



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.borough.kenai.ak.us

MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Dale Bagley, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Mike Navarre, Borough Mayor *MN*

FROM: Max Best, Planning Director *MB*

DATE: December 22, 2014

SUBJECT: Ordinance 2014-39: approving the Diamond Willow - Ravenwood Single-Family Residential (R-1) Local Option Zoning District (LOZ).

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled December 15, 2014 meeting. A motion passed by unanimous consent to recommend approval of the Diamond Willow – Ravenwood Single-Family Residential (R-1) Local Option Zone with the exclusion of Tracts A2A, A2 and Lot 1-A.

An amendment motion passed by majority consent to exclude Tracts A2A, A2 and Lot 1-A from the Diamond Willow – Ravenwood Single-Family Residential (R-1) Local Option Zone. (*Bryson, No; Carluccio, Absent; Collins, Absent; Ecklund, Yes; Foster, Absent; Holsten, Yes; Isham, Yes; Lockwood, Yes; Martin, Yes; Ruffner, Absent; Venuti, Yes; Whitney, Absent*)

In the Ordinance, please make the following amendment to the last WHEREAS statement:

WHEREAS, the Kenai Peninsula Borough Planning Commission held a public hearing on December 15, 2014 and recommended approval of the Diamond Willow – Ravenwood Single-Family Residential (R-1) Local Option Zoning District with the removal of Tracts A2A, A2 and Lot 1-A by unanimous consent.

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

AGENDA ITEM F. PUBLIC HEARINGS

2. Ordinance 2014-39: approving the Diamond Willow - Ravenwood Single-Family Residential (R-1) Local Option Zoning District (LOZ). **Legal Description:** The property included in the LOZ under consideration is described as follows: Tract A, Ravenwood Subdivision Addition No. Two, according to Plat 77-41; Lots 1, 2, 3, and 4, Block 4 and Lots 1, 2, 3, 4, 5, 6, and 7, Block 5, Ravenwood Subdivision Addition No. 2, according to Plat 81-47; Lots 1, 1A, 2, 3, and 4, Block 6 and Lots 8, 9, 10, and 11, Block Five, Ravenwood Subdivision No. 4, according to Plat 84-234; Lot 1-A, Ravenwood Subd. #7, according to Plat 97-70; and Lot A2 and Tract A2A, Diamond Willow Estates Subdivision Part 11, according to Plat 2012-93; all located in the Kenai Recording District, Third Judicial District, State of Alaska. **Location:** Certain parcels along Virginia Dr, Ravenwood St, Canvasback Av, Wren Dr, Merganser Ave, Puffin St, Gadwall Ave, and Pelican Rd. **Request:** A petition has been received requesting that the subject property be zoned as Single-Family Residential (R-1), and be subject to the uses and development standards set forth in KPB 21.44.160.

Staff Report given by Bruce Wall

PC Meeting: 12/15/14

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 19 parcels for the formation of an R-1, Single-Family Residential local option zoning district (LOZ), which is more than three-fourths of the 24 parcels within the proposed district. The petition requirements have been met to get the zoning request before the Planning Commission. Pursuant to KPB 21.44.010, property owners may petition the assembly for greater restriction on land use than otherwise provided in Title 21 of the KPB Code. Furthermore, the proposed LOZ 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.

This ordinance has been introduced to the assembly. The assembly has scheduled it for a hearing on March 17, 2015. Property owners within the proposed district and within 300' of the proposed district received a notice of this meeting and for a meeting with the assembly in January. The January hearing will not take place for this ordinance.

We have received two comment letters. One representing the owner of the 46 acre parcel directly to the north. The other represents the owner of Tract A2A and Lot A2 which are included within the northern part of the proposed district. The tract and lot numbers are shown on page 108 of your packet.

