

I. CALL TO ORDER

The special meeting of the Matanuska-Susitna Borough Assembly was held on November 3, 2011, at the Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 6 p.m. by Mayor Larry DeVilbiss for the purpose of discussing Ordinance Serial Nos. 11-073 and 11-106.

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*) (*entered telephonically at 6:04 p.m.*)
Mr. Steve Colligan, Assembly District No. 4
Mr. Darcie K. Salmon, Assembly District No. 5 (*attended telephonically*)
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
Ms. Brenda J. Henry, Executive Assistant to the Borough Clerk
Ms. Elizabeth Gray, Assistant Borough Manager
Ms. Patty Sullivan, Public Affairs Director
Ms. Shannon Bodolay, Assistant Borough Attorney
Mr. Alex Strawn, Permitting Services Manager

III. APPROVAL OF AGENDA

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

Assemblymember Colver stated that he would like to take up Ordinance Serial No. 11-106 prior to taking up Ordinance Serial No. 11-072 and to take them up separately.

There was no objection noted.

Mayor DeVilbiss stated that he has a proclamation that he would like to read immediately following the pledge of allegiance.

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 Ms. Lucille Frey, a member of the audience.

Mayor DeVilbiss read a proclamation in recognition of Adoption Awareness Month.

V. UNFINISHED BUSINESS

(The items were listed together on the agenda, but under the approval of the agenda, it was approved to take them up separately.)

- A. Ordinance Serial No. 11-106: AN ORDINANCE AMENDING MSB 17.29.160, GENERAL STANDARDS FOR FLOOD HAZARD REDUCTION.
1. IM No. 11-123

MOTION PENDING: Assemblymember Colver moved to adopt Ordinance Serial No. 11-106.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-106 as follows:

- MSB 17.29.040(A), by inserting the words “as defined in the current edition of the Code of Federal Regulations” at the end of the first paragraph;
- MSB 17.29.040 (A), Definitions, to strike the words “so as to give them the meaning they have in common usage and to give this chapter its most reasonable application” after the word “interpreted and then after the word “interpreted” the words “as defined in the current edition of the Code of Federal regulations; and
- MSB 17.29.160 (A) (4) by inserting the following language for (a), (b), and (c) as follows:
 - (a) Within FEMA mapped special flood hazard areas in Zones A, AO, AH, or AE on the DFIRM, subdivision proposals or other similar housing development such as mobile home parks shall verify they are reasonably safe from flooding by demonstrating that:
 - (1) the subdivision is consistent with the need to minimize flood damage; and
 - (2)the public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize flood damage; and
 - (3) the subdivision has adequate drainage provided to reduce exposure to flood damage.
 - (b) Within FEMA mapped special flood hazard areas in Zones A, AO, AH, or AE on the DFRIM, if the subdivision and other proposed new development is greater than 5 acres or 50 lots, whichever is less, the applicant shall also:
 - (1)map special flood hazard areas and floodways on the preliminary and final plats; and

- (2) provide base flood elevation data where base flood elevation is available; or
- (3) generate base flood elevation where base flood elevation data is not available from the Borough or other authoritative source.
- (c) The test of reasonableness shall be in accordance with MSB 17.29.160(B).
 - by striking the language in MSB 17.29.1601 (A)(4)(d) in its entirety; and
 - by replacing the language in MSB 17.29.160 (B) with the following:
 - “Review of development permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source pursuant to MSB 17.29.130(A)(4), applications for development permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment based on mapped flood hazard data, use of historical records, high water marks, photographs of past flooding, anecdotal information from long-time residents, and other similar information where available.”

Assemblymember Colver:

- spoke to MSB 17.29.160 (F)(iii);
- noted that the interpretation of staff, is that if there is water on it, it needs to be identified as a flood hazard area;
- stated that engineers or surveyors will attempt to determine where the high water mark generally is, but that it may be difficult in remote areas;
- related that he worked with the Law Department to determine what is the least the Borough must do to be compliant with Federal Emergency Management Agency (FEMA) regulations, which was not very clear;
- stated that they worked with FEMA personnel who stated that if it is in a zone “A” area, that is where the flood hazard determination needs to be made;
- related that the amendment will provide definite direction as to what must be mapped and identified as flood hazard zones; and
- opined that it is much more succinct, which will easily identify where residents must obtain flood insurance.

