

**I. CALL TO ORDER**

The special meeting of the Matanuska-Susitna Borough Assembly was held on April 17, 2012, at the Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 2 p.m. by Mayor Larry DeVilbiss for the purpose of discussing Ordinance Serial No. 11-072.

**II. ROLL CALL**

Assembly members present and establishing a quorum were:

- Mr. Warren Keogh, Assembly District No. 1
- Mr. Noel Woods, Assembly District No. 2
- Mr. Ronald Arvin, Assembly District No. 3 (*Deputy Mayor*)
- Mr. Steven Colligan, Assembly District No. 4 (*arrived at 2:10 p.m.*)
- Mr. Darcie K. Salmon, Assembly District No. (*arrived at 2:06 p.m.*)
- Mr. Jim Colver, Assembly District No. 6
- Mr. Vern Halter, Assembly District No. 7

Staff in attendance were:

- Ms. Lonnie R. McKechnie, Borough Clerk
- Mr. John Moosey, Borough Manager
- Mr. Nicholas Spiropoulos, Borough Attorney
- Mr. John Aschenbrenner, Deputy Borough Attorney
- Ms. Jamie Newman, Deputy Borough Clerk
- Mr. Paul Hulbert, Platting Officer

**III. APPROVAL OF AGENDA**

Mayor DeVilbiss:

- announced that a copy of Planning Commission Resolution Serial No. 12-08 was distributed to the Assembly;
- suggested that the Assembly review the resolution; and
- reported that it has been suggested that instead of waiting until the end of the meeting for audience participation, the Assembly take intermittent participation throughout the meeting.

Assemblymember Colver:

- objected to the suggestion of intermittent public participation in the interest of time;
- clarified that all proposed amendments to Ordinance Serial No. 11-072 have been made available to the public; and
- requested to move audience participation as the next item of business.

There was no objection noted.

GENERAL CONSENT: The agenda was approved as amended without objection.

#### IV. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mr. Paul Hulbert, Platting Officer.

#### V. AUDIENCE PARTICIPATION

The following person spoke in support of the proposed amendments and spoke to concerns regarding access to remote parcels when families are trying to break up parcels with no money exchanging hands: regarding the cost of roads: Ed McCain

The following person spoke to concerns about the difficulty in expanding rural roads and removing lot lines: Mr. Bill Haller.

The following person spoke to concerns with access to adjoining lands and suggested that the Assembly amend MSB 16.20.100, to strike the word "suitable" and add "legal and constructible:" Mr. Butch Moore.

The following person spoke to concerns regarding the subdivision process of remote parcels without an access road being constructed to Borough standards: Mr. Mike Shrieves.

#### VI. ITEMS OF BUSINESS

A. Ordinance Serial No. 11-072: AN ORDINANCE REPEALING MSB TITLE 27 AND ADOPTING MSB TITLE 16, SUBDIVISIONS. *(Sponsored by Assemblymember Colver)*

MOTION PENDING: Assemblymember Colver moved to adopt Ordinance Serial No. 11-072.

VOTE: The main motion passed as amended without objection.

MOTION PENDING: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.005(B)(3), to insert the following sentence at the end of paragraph (3) and to insert subsections (a) through (f), to read as follows:

(3) The platting officer shall determine whether utility easement requests are reasonable and only require reasonable requests as recommendations to the Board or as conditions of approval. The platting officer shall provide final approval on the adequacy of an easement(s) provided for a platting actions on final plats and platting actions delegated as by this title, within twenty (20) days of acceptance of submission. **The platting officer is to use the following criteria to determine the reasonableness and adequacy of utility easements:**

**(a) Fifteen-foot wide utility easement outside**

**both sides of road rights-of-way for overhead wire utilities. Utility easements can be reduced to 10' if all wire utilities are buried;**

**(b) The portion of back slopes or fore slopes that extends into the utility easement should not exceed a 4:1 slope;**

**(c) If the city has standards for installing utilities, those standards must be met;**

**(d) If overhead utilities are to be installed, the developer is to provide anchor easements appropriately sized and located meeting the utility company's design standards;**

**(e) Utility easements are not to be placed in swamps, steep slopes, or other unusable areas. Utility easements are to be fully useable for utility installations where installation equipment can safely work; and**

**(f) Utility easements are to be designed in accordance with current subdivision construction design standards.**

Assemblymember Keogh:

- noted that the Attorney recommended that the Assembly adopt standards for the Platting Officer to follow; and
- added that the amendment is proposed by the Platting Department.

Assemblymember Colver:

- spoke in opposition to expanding the authority of the platting office to make reasonable decisions; and
- spoke favorably about allowing the platting office an opportunity to resolve utility issues without mandating them.

VOTE: The primary amendment failed with Assemblymembers Keogh and Halter in favor.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.100, by adding a new subsection (E), to read as follows:

(E) A subdivider proposing to create roads shall provide access to adjoining privately owned parcel(s) through a proposed subdivision as follows:

(1) legal access shall be provided along a constructible alignment;

(a) geometrical alignment shall meet a minimum of subcollector standards unless the applicant demonstrates that it is not necessary;

(b) provided that constructing physical access to said adjoiners shall not be a condition of plat approval; and

(2) access to adjoining lands does not have to be provided where suitable alternative access is available.

Assemblymember Colver noted that the amendment will ensure connectivity to adjoining parcels to provide for further development and not land lock private property.

**MOTION:** Assemblymember Salmon moved a secondary amendment to subsection (E), by striking the word “provide” and inserting in its place the word “ensure” and by striking the word “through” and inserting in its place the word “beyond,” and in paragraph (2), by striking the word “suitable” and inserting in its place the words “legal and constructible.”

Assemblymember Salmon:

- spoke in favor of the secondary amendment; and
- added that the word suitable is subjective.

Assemblymember Keogh asked Mr. Hulbert for his thoughts on the primary and secondary amendment.

Mr. Hulbert expressed concern that the requirement to provide access to adjoining parcels does not include publicly owned lands.

Assemblymember Colver:

- spoke in opposition to the concern raised by Mr. Hulbert ; and
- stated he is philosophically opposed to private property owners having to provide access to public lands.

Mayor DeVilbiss suggested that the Assembly divide the question to consider the portion of the secondary amendment to strike the word “suitable” and insert in its place the words “legal and constructible” separately.

There was no objection noted.

**MOTION:** First Segment: Assemblymember Salmon moved a secondary amendment to strike the word “suitable” and insert in its place the words “legal and constructible.”

**VOTE:** First Segment: The secondary amendment passed without objection.

**MOTION:** Second Segment: Assemblymember Salmon moved a secondary amendment to strike the word “provide” and insert in its place the word “ensure” and to strike the word “through” and insert in its place the word “beyond.”

**VOTE:** Second Segment. The secondary amendment passed without objection.

**MOTION:** Assemblymember Keogh moved a secondary amendment to Ordinance Serial No. 11-072, MSB 16.20.100 (E), to add the word “publicly” after the word “privately” to read as follows:

(E) A subdivider proposing to create roads shall ensure access to adjoining privately and publically owned parcel(s) beyond a proposed subdivision as follows:"

VOTE: The secondary amendment failed with Assemblymembers Keogh, Woods, and Halter in favor.

VOTE: The primary amendment passed with Assemblymember Keogh opposed.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.022(A)(1)(a), by striking the subparagraph in its entirety and inserting the following:

(a) roads shall be constructed to a residential standard unless superseded by other provisions elsewhere within this title.

Assemblymember Cover:

- noted that the amendment is presented at the request of the Platting Officer; and
- further added the intent is to bring clarity to the code.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.005(B), by striking "2 - 4" and inserting "1 - 4" in its place, and to insert a new subsection (E) to read as follows:

(B) The platting officer shall act upon applications for abbreviated plat approval, waivers, minor plate amendments to combine 1-4 lots(s), 40 acre exemptions and right-of-way acquisition plats.

(E) Plats to remove lot lines are exempt from provisions of the code:

- (1) which require soils report submittals; and
- (2) requirements for road upgrades or construction.

Assemblymember Cover:

- noted that the amendment is presented at the request of the Platting Officer; and
- further added the intent is to bring clarity to the code as previously discussed by the Assembly.

Discussion ensure regarding:

- the fees charged when eliminating common lot lines;
- the process for eliminating lot lines;
- the process for plat approval; and
- the cost of as-built surveys and title insurance.

MOTION: Assemblymember Colligan moved a secondary amendment to add a new paragraph (3) to read as follows:

(3) as-built survey.

VOTE: The secondary amendment passed without objection.

Assemblymember Arvin spoke to the importance of reducing fees for eliminating common lot lines.

MOTION: Assemblymember Halter called for the question (to stop debate).

VOTE: The motion passed without objection.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.100(C), by striking subsection (C) in its entirety, as follows:

[(C) A SUBDIVISION PLAT, WHICH MOVES OR ELIMINATES LOT LINES OF AN EXISTING SUBDIVISION, BUT DOES NOT INCREASE THE NUMBER OF PARCELS OF LAND OR THE PROJECTED TRAFFIC, SHALL NOT REQUIRE THE CONSTRUCTION OF A PHYSICAL ROAD IF THE EXISTING ROAD HAS BEEN ACCEPTED AND MAINTAINED BY THE BOROUGH OR THE STATE.]

Assemblymember Colver noted the intent of the amendment is to eliminate a redundant portion of the code.

VOTE: The primary passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.100, by inserting a new subsection (F) to read as follows:

(F) A subdivision plat whose sole purpose is to separate/divide a home/headquarters site in a Matanuska-Susitna Borough agricultural rights parcel under former MSB Title 13 is exempt from the road construction standards of the MSB Subdivision Construction Manual provided that the following conditions are fulfilled:

(1) Prior to preliminary plat submittal the agriculture rights property owner is to obtain assembly approval of the sale of the home/headquarters site through an application made to the MSB Land and Resource Management Division; and

(2) The maximum parcel size is five acres for the home/headquarters site; and

(3) Only two parcels can be created from the farm unit parcel, the home/headquarters site and the remainder; and

(4) The applicant demonstrates that legal access as defined in MSB 16.20.120 Legal Access exists to all parcels or tracts created, and the suitability of the legal access for future residential road construction is documented by a registered land surveyor or civil engineer hired by the applicant; and

(5) The property is to be surveyed and monumented and a plat submitted in conformance with MSB 16.15.015 Preliminary Plat, 16.15.045 Plat Approval, 16.15.049 Final Plat; General Provisions, and 16.15.051 Final Plat; Submitted; and

(6) A plat note declaring that the MSB is not responsible for road construction or road maintenance; and

(7) A plat note restricting further subdivision of the parcels being created.

Assemblymember Colver noted the primary amendment is in Title 27 and therefore proposed to be included in Title 16.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.05.015(C), to add the words “except for the BLM manual of survey instructions” to read as follows:

(C) Each manual, except for the BLM manual of survey instructions, may be modified by the platting board subject to review by the planning commission and adoption by the assembly

Assemblymember Keogh asked about the appropriateness of requiring the Subdivision Construction Manual in the list of documents to be incorporated within the legislation.