Tract A2A, which is a part of this petition, and Lots C, D, & E, which are not a part of this petition, were the subject of a Conditional Land Use Permit Application that was denied by the Planning Commission. That denial has been appealed and will be heard by the Board of Adjustments in on January 21st.

The LOZ petition and maps showing the boundaries of the proposed district, the lot sizes within the proposed district, parcels whose owners have signed the petition, the current land use, the land ownership, the Diamond Willow – Ravenwood petition were included in the Planning Commissioner's packet.

KPB 21.44.060 states, "The assembly shall approve, disapprove, or modify the proposed local option zoning district. The assembly reserves the right to disapprove a local option zoning district in its legislative capacity notwithstanding the district's meeting the criteria of this chapter."

Staff recommends that the Planning Commission make a recommendation of approval to the assembly on this proposed ordinance.

Consideration of this ordinance is appreciated.

END OF MEMORANDUM & STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Joe Kashi, Attorney at Law

Mr. Kashi was at the meeting representing Sean Cude. In the many years that he worked for the Borough, he learned that land use and planning issues are always a matter of concern. He stated that people tend to see an apocalypse as they tend to see many matters which are a parent perception which may or may not be based upon the facts. The problem tends to be that everybody's perception is their reality.

Mr. Kashi referred to page 108 of the packet which shows the property that will be within the Ravenwood Local Option Zone. He commented that he takes no opinion on local option zoning (LOZ) and felt that it was a good idea. The way that this subject LOZ is drawn brings the idea of local option zoning into disrepute. The commission needs to consider what is being done and why it was being done. According to the map the commercial boat yard and a mechanic shop was excluded from the subject LOZ and then there is the flag lot with the big lot.

Ms. Kashi presented photos that he discussed with the commission.

Mr. Kashi stated that in this area there is a big Quality Asphalt paving pit and construction company that is not included in the subject LOZ. If concerns to the neighborhood are being looked at then someone should look at the other pits in the area. If anyone has had the opportunity to visit the site, it is pretty evident that this is small potatoes versus taking on a big out of town company. He stated if there are concerns at this pit then someone should take a look at Quality Asphalt or the Davis gravel pit that is nearby. Instead there are those people who are looking at a small area which has been used on and off for over 30 years for the purpose of extraction. There is just a small additional amount that is left to be excavated.

Mr. Kashi showed in the photos where Mr. Gattenby's house was located which is surrounded by unzoned property of the boat yard, Quality Asphalt and Brown Construction. He wasn't sure why anyone would draw the lines like they have been except for the fact that they are trying to achieve a specific result rather than to zone a neighborhood. He felt that zoning a neighborhood is not a bad idea but trying to use zoning as an offensive purpose is not a good idea.

Mr. Kashi suggested that Tracts A2A and A2 be excluded from the LOZ since it doesn't make any sense in this context especially when considering that the area to be zoned is just a small area between the David pit and the big Quality Asphalt pit. These lots are just a small couple of acres with most of the lot already being reclaimed. He felt it also doesn't make sense to include these lots in the residential zoning because most of the property has been excavated. Gravel has been extracted from the site but it just hasn't been concluded.

Mr. Kashi stated that nobody in their right mind was going to build a residence in a partially excavated gravel pit. In a different perspective, the proposed zoning makes no sense having the boat yard, the Quality Asphalt pit, the large area of the Gattenby's property and the flag lot between things.

Mr. Kashi showed a photo that was taken about a month ago after some additional work was done where clean fill was pushed in. He thought there was one piece of culvert that is there that hasn't been removed yet that somebody left at one time. The property has been brought almost up to grade level. Mr. Kashi felt that people want a hay field at somebody else's expense. He lives by a hay field on Robinson Loop and thought it was great. The property has been reclaimed to road level. There is no way someone will get the rest of the area reclaimed if it is expected to be done for several hundred thousands of dollars of their own money and then can't do anything with the property. Again, he reiterated that no one could build a house on the property since it is all fill. A house cannot be built on 30 or 40 feet of uncompacted dirt and fill.

