September 1, 2010
5:30 P.M.

Cowles Council Chambers
491 East Pioneer Avenue
Homer, Alaska

WORK SESSION
Advisory Planning Commission
AGENDA

1. Call To Order, 5:30 P.M.

2. Discussion of Items on the Regular Meeting Agenda

3. Staff Report PL 10-59, Draft Rezone Ordinance ***(Please refer to page 85 of the regular meeting packet.)***

4. Staff Report 10-80, Resubdivision Code

5. Staff Report PL 10-78, Draft Spit Comprehensive Plan ***(Please refer to page 43 of the regular meeting packet.)***

6. Public Comments
   The public may speak to the Planning Commission regarding matters on the work session agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

7. Commission Comments

8. Adjournment

City of Homer
Planning & Zoning
491 East Pioneer Avenue
Homer, Alaska 99603-7645

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Web Site *www.ci.homer.ak.us*

STAFF REPORT PL 10-80

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: September 1, 2010
SUBJECT: Subdivision Ordinance

Introduction
This subject was brought to the forefront as there were some questions about Homer's ability to require subdivision improvement for platting actions such as removal of lot lines.

Subdivision
As included in you packets last week, the attorney highlighted the reference in our definition that subdivision includes any subdivision or resubdivision. The key being that a resubdivision includes the removal of a lot line where two or more lots may not be created.

The Attorney and the Borough seem to make it clear that the City of Homer is within its' rights to require that subdivisions or resubdivsions adhere to requirements found in Homer City Code.

Notable Changes
Language suggested by the City Engineer include the dedication of 15' easements along all existing or propose rights-of-way and any easements identified in the Water and Sewer Master Plan.

Another discussion I had with Carey was about the deletion of the waiver of the provision (22.10.050(a)) requiring the construction of all utilities and other public improvements prior to release for plat filing. The waiver allows for an agreement that no building permit or request for utility connection will be submitted until such improvements are completed and accepted. The thought is that this provision has not been requested in the last ten years and seems to be a legacy policy that should be removed from code. So the recommendation would be to strike, "~~This provision may be waived if the developer signs an agreement with the City of Homer that no building permit and/or request for utility connection will be submitted to the City for any lot within the subdivision until such time as the improvements are completed and accepted by the City of Homer. This agreement shall be recorded and constitute a covenant running with the land.~~"

Concepts that are approved will be forwarded to the Attorney for review prior to further review by the Planning Commission.

Recommendation
Review and suggest date for public hearing(s) or schedule time for further review.

CITY OF HOMER
PUBLIC WORKS
3575 HEATH STREET HOMER, AK 99603

TELEPHONE (907)235-3170
FACSIMILE (907)235-3145

MEMORANDUM

TO: Rick Abboud, City Planner

FROM: Carey Meyer, Public Works Director

DATE: August 4, 2010

RE: **Homer City Code Revisions**
15' Frontage Utility Easements and other Issues

The following is discussion of and recommendations for Code language revisions pertaining to the requirement that all lots have a 15' utility easement immediately adjacent to the street right-of way and other platting issues that Public Works routinely comments on.

Issues:
1) 15' utility easement immediately adjacent to the street right-of way,
2) Requirement to create easements for future water and sewer improvements,
3) Radius returns on street intersection property lines,
4) Water/sewer service relocation requirements.

Discussion:

Public Works recognizes that when a property owner submits a plat to the Planning Commission to create, vacate, or move property lines; or modify private ownership interests; they are expected to take the public interest into account. One of the purposes of a preliminary plat, according to Kenai Peninsula Borough Code is "to give the planning commission and the planning director ample time to study the proposed *subdivision* and its relation to the *overall needs of the Kenai Peninsula Borough and its residents*." During the review of a plat, Public Works raises the above four issues routinely, in the interest of the public; and in accordance with additional provisions of Homer City Code.

