



# **KENAI PENINSULA BOROUGH**

## **PLANNING DEPARTMENT**

144 North Binkley Street • Soldotna, Alaska 99669-7520

**PHONE:** (907) 714-2200 • **FAX:** (907) 714-2378

*Toll-free within the Borough: 1-800-478-4441, Ext. 2200*

[www.kpb.us](http://www.kpb.us)

**MIKE NAVARRE**  
**BOROUGH MAYOR**

## **MEMORANDUM**

**TO:** Blaine Gilman, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** Mike Navarre, Borough Mayor *MN*

**FROM:** Max Best, Planning Director *MB*

**DATE:** July 7, 2016

**SUBJECT:** Ordinance 2016-~~30~~<sup>30</sup>, An Ordinance Approving Bing's Landing Single-Family Residential (R-1) Local Option Zoning District and Amending KPB 21.46.040 (Mayor)

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled June 27, 2016 meeting.

A motion passed by unanimous consent to recommend approval of Ordinance 2016-\_\_\_; Ordinance approving Bing's Landing Single-Family Residential (R-1) Local Option Zoning District in the Sterling area.

An amendment motion passed by unanimous consent to remove Lots 2, 3, 4, 5, 6, 7, 8, 9 & 10, Bing's Landing Archer's Addition, according to Plat 2002-95, Kenai Recording District, from the Bing's Landing Single-Family Residential (R-1) Local Option zoning District in the Sterling area as presented by staff.

In the Ordinance, please make the following amendments to the WHEREAS statements:

WHEREAS, the mean size of the parcels within the proposed local option zoning district is ~~4.17~~ **1.25** acres; and

WHEREAS, ~~58~~ **39** of the ~~64~~ **42** parcels within the proposed district are within 50 percent of the mathematical mean of all lots within the proposed local option zoning district; and

WHEREAS, the Kenai Peninsula Borough Planning Commission held a public hearing on June 27, 2016, and recommended approval by unanimous consent of the Local Option Zone with the removal of Lots 2, 3, 4, 5, 6, 7, 8, 9 & 10 of the Bing's Landing Archer's Addition.

Also in the Ordinance, please make the following changes to the description of Bing's Landing

10. Bing's Landing, described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, Block 4; and Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, and 29, Block 5, Bing's Landing Subdivision Part One, according to 84-199, Kenai Recording District; and

Lot 26A, Bing's Landing Subdivision Part Two, according to 95-8, Kenai Recording District; and

Lots 2, 3, 4, 5, 6, 7, 8, 9, and 10, Bing's Landing Archer's Addition, according to Plat 2002-95, Kenai Recording District.

Attached are the unapproved minutes of the subject portion of the meeting.

## AGENDA ITEM F. PUBLIC HEARINGS

5. Ordinance 2016-\_\_\_; Public notice is hereby given that property in the Sterling area is being considered for the formation of a Single-Family Residential (R-1) local option zoning district (LOZD). **Legal Description:** The property included in the LOZ under consideration is described as follows: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, Block 4; and Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, and 29, Block 5, Bing's Landing Subdivision Part One, according to 84-199, Kenai Recording District; and Lot 26A, Bing's Landing Subdivision Part Two, according to 95-8, Kenai Recording District; and Lots 2, 3, 4, 5, 6, 7, 8, 9, and 10, Bing's Landing Archer's Addition, according to Plat 2002-95, Kenai Recording District. **Location:** Lots along Bings Landing Road, Samsel Road, Lynx Court, West Hills Court, Steelhead Circle, and Rapids Avenue, excluding those parcels that border Sterling Highway.

Memorandum & Staff Report given by Bruce Wall

PC MEETING 6/27/16

This ordinance would approve the formation of a Single-Family Residential (R-1) Local Option Zoning District (LOZ).

A petition has been submitted by property owners of 46 parcels for the formation of an R-1, Single-Family Residential local option zoning district (LOZD), which is three-fourths of the 61 parcels within the proposed district. All of those lots gain access either directly or indirectly to the Sterling Hwy via Bings Landing. There are some adjacent parcels which have frontage directly to the Sterling Hwy but were not included in the Local Option Zone because it was felt that they may have some commercial uses.

The petition organizer began collecting signatures two months prior to the enactment of Ordinance 2016-03(Substitute). The organizer had 60 days to obtain 75% of the property owners' signatures which was returned three days after the ordinance was adopted. Rather than change the rules on the petition organizer midway through the process, it was determined that he should be allowed to continue the process under the code in effect when the borough provided him with the petition forms. All other provisions of Ordinance 2016-03(Substitute) will apply. The proposed LOZD is consistent with Goal 6.5 of the 2005 KPB Comprehensive Plan which is to maintain the freedom of property owners in rural areas of the borough to make decisions and control use of their private land.

The LOZ petition form that was submitted by the residents was included in the Planning Commission packet. Also included were maps showing the boundaries of the proposed district, the lots sizes within the proposed district, parcels whose owners have signed the petition, the current land use, and the land ownership.

