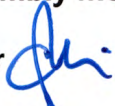



Kenai Peninsula Borough
Planning Department

MEMORANDUM

TO: Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor 

FROM: Max J. Best, Planning Director 

DATE: September 26, 2019

RE: Ordinance 2019-24, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled August 26, 2019 and September 23, 2019 meetings.

A motion passed by unanimous consent to postpone until borough back by staff.

The Planning Commission felt that comments from the Cities should be received before action is taken.

If the Assembly approves the Ordinance, please make the following amendment to the last WHEREAS statement:

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on September 23, 2019, made no recommendations.

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

Commissioner Venuti wanted to know if Ms. Wade had the opportunity to read the letter from the Kachemak Bay Conservation Society. Ms. Wade read it briefly right before the meeting. Commissioner Venuti wanted to know what she thought of the recommendations and if they were feasible to add into the plan. Ms. Wade felt that they could and did not see anything that contradicted the values that have been shared through this process.

Commissioner Ecklund wanted to discuss the process for the plan. She wanted to know if it could be brought back after some of the suggestions are made so they can review it. She felt they did not need the whole plan again but would like to see the changes. She also wanted to know if they had to make motions for each recommendation or if some could be grouped. Mr. Wall said that they could instruct staff to make some changes and bring it back and then they will have a new draft to review and adopt.

Chairman Martin said that he would like it to be time specific on when to review the plan.

Commissioner Ruffner wanted to try to summarize the wishes of the Commission for Ms. Wade. Update the census tables for the agriculture data from 2012 to 2017; incorporate the five recommendations from the Kachemak Bay Conservation Society, and a specific timeline for review instead of periodic update.

Chairman Martin noted from his agriculture perspective that the cannabis statistics are significant even if the benefits are not local relatively speaking. Commissioner Carluccio noted that we do get sales tax. Mr. Wall said the sales tax does go to the Borough.

Commissioner Ruffner wanted to know if staff needed more information. Mr. Wall felt that what was given was sufficient direction. He does have concerns about item one on the Kachemak Bay Conservation Society list. It deals directly with the Hazard Mitigation Plan. That is something that the Commission has already forwarded to the Assembly. He would recommend items two through five on the list.

Commissioner Ecklund noted that Kachemak Bay Conservation Society amendments do not get specific enough for alternative energy or the solar and wind farmland use. She would like to see more about alternative energy.

Ms. Wade said there were two things she did not hear Commissioner Ruffner cover in his summary and the alternative energy was one. The other was related to it, the educational and training opportunities tied to growth industries. Tying it back to those alternative energy and others discussed. Commissioner Ruffner wanted to clarify that those suggestions would also be looked at. Ms. Wade confirmed.

Commissioner Ruffner asked if staff wanted to the postponement to be date certain or brought back by staff. Mr. Best asked what Ms. Wade's ability would be to have the changes made. Ms. Wade said she would like to have the changes made within the next two weeks. After hearing the public input and with it already being a two-year process, she felt sooner was better. Mr. Best said that brought back by staff would be best.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Ecklund, to postpone the review of the Comprehensive Plan until brought back by staff.

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

AGENDA ITEM F. PUBLIC HEARINGS

2. Ordinance 2019-___; Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions.

Staff Report Given by Max Best

PC Meeting: 8/26/19

This ordinance is to allow people to have gated or private subdivisions within the Borough. If all of the requirements of the Borough Platting code are met, a road can be vacated and made into a tract of land creating a gated private community.

Some requirements are that Title 14 and 20, as they relate to development, would need to apply. Utility requirements, road width, etc. would have to apply in case the tract is dedicated as a public right-of-way and ceases being private.

There are requirements to get to and through the gates. There must be a turnaround before the gate and adequate access. All of the requirements go through fire and emergency services to determine that they could access the subdivision if needed. They would have a clicker or code that would allow them access to the subdivision.

This was created by staff to address those subdivisions that may potentially want private roads. This can be difficult but doable. There are situations where "to and through" the subdivision is not needed. Example would be a small cul-de-sac that accesses land that does not require streets to go around or through the subdivision. It would work in that situation.

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the Commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Carluccio, to forward to the Assembly a recommendation to approve Ordinance 2019-___; an ordinance adopting KPB 20.80, Subdivision private streets and gated subdivisions.

Commissioner Whitney wanted to know if an existing subdivision could do this if the ordinance is adopted. Mr. Best said they could but the right-of-way would have to be vacated. One hundred percent of the property owners that abut the right-of-way would have to be a part of the process. It will take everyone in the area to agree to it.