Kenai Peninsula Borough Code 20.04.040 says "A plat, prepared and submitted in accordance with the applicable provisions of this title, is required for all *subdivisions* of land ....." In KPB Code, Section 20.08.150. states that "*Subdivision* means the division of a tract or parcel of land into 2 or more lots, sites or other divisions for the purpose, whether immediate or future, of sale or building development, *and includes resubdivision* and, when appropriate to the context, relates to the process of subdividing or to the land or areas subdivided." (Ord. No. 78-37, § 2(part), 1979)

The purpose of Title 20 of KPB Code is "to promote an adequate and efficient street and road system, *to provide utility easements*, to provide minimum standards of survey accuracy and proper preparation of plats, and *to protect and improve the health, safety and general welfare of the people*."

15' utility easement immediately adjacent to the street right-of way

Attached is a Typical *Rural* Roadway Section showing what most roads in Homer look like today. There is plenty of room within street right-of-way, on either side of the road, for utility trenching in a rural road right-of-way. The Typical *Utility* Location detail shows where utilities are generally located within the right-of-way.

Attached is a Typical *Urban* Road Section showing what all roads in Homer will probably look like at some time in the future. The cost of maintaining and replacing utilities under the more expensive surface improvements is high. Having the ability to utilize easements adjacent to the right-of-way is an important option that should be provided for. The creation of these easements serves the public interest by reducing substantially the cost of maintaining and replacing these expensive and vital utilities.

These easements *are* an encumbrance on the property, but less than what we might think. The easements are within the front twenty feet of the lot (within the building setback area). The creation of these easements does not affect the buildable area of the lot. The property owner retains the use of the surface of the easement; for parking, lawn, fences, and other surface uses consistent with the utility easement needs. Sometimes a manhole, a pedestal, transformer is located within the easement that can have a localized effect on surface usage.

The language in Homer City Code that requires these easements is 22.10.051 Utility easements. "Each lot of a new subdivision must have access from a fifteen foot utility easement." (Ord. 90-5, 1990) This language has been utilized in the past as authority to require 15' wide easements along the front of all property.

This language could be improved. See recommendations section for proposed revised language.

Requirement to create easements for future water and sewer improvements

The language in Homer City Code that requires plats to show easements needed for future water and sewer main extensions is not definitive. Requirements to dedicate road rights-of-way, drainage easements, and easements for trails are already codified, but not water and sewer main easements. The City has prepared a Water and Sewer Master Plan that shows how water and sewer would most likely be extended to provide serve to all neighborhoods in Homer. Code language that would require water and sewer easements be dedicated is presented in the recommendations section below.

Radius returns on street intersection property lines

Homer City Code 11.04.090 requires minimum 20-foot radius returns at all intersections. No Code language revisions are necessary.

Water/sewer service relocation requirements

When platting actions move property lines, existing water and sewer services are sometimes affected. Public Works makes comments on these types of plats to inform applicants that existing services need to be relocated or new services need to be installed to allow water and or sewer service to continue to be provided.

Before the final plat can be recorded, the Borough contacts Public Works and asks whether any required improvements have been completed or a construction agreement has been executed. Public Works has used this opportunity to make sure that service modifications have been completed.

Homer City Code 22.10.050 Improvement Requirements General states: No subdivision plat shall be released by the Kenai Peninsula Borough for filing at the State Recorder's Office, until the subdivider or developer of such subdivision constructs streets in all rights-of-way dedicated by said plat, *and all other utilities and other public improvements* to be constructed in said rights-of-way dedicated by said plat, and all other utilities and other public improvements to be constructed in said rights-of-way according to the standards and procedures required under Title 11 of this Code. The plat shall not be released for filing until the City of Homer issues written approval of said street and utility improvements to the Kenai Peninsula Borough. This provision may be waived if the developer signs an agreement with the City of Homer that no building permit and/or request for utility connection will be submitted to the City for any lot within the subdivision until such time as the improvements are completed and accepted by the City of Homer. This agreement shall be recorded and constitute a covenant running with the land.

