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TO: Planning Commission

FROM: Tim Maguire, Planner
Community Development Department

FILE NO.: TXT2007-00004

PROPOSAL: A draft ordinance amending Title 49 Land Use Code, Chapter 35-Public Improvements, which deals with the construction requirements for new subdivisions. (Ordinance Serial No. 2009-XX)

Attached is a copy of Draft Ordinance 2009-XX, which proposes revisions to Title 49, specifically Chapter 35, Public Improvements. This proposal is a continuation of the update of Title 49, the CBJ Land Use Code. The focus of this update, as with the previously revised sections of code, is to clear up inconsistencies, clarify requirements, and to streamline the process where possible, as opposed to making major revisions to the improvement standards themselves. However, because certain sections of the code are so out of date, or are considered in error, we have proposed some revisions to the standards as well.

This rewrite also moves other public improvements standards located in other parts of the Title 49 and consolidates them in this chapter. Likewise, there are a number of sections in Chapter 35 that are permits or subdivision design standards that will be moved to their appropriate code sections.

BACKGROUND

This particular section of Title 49, Chapter 35, Public improvements has gone through many reviews prior to reaching the full Commission, including:

- Staff consultation with Brenner Engineering, LCC, who previously worked in the CBJ Engineering Department as chief surveyor and has direct oversight of subdivision development with the CBJ and in the private sector.

- The CBJ Fire, Engineering, Community Development, and Public Works Departments reviewed proposed code revisions throughout the process.

- The Title 49 Committee met numerous times to consider this proposal. Most recently, the Committee met to discuss some unresolved issues regarding CBJ oversight of individual on-site wastewater systems.
All Committees’ recommendation were incorporated into the draft and then submitted to the Law Department to produce this draft ordinance.

Also included in the packet is a copy of the existing code language for Chapter 35 that indicates all proposed deletions, revisions, and additions. In addition, comments can be found in the margins of this document that explain the reasoning behind many of the proposed amendments.

As seen in this marked up copy, there is very little of the existing code that is being retained. Because this is the case, Chapter 35 will be repealed and re-enacted as new code.

ADOPTION PROCESS

After a public hearing on the draft, the Planning Commission will make a recommendation to the Assembly with any proposed amendments. The amendments will be incorporated into the draft by the Law Department. The draft, however, will not be brought to the Assembly for adoption at this time. Many of the changes proposed in the rewrite of Chapter 35 are directly linked to revisions that will have to take place with the rewrite of Chapter 15 Article IV, Major and Minor Subdivisions, which is currently being reviewed by the Title 49 Committee.

MAJOR REVISIONS

The following is a brief summary of the major revisions being proposed to Chapter 35 and a brief discussion of the issues with the existing code language and proposed solutions:

1. Driveways in the Rights Of Way. This code section deals with the process to allow a driveway to be built in an existing public right of way at less than full public construction standards for the purpose of providing access to existing lots. Currently, the process is cumbersome. An Allowable Use permit is required to approve a driveway that would serve 4 or fewer lots, and a Conditional Use permit is required for a driveway that would serve 5 or more lots.

These permit processes and their standards for approval are not good fits for the proposals being considered. Driveway permits are largely dependent on the recommendations from Engineering Department as to how the driveway should be constructed. In most all cases, the question of whether to allow a driveway instead of a full public street is not the issue. Property owners need to get access to their lot, and to require full construction of a public roadway would be cost prohibitive.

The Title 49 Committee is recommending that the code be revised so that requests involving 5 or fewer lots will be handled with an in-house permit and that requests involving 6 or more lots will continue to be reviewed by the Planning Commission. The Commission will retain the option to require construction of a full public roadway if deemed necessary. In both cases, the criteria for permit approval will be tailored to fit the proposal.
In addition, this code section will be moved from Chapter 35, Public Improvements to Chapter 15, Permits and be a stand alone permit. This code section lays out the process for approving driveways in existing public rights of way and is not an improvement standard for constructing a new subdivision.

Ordinance PAGE 2 LINE 7 Existing Code with Markup PAGES 2 & 22-LINES 8 & 990

2. Waiver of Public Improvements Currently, there are numerous waivers for improvement standards in Chapter 35. The number of waivers in the code has grown over the years. The problem is that in trying to address many special situations it becomes confusing as to what standards apply. In many cases, these code sections are used only one time.