Commissioner Ecklund noted that this is a brand new section of Borough Code. She did not think there was anything existing about gated communities or private streets in the code. Mr. Best said this is new. It can be done under existing code but it requires numerous exceptions to the code. Commissioner Ecklund wanted to know if there was a specific instance that had caused this to be drafted. Mr. Best said perhaps.

Commissioner Carluccio wanted to know if staff looked at other Boroughs or States that have gated communities to see how it worked for them. Mr. Best said they did a lot of research on how it worked in other municipalities. There are a lot of them in California, etc. The biggest concern was providing emergency services to people and making sure there is a way to adequately respond to people. It cannot just be a trail that emergency vehicles cannot use. Commissioner Carluccio followed up by asking if it would all have to be privately owned land, that there would be no easements or trails. Mr. Best said it would be a tract of land that is owned by all the abutting landowners. If it is done at the time of subdivision, it would be a tract owned by the Home Owners Association and the Association would own, operate, and maintain the road. Utility easements would be associated with it and building setbacks in case the Borough takes over the right-of-way. It has to meet all of title 14 and 20 for the Borough to take it. Non-conforming structures or things in the right-of-way would not allow the Borough to take the road. It must be built to Borough standards and met all the requirements the Borough has in place. Commissioner Carluccio asked if the best way to do this is to start with a tract of land and then subdivide to build the gated community. Mr. Best said this is generally for that situation. It will be difficult but possible for existing subdivisions to become a gated community.

Commissioner Venuti wanted to know if a local option zone could be a gated community and about emergency vehicle access. Mr. Best said that he did not know any reasons why a local option zone could not be a gated community. The Borough would have access anytime staff needed. Gates would have to

be approved by emergency service providers. There would be a code, a lock that can be cut, and a way to access the subdivision if needed even if the power is out. Emergency services would have free access and this ordinance reserves access for the Planning Department. Widths and heights of gates will be worked out with Emergency Services. Commissioner Venuti wanted to know if a how property rights will be handled. Mr. Best said that an HOA would have to own it and the Borough would not have property rights associated with the roadway. The HOA would also maintain the road.

Commissioner Ecklund is concerned about not having building setbacks incorporated into the ordinance due to safety standards for fires, etc. Mr. Best noted that building set backs are a provision of Chapter 20 so it would have to be in place.

Commissioner Whitney wanted to know if the Borough would be compensated for giving up a right-of-way in established subdivisions that form a gated community and turn the road into a private road. Mr. Best responded that if a municipality purchased land for a right-of-way they could be compensated during the vacation process. The Borough gets the right-of-ways mostly through dedicated fee land with no cost. Commissioner Whitney noted that the Borough may have been improving it and have money invested into the road. Mr. Best thought that the Roads Department would be willing to give up the maintenance on the road over what it costs to continue maintenance and improvements. Mr. Best noted that it was a good question that was not fully considered.

Commissioner Ruffner noted that when reading the proposal it is generally following all the subdivision requirements and Title 14 for road construction. That seems reasonable in the sense that it could wind up coming back to the Borough and it needs to be safe. The issue he sees is once a certain sized parcel is turned into a gated community the through traffic to get to future development seems to be a challenge. He wanted to know if there was any thought put into size limitations. There are block length requirements, but he wanted to know if there was something in this ordinance that talks about size. Mr. Best said that it must meet Chapter 20 requirements including the "to and through". It is not for every piece of property. There is no size requirement because many larger parcels require "to and through" easements or right-of-way dedications. Commissioner Ruffner noted that the exception to block length is given generously and he could see that becoming an issue.

Chairman Martin wanted to know if there would be any legal complications if the Borough owns a parcel inside a gated community after tax foreclosure. Mr. Best said that was discussed and it was determined that the borough would not be obligated to pay Home Owner fees for tax foreclosed properties. The Borough currently does not have those obligations for property acquired during tax foreclosure.

Commissioner Whitney wanted to know if the property owners in the gated community would still have to pay the road service mill rate. Mr. Best said they would. Commissioner Whitney said the owners would be doubling their cost because they would also pay the maintenance through the Home Owners Association. Mr. Best said that was correct.

Chairman Martin noted he likes to encourage more parks and open space within subdivisions. Currently there is no economic incentive for a developer to do that and the Borough does not want to own those parks. He wanted to know if this would help encourage that. Mr. Best said the developer or owners could designate a lot within the subdivision as an open space and the Home Owners Association can own it and utilize it as a park. This could possibly advance that type of situation. Chairman Martin noted they would still have to pay property tax on it. Mr. Best said they would.