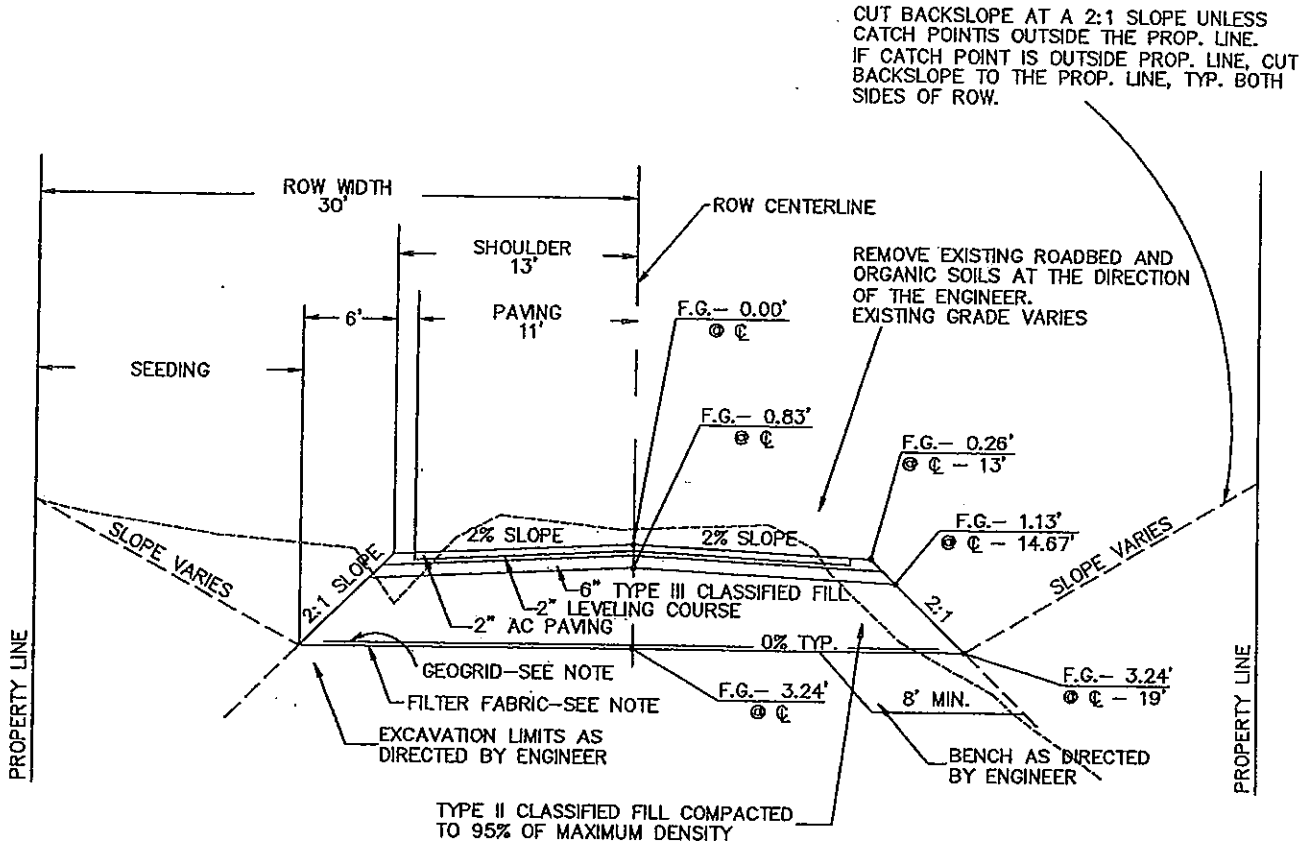
Public Works is not aware of a circumstance where the applicant has refused to accomplish this work as part of the final platting conditions; but language is not present in Homer City Code that specifically stipulates that the completion of these types of improvements can be a condition to a plat approval. Applicants seem to understand the importance of making the service line modifications and appreciate knowing up front what needs to be done.

Some additional language in Homer City Code would make sense; recommended language is contained in the recommendations section below.

Recommendations: The Homer Advisory Planning Commission approve the following Homer City Code language modifications/additions:

1) 22.10.051 Utility easements. ~~Each lot of a new subdivision must have access from a fifteen foot utility easement. (Ord. 90-5, 1990)~~ **(a) Each lot of a new subdivision shall have a fifteen (15) foot wide utility easement dedicated immediately adjacent to any existing or proposed street right-of-way. (b) New lots within subdivisions shall have water and/or sewer easements dedicated that are needed to construct future water and sewer mains as shown on the official Water/Sewer Master Plan approved by the City Council.**

