

Introduced by: Mayor
Date: 08/07/18
Hearing: 09/04/18
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2018-27**

AN ORDINANCE AMENDING KPB 20.60, KPB 5.35, AND KPB 14.31 CREATING A NEW REQUIREMENT THAT PROPERTY OWNERS PAY OFF THE REMAINING BALANCE OR PREPAY ESTIMATED COSTS OF ANY SPECIAL ASSESSMENTS ON PROPERTY TO BE SUBDIVIDED BEFORE A FINAL PLAT IS RECORDED, AND PROVIDING NOTICE OF THE REQUIREMENT

WHEREAS, AS 40.15.020, Plats to Be Acknowledged and Contain Certificate that Taxes and Assessments Are Paid, allows for collection of taxes prior to recordation of a plat; and

WHEREAS, KPB 20.60.030 requires taxes to be paid before a final plat is recorded but does not specifically include special assessments; and

WHEREAS, KPB 5.35.010 provides authority for the borough assembly to assess against private real property and/or the property of the government unit all or a portion of the cost of constructing or improving capital projects for utility special assessment districts; and

WHEREAS, KPB 14.31.010 also provides authority for the borough assembly to assess against the property of a state or federal governmental unit and private property to be benefitted by capital improvements to borough roads all or a portion of the cost of the improvement; and

WHEREAS, pursuant to AS 29.46.080(c) assessments are liens on property and are prior and paramount to all liens except municipal tax liens; and

WHEREAS, when property is subdivided the legal descriptions change which seriously complicates the ability to enforce the lien; and

WHEREAS, when property subject to an assessment lien is subdivided it is difficult to fairly allocate the lien among the newly created parcels; and

WHEREAS, in order to satisfy the lien, all assessments must be paid before the parcel is subdivided; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of August 13, 2018, recommended approval by unanimous consent;

WHEREAS, the Kenai Peninsula Borough Road Service Area Board, at its regular meeting of August 14, 2018, recommended approval by the passage of RSA Resolution 2018-05;

WHEREAS, the borough's best interest would be served by amending these sections of code to require property owners to pay off any remaining balance owed on assessments, or prepay estimated costs if final assessment is not yet determined, before subdividing;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 5.35.070(B) is hereby amended as follows:

5.35.070. Property assessed—Restrictions on formation.

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- B. The legal description of parcels within the proposed district as of the date of the mayor's approval of the petition report under KPB 5.35.105 will establish the parcels for assessment. No subdivision, reversion of acreage, or lot line adjustment will be recognized for USAD assessment purposes after the mayor's approval of the petition report. In the event a property owner seeks to subdivide a benefited parcel after the date of the mayor's approval of the petition report or after costs are assessed under this chapter, the property owner shall be required pay off the remaining balance of the assessment, or prepay estimated costs if the final assessment has not been determined, prior to approval of the final plat pursuant to KPB 20.60.030. If prepayment of the estimated cost of the assessment is required, the subdividing property owner shall be issued a refund for any amount in excess of the prepaid estimated cost over the final assessment. If the petition or project fails for any reason, the borough shall refund the prepayment. If a final plat is not approved pursuant to KPB 20.60.030 and the subdividing property owner requests a refund of the prepayment in writing within 30 days of denial of the final plat, the borough shall refund the prepayment. If the estimated costs are less than the final assessment the subdividing property owner shall be responsible for payment of the difference, due within 30 days of the final assessment.

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SECTION 2. That KPB 5.35.107(A) is hereby amended as follows:

5.35.107. Petition filing; Requirements of petition.

- A. Petition content. The petition, which shall be distributed by the sponsor to all owners of property within the proposed district, shall include: the petition report

approved by the mayor under KPB 5.35.105; a statement notifying the property owners to contact the applicable utility for any additional costs that may be required to utilize the improvement; notification that any costs to connect individual parcels to the main improvement are not included in the assessment; a statement notifying property owners that if they subdivide their property the full balance of the assessment, or prepayment of estimated costs if final assessment has not been determined, must be paid before the final plat may be signed and recorded; and, a signature page with instructions.

