



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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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: November 14, 2014

SUBJECT: Ordinance 2014-35; approving Diamond Willow - Fairfield Single-Family Residential (R-1) Local Option Zoning District, and amending KPB 21.46.040

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance 2014-35 during their regularly scheduled November 10, 2014 meeting. A motion recommending approval of the Diamond Willow – Fairfield Single Family Residential (R-1) Local Option Zoning District with the exclusion of Lots C, D, and E passed by majority consent. (*Bryson, No; Carluccio, Yes; Collins, Yes; Ecklund, Yes; Foster, Yes; Holsten, Yes; Isham, Yes; Lockwood, No; Martin, Yes; Ruffner, Yes; Venuti, No; Whitney, Yes*)

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 November 10, 2014 and recommended approval by majority consent.

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



BRYSON YES	CARLUCCIO YES	COLLINS YES	ECKLUND YES	FOSTER YES	HOLSTEN YES	ISHAM YES
LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES		12 YES

AGENDA ITEM F. PUBLIC HEARING

5. Ordinance 2014-35; approving Diamond Willow - Fairfield Single-Family Residential (R-1) Local Option Zoning District, and amending KPB 21.46.040

Staff Report given by Bruce Wall

PC MEETING: November 10, 2014

Location: Parcels along Belmont Court and Lexington Court, certain parcels along the Pine Cone Way right-of-way, certain parcels along Virginia Drive, parcels along Gary Avenue, and certain parcels along Ciechanski Road.

BACKGROUND INFORMATION: A petition has been submitted by property owners of 55 parcels for the formation of an R-1, Single-Family Residential local option zoning district (LOZ), which is more than three-fourths of the 72 parcels within the proposed district. The petition requirements have been met to get the zoning request before the planning commission.

Three comment letters have been received. The most recent letter from the KPB Land Management Division was included in the desk packet along with a map with the Borough owned lots circled.

Also included in the desk packet was a map showing the boundaries of the proposed LOZ along with the boundaries of another proposed LOZ that will be heard at the December PC meeting.

KPB 21.44.050 states that the planning commission shall recommend to the assembly approval, disapproval, or modifications of the proposed local option zoning district.

Tract A2A and Lot A2, on the south end of the proposed district, are not included on this petition because they were included on another LOZ petition that has been submitted. That petition will be on the Planning Commission's December agenda. Lot 1A is not a part of either of these two petitions.

On the north end of the proposed district Tract B1, Tract B2-1, Lot B2-6, and Lot 22 are included on another LOZ petition that is still being circulated.

On the west side of the proposed district is Lot 1, J&P Subdivision and Lot 1 thru 7 of the Aurora Addition to the J&P Subdivision. The Borough currently owns the lots in the Aurora Addition. Only 2 of these lots are included in the petition. Marcus Mueller has stated that the Land Management Division takes a neutral position with respect to a local option zoning proposal that involves tax foreclosed properties.

On the south end of the map; Tract A2A, Lots C, D, & E 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 Adjustment on January 21, 2015. If the permit had been approved, the applicant would have been required to submit a plat that would have combined these 4 parcels into one. The owner of that property has recently submitted that plat to the planning department. The Plat Committee should see that preliminary plat in December.

Contents of the commission packet:

- Memo to the Assembly
- Proposed Ordinance 2014-35
- Map showing the acreage of each lot in the proposed LOZ
- Map showing the land use in the vicinity of the proposed LOZ
- Aerial photo of the proposed LOZ
- Map showing the land ownership in the vicinity of the proposed LOZ
- Map showing lots with and without the owner's signature on the petition
- Comments
- Copy of the submitted petition

Information sheets, explaining the R-1 zone and home occupations, provided to petition signers
Map showing the proposed Diamond Willow – Fairfield LOZ and Diamond Willow – Ravenwood LOZ

PUBLIC NOTICE: Public notice of the application was mailed on October 20, 2014 to the 140 property owners within the proposed district and within 300 feet of the boundaries of the district. Public notice of the application was published in the October 30, 2014 & November 6, 2014 issues of the Peninsula Clarion.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission open the public hearing, take testimony and postpone action until brought back by staff.

END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Travis Penrod, 36860 Virginia Dr. & 36770 Virginia Dr.

Mr. Penrod is the person who circulated the petition and got the signatures. He had a great deal of knowledge on the subject so he was available to answer questions if the commissioners had any.

Mr. Penrod stated that the Local Option Zoning was an option that was given to them by the Borough to help protect their property. They received the information and figured out how it all worked and started the process. He met with Mr. Wall, the Borough Planner to make sure the local option zoning petition met all the requirements and that they collected the right amount of signatures. It was then submitted it to the Borough to be processed.