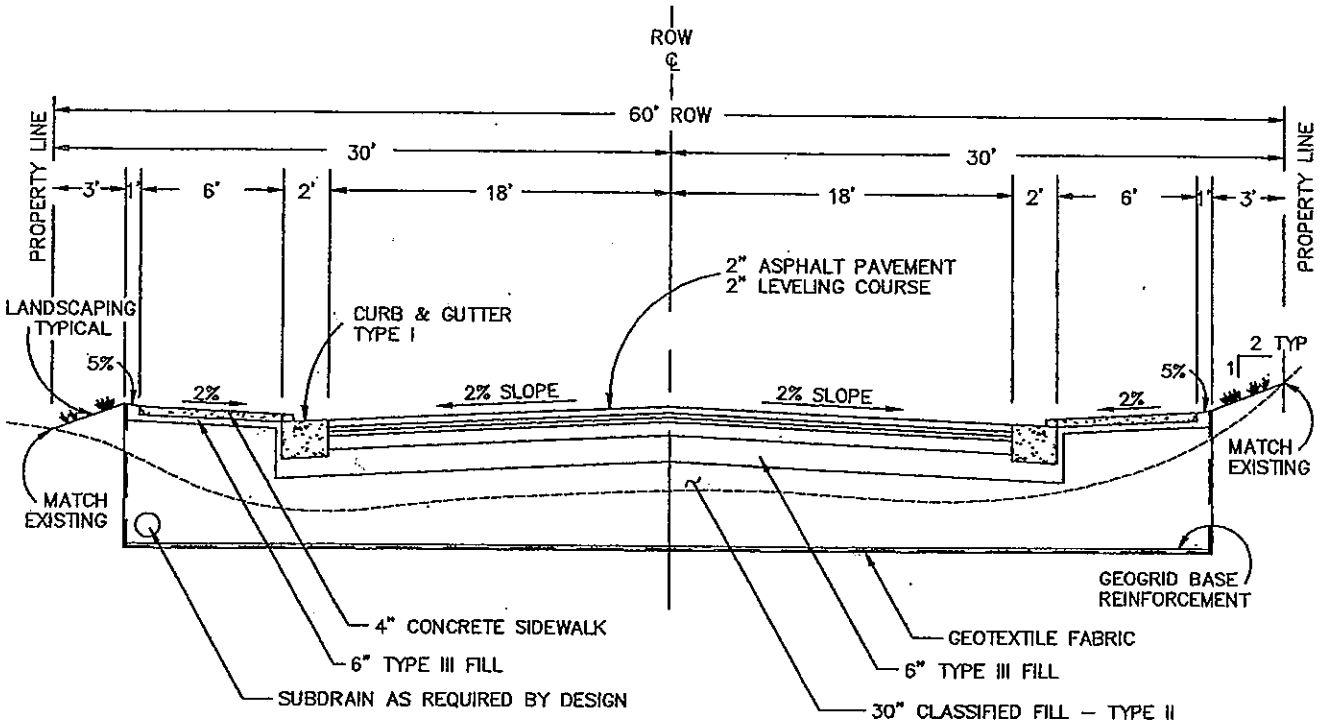
2) 22.10.050 (a) Improvement requirements General. No subdivision plat shall be released by the Kenai Peninsula Borough for filing at the State Recorder's Office, until the subdivider or developer of such subdivision constructs streets in all rights-of-way dedicated by said plat, and all other utilities and other public improvements to be constructed in said rights-of-way dedicated by said plat, and all other utilities and other public improvements to be constructed in said rights-of-way according to the standards and procedures required under Title 11 of this Code. The plat shall not be released for filing until the City of Homer issues written approval of said street and utility improvements **(including water and sewer service relocations/additions)** to the Kenai Peninsula Borough. This provision may be waived if the developer signs an agreement with the City of Homer that no building permit and/or request for utility connection will be submitted to the City for any lot within the subdivision until such time as the improvements are completed and accepted by the City of Homer. This agreement shall be recorded and constitute a covenant running with the land. Strike - Carey



NOTES:

1. PLACE GEOGRID AND FILTER FABRIC A MINIMUM OF 1' AND A MAXIMUM OF 2' FROM EACH EDGE OF THE EXCAVATION.
2. TYPICAL CROSS SECTION MAY VARY BASED ON R.O.W. WIDTH, GEOTECHNICAL AND DESIGN INFORMATION.

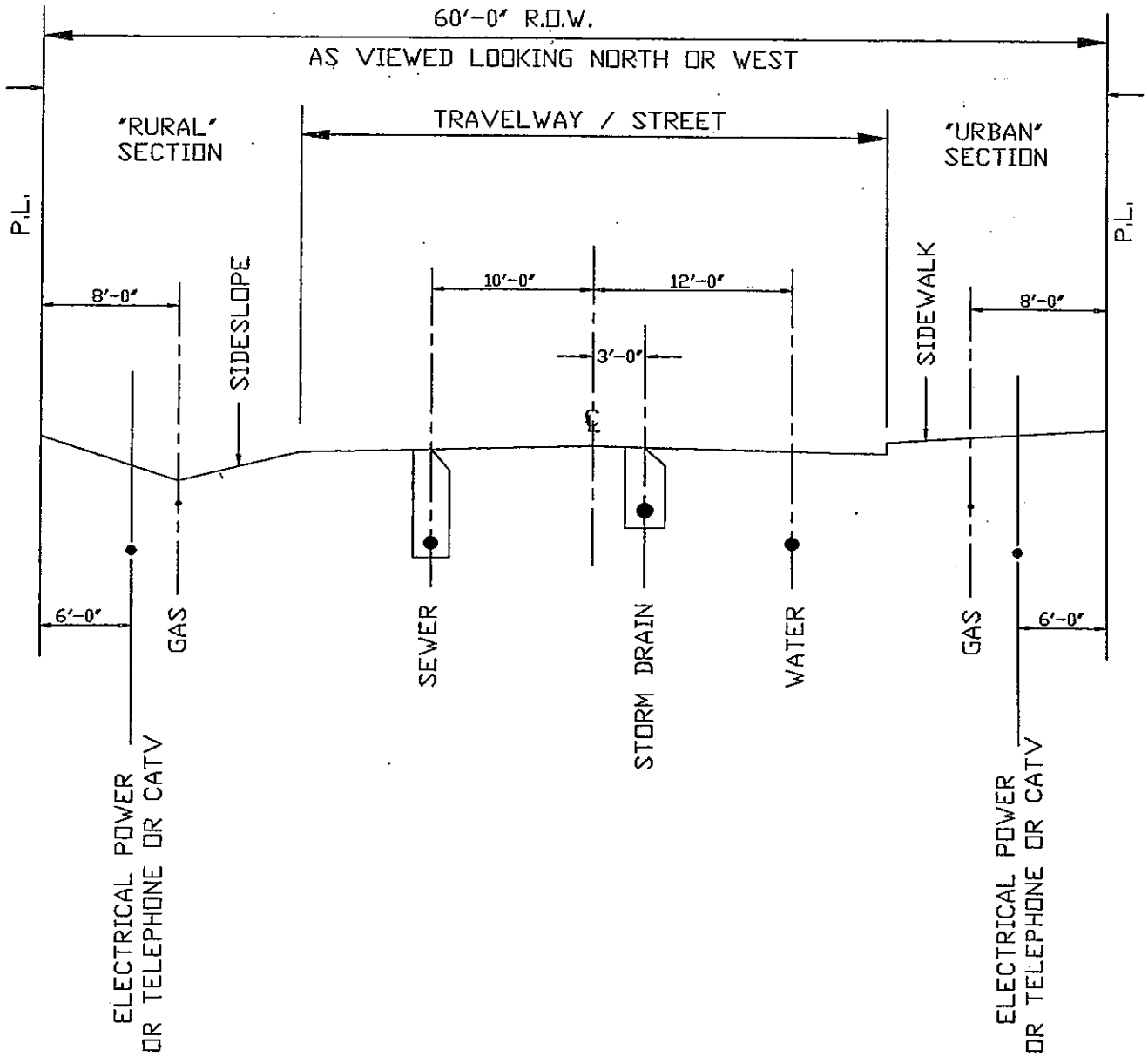
CITY OF HOMER ALASKA MARCH 31, 1964	SCALE: NTS REVISED: 6/99	TYPICAL ROADWAY SECTION RURAL	DETAIL # **200.01**



NOTES:

1. TYP. CROSS SECTION MAY VARY BASED ON ROW WIDTH, GEOTECH & DESIGN INFORMATION.

CITY OF HOMER ALASKA MARCH 31, 1964	SCALE: NTS REVISED: 6/99	TYPICAL ROADWAY SECTION URBAN (CURB, GUTTER & SIDEWALK)	DETAIL # **200.02**



CITY OF HOMER ALASKA MARCH 31, 1964	SCALE: NTS REVISED: 6/99	TYPICAL UTILITY LOCATIONS	DETAIL # 200.04

Rick Abboud

From: Best, Max [MBest@borough.kenai.ak.us]
Sent: Monday, July 26, 2010 11:50 AM
To: gary@abilitysurveys.com
Cc: Rick Abboud
Subject: RE: Request for Department Policy Interpretation of Homer City Code

Gary,

1. You are altering a plat.
2. It requires you to apply "subdivision regulations".

Max.

From: gary@abilitysurveys.com [mailto:gary@abilitysurveys.com]
Sent: Monday, July 26, 2010 11:19 AM
To: Best, Max
Cc: Rick Abboud
Subject: Re: Request for Department Policy Interpretation of Homer City Code

Dear Max;

Thank you very much for trying to answer my question. However it seems you're not understanding my question and assertion.

The question is; How does KPB Planning Staff justify treating this plat action which solely requests a vacation of lot lines, as a subdivision in the city of Homer when the Homer City Code specifically defines subdivision as;

22.10.030 Definitions. The following words and phrases shall have the meanings set forth in this section, unless otherwise provided or the context otherwise requires:

22.10.030(a)–22.10.050(b)

b. "Subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, including any subdivision or resubdivision. When appropriate to the context, the term shall refer to the process of subdividing or to the land or areas subdivided. (Ord. 87-8 (S) (part), 1987)

and so the assertion is that according to the definition of the Homer City Code, this action does not qualify as a subdivision because it is not a division of a tract or parcel of land into two or more lots, sites, or other divisions" ..... And therefore should not be subject to the more recently enacted easement and right-of-way provisions. This was the assertion in the submittal letter and as yet I don't believe it has been addressed. Now we are trying to find out what reasoning the Staffs use to ignore or re-interpret this code provision.

This clearly is not a division of a tract or parcel of land so how can it come under that definition?

Please explain.

Gary Nelson, PLS

cc: Ken Moore

----- Original Message -----
From: Best, Max
To: gary@abilitysurveys.com
Cc: Rick Abboud
Sent: Monday, July 26, 2010 9:17 AM
Subject: RE: Request for Department Policy Interpretation of Homer City Code

Gary,
AS 29.40.080 (a), The Assembly by ordinance shall establish a platting authority to administer subdivision regulations and to perform other duties as required by the assembly.
AS 29.40.120, A recorded plat may not be altered or replated except by the platting authority on petition of the state, the borough, public utility or the owners of a majority of the land affected by the alteration or replat.
KPB 20.04.010, The purpose of this title is to promote an adequate and efficient street and road system, to provide utility easements, to provide minimum standards of survey accuracy and proper preparation of plats and to protect and improve the health and general welfare of the people.
20.20.250, Where cities have enacted by ordinance different design standards than those set forth in this chapter, the planning commission may apply such city standards in lieu of those set forth in this chapter.

At the KPB plat committee meeting of July 19, 2010 you asked for an exception to 20.20.250 of the KPB code and were denied based on the four findings listed on page 222.

1. Homer 11.04.090 requires minimum 20-foot radius returns at all intersections.
2. Homer 22.10.051 states that each lot of a new subdivision must have access from a 15-foot utility easement.
3. Homer has consistently required compliance with this portion of their code.
4. Per KPB 20.16.120(B)(1) The subdivider bears the responsibility for coordination with the utility companies.

I do not see where the city or the borough have acted outside the bounds of their authority.
Max.

From: gary@abilitysurveys.com [mailto:gary@abilitysurveys.com]
Sent: Friday, July 23, 2010 3:05 PM
To: Best, Max
Cc: Rick Abboud
Subject: Re: Request for Department Policy Interpretation of Homer City Code

Max;

I feel your explanation dances around my request and does not address it.

