



# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

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

## **MEMORANDUM**

**TO:** Kelly Cooper, Assembly President  
Kenai Peninsula Borough Assembly Members

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

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

**DATE:** April 27, 2017

**SUBJECT:** Ordinance 2016-19-36; An ordinance authorizing the purchase of a 4.3 acre drainage easement at Karluk Avenue and appropriating \$60,000 from the Land Trust Fund for the Acquisition.

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled April 24, 2017 meeting.

A motion failed by majority consent to recommend approval of Ordinance 2016-19-36; An ordinance authorizing the purchase of a 4.3 acre drainage easement at Karluk Avenue and appropriating \$60,000 from the Land Trust Fund for the Acquisition. (*Carluccio, No; Ecklund, No; Ernst, No; Foster, Absent; Glendening, No; Isham, No; Lockwood, No; Martin, No; Ruffner, No; Venuti, Yes; Whitney, No*)

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

*WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of April 24, 2017, recommended denial by majority consent.*

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

AGENDA ITEM F. PUBLIC HEARINGS

2. Ordinance 2016-19-36; An ordinance authorizing the purchase of a 4.3 acre drainage easement at Karluk Avenue and appropriating \$60,000 from the Land Trust Fund for the Acquisition.

Memorandum & Staff Report given by Marcus Mueller

PC Meeting: 4/24/17

During the fall flooding in 2013 it became evident that the Karluk Avenue Road ditch system had no outlet except a neighboring property immediately adjacent to the lowest extent of the ditch. The administration communicated with the owners, Paula and Timothy Keohane, who were gracious in permitting use of the property under those circumstances. The location became known as the "Karluk Basin", which was a location that emergency operations were conducted to install a pipe under Kalifornsky Beach ("K-Beach") Road thereby making it possible to mechanically pump water to the Cook Inlet once the Keohane property reached its estimated 3 million gallon capacity to store water. As the water management function on this property was demonstrated to be a low cost alternative to other means of road ditch extension, the acquisition of a drainage easement was identified as being in the long term interests of the borough.

The functions of this drainage easement would support the Roads Service Area with normal ditch function as well as emergency management functions of the Borough as a relief to high water if such an event were to ever occur again.

In 2014 a proposal was brought forward under Ordinance 2014-32 which proposed acquiring an easement by means of a land exchange. That ordinance was defeated. The administration has continued discussions with the property owner and has had the proposed easement independently appraised. The appraisal came in at \$51,000. The property owner is willing to accept \$60,000 for the easement. While this exceeds the appraised value it would cost the borough more than this purchase price to pursue other remedies to address the flooding such as extending the ditch across K-Beach Road so the water can flow into Cook Inlet.

This ordinance would authorize the mayor to acquire the 4.3 acre drainage easement on Karluk Avenue for \$60,000 and would appropriate the funds from the Land Trust Fund for this acquisition. Consideration of this ordinance is appreciated.

END OF MEMORANDUM & STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Dan Sterchi, Mile 12.5, Kalifornsky Beach Road

Mr. Sterchi urged the commission to vote this down and send it back to the Mayor. The work that the borough and administration has done with good intentions has a whole bunch of unintended consequences that nobody is saying anything about. He stated that DOT was looking for a permanent solution on this, not just a pipe and a pump draining the water down to the bluff. They need to work for a permanent solution.

Mr. Sterchi stated that money was tight and they don't have \$60,000 to give to the landowners. He stressed that they need to work on a permanent solution so reiterated that this needs to be sent back to administration..

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

Commissioner Glendening asked if he knew what DOT's solution would be. Mr. Sterchi replied that DOT says that they can't go more than 750 feet without making a cross culvert and getting it to the bluff. All they are worried about was getting off their right-of-way. It was all private property along there except for two or three parcels. There will have to be some major improvements on a couple of those parcels. They already went

through this on the High Water Task Force last year and got shot down on that deal because of the budget. He stated they will have to plan for a permanent solution.

Commissioner Ruffner asked what the harm was in having a pond store the water. Mr. Sterchi replied that DOT doesn't like that the pond was right next to their right-of-way. They can't have that big pond stacking up this water and rotting out their road. He stated that this was already old history.

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

2. Toby Burke, 51135 Buoy Ave, Kenai

Mr. Burke's property was not too far from the Keohane property. He agreed with Mr. Sterchi's testimony. This action was very similar to the action that was proposed to the Assembly in 2014 and voted on in 2015. Not too much has changed in that many local residents believed that it was not a very good idea back in 2015. They still believe it is a bad idea in 2017.

