

Kenai Peninsula Borough
Planning Department

MEMORANDUM

**TO: Brent Hibbert Assembly President
Kenai Peninsula Borough Assembly Members**

THRU: Charlie Pierce, Borough Mayor

FROM: Melanie Aeschliman, Planning Director *MA*

DATE: July 1, 2021

RE: Ordinance 2021-23: An Ordinance Authorizing the Sale of Certain Parcels of Borough Land by Outcry Auction Followed by an Over-The-Counter Sale.

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled June 28, 2021 meeting.

An amendment motion passed by unanimous vote to recommend amending the ordinance to remove from the land sale the 10 parcels in the City of Homer. (9-Yes, 0-No, 2-Absent)

An amendment motion passed by unanimous vote to recommend amending the ordinance to remove from the land sale parcel 035-290-33 located in Hope and not put it up for sale until it can be included in the Percy Hope LOZD mixed residential zone. (9-Yes, 0-No, 2-Absent)

An amendment was passed by unanimous vote to recommend amending the ordinance to remove from the land sale parcel 063-043-29 with the intention of offering it in a future agricultural land sale or lease. (9-Yes, 0-No, 2-Absent)

A motion passed by unanimous vote to recommend approval of amended Ordinance 2021-23, an ordinance authorizing the sale of certain parcels of borough land by outcry auction followed by an over-the-counter sale. (9-Yes, 0-No, 2-Absent)

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

WHEREAS, the planning commission at its regularly scheduled meeting of June 28, 2021, recommended approval as amended by unanimous vote.

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

AGENDA ITEM E. NEW BUSINESS

- 6. Ordinance 2021-23: An ordinance authorizing the sale of certain parcels of Borough land by outcry auction followed by an over-the-counter land sale.

Staff report given by Marcus Mueller.

The Kenai Peninsula Borough (KPB) Land Management Division has identified certain parcels of land that are surplus to the KPB's needs. These parcels could be placed in a competitive market value land sale by outcry auction, followed by an over-the-counter sale. Auction reserves and minimum sale prices are proposed to be set at the estimated fair market value as determined through consultation with the KPB Assessing Department.

In addition to the parcels discussed in the classification resolution there are several parcels, which have already been classified, being offered. There is a 6.8-acre lot in the Moose Point Subdivision, two .9-acre lot in the Journey's End Subdivision and a 50-acre tract in the K-Beach area.

The live outcry auction is proposed for August 14, 2021, to be held at Soldotna High School. A sale brochure will identify the parcels and provide a brief explanation of the auction and subsequent closing process. Notice of the land sale will be published in accordance with KPB 17.10.110 and the brochure will be made available on the KPB Land Management Division's website. The ordinance provides a framework to reschedule the auction in the event the August 14TH date is cancelled, in recognition of Covid-related uncertainties.

A finder's fee is not proposed for sales occurring in the outcry auction. A finder's fee is proposed to be offered for the sale of any remaining properties through an over-the-counter land sale as described in the ordinance.

This ordinance would authorize an outcry auction land sale of certain parcels of borough land followed by an over-the-counter land sale of the parcels not sold at auction.

END OF STAFF REPORT.

Chair Martin opened the meeting for public comment.

Dale Banks; 5011 Alder Lane, Homer AK, 99603: Mr. Banks thanked the commission for their careful consideration of the properties in the Homer area. He would like to recommend that the commission make an amendment to remove those properties from the land sale.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MAIN MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to forward to the assembly a recommendation to approve Ordinance 2021-23 authorizing the sale of certain parcel of Borough land by outcry auction followed an over-the-counter sale.

AMENDMENT A: Commissioner Ecklund moved, seconded by Commissioner Bentz to amend the ordinance by removing the ten parcels in the City of Homer.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT A MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Venuti				
No					
Absent	Chesser, Ruffner				

Commissioner Ecklund had a question for Mr. Mueller regarding the reserve amounts. She noted the reserve price for the ten 2.5-acre lots in the City of Homer, which have some wetlands with some buildable areas and most likely a view since they are along the bluff area, have a reserve price of \$25,000. However, the Cooper Landing lots, which are not as big as the Homer lots, have reserve prices of \$80,000 to \$95,000. She wanted to know how these reserve amounts were set. Mr. Mueller replied that the reserve amount are set in consultation with the Assessing Department. He noted that in Cooper Landing, there is definitely a limited supply of land and it goes at a premium price. With the Homer lots what you are seeing affecting the price is the condition of the property, the soils are not very good. These properties will require a lot of work and money to develop. Commissioner Ecklund then asked if these reserve prices would be considered fair market. Mr. Mueller replied that Alaska is a non-disclosure state so the Assessing Department is working with very little information. The Assessing Department does mass appraisals as opposed to specialized appraisals. When we work with our Assessing Department, we work with the data they have. Therefore, in some sense it is a bit like shooting in the dark when it comes to pricing.

Ms. Hindman noted there were two other parcels the commission was recommending removing from the classification resolution. She wanted to know if they should be removed from this ordinance as well as they could not be sold without being classified. Mr. Mueller would recommend that the Planning Commission remove those lots as well.

AMENDMENT B: Commissioner Ecklund moved, seconded by Commissioner Morgan, to remove the Hope property from the land sale ordinance and not put up for sale until it can be included in the Percy Hope LOZD mixed residential zone.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT B MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Venuti				
No					
Absent	Chesser, Ruffner				

Mr. Mueller asked for clarification on parcels that the commission has recommended for a different classification. For example, the 40-acre parcels in the Sterling area. The commission is recommending these two parcels be classified agriculture, do they want them to move forward in the land sale and have them sold as unrestricted or have them removed and pursue a different management avenue. The same would be true for the Cooper Landing parcels.

Commissioner Ecklund stated that she believes the classifications should be listed on the brochure and that code should be followed in relation to the classification. Mr. Mueller reminded Commissioner Ecklund that the classification status goes away at the point of sale. Commissioner Ecklund then asked if that is what Borough code states. Mr. Muller replied that classification only applies to borough owned lands. When the property is sold, it is no longer borough land and classification does not apply to the property owners. Commissioner Ecklund then stated if that is what code says then they are bound by borough code.

Commissioner Ecklund then asked what they could do to ensure that the properties could be bound to their intentions. Mr. Mueller stated he does not really have any good ideas. Thinking of borough land classification as an instrument of land use regulation, such as zoning, does not work, as they are two different devices meant to do different things. Commissioner Ecklund asked about a case several years ago where they classified a 40-acre lot as agricultural/preservation. Is he saying once that land was sold the new landowner was allowed to do whatever he wanted to do with the land. Mr. Mueller replied in that specific case there was a deed restriction placed on the title. In the ordinance for that land sale there was a specific provision stating the half of the parcel classified as preservation would have a deed restriction placed on it, along with the specific language that would be used on the title. Deed restrictions could be used but he would caution against them. He is not a supporter of deed restrictions for two reasons. One, when looking at land use regulations we are looking at zoning. Zoning is dynamic, it allows the planning commission to identify and work with changes that exist on the land and how it is used. It allows for changes

and variances. Deed restrictions runs with the land, it could still be in place 100 years from now. Deed restrictions do not allow for any changes over time.

Commissioner Ecklund then stated that her amendment to change the classification of the parcels in Cooper Landing was based on the APC’s recommendations and the public comments received. She believes that area is residential and if there was a way they could add something to the ordinance to ensure that it would stay residential, such as a deed restriction she would be happy to support that. She then asked Mr. Mueller what that deed restriction language would be. Mr. Mueller replied staff could mine out some examples of language and bring a proposed amendment to the assembly but he would speak against it because deed restrictions leave both the property owner and the bureaucrat in an untenable position. He noted that in the past they have used the classification definition as language for a deed restriction. Commissioner Ecklund then stated if you do not use a deed restriction, then some developer could purchase those five parcels and turn it into a commercial property. That would not honor the recommendations of the APC and the other public comments.

Commissioner Bentz had a question about the parcels that they recommend classifying a residential. She understands that the classification goes away if they are sold and no longer in borough hands. If the borough was to retain these lands would there be an opportunity later to offer them in an agricultural land sale or lease. Mr. Mueller replied if these parcels were exclude from the general land sale it would seem to be appropriate to offer them in a future agricultural sale or lease.

AMENDMENT C MOTION: Commissioner Bentz moved, seconded by Commissioner Carluccio to amend the ordinance and remove parcel 063-043-29, with a recommended classification of agriculture, with the intention of offering it in a future agricultural land sale or lease.

Commissioner Ecklund then asked Mr. Mueller if this land was sold in a future agricultural sale once it is sold would that mean the new owner could do whatever they wanted with the land. Mr. Mueller replied if it was sold in an agricultural lease program the lessee would be bound by the terms of the lease. If it were sold as a part of an agricultural program, we would first amend borough code to create a local option zone for agriculture. Then we would sell the land in agricultural zone, which would fit within Title 21 of borough code.

Commissioner Ecklund the replied the process Mr. Mueller would be similar to creating a residential LOZD on properties before they are sold, insuring that those properties would be used for residential purposes. She understands there are not enough properties in the Cooper Landing area to form a LOZD. She just wants to find a way to support the recommendations of the area APC, which is that these lots be used for residential purposes. Mr. Mueller replied it would require a change in code, lowering the threshold of lots required to form a LOZD. This would be similar to what he would recommend with an agricultural LOZD, which would require only one lot.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT C MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Venuti				
No					
Absent	Chesser, Ruffner				

Chair Martin called for a vote on the main motion.

Ms. Hindman asked for clarification regarding the parcels in Cooper Landing area, would their recommendation be that they remain in the land sale.

Mr. Mueller replied that it was his understanding the recommendation was to change the proposed classification of the lots to residential and include them in the land sale. Understanding when they are sold it would be as they are currently zoned which is unrestricted.

Commissioner Morgan stated that she now has a better understanding of the difference between classification and zoning. She noted that the recommendation of the APC was that the lots be used for residential purposes only. Her desire is to support the recommendation of the APC. She is not sure what the answer is here. Perhaps they should pull them from the sale; she then asked Mr. Mueller if he was aware of any other options that would support the recommendation of the APC. Was the only option available to try to find seven other landowners willing to join a LOZD? Mr. Mueller stated that he could see several options. They could try to gather more landowners to form a new LOZD. They could amend the Birch & Grouse Ridge LOZD, which is adjacent to these lots, to include these lots. They could offer these lots with a deed restriction limiting the use to residential. Lastly, they could offer them for sale unrestricted. As a land manager, he looks at the lot sizes, location and how other similar lots in Cooper Landing have been used. Given the land use history in this area, they are likely to be a high dollar purchase by someone wanting to build a recreational cabin. Commissioner Morgan stated that she agreed with Mr. Mueller's last statement but that does not follow the recommendation of the APC. She is not sure that the APC had a clear understanding of all the options discussed here tonight. She would like to see the APC be a part of the conversation regarding what happens to these lots. She asked Mr. Mueller if he had the opportunity to have this type of conversation with the APC. Mr. Mueller replied that he had not.

AMENDMENT D MOTION: Commissioner Morgan moved, seconded by Commissioner Carluccio to amend the ordinance and pull the Cooper Landing parcels from the land sale to allow for further discussions with the Cooper Landing APC.

Commissioner Ecklund asked Mr. Mueller if these lots are pulled and go back to the APC when could they go back in to a land sale, how often are land sales done? Mr. Mueller replied general land sales are generally conducted annually.

Commissioner Morgan asked would there be time for this to go back to the APC for discussion and still be included in this land sale. Mr. Mueller replied the assembly is scheduled to hear this on July 6th, with the proposed sale date being August 14th, allowing for about 30 days to market the sale.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT D MOTION FAILED BY MAJORITY VOTE:

Yes	4	No	5	Absent	2
Yes	Bentz, Carluccio, Morgan, Venuti				
No	Brantley, Ecklund, Fikes, Gillham, Martin				
Absent	Chesser, Ruffner				

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MAIN MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Venuti				
No					
Absent	Chesser, Ruffner				

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Ecklund informed the commission that the plat committee heard and approved 6 plats.

AGENDA ITEM L. COMMISSIONER COMMENTS

AGENDA ITEM M. ADJOURNMENT – Commissioner Carluccio moved to adjourn the meeting at 10:30 p.m.