

CODE ORDINANCE

Sponsored by: Borough Manager
Introduced: 02/16/16
Public Hearing: 03/01/16
Adopted: 03/01/16

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 16-018**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING TITLE 43 SUBDIVISIONS, TO ADDRESS INCONSISTENCIES OUTLINED IN THE STAFF MEMORANDUM DATED MARCH 1, 2013.

BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough Code.

Section 2. Amendment of subsection. MSB 43.05.050(B), OWNER AUTHORIZATION, is hereby amended as follows:

(B) A certificate to plat or a preliminary commitment for title insurance prepared by a title company is to be submitted with an application for a vacation, abbreviated plat, preliminary plat, public use easement, waiver, or 40-acre exemption. The title report or preliminary commitment for title insurance must be current within 120 days of submittal of the application.

Section 3. Adoption of subsection. MSB 43.05.050(C), OWNER AUTHORIZATION, is hereby adopted as follows:

(C) The platting action will be unaffected if ownership changes during the platting process;

provided, that an updated certificate to plat, or preliminary commitment for title insurance, is received by the platting division.

Section 4. Amendment of subsection. MSB 43.10.010(A), BOARD ESTABLISHED; DELEGATION, is hereby amended as follows:

(A) There is established a platting board which, pursuant to A.S. 29.40.080, is delegated the platting function of the Borough. The Platting Board shall hear and decide applications for approval of preliminary plats, variances, public use easements, plat note amendments, and vacations of public interest in accordance with this title.

Section 5. Amendment of subsection. MSB 43.10.060(D), PLATTING AUTHORITY PROCEDURE, is hereby amended as follows:

(D) The platting authority may approve an application subject to conditions that it finds necessary to implement the purposes of this title. The conditions shall be set forth in the motion and notice approving the application. [COVENANTS, CONDITIONS, AND RESTRICTIONS MAY BE SUBMITTED WITH THE FINAL PLAT FOR RECORDATION.]

Section 6. Adoption of subsection. MSB 43.10.065(G), NOTICE; PUBLIC HEARING, is hereby amended as follows:

(G) Notice of right-of-way, public use easement,

section line easement or RS-2477 easement vacation requests shall be posted and maintained by the applicant 30 days prior to the public hearing. The notices shall state the date, time, and place of the public hearing and be located in a manner clearly visible to the public. These notices must be posted along the boundary of the property at all common points of access to that portion of the easement or right-of-way that is subject of the application. The notices shall be in the format approved by the platting officer. The applicant shall submit an affidavit verifying that this posting has been made.

Section 7. Amendment of subsection. MSB 43.15.012(D), FORTY-ACRE EXEMPTION, is hereby amended as follows:

(D) The decision of the Platting Officer in this matter is final unless appealed in accordance with MSB 43.35. [TO THE PLATTING BOARD IN WRITING WITHIN TEN DAYS.]

Section 8. Repeal of subsection. MSB 43.15.012(E), FORTY-ACRE EXEMPTION, is hereby repealed in its entirety:

[(E) THE APPLICANT MAY APPEAL THE DECISION OF THE PLATTING BOARD TO THE BOARD OF ADJUSTMENT AND APPEALS IN ACCORDANCE WITH MSB TITLE 15.]

Section 9. Amendment of subsection. MSB 43.15.016(D), PRELIMINARY PLAT SUBMITTAL AND APPROVAL, is hereby amended as follows:

(D) The statutory 60-day period for approval or nonapproval begins on the date the application is accepted for [APPROVAL] **public hearing.**

Section 10. Amendment of subsection. MSB 43.15.021(A), PUBLIC USE EASEMENT ACCEPTANCE PROCEDURE, is hereby amended as follows:

(A) Prior to acceptance by the borough and recordation, the offeror [FOR] **of** a public use easement shall submit a legal description of the proposed easement together with a drawing depicting the location of the proposed easement. If the proposed easement is in the form of a metes and bounds description, the description shall be submitted under the seal of a registered land surveyor. **In lieu of a written legal description, a drawing showing the location and dimensions of the public use easement under the seal of a registered surveyor shall be submitted.**

Section 11. Amendment of subsection. MSB 43.15.021(B), PUBLIC USE EASEMENT ACCEPTANCE PROCEDURE, is hereby amended as follows:

(B) The legal description or drawing shall be reviewed for accuracy and completeness. If discrepancies are found, the offeror shall be notified of the discrepancies and shall resubmit the application for approval.

Section 12. Adoption of subsection. MSB 43.15.021(G), PUBLIC USE EASEMENT ACCEPTANCE PROCEDURE, is hereby adopted as follows:

(G) In acting on applications under this section the platting authority shall use the standards and procedures of MSB 43.10.060. Public noticing shall be in accordance with MSB 43.10.065.

Section 13. Amendment of section. MSB 43.15.022, WAIVERS, is hereby amended as follows:

(A) Those portions of this title specifically addressing the preparation, submission for approval, and recording of a plat shall not apply to waiver subdivisions for which the preparation, submission for approval, and recording of a plat has been waived, upon proof that:

(1) the applicant for approval of the plat waiver proves that the road utilized for access meets the following minimum requirements, unless the state or local government has accepted responsibility for

construction and maintenance:

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

(b) The roadway, including any slopes, cuts, and fills actually used for access, is located entirely within the easement or right-of-way dedicated to the public or over other legal access, as defined [IN THE MATANUSKA-SUSITNA BOROUGH SUBDIVISION CONSTRUCTION MANUAL] in MSB 43.20.120.

(c) If a waiver is proposed along an existing maintained borough road, the petitioner shall not be required to upgrade said road;

(2) each lot or tract created is five acres in size or larger and the waiver of subdivision requirements will create no more than four parcels, an unlimited number of waivers from the original parent parcel are allowed;

(3) no dedication of public right-of-way, easement or other public area is required;

(4) proof has been submitted demonstrating that reasonable utility easements are provided;

(5) prior to recordation, all parcel corners shall be surveyed and monumented. A record of survey

shall be recorded in the State Recording District Office. The survey shall be tied to at least two platted subdivision corners or two aliquot part corners set by the state or federal government, or registered land surveyor, or any combination of the preceding;

(6) each lot or tract shall have legal and physical access to a public highway or street; [AND]

(7) [ALL PARCEL LEGAL DESCRIPTIONS SHALL BE PREPARED AND CERTIFIED BY A REGISTERED LAND SURVEYOR.]

The parcels or tracts created can be described by:

(a) aliquot part; or

(b) a metes and bounds description,

provided the description is under the seal of a land surveyor; and

(8) the applicant for approval of the plat waiver provides supporting written information including all soils and engineering data as required by this title.

(B) All waiver requests shall be made to the Platting Officer and shall be accompanied by:

(1) one completed waiver application form with tax official certification and notarized signature of the owner, and notarized signature of the

mortgagee, if applicable;

(2) a neat, legible drawing on a sheet of 8.5-inch by 11-inch paper, or even increment of paper, showing location of markers, recorded easements, improvements, parent parcel boundaries, severed parcel boundaries, arrow indicating north, section, township and range;

(3) a review and reservation, if applicable, of utility easements;

(4) [PROOF OF OWNERSHIP, WHICH SHALL CONTAIN THE PROPERTY DESCRIPTION, AND PROOF OF RECORDED UTILITY EASEMENTS.] The proof of ownership shall be a certificate to plat or a preliminary commitment for title insurance in accordance with MSB 43.05.050. [AN

AFFIDAVIT IN THE FOLLOWING FORM:

AFFIDAVIT OF OWNERSHIP

STATE OF ALASKA)

)SS.

THIRD JUDICIAL DISTRICT)

_____, BEING DULY SWORN, DEPOSES AND SAYS: _____ (IS, ARE) THE LEGAL OWNER(S), MORTGAGEES OR CONTACT PURCHASER OF THAT REAL PROPERTY DESCRIBED AS FOLLOWS

FURTHER, TO THE BEST OF MY (OUR) KNOWLEDGE, THERE ARE NO RESTRICTIONS, RESERVATIONS OR EASEMENTS UPON THE PROPERTY WHICH WOULD BE INCONSISTENT WITH THE REQUESTING AND GRANTING OF THIS WAIVER, WHICH WE NOW REQUEST.