Mr. Burke stated that back in 2015 when a similar ordinance was defeated; he put down a list of nine reasons why this shouldn't go forward with that ordinance. He felt those reasons were still valid.

Mr. Burke stated that everyone knew there was an emergency action when the water was put into the Keohane basin. Eventually, DOT allowed them to burrow a hole, place a temporary pipe, place a on the western side and pumped to the bluff. Essentially, that would have to happen again and residents hoped that they would not have to do that again. They hoped that the Borough was going to make a permanent solution. He stated that DOT that the temporary pipe that was jacked underneath was a temporary solution.

Mr. Burke felt that if they were going to go ahead with this proposed ordinance then it begs the question about the other two parts to this that happened in 2013 of utilizing the pipe and obtaining permission from DOT to maintain that pipe. There are a lot of things that are still unresolved. All the stuff when it was originally proposed was saying that this was a one-time deal and they would come up with a permanent solution. He stated that here they were four years later and they still haven't moved past this.

Mr. Burke reiterated that he has nine reasons why they shouldn't do this which are still valid. He felt these reasons played a part in defeating the previous ordinance when he gave these back in 2015.

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

Commissioner Ruffner asked if one of the reasons was that they keep all the water ponded on the east side of the road without a plan to get it to the Inlet. Mr. Burke thought that local residents were thinking that ponding it was a non-solution and in addition to his nine reasons. He thought that basin was already compromised when they are in that emergency situation where they have elevated groundwater.

Commissioner Carluccio asked permission for Mr. Burke to read his reasons for denial into the record. Mr. Burke read his following reasons for denial into the record.

Reasons for Denial

1. The approximately 3½ million gallon capacity of the depression is, hydrologically speaking, a relative thimble. It's relatively small capacity is quickly reached and exceeded as demonstrated in the Fall of 2013.
2. During flood events the basin will already be significantly filled by elevated ground water before storm water runoff was diverted to it, as it was in 2013 thus the basin will already be significantly compromised at the time its entire, yet very modest capacity is most needed.

3. Diverting millions of gallons of storm water runoff into the basin will only exacerbate severe high ground water problems in the surrounding neighborhood as the enormous hydraulic pressures of the heavy body of water pushes water outward in all directions toward neighboring residential properties, septic systems and DOT's K-Beach Road bed which will already saturated to capacity.
4. Has the proposed storm water runoff retention basin been properly engineered? No. Is the storm water runoff retention basin to be lined with an impermeable membrane to stop infiltration from further elevating local ground water levels and damaging neighboring properties? No. Are neighboring property owners aware of the risks the un-engineered, un-lined storm water runoff retention basin presents to them and that it effectively serves to leach its load into surrounding sediments further increasing already critically high ground water levels in nearby residential areas and potentially accelerating erosion along the densely populated bluff face? No.
5. In 2013, the Borough administration justified the use of the basin as an emergency, stop-gap measure and vowed to seek a permanent drainage solution once the emergency passed. Does this ordinance not renege on that promise made to local residents and DOT? Yes. Does this not merely "kick the can down the road" and put off the day of reckoning by continuing to rely on this most unreliable and destructive retain, leach, and pump storm water runoff management strategy making the expediency permanent? Yes.
6. Are adjacent bluff property owners likely to continue to allow the Borough to pump storm water runoff across their properties when the basin cannot leach its load fast enough and is overwhelmed as it was in 2013? Maybe. And if they do, will they not seek a lucrative compensation for rendering a perceived public service during an emergency just as the Keohanes are now? Maybe. Does this set a fiscally, immorally, unsound precedent? Definitely.
7. Kenai Peninsula Borough municipal code 14.06.170 explicitly defines road construction standards, in regard to drainage and culverts. *"Roads shall be constructed to prevent ponding of runoff waters in roadside ditches. Drainage ditches shall be constructed such that runoff waters shall be conveyed to natural drainage courses, ditches or waterways, or other man-made drainage courses. Outfalls shall be constructed to prevent excessive siltation of riparian habitats, channel erosion, or other damage to public or private property. The RSA board may require an engineering analysis and design for locations susceptible to flooding, siltation or other natural conditions potentially damaging to the right-of-way, adjacent property, or water courses and water bodies.* Accordingly, the Borough administration is deliberately violating its own municipal code (law) 1.) by Intentionally allowing storm water runoff to pond in roadside ditches throughout the entire 2013 K-Beach flood area; 2.) Intentionally preventing the conveyance of storm water runoff to natural or man-made drainage courses and outfalls; and 3.) Intentionally withholding engineering analysis and design, from locations that have historically proven to be susceptible to flooding, consequently causing damage to adjacent property.