Mr. Penrod mentioned that every resident, every house and every structure in this subject local option zone meets the R1 residential standard which is what they were applying for so that no one would have to be grandfathered in. All the property is either a vacant lot or is residences that meet the R1 standards. He stated that the residents who have built homes were planning on living in a residential area. He also stated that the neighborhood covenants support the same thing as the LOZ even though the Borough doesn't recognize covenants.

Mr. Penrod understood that the Planning Department recommended postponing action on this LOZ but he requested that this move forward meeting all the timelines that were mentioned. They all know there is an appeal with the material site permit but that appeal is grandfathered in so this petition can continue. It can be approved and passed. He stated that the gravel pit permit was grandfathered in if the appeal was overturned. Everyone knows that the subdivision plat of Tracts C, D & E was submitted prior to this LOZ petition. He stated that if they get the LOZ approved then any future development would have to comply with the R1 Residential zoning which protects them from any future industrial development.

Mr. Penrod requested that this process continue to the Assembly meeting on November 25, 2014. He was available to answer questions.

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

2. Oliver Amend

Mr. Amend owns 11 lots that were excluded from this R1 zoning. There was someone else at the meeting who owned 12 lots that were excluded from the zoning petition which equals 23 lots plus they have another 6 lots for a total of 29 lots. He felt that was not a majority that backs up Mr. Penrod's claims of 75% of the landowners supporting the LOZ petition.

Mr. Amend bought his lots and was investing several million dollars in the development of those lots so he wants to keep the property covenants the way they are. There are only 10 places within the Kenai Peninsula Borough where there was R1 zoning. This is a residential area and that is their goal.

Mr. Amend had previously allowed Mr. Penrod to go into the pit and take pictures. There has never been one instance over the years of having citations issued from ADEC or EPA for violations of his development. He stated everything has been done above board.

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

Commissioner Martin asked if he could elaborate on the lots numbers that he owned. Mr. Amend replied that he owns the lots on the north end which are Tract B1, Tract B2-1, B2-2 B2-6 and Lot 22. Chairman Bryson asked if the lots were north of Ciechanski Rd. Mr. Amend replied that they are south of Ciechanski Rd. Mr. Best clarified that Mr. Amend owns Tract B1, B2-1, B2-2, B2-6 and Lot 22. Mr. Amend replied that he also owns six lots that were just submitted to the Planning Department. Mr. Best also clarified that Tract B2-1 has a preliminary plat that will be subdivided into six lots. Commissioner Martin asked if Tract B1 was scheduled to be subdivided. Mr. Best replied no, Tract B2-1 is in as a preliminary plat of six lots. Mr. Wall also stated that Mr. Amend owns Tract B2-2 which is included in on the LOZ petition.

Commissioner Foster asked if he supported the residential concept but did not want the local option zoning. Mr. Amend replied that he supported the covenants the way they are since they are more restrictive than a R1 zone. Commissioner Foster asked if he understood that the Borough does not enforce or protect the covenants and takes a civil suit if a situation arises. Mr. Amend felt they could govern it themselves.

There being no further questions, the public hearing continued.

3. Justin Evans, 47207 Lexington Ct.

Mr. Evans is a homeowner within the Diamond Willow Estates. He supported the local option zoning since it was a protection for any future civil suits that they may have.

Mr. Evans was told by his realtor that the gravel pit was an illegal dig and was being filled in when he purchased his property in 2007. That was one of the reasons they purchased their property because it was in a residential area with homeowners and families. He wants to make sure that the area stays as a residential area so he urged the commission to vote in favor of granting the Local Option Zone.

Mr. Evans asked that they allow things that are grandfathered in to be worked out with the appeal. He requested that they get this done which is why the Borough and Assembly was here to help protect homes and families. He was available to answer questions.

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

4. Jacob Newton, 46738 Gary Ave

Mr. Newton purchased his home less than two years ago and was under the assumption that the pit was being filled in and would continue to be filled in until it was a field. He supported the R1 Local Option Zoning.

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

5. Dave Tiedeman, 36750 Virginia

Mr. Tiedeman bought his property in 2004 and also thought the pit was being filled in at that time which was why they were encouraged to buy the property. There have been problems in that pit from back in 2004 which had to be addressed back then. Everyone thought it was taken care of but it keeps raising its ugly head. This is obvious a residential area that needs to be protected.

Mr. Tiedeman stated there are concerns of more extraction of gravel being done out at the other field. He sees a precedent being made if the owner gets to go back in and dig. He thought they were setting a bad precedent for a very nice residential area that needs to be protected.

