

Introduced by:	Mayor, Martin
Substitute Introduced:	09/18/07
O2007-33 (Mayor, Martin)	See Original for Prior History
Hearings:	10/09/07, 10/23/07 & 11/20/07
Action:	Added Hearing Date of 11/20/07
Action:	Postponed Until 10/23/07
Action:	Postponed Until 11/20/07
Action:	Postponed as Amended Until 12/04/07
Action:	Failed to Enact
Vote:	4 Yes, 3 No, 0 Absent
Action:	Notice of Reconsideration Filed by Martin
Date:	01/08/08
Action:	Reconsidered and Postponed until 01/22/08
Date:	01/22/08
Action:	Amended and Postponed until 02/05/08
Date:	02/05/08
Action:	Failed to Enact as Amended
Vote:	4 Yes, 4 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2007-33 (MAYOR, MARTIN) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB TITLE 14, “STREETS, SIDEWALKS, ROADS
AND TRAILS,” AND KPB TITLE 20, “SUBDIVISIONS,” PROVIDING FOR THE
CONSTRUCTION OF ROADS TO BOROUGH MAINTENANCE STANDARDS PRIOR
TO FINAL PLAT APPROVAL**

WHEREAS, Ordinance 2007-11 was introduced March 13, 2007, and tabled April 17, 2007; and

WHEREAS, a joint work session was held between the planning commission and the road service area board regarding Ordinance 2007-11 where staff presented suggested amendments based on comments received thus far, and additional public comments were received; and

WHEREAS, this ordinance is being presented rather than removing Ordinance 2007-11 from the table and amending the same; and

WHEREAS, there are numerous dedicated rights-of-way that are poorly constructed within the Kenai Peninsula Borough Road Service Area (“RSA”); and

WHEREAS, residents of the RSA turn to the borough to resolve issues of poor road construction; and

WHEREAS, borough personnel and resources are expended in resolving road construction issues because roads are not constructed before final plat approval of the dedication; and

WHEREAS, requiring construction of roads before final plat approval would best serve the growing number of residents and homebuyers within the borough; and

WHEREAS, other second class boroughs within Alaska require construction of roads before final plat approval; and

WHEREAS, subdivisions in near proximity to municipal- or state-maintained roads are typically purchased by people who expect to receive road maintenance; and

WHEREAS, roads initially constructed to borough standards decrease access and safety problems for residents and taxpayers of the RSA; and

WHEREAS, roads constructed to borough standards will provide an important service in RSA maintenance to borough residents; and

WHEREAS, it is common practice to require certificates or signatures from other departments or agencies as a condition of final plat approval; and

WHEREAS, the RSA board certifies roads for maintenance and has continuing responsibility for improvement and maintenance of roads certified for maintenance; and

WHEREAS, goal 5.1 of the comprehensive plan is to continue and improve maintenance and upgrading of borough roads; and

WHEREAS, goal 5.2 is to establish procedures and incentives to upgrade substandard roads and bridges within the Borough; and

WHEREAS, goal 5.3 is to establish a means by which the Borough can improve the likelihood that roads built as part of a residential development are constructed to borough standards; and

WHEREAS, at its regularly scheduled meeting of October 8, 2007, the planning commission recommended enactment by unanimous consent; and

WHEREAS, at its regularly scheduled meeting of November 13, 2007, the road service area board recommended enactment with minor amendments by unanimous consent;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. KPB 14.06.200 is hereby amended as follows:

14.06.[200] 300. Road construction standards--Definitions.

For purposes of this chapter, the following definitions apply:

"AASHTO" means "American Association of State Highway and Transportation Officials."

"Arterial road" means a road intended to carry traffic from local and subdivision roads to major highways. Such roads primarily accommodate relatively large volumes of traffic for relatively long distances at relatively high speeds.

"Board" means the Kenai Peninsula Borough Road Service Area Board, unless otherwise specified.

"Collector road" means roads which provide both land access and carry traffic from local or subdivision roads to arterial or major highway systems.

"Local roads" means internal subdivision roads or a road designed and intended to serve local areas. Such roads primarily accommodate land access to abutting property. Local roads feed traffic into collector and arterial street systems.

"Motor vehicle" means a vehicle which is self-propelled except a vehicle manned by human or animal power.

"Road construction standards" means the minimal standards set forth in this chapter for the purposes of certification for RSA maintenance.

"Subcollector road" means a local road which also provides through traffic service between local roads and collector, arterial, or major highway roads.