Keep in mind that 14.06.170 does not allow for roadside storm water runoff to be conveyed to drainage galleries, leach fields, nor retention ponds for the purpose of percolating storm water runoff into the ground, though it is common practice by the Borough's RSA.

Even though the case could be made, that these are sound and practical engineering practices in certain circumstances, they assuredly are not sound

practices in areas that suffer from recurring high ground water as in the K-Beach area. Employing such engineering structures in hydrologically unsuitable places is not only ineffective but only serves to compound the high ground water problem further. The proposed KPB ordinance intention is to direct roadside storm water runoff to the Keohane basin is in direct violation of 14.06.170 and will expose the Borough to legal challenges with a high potential for incurring substantial legal costs and damages.

8. The Borough administration has assured K-Beach residents they have data indicating that flooding on the magnitude of the 2013 K-Beach flood occurs only once every 30 years which they contend does not justify constructing a K-Beach storm water runoff drainage network. If that is so, then why are they actively seeking a drainage easement on the Keohane property when a flood recurrence is deemed unlikely in the short and long-term? The logic is faulty and inconsistent.
9. The Keohane's basin is situated beside the Karluk Avenue right-of-way (ROW). Storm water runoff conveyed along Karluk Avenue can only with much difficulty go anywhere but the Keohane's basin since it slopes into the borough ROW. The borough did not do this, whoever excavated the basin originally excavated into the borough ROW so the borough can't help that the water can't go down the ROW without it going into the basin. No elevated buffer strip was retained between it and the basin. Mining up to or into the ROW made the excavated basin more prone to flooding. Owners of the parcel assume the liability of the excavated basin which permanently altered the natural topography and drainage of the area.

Chairman Martin asked if there were further comments or questions. Hearing none 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 Ruffner moved, seconded by Commissioner Ecklund to recommend approval of Ordinance 2016-19-36; An ordinance authorizing the purchase of a 4.3 acre drainage easement at Karluk Avenue and appropriating \$60,000 from the Land Trust Fund for the Acquisition.

Commissioner Ruffner asked if anything changed since this was brought before them a few years ago. Mr. Mueller replied that there is a difference between this ordinance and the previous ordinance in that the previous ordinance proposed to acquire this easement by exchange of property. That exchange of property was another layer that was involved then that is not now. In terms of the purpose and effect of the drainage easement nothing has changed on that end.

Commissioner Ecklund asked who owns Kalifornsky Beach Road and that right-of-way. Mr. Mueller replied that Kalifornsky Beach Road was an Alaska DOT highway. Commissioner Ecklund asked if Karluk Ave and the borough ordinance on right-of-ways came into effect after the basin was dug. She asked which came first, Karluk Ave or the basin. Mr. Mueller replied that he did not have that history. He understood that the basin was dug to create K-Beach Road so he presumed it preceded Karluk Ave.

Commissioner Isham stated that it looked like someone wanted some kind of pipe going into the Inlet and asked if the borough has looked at that. Mr. Mueller replied that what was in place now was a six inch HDPE pipe that crosses K-Beach Rd, which was used in 2012-2013 with the mechanical pumping operation, keeping the water contained within a pipe system all the way out to the beach and laid out on the beach at the end of the pipe. In terms of doing an open ditch system, there are so many constraints on that, starting with crossing K-Beach Rd then continuing through a fairly incised ditch, from there to the bluff and not an apparent pathway to carry the water in an open ditch system to the beach itself, nothing exists naturally. Commissioner Isham asked if they have looked at it and if it was not possible. Mr. Mueller replied that they have scratched their heads on it with no traction.

Commissioner Ecklund asked if it was private property where this water just happens or if they put more water into it than naturally happens there back in 2013. Mr. Mueller replied that there were some ditch improvements along Karluk Ave and adjoining streets in 2013 that helped to convey water towards K-Beach Rd. There was also some mechanical pumping within the subdivision that promoted conveyance on K-Beach Rd with the destination being this basin and pumped from there as needed. Commissioner Ecklund asked how many private properties exist between K-Beach and Cook Inlet that a ditch or whatever conveyance would cross. Mr. Mueller replied that there would be about 2-3 properties from K-Beach Rd to the Cook Inlet.

Commissioner Glendening asked if there was a GIS picture that would give them a visual of how the water was to be moved and which properties it would go through and how it was to be dispersed on the beach. He also asked what DOT's insight was on the dewatering the swamp. Mr. Mueller replied that he does not have a schematic showing the pumping configuration at this time but it would be possible to create one. He stated that he does not have any new information regarding DOT's current position on this. They have no additional information since 2013.

Commissioner Glendening asked if they buy it and they have a big pond and they are going to pump the water across private property through a State right-of-way but they don't have a clear vision of how this was going to happen or permission or a view from the State. He stated he was a little hazy on the details. Mr. Mueller replied that the starting point would be that water rolling down Karluk ditch with the destination being at this location regardless of whether it rises to a 3 ½ million gallon fullness or not, it has that Roads Service Area, that road ditch function which was one of the purposes. The second purpose was an emergency management purpose where there was a significant event and additional authorities need to be implemented. It kind of gets into an emergency management realm. This would be an asset in that with the exception of tsunami sirens. Emergency management infrastructure doesn't exist a lot of times.

Commissioner Ecklund asked what the legal ramifications of using somebody's private property to put excess water on. She asked if they would be liable to fix Karluk Ave ditch to keep the ditch water from running onto someone's private property. Mr. Mueller replied that potential liabilities were outside of the scope that he could speak to.

Commissioner Ecklund asked legal staff if they were required to do something when borough maintained roads and right-of-ways was pouring water onto someone's private property. Ms. Montague believed that was the purpose of this proposed arrangement. It was to come to an agreement that they can have water in that basin. As she recalled from a couple of years ago, the owners of the property allowed them to use the basin. She stated they have been working on a plan to basically memorialize that unofficial permission.

Chairman Martin asked if Commissioner Ecklund's liability questions were more to the effects of buying this parcel and if it would raise the water table in the surrounding neighborhoods. Commissioner Ecklund replied no, her question was more with the liability of having a road system and a ditching system that puts excess water onto someone's private property without them doing anything about it.

Commissioner Glendening understood that they would purchase this easement which would allow them to collect the water but he wasn't sure if they had permission to pump it across someone's property right now. Mr. Mueller replied that when they get across K-Beach Rd in that six inch pipe; the pipe system that was run followed the ditch within the right-of-way up towards the Inlet and then the section line easement from there. There was permission secured from a property owner that took the pipe outside of the section line easement because it was a more preferred route for the pipe since it had less gradient to it. There is right-of-way continuous so it was legally feasible to carry water out. Commissioner Glendening asked if DOT would allow them to cross the right-of-way with this volume of water. Mr. Mueller replied that there was a six inch pipe under the road that exists but they don't have any agreement beyond the authorization to install that. There is no maintenance agreement in place.

Commissioner Whitney asked what would happen if DOT told them to shut that pipe down. Mr. Mueller replied that if DOT told them to shut the pipe down then they would have to shut the pipe down.

Commissioner Ruffner understood that they improved the ditches along Karluk Ave which ends at this basin. He asked if they did anything that directed water into that basin. That was just a low spot on this side of the road and was where it ended up. Mr. Mueller replied correct. Commissioner Ruffner stated that he was struggling with this because this happens to a lot of people where the water just winds up in their yard. He struggled with buying one piece of property knowing that this happens to a lot of other people and then not having the outlets. That was not a question except for the fact that they didn't really do anything other than they didn't direct more water in it but just cleaned out the ditches closer to spec along Karluk Ave. Mr. Mueller replied correct.

Commissioner Lockwood understood that DOT's only role in this whole process as to what has to do with K-Beach itself and the State road right-of-ways. He asked if funding from them was involved. Mr. Mueller replied that in this case, DOT's role is that they have a right-of-way that goes between Karluk Ave on one side and Karluk Ave on the other. They have not been any project plan that involves them beyond that six inch pipe. Commissioner Lockwood thought that DOT when they put in K-Beach Rd in the first place that they moved a lot of material so they are part of the problem so why shouldn't they be part of the solution.

Commissioner Venuti asked what the water situation was prior to the installation of the pump. He asked if it was flowing over the road. Mr. Mueller replied that water was not flowing over the road; the road is elevated above the general landscape by several feet. What the situation was before the pump was that there was a landscape that has a very broad and shallow gradient where the typical outflow for water was underground. The water bleeds out of the bank. There was not a defined surface drainage network present in that area so they are left with water lands where the gradient stops going down and starts going up.