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

6. Louise Soltis

Ms. Soltis is the wife of Mr. Tiedeman and stated they have lived on their property for 10 years. She felt what was going on here is something that they will see a lot of over the next five years. This area has a lot of vacant land; it is not just going to be their residential area that will be vulnerable. There will be a lot more people moving to this area so it makes a lot more sense to have lots where people can build homes rather than allowing one person go in and dig up gravel. The digging makes a lot of

noise and is left with a big mess when the digging is done.

Ms. Soltis urged the commission to push through on making this a housing area zone and protect those residents who have made this their homes and who plan to retire and live in this area. It is a beautiful area that she would hate to see destroyed. She asked for the Commission's support to help those who have made this their home and do not wish to see the area destroyed. Ms. Soltis was available to answer questions.

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

7. Mercedes Gibbs

Ms. Gibbs is against the R1 zoning petition. She has been in the area for almost 40 years.

Ms. Gibbs stated that it was a necessity when she owned and operated the gravel pit. They never planned to have the other field be a gravel pit because she liked the area and she and her family planned to stay there. She stated that several contractors contacted her about the hay field becoming a gravel pit but she did not want that being a gravel pit anymore. Ms. Gibbs sold the gravel pit because the new owner wants a nice area and also has the capacity to operate it and reclaim it. She doesn't know why people want to stop them since the new owner has the capacity to fill up the gravel pit and make a nice field. Ms. Gibbs questioned if the residents just wanted to have a big hole left. She never planned to have another gravel pit.

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

8. Dennis Gease, 36710 Virginia

Mr. Gease has lived there for 10 years and stated that he loves the area. He stated he would have no problem if what Ms. Gibbs testified was true, that the pit would be filled up, seeded over and become a grass field but that is not what has happened over the last 10 years. They go from one startup of that pit to an appeal which carries on for a few years and then another startup with an appeal. This has been going on for 10 years.

Mr. Gease stated that the landowners with the support of a member of the planning commission agreed to try and zone this area which is permitted by the Borough. They went through all the constraints of getting paperwork filled out and turned in which is why they are at this meeting. They wished that the commission would take this request under advisement and zone it residential as requested. He was available to answer questions.

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

Commissioner Lockwood commented that the commission does not have Borough zoning rights which is why it is called the Borough Planning Commission and not the Borough Planning and Zoning Commission. There is no zoning outside the city limits because the Borough population has not voted for zoning. Mr. Wall clarified that the Borough has zoning authority which is why they are able to enact the local option zones. He stated there is also the Habitat Protection District which in practice acts as a zoning district. The Borough Assembly has the power to zone property with or without the property owners consent. They can do that outside the Local Option Zone petition process but the Assembly has chosen not to do that yet. Commissioner Lockwood asked why the commission isn't called the Borough Planning & Zoning Commission. Chairman Bryson stated that when zoning was transferred to the different municipalities, it went through the Borough who delegated that authority to the cities who wished to incorporate that in their charters. He stated that any zoning for this area passes through the Borough.

Hearing no further questions or comments, the public hearing continued.

Mr. Gease asked if they were following the right procedure. Chairman Bryson replied yes, the Local Option Zoning is a valid procedure and activity.

9. Sean Cude

Mr. Cude was the landowner asking the Planning Commission to not include his three lots within the R1 zoning which are Lots C, D and E. The three parcels are currently in the appeal process for a

conditional use gravel permit and a replat has already been submitted to the Borough to combine those lots in with Tract A2A. The three parcels have previously been mined for gravel and should have never been resubdivided back into 2008 for residential lots as they do not meet the proper requirements for a residential lot. He stated he submitted photos were included in the packet.

Mr. Cude stated that this R1 zoning stems from an application for a conditional use permit which is currently under the appeal process. The Deputy Borough Attorney, Holly Montague stated on her entry of appearance that the Planning Commission decision is inconsistent with the criteria in KPB Chapter 21.29. He felt that he should have a fair appeal process and that no decision should be made until that process is complete.

Mr. Cude stated that Diamond Willow Estates already has covenants in place. As someone would drive through the neighborhood they would see several covenant violations like a house with three car garages when it clearly states no more than two; lots more than 50% cleared; fishing lodges; large shops; and dual houses on one lot. It is obvious that none of these issues have been of concern until he applied for his conditional use permit.

Mr. Cude also pointed out that several homes have been built in the neighborhood after the pit was established. He thought almost everyone who testified at this meeting moved into that neighborhood and the entire Fairfield Subdivision was built after the pit was established. There is never any promise that any pit will get reclaimed but the subject one has been reclaimed probably more than any pit in the area and better kept. Mr. Cude stated that according to Borough records, Mr. Penrod chose to live there and build homes in 1998 and 2003 after the pit was established.

