



# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

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**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:** June 15, 2016

**SUBJECT:** Ordinance 2016-20; Authorizing a Negotiated Lease at Less Than Fair Market Value with the SAH Soccer, Inc. dba Soccer Association of Homer of Approximately 3.5 Acres of Borough Land Adjacent to the Homer Middle School for the Development, Management and Maintenance of a Year-Round Indoor Field AKA "South Peninsula Athletic and Recreation Center"

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled June 13, 2016 meeting.

A motion passed by unanimous consent to recommend approval of Ordinance 2016-20, Authorizing a Negotiated Lease at Less Than Fair Market Value with the City of Homer for approximately 3.5 Acres of Borough Land Adjacent to the Homer Middle School for the Development, Management and Maintenance of a Year-Round Indoor Field AKA "South Peninsula Athletic and Recreation Center".

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

*WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of June 13, 2016, recommended approval by unanimous consent.*

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

AGENDA ITEM F. PUBLIC HEARINGS

5. Ordinance 2016-20; Authorizing a Negotiated Lease at Less Than Fair Market Value with SAH Soccer, Inc. dba Soccer Association of Homer of Approximately 3.5 Acres of Borough Land Adjacent to the Homer Middle School for the Development, Management and Maintenance of a Year-Round Indoor Field AKA "South Peninsula Athletic and Recreation Center

Memorandum given by Max Best

PC Meeting: 6/13/16

The Kenai Peninsula Borough and Kenai Peninsula Borough School District were approached by the Soccer Association of Homer with an inquiry regarding allowing for the development of a year-round indoor field on land owned by the borough and partially integrated in the Homer Middle School campus. The resulting stakeholder process led to the proposal contained in the proposed ordinance. This proposal involves platting a self-contained tract of land embracing an old softball field and leasing that parcel to the Soccer Association of Homer to implement their plan. The lease additionally provides permission for common use of the ingress, egress and parking area which serves the school and school grounds. The proposed term is 20 years with a 10-year renewal option at rate of \$1.00 per year.

The borough's leasing format approves specified use through approval of a development plan, therefore the plan documents referenced in the lease compose the scope of the uses that would be authorized by the lease, along with a provision that allows for development plans to be modified over time consistent with the nature of the original lease.

This lease will benefit the school district by making available an indoor recreational facility to the school district for school purposes during designated hours for a negotiated fee. Promoting wellness in the community is consistent with the Kenai Peninsula Hospital service area purposes. Upon termination of the lease valuable site improvements will remain on the parcel.

Consideration of this ordinance is appreciated.

END OF STAFF REPORT

**AMENDMENT MEMORANDUM**

Amendment reviewed by Max Best

PC Meeting: 6/13/16

The proposed ordinance would lease a public asset for \$1.00/year to a private organization for recreational purposes. The borough does not have recreational powers to support a gift of the use of its public land for a purpose that the Kenai Peninsula Borough does not have powers to pursue. The City of Homer has recreational powers and a vision for an indoor recreational facility as reflected in city planning documents. KPB 17.10.100 (D) authorizes the KPB to enter a non-competitively bid cooperative lease with a city. The lease will contain provisions that the facility be open and available to the general public and the KPBSD will be allowed a certain amount of usage to further ensure the borough's land is being used for public purposes. The administration respectfully requests the assembly approve the following amendments to this ordinance.

- Amend the title by deleting the language in ~~bold and strike through~~ and adding the language in **bold and underline** below:

AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE AT LESS THAN FAIR MARKET VALUE WITH **THE CITY OF HOMER SAH SOCCER, INC. dba SOCCER ASSOCIATION OF HOMER** OF APPROXIMATELY 3.5 ACRES OF BOROUGH LAND ADJACENT TO THE HOMER MIDDLE SCHOOL FOR THE DEVELOPMENT, MANAGEMENT AND MAINTENANCE OF A YEAR-ROUND INDOOR FIELD AKA "SOUTH PENINSULA ATHLETIC AND RECREATION CENTER"

- Amend the second whereas clause by adding the language in **bold and underline** below:

**WHEREAS**, the City of Homer commissioned the 2015 Parks, Art, Recreation and Culture (PARC) Needs Assessment which identified **as the most significant priority** space needs for year-round indoor **recreational** activities, including those within the scope of the SPARC indoor field; and

- Add a new whereas clause after the fifth whereas as follows:

**WHEREAS, KPB 17.10.100(D) authorizes a cooperative lease with a city; and**

- Add the following three new whereas clauses before the last three whereas clauses as follows:

**WHEREAS, the Kenai Peninsula Borough comprehensive plan Goal 4.10 Objective 1 is to encourage coordination between the borough and cities which provide recreational facilities; and**