Assemblymember Keogh stated that he would like to have Ms. Taunnie Boothby, Alaska State Coordinator for Flood Plain Management, come forward to answer questions on the impacts of the amendment.

Mr. Moosey noted that staff is also available to answer questions.

Assemblymember Keogh:

- queried if Ms. Boothby had an opportunity to review the proposed amendments; and
- requested that she speak to the potential impacts of the amendments on FEMA requirements.

Ms. Boothby:

- stated that she has not had a lot of time to review all of the proposed changes;
- related that it is her understanding that the amendments are to clarify the minimum requirements of the program; and
- noted that it is also to eliminate confusion in unmapped areas.

Assemblymember Keogh:

- queried of the changes she has reviewed, do they succeed in clarifying and simplifying confusion in unmapped areas; and
- stated that he wants to ensure that the legislation would not be harming National Flood Insurance Program (NFIP) requirements.

Ms. Boothby:

- stated that any changes that occur with the ordinance need a thorough review to ensure they meet FEMA standards; and
- related that either she or FEMA could conduct that review.

Discussion ensued regarding:

- the accuracies of data used to determine flood zones;
- that Alaska is more challenged due to less accurate data;
- the length of time to bring data up-to-date through the Light Detection and Ranging (LIDAR) mapping project;
- how federal appropriations impact mapping projects throughout the Nation;
- the reasons that staff recommended a two foot free board in order to help the owner builder to identify issues at appropriate height;
- that the more refined information that is gathered for residents, the better it is to make the case to update Alaska's maps;
- whether or not there are other areas where exemptions have been negotiated due to the lack of information;
- that mapping projects are contracted out and that most companies are not here in Alaska;
- that even with refined data there will still be challenges;
- that there are no determinations that would qualify the Borough for an exemption;
- that some mapping information should come from residents who are familiar with their properties;
- concerns with a "one size fits all" type of permitting process;
- that the Assembly wants to ensure that people who are located in flood plains have the most accurate information possible;
- the need to educate homeowners as to what their risks are in particular areas;
- the process of quality control for the LIDAR project;
- how FEMA ranks funding priorities when updating maps;
- the status of the LIDAR project within the Borough;
- that the amendment meets the minimum FEMA requirements;
- that FEMA will need to review and approve the legislation within 90 days of it being adopted;

- that the amendment provides specific areas where mapping flood hazards should occur;
- that the amendment would be applicable for all Zone “A” designated areas;
- the reasons that the Big Susitna River area is not mapped as a flood hazard area;
- that FEMA mapping priorities tend to be based on higher populated areas, or in areas of anticipated development;
- that when FEMA is considering levels of risk they have to decide what is mapped and what is not;
- the number of parcels within red zones;
- the fact that if even a square foot of property is in the red zone residents are notified;
- that when the LIDAR is in hand that the Borough can actually pin point the development that has occurred in special flood hazard areas;
- other possible processes for identifying flood hazard areas;
- that there are 5,260 parcels within the Borough that touch identified flood hazard areas and that 2,200 of those parcels have structures with assessed values;
- that there are 344 insurance policies through the NFIP and that of those, 71 are not in special flood hazard areas and are voluntarily purchasing flood insurance;
- how flood disasters are declared in Alaska; and
- the possibility of FEMA denying the legislation.

MOTION: Assemblymember Colver moved a secondary amendment to MSB 17.29.160 (A)(4)(b)(3) by inserting the following: “(i) The Borough shall not require a petitioner to determine the base flood elevation if the subject property is more than one mile from a source of elevation data.”

Assemblymember Colligan opined that there are several sources of elevation data.

Assemblymember Colver:

- stated that even when Global Positioning Satellites (GPS) are used, one would need to see what the elevation is at a known point so that if you move two miles away you have a correction factor;
- noted that he does not intend to push the amendment through, as Law had advised that it is not legal; and
- stated that he did want it up for discussion.

Discussion ensued regarding:

- that the Code of Federal Regulations (CFR) requires that base flood elevation has to be provided, but it does not say that a sub-divider has to be the one who provides it;
- that staff could provide base flood elevation, but that someone must provide it regardless of the data available; and
- that in light of the recommendation by Law that the secondary amendment is not legal and that it should be withdrawn.

WITHDRAWAL: Assemblymember Colver moved to withdraw his secondary amendment.