Mr. Cude felt that the R1 Zoning was realistically and intended for and appropriate for neighborhoods having no protections not for someone to just come in and pick out certain parcels and avoid certain people to make sure they get enough signatures received and make sure the areas are contiguous. He stated that the lots as shown on the map are not contiguous. He stated that there could be a single lot in the middle of the subdivision that is not included in the zoning because there were not enough signatures obtained with this subject R1 zoning petition and the other pending petition. This is clearly not what the R1 zoning was intended for to pick and pull certain parcels to stop certain things.

Mr. Cude stated that he has done extensive work and has been one of the most responsible operators of this site since his ownership of the property which has all come under opposition. He felt he was getting blamed for filling in and digging it out. No matter what he does, Mr. Penrod will not be happy. Mr. Cude stated that at the last meeting, Ms. Penrod brought a jar of gravel that was taken from his site without his permission while trespassing. He filed a no trespassing on Mr. Penrod who claimed he was burying asphalt.

Mr. Cude stated there was a letter that was received from the Solid Waste Regional Program Manager that discussed his history and compliance as an operator with no DEC problems or compliance issues. He has never had an environmental violation in his 20 years as a contractor. Mr. Cude was all about making the community a better place. Last year, he recycled over 10,000 cars in the State of Alaska to try to make this a better place to live.

Mr. Cude understood that everyone wants to see this cleaned up but this does come with a cost. He also owns one of the most expensive 3.7 acre river lots in the subdivision so he has a vested interest to make sure that the site gets clean and reclaimed.

Mr. Cude hoped that they could work together to get this site cleaned up so that it doesn't become an eyesore in the years to come. He does not want to be involved in the R1 zoning.

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

Commissioner Ruffner asked what his understanding of who has standing and if the appeal process went forward in his favor. Mr. Cude replied that he felt a decision should not be made whether his lots should be part of it until the appeal process is done. Secondly, his lots do not meet residential standards. The three lots should not have been originally pulled out and made into residential lots back in 2008. One of the conditions with the conditional use permit was that they would have to resubdivide those three lots into the Tract A2A

which has been submitted to the Borough for review.

Commissioner Ruffner asked if he felt he was first in line to have a decision made on his proposal. Mr. Cude replied yes, that was what stemmed this R1 zoning. Commissioner Ruffner asked if it was his understanding that he was first in line even if something happened at this meeting. Mr. Cude deferred to Mr. Kashi who was representing Mr. Cude. Mr. Kashi deferred to the Borough Attorney or Planning Director for their opinion. Mr. Best stated he posed that question to the Legal Department and haven't received an answer but expected that it could be challenged since Mr. Cude started his process for a material site prior to the local option zoning petition.

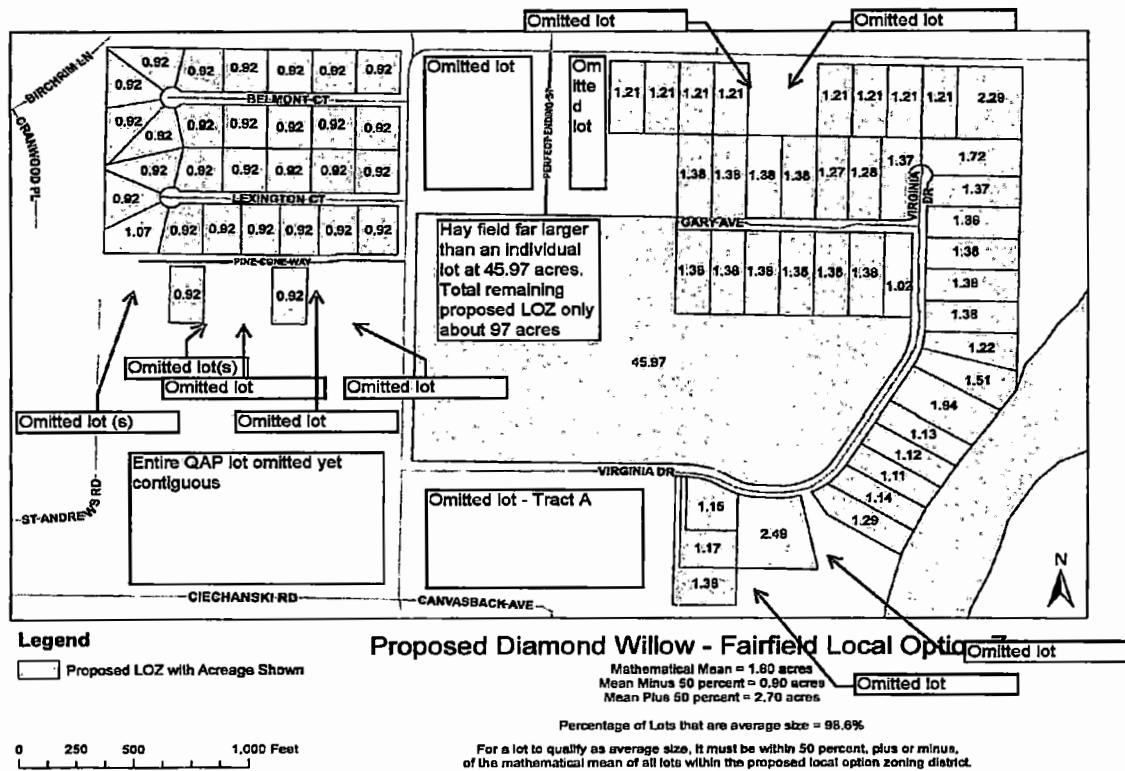
Commissioner Martin asked if it made sense to him if the commission made an addendum to remove the four lots from the LOZ. Mr. Cude stated that the next petition includes his river lot and a large parcel on the other side. It comes back to it not being contiguous. He felt it was picking and pulling pieces and done without notifying all the owners. Mr. Cude was never asked if he wanted to sign the petition. He found out about the petition from another neighbor.

