

I. CALL TO ORDER

The special meeting of the Matanuska-Susitna Borough Assembly was held on December 20, 2011, at the Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 3:30 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*)(*attended telephonically*)
Mr. Steve Colligan, Assembly District No. 4 (*arrived at 3:34 p.m.*)
Mr. Darcie K. Salmon, Assembly District No. 5 (*arrived at 3:35 p.m.*)
Mr. Jim Colver, Assembly District No. 6
Mr. Vern Halter, Assembly District No. 7

Staff in attendance were:

Ms. Jamie Newman, Deputy Borough Clerk
Mr. John Moosey, Borough Manager
Mr. Nicholas Spiropoulos, Borough Attorney
Mr. John Aschenbrenner, Deputy Borough Attorney
Ms. Brenda J. Henry, Executive Assistant to the Borough Clerk
Mr. Paul Hulbert, Platting Officer
Mr. Dennis Brodigan, Emergency Services Director
Mr. Alex Strawn, Permitting Services Manager

III. APPROVAL OF AGENDA

Mayor DeVilbiss inquired if there were any changes to the agenda.

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

IV. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Mr. Hall, a member of the audience.

V. ITEMS OF BUSINESS

1. Ordinance Serial No. 11-072: AN ORDINANCE REPEALING MSB TITLE 27 AND ADOTING MSB TITLE 16, SUBDIVISIONS.
 - a. IM No. 11-122

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

MOTION PENDING: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.055 Rural and Remote Access, to insert section (B) to read as follows: (B) *Remote Subdivision Access*. The purpose of this subsection is to allow for recreational use and subdivision of lands where road access to a proposed remote subdivision is not practicable given the size of the subdivision, the cost of subdividing, assessed value of the property and the cost of providing access due to the location, topographical constraints, terrain, and it is not the desire of the subdivider to have road access, and proposes access is via trails, creeks, rivers, or lakes by snowmobile, on-foot, skis, dog team, off-road vehicle, boat or airplane. The following legal and physical access requirements apply:

- (1) legal access shall be provided for internal roads or trails to all parcels, and internal roads shall be a minimum of 60 feet wide. Legal access can be provided for by plat or by a recorded public use easement document, or other public access easement such as a section line easement;
- (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 60 feet wide;
 - (a) a navigable waterway;
 - (b) a float plane accessible lake
 - (c) an airstrip as approved by applicable agencies including FAA, DOT or other agencies; where an airstrip is used, a plat note shall be added that no maintenance or upgrades will be provided by the borough.
- (3) Private Property Rights. Access routes shall not trespass upon private lands, and shall avoid conflicts with adjoining and nearby private properties.
- (4) Sufficient land area shall be dedicated for parking at the permanent public access point unless the applicant demonstrates that it is unnecessary to serve the proposed subdivision. Physical improvement shall be made to a required parking area to handle the average number of vehicles using the area at one time, to include clearing and grubbing, a base constructed of suitable soils, and grading and drainage improvements as necessary.
- (5) Physical Access.
 - (a) Internal access roads or trails shall be constructible. Internal and external physical trail access shall meet the following minimum standards:
 - (i) a minimum of 10 feet wide;
 - (ii) avoid wetlands where possible;
 - (iii) be cleared and grubbed;

(iv) have hardened surface with a minimum of one foot thick gravel base or use existing soils where suitable as determined by an engineer;

(v) be shaped to drain;

(vi) provide drainage improvements such as culverts for water crossings and make grading improvements to avoid ponding in low areas:

(aa) when transiting across unavoidable natural features where improvements will be continually inundated by natural forces, a subdivider will not be required as a condition of plat approval to provide improvements that cannot be permanent due to natural circumstances. However, a subdivider must demonstrate why such areas are unavoidable give the size of the subdivision, the expected disruption to access, and the cost of avoiding such disruption. Except that disruption which is expected to be so frequent as to render the access unusable for any significant part of a season will not be allowed;

(bb) where trails encounter large water crossings such as creeks and rivers and it is not feasible to install culverts or construct a bridge, an open water crossing will be allowed provided that it is approved by the agencies having jurisdiction over the waterway and stream bank stabilization improvements are installed where needed;

(cc) for transit across wetland or marshy conditions installation of approved matting shall be allowed to be substituted for a hardened surface as specified above.

(6) All subdivisions under this section shall have a plat note which reads: the borough is not responsible for maintenance or upgrades of any access improvements to lots or parcels created under this provision.