KPB 21.44.060 states, "The assembly shall approve, disapprove, or modify the proposed LOZD. The assembly, in its legislative capacity, may disapprove an LOZD notwithstanding the district's meeting the criteria of this chapter."

On June 27, 2016, the KPB Planning Commission will hold a public hearing and make a recommendation regarding the formation of the R-1 district. Consideration of this ordinance was appreciated..

### END OF MEMORANDUM & STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Mark Everson, 9320 Aphrodite Dr, Anchorage  
Mr. Everson owns Lots 1-6, Archers Addition and was at the meeting to stand with Patsy Archer who owns Lots 9 and 10, Archer Addition which gives them 8 out of 10 lots in their subdivision. They respectfully request that Bing's Landing Subdivision Archer Addition be removed from this R-1 zoning since they are not part of the Bing's Landing Subdivision. Bing's Landing Subdivision Archer Addition has covenants. He requested that his five signatures be withdrawn from the petition since confirmation has been made since signing that they are not part of Bing's Landing Subdivision. The

existing Archer Addition covenants already reflect much of what the petitioners of Bing's Landing are trying to accomplish.

Chairman Martin asked if there were questions for Mr. Everson.

Commissioner Foster asked if he was aware that the covenants are not enforced by the Borough and would be a civil issue if covenants are broken. If someone breaks a covenant then they would have to take them to court whereas the Borough would enforce if it was part of a local option zone. Mr. Everson understood that.

Commissioner Ruffner asked if there was a concern that prompted the proposed creation of this local option zone. Mr. Everson replied that he was misled into believing that Bing's Landing was part of his subdivision and was hasty in signing the petition. The lot sizes of 40,000 square feet just came to light. Much of those lots are less than that but was told by Mr. Wall that those lots would be grandfathered in. He felt it started to get complicated and expressed concern with getting involved with 50 other homes when there are only 10 lots in his subdivision. Commissioner Ruffner asked if there was a particular issue that started the prompting of creating this local option zone. Mr. Everson thought not and stated he was slow in confirming what he already knew and would not have signed this as he did. He didn't think anyone did anything intentionally wrong but thought the petitioners slightly misled him. Commissioner Ruffner stated that there will be more involvement from the staff from this point forward which will make it clearer.

Commissioner Ecklund asked if the nine lots he requested to be removed from this LOZ were on the east side of Bing's Landing Rd. Mr. Everson replied that was correct and requested that all nine lots be removed from the proposed LOZ.

There being no further comments or questions, the public hearing continued.

2. Niki Pereira, 37195 Steelhead Cir

Ms. Pereira felt terrible that Mr. Everson felt misled. They literally took the Bing's Landing Subdivision, which has three or four parts to it. She stated she was always under the belief that it was always part of the Bing's Landing Subdivision.

Ms. Pereira stated that they have felt caught between a couple of the LOZ's that are offered to protect their neighborhood from becoming business ventures. She stated they are actually a waterfront neighborhood being right on or near the river. They are a pretty close and cohesive community but they fall a lot more under the RW zone in terms of the activities a lot of their people would like to be involved in.

There are people there that want to build a small cottage for their relatives to use when they come to go fishing. Ms. Pereira stated they cannot do that under the R1 zone because the lot size for the RW was so huge and restrictive even the biggest lots couldn't fall under that. The only thing they had to fall back on if they were going to create a single family community was the R1 zone but as Mr. Everson stated, it was just too restrictive in a lot of cases for their lots. She would like to see this go through but wanted the commission to know that they have these concerns because some of their neighbors will not be able to do some of the activities they wanted to do. They would like to allow them to do what they want and to see it happen but they can't do it because the R1 zone was too restrictive for their waterfront community.

Chairman Martin asked if there were questions for Ms. Pereira.

Commissioner Foster asked if they spoke with staff about having an RW local option zone. Ms. Pereira replied that the RW zone was under the old code. She asked if that zone had changed with the new code and if the lot size has dropped. Mr. Wall replied that the minimum lot sizes are the same in the RW zone as in the R1 zone. He stated the RW zone would work if it was just the lot sizes but the ordinance requires that 30% of the lots need to front on the water. They did not have the 30% of the lots and only had 11 of the 61 lots that were along the river. Ms. Pereira understood that the lot size for the RW zone was 100,000 square feet in the old ordinance. Mr. Wall replied that the minimum lot size did not change. Ms. Pereira asked if the minimum

was 40,000 square feet. Mr. Wall replied yes, the Rural Residential zone has a minimum lot size of 100,000 square feet which would have been the only other option. Ms. Pereira stated that the lot size for the R1 zone could be too restrictive for some of their residents.

Commissioner Ecklund asked if they were in the area when the new ordinance was brought before the Planning Commission and Assembly. Ms. Pereira replied yes. Commissioner Ecklund asked if she understood that they could propose some changes to the lot sizes in the zoning ordinance in the future. Ms. Pereira asked if that could be retroactive. Commissioner Ecklund replied that would have to go through staff but could be a R1 to RW compromise. These are codes but could be changed through a process.

