

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly
Blair Martin, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

FROM: Sean Kelley, Deputy Borough Attorney
Scott Huff, Platting Manager
Marcus Mueller, Acting Planning Director

CC: Charlie Pierce, Mayor

DATE: October 1, 2020

SUBJECT: Ordinance 2020-45, Subdivisions, Hearings and Appeals Amendment
Ordinance **Sectional Analysis**

The following provides a sectional analysis of the amendments to the subdivision regulations and KPB Chapter 21.20, Hearings and Appeals.

Section 1 amends KPB 2.40.080 to clarify that the planning commission's delegation of powers to the plat committee is done in its capacity as the platting board, to change the time to file a request for review from ten days to fifteen days, and to establish that any person or agency sent a notice of decision may request review by the full planning commission.

Section 2 amends KPB 20.10.040 clarifying when an abbreviated plat procedure may be used and adds a cross reference to KPB 20.40.

Section 3 conforms KPB 20.10.080, related to vacation plats, to recognize that there may be vacation plats that are not right-of-way vacation plats and to cross reference the new vacations chapter KPB 20.65.

Section 4 adds a new section KPB 20.10.100 to provide a uniform notice section for public hearings under Title 20.

Section 5 adds a new section KPB 20.10.110 to establish a building setback encroachment application and permit process. Currently an exception is granted to allow a building to remain within a building setback on all recorded plats. Platting exceptions are allowed only at time of preliminary plat approval. This will allow a process to review and grant (or deny) permission for a building to remain within a building setback within already platted subdivisions.

Section 6 adds a new section KPB 20.10.120 to provide for a notice of decision section to include the persons or agencies that will be sent a notice of decision.

Section 7 amends KPB 20.25.020 to clarify that the submission of a preliminary plat is the responsibility of a licensed land surveyor.

Section 8 amends KPB 20.25.030 to clarify that the planning director will determine the number of copies and format for preliminary plat submissions and this number will be noted on the submittal application.

Section 9 amends KPB 20.25.050(A) to recognize that platting powers have not been delegated but that such powers may be delegated to the cities upon request, amends KPB 20.25.050(B) & (E) to eliminate 49-day deadline for city advisory planning commission review of preliminary plat, and amends KPB 20.25.050(F) to state that a final plat may not deviate from a preliminary plat unless the city has approved the revision.

Section 10 amends KPB 20.25.060, applicable to second class cities, the changes are similar to section 9 by removing the 49-day deadline for city review of a preliminary plat and removing reference to delegation of limited platting authority.

Section 11 amends KPB 20.25.070 to require that the parent plat name be carried forward on the preliminary plat, to clarify that the preliminary plat must identify existing travel ways, to require the plat show the status of neighboring parcels within 100 feet to assist within planning for street intersections and future development, and to show low wet or swampy areas to assist owners plans for prudent placement of structures, wells, septic systems, and rights-of-way.

Section 12 repeals KPB 20.25.090 due to new uniform notice section KPB 20.10.100 proposed in this ordinance.

Section 13 amends KPB 20.25.110 to clarify the approval time frame of the preliminary plats, the expiration of preliminary plat, the number of extensions that may be granted, and to put the subdivider on notice when a preliminary plat is granted a time extension the final plat must comply with current subdivision code.

Section 14 conforms KPB 20.25.120 to the KPB 2.40.080 amendments regarding deadline for filing a request for review of a plat committee decision. A section is being added to codify that preliminary plats approved prior to February 14, 2014 (prior code which contained no time expiration) will now have ten years from

date of approval to record the plat, update to current code, or have the approval expire after 10 years.

Section 15 amends KPB 20.30.060(D) clarifies the placement of a ten-foot utility easement within borough rights-of-way and states that within the boundaries of a city the city and applicable utility providers will determine location, and/or width of utility easements.

Section 16 repeals KPB 20.30.110, half streets, in recognition that applicable half street language is moved to KPB 20.30.120.

Section 17 amends KPB 20.30.120(A) to move the half street requirements to fall within the street width requirements of code and to change the notice to adjoining property owners to be consistent with KPB 2.40.080.

Section 18 amends KPB 20.30.150(B) to add requirement that distance between street centerlines shall be no less than 150 feet.

Section 19 amends KPB 20.30.240(A) to clarify that the building setback requirement applies to all dedicated rights-of-ways and to add a plat note when a subdivision is affected by a local option zoning district.

Section 20 amends KPB 20.30.250 to allow completion of new plats without requiring an exception to KPB 20.30.240 when the recorded plat shows a building set back. This will remove the requirement for an exception request to not carry forward a plat note that no longer applies. Currently this often affects simple replats within cities with zoning powers. The change will help simplify the platting process.

Section 21 amends KPB 20.30.270 to clarify that the different design standards in cities may be applied by the planning commission even if platting powers haven't been delegated to that specific city.