SECTION 2.KPB 14.06.200 is hereby enacted as follows:

14.06.200. Certification of road construction for final plat.

A. *Road Construction Certificate.*

1. Except as provided below, an applicant for approval of a final plat that is subject to the road construction requirements of KPB 20.16.065(A) must submit to the RSA an application for certification that all roads within the road service area that are proposed to be dedicated by a plat are constructed to the applicable standards set forth in this chapter and that the applicable procedures and requirements have been followed. The application for certification shall be on a form provided by the RSA.
2. The requirement in subparagraph (A)(1) of this section does not apply when a subdivision agreement is entered for a deferred improvement guarantee under KPB 14.06.205 and KPB 20.16.065(H) or road construction requirements for plat approval are waived under KPB 14.06.210.

3. The RSA shall issue the certification to the applicant, and provide a copy to the borough planning department, if it determines that the roads in the proposed subdivision are constructed in compliance with the applicable requirements in this chapter.

SECTION 3. KPB 14.06.205 is hereby enacted as follows:

14.06.205. Subdivision agreement required.

- A. The KPB may enter a subdivision agreement with a subdivider for roads to be constructed after final plat approval upon adequate guarantee being received by the borough that the roads will be constructed to RSA maintenance standards. Subdivision agreements are also required to allocate costs between the borough and subdivider for roads constructed pursuant to KPB 20.16.065(A)(2).
- B. The RSA board shall adopt a subdivision agreement policy addressing types of guarantees available, the application process, financial responsibility requirements, contents of the subdivision agreement, time frame for construction completion, value of the guarantee, and fees, if any, associated with administration of the subdivision agreement, release, default, and enforcement of guarantee provisions.
- C. The assembly by resolution shall approve any subdivision agreement policy or revision to the policy prior to implementation.

SECTION 4. KPB 14.06.210 is hereby enacted as follows:

14.06.210. Waiver of road construction requirement for plat approval.

- A. Where the road construction requirements of KPB 20.16.065(A) otherwise apply to a subdivision road, those requirements may be waived by the RSA board for one or more of the roads upon making findings regarding the following factors:
 1. Substandard access to the subdivision due to topography, location, or width of right-of-way, current or projected traffic volume or other unique conditions or surrounding development.
 2. The lack of road construction will not have a deleterious effect on access.
 3. The applicant did not cause the conditions on which the waiver request is based.

4. The borough's interest served by granting the waiver outweighs the interest in certifying the roads for maintenance.
 5. Where the rights-of-way in the subdivision access other parcels beyond the subdivision, waivers are disfavored.
 6. Economic inconvenience or hardship for the applicant is not a valid reason for a waiver under this section.
- B. The application for waiver shall be made on a form provided by the RSA. There shall be a written staff report regarding waiver applications.
- C. *Board action.* The burden is on the applicant to meet the above factors and demonstrate to the RSA board that granting the waiver of road construction will not undermine the objectives of KPB 20.16.065 and KPB Chapter 14.06. The board may deny, modify, or grant the requested waiver by board resolution.

SECTION 5. KPB 14.06.220 is hereby enacted as follows:

14.06.220. Appeals.

Any appeals regarding road construction waivers, exceptions, or conditions established by the road service area board shall be filed with the Superior Court at Kenai, Third Judicial District, State of Alaska, pursuant to the Alaska Rules of Civil Procedure.

SECTION 6. KPB Chapter 20.08 "Definitions" is amended by adding a new section as follows:

20.08.065. Legal access.

"Legal access" means a contiguous section line easement, platted public right-of-way, or public access granted by recorded document and accepted by the borough planning commission, all of which must be constructible from a road right-of-way maintained by a municipality or State of Alaska DOTPF to a parcel.

SECTION 7. KPB Chapter 20.08 "Definitions" is amended by adding a new section as follows:

20.08.105. Municipal.

"Municipal" means the borough or a city organized under Title 29 of the Alaska Statutes.

SECTION 8. KPB Chapter 20.08 “Definitions” is amended by adding a new section as follows:

20.08.170. Unsubdivided remainder.

“Unsubdivided remainder” means the portion of a parcel that has received preliminary plat approval but does not have recorded final plat approval.