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

10. Joe Kashi, Attorney at Law

Mr. Kashi represented Mr. Cude. He liked the idea of local option zoning and thought he may like it in his own neighborhood. Having said that he felt this subject petition was going to be a very bad precedent. Mr. Kashi submitted packets of information with photos to the Commission.

Mr. Kashi stated this was a very inappropriate gerrymander. In the color map as shown below, there are numerous lots that have been omitted from the LOZ petition. The lots are supposed to be reasonably average in size. Most of these are one acre lots but one 45.97 acre lot that doesn't fit in the ordinance. He felt that the only reason that lot was included was to make it contiguous with the three lots that Mr. Cude asked to be removed from the LOZ. The mere fact of putting that lot in there prevents it from complying to the provisions of the ordinance because it is not the right size. Secondly, it would only make it allegedly contiguous but at the same time there are a bunch of gerrymanders in there. This is not the kind of compact contiguous zoning the Borough should have.



Mr. Kashi stated that the three lots that are being proposed to be combined with Tract A do not fit. Tract A has always been excluded from the restrictive covenants that have been in place for 40 years and has always been used for gravel purposes. His client only bought this lot two years ago and there has been a huge cleanup since that point. He stated that ADEC submitted a letter saying that everything was in nice shape and Mr. Cude has done a good job around the State.

Mr. Kashi stated that most of the fill that is going in the pit is clean dirt and coming from the Kenai Peninsula Borough and the City of Kenai. He felt this is a bad precedent not only in terms of zoning but also in terms of cleaning up the lot. Mr. Kashi explained a few photos that he and his client took of the subject gravel pit property. He showed photos of Quality Asphalt's pit which is nearby and compared it to a photo of the subject parcel. They are trying to do the right thing and felt that if it is shut down then it won't happen. There will only be the remnant of the hole there and the property not reclaimed.

Another reason those lots are not appropriate is that they are not supposed to be under the ordinance surrounded by incompatible uses. Mr. Kashi stated that A-1 Enterprises and three other gravel pits are next to them in the area. His client has two-thirds of the property filled and questioned why everyone was beating on his client when they should be looking at Quality Asphalt's pit or the other ones in the area. He stated his client is trying to clean up the property.

One last thing would be that it would be ideal if they would have more operators who comply with DEC. Mr. Kashi referred to November 7, 2014 letter which talks about his client's excellent record as an operator in terms of avoiding environmental operations and cleaning it up. He asked who they want there and who do they expect to pay for it; do they want to leave it as it is or give them a chance to clean it up. Do they want to have a gerrymander with fingers all over the place that sets a bad precedent or otherwise. Do they want to have a place for the Borough, the City of Kenai and DOT to have a place to dump their materials? Those are the questions that have to be asked. He sympathizes with the landowners who live there and agreed he would not want a gravel pit in his backyard. Mr. Kashi referred to the Robinson Loop Rd gravel pit that has been reclaimed and was now a horse ranch. He stated his client is trying to do a nice job.

Mr. Kashi stated that this was not the way to make things work. It is not the way zoning works. He believes in zoning and has tried to do that clear back when he was Borough attorney but this isn't the way to do it. Mr. Kashi believes in environmental stuff but there has to be a way to pay for it. It doesn't happen magically.