In general, the direction of the Title 49 Committee is to delete the waivers that are not useful and retain those that are considered to still have value. The Committee also stated that removal of these waivers does not prevent adding new ones in the future.

In particular, there are three waivers situations for construction of curb and gutter. The recommendation is to remove these for the following reasons:

- The code has more recently been updated to allow subdivisions in the Urban Service Area to build without curb and gutter. This optional road standard is allowed for subdivisions within lower density zoning districts (D-3, D-1 and RR) under certain conditions. There is no need to request a waiver if the conditions are met.

- Our engineering consultant says that in almost all cases, if a property can be drained, then curb and gutter/storm drainage is feasible and therefore waivers are not necessary.

- In most cases, streets in the Urban Service Area now require sidewalks adjacent to the travelled way. Sidewalks are more workable, and safe, if accompanied by curb and gutter.

Ordinance PAGE 8 - LINE 8 Existing Code with Markup PAGE 22 - LINE 840

3. Temporary Cul-de-sacs. Currently the code does not address the use of temporary cul-de-sacs. Temporary cul-de-sacs have been used in subdivisions in the past with varying success. The concept is to allow the temporary use of land for the turnaround portion of the cul-de-sac street until such a time that the roadway is extended. At that time, the restrictions on the use for turnaround area can be lifted, and the property reverts back to the adjoining property owners. (See Attachment 1).

Issues with this concept include the following:

- What is the process for reversion of the turnaround area back to fee simple ownership?
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- How does the temporary turnaround and associated utilities get reconstructed and the extension made to the adjacent property?
- Who pays for the reconstruction of the turnarounds and the extension?
- What are the building setbacks from the temporary turnaround?

The Title 49 Committee recommends the following changes to address these issues:

- A new code section to spell out how a temporary cu-de-sac will be shown on the plat, and the process for how and when the temporary use of land goes away.

- A requirement be added for a bond to be posted for reconstruction of the turnaround and utilities when the roadway is extended. This revision is also an attempt to deal the cost of reconstruction more equitably i.e. so that not all the costs defer to the developer of the adjoining land.

Ordinance PAGE 18 - LINE 4 Existing Code with Markup PAGE 15 - LINE 645

4. Water Systems. The section of code deals with the requirements for providing water systems for daily use and fire protection in new subdivisions. The following are issues with the existing code:

- The code is not clear on quantity and pressure standards for daily water use in new subdivisions.

- What are the requirements for fire flows in new subdivisions not served by the public water system but located in the Fire Service (Service Area 10) area?

- How do the CBJ water system improvement requirements relate to the State requirements for water appropriation?

- Do commercial and industrial subdivisions require different standards for water system improvements?

The Title 49 Committee recommends the following revisions to clarify what will be required for daily water service and fire protection:

- That language be added to clarify the standards for water daily in new subdivisions, and require separate standards of review for non-residential water systems.

- Subdivision that are not connected to the public water system, but located in Service Area 10, will require some system of fire protection that meets the fire code.

- Code language be added to require coordination with the State of Alaska requirements for the appropriation of water and securing water rights.
5. Sanitary Systems. The State of Alaska Department of Environmental Conservation (ADEC) is no longer responsible for reviewing subdivisions for suitability of proposed waste treatment systems. These responsibilities are now the CBJ’s. In addition, the CBJ recently adopted new code language and regulations that require construction permitting and maintenance oversight for individual wastewater treatment systems in new subdivisions outside the Urban Service Area. These changes have lead to some issues with the current code with regard to wastewater systems including the following:

- The code language in Title 49 is not consistent with the regulations adopted regarding permitting and maintenance oversight. The code language is general and makes no distinction between the type (residential or commercial), the size (major or minor subdivisions) and all types of private treatment systems (individual or community systems) that are under CBJ construction permitting and maintenance oversight.

- The adopted regulation states that CBJ construction permitting and maintenance oversight is only required for major residential subdivisions.

- Use in the code of the wording “enter into a contract with the CBJ Public Works Department or its designee for operation, monitoring, or maintenance of the private sewerage facility” has already led to problems with expectation of property owners that the CBJ is responsible for maintenance of their systems rather than overseeing property owner maintenance.

- The existing code does not speak to the various types of wastewater treatment systems that can be considered in subdivision development.