MORTGAGEE OR CONTRACT SELLER

OWNER OR CONTRACT PURCHASER

MORTGAGEE OR CONTRACT SELLER

OWNER OR CONTRACT PURCHASER]

(5) All waiver subdivision requests shall be submitted to the Platting Officer for approval. Within ten business days of submittal, the application shall be accepted, or rejected for failure to meet the requirements of the afore subsections.

(C) Public notice of waiver subdivisions shall follow the procedures of MSB 43.10.065, 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.

(D) The decision of the platting officer in this matter is final unless appealed in accordance with MSB 43.35.

Section 14. Amendment of subsection. MSB 43.15.025(D), ABBREVIATED PLATS, is hereby amended as follows:

(D) The decision of the platting officer in this matter is final unless appealed in accordance with MSB 43.35. [APPEALS FROM DECISIONS MADE PURSUANT TO THIS SECTION SHALL BE MADE TO THE PLATTING BOARD.]

Section 15. Amendment of section. MSB 43.15.032, ELIMINATION OR MODIFICATION OF UTILITY, DRAINAGE, SANITATION, AND SCREENING EASEMENTS, is hereby amended as follows:

43.15.032 ELIMINATION OR MODIFICATION OF UTILITY, DRAINAGE, SANITATION, **SLOPE, SNOW STORAGE, BUFFER,** AND SCREENING EASEMENTS.

A) The Platting Officer shall review and act upon all [APPLICATIONS] **petitions** requesting elimination or modification of platted utility, drainage, sanitation, **slope, snow storage, buffer,** and screening easements; provided, that;

(1) the authority having jurisdiction over the easement consents;

(a) however, if the beneficiary of an

easement refuses to authorize a vacation, the platting officer may approve the vacation if the following conditions are met:

(i) there are currently no existing improvements within the subject easement of the easement beneficiary or a portion of the easement will remain which includes the improvements;

(ii) if necessary a substitute easement is provided by document on the plat; and

(iii) findings of facts support granting the vacation;

(2) if the elimination or modification of easement is due to an encroachment, an as-built survey must be submitted with the original [APPLICATION] petition; and

(3) a vacation resolution is recorded along with a graphic representation showing the specific area eliminated and any alternate easements proposed.

(B) In acting on applications under this section the Platting Officer shall use the standards and the procedures used by the platting board in acting on applications under MSB 43.10.060. The Platting Officer shall [APPROVE OR DISAPPROVE] act upon the application within 30 [CALENDAR] days of the acceptance [OF THE

APPLICATION] for public hearing.

(C) [PROPOSED VACATION WILL BE PRESENTED TO THE BOROUGH ASSEMBLY WITHIN 30 DAYS OF THE DATE OF THE WRITTEN DECISION BY THE PLATTING OFFICER.] Public noticing shall be in conformance with MSB 43.10.065. Notice of platting authority approval shall be sent to the public body having jurisdiction in accordance with MSB 43.10.065.

Section 16. Adoption of subsection. MSB 43.15.035(E), VACATIONS, is hereby adopted as follows:

(E) Public noticing shall be in conformance with MSB 43.10.065. Notice of platting authority approval shall be sent to the public body having jurisdiction in accordance with MSB 43.10.065.

Section 17. Repeal of paragraph. MSB 43.15.040(B)(7), SECTION LINE AND STATE RECOGNIZED RS-2477 EASEMENT VACATIONS, is hereby repealed:

[(7) THE APPLICANT FOR A SECTION LINE EASEMENT OR RS-2477 EASEMENT VACATION MUST PLACE A SIGN, NOTIFYING THE PUBLIC OF THE DATE, TIME, AND PLACE OF THE PUBLIC HEARING, AT THE EASEMENT WHERE THE PROPOSED VACATED AREA LIES BETWEEN, 30 DAYS PRIOR TO PUBLIC HEARING. THE SIGN SHALL BE DESIGNATED BASED ON STANDARDS SET BY THE PLATTING DIVISION AND LOCATED IN

A MANNER CLEARLY VISIBLE TO THE PUBLIC. THE APPLICANT SHALL SUBMIT AN AFFIDAVIT VERIFYING THAT THIS POSTING HAS BEEN MADE. LOCATION AND FORMAT OF SIGNS SHALL BE DETERMINED BY PLATTING STAFF;]

Section 18. Adoption of subsection. MSB 43.15.040(C), SECTION LINE AND STATE RECOGNIZED RS-2477 EASEMENT VACATIONS, is hereby amended as follows:

(C) Public notice of the vacation shall follow the procedures of MSB 43.10.065. Notice of platting authority approval shall be sent to the public body having jurisdiction in accordance with MSB 43.10.065.