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

11. Kristin Webber, 46724 Gadwall Ave.

Ms. Webber stated that the gravel pit is almost directly behind her house. When they bought their house about four years ago, they were told that it was an illegal gravel pit and it was being filled. She stated it is even loud when the pit is being filled. Her preference would be that they just leave it the way it is but she definitely doesn't want them to fill it by mining it with a rock crusher. Ms. Webber has a two year old and hopefully one on the way soon. She thought everyone in the area assumed the gravel pit was closed.

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

12. Crystal Penrod, 36860 Virginia Dr.

Ms. Penrod stated that she and her husband are the sole organizers behind this zoning petition. There has been a lot of testimony regarding the gravel pit of which she apologized because they weren't at the meeting for the gravel pit issue but was at the meeting for the local zoning issue. She stated that gravel pits are common in this area but that was for another day.

Ms. Penrod stated they are at this meeting to talk about the zoning of their neighborhood. She and her husband have lived in their house since 1995-96 and subsequently bought another piece of property with a starter house on it for their son. They have ties to this neighborhood and aren't going anywhere. There are a lot of families in the area that are also in this same situation. These are retirement homes and people who are permanent in the area. The river is behind them and it is

beautiful. All the lots in the area in the last ten years have either sold and have been built on or are in the process of that. Ms. Penrod stated that the borough only owns property in this area because of people who did not pay their taxes. She did say that there are a few vacant lots.

Ms. Penrod stated that for the most part this is a residential area. The Fairfield neighborhood has joined in on their neighborhood as well as the older Ravenwood Subdivision on the other side of Virginia. They are asking the commission and what they are trying to accomplish is to get this area designated as a R1 Residential area. What that means is that they have gone through the entire neighborhoods extensively. She felt that not one single home is out of the R1 zoning restriction which is because they have good covenants. When the property was developed all the landowners signed on to those covenants.

Ms. Penrod felt that they did their best in circulating this petition to contact every homeowner in the area. They did not contact Mr. Cude because they felt like that he would not be in agreement with them. She stated that Mr. Cude made it very clear that he doesn't like who they are and what they stand for however it is not their mission to shut him down or cause him any harm. They wish him no ill will. They are good people. Her husband serves in the US military and is often deployed. Ms. Penrod was a stay at home mom until recently and stated that they want to live here extensively and wants to remain here. She requested the commission's help to protect their property so that nothing in the future can come in such as a used car lot, cement plant or anything industrial that would cause harm to the neighborhood. They are trying to protect their property values, wanting to protect it for their children and that is what they are asking.

Ms. Penrod stated that Mr. Wall helped select the lots that were to be included in the zone. He guided them through the whole process so this has all been done through the Borough. This is a three petition process and Petition 2 will be heard at the December PC meeting. She hoped to get enough signatures on the third petition so that could move forward. Ms. Penrod stated that they eventually want the whole area to be zoned as R1 Residential as it should be since they are all family homes and all families with children.

Ms. Penrod showed the original plat from the 1970's and stated that Mr. William Gibbs was the homesteader of the original plat. The original plat was quite different than what has been in the packets. She stated he intended it to be a neighborhood and did not intend it to be industrial. There have been several more housing lots that were developed in that 40+ acre field which it was intended that the lots be purchased to put homes on it, not businesses, not industrial, and no commercial. The original plat shows that it was to be developed as a neighborhood. They are not asking the commission to put anyone out of business and not talking about any other outside issues. No one has to pay for it and there is no money involved.

Ms. Penrod reiterated that they are asking them to help protect their neighborhood. To protect it so that their children can ride their bikes in the street without them being run over by dump trucks so that they can know whatever happens, that their homes will be their homes until they decide they don't want to do that anymore. She didn't think that was unrealistic to ask because this area is a residential area and because it is quite obviously that it is a neighborhood. The neighborhood has come together and they have endured some scrutiny by proposing the local option zone. They knew that there would be people that would be upset with them. Ms. Penrod commented that they don't have an attorney but they do have a homeowners association that they are building. They are neighborhood of people and they just want to know that they can protect their homes and that they can live there without expecting heavy equipment or industrial activity to interrupt their lives. She would appreciate it if the commission would pass the LOZ petition as is so that they can continue to move forward.

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

Commissioner Isham stated that it appeared that Mr. Cude's three lots were included in the LOZ without his knowledge. Ms. Penrod replied that there has to be contiguous properties and have to be in the same area. She stated that Mr. Wall told them what they needed in order to get the zoning petition moving forward. It is based on a math formula. You have to do the mathematical mean and Mr. Wall worked with them on it and he puts the property values in. It is all about acreage and position on the map. She stated that the Borough properties are included in the R1 zone but are counted against them because the borough remains neutral to

the local option zone. They have to have 75% of the signatures which are a lot but can't count on the Borough as a signature. She deferred to Mr. Wall who could tell them the formula that is used.