Mr. Kashi stated that it makes no sense in this context by adding Tract A2A and A2 to the LOZ. It will

basically bring the entire local option zoning process into unnecessary controversy for no good reason especially given the neighborhood and what is around it. If local option zoning was wanted then it needed to be moved along in an appropriate way and needed to be done in a calm and rational way based on real facts and based upon the existing character of the neighborhood. These pits have been around for 30 years with most of these pits having had their inception well before people even started building.

Mr. Kashi recommended on behalf of his client that Tracts A2 and A2A which is basically the remnants of Tract A and was always excluded from the existing covenants be removed from the proposed local option zone. He was available to answer questions.

Chairman Bryson asked if there were questions for Mr. Kashi.

Commissioner Isham asked if he wanted to exclude Tract A2A. Mr. Kashi stated that he requested that Tracts A2A and A2 be removed from the proposed LOZ. He believed that Tract A2A was before the Plat Committee to combine lots to bring it closer to the original Tract A. The problem was that someone got carried away with putting flag lots all over the place even though there was no river access. He stated it was being restored to a closer approximation of Mr. Gibb's, the original homesteader, original platting of the property and the original covenants. Commissioner Isham asked if Mr. Cude owned Tracts A2A and A2. Mr. Kashi replied affirmative.

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

2. Virgil Gattenby

Mr. Gattenby owns Tract 1A and is right on the corner of Tract A2A. He spoke with both parties and does not wish to make any enemies since this has been a pretty heated situation. Mr. Gattenby understood that the pit has been in use for a long time but it is not real thrilling to have dump trucks going on the roads on both sides of his property.

Mr. Gattenby felt it was in the best interest of his family to not be zoned residential. He requested that his petition be removed to be zoned residential just so that he could see how this plays out. Mr. Gattenby also felt he needed to get more educated on this and felt that he was not prepared to make a decision on this at this time. He asked for a little more time to be able to discuss this with individuals more knowledgeable than himself with the status of what his property should be in the future.

Chairman Bryson asked if there were questions for Mr. Gattenby. Hearing none the public hearing continued.

3. Tracey Earl, 46740 Gadwall Ave.

Ms. Earl stated that the gravel pit was located right behind her house so she would be greatly affected by how this turns out. In 2007 when they bought their house, they were told by the realtor that the gravel pit was an illegal pit and that it was being filled in so it would no longer be able to be a gravel pit. That made a determination on her purchasing that property knowing that it was being filled in. Ms. Earl stated there hasn't always been clean fill being put into the pit. She has seen blue board, construction materials, asphalt, concrete with rebar, and a refrigerator which she believed has been removed. That is not clean fill as far as she was concerned which could negatively affect her water.

Ms. Earl stated that her house shook when a road was being built in the gravel pit. It was noisy. They moved out of town to have some peace and quiet and didn't know that she would be next to a gravel pit.

Ms. Earl expressed support for the Residential R1 zoning because of the issues she expressed. She knows what has gone on with this pit and what has gone in it however she doesn't know if the applicant was the owner at the time. Ms. Earl bought her house knowing that the pit was being filled in because it was supposedly an illegal pit. She doesn't want a gravel pit in her backyard and if it takes putting in a residential zone then she was all for it.

Chairman Bryson asked if there were questions for Ms. Earl. Hearing none the public hearing continued.

4. Travis Penrod, 36860 Virginia Dr.

Mr. Penrod presented photos of the gravel pit that shows something different than what a previous testifier submitted. All the photos were when Mr. Cude owned the property.

Chairman Bryson reminded the testifiers that the testimony taken was for the Local Option Zoning district petition and not the gravel pit.

Mr. Penrod stated that he was the petitioner and organizer of the local option zone petition. The purpose of the local option zoning is to get the entire area zoned as residential, R1. The reason why it should be R1 zoning is to protect property values so that there aren't commercial operations in residential areas. He stated this is a residential area as specified in what was heard from the testimony that was given.