Commissioner Venuti understood that this was a cost effective way to deal with it at this time and asked if acquiring this drainage easement wouldn't preclude further development in the future. Mr. Mueller replied that the drainage easement was designed in two parts. One was to secure an easement for that property which was a former gravel pit depression that has some capacity when water rolls in it, it can store some degree of water. The water then reenters the groundwater and can flow out to the Inlet. He stated the other part was that the easement would allow for designed improvements to happen in the future. The idea was that if in the future there was a project that wanted to create more capacity in that basin by further excavation or wanted to create a cross culvert under K-Beach Rd that required additional space beyond the 60 foot right-of-way of Karluk Ave that those types of improvements are specifically allowed within the terms of that easement. What they would get would be what exists today plus the benefit of that space to work to make drainage improvement in the future within this easement footprint.

Commissioner Ecklund stated that this was a hard one even though one of the testifiers mentioned that this was a 30 year flood occurrence. Things typically flood a lot sooner than stated in the hydrology research so she would hate to have this happen again without some problem solving. She felt that it should be DOT that should be doing the problem solving and thought that there was a mechanism that DOT can be encouraged to look at ditching under K-Beach Rd. She hesitates to buy property to store water and then to have to buy property to run water across it or buy other people's property for storing more water in the borough which could be quite costly. With the Borough's help and the public's help from that area, DOT might be encouraged to solve this problem.

Commissioner Ruffner concurred with Commissioner Ecklund. He didn't see enough of the plan and just buying this one depression doesn't feel like the right thing to do. They need a little more plan on how the water will get out of this basin. He stated that DOT's road was acting like a dam in this location so he didn't feel good about buying a hole in the ground that was not going to hold that much water.

Commissioner Glendening stated that he too would be reluctant to support the expenditure of \$60,000 without having a more complete view of how they were going to fulfill this dewatering of a swamp. It happens once every 30 years however it could happen next fall. They need more information. It would be helpful to have exhibits as least to the standard of some of the plats they get showing some of the contours and proposed agreement with the State on how they were going to move water across their right-of-way. He requested more information before approving \$60,000.

Commissioner Whitney asked if this easement was a long term lease. Mr. Mueller replied that it would be a perpetual easement. The property owner would still own the property but the easement would allow the borough to make use of the property for those purposes that are consistent with drainage and water management

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

**VOTE:** The motion **failed** by majority consent.

CARLUCCIO NO	ECKLUND NO	ERNST NO	FOSTER ABSENT	GLENDENING NO	ISHAM NO	LOCKWOOD NO
MARTIN NO	MORGAN NO	RUFFNER NO	VENUTI YES	WHITNEY NO		1 YES 10 NO 1 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

3. Ordinance 2017-08; An ordinance authorizing a Community Trail Management Agreement with Tsalteshi Trail Association.

Memorandum & Staff Report given by Marcus Mueller

PC Meeting: 4/24/17

Tsalteshi Trails Association, Inc. ("TTA") has developed, maintains and manages 25 kilometers of Nordic ski trails on borough land near Skyview High School, south of Soldotna. TTA has applied for a Community Trail Management Agreement ("CMTA") to establish a new multi-use trail system in the landfill buffer across from Central Peninsula Landfill.

Tsalteshi Trails proposes a new southern trail system that would be on the Borough's landfill buffer lands across from the Solid Waste landfill. These are lands that the Borough owns and manages as buffer space to the regional landfill.

A CTMA has been prepared that provides a framework and set of management tools that can be used to implement a Trail Management Plan in balance with other interests of the borough.

The trail facilities proposed are year-round, non-motorized; human-powered which would be groomed in the winter for multiple uses and maintained in the summer also for multiple uses. The Trail Management Plan would allow for "administrative amendment" where modifications are consistent with the general scope authorized by the assembly. "Major amendments" that introduce significant changes in location, use, fees, or regulations, would go before the assembly for additional approval.

This is the first implementation of the Borough's Code for community trail management agreements. They have had this code on the books since 2009. It provides a template form for community trail management agreements that could then be used in other contexts such as Snomads, Caribou Hills Cabin Hoppers, Kachemak Bay Water Trails, US Forest Service, Manitoba Huts, and other types of trail management groups and systems. This template is designed to house a variety of different trail contexts.

The Planning Commission's recommendations will be provided prior to the hearing on this ordinance.

Consideration of this ordinance is appreciated.

END OF MEMORANDUM AND STAFF REPORT

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

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Isham to recommend approval of Ordinance 2017-08, authorizing a Community Trail Management Agreement with Tsalteshi Trails Association,