Commissioner Foster asked if she supported staff's recommendation to postpone. Ms. Penrod replied that they do not support postponement. They all want this to move forward. It has been proven that they obtained the signatures and they would like to move forward with it. There are two other petitions where the second petition has already been turned in. They want to go ahead and establish these neighborhoods. She stated there is an appeal process that is ongoing and if Mr. Cude's appeal is granted then the landowners can also appeal which means it could go on for months.

There being no further questions, the public hearing continued.

13. Joe Kashi

Mr. Kashi supplemented the previous submitted information with additional photos and information. He stated that they have enough lots to have petitioned to have an industrial local option zone but they haven't done that.

Ms. Penrod stated that they could not have done that because they would have had to have 75% of the owners sign the petition.

There being no further questions, 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 Isham to continue the public hearing until brought back by staff.

Commissioner Carluccio asked why staff requested postponement. Mr. Wall replied that there were a number of issues on it that seemed complex that staff hoped would get resolved. One issue being the gravel pit appeal and the other issue is the second local option zone that will be heard in December. He also stated that the Legal Department requested that those complex details be resolved prior to moving the LOZ forward.

Chairman Bryson asked if it was priority of petitions. Mr. Wall replied that wasn't specifically addressed with Legal. It is kind of a messy situation with all of those things going on at the same time.

Commissioner Holsten asked if the Commission can opt to adjust the zone since the landowners have met the standards for a local option zone. Mr. Wall replied yes, that was correct. The landowners have met the petition requirements to get it before the Planning Commission and ultimately the Assembly. He stated that the Ordinance requires that the Planning Commission make a recommendation to the Assembly to approve it, disapprove it or modify it. The Planning Commission has a lot of leeway with that modification provision to change the boundaries and make that recommendation to the Assembly.

Commissioner Holsten understood that they can remove Lots C, D & E from the LOZ and then the appeal on the gravel pit would no longer be pertinent to this issue. Mr. Wall replied that was correct.

Commissioner Holsten stated she was bothered by delaying this petition unless she hears more convincing arguments. She understood that if the appeal is granted to Mr. Cude then these three lots would not qualify and his action will take precedence over this zoning request. Furthermore, if they take those three lots out of the zone then it doesn't affect him if the zoning is passed. Mr. Wall replied that was correct.

Commissioner Carluccio stated that in the past they have told landowners that there was local option zoning that could be done before they had to worry about additional gravel pits coming in. She thought that they were doing a disservice to the landowners who took the time to put together their petition by delaying this action especially that the commission has the ability to remove these three lots if they decided to which would make the delaying action moot. She stated she would not support delaying this petition.

Commissioner Foster agreed with Commissioner Carluccio. He thought the worst thing that could happen is that this goes forward to the Assembly and they send it back to the Commission for further review. He stated he did not support postponement.

Commissioner Isham asked how Lots C, D & E were included in the proposed zone without the landowner's knowledge. Mr. Wall replied that the ordinance has certain requirements as far as 66% of the lots need to be of average size and it defines what average is. The information regarding that was included in the PC Packet. Also he included a map which shows the acreage of each lot within the LOZ and also showed the calculation of what the average lot size is. In order to qualify as average size, it needs to be within 50% of the arithmetic mean which puts the low side down to .9 acres and the high side to 2.7 acres. The only parcel that does not qualify is the large parcel of 45.97 acres. All of the other lots fit within that average lot size.

Commissioner Isham asked how Lots C, D & E were included in the LOZ. Mr. Wall replied that the ordinance states that the organizer of the petition would coordinate with staff. It also states that staff was to help determine the appropriate boundary which he felt wasn't done in this case. He overlooked that one sentence but it does meet the letter of the requirements. Once that is done, he generates the petition based on the Assessor's records of the ownership and provides that to the organizer of the petition. It is at that time that the organizer obtains the signatures that are required. Mr. Wall stated that once the petition is received by staff, a public notice is sent to the landowners informing them of the LOZ petition. He stated that it was up to the petition organizer to contact the property owners. It sounded like he focused on the people that they felt they could get the signatures from because of the time constraints. Commissioner Isham thought the process wasn't done at 100% because Mr. Cude wasn't notified. Mr. Wall replied that everything in the Ordinance was followed. He stated that they did receive a public notice with all the property owners that this hearing would be taking place.

Commissioner Martin stated he was in favor of postponement because Lots C, D, & E were included in the Local Option Zone. He also stated that he would be in favor of not postponing if there was a way to amend the zone to exclude those three lots.