Mr. Penrod stated that Mr. Cude was digging in the water aquifer which was proven by the photos he presented. Also, Mr. Cude was pushing illegal material in the pit which was also proven by the photos that were presented.

The main thing Mr. Penrod wanted to mention is that this LOZ petition needs to be pushed through in its entirety. This pit was never a legal pit; it is a hole that has been dug in the ground with no record anywhere that it was ever a certified pit. It has been illegal from the ground up of which the Borough is at fault for that because nothing was ever done. He stated that zoning this area residential safeguards them and the neighborhood. Mr. Penrod felt that the LOZ would be null and void if Tracts A2A and A2 were removed from the LOZ. A responsible thing that could be done with those tracts would be to create a community park which works well in the R1 zoning regulations. He understood that it wouldn't make sense to build a residential home on it. The most important thing is that the LOZ needs to include those lots.

Chairman Bryson asked if there were questions for Mr. Penrod.

Commissioner Martin asked if it was his desire to see this completely reclaimed and grass growing on it. Mr. Penrod replied that there has been and great amount of horrific activity that has taken place in that pit. The people have had to endure illegal dumping and digging in the water aquifer. There is a potential of having a catastrophe happen in the pit with the proposed new permit. There could be a diesel fuel spill with all the equipment in the pit which would certainly destroy the water that everyone's wells are tied into in this area. He would like everything in the pit to stop, have it groomed and developed into a community park. Commissioner Martin asked if he would like the hole to be left open. Mr. Penrod replied that he would like to see it groomed and developed into a park. He stated that clean fill can be dumped in the pit according to ADEC.

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

5. Sean Cude

Mr. Cude stated that he has only been the owner of the gravel pit for two years. It has gotten so out of control there that he has had to put on a "No Trespassing" on Mr. Penrod to keep him out of the pit and out of the facility.

Mr. Cude stated that ADEC, the Borough Roads Department, and the Borough Mayor has been in the pit. There have not been any violations in the two years since he has owned it. He felt that Mr. Penrod would still not be happy if he bought enough gravel from either the Best or Davis pits and put it in the property.

Mr. Cude stated they are talking about four acres out of the final 19 acres. The permit could be revoked if there are violations if the conditional use permit was granted. He has agreed to go above and beyond with various conditions such as reducing it from 20 years to 15 years, to install camera systems down there so that the Borough could monitor him 24/7, and to reduce his hours of operation

from 7 to 7. Mr. Cude felt that no matter what he agreed to he would be unable to make this situation happy. It is his goal to fill this property in, get it back to a hay field and connect it to Tract A2 which is not part of the actual gravel pit. He stated that it would be a connection which would give him a 22 plus acre parcel with Kenai River frontage which would be a very valuable piece of land.

Mr. Cude stated that there is no factual data that any water aquifer issues have happened. There are pits all around there; Davis, Best and QAP. He was the one who was actually reclaiming this lot faster than any of the pit operators in the area. There is always a new problem every time they come around.

Mr. Cude made it clear that he does not want Tract A2A as part of the LOZ since it doesn't meet the requirements of a R1 local option zone. Someone will not be able to build on 20 acres of fill. He was strictly looking at getting the last four acres out of there so that he would have the funds to clean this up properly.

Mr. Cude pointed out that he has allowed several of the local residents in the subdivision to dump their grass clippings and tree clippings of which he doesn't charge anything for it. He is trying to help get this thing filled in but it also comes with a cost.

Mr. Cude understood that his Lots C, D and E were pulled from this until the Assembly decided upon this. He asked that Tracts A2A and A2 be removed from this petition. Just as Mr. Kashi mentioned, local option zoning is great but it needs to be done in a contiguous way and not as a target to stop something that was there.