SECTION 9. KPB 20.12.090 is hereby amended as follows:

20.12.090. Approval—Scope—Expiration restriction.

Approval of the preliminary plat shall not constitute approval of the final plat, but means only that the basic lot and street design is acceptable. The subdivider is on notice that it is his responsibility to provide all the information required in this ordinance and to prepare a correct final plat. [WHEN MORE THAN ONE YEAR TRANSPIRES BETWEEN PRELIMINARY PLAT APPROVAL AND DATE OF RECEIPT OF A FINAL PLAT, THE COMMISSION MAY REQUIRE THE SUBMISSION, AND ACTION ON, A NEW PRELIMINARY PLAT. THE APPROVAL OF A FINAL PLAT FOR A PORTION OF THE PRELIMINARY SHALL EXTEND THE PRELIMINARY APPROVAL FOR ONE YEAR EXCEPT THAT THE COMMISSION MAY REQUIRE A NEW PRELIMINARY PLAT WHEN THE ABUTTING ROAD SYSTEM CHANGES.] Final plats must be submitted to the planning department within three years of the date of preliminary plat approval or the preliminary plat approval is void. The planning [COMMISSION] director may grant extensions to the time period for final plat approval if such extension is requested before the expiration of the original deadline for final plat approval. The planning commission shall review and decide extension requests filed after the expiration of the original or any extended deadline for final plat approval, or if the applicant is requesting a revision to the preliminary plat. Extensions may be granted for one-year periods. If an extension to the deadline for final plat approval is granted, the subdivider must comply with the borough laws in effect on the date the extension is granted unless an exception is granted under KPB 14.06.130 or KPB 20.24 as appropriate.

SECTION 10.KPB Chapter 20.16 “Final Plat” is amended by adding a new section as follows:

20.16.065. Road construction required within road service area.

A. *Road construction required.* The subdivider must provide a certificate from the Kenai Peninsula Borough Road Service Area Board that all roads within the road service area proposed to be dedicated by the plat are constructed to the standards set forth in KPB 14.06:

1. where the boundaries of the subdivision are measured to be 330 feet or less from termination of maintenance on a municipal- or state-maintained road;

2. where the proposed subdivision otherwise meets the criteria of this ordinance requiring road construction and (a) the proposed subdivision is more than 330 feet from a borough- or state-maintained road and (b) funding for construction of the access road is provided by the borough or another source other than the subdivision developer. Roads constructed by the borough must meet the criteria of KPB 16.41.190.

a. *Collector access roads.* If the RSA requires the construction of an access road under the authority of KPB 20.16.065(A) which is a collector road or greater, as defined by KPB 14.06.200, the borough shall reimburse a sum equal to the reasonable construction cost of the standard specified by the RSA less the estimated construction cost in accordance with the category standards in KPB 14.06.090, subject to the availability of funds appropriated for that purpose. If the RSA has not required construction to collector or greater standards, the subdivider shall construct the road to the standards required by the RSA consistent with KPB 14.06, and is not eligible for borough reimbursement of the construction costs. If a subcollector or greater standard is required to serve the lots within the proposed subdivision, the subdivider is not eligible for borough reimbursement of the construction costs.

B. *Measurements.* Where distance measurement is necessary to determine applicability of this section, distance shall be measured from right-of-way boundary to the subdivision boundary which are nearest each other. Where it is necessary to measure distance from the end of maintenance to determine applicability of this section, distance shall be measured from the parcel boundary where maintenance ends closest to the proposed subdivision boundary.

C. *Procedure.*

1. The applicant or designee must construct the roads within the subdivision to RSA standards, enter a subdivision agreement in lieu of constructing the roads as provided in KPB Chapter 14.06, or obtain a waiver of construction requirements from the RSA board.

2. To obtain a certification from the RSA required by KPB 20.16.065(A)(1-3), the applicant or designee must submit the preliminary plat to the RSA. The RSA director has 30 days from submittal of an approved preliminary plat to determine if a road construction certificate is required. Failure of the RSA director to determine whether a construction certificate is required within the 30-day period will result in the preliminary plat being presented to the RSA board for a determination of whether any or all roads must be constructed as required by KPB 20.16.065.

3. Upon certification of construction or execution by the applicant and borough of a subdivision agreement in lieu of construction, the RSA shall provide the planning department with the applicable certification.
 4. If the applicant or designee seeks a waiver of construction requirements pursuant to KPB 14.06.210, the applicant must submit an application for such waiver to the RSA board. The RSA shall provide the planning department a copy of the RSA board resolution showing any and all actions taken by the RSA board regarding waivers of one or more roads from the road construction requirements.
- D. *Phased subdivisions.* Roads need only be constructed for that phase of the subdivision submitted for final plat approval. Phases of subdivisions must be submitted in such order that the roads in the first phase receiving final plat approval are connected or most adjacent to the maintained access to the subdivision. Subdivision phases must be numbered consecutively in the order that they are submitted for final plat approval, beginning with “phase one.”
- E. *Double frontage lots.* Where a plat dedicates double-frontage right-of-way for lots and one of the rights-of-way abuts the outer boundary of the subdivision, only the internal subdivision road accessing the lot must be constructed.
- F. *Exemptions.*
1. *Legal access exemptions.*
 - a. Subdivisions without legal access are exempt from the requirements of KPB 20.16.065(A) and (B), except that subdivisions that require access via an Alaska Railroad Corporation corridor are not exempt from the provisions of KPB 20.16.065(A).
 - b. That segment of an internal subdivision road that is dedicated solely to provide access to parcels adjoining the proposed subdivision is exempt from the requirements of KPB 20.16.065(A) unless it is the continuation of an existing easement or previously platted right-of-way, or intersects with a previously dedicated right-of-way or easement.
 2. *Two Parcel Exemption.* Road construction is not required where the subdivision creates only two lots from a parent parcel at least 40 acres in size and one of the lots created is no more than an acre or is no more than the minimum size necessary to support an on-site well and septic system.