Commissioner Holsten stated that the materials say that the Borough is neutral on this issue. In fact, for every one of those lots that the Borough has that they say they are neutral on, then the group had to get three other landowners that they supported the zone. Mr. Wall replied yes, that was correct. It is really a not vote when the Borough says they are neutral on this matter. He agreed that it did require additional signatures from the petitioner. Commissioner Holsten asked how many Borough lots there were. Mr. Wall replied that there were a total of 8 lots. Commissioner Holsten asked if the petitioner had to get 24 additional signatures because of a neutral vote of the Borough. Mr. Wall replied that there were only 3 lots on this petition. When he met with the organizer he realized that it would almost be impossible to get signatures so at that point he removed some of the Borough lots because they recognized that they were going to be no votes.

Commissioner Holsten felt that Lots C, D & E should be removed from this LOZ and move this petition forward.

Commissioner Isham agreed with Commissioner Martin and believed that postponement would be best unless the three lots were removed.

Commissioner Carluccio asked if the amendment can be done on the postponement because it would be voting on the postponement before voting on taking the lots out. Chairman Bryson replied that the postponement motion would need to be voted down. Commissioner Carluccio asked if the motion to postpone was voted down and the lots were not removed then could another motion to postpone be brought forward. Commissioner Foster stated that a Reconsideration motion could be made by the prevailing side.

Chairman Bryson understood there is not a motion to put this on the table and determined that the postponement motion was out of order so that postponement motion was dropped.

Commissioner Carluccio asked if there was a motion since the postponement motion was out of order. Chairman Bryson replied that a motion needs to be put on the table for discussion.

MOTION: Commissioner Holsten moved, seconded by Commissioner Ecklund to approve the Diamond Willow – Fairfield Single Family Residential (R-1) Local Option Zoning District with the exclusion of Lots C, D, and E.

Commissioner Carluccio asked if the petition would be invalid if those three lots were removed. Mr. Wall replied that the petition followed all the processes of the ordinance and that gets it in front of the Commission.

Now that the petition is in front of the Commission those initial petition requirements are not relevant. It is just the process of getting it in front of the Commission. The boundaries can be changed and adjusted now that the Commission is reviewing it.

Commissioner Ruffner asked if a few larger lots can be included in the LOZ. Mr. Wall replied that the ordinance requires 66% to be of average size.

Commissioner Ruffner asked if Lots C, D, & E could be brought back into the Local Option Zone once they are removed. Mr. Wall replied that there is another petition to the south of that which will be heard in December. These three parcels would be contiguous to that petition so those three lots could be added to the second petition. Commissioner Ruffner understood that those three lots could be included from the southern portion of the property.

Commissioner Foster asked why the Borough was taking a neutral stand on the development of this Local Option Zone petition. Mr. Best replied that it wasn't necessarily a neutral stand but was basically a no vote. They have the same situation when they do the utility special assessment districts and the road improvement districts where the policy is that they don't sign the petition. He stated that it would be better to not be included in the petition area if they really want to be neutral. To be neutral they should really be neutral and it shouldn't affect the public that wants to do these things. Mr. Best stated that staff is really looking at where they feel as staff this is a good thing. He stated it is kind of contrary to what staff would like to see which would be to add those lots in the LOZ. This is the first petition that wasn't 100%. The ones brought forward before were 100%. These are Borough programs so he felt that the Borough should participate.

Commissioner Ruffner was leaning towards a no vote because he doesn't agree with pulling the three lots out of the LOZ. If this was the petition the landowners put forward and it is what they requested then it needs to be acted upon. This is the tool that the Borough has given them to enact zoning.

Commissioner Foster stated that Ms. Penrod stated that the reason was to protect their property values for any remaining development around there and they are not trying to stop what is currently there so he supported the motion.

Commissioner Carluccio agreed with Commissioner Foster. These three lots could be added to the LOZ to the south which is adjacent to this one if the petitioners want them included. She thought a good percentage of what they want was going to happen with this so she thought they should give them this. They may need to readdress those three lots later on and it will also give the opportunity for the appeal process to go through. She thought this petition should not be held up at this time.

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

VOTE: The motion passed by majority consent.

BRYSON NO	CARLUCCIO YES	COLLINS YES	ECKLUND YES	FOSTER YES	HOLSTEN YES	ISHAM YES
LOCKWOOD NO	MARTIN YES	RUFFNER YES	VENUTI NO	WHITNEY YES		9 YES 3 NO

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 Ruffner reported that the Plat Committee reviewed and conditionally approved 1 preliminary plat.

AGENDA ITEM K. OTHER/NEW BUSINESS

AGENDA ITEM L. ASSEMBLY COMMENTS - None