It is my contention that;

1. Homer Planning Staff and KPB Planning Staff and Commission disregarded the Homer City Code and requested over and above the Homer City Code provisions by definitions contained in the code which I submitted to you. Those definitions seem to exclude the sole action of a vacation of lot lines, making our requested action not subject to the other code provisions to granting easements and rights-of-way.

2. the City's appointed and duly authorized Platting Authority or Voice, the HAPC, did not vote to require the easements or dedication. Those were only recommendations from the Public Works Department and they did not demonstrate an immediate need for them when specifically asked if there was one. This was mentioned in the submittal letter that contained the meeting minutes.

3. KPB staff recommended what Homer Public Works recommended but the HAPC did not support those recommendations.

4. Homer City Code by it's definitions exclude the sole action of Vacating lot lines from the easement, right-of-way, and other subdivision improvement requirements. The wording appears to be intentional.

5. Your reply states "city requirements must be followed", and it is my contention that both the **city and borough are not following the city code requirements.**

6. Your reply does not seem to answer the original question posed. I care not if you address my contentions mentioned here, but I would like a direct answer to the original question posed in the first sentence of my request.

Thank you very much,

Gary Nelson, PLS

----- Original Message -----
From: Best, Max
To: gary@abilitysurveys.com
Cc: Rick Abboud
Sent: Thursday, July 22, 2010 5:07 PM
Subject: RE: Request for Department Policy Interpretation of Homer City Code

Gary, Ken,
Pursuant to KPB 20.12.050, it is mandatory that the plat be first submitted to the city. Pursuant to KPB 20.12.050(C), the applicant bears the responsibility for presentation to and discussions with the city so that the final plat will conform to "lawful ordinances and requirements of said city." The ultimate goal of the platting process is to achieve a final plat, which is why KPB 20.12.050(C) references the final plat; it is not because lawful ordinances and city requirements do not need to be followed prior to the final plat being submitted. Per the boroughs' code , city requirements must be followed from the time of submittal; that is the very reason the borough requires the preliminary plat submittal be made to the city first. If the city's requirements did not need to be followed , there would be no reason to submit the plat at any stage to city for review. Clearly, subsection C requires the advisory planning and municipal departments, as appropriate, review the plat at the preliminary stage, and our code specifically allows the city to establish requirements for this review. It is also mandatory that the city's comments be included with the preliminary plat submittal to the borough. Without the comments, the platting division is well within its purview to return the plat for to the surveyor for modification or corrections as required by AS 29.40.110.

In other words, you need to work things out with the city.

Max Best

From: gary@abilitysurveys.com [mailto:gary@abilitysurveys.com]
Sent: Thursday, July 22, 2010 10:29 AM
To: Best, Max
Cc: Rick Abboud
Subject: Request for Department Policy Interpretation of Homer City Code

Planning Directors Max and Rick;

Please give us (owner/client Ken Moore and I) your departments explanation of why you feel our requested plat action on W.R. Benson's Moore Replat considered at the KPB Plat Meeting of 7/19/2010 required granting easements and right-of-way. Our reading and interpretation of the Homer City Code with definitions cited below lead us to believe the codifiers intended for plat actions of this sort to not be subject to additional takings or requiring additional grants. Why else would the code provisions be expressed as they are? (See code below).

We ask a timely reply because we are considering filing a request for a Plat Committee Review and we only have 10 days from the meeting date to submit our request.

Sincerely,

Gary Nelson, PLS
and
Ken Moore

11.20.010 Intent. The intent of this chapter is to establish procedures for constructing streets and utility mains in existing rights-of-way or public rights-of-way or easements to be dedicated by plat. (Ord. 87-6(S) 1(part), 1987).

11.20.020 Scope and applicability. This chapter governs all street and utility main construction in public rights-of-way which are greater than twenty-two feet in width, excepting those rights-of-way which are specifically claimed for ownership and maintenance by the State of Alaska. It shall further govern such construction of streets and utility mains in rights-of-way or easements proposed to be dedicated as part of pending subdivision plats, as required in Chapter 22.10 of the Homer Municipal Code. (Ord. 87-6(S) 1(part), 1987).