Section 19. Amendment of subsection. MSB 43.15.052(E), FINAL PLAT; PLAT NOTE, is hereby amended as follows:

(E) Restrictive covenants. Covenants, conditions, and restrictions may be submitted with the final plat for recordation. All reservations or restrictive covenants shall be referenced by the book, page, or serial number and recording district on the plat in the following form:

Restrictive covenants were recorded in the _____ recording district on ____, 20__, in book ____, page ____ (or serial number) _____.

Section 20. Amendment of subsection. MSB 43.15.053(E), FINAL PLAT; CERTIFICATES, is hereby amended as follows:

(E) Certificate to plat. Every final plat of a subdivision submitted for recording shall be accompanied by a certificate to plat or a preliminary commitment for title insurance, executed no more than 90 days prior to recording, by a title insurance company, confirming that the title of the land described and shown on the plat is in the name of the person signing the certificate of ownership as it is shown on the plat, or in the name of the corporation as shown in the certificate of ownership.

Section 21. Amendment of subsection. MSB 43.15.053(F), FINAL PLAT; CERTIFICATES, is hereby amended as follows:

(F) Every final plat of a subdivision submitted for recording shall be accompanied by a certificate from the tax collecting official or city treasurer stating that all special assessments and Borough real property taxes levied against the property are current [PAID IN FULL. IN THE CASE OF REAL PROPERTY TAXES, IF THE TAXES ARE NOT DELINQUENT, TAXES ARE DEEMED PAID IN FULL WITH RESPECT TO THIS SECTION]. The certificate shall be as follows:

CERTIFICATION OF PAYMENT OF TAXES

I hereby certify that all current taxes and special assessments, through _____, 20____, against the property, included in the subdivision or resubdivision, hereon have been paid.

_____, 20____

Tax Collection Official (Borough)

I hereby certify that all current taxes and special assessments through _____, 20____, against the property, included in the subdivision or resubdivision, hereon have been paid.

Tax Collection Official (City)

Section 22. Amendment of paragraph. MSB 43.15.070(D)(6),
RIGHT-OF-WAY ACQUISITION PLATS, is hereby amended as follows:

(6) [ALL] The decision[S] of the platting officer in this matter [UNDER THIS SECTION ARE] is final unless appealed [TO THE PLATTING BOARD WITHIN TEN DAYS] in accordance with MSB 43.35. An appeal under this subsection is treated as an original subdivision application.

Section 23. Amendment of subsection. MSB 43.20.055(B),
RURAL AND REMOTE ACCESS, is hereby amended as follows:

(B) Remote subdivision access for parcels outside of a road service area. 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, and terrain, and it is not the desire of the subdivider to have road access, and proposed access is via trails, creeks, rivers, or lakes by snowmobile, on foot, skis, dog team, off-road vehicle, boat, railroad, 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] rights-of-way 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 ten lots or less may be 50 feet wide:

(a) a navigable waterway;

(b) a float plane accessible lake; [OR]

(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[.]; or

(d) railroad.

(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 ten 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, given 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;

(vii) 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.

Section 24. Amendment of subsection. MSB 43.20.060(C),

Dedication to public, is hereby amended as follows:

(C) Roads shall be dedicated for access to all

lots within the subdivision and parcels of land adjacent to the subdivision except that access to adjoining lands does not have to be provided where legal and constructible alternative access is available. Dedications shall be a minimum of 60-foot wide and sufficient to carry all traffic generated by the subdivision and to provide residential rights-of-way for projected traffic through the subdivision. 60-foot radius rights-of-way shall be dedicated at temporary and permanent cul-de-sacs.