SECTION 3. That KPB 5.35.110(E) is hereby amended as follows:

5.35.110. Resolution to form the district and proceed with the improvement.

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E. After public hearing, the assembly may adopt the resolution to form the district and proceed with the improvement. If the assembly approves the district, the resolution shall:

1. describe the improvement and its location;
2. describe the parcels benefitted by the improvement;
3. make a finding that the improvement is necessary and should be made;
4. identify any parcels within the boundaries excluded from the district, which will not receive the benefit of the improvement and will not be subject to the assessment;
5. if the mayor signed the petition on behalf of the borough, approve the mayor's action;
6. approve the estimated cost of the improvement;
7. include an estimated assessment roll showing the amount of the assessment against each parcel;
8. authorize the mayor to proceed with the construction of the improvement; [AND]
9. require the clerk to record in the district recorder's office a copy of the resolution to form the district and proceed with the improvement and the estimated assessment roll; and[.]

10. include notice that the property owner must pay off the remaining balance of any special assessments on property to be subdivided, or prepay estimated costs if the final assessment has not been determined, before a final plat may be signed and recorded pursuant to KPB 20.60.030.

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SECTION 4. That KPB 5.35.150(C) is amended as follows:

5.35.150. Ordinance of assessment.

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C. Prior to enactment of the ordinance of assessment, the assembly shall:

1. Fix a time to hear objections to the assessment roll;
2. Provide that the borough clerk publish notice of the ordinance of assessment as required under KPB 22.40.010(D); and
3. Provide that the borough clerk notify the owners of record of the parcels to be assessed for the improvement by regular mail not less than 10 days before the hearing; the notice shall include notice of individual assessment, [AND] notice of the time and place of the hearing and notice that the validity of the assessment may not be contested by a person who did not file with the borough clerk a written objection to the assessment roll before its confirmation. The notice shall also state the decision of the governing body on an objection may be appealed to the superior court within 30 days after the date of confirmation of the assessment roll, and if no objection is filed or appeal taken within that time, the assessment procedure is considered valid in all respects.

SECTION 5. That KPB 5.35.160(A) is hereby amended as follows:

5.35.160. Notice of assessment.

- A. Within 15 days after the enactment of an ordinance under KPB 5.35.150 levying a special assessment, the finance director shall mail a statement to the owner of record of each property assessed. For each property the statement shall designate the property, the total allocated assessment, the assessment lien amount, the schedule of payments, the time of delinquency, penalties, and notice of the deferral of principal option described in KPB 5.35.155. The statement shall also include notice that if a benefited parcel is subdivided

following the date of the mayor's approval of the petition report under this chapter, the property owner shall be required to pay off the remaining balance of the assessment, or prepay estimated costs if the final assessment has not been determined, prior to approval of the final plat pursuant to KPB 20.60.030. Additionally, the statement shall include notice that the ordinance of assessment is the final determination of the assessment, and any property owner who filed a written objection to the assessment roll before its confirmation in that ordinance may appeal the decision of the assembly on their objection to the superior court within 30 days after the date the assessment roll was confirmed.

SECTION 6. That KPB 14.31.080(B) is hereby amended as follows:

14.31.080. Restrictions on district formation.

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- B. The legal description of parcels within the proposed district as of the date of the RSA resolution to approve the petition report and recommend a borough match under KPB 14.31.065 will be used to determine assessment. No subdivision, reversion of acreage, or lot line adjustment will be recognized for RIAD assessment purposes after the RSA board issues the resolution under KPB 14.31.065. In the event a property owner seeks to subdivide a benefited parcel after the date of the RSA resolution or after costs are assessed under this chapter, the property owner shall be required to pay off the remaining balance of the assessment, or prepay estimated costs if the final assessment has not been determined, prior to approval of the final plat pursuant to KPB 20.60.030. If prepayment of the estimated cost of the assessment is required, the subdividing property owner shall be issued a refund for any amount in excess of the prepaid estimated cost over the final assessment. If the petition or project fails for any reason, the borough shall refund the prepayment. If a final plat is not approved pursuant to KPB 20.60.030 and the subdividing property owner requests a refund of the prepayment in writing within 30 days of denial of the final plat, the borough shall refund the prepayment. If the estimated costs are less than the final assessment the subdividing property owner shall be responsible for payment of the difference, due within 30 days of the final assessment approval.