Mr. Cude stated that Mr. Penrod purchased his property in 1998 when the pit was partially excavated. In 2003, he built a second house which is now there is an issue. This was not an illegal pit when it first got dug out because there wasn't a requirement of the borough at that time. The problem was that Mr. Gibbs, the previous owner did not fill out the grandfather paper rights which is why it didn't get grandfathered in and a permit wasn't required prior to that.

Chairman Bryson asked if there were questions for Mr. Cude. Hearing none, the public hearing continued.

6. Samuel Webber, 46724 Gadwall Ave

Mr. Webber stated that his property borders the southern edge of the gravel pit. He expressed some concerns with the gravel pit operating in the area and spoke in favor of the LOZ – R1 Residential zone.

Mr. Webber supported Mr. Penrod's point regarding the exclusion of these properties, Tracts A2A and A2 from the LOZ Residential R1 zone. He also felt that the exclusion of these properties would null and void any effect that this local option has.

Mr. Webber expressed concern about having a gravel pit in his back yard. Back in 2012, when there was fill being either removed or moved around inside of the pit, it was happening directly in back of his house which made his windows rattle. It was quite disturbing while it was going on and he didn't want that to be his new daily normal. He was informed that the pit was illegal and that it was being filled in and that it wasn't going to be a concern with operations beginning again when he bought this property in 2011. Mr. Webber guaranteed that he would never have bought his house if he had known there was an option that this gravel pit would start back up. He does not want to live next to a rock crusher and heavy equipment going 24/7. It was bad enough listening to Davis Block. He expressed concerns about having this directly in his back yard with noise pollution and decreased property values in the amount of millions of dollars. This includes Mr. Penrod's neighborhood and obviously Ravenwood Subdivision; both of which have riverfront property which is extremely valuable. He does not want to put this at risk as far as reduced property values because who will want to buy a residence where they have to listen to a rock crusher going 24/7. This will more than likely going to be their future unless they have this residential R1 option put through to prevent a situation like that.

Mr. Webber has nothing personal against Mr. Cude, he has never talked with him in person before. He was not under the opinion that Mr. Cude should have to just sit on this property and turn it into a hay field and lose money which doesn't make any sense. There have been many ideas that have floated around of going to the neighborhood and getting together some kind of community action to possibly purchase the land from Mr. Cude so that he would not have to take the hit monetarily. The R1 zone option allows them to put in community resources such as soccer fields, baseball fields or anything that would benefit the community at large and obviously increase property values while also making sure that Mr. Cude does not take a monetary hit. These are plausible solutions but these are the only solutions that can happen if the R1 option goes through and if the tracts they are speaking about are not excluded from the R1 option. If they are excluded then they should take the entire R1 option for the rest of it and throw it away; it will be useless to everyone who buys into those neighborhoods.

Chairman Bryson asked if there were questions for Mr. Webber.

Commissioner Ecklund asked him who told him that the gravel pit was illegal and was in the process of being filled in. Mr. Webber replied that they were told that by their real estate agent.

Commissioner Martin asked if he understood that Mr. Cude intended to use the proceeds of the final pits of gravel to help reclaim this property which may get done sooner if he has the authority to do that. Mr. Webber replied that he wished he had the faith that was going to be the final solution. Unfortunately, he doesn't see that happening. He sees this being a pit that runs and is active and plans being changed once the R1 zone option is no longer a threat. Mr. Webber stated that it sounded like a great idea at face value. Unfortunately, he doesn't have a lot of faith that will be the actual end game.

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

7. Peter Endries, 35280 Rockwood Dr.

Mr. Endries looked at this from a slightly different perspective than everyone else. The piece of property that he owns that they want to be part of this R1 zoning is a little bit further away. Mr. Penrod originally sent him information about the zoning that was being proposed. He thought it wasn't a complete package as far as what this residential zoning would include. Mr. Endries had concerns about this zone because he potentially would like to build a house on his piece of property. He has a small construction company but when he looks at the standards that were forwarded to him he had some personal concerns about having this zoning come through.

Mr. Endries stated that the proposed zone created questions regarding the setback requirements and how much thought was actually put into creating these particular rules. He asked for a definition of what the following statement meant and how site was defined. "*The forester buffer between road and site.*" His questions included, 1) What if there weren't any trees there to begin with? 2) Does that mean where he builds his house? 3) It has 20 feet so does that mean that there has to be 20 feet of trees between the road and his house? 4) How big do those have to be and can there be bushes? 5) What happens if he doesn't like trees in his front yard? He thought he would be required to keep ones there or if they are nonexistent, would he have to plant them? There seems to be a lot of questions.

Mr. Endries also expressed concern regarding the standard that states, "No changes in the outside appearance of a building or parcel." So what in the world does that mean; does that mean he can't reside his house. He reiterated that it states that no changes in the outside appearance of a building or parcel can be done so does that mean no one can redo the landscape. Mr. Endries has a problem with the regulation itself but doesn't know where he sits on the issues. These are some very extremely vague rules in his point of view. He also stated that hazards could not be created, in whose opinion and how are those defined?

Mr. Endries stated that outside storage of anything related to the home occupation is prohibited. So basically any in home occupation needs to stay inside the house. In his case, he has a construction

company and has his office in his home yet that is not an approved type of business for this R1 zoning. That means unless he obtains some kind of exception he can't even have an in home office for his construction company. There are occasions that he drives a dump truck home overnight. He tries not to do that but it does happen on occasion. It also states that the home occupation shall not result in noise, vibration, blare fumes, heat, odor, smoke or electrical interference detectable to the normal senses of a parcel. To him it means that someone can't cut lawn with a riding lawn mower.

Mr. Endries stated that the regulations are not well thought out in his opinion. He stated that he would not vote for the R1 zone with the regulations the way they are written since they are too vague.

Chairman Bryson asked if there were questions for Mr. Endries.

Commissioner Holsten asked if he was in the proposed zone. Mr. Endries replied that he was sent a letter notifying him of this meeting. He stated he was part of the third petition that has not gone before the Commission yet. Chairman Bryson asked if he was an adjacent property owner. Mr. Endries replied yes.

Commissioner Isham asked if his lot was part of the subject LOZ or was it adjacent to it. He asked him what his lot number was. Mr. Endries replied that he didn't have that at the top of his head. He was sent a map from Mr. Penrod with his lot included in it. Chairman Bryson asked what street he lives on. Mr. Endries replied that he doesn't live anywhere near this. Commissioner Isham asked if he could identify his lot. Mr. Endries replied that he owns a vacant parcel that is close to proposed zone. Commissioner Isham stated that they were trying to figure out where his lot was located. Mr. Endries replied that his lot was about a 4 acres parcel off of Circle Park St. and Mooseberry Ave.

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

8. Crystal Penrod, Virginia Dr.

Ms. Penrod stated that the photos that her husband presented will show the true tale here. Mr. Cude has allowed illegal dumping and has gone into the water ever since he bought this property. This pit was never a legal gravel pit. It was in 2004 when the illegal digging started; they fought it then and have been fighting it ever since. This pit has not had clean fill dumped in but there have been septic tanks, huge containers of salt, and sewer pipes. She knew that none of it came from the Borough.

Ms. Penrod stated that Mr. Cude purchased this property with covenants which has been verified with the Title Company. Lot A2 has covenants on it. It was not on them that Mrs. Gibbs sold him property that he can't use. She felt sorry for him because there have been more than one person who has fallen prey to that.

Ms. Penrod stated that the covenants in the neighborhood will still apply whether or not the R1 LOZ is approved. They are prepared to follow up with that, they would prefer not to have to do that legally because it is expensive and it is a legal battle. She stated they were given this tool to use and they are trying to use it. The land can still be reclaimed; the LOZ approval does not change that at all but does prevent future industrial and commercial use of the land which is what they are trying to do. They don't want used car lots, porta potty businesses and anything that is industrial in their neighborhood.