Section 25. Repeal of paragraph. MSB 43.20.100(D)(2), ACCESS REQUIRED, is hereby repealed:

[(2) ACCESS TO ADJOINING LANDS DOES NOT HAVE TO BE PROVIDED WHERE LEGAL AND CONSTRUCTIBLE ALTERNATIVE ACCESS IS AVAILABLE.]

Section 26. Amendment of subparagraph. MSB 43.20.281(A) (1)(h), AREA, is hereby amended as follows:

(h) Where lots, tracts, or parcels exceed five acres in size, the platting authority may accept [A REDUCED NUMBER OF TEST HOLES OR] other supporting information, accomplished under the direct supervision of a state of Alaska registered engineer.

Section 27. Amendment of subparagraph. MSB 43.20.281(E) (1)(a), AREA, is hereby amended as follows:

(a) Each non-open space lot, in which the lot area was reduced, has 10,000 square feet of contiguous usable septic area delineated on the plat, unless served by a municipal or community wastewater system;

Section 28. Amendment of section. MSB 43.20.300, LOT AND BLOCK DESIGN, is hereby amended as follows:

(A) For rural districts, the length of a block shall be not less than 400 feet, no more than 3,000 feet, or less than 800 feet along collector or arterial roads.

(B) No lot under two acres in size shall have an average depth of more than three times the average width, except:

(1) Lots of 40,000 square feet minimum shall have an average width of at least 125 feet when they exceed the three-to-one ratio due to unusable area or natural ground slope exceeding 25 percent;

(2) Lots of 20,000 square feet minimum shall have an average width at least 85 feet when they exceed the three-to-one ratio due to unusable area or natural ground slope exceeding 25 percent grade.

(C) Lots two acres to ten acres may have an average depth of no more than four times its average

width.

(1) Lots two to ten acres shall have an average width of at least 125 feet when they exceed the four-to-one ratio due to unusable area or natural ground slope exceeding 25 percent.

(D) Flag lots.

(1) Flag lots are allowed with a maximum pole length of 2,640 feet [AND THE FLAG POLE PORTION SHALL NOT COUNT IN THE WIDTH-TO-LENGTH RATIO].

(a) For poles up to 1,320 feet or upon survey where a one-quarter section aliquot part dimension exceeds 1,320 feet, the width of the pole portion must be a minimum of 30 feet wide and 60-foot road frontage requirement does not apply;

(b) For a pole length greater than 1,320 feet and not exceeding 2,640 feet, the pole width must be a minimum of 60 feet wide.

(c) The flag pole portion shall not count in the average width or the average depth calculations.

Section 29. Amendment of subsection. MSB 43.35.003(A), APPEALS OF PLATTING OFFICER DECISION, is hereby amended as follows:

(A) Appeals to the platting board shall be filed

within ten [CALENDAR] days of the Platting Officer's written decision on abbreviated plats, 40-acre exemptions, waivers, right-of-way acquisition plats, and airport acquisition plats[, AND ELIMINATION OR MODIFICATION OF UTILITY, DRAINAGE, SANITATION, AND SCREENING EASEMENTS].

Section 30. Amendment of subsection. MSB 43.35.005(E), RECONSIDERATION BY PLATTING BOARD, is hereby amended as follows:

(E) If the petition for reconsideration is granted, the Platting Board shall set the matter on its agenda for rehearing only after notifying all people giving testimony and all people required to receive notice of the original petition under [MSB 43.05] MSB 43.10.065. Parties shall have ten days from the date of notice that a reconsideration hearing has been granted to file written comments and inform the platting division of their intent to participate in the hearing.

Section 31. Effective date. This ordinance shall become effective upon adoption.

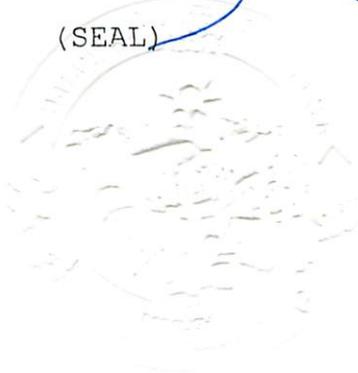
ADOPTED by the Matanuska-Susitna Borough Assembly this
1 day of March, 2016.


VERN HALTER, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)



PASSED UNANIMOUSLY: Sykes, Beck, McKee, Colligan, Mayfield,
Doty, and Kowalke.