Commissioner Ruffner said he did not have any issues if a developer wants to develop a gated community if it does not interfere with future development of the larger lands that are still out there. The Borough is still entitled to some State lands and the State is still entitled to some Federal lands. This is a big piece of code to introduce and vote on in the same meeting. He does not know if the public knows that this is out there. Everything he has heard sounds reasonable but is reluctant to vote on it.

Commissioner Ecklund wanted some clarification about section line easements that go through a parcel that wants to be a gated community. She wanted to know if the gate would go on the far side of the section

line easement so that public access is not blocked. Mr. Huff said that public access easements would have to stay open from point A to point B. The easement could pass through a subdivision but the public would not have the right to get onto the private access road. Commissioner Ecklund wanted to know if the property was to be gated if a pedestrian gate would have to be allowed on either side to allow people to walk through the section line easement. Mr. Huff stated that a legally a pedestrian or section line easement cannot be blocked. The gate would be on the road and the public could continue to use the section line easement to pass through the subdivision. Commissioner Ecklund followed up by stating that the owners could not put up a fence around the whole property from both sides of the gate and block the whole subdivision off if there is a section line easement through it. Mr. Huff said a fence could be put up on their property but the section line easement cannot be blocked.

Commissioner Whitney felt that many questions of had been raised and many answers were not available right now. He felt that there needed to be more research and clarification on what the parameters, rules and regulations would be for somebody to do this. Mr. Best asked Commissioner Whitney what specific questions he would like answered. Commissioner Whitney wanted to know what would happen to the street in an already formed subdivision. If that road has been built and maintained by the Borough who will pay for that investment.

Commissioner Fikes asked if there were any gated communities in the Borough at this time. Mr. Best said there are some. Commissioner Fikes asked how they are operated. Mr. Best said it is similar to this ordinance. Kenai River Keys is one and the emergency service providers have clickers to get access and a gate that can be clipped and opened at any time. It has been a private subdivision with private roads since about 1972.

Commissioner Ruffner he would like some more thought on size limitations and tie it to block length. Maybe two time the block length or something similar would be a limitation. It can get more complicated than that when looking at the surrounding lands. A block length could be met but forcing the only other access into a wetland that cannot be developed. He would like to see some rules that limit size and feasibility for construction around the subdivision. Mr. Best said that they could look into it more. The ordinance is being introduced to the Assembly on September 3 and will be heard on October 8. The Planning Commission will have a meeting between those dated so more information can be given to the Commission before they vote.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Carluccio to postpone until brought back by staff.

Commissioner Ecklund wanted to ask about the management of the new ordinance. She wanted to know the Planning Commissioner or Assembly will be making the decisions on private subdivisions. Mr. Best said it would be the Planning Commission and their decision would not be forwarded to the Assembly.

Commissioner Fikes said if this were coming back, she would like to see or hear some feedback from Emergency Services if there have been any complaints or issues. In addition, if the utility companies have had problems with access, or complaints from people that live in a current gated community regarding services. Mr. Best said that there have been no complaints that the Borough is aware of because they make the subdivision must be access available. Kenai Keys has had a special assessment done and had gas put into the community. During a flood event, the gate is locked open so that people can come and go to escape any flood issues. Commissioner Fikes was concerned about seasonal people or those that are on the slope. If an emergency arises when they are not there, where would the protection and responsibility lie, with the Borough or Home Owners Association?

Commissioner Ecklund said this brings to mind when a staff report says that the different groups say no comment or no objection. She wanted to know if that could be included in a staff report for this item. It may be helpful to know that others have reviewed it.

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

AGENDA ITEM E. UNFINISHED BUSINESS

2. Ordinance 2019-24; Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions.
Postponed from the August 26, 2019 Planning Commission meeting.

Staff Report Given by Scott Huff

PC Meeting: 09/23/2019

At the August 26, 2019 Planning Commission meeting there was a motion to forward to the Assembly a recommendation to approve Ordinance 2019-24 to adopt KPB 20.80. At that meeting, the Planning Commission asked staff to get more information. The Ordinance was sent to the KPB Roads Director, Emergency Management providers as well as title officers. There were no responses received back except for some conversations Mr. Best had with Chief Browning. Late this evening the Roads Director commented that the RSA Board had already approved the Ordinance.

There has been contact with the cities of Kenai, Soldotna, Homer and Seward. Staff will be meeting with the City of Homer on September 23, 2019 and the City of Soldotna on October 2, 2019 to review the ordinance and hear their concerns.