11.20.030 Definitions. In this chapter, unless otherwise provided or the context otherwise requires, the following definitions shall have the meanings set forth below:

t. **"Subdivision"** means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, including any subdivision, and

when appropriate to the context, the process of subdividing or the land subdivided. A "new subdivision" is a subdivision in which a plat is recorded after the effective date of this chapter.

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22.10 Subdivision Improvements

22.10.030 Definitions. The following words and phrases shall have the meanings set forth in this section, unless otherwise provided or the context otherwise requires:

22.10.030(a)—22.10.050(b)

a. **"Subdivider"** means a person, firm, association, partnership, corporation, governmental unit or combination of any of these which may hold any recorded or equitable ownership interest in land, and dividing or proposing to divide such land so as to constitute a subdivision as defined in this section. This term shall also include all heirs, assigns or successors in interest, or representatives of, the subdivider, owner, proprietor or developer.
b. **"Subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, including any subdivision or resubdivision. When appropriate to the context, the term shall refer to the process of subdividing or to the land or areas subdivided.** (Ord. 87-8 (S) (part), 1987)

22.10.051 Utility easements. Each lot of a new subdivision must have access from a fifteen foot utility easement. (Ord. 90-5, 1990)

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11.04.030 Definitions. In this chapter, unless otherwise provided, or the contest otherwise requires, the following words and phrases shall have the meanings set forth below:

y. "Subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, including any subdivision, and when appropriate to the context, the process of subdividing or the land subdivided. A "new subdivision" is an subdivision in which a plat has received preliminary approval prior to the effective date of this chapter. There will be no time extension allowed for said preliminary plat to be considered at a later date.

City Attorney's take on Subdivision Question 7-22-10

The deletion of a lot line is a subdivision. The planning commission may, but is not required to, waive improvement and dedication requirements in connection with a subdivision that consists only of the removal of a lot line.

Under state law, as well as under the Borough and City codes, the term "subdivision" is defined to include resubdivision (i.e., the rearranging of lots in an existing subdivision, including the removal of lot lines).

AS 29.71.800(23)(A) provides that "subdivision" means "the division of a parcel of land into two or more lots or other divisions for the purpose of sale or building development, ***includes resubdivision***, and relates to the process of subdividing or the land subdivided." (Emphasis added)

Kenai Peninsula Borough Code 20.08.150 defines "subdivision" as the division of a tract or parcel of land into 2 or more lots, sites or other divisions for the purpose, whether immediate or future, of sale or building development, ***and includes resubdivision*** and, when appropriate to the context, relates to the process of subdividing or to the land or areas subdivided. (Emphasis added)

HCC 22.10.030(b) defines "subdivision" as "the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, ***including any subdivision or resubdivision***." (Emphasis added)

In addition, state law specifically requires platting action to alter a recorded plat. AS 29.40.120 provides in relevant part, "A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of a majority of the owners of the land affected by the alteration or replat."

The Homer City Code authorizes the planning commission to exempt small resubdivisions from the standards for subdivisions in the Code. HCC 22.10.040(a) provides, "The standards of this chapter shall apply to all subdivisions in the City of Homer. Exemptions from the requirements of Chapter 22.10 of this Code may be granted concurrent with preliminary plat approval by the Homer Advisory Planning Commission under the following conditions...Resubdivision of existing subdivisions not to exceed three lots, and involving no new dedications of rights-of-way." Similarly HCC 22.10.050, regarding improvement and dedication requirements, includes subsection (b) which provides, "Plats may be exempted from these provisions by the Commission as provided for in Section 22.10.040."

The plat also would be eligible for the abbreviated plat procedure under Kenai Peninsula Borough Code 20.04.070:

The abbreviated plat procedure may be used in those instances where the subdivision or resubdivision is of a simple nature and meets all of the specific requirements of this section.
A. Eligible Preliminary Plats. Movement or elimination of lot lines and the simple subdivision of a single tract parcel or lot into two tracts or lots provided that the subdivision does not:
1. Result in any lot less than the minimum lot size required under existing zoning and this section.
2. Allow a change in the permitted use to which the lot or tract may be devoted under existing zoning.
3. Alter a dedicated street or other right-of-way or require additional dedication.
4. Deny adequate public access to and from all lots or tracts created and adjacent.
5. Require the granting of any exception to the Borough Subdivision Ordinance.