Mr. Hulbert noted that although the document is authored by the Public Works Department, it is part of the subdivision code.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.055(A)(3)(b) and 16.20.055(B)(2), and to add a new subsection (D) to read as follows:

MSB 16.20.055(A)(3)(b)

(b) For a plat or waiver of 4 lots or less within a road service area created for conveyance to heirs, family members or others, physical access to the lots may be by a pioneer standard road within a 50 [60]foot right-of-way provided that:

MSB 16.20.055(B)(2)

(2) External legal access to a remote subdivision can be provided by any of the following and shall be a minimum of 100 feet wide for terrestrial access to accommodate reroutes of trails within the right-of-way or easement, excepting that for subdivisions of 10 lots or less may be 50 [60]feet wide;

16.20.055(D)

(D) For a rural or remote subdivision in a road service area where the physical access to a proposed subdivision will be improved, connectivity will be improved, and the primary purpose of the proposed subdivision is for seasonal or recreational use.

(1) The platting board may approve a reduction in road standards to a pioneer standard road within and leading to a subdivision, provided that:

(a) a note be placed on the plat that no borough funds will be expended to upgrade the roads;

(b) before borough maintenance will be provided, the roads will have to be upgraded and accepted for maintenance by the public works department; and

(c) for subdivisions greater than 10 lots, a parking area of sufficient size shall be reserved and constructed if no provisions are made for winter maintenance of the subdivision roads.

Assemblymember Colver:

- spoke in support of allowing a lower standard of road within a road service area for remote subdivisions that are well off the maintained road system;
- noted that the Platting Officer has recommended that the minimum width of legal access to a remote subdivision or waiver where a 60 feet is specified be reduced to 50 feet to conform with many existing easements; and
- added that leaving the 60 feet minimum width will result in the additional acquisition of right-of-way.

Assemblymember Keogh expressed concern that the words rural and remote are not defined in the legislation.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.05.050, by inserting a new subsection (B) to read as follows:

(B) A certificate to plat prepared by a title company is to be submitted with an application for a vacation, abbreviated plat, preliminary plat, public use easement, waiver, or forty-acre exemption. The title report must be current within 120 days of submittal of the application.

Assemblymember Colver noted the primary amendment is in Title 27 and therefore proposed to be included in Title 16.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to MSB 16.15.070, by striking it in its entirety and inserting in its place the following:

(A) *Alternate procedure.* A plat for a subdivision created by a government agency's acquisition of a road, street, highway, right-of-way, railroad

right-of-way, or airport parcel is subject to approval under this section and is not subject to any other approval procedure for plats under this chapter.

(B) *Submission requirements.* A government right-of-way acquisition plat submitted under this section shall contain the following information:

- (1) the location, name, and number of the project for which the acquisition is required;
- (2) the proposed timetable for acquisition and construction;
- (3) the dimensions and area of the parcels to be acquired and of each remainder parcel; and
- (4) the names of the property owners identified by parcel.

(C) *Right-of-way acquisition plat.* A right-of-way acquisition plat shall conform to the submission requirements of subsection (B) of this section and to the other provisions of this title, provided that:

- (1) a right-of-way acquisition plat is not subject to any of the other submission requirements for plats under this title;
- (2) a right-of-way acquisition is not subject to the Subdivision Construction Manual;
- (3) survey requirements of this title are not applicable to a right-of-way acquisition plat unless otherwise provided by written agreement between the borough and the government agency applying for the plat; the borough shall require remonumentation or reference monumentation of subdivision control monuments, aliquot part section corner monuments and government survey control monuments that will be disturbed, destroyed or lost as a result of the proposed project; and
- (4) the state, its agencies, instrumentalities, or political subdivision and the Matanuska-Susitna Borough may acquire or obtain conveyances, including dedication of lots or tracts of a right-of-way acquisition plat, before submittal of a right-of-way acquisition plat for approval by the Matanuska-Susitna Borough. A right-of-way acquisition conveyance may be recorded before approval and recording of the right-of-way acquisition plat.

(D) *Action.* Actions necessary prior to approval of a final plat include:

- (1) The platting officer and the appropriate government agency shall review the right-of-way acquisition plat for completeness. If the proposed plat does not meet the requirements of this section, it shall be returned to the submitting agency with an explanation of the deficiencies.
- (2) The platting officer shall make the decisions required by this section unless a government agency applying for the plat requests a public hearing before the platting board.
- (3) The public notice and hearing requirements applicable to plats submitted for approval by the platting board apply to right-of-way acquisition plats submitted to the borough for action. If the submitting agency requests a public hearing before the platting board, or if the agency appeals the borough decision under subsection (D)(6) of this section, the public notice and hearing requirements applicable to other plats submitted to the platting board shall apply.
- (4) The preliminary approval of a right-of-way acquisition plat is effective for 120 months. The platting board or platting officer may grant an

extension of up to 120 months for recording the final plat upon the finding that it is in the public interest to do so.

(5) The platting officer or platting board, as appropriate, may require as a condition of final plat approval any action it finds appropriate under the circumstances of the proposed plat or project, insofar as those actions are consistent with state law, including, but not limited to, the acquisition of remainder parcels that will not meet the applicable minimum requirements for lot size or dimensions. The platting officer or platting board may also require the realignment or reconstruction of any abutting or intersecting road or street right-of-way adversely affected by the acquisition or project.

(6) All decisions of the platting officer under this section are final unless appealed to the platting board within 15 calendar days. See MSB 1.15.005(A). An appeal under this subsection is treated as an original subdivision application.

(7) Unless otherwise agreed to in writing by the platting officer, all monumentation, remonumentation, right-of-way alignment, and reconstruction and other requirements of the borough or of this title shall be met before approval of the final plat unless it is clearly impractical or legally impossible to accomplish prior to final plat approval. Any action required as a condition of final plat approval, but not to be accomplished prior to the approval, shall be completed under the terms and conditions as are set out in writing by the borough. Any survey markers that control the length or direction of any property line shall be reset according to the new location. Monumentation shall be in accordance with standards set forth in MSB 43.15.054.

(E) Application. Except to the extent otherwise agreed to in writing by the platting officer, the provisions of this title other than those specifically excepted under this section shall apply to right-of-way acquisition plats.

Assemblymember Colver noted the amendment is presented at the request of the Platting Officer.

Discussion ensued regarding appeals to the platting officer.

MOTION: Assemblymember Colver moved a secondary amendment to subsection (D)(6) to strike the number "15" and insert in its place "10" and to strike words "See MSB 1.15.005(A)."

VOTE: The secondary amendment passed without objection.

VOTE: The primary amendment passed without objection.

*(The meeting recessed at 3:21 p.m. and reconvened at 3:32 p.m.)*

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.015(C)(2) and (3), as follows:

(2) approval of a preliminary plat expires 72 months after the date of the written notice of platting board action, unless the platting board or the platting officer first extends its duration at the request of the

applicant. The platting officer may grant two extensions, not to exceed two years each. Only the platting board has authority to grant additional extensions. The platting board or platting officer may approve an extension only if it finds that the conditions supporting approval of the preliminary plat have not materially changed. The 72 [24]-month period shall begin on the date of the written notice of the platting board action. An appeal from the decision of the platting authority regarding preliminary plat approval shall be made within the time specified under MSB 15.39.150, Appeals; Commencement. The 72[24]-month period shall be extended until the appeal is resolved. A subdivider may proceed upon an expired preliminary plat only with a new application. Staff review time of the submitted final plat shall be deducted from the 72 [24] months.

(3) Where a subdivider intends to develop a subdivision in phases, approval of the preliminary plat shall be conditioned upon the subdivider's compliance with a phased development master plan prepared by a subdivider and approved by the platting board. Approval of a master plan for phased development expires 72 months after the date of the written notice of platting board action unless an extension is approved by the platting board or platting officer in the same manner extensions of preliminary plats are approved under paragraph (B)(2). [THE TOTAL OF ALL EXTENSIONS SHALL NOT EXCEED MORE THAN 120 MONTHS FROM THE ORIGINAL WRITTEN APPROVAL.]An appeal from the decision of the platting board regarding master plan approval shall be taken within the time specified under MSB 15.39.150, Appeals; Commencement. Filing an appeal shall extend the 72-month period until the appeal is resolved. A subdivider may proceed with an expired master plan for phased development only with a new application.

Assemblymember Colver:

- noted the amendment to replace 24 months with 72 months is proposed for consistency; and
- spoke in support of not limiting the duration of preliminary plat approval time.

Discussion ensued regarding notice given to applicants informing them of eligibility for extension of preliminary plat.

MOTION: Assemblymember Arvin moved a secondary amendment to MSB 16.15.015(c)(2)(a), by inserting the word "administration" before the word "extension" to read as follows:

(a) Providing that any plat, (master plans for phased development, abbreviated plats, regular plats) approved under provisions of the former Title 16 and Title 27 shall be granted an administrative extension of an additional 5 years effective from the date of adoption of this ordinance. This five year extension is in addition to all previously granted extensions and starts at the end of the previously approved expiration date of the extension or original plat expiration date, whichever is later.

VOTE: The secondary amendment passed without objection.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.005(C), by striking all language after the first sentence to read as follows:

(C) Leaseholds located within the Wasilla Municipal Airport and Palmer Municipal Airport are exempt from the requirement to plat.

Assemblymember Keogh:

- spoke in support of removing the language as recommended by the Attorney;
- noted that airports are regulated by the Federal Aviation Administration; and
- added that the cities of Palmer and Wasilla exercise planning authority.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.012(B)(7)(c)(i), by deleting the words “excepting for areas” and inserting in its place the words “Access for parcels located” and deleting the words “access to parcels” and inserting in its place “Trail standards are listed in 16.20.055(B)(5),” at the end of the last sentence, to read as follows:

(i) Access for parcels located two miles beyond the limits of the Core Comprehensive Planning Area may be from a trail or a constructible trail. Trail standards are listed in MSB 43.20.055(B)(5).

Assemblymember Keogh noted the primary amendment is presented at the request of the Attorney and the Platting Officer.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.040, by inserting the words “and State Recognized RS-2477” in the title and striking the existing language and inserting in its place the following to read:

Section Line and State Recognized RS-2477 Easement Vacations

(A) This title provides standards for the vacation of section line easements and state recognized RS-2477 easements, also referred to as rights-of-way acquired under former 43 U.S.C. 932.

(B) An application for vacation of a section line easement or RS 2477 easement shall contain the following:

(1) a preliminary finding or approval from the appropriate agency of the state of Alaska;

(2) documentation by a registered land surveyor establishing the existence of a valid section line easement or RS 2477 easement within the area to be vacated, stating the width of the section line easement or RS 2477 easement and verifying the existence and width of any adjoining section line easements or RS 2477 easements;

(3) legal description of the section line easement or RS 2477 easement proposed for vacation;

- (4) reason for vacation request;
- (5) plat copies, as needed, of a section line or RS 2477 vacation plat, drawn to the requirement of the state of Alaska;
- (6) current Alaska State Department of Transportation and Public Facilities and Department of Natural Resources final approval required prior to recordation pursuant to AS 19.30.410;
- (7) the applicant for a section line easement for RS 2477 easement vacation must place a sign, notifying the public of the date, time, and place of the public hearing, at the easement where the proposed vacated area lies between, 30 days prior to public hearing. The sign shall be designated based on standards set by the platting division and located in a manner clearly visible to the public. The applicant shall submit an affidavit verifying that this posting has been made. Location and format of signs shall be determined by platting staff;
- (8) demonstration that a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses pursuant to A.S. 19.30.410. In making this determination, the platting board shall consider comments from utilities concerning the adequacy of alternative access to provide for utility facilities and services; and
- (9) demonstration that the vacation shall meet the standards set forth under MSB 43.15.035.

Assemblymember Keogh:

- noted the intent of the amendment is to clarify that the State is the authority on vacating RS-2477 trails and section line easements; and
- stated the language is proposed provide detail and guidance to the public seeking such vacations.