**WHEREAS, the City of Homer has recreational powers and the Kenai Peninsula Borough does not have recreational powers within the City of Homer; and**

**WHEREAS, the indoor recreational facility would be located within the South Kenai Peninsula Hospital Service Area which has wellness program powers; and**

- Amend the second to last whereas clause by adding the language in **bold and underline** below:

WHEREAS, the Kenai Peninsula Borough Board of Education at its regularly scheduled meeting of June 6, 2016 recommended **a lease for the development of an indoor soccer facility;** and

- Amend the first paragraph of Section 1 by deleting the language in **~~bold and stricken through~~** and adding the language in **bold and underline** below:

SECTION 1. Pursuant to KPB 17 .10.100 (I) and 17 .10.120 (D), the Assembly finds that leasing approximately 3.5 acres of borough land more particularly described in Section 2 below at less than fair market value to the ~~Soccer Association of Homer~~ **City of Homer** for the development, management, and maintenance of an indoor field is in the best interest of the borough based on the following findings of fact:

- Amend the Section 1 by adding the following findings in **bold and underline** below:

**The City of Homer has recreational powers and a vision for indoor recreational facilities while the borough does not have recreational powers within the city limits of Homer.**

**A less than fair market value lease to the City of Homer supports the city having funds available to support the development of the indoor recreational facility.**

**The City of Homer has demonstrated significant support for this project through adoption of plans supporting indoor recreation facilities and appropriating funds for the indoor recreation facility.**

- Amend Section 3 by deleting the language in **~~bold and stricken through~~** and adding the language in **bold and underline** below:

SECTION 3. That the Assembly makes an exception to KPB 17.10.090 requiring classification prior to disposal. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
  - A. KPB 17 .10.080(A) states classification of property is for review, plan implementation and management purposes. The classification system designates the most appropriate uses for land and thereby guides borough management of such lands

and implementation actions to provide for the identified uses. Classification immediately prior to disposal of borough land that has been specified for a certain use does not accomplish these purposes.

- B. The land use will be restricted by the terms of the lease.
  - C. The proposed lease will facilitate a land use consistent with the prior field uses.
  - D. The property is zoned by the City of Homer such that uses must conform to that zoning and applicable conditional use permitting processes.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
- A. This ordinance authorizes subject land to be leased to the ~~Soccer Association of Homer~~ **City of Homer** on a non-competitive basis, at other than market value, pursuant to KPB 17.10.100(1) and 17.10.120(D). Classification will be redundant and not serve a useful purpose based on the findings of No. 1 above.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
- A. The use of the subject land for indoor field purposes will benefit the public **health and welfare by providing indoor recreational facilities** and is consistent with prior field uses.
  - B. The land is suitable for the proposed use and is compatible with adjacent land uses, subject also to city of Homer Zoning Codes.

➤ Amend Section 4 by adding the language in **bold and underline** below:

SECTION 4. That the Assembly additionally makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

- 1. Special circumstances or conditions exist.
  - A. The purpose of advertising, pursuant to KPB 17.10.110, is to notify the public of an opportunity to purchase or lease KPB land. However, because the authorization of this ordinance is for a sole source lease, advertising will not serve a useful purpose.
- 2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
  - A. Making an exception to advertising, pursuant to KPB 17.10.110, will not affect any substantial property right as this is public land with previous seasonal field uses **and the conveyance is to a public entity to continue recreational use of the land.**
- 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
  - A. Making an exception to advertising, pursuant to KPB 17.10.110, will not be detrimental or injurious to any public or private parties as leasing the subject land is suited for the development of a year-round field and is compatible with the

surrounding land use and supported by other city of Homer planning and zoning processes.

- Amend Section 5 by deleting the language in **bold and stricken through** and adding the language in **bold and underline** below:

SECTION 5. Based on the foregoing, after the final plat of the subject property is recorded, the mayor is hereby authorized, pursuant to KPB 17.10.100 (I) and 17.10.120 (D) to lease the land described in Section 2 above to **the City of Homer SAH Soccer, Inc. dba Soccer Association of Homer** for a term of 20 years with a 10-year renewal option at \$ I/year. The Soccer Association of Homer shall be responsible for all surveying and platting costs. The authorization is for lease solely to the **Soccer Association of Homer and it may not assign any rights to negotiate or enter an agreement for lease with any other persons or entity without obtaining prior approval in accordance with the lease City of Homer which is authorized to sublease to the Soccer Association of Hoemr to establish an indoor soccer and recreational facility on the parcel.**

- Amend Section 7 by deleting the language in **bold and stricken through** and adding the language in **bold and underline** below:

SECTION 7. That the **Soccer Association of Homer City of Homer** shall have 365 days to execute the lease document from the effective date of this ordinance.

END OF AMENDMENT MEMORANDUM

Chairman Martin opened the meeting for public comment.

1. Daniel Zatz

Mr. Zatz was with the Homer Soccer Association which is a 501(C3) Nonprofit Organization. As the climate has been changing in Homer, they have found over the last few years that all of the school fields that used to be frozen, where kids used to play, have turned to mud. The school district closes all of them when it turns to mud, so there is no place for the kids to play all winter. There are also very poor walking areas in Homer. There is ice in the winter which is creating broken bones for senior citizens so the Soccer Association decided to take it upon themselves to build a 75 foot wide by 160 foot long building to create an indoor space so that they can solve some of these problems in Homer. He stated that with their board, they have raised \$130,000 to date with a match of \$189,000 from the City of Homer and \$20,000 from City of Kachemak. There is enough money to purchase the building at this point. They are prepared to start doing the dirt work the beginning of August and they want to raise the building in September to have the first playable games in there at the end of September. It is very much a privately funded solution to some problems that their community has.

Mr. Zatz stated that some of the issues that have come up in the last few years has been the \$1 a year lease. He stated that it would be great if this ordinance was approved to go to the City of Homer. Mr. Zatz stated that after the 20 year lease is over and they are prepared to give back what is the sum of more than a half million dollar building to the Borough which essentially they would have been paying over \$2,000 per month rent for the space. He thought that would argue favorably for the dollar year lease because it was much more than that.

Mr. Zatz felt that the kids in Homer were really suffering from a lack of play space which affects people physically and mentally. Also the seniors would have a place to walk around inside during the winter. This is a healthcare issue and he felt they are solving that issue.

Mr. Zatz asked for the Commission's support. The things that they expect to happen in the facility would be soccer, pickle ball, volleyball, and a track around the outside for walking. It will be opened up for a play space for toddlers. In general, they just want this to be a good addition to the community. He was available for questions.

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

Commissioner Ruffner congratulated him for raising the money for a do good cause in the current fiscal environment. He asked what the plan was for admission fees and belonging to the Association. Mr. Zatz stated that they would basically be covering their operating costs. There is no note to pay off for this building so it would be just operational. He stated they were estimating that they would need to maintain around \$15 an hour to keep it open for the 8-10 hours that they are open. It would probably end up being \$3 per person at a rough average of five people per person. They hoped that there would be many more people at a time and that they could possibly keep the price below that. Commissioner Ruffner understood that they would have a \$3 per person charge for some period of time. Mr. Zatz replied that was correct.

Commissioner Holsten asked if their proposed fees included the maintenance of the building. Mr. Zatz replied yes, it does. This is a fabric covered building with the steel structure having a 50 year warranty and the covering on the outside having a 20 year warranty. They have money set aside for maintenance and they are not anticipating huge costs. Commissioner Holsten stated that she likes the whole idea of multi-purpose of this project and congratulated him. She asked what the City of Homer's fiscal responsibility would be to the physical plant. Mr. Zatz replied that the City of Homer doesn't have a fiscal responsibility to the building. They have approved \$189,000 matching funds that go through the Homer Foundation.

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

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

**MOTION:** Commissioner Venuti moved, seconded by Commissioner Lockwood to recommend approval of Ordinance 2016-20; Authorizing a Negotiated Lease at Less Than Fair Market Value with the City of Homer for approximately 3.5 Acres of Borough Land Adjacent to the Homer Middle School for the Development, Management and Maintenance of a Year-Round Indoor Field AKA "South Peninsula Athletic and Recreation Center".

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

CARLUCCIO YES	COLLINS YES	ECKLUND ABSENT	ERNST YES	FOSTER YES	GLENDENING YES	HOLSTEN YES
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	12 YES 1 ABSENT

### Overview

The State has received approximately 30 applications for marijuana facilities within the Borough. The first nine is what is before the Commission at this meeting. These are the applications that the Marijuana Control Board staff has determined are complete applications. The Marijuana Control Board met last week and approved many of these applications. The approval is pending waiting for the Borough's non-objection of the applications. They realize that the Commission and Assembly have the ability to place conditions on these applications. In the future some of these applications will take place before the Marijuana Control Board acts on them because they only meet five times per year. Some of these applications will come before the Commission before the Marijuana Control Board acts on it. It depends on how the Borough's calendar matches with their calendar. Once the Marijuana Control Board staff determines an application is complete the Borough has 60 days to comment on it which generally means there is a pretty tight schedule which is why things won't quite line up the same from one application to another.

### AGENDA ITEM F. PUBLIC HEARING

6a. State application for a marijuana establishment license; Kasilof Area

Staff Report given by Bruce Wall

PC MEETING: June 13, 2016