There was no objection noted.

VOTE: The primary amendment passed without objection.

(The meeting recessed at 7:25 p.m. and reconvened at 7:35 p.m.)

VOTE: The main motion passed as amended without objection.

(Assemblymembers Salmon and Arvin re-entered the meeting telephonically at 7:36 p.m.)

B. Ordinance Serial No. 11-073: AN ORDINANCE AMENDING MSB 17.02, MANDATORY LAND USE PERMIT.

1. IM No. 11-123

MOTION PENDING: Assemblymember Colver moved to adopt Ordinance Serial No. 11-073.

MOTION: Assemblymember Colver moved primary amendment to Ordinance Serial No. 11-073 as follows:

- MSB 17.02.020, by striking (A) (1) through (A) (4) and striking (B) and (C) in their entirety;
- by striking MSB 17.02.030 (B) (3) and (4) in their entirety;
- by striking MSB 17.02.030 (C) and (D) in their entirety; and
- by striking the additions and deletions originally proposed in the ordinance.

Assemblymember Colver:

- stated that there have been problems with residents with small lots building too close to the lot line;
- noted that the issue is typically discovered when they attempt to sell their homes;
- related that what the Borough did was to have them re-plat and carve out a portion of the right-of-way and call it snow storage easement in order to fix the setback issues;
- spoke to when the original legislation was adopted and how it occurred;
- opined that a sketch that is brought into the Borough is not an assurance that a builder will not make a mistake;
- stated that he thought the public would be better served if they are only required to secure a permit or a lot survey when it is a small lot; and
- opined that this is a good compromise, as a drawing does not add value to the permit process.

Assemblymember Halter queried if the procedure is consistent with the proposed amendment.

Mr. Spiropoulos affirmed the query.

Discussion ensued regarding:

- when a mandatory land use permit is required;
- the benefits of a certified site plan versus a vicinity map;
- that if only a vicinity map is required, that follow-up to gather additional information from the resident would be necessary;

- the best way to ensure that code is not conflicting;
- that a mandatory land use permit is only required if a parcel is in a flood hazard area or within 75 feet of waterbody;
- the possibility of including a cautionary statement that indicates that it would be to residents' advantage to certify boundary lines for placement of buildings; and
- concerns that the permitting process is being addressed prior to procedure.

MOTION: Assemblymember Colver moved a secondary amendment to MSB 17.02.030 (B)(2), by striking the words "for any of the following."

VOTE: The secondary amendment passed with Assemblymember Keogh opposed.

Assemblymember Keogh queried if there are any potential impacts of deleting the need for a mandatory land use permit.

Mr. Strawn:

- related that the Borough processes over 600 applications per year;
- stated that since 2008, staff has reduced the amount of time to process applications;
- opined that it has been a great opportunity to educate the public;
- noted filing a site plan and paying a fee has really increased awareness that residents may not have thought of in the first place; and
- opined that this has been a positive thing for the Borough.

Assemblymember Arvin queried if there was a definition for "structure" and if a dog house would qualify.

Mr. Spiropoulos:

- noted that the requirements for waterbody setback has its own definition of structure;
- advised that for purposes of waterbody setback, a structure is defined as a habitable building, dwelling, or garage; and
- noted that means that everything else is not a structure.

Discussion ensued regarding:

- combination land use and flood hazard permits;
- that regardless of the need for a permit that mapping has to occur;
- how to ensure that the legislation can be reasonably interpreted;
- the possibility of reinserting MSB 17.02.020(A)(1);
- how setback requirements impact the permitting process;
- what items permits are required for;
- the possibility of defining structure to apply to more sections of Borough code;
- the desire of the Assembly to ensure that the public has the information they need to make informed decisions;
- concerns with the ability of the Planning Director to grant administrative extensions to permit applications; and
- that typically, administrative extensions are not implemented.

MOTION: Assemblymember Keogh moved a secondary amendment to reinsert MSB 17.02.020(A)(1).

Assemblymember Arvin noted that he objects to the secondary amendment.

Assemblymember Halter queried if the cities of Houston, Palmer, and Wasilla have separate permit processes for residential and commercial.

Mr. Strawn advised that he is not privy to that information.

Assemblymember Halter queried if Anchorage had separate processes.

Mr. Strawn stated that would be like comparing apples and oranges, as Anchorage has zoning clearance rather than building permits.