MOTION PENDING: Assemblymember Halter moved a secondary amendment to MSB 16.20.055, as follows:

- (B) to insert in the title “for parcels outside of a road service area” to read: “Remote subdivision access for parcels outside of a road service area.”
- (B) in the second sentence, to insert after the word “lands” the words “outside of road service areas” to read: “The purpose of this subsection is to allow for recreational use and subdivision of lands outside of road service areas where road access to a proposed remote subdivision is not practicable given the size of the subdivision, the cost of subdividing, assessed value of the property and the cost of providing access due to the location,

topographical constraints, terrain, and it is not the desire of the subdivider to have road access, and proposes access is via trails, creeks, rivers, or lakes by snowmobile, on-foot, skis, dog team, off-road vehicle, boat or airplane.”

Assemblymember Colver

- spoke to concerns that the Assembly does not know the boundaries of road service areas;
- referred to the maps on the wall provided by the Manager;
- spoke to weekend cabin uses that many residents use that are in a road service area, but have no road maintenance;
- stated that the body needs to figure out a way to provide service to residents who are in road service areas, but receive no service;
- spoke to the need to upgrade parking areas that are used for residents to access their rural lots; and
- stated that he is against the secondary amendment.

Assemblymember Halter:

- stated that he is not opposed to rural subdivisions, but generally speaking those within fire service areas are also in road service areas;
- stated that a way to solve the problem would be to exempt them from paying road service or fire service taxes;
- noted that he is unsure of the best way to proceed; and
- spoke to the many areas in which people are paying for services, but not receiving services.

Assemblymember Woods:

- disagreed with the worry about people paying road and fire service taxes;
- opined that with regard to fire service areas, the body might be able to adopt protection for individuals by saying that they can get fire extinguishers from the Borough;
- stated that everyone pays road service area taxes and opined that there is no need for an exemption to that policy; and
- stated that he can understand the need to provide exemptions for fire service areas.

Discussion ensued regarding:

- concerns with how to apply road service and fire service taxes to remote parcels;
- the possibility of either not charging road service area taxes or figuring out a way to apply to remote parcels separately;
- the possibility of accumulating tax funds to eventually build access roads to remote parcels;
- that the Borough cannot remedy all situations;
- the possibility of providing code that if a subdivision becomes large enough that it actually generates funds, that it would receive trail and parking maintenance; and
- the possibility of providing the minimal level of maintenance if subdivisions do become large enough to generate funds.

VOTE: The secondary amendment passed with Assemblymember Colver opposed.

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

MOTION: Assemblymember Colligan moved a primary amendment to Ordinance Serial No. 11-072 as follows:

- by striking MSB 16.20.060(D) in its entirety; and
- MSB 16.20.100(D), by inserting the words “private roads” after the word “subdivisions” to read: “Gated subdivisions and private roads shall be approved provided they meet the following criteria;”

Assemblymember Halter queried what the legal ramifications of the language that reads “Emergency Services and Borough road maintenance will be provided access.”

Mr. Spiropoulos:

- noted that often times private gated subdivisions will have a lock box which provides access for emergency services; and
- noted that on either end of the road, either before or after the private subdivision, it could be considered a Borough maintained road.

Assemblymember Halter queried if it could be inferred that services are required.

Mr. Spiropoulos:

- noted that someone could attempt to infer it;
- advised that public funds cannot be used on private subdivision roads; and
- stated that he could work on language that would address that situation.

Assemblymember Keogh:

- stated that he is opposed to the amendment; and
- opined that there is no way that the body will finish the legislation this evening.

VOTE: The primary amendment passed with Assemblymember Keogh opposed.

MOTION: Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-072, by striking MSB 16.20.100(D) in its entirety and inserting in its place: “Emergency Services shall be provided access to deliver services within the private subdivision. Borough maintenance shall be provided access to get through subdivision to provide services beyond the private subdivision.”

VOTE; The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.055, by striking it in its entirety and inserting in its place: “Rural and remote access.

(A) The provisions of this subsection provide a different set of standards for rural and remote access and supersede other provisions of this title. The following provisions are intended to provide for development of recreational lots

and allow homesteaders or families that have access to their property and do not need maintenance, the ability to divide their property to pass on to heirs or others.

(1) If the subject property is intended for use primarily as a recreational or seasonal use subdivision and is outside of a road service area, pioneer roads are allowed for physical access provided that:

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

(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.

(2) The petitioner will not be required to upgrade any road prior to the subject parcel that is or has been maintained by the state or Borough. The petitioner will not be denied a subdivision approval if there is an existing legal and physical access to the subject parcel.

(3) All subdivisions must contain a 60-foot right-of-way, plus a 15-foot utility easement. Only a 50-foot right-of-way is required to access the subject parcel. Any existing legal and physical access to the subject parcel less than 50 feet may be approved with a variance.

(a) The provisions of this subsection are intended for remote areas of the Borough where no or few services are provided. For a plat of four lots or less outside of a road service area, legal access shall be provided to all of the lots and construction of a road is not required, provided that:

(i) A note shall be placed on the plat to state that if any of the lots or parcels are further subdivided which would create more than the four original lots created, a road must be constructed to pioneer road standards and until accepted by the Borough, no Borough maintenance will be provided nor any Borough funds shall be spent on upgrades.

(b) For plat or waiver of four 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 60-foot right-of-way provided that:

(i) A note shall be placed on the plat or waiver stating: 1) To further subdivide any of the lots or parcels, the road(s) must be constructed to residential standards, and 2) Until accepted by the Borough, no Borough maintenance will be provided nor any Borough funds shall be spent on upgrades.

Assemblymember Colver:

- opined that the amendment has a little of something for every situation that may be encountered;
- noted that he provided for Alaska State Department of Natural Resources parcels to have access;
- stated that there are protective notes attached that state that there will be no maintenance or upgrades by the Borough;
- related that other provisions were proposed by the Mat-Su Business Alliance to provide for pioneer access;

- noted that it also provides for four lots or less within service areas as well, for an owner that wants to pass on land to others;
- spoke to another homestead provision, that provided for federal conveyance of properties, that allows them to do four lots or less without having to construct a road; and
- reiterated that it provides for someone to be able to pass along lots to heirs or others.

Mayor DeVilbiss queried how intent is demonstrated or proved that a parcel is going to a family member.

Mr. Spiropoulos stated that it would not be demonstrated as the language also indicates “or others” which provides for equal protection.

Mayor DeVilbiss queried if Mr. Spiropoulos had an opportunity to review the proposed amendment.

Mr. Spiropoulos affirmed the query.

Assemblymember Keogh queried if the words “or others” was stricken if it would be problematic.

Mr. Spiropoulos:

- spoke to the scenario of two people being raised together as siblings but one of them not being a blood relative;
- related that should the father of those two want to subdivide the property and pass it on, that if the words “or others” is removed that the non-blood sibling would have a legal standing for an equal protection suit;
- noted that property could be conveyed to family members or heirs, but not close friends or others who may have been raised as a family member.

Discussion ensued regarding:

- previous public testimony in support of being able to pass on property to immediate family members;
- that the amendment would allow for conveyance of property to family members;
- the opinion that if the words “or others” are included, that the remaining language would not be necessary;
- that if the property is subdivided and conveyed that it would be subject to the same restrictions; and
- that the plat note would always remain attached to the parcel.

Assemblymember Arvin spoke to concerns that it is not clear that the Borough will not provide upgrade and maintenance for access to parcels.

Mr. Spiropoulos stated that the words “by someone other than the Borough” could be inserted to provide clarification.

MOTION: Assemblymember Arvin moved secondary amendment to MSB 16.20.055 (A)(1)(b), by inserting after the word “upgraded” the words “by someone other than the Borough” to read: “before Borough maintenance will be provided, the roads will have to be upgraded by someone other than the Borough, and accepted for maintenance by the public works department;”

VOTE: The secondary amendment passed without objection.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-072, to strike “Title 16” and insert in its place “Title 43” throughout the ordinance.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, by amending the title from “Title 16” to “Title 43” after adoption and preceding codification.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.280(B)(1)(f)(i), by striking all of the language after the word “feet” to read: “the subdivision has a minimum lot size of 9.183 acres or 400,000 square feet; or”

Assemblymember Colver:

- noted that this is how code was interpreted until Title 27 was adopted;
- opined that it is not necessary to have a letter by a civil engineer; and
- further opined that it places unnecessary burdens on the public.

Discussion ensued regarding:

- the impact on the remaining sections of code; and
- where the suggested amendment came from.

Assemblymember Keogh queried if there has ever been a lot of 10 acres that did not have a suitable area for constructing a septic system.