SECTION 7. That KPB 14.31.090(E) is hereby amended as follows:

14.31.090. Assembly resolution to form district and proceed with improvement.

...

- E. After public hearing, the assembly may adopt the resolution to form the district and proceed with the improvement. The resolution shall:

1. Describe the improvement and its location;
2. Describe the parcels benefitted by the improvement;
3. Approve the estimated cost of the improvement;
4. Make a finding that the improvement is necessary and should be made, as required by AS 29.46.020;
5. Identify any parcels within the boundaries excluded from the district, which will not receive the benefit of the improvement and will not be subject to the assessment;
6. If the mayor signed the petition on behalf of the borough, approve the mayor's action;
7. Include an estimated assessment roll showing the amount of the assessment against each parcel;
8. Authorize the mayor to proceed with the construction of the improvement; [and]
9. Require the clerk to record in the district recorder's office a copy of the resolution to proceed and the estimated assessment roll; and[.]
10. Include notice that the property owner must pay off the remaining balance of any special assessments on property to be subdivided, or prepay estimated costs if the final assessment has not been determined, before a final plat may be signed and recorded pursuant to KP.B 20.60.030.

SECTION 8. That KP.B 14.31.130(A) is hereby amended as follows:

14.31.130. Notice of assessment.

- A. Within 15 days after the adoption of an ordinance levying an assessment under KP.B 14.31.110, the finance director shall mail an assessment statement to the record owner of each assessed parcel. The statement shall describe the parcel, state the date of mailing of the statement, the amount of the total allocated assessment, the assessment lien amount, the times for payment of the assessment, the rate of interest on unpaid installments, the penalty and rate of interest on delinquent installments, and notice of the deferral of principal option described in KP.B 14.31.145. The statement shall include notice that it is the final determination of the assessment and that the property owner has 30 days from the date of mailing of the notice to appeal the assessment to the superior

court. The statement shall also include notice that if a benefited parcel is subdivided following assessment of costs under this chapter, the property owner shall be required to pay off the remaining balance of the assessment, or prepay estimated costs if the final assessment has not been determined, prior to approval of the final plat pursuant to KPB 20.60.030.

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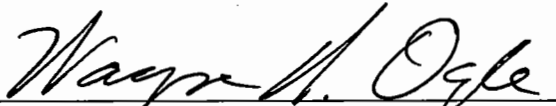
SECTION 9. That KPB 20.60.030 is hereby amended as follows:

20.60.030. Certificate of borough finance department required.

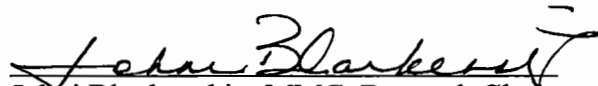
All taxes and special assessments levied on the property within the subdivision shall be paid prior to recordation of the final plat. If approval is sought between January 1 and the tax due date, there shall be on deposit with the borough finance department an amount sufficient to pay the entire estimated real property tax for the current year. Additionally, the entire balance, or estimated balance of all special assessments or pending special assessments, as provided in KPB 5.35.070(B) and KPB 14.31.080(B), against the property owed to the borough must be paid in full prior to filing of the final plat. Prior to filing of the final plat, a certificate to this effect shall be provided by the borough finance director or [HIS] designee upon request by the planning director. Estimated tax payments shall be applied to the actual bill as of July 1 or such earlier date as the taxes due have been determined.

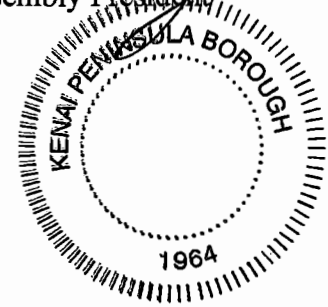
SECTION 10. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF SEPTEMBER, 2018.


Wayne H. Ogle, Assembly President

ATTEST:


Johni Blankenship, MMC, Borough Clerk



- Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle
- No: None
- Absent: None