


Kenai Peninsula Borough  
Planning Department

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**MEMORANDUM**

TO: Assembly President  
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor

FROM: Marcus A. Mueller, Acting Planning Director 

DATE: October 14, 2020

RE: Ordinance 2020-45: An ordinance amending Kenai Peninsula Borough Code of Ordinances including Chapter 2.40-Planning Commission, Title 20-Subdivisions, Chapter 21.20-Hearing & Appeals to correct grammatical errors, clarify and improve certain administrative procedures.

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The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled October 12, 2020 meeting.

A motion passed by unanimous vote (8 Yes, 0 No, 2 Absent) to recommend the adoption of Ordinance 2020-45.

In addition the KPB Planning Commission made a motion passed by unanimous vote (8 Yes, 0 No, 2 Absent) to recommend additional language be added to KPB 20.65.07(H) of the ordinance; which staff will present in a separate amendment memo.

In the ordinance, please amend the last WHEREAS statement:

WHEREAS, at its meeting of October 12, 2020, the Planning Commission reviewed this ordinance and recommended approval by unanimous vote.

Attached are the unapproved minutes of the subject portion of the meeting.

- \*4. Plats Granted Final Approval (20.10.040) – None
- \*5. Plat Amendment Requests – None
- \*6. Commissioner Excused Absences
- \*7. Minutes
  - a. September 28, 2020 Planning Commission Meeting

Vice Chair Ruffner asked if anyone present wanted to speak or had concerns about any of the items on the consent or regular agendas.

Hearing no one else wishing to comment, Vice Chair Ruffner returned the discussion to the Commission.

**MOTION:** Commissioner Carluccio moved, seconded by Commissioner Brantley to approve the consent agenda and the regular agenda.

**MOTION PASSED:** Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Yes		10	No	0	Absent	0
Yes		Bentz, Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No		None				
Absent		None				

**AGENDA ITEM D. OLD BUSINESS**

1. Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures

Staff report given by Scott Huff.

PC Meeting: October 12, 2020

Since the last significant rewrite to the borough’s subdivision code in 2014, platting staff have found a number of provisions that would benefit from clarifying language. The amendments to KPB Title 20 (Title 20) and KPB 2.40 will improve the platting process and procedure and make Title 20 consistent with current law. Among technical changes to borough subdivision regulations, the amendments will add a new uniform notice section that will be applicable to all of Title 20.

The amendments will repeal KPB 20.70, Vacation Requirements, and replace that chapter with a new vacations chapter, KPB 20.65, Vacations. The new vacation chapter will clarify that only platted public easements may be vacated by the planning commission subject to consent or veto by the borough or a city, if the easement to be vacated is within a city. The new vacation chapter will include a utility easement alteration or removal section to improve the procedure for alteration of utility easements.

The amendments to KPB 21.20 seek to improve definitions and to clarify that hearing officer appeals are on the record appeals. The amendments also provide for a process of non-participation by the borough and to remove requirements for providing statements and motions even when the borough is not a participating party.

The KPB Planning Commission reviewed Ordinance 2020-\_\_\_\_, Subdivisions, Hearings and Appeals Amendment Ordinance at the meeting of September 28, 2020. After the meeting KPB Platting staff and KPB Legal staff revised the ordinance as outlined below.

- Updated the title to add the word ‘AND’.
- Updated and completed the **WHEREAS** statements,
- Revise **SECTION 1** by removing AFTER NOTIFICATION and replacing with of date of distribution.