Section 22 amends KPB 20.30.280(C) to clarify the applicable provision of floodplain management code that must be followed for subdivision plats.

Section 23 amends KPB 20.30.290 to conform to KPB 21.18 by adding the word "waters" to provide the correct title and description for the applicable plat note.

Section 24 amends KPB 20.40.020(A)(3) to clarify that a vacation is not limited to dedicated right-of-way vacations and to correct cross reference to new KPB 20.65.

Section 25 amends KPB 20.40.030 to remove the nominal five acre description from the abbreviated submittal for the wastewater review to eliminate confusion and adds a cross reference to KPB 20.40.100(F).

Section 26 amends KPB 20.40.040 to remove reference to borough regulatory requirements because the borough does not regulate the installation of septic systems and adding a plat note so that owners are aware that a soils analysis report is on file with the borough which is beneficial when planning for the installation of a septic system.

Section 27 amends KPB 20.40.070 by adding a new paragraph C to clarify that a licensed engineer or surveyor does not have to sign the wastewater disposal note for subdivisions served by city septic systems.

Section 28 amends KPB 20.40.100 to align with changes to 20.40.030 by removing reference to nominal five acres and replacing it with 200,000 square feet.

Section 29 amends KPB 20.50.010(A) to clarify that an exception may be requested without a formal application process.

Section 30 adds a new section KPB 20.60.025 requirement that the final plat filing fee must accompany the submission of the final plat.

Section 31 amends KPB 20.60.070 to conform with State of Alaska (DNR) platting recommendations and to clarify drawing standards to be followed (colors should not be used, appropriate drawing scales, and the appropriate font size) so that recorded plats are legible and can be reproduced in the future.

Section 32 amends KPB 20.60.110 to provide that non-radial lot lines must be labeled to provide useful information to owners and subsequent surveyors, to label computed data where lines were not measured, and to add clarification to situations where a discrepancy is found between survey markers and/or to show how new survey marker locations were established.

Section 33 amends KPB 20.60.130 to define that the boundary of the subdivision must be established and clearly shown on the drawing.

Section 34 amends KPB 20.60.170 to clarify that private covenants, easements, or deed restrictions will be shown on plat when known but that they are not enforced or regulated by the borough, and to add a requirement that subdivision plats must confirm to applicable local option zone requirements.

Section 35 amends KPB 20.60.180 to add a new paragraph B regarding plat note revision or removal.

Section 36 amends KPB 20.60.210 to add a new paragraph E to require notification to the owner(s) of the affected lot and/or owners in the subdivision when a request to amend a record plat is received.

Section 37 adds a new chapter KPB 20.65, Vacations, to borough code.

- **KPB 20.65.010** provides authority, legislative intent, scope and purpose of the chapter to clarify that the chapter only applies to platted public easements or areas. The chapter does not apply to private easements or easements created by contract, deed, or Alaska Statute.
- **KPB 20.65.020** provides for a planning commission recommendation on the vacation of state easements.
- **KPB 20.65.030** provides that vacations must conform to requirements of KPB 20.65 and AS 29.40.120 through AS 29.40.160.
- **KPB 20.65.040** provides for an informal pre-application conference with borough staff and provides the requirements for a complete application.
- **KPB 20.65.050** provides the procedure to be followed, the criteria for evaluating the merits of a vacation application, that approval of a vacation is not final without the consent of city council or assembly, as applicable, that a planning commission denial is final and that as a legislative act appeals of a vacation decision must be filed in Alaska Superior Court.
- **KPB 20.65.060** addresses title to the vacated area.
- **KPB 20.65.070** concerns process and procedure for alteration, including removal, of platted utility easements.

Section 38 repeals KPB 20.70, Vacation Requirements, as this chapter is replaced by new vacations chapter KPB 20.65.

Section 39 amends KPB 20.80.040 to conform cross reference to KPB 20.65.

Section 40 amends KPB 20.90.010 definitions.

Section 41 amends KPB 21.20.210 definitions to clarify that a party must own property within the notification radii to appeal a planning commission decision to a hearing officer.

Section 42 amends KPB 21.20.230(B) to remove confusion regarding assembly consideration of vacation approvals as that is covered in full by new KPB 20.65.050.

Section 43 amends KPB 21.20.250 to provide for a process of non-participation by the borough when only private interests are being litigated.

Section 44 amends KPB 21.20.270 to clarify that KPB 21.20 appeals are appeals on the record and new evidence will not be admitted without cause.

Section 45 amends KPB 21.20.280 for clarification regarding who must submit an opening statement and to clarify when additional written statements are allowed.

Section 46 amends KPB 21.20.300 to clarify that the borough may only file motions if it enters an appearance in the matter.

Section 47 sets the effective date of this ordinance.