Ms. Penrod stated there have been violations on the pit which can be verified through Steve Russell with ADEC and through the drinking water program. Also Bruce Wall, Borough Planner has taken many of their calls regarding asphalt being dumped into their open water aquifer. The only time that her husband was actually in the pit was with the ADEC and the Borough, taking pictures of this violation. She stated they certainly weren't trespassing.

Ms. Penrod reiterated that there are covenants that are attached to this and really want this LOZ to go through as planned. It has just been a mess. She stated they were given this tool by the Borough and really want to see it work. They want to be a good example of how zoning can work and want to get their neighborhood back after 15 long years of battling one thing or another. She stated she

would really appreciate it if the Commission would really take into consideration the whole story.

Chairman Bryson asked if there were questions for Ms. Penrod. Hearing none the public hearing continued.

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

MOTION: Commissioner Martin moved, seconded by Commissioner Holsten to recommend adoption of Ordinance 2014-39, an ordinance approving the Diamond Willow – Ravenwood Single-Family Residential R-1 Local Option Zone.

Commissioner Ecklund asked how they would prevent a parcel in a residential R1 zone from becoming a home sight. The comments have been that it was a reclaimed gravel pit with 30 feet of fill and someone would not want to build a home on it. Mr. Wall replied that the borough could not prevent that from happening under the current ordinances. The property would be zoned residential and a resident would be allowed. He believed what the applicant was stating was that it wasn't suitable for construction.

Commissioner Isham stated that the owner of Lot 1-A also requested that his lot be removed from the proposed local option zone.

AMENDMENT: Commissioner Martin moved, seconded by Commissioner Ecklund to amend the motion to exclude Tracts A2A, A2 and Lot 1-A from the Residential R1 Local Option Zone.

Chairman Bryson asked if it was appropriate at this time to modify the petition. Mr. Best believed that would be appropriate. They are still discussing the approval, disapproval and modify statement in the Code. It would probably be allowed as long as it met the petition requirements for area and average size prevailing.

Chairman Bryson asked how an amendment to the LOZ petition would work. Mr. Best replied that the Commission would forward a recommendation to the Assembly. Chairman Bryson asked if that would be an Assembly decision. Mr. Best replied yes, that is correct. It would be a recommendation of approval with an amendment that would go to the Assembly. Chairman Bryson asked if the petition could still go forward with their approval concerning area. Mr. Best replied yes, that was correct.

Commissioner Holsten asked if the petition would become null and void if lots were subtracted and it no longer met the requirements. Mr. Best didn't believe that once the petition was forwarded to the Assembly that the petition requirements necessarily need to be met but the area size and contiguous portions need to be met. Commissioner Holsten asked if they would be met if the three parcels were excluded from the LOZ. Mr. Wall replied that it does meet the area requirements of the petition.

There being no further comments or questions, Chairman Bryson called for a roll call vote.

AMENDMENT VOTE: The motion passed by majority consent.

BRYSON NO	CARLUCCIO ABSENT	COLLINS ABSENT	ECKLUND YES	FOSTER ABSENT	HOLSTEN YES	ISHAM YES
LOCKWOOD YES	MARTIN YES	RUFFNER ABSENT	VENUTI YES	WHITNEY ABSENT		6 YES 1 NO 5 ABSENT

There being no further comments or questions, Chairman Bryson called for a roll call vote on the main motion.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO ABSENT	COLLINS ABSENT	ECKLUND YES	FOSTER ABSENT	HOLSTEN YES	ISHAM YES
LOCKWOOD YES	MARTIN YES	RUFFNER ABSENT	VENUTI YES	WHITNEY ABSENT		7 YES 5 ABSENT