- Revise **SECTION 4** by adding a sentence to paragraph C so that the process to submit written comments is included on the notice that is sent to neighboring land owners.
- Revise **SECTION 4** by adding paragraph E. This section states that notice of any platting action must be sent by certified mail to any beneficial interest holder that is identified in the certificate to plat (title report).
  - E. Parties whose sole interest in the subdivision is as a beneficiary of a deed of trust, as shown on the certificate to plat, shall be sent certified mail notice by the planning department. If a beneficial interest holder does not respond within 30 days of the date of mailing indicating that the deed of trust either prohibits or allows the proposed platting action, or requires their signature on the plat, the plat may be approved. The owner may submit a letter of non-objection from the beneficial interest holder with the plat in lieu of the notice requirement. If the final certificate to plat shows additional beneficial interest holders, and they have not signed the plat or provided a letter of non-objection, the planning department will send them notice and give them a 30 day response time prior to approval of the final plat.
- Revise **SECTION 5** as follows
  - 20.10.100(F) to read, '... the permit will be valid for the life of the structure, or for a period of time set by the Planning Commission.'
  - 20.10.100(G) to read, 'The planning commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.'
  - 20.10.100(H) to correct the reference of code for party of record from 20.90 to 21.20.210.
- Revise **SECTION 11** by adding 'all of' in the first sentence so that all listed requirements must be shown and revising paragraph G to read smoother.
- Revise **SECTION 17 and SECTION 18** to identify the specific paragraphs that are being edited.
- Revise **SECTION 21** by leaving in the word 'shall' and not replacing the word with 'may'. This change is per the request of the City of Soldotna. This change will require the KPB Planning Commission to apply city subdivision standards. Any issue with a city design standard will need to be worked out between the applicant and city. Any appeal of a city design standard will follow KPB 21.01.020(E) which reads, *The borough will not be responsible to defend against any claims for damages, or other liability arising from the exercise of any power by the city, the city advisory planning commission, or any administrative officer of the city.*
- Revise **SECTION 22 and SECTION 24** to identify the specific paragraphs that are being edited.
- Revise **SECTION 27** specifically
  - o 20.40.070(A)(3) to read, 'The minimum lot size necessary to maintain the applicable separation distance [SET OUT AT] pursuant to 18 AAC 72.020 from any part of the wastewater system.'
  - o 20.40.070(C) to read, 'If all lots in the subdivision are served by a wastewater treatment and disposal system within a home rule or general law city, then signature by a licensed engineer or surveyor is not required.'

- Revise **SECTION 29** to state that the request for an exception shall be in writing.
  - Revise **SECTION 37**,
    - o Add 'CHAPTER' to the title.
    - o Edit 20.65.070(H) to require an exhibit drawing, prepared by a licensed engineer, to be recorded along with a resolution when an alteration or removal of a utility easement has been approved by the KPB Planning Commission.
- H. Upon approval, the alteration of a utility easement can be finalized by either.
1. Recording of a subdivision plat which complies with Chapter 20.
  2. Recording of a utility easement alteration resolution. Upon approval of an alteration to a platted utility easement, not associated with the vacation of a right-of-way, not requiring transfer of title, or changing of boundary lines, a resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the approval. The petitioner is responsible for the recording fees. The resolution will require an exhibit drawing showing, and dimensioning, the utility easement alteration area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

Mr. Huff noted that the "edit" language in the second bullet point under Section 37 was not included in the ordinance before them tonight and would request that the commission amend their motion to include this language.

**END OF STAFF REPORT**

Vice Chair Ruffner opened the meeting for public comment.

Hearing no one wishing to comment Vice Chair Ruffner closed public comment and discussion was opened amount the commission.

Vice Chair Ruffner noted that there was a motion on the floor from the 9/28/20 meeting but he would entertain an amendment motion to add the additional language recommended by Mr. Huff.

**MOTION:** Commissioner Morgan motioned, seconded by Commissioner Ecklund to recommend to the Assembly the approval of Ordinance 2020-45 (from 9/28/20).

**AMENDMENT MOTION:** Commissioner Bentz motioned, seconded by Commissioner Venuti to recommend the following language be added to the ordinance: The resolution will require an exhibit drawing showing, and dimensioning, the utility easement alteration area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

**AMENDMENT MOTION PASSED:** Seeing and hearing no discussion or objection, the motion passed by unanimous vote.

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No	None				
Absent	Ecklund, Martin				

**MOTION PASSED:** Seeing and hearing no discussion or objection, the motion passed by unanimous vote.

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No	None				
Absent	Ecklund, Martin				