Discussion ensued regarding:

- that square footage would be a concern if the structure was in a special use district;
- the difference between the definition of “footprint” versus “square footage;” and
- that footprints would apply to set back requirements.

VOTE: The secondary amendment failed with Assemblymember Keogh in support.

Assemblymember Halter:

- stated that the mandatory land use permit was designed to incorporate other code sections; and
- queried if a resident was building a standard home what section of code would apply.

Mr. Spiropoulos stated that it would depend on if the home was built within a special land use district, in which case other restrictions may apply.

Assemblymember Halter stated that a driveway permit would be required and queried what else may apply.

Mr. Strawn noted that multifamily housing development would require a permit.

Discussion ensued regarding:

- that set back requirements are found in different portions of code;
- how land use regulations impact the need for permits; and
- that the legislation does not establish new regulations only the permitting process.

MOTION: Assemblymember Colligan moved a secondary amendment to strike MSB 17.02.020(A)(6) in its entirety.

Mr. Spiropoulos:

- stated that the effect of the proposed amendment would be that one would need a mandatory land use permit for any special development within a special flood hazard area, which is required regardless; and
- advised that should the body decide to leave the section in, he would recommend replacing the word “structure” with the word “building” and perhaps strike the remaining language after the word waterbody.

WITHDRAWAL: Assemblymember Colligan moved to withdraw his secondary amendment.

There was no objection noted.

Assemblymember Woods noted that staff had suggested that it would be appropriate to strike MSB 17.02.020 (A) (5) and (6).

Mr. Strawn stated that all that would change is that there would be no mandatory land use process.

Ms. Probasco:

- noted that former code was voluntary, so it did not really accomplish much; and
- stated that acknowledgment was required for financing purposes only.

MOTION: Assemblymember Keogh moved secondary amendment to MSB 17.02.020 (A) (6), to strike the word “structure” and insert the word “building” in its place and to strike the remaining language after the word “waterbody” to read: “the construction or placement of any building within 75 feet of any watercourse or waterbody.”

Assemblymember Halter queried the effect of the amendment.

Mr. Spiropoulos:

- noted that the definition would change;
- advised that “building means, any structure, including mobile homes, intended for the shelter, housing, or enclosure of any person, animal process, equipment, goods, use, materials, or services of any kind or nature;” and
- noted that there would be things that could be placed within 75 feet of a waterbody.

Assemblymember Arvin stated that he supports the amendment.

VOTE: The secondary amendment passed without objection.

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

VOTE: The motion failed with Assemblymembers Arvin, Salmon, and Colver in support (required five votes).

Assemblymember Woods spoke to concerns that residents may cause themselves problems without access to accurate and easy to understand information.

Ms. Probasco stated that regardless if there is a mandatory land use permit or not, that when residents come in, they are currently provided with a packet of information.

Mayor DeVilbiss queried if that information was available on the Borough website.

Ms. Probasco affirmed the query.

Assemblymember Keogh queried if the setback requirements from property lines on an acre or less are mentioned in other places within code.

Mr. Spiropoulos:

- stated that they are not; and
- spoke to different setback requirements and what would trigger the necessity for a permit.

Discussion ensued regarding:

- how lots are created through the subdivision code;
- that lots can be created at less than one acre;
- concerns with lots being smaller than one acre;
- concerns with ensuring the public is educated on changes to the code;
- that the public utilizes the “My Property” portion of the Borough website quite a bit;
- what could occur if someone builds within the setback; and
- that financial institutions will not finance structures encroaching on setbacks.

MOTION: Assemblymember Keogh moved a secondary amendment to MSB 17.02.020 (A) (1) (a) by reinstating language to read: “Construction or placement of any building, which will be sited on a lot of one acre or less.”

Assemblymember Keogh:

- spoke to concerns with Bestline Subdivision, which has several non-conforming lots; and
- opined that postage stamp size lots are a problem.

Assemblymember Colver stated that his biggest concern is ensuring that lots are surveyed regardless of their size.