Commissioner Foster wondered if the new ordinance would allow for a hybrid. Originally, the idea was that a group of homeowners could design their own code but it got too cumbersome for the Planning Department so they came up with cookie cutter ones. He wasn't sure if there was an option to have the lots on the water to be part of a RW zone and the rest of the lots are a combination of R1 or R2. Ms. Pereira appreciated the suggestions and wasn't sure they were able to address them at this level. Commissioner Foster stated that part of this was to protect from major commercial things.

Ms. Pereira suggested that the Archer Addition be removed, give them the R1 zone with the understanding that they could come back and review it to work with them. There are covenants but they were written in the early 1980's and the only way for those to be applied was to have an active Homeowners Association. There are not enough full time residents in Bing's Landing to make that acceptable. Commissioner Foster stated that they would have to have an active Homeowners Association that wants to take whoever was breaking the covenant to court. Ms. Pereira stated that those covenants were California covenants that were transplanted up here which were really restrictive and makes the R1 zone look like nothing.

Commissioner Ruffner asked if there was something that prompted them to develop a local option zone. Ms. Pereira replied that there were a few things. The marijuana issue was one because there are a lot of open lots that could be developed for that use. They also heard that there might be multi-family dwellings that some folks want to put in there and they don't want multi-family dwellings. They want it to remain a single family residential neighborhood. Also there are more businesses that are moving in. She stated they have been having tremendous problems in their subdivision regarding the State Park easement. They are just trying to make it a quiet neighborhood that they can live in.

There being no further comments or questions, the public hearing continued.

3. Robert Pereira, 37195 Steelhead Circle

Mr. Pereira wanted to make clear that if the R1 zone passes and someone has a lot that is too small then they have the option to come to them and ask for something different.

Mr. Wall stated that the ordinance addresses smaller lots as non-conforming lots. There are not going to be any additional restrictions on those than on any other lots. He stated that any new lots will need to meet the minimum standards. They would need to follow the same process to make changes to a zone as they did in asking for a zoned area. There was no reason the lot owners of the lots along the river couldn't come to them to request to change them to a RW zone. Mr. Pereira understood that someone could come before them to appeal for changes. Mr. Wall replied that there was a variance process for a non-conforming lot. It would be something that the Planning Commission would need to approve but it could justify the grounds for a variance for setbacks.

There being no further comments or questions, the public hearing continued.

4. Mark Everson

Mr. Everson stated that he appreciated what the Bings Landing Subdivision was trying to do because he was on board at one point. The Archer Addition was a much newer addition and thought that most of those covenants have expired so he doesn't know if they are in the same timeframe as covenant or zoning as Bing's Landing.

Seeing and hearing no one else wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

**MAIN MOTION:** Commissioner Ecklund moved, seconded by Commissioner Isham to recommend adoption of Ordinance 2016-\_\_\_; Ordinance approving Bing's Landing Single-Family Residential (R-1) Local Option Zoning District in the Sterling area.

**AMENDMENT MOTION:** Commissioner Ecklund moved, seconded by Commissioner Isham to remove Lots 2, 3, 4, 5, 6, 7, 8, 9 & 10, Bing's Landing Archer's Addition, according to Plat 2002-95, Kenai Recording District, from the Bing's Landing Single-Family Residential (R-1) Local Option zoning District in the Sterling area as presented by staff.

Commissioner Foster stated he would support the motion since they heard opposition from the Archer Addition and the initiators of local option zone supported removing Archer Addition from the LOZ.

Commissioner Whitney asked if that would create any problems with the percentage of lots needed. Mr. Wall replied the requirements for the percentages were needed to get the petition before the Commission. Now that it was being considered then those percentages don't really matter. The other thing that comes into play was the average lot size and those smaller lots would not adversely affect the average lot size.

**AMENDMENT VOTE:** The motion passed with unanimous consent

CARLUCCIO YES	COLLINS YES	ECKLUND YES	ERNST ABSENT	FOSTER YES	GLENDENING YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD ABSENT	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	10 YES 3 ABSENT

Commissioner Ruffner wanted to make sure that the public understood that there are no hybrids when modifying a LOZ. Chairman Martin stated that a variance could be granted but there was no ale carte when it comes to building one to begin with.

**MAIN MOTION VOTE:** The motion passed by unanimous consent.

CARLUCCIO YES	COLLINS YES	ECKLUND YES	ERNST ABSENT	FOSTER YES	GLENDENING YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD ABSENT	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	10 YES 3 ABSENT

~~AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) - None~~

~~AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING – None~~

~~AGENDA ITEM I. SPECIAL CONSIDERATIONS - None~~

~~AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS~~

Chairman Ecklund reported that the Plat Committee reviewed and conditionally approved 7 preliminary plats.

AGENDA ITEM K. OTHER/NEW BUSINESS

1. New Plat Committee (July, August, September 2016)  
- 5 members / 2 alternates

Alternates

James Isham, Sterling  
Blair Martin, Kalifornsky Beach  
Paul Whitney, City of Soldotna