The Title 49 Committee recently met with representatives from the Engineering and the Public Works Departments to discuss these issues. The Public Works Department stated they did not have the resources or expertise to increase their oversight of individual on-site wastewater and disposal systems above that for major, residential subdivisions.

The Engineering Department agreed that expansion of their permitting and construction oversight responsibilities could be expanded to include both minor and major residential subdivisions.

The Title 49 Committee recommends the following code revisions:

- That difference between the code language and the regulation be reconciled and reflect the proposals as laid out by the Public Works and Engineering Departments above.

- That code language be added to address the various types of wastewater systems that can be considered for subdivision development, and possible differences in review requirements.

- That the wording regarding maintenance of individual wastewater systems be revised to reflect the responsibility of the Public Works Department to ensure property owner maintenance.
6. Oversizing Lines. The code sections for water and sewer utilities both have lengthy code sections that deal with the requirement to oversize utilities in subdivision to serve the future development of adjacent lands. As indicated by the comments from Joe Buck, the Public Works Director, these sections of code are overly complicated, and in most cases incomprehensible. Our engineering consultant indicated that oversizing is rarely an issue and the cost is not significant. The bulk of the cost is the installation of the utilities, not the difference in line size.

For these reasons, the Title 49 Committee recommended that most of this code language concerning oversizing be eliminated and simply state that oversizing will be required if the Engineering Director determines it necessary. Any cost difference that may occur can be dealt with at the time of construction plan approval.

7. Walkways. The existing code dealing with walkways has a number of issues including:

- The joint use of walkways for both pedestrian and bicycle use is not addressed.
- It is not clearly stated that walkways are needed for connections of one subdivision to another.
- The existing minimum width of 5 feet shown for a walkway does not comply with the current AASHTO standards (Bike Guide: The American Association of State Highway and Transportation Officials 1999 Guide for the Development of Bicycle Facilities). The minimum for a two-way pathway is 8 feet. The AASHTO standards have been adopted by ADOT&PF for shared use pathways.
- There is no requirement for a right of way to be provided and therefore no minimum right of way width.

The Title 49 Committee has recommended proposed revisions to this code section including changing “walkways” to “shared-use pathways” and to include the following:

- That the minimum width of a shared-use pathway be increased from 5 feet to 8 feet based on the AASHTO standards.
- That rights-of-way be required at a minimum width of 10 feet.
- That clarification be made that pathways may be required to provide connections between residential areas.
- Finally, that the timing of construction of these pathway be addressed to try and prevent past difficulties with putting in pathways after houses have been built on adjacent lots.
8. Sidewalks. Title 49 was amended a number of years ago to require sidewalks for all new subdivisions in the Urban Service Area. Sidewalks are required on both sides of the street, except in the case of local streets in the RR, D1, and D3 zoning districts, where only one sidewalk (pathway), separated from the roadway is required. Some issues remain with the existing code language including the following:

- Currently, there are two situations where the Planning Commission can waive sidewalk construction. The first is limited to very specific circumstances, and the second only deals with alternative improvements outside the existing right of way.

- The minimum width for sidewalks is not stated, except for local access streets in the D-1, D-3, and RR districts.

- The code states that two sidewalks are required in residential and commercial subdivisions in the Urban Service Area. This requirement has always been a point of confusion. Is a commercial subdivision one that is commercially zoned or one that allows commercial uses? The interpretation, lately, is the latter.

The Title 49 Committee has recommended revisions to this code section including the following:

- Make the code clear that two sidewalks are required in all subdivisions in the Urban Service area, except for local access streets in the D-1, D-3, and RR zoning districts; our land use code permits commercial uses in the industrial zoning district.

- Combine the two existing waiver provisions into one waiver that allows the Planning Commission more flexibility in the type of options for construction that can be considered for sidewalks, if certain criteria are met.

- That the minimum sidewalk width is five feet.

9. Code Organization. The following are some issues with the existing code arrangement:

- The Public Improvement section (Chapter 35) was separated from the Subdivision code section when Title 49 was revised in 1987. This revision, in retrospect, has caused more confusion than it has helped.

- This and other subdivision requirements are scattered throughout the code.

The Title 49 Committee has recommended revisions to this code section including the following:

- All section of code regarding subdivision requirements will be put into a new chapter: Chapter 17, Subdivision Permitting.

- Make Chapter 35 a subsection under Chapter 17, Subdivision Permitting.