Assemblymember Colver:

- spoke in opposition to the amendment; and
- opined that the language is verbose and unnecessary.

Discussion ensued regarding whether the language currently written in the legislation is sufficient or if the language requires expansion.

**VOTE:** The primary amendment passed with Assemblymembers Arvin, Colver, and Salmon opposed.

**MOTION:** Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.049(G), as follows:

(G) Minor plat alterations.

(1) The purpose of this subsection is to resolve platting issues and/or improve the subdivision design and function without burdening staff, the petitioner and the board with the additional time and costs to rehear the case.

(2) The platting officer is authorized to approve minor changes to an approved preliminary plat or master plan during review of the final plat for the following items. [LOT CONFIGURATION, LOT SIZE, DELETION OF

LOTS, ADDITION OR DELETION OF EASEMENTS, MINOR ROAD ALIGNMENT CHANGES, LOCATION OF FINAL EASEMENTS, ADDITION DELETION OR REVISION OF PLAT NOTES WHERE APPROVED PLAT CONDITIONS CANNOT BE MET OR OTHER REGULATORY AGENCY PERMITS OR AUTHORIZATION HAVE NOT BEEN GRANTED OR CONDITIONS HAVE BEEN RESOLVED, RESOLUTION OF SERVICE AREA BOUNDARY CONFLICTS, OR TO RESOLVE ISSUES OR IMPROVE THE SUBDIVISION DESIGN AND FUNCTION.] **Any amendment or modification of the preliminary plat shall be limited to the following:**

- (a) The total number of lots may be reduced;**
- (b) The total number of lots may not be increased;**
- (c) Individual lot sizes may not be reduced by more than 20% per lot, and at no point to less than the minimum requirements that the preliminary plat was approved under. The aggregate of the proposed reductions shall not exceed one acre;**
- (d) Proposed rights-of-way or easements may be moved up to 25 feet if approved by the platting officer, if changes made do not affect existing properties;**
- (e) Proposed rights-of-way or easements may be moved between 25 feet and 100 feet with the concurrence of the platting officer and the Director of the MSB Department of Public Works, as long as changes do not increase the average daily traffic count by more than 5% or necessitate a higher road classification;**
- (f) Approved external accesses cannot be changed;**
- (g) Amendments and modifications cannot create setback violations.**

Assemblymember Keogh noted the intent of the amendment is to streamline the permitting process by eliminating two potential appeals on the same plat.

Mr. Spiropoulos:

- spoke to the platting process;
- affirmed that the amendment is an attempt to reduce the number of appeals that may be filed by authorizing the platting officer to approve minor changes to an approved preliminary plat under standards in code; and
- noted that platting authority under state law is the platting board not the platting officer.

Assemblymember Arvin stated that the proposed amendment ensures that the applicant understands what minor changes may be made.

VOTE: The primary amendment passed with Assemblymembers Colver and Salmon opposed.

MOTION: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.060, by inserting a new subsection (D) to read as follows:

(D) The platting board may require the dedication or improvement, or dedication and improvement of rights-of-way, tracts, or easements no narrower than 10 feet in width to accommodate the construction of walkways up to eight feet in width in any of the following circumstances:

(1) If a walkway is indicated as appropriate in the borough's comprehensive plan or other ordinance, i.e., special land use district (SPUD); and

(2) if the walkway is reasonably necessary to provide safe and efficient pedestrian access to a school, playground, park, shopping center, public cemetery, transportation, or other community facility; or

(3) if the walkway is reasonably necessary to provide connectivity to a dedicated right-of-way in an adjoining subdivided or unsubdivided parcel; or

(4) if appropriate as a condition of a variance from block length under MSB 16.20.300 (A):

(a) a walkway dedication shall not be considered as a justification for a variance from MSB 16.20.300 (A); and

(b) a walkway shall not be considered a physical barrier to the continuity of development for calculation of block length.