Mr. Hulbert advised that he is not aware of one.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-072, MSB 16.20.055, Waivers:

- in (A)(2) to strike the following language “an unlimited number of waivers from the original parent parcel are allowed;” and
- to insert new sections (C) and (D) to read:
 - o “(C) The cumulative total number of lots which may be created through the waiver subdivision process is four.
 - (D) Public notice of waiver subdivisions shall follow the procedures of MSB 16.10.065 pertaining to actions requiring a public hearing and written comments on the waiver application shall be accepted. A public hearing is not required for waiver subdivisions.”

Assemblymember Keogh:

- noted that Alaska Statute 29.40.090 specifically addresses abbreviated plats and waivers;
- stated that the language that he is proposing be stricken is in conflict with State Statute;
- opined that the proposed amendment would bring Borough code into line with State requirements; and
- spoke to legal opinions that have suggested that Borough code cannot conflict with State Statute.

Mr. Spiropoulos stated that it was and will always be the advice of his office that serial waivers are not permissible under that State law.

Assemblymember Colver:

- noted that he disagrees with that assertion;
- stated that he disagrees with the proposed restrictive language;
- spoke to the many legal opinions that have conflicted on whether or not serial waivers are allowable or not;
- noted that it has not yet been challenged;
- opined that it is more of a policy call;
- stated that it would be highly inefficient and very expensive for a developer to create a subdivision four lots at a time; and
- opined that there would be no flexibility if the amendment was adopted.

Assemblymember Salmon:

- noted that he is in agreement with Assemblymember Colver;
- spoke to the many ways that private land use is already restricted;
- opined that personal use of privately owned lands should not be restricted even further; and
- further opined that if the language is already in State Statute that it does not need to be in code.

Discussion ensued regarding:

- the desire to not adopt Borough code that conflicts with State Statute;
- lots within the Borough that appear to have been subdivided four lots at a time over the course of several years;

- the opinion that the way those lots were divided did not have negative impacts on the Borough, but increased the tax base;
- concerns with emergency services and road services access on those lots;
- concerns with serial waivers;
- how former code impacted the way subdivisions were created in the past;
- that subdivisions always need some type of access;
- that it is not economically feasible to subdivide property by serial waiver;
- that land values are much higher now than in 2003, which has an impact on how subdivisions may be created;
- the opinion of some members that it is State Statute that needs to be changed;
- that State Statute mandates that the Assembly establish by ordinance an abbreviated plat process;
- that there is not good legislative history concerning serial waivers;
- the desire not to put too many restrictions on private land use; and
- interpretation of State Statute versus Borough code.

VOTE: The primary amendment failed with Assemblymembers Keogh, Woods and Halter in support.

(The meeting recessed at 5:15 p.m. and reconvened at 5:45 p.m.)

Assemblymember Colver:

- noted that the body has attempted to postpone legislation to the beginning of January 2012;
- opined that if the meeting started early enough that the body could complete the legislation; and
- stated that he would like to postpone Ordinance Serial No. 11-072 to February 7, 2012, at 1 p.m.

Assemblymember Keogh opined that 1 p.m. is too early, and that the meeting should start at 3:30 p.m.

Mr. Moosey noted that the Winter Session for the Alaska Municipal League is scheduled for the first part of February.

Discussion ensued regarding a time certain to postpone the legislation.

Mayor DeVilbiss inquired if there was any objection to taking up the postponement of Ordinance Serial No. 11-072 after audience participation.

There was no objection noted.

VI. AUDIENCE PARTICIPATION

The following person spoke to looking forward to Winter Solstice: Mr. William Bruu.

The following person spoke to overall concerns with Ordinance Serial No. 11-072 and to the need to keep the public involved in the platting process: Ms. Dianne Woodruff.

VII. MAYOR, ASSEMBLY, AND STAFF COMMENTS

Mayor DeVilbiss queried how the body would like to proceed with determining a date for postponement.

Assemblymember Colver stated that he would like a date set this evening, rather than the Clerk coming back with a date.

Mayor DeVilbiss queried if there was any objection to postponing Ordinance Serial No. 11-072 to a time certain of February 28, 2012, at 1 p.m.

There was no objection noted.

Mayor DeVilbiss queried if there was any objection to not providing any additional comments in order to start the 6 p.m. regular meeting as advertised.

There was no objection noted.

VIII. ADJOURNMENT

The special meeting adjourned at 6 p.m.


LARRY DEVILBISS, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

Minutes approved: 01/17/12