Since the August 26, 2019 meeting, staff has come up with nine revisions. Most of them are general housekeeping items. A few items were mentioned in the code two or three times. There are no major changes being proposed.

Mr. Huff offered to review the changes one by one if requested. He noted that the Planning Commission could approve in one motion or review and act on each one separately. The Commission could also choose to not amend and pass the ordinance onto the Assembly as presented.

END OF STAFF REPORT

MOTION ON FLOOR: to forward to the Assembly a recommendation to approve Ordinance 2019-___; an ordinance adopting KPB 20.80, Subdivision private streets and gated subdivisions.

Mr. Best summarized his conversation with Chief Browning about access through gates onto private streets. Chief Browning indicated that most jurisdictions have a box with a coded universal key. There is a time stamp for when the key is used and by whom. It is up to the emergency service providers in the area to determine what they would require such as a padlock or combination lock. The ordinance already contains that the approval of the emergency responders would be required. That includes the construction of the gate. The height, width, the access and the availability to get an apparatus through will go through the emergency responders.

Mr. Best also had a discussion with the roads director, Mr. Uhlin. Commissioner Whitney had previously asked about public money being put into a public road and then turning it into a private road. Mr. Uhlin's felt that it would be given up because the maintenance cost over time would be more than what invested into the road. Less roads will be maintained by the borough, which will cost less money.

Mr. Best noted that after discussion and review with staff the question of how the ordinance will work within the cities arose. It is not mentioned in the ordinance. Currently the code says that at the time of final review an installation agreement with the city is needed. During the preliminary process staff has the plat go to the city for comments in relationship to the borough code because the borough is the platting authority. Staff wants to meet with the cities and talk about building setbacks and their zoning. They may require the roads to be constructed to a standard in the city because of obligations for water, sewer, utilities and the access required to maintain those services. The cities may be able to allow gates now because they have that authority but the concern is that they do not have anything in place to address the specifics laid out in this ordinance. The meetings with Soldotna and Homer are scheduled. The meeting with Kenai has not been scheduled but there have been conversations with them. Staff wants to give the cities a chance to see

how it would work with their code, if they want to prohibit it within their boundaries or agree with what is proposed.

Commissioner Whitney wondered if this should be postponed until the meetings with the cities are held to see if they need to propose any additional changes. The changes can be done at one time so it does not have to come back for more changes. Mr. Huff let the Planning Commission know that the Assembly would hear this item on October 8, 2019. Mr. Best said that the managers for the cities of Soldotna and Kenai have requested that they be given more time. He does not have any indication from the Assembly if they will honor that request.

Commissioner Ecklund asked if there could be postponement on this item at the Assembly meeting. She wanted to know if the Assembly could be told there had been a request for postponement by two cities. Mr. Huff said the Assembly could postpone if they hear from the Planning Commission and the cities to postpone.

Commissioner Venuti wanted to know more about the meeting in Homer on September 23, 2019. Mr. Huff said it would be a phone call on September 24, 2019. Commissioner Venuti wanted to know whom staff was meeting with. Mr. Huff said it would be with Julie Engebretsen, Deputy City Planner, as well as Mr. Abboud, the City Planner. He was not sure what others would be taking part. Commissioner Venuti wanted to know if there were plans to meet with the City Council. Mr. Huff said that the upcoming meeting was a teleconference with city staff to answer questions. It is possible that a meeting with the City Council will be requested or needed but that will be determined after discussions are had with the city staff.

Commissioner Ruffner said he felt like he wanted to postpone. This is a big change in code and the public has not commented on this. He is not sure if this came from the public or how it originated. He felt that it was a little odd that there has not been anyone testifying on gated subdivisions.

Commissioner Ruffner wanted to make sure this is not used as a tool to block public access. He had thought about limiting the size and wanted to know if staff discussed it since there is not a size limitation. Mr. Huff said it was discussed but the very first item says it must comply with Chapter 20.30, which is design. It must meet the block length requirements and provide to and through rights-of-way. Access cannot be limited to unsubdivided lands beyond the subdivision.

Commissioner Ernst asked if it could limit access to public section line easements. Mr. Huff said possibly to get to the section line easement. If the right-of-way is to a section line easement for to and through access it could not be vacated. He does not think one could be vacated if the right-of-way connects to a section line easement.

MOTION FOR POSTPONEMENT: Commissioner Ruffner moved, seconded by Commissioner Bentz, to postpone until brought back by staff.

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