Discussion ensued regarding:

- that if there are people out there who are willing to buy a small lot and live on it, that is their right to do so;
- that Government should not be involved in determining the size of a lot someone would like to live on;
- that there are guidelines and protections in place now to prevent subdivisions such as Bestline;

- that most realtors urge buyers to come to the Borough to find out what permits might be required before construction begins;
- that Government should not be attempting to protect citizens from themselves;
- how to ensure that the public is aware that there is a permitting process;
- that a reasonable person would recognize that there may be conditions that need to be adhered to before construction begins;
- that contractors are aware of regulations and are not going to build in violation; and
- the timeline for processing driveway permits.

VOTE: The secondary amendment failed with Assemblymember Keogh in favor.

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

VOTE: The motion failed with Assemblymember Salmon in support (required five votes).

MOTION: Assemblymember Arvin moved a secondary amendment to MSB 17.02.040 (B) by striking the words “to four” after the word “two” to read: “A driveway permit application may be submitted with a land use permit application. The fee payment can be made concurrently with the land use permit fees. Approved driveway permits will be issued from the Department of Public Works by mail within two weeks from the date a complete application is submitted.”

Mr. Strawn:

- related that a lot of improvements have been made to the driveway permit process;
- acknowledged that there are many changes that still need to occur;
- noted that driveway permits are no longer handled by the Public Works Department, but at the Permit Center in Planning;
- advised that at this time, there are currently 4,500 driveway permit applications that are incomplete;
- noted that the problem is that there have been no final inspections after the driveways are complete;
- stated that there are only enough funds to hire one temporary employee that works extremely hard all summer, but is never able to get ahead;
- noted that part of the problem was the former process for driveway permits;
- and
- advised that there is a huge back log of driveways that need to be inspected and approved.

Mayor DeVilbiss inquired if the amendment would cause any problems.

Mr. Strawn advised that staff has not been able to meet the current deadline and will continue to not be able to meet the deadline.

Discussion ensued regarding:

- the huge back log of driveway permits;
- how the back log is prioritized;
- the need for additional staff in order to eliminate the back log;

- the possibility of engaging road service managers to assist with reducing the back log; and
- the possibility of eliminating the need for follow-up.

VOTE: The secondary amendment passed without objection.

VOTE: The primary amendment passed without objection.

VOTE: The main motion passed as amended without objection.

VI. AUDIENCE PARTICIPATION

The following person spoke to concerns that Ordinance Serial Nos. 11-073 and 11-106 were adopted too soon and spoke against the Federal Emergency Management Agency: Ms. Lucille Frey.

VII. MAYOR, ASSEMBLY, AND STAFF COMMENTS

Assemblymember Keogh thanked Ms. Boothby for being in attendance this evening and providing insight.

Mr. Spiropoulos:

- related that the timeframe amended to ensure that driveway permits are issued within two weeks, will also apply to the mandatory land use permit; and
- noted that the Permit Center may be in a bit of a bind with the shortened timeframe.

Ms. McKechnie:

- noted that at the last meeting the Assembly had discussed setting a planning session after the newly elected members were seated;
- spoke to the upcoming holidays;
- related that typically the Assembly meets on a Saturday in January; and
- stated that she would bring forward dates at the November 15, 2011, if that is how the body would like to proceed.

There was no objection noted.

Assemblymember Colligan spoke to items that he would like to address during the budget cycle.

Assemblymember Salmon:

- apologized for not being at the meeting in person;
- stated that he appreciates the hard work Assemblymember Colver put into the legislation this evening; and
- thanked the body for a good meeting.

Assemblymember Arvin:

- thanked Assemblymember Colver for the work he put into the legislation this evening;
- stated that he will be in town December 5 through December 13; and
- queried when the timber harvest legislation would be back before the body.

Ms. McKechnie stated that it is coming back before the body on December 7.

Mayor DeVilbiss queried if December 10 would be a good date for the planning session.

Assemblymember Salmon advised that he will be out of town on that date.

Assemblymember Colver queried if Assemblymember Arvin would be in town on December 15.

Assemblymember Arvin stated that he would not.

Assemblymember Keogh:

- noted that the body has six meetings already scheduled for the month of December; and
- suggested that a date in January would be more appropriate.

There was no objection noted.

Mayor DeVilbiss:

- spoke to attending a meeting regarding the gas and oil industry;
- opined that Alaska is a lot less vulnerable now than it was in 1985; and
- stated that the local job base needs to grow.

VIII. ADJOURNMENT

The meeting adjourned at 9:50 p.m.


LARRY DEVILBISS, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

Minutes approved: 12/06/11