MOTION: Assemblymember Colver moved a secondary amendment to strike (4)(a) in its entirety and insert in its place the following:

(4) The above requirements for dedication of additional right-of-way for a walkway shall apply only where a walkway cannot be contained within the legal right-of-way reserved for a street.

(a) Plats or master plans of 20 lots or less shall be exempt from requirements to construct a walkway, unless evidence is presented supporting the need for pedestrian safety or the walkway will provide connectivity to other pedestrian facilities.

Assemblymember Colver:

- stated that the primary amendment allows the platting board discretion to require an additional 10 foot right-of-way along a road for walkway or trail; and
- noted that the intent of the secondary amendment is to limit that discretion.

VOTE: The secondary amendment passed with Assemblymembers Keogh and Woods opposed.

VOTE: The primary amendment passed with Assemblymember Salmon opposed.

MOTION: Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.15.053(F), as follows:

(F) Certificate of payment of taxes. Every final plat of a subdivision submitted for recording shall be accompanied by a certificate from the tax collecting official or city treasurer stating that all special assessments and borough real property taxes levied against the property are paid in full. In the case of real property taxes, **if the taxes are not delinquent, taxes are deemed paid in full with respect to this section.** [IF APPROVAL IS SOUGHT BETWEEN

JANUARY 1 AND THE TAX DUE DATE, THE CERTIFICATE SHALL STATE THERE IS ON DEPOSIT WITH THE BOROUGH AN AMOUNT SUFFICIENT TO PAY ESTIMATED REAL PROPERTY TAXES FOR THE CURRENT YEAR AT THE TIME OF FILING.] The certificate shall be as follows:

Assemblymember Halter spoke in favor of the amendment as it removes any economic hurdles in the transaction of business.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Keogh moved to refer Ordinance Serial No. 11-072 to the Planning Commission, Platting Board, and the Local Road Service Area Advisory Board to review for 60 days and to hold another public hearing before the Assembly prior to final action.

Assemblymember Salmon:

- spoke in opposition to the amendment; and
- stated continued delay will have an adverse effect on the upcoming summer construction season.

Assemblymember Keogh:

- noted that the legislation has been amended a lot since the last public hearing; and
- stated that the Assembly would be remiss by not having the Planning Commission and the Platting Board review the legislation with the changes.

Discussion ensued regarding concerns with postponing the legislation.

VOTE: The motion to refer failed with Assemblymember Keogh in favor.

VOTE: The main motion passed as amended with Assemblymember Keogh opposed.

MOTION: Assemblymember Halter moved to direct the Platting Board and the Planning Commission to review Ordinance Serial No. 11-072 and to report findings back to the Assembly by January 2013.

VOTE: The motion passed without objection.

## **VII. MAYOR, ASSEMBLY, AND STAFF COMMENTS**

Mr. Spiropoulos:

- spoke to concerns with the last amendment; and
- stated that the amendment is problematic under State Law and would cause administrative hurdles and legal issues.

Assemblymember Keogh:

- noted the issues with the legality of serial waivers;
- commented that a legal opinion from the Attorney and outside counsel affirmed serial waivers are illegal; and
- opined that State Statute is clear on this issue.

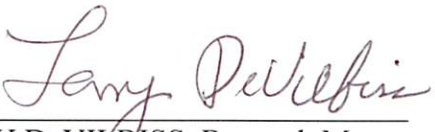
Assemblymember Colver:

- thanked staff for their assistance with Ordinance Serial No. 11-072;
- stated that he appreciates good debate; and
- opined that it is now clear that the Platting Board cannot go outside of the provisions of code.

Mayor DeVilbiss thanked the Assembly for their work on Ordinance Serial No. 11-072.

### VIII. ADJOURNMENT

The meeting adjourned at 4:53 p.m.

  
\_\_\_\_\_  
LARRY DeVILBISS, Borough Mayor

ATTEST:

  
\_\_\_\_\_  
LONNIE R. McKECHNIE, CMC, Borough Clerk

Minutes Approved: 05/01/12