CITY OF BETHEL

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Introduced by: City Manager Hunter
Date: March 14, 1995
Public Hearing Date: March 28, 1995
Action: Passed
Vote: 4-Yes, 1-No (Miller)

ORDINANCE #95-07

AN ORDINANCE OF THE CITY COUNCIL OF BETHEL, ALASKA AMENDING TITLE 17 OF THE BETHEL MUNICIPAL CODE, ENTITLED SUBDIVISIONS, SECTION 17.24.200, ENTITLED RECREATIONAL DEDICATION

NOW, THEREFORE, BE IT ENACTED by the City Council of Bethel, Alaska, as follows:

Section 1: Title 17 of the Bethel Municipal Code is hereby amended by amending Section 17.24.200 Entitled Recreational Dedication.

Section 2: If any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 1: Section 17.24.200 of the Bethel Municipal Code is hereby adopted as follows:

17.24.200 Recreational Dedication. In cases where the amount of land to be subdivided is two acres or greater and where the subdivision of land will create six or more lots, the following shall apply:

A. Open Space Requirement.

1. Amount of open space required. A minimum of ten percent (10%) of the tract proposed for development shall be set aside for developed and undeveloped open space, adjusted upward or downward, as appropriate, for conditions such as population density, existing municipal facilities, topography, socioeconomic characteristics of the prospective population, and other appropriate site- and development-specific factors.

2. Size of open space parcels. The area of each parcel of open space designed for developed open space shall be of such minimum dimensions as to be functionally usable.

3. Location of open space parcels. Open space parcels shall be convenient to the dwelling units they are intended to serve and shall be sited with sensitivity to noise generation and surrounding development. The open space shall include areas

which are suitable for recreation and not entirely undevelopable land.

B. Improvement of Open Space Parcels.

1. Developed open space. The planning commission or other approving authority may require the installation of recreational facilities, taking into consideration:

a. The character of the open space land;

b. The estimated age and the recreational needs of persons likely to reside in the development;

c. Proximity, nature and excess capacity of existing municipal recreation facilities; and

d. The cost of the recreational facilities.

2. Undeveloped open space. As a general principle, undeveloped open space should be left in its natural state.

C. Deed Restrictions. Any lands dedicated for open space purposes shall contain covenants and deed restrictions approved by the municipal attorney ensuring that:

1. The open space area will not be further subdivided in the future;

2. The use of the open space will continue in perpetuity for the purpose specified; and

3. Common undeveloped open space shall not be turned into a commercial enterprise admitting the general public at a fee.

D. Open Space Ownership. The type of ownership of land dedicated for open space purposes shall be selected by the owner, developer or subdivider, subject to the approval of the planning board. Type of ownership may include, but is not limited to, the following:

1. The municipality, subject to acceptance by the governing body of the municipality;

2. Other public jurisdictions or agencies, subject to their acceptance;

3. Quasi-public organizations, subject to their acceptance;

4. Homeowner, condominium, or cooperative associations or organizations; or

5. Shared, undivided interest by all property owners in the subdivision.

E. Homeowners Association. If the open space is owned and maintained by a homeowner or condominium association, the developer shall file a declaration of covenants and restrictions that will govern the association, to be submitted with the application for the preliminary approval. The provisions shall include, but are not necessarily limited to, the following:

1. The homeowners association must be established before the homes are sold;

2. Membership must be mandatory for each homebuyer and any successive buyer;

3. The open space restrictions must be permanent, not just for a period of years;

4. The association must be responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities;

5. Homeowners must pay their pro rata share of the cost, and the assessment levied by the association can become a lien on the property if allowed in the master deed establishing the homeowners association; and

6. The association must be able to adjust the assessment to meet changed needs.

F. Maintenance of Open Space Areas. The person or entity identified in subsection D as having the right of ownership or control over the open space shall be responsible for its continuing upkeep and proper maintenance.

Section 4: This ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing laws or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, by lawful action of the City except as shall be expressly provided for in this title.

Section 5. This ordinance shall take effect upon passage.

PASSED AND APPROVED THIS 28TH DAY OF MARCH, 1995

Allan Wintersteen, Mayor

ATTEST:

Connie Tucker, City Clerk