G. *Exceptions.*

1. Any reduction in road construction standards must be granted by road service area board resolution pursuant to applicable provisions in KPB Chapter 14.06. KPB Chapter 20.24, providing for exceptions to platting requirements, shall not apply to road construction standard determinations.
2. Exceptions to subdivision design provisions set out in this section shall only be granted in accordance with KPB 20.24.

H. *Deferred improvement—Guarantee.* When the preliminary plat of a subdivision is approved, and the final plat is subject to conditions requiring the construction of roads, the final plat may be recorded prior to the completion of the improvements only if the applicant has first submitted to the planning department a certification from the RSA that the applicant has completed all requirements for a subdivision agreement under KPB 14.06.205.

I. *Notice on Plats Regarding Roads Not Certified for Maintenance.* The borough shall record a notice that roads within a subdivision are not certified for maintenance where the plat depicts dedicated roads that will not be certified for RSA maintenance at the time of final plat approval. A release of this notice shall be recorded by the RSA as roads subject to the notice are certified for maintenance.

SECTION 11. KPB Chapter 20.20, Design Requirements, is amended by adding a new section as follows:

20.20.055. Access.

Subdivision design shall provide connection to a state- or municipal-maintained road where feasible and shall provide two access points where feasible. For subdivisions meeting the criteria of KPB 20.16.065(A), the access to the subdivision must be constructed to KPB 14.06 standards if any of the subdivision boundaries are 330 feet or less from a municipal- or state-maintained road. All access points within 330 feet of a municipal- or state-maintained road must be constructed.

SECTION 12. KPB 20.20.240 is deleted in its entirety as follows:

[20.20.240. Unsubdivided remainder.

WHEN AN EXISTING PARCEL IS SUBDIVIDED AND A PORTION OF THE PARCEL IS NOT INCLUDED IN THE SUBDIVISION, THAT PORTION IS AN UNSUBDIVIDED REMAINDER. NO UNSUBDIVIDED REMAINDER OF LESS THAN 40 ACRES THAT DOES NOT ABUT ON A DEDICATED PUBLIC RIGHT-OF-WAY SHALL BE PERMITTED.]

SECTION 13. KPB 21.29.010 is hereby amended as follows:

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a permit.
- D. Material extraction for road construction within a parcel is prohibited within 20 feet of a platted right-of-way or within ten feet of a lot line and does not require a permit when:

- 1. it has received preliminary plat approval;
- 2. the material is used within the boundaries of the proposed subdivision, or for development of the road directly accessing the subdivision;
- 3. extraction is not in a mapped flood plain or subject to KPB 21.29.010(B);
- 4. extraction does not enter the water table;
- 5. extraction does not cross property boundaries.

SECTION 14. Plat submittals received on or after the effective date of this ordinance must comply with the provisions of this ordinance. Plats which have received preliminary approval or an extension for final plat approval on the date of enactment of this ordinance are subject to the subdivision regulations in effect on the date preliminary plat approval or the extension was granted. Any further extensions for final plat approval are subject to the requirements of this ordinance.

SECTION 15. This ordinance shall take effect ninety days after enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2008.

Grace Merkes, Assembly President

ATTEST:

Sherry Biggs, Borough Clerk

Vote on 12/04/07 Motion to Enact:

Yes: Gilman, Martin, Smith, Sprague

No: Fischer, Knopp, Long

Absent: Merkes, Superman

Vote on Motion to Reconsider and Postpone until 01/22/08:

Yes: Gilman, Long, Martin, Smith, Sprague

No: Fischer, Knopp, Superman, Merkes

Absent: None

Vote on Motion to Postpone as Amended until 02/05/08:

Yes: Fischer, Knopp, Long, Smith, Sprague, Superman, Merkes

No: Gilman, Martin

Absent: None

Vote on Motion to Enact as Amended:

Yes: Gilman, Martin, Smith, Sprague

No: Fischer, Knopp, Superman, Merkes

Absent: Long