

Introduced by: Mayor
Date: 02/04/20
Action: Adopted as Amended
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-011**

**A RESOLUTION AUTHORIZING THE ACQUISITION BY DONATION OF 20 ACRES
OF LAND LOCATED IN THE SEWARD AREA ON BEHALF OF THE SEWARD BEAR
CREEK FLOOD SERVICE AREA**

WHEREAS, the Seward Bear Creek Flood Service Area (“SBCFSA”) provides for flood planning and mitigation within the service area; and

WHEREAS, the record owners of a parcel of land within the SBCFSA boundary have offered to donate the property to the borough for floodplain conservation and mitigation purposes; and

WHEREAS, the 20-acre property is located in the Resurrection River historic braidplain east of the Seward Airport and adjacent to other borough land managed for floodplain purposes; and

WHEREAS, the acquisition and management of this land for floodplain values would further Objective D, Strategy 2 of the Kenai Peninsula Borough Comprehensive Plan which is to “Identify and protect the critical natural systems of the Kenai Peninsula Borough, its rivers, watersheds, floodplains and fish and wildlife habitats and resources”; and

WHEREAS, the land is vacant and unimproved with a current assessed value of \$6,800; and

WHEREAS, the SBCFSA board at its meeting of September 9, 2019, recommended approval of the subject acquisition; and

WHEREAS, the KPB Planning Commission, at its regularly scheduled meeting of January 27, 2020, recommended approval by unanimous consent;

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

SECTION 1. That the acquisition of the following described real property on behalf of the Seward-Bear Creek Flood Service Area is in the best interest of the borough:

Government Lot 4, Section 35, Township 1 North, Range
1 West, Seward Meridian, Alaska (Assessor Parcel No.
145-022-24)

SECTION 2. That the terms and conditions substantially in the form of the Purchase Agreement accompanying this resolution are hereby approved. The purchase price shall be one dollar (\$1.00) plus closing costs not to exceed six hundred dollars (\$600). The borough shall also pay an amount equal to the 2020 property taxes on this property.

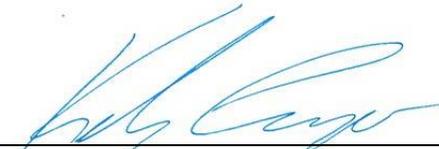
SECTION 3. That this acquisition is for flood mitigation purposes.

SECTION 4. That the proposed classification of this land is preservation.

SECTION 5. That the mayor is authorized to execute any and all documents necessary to purchase the real property described in Section 1 in accordance with the terms and conditions contained in this resolution and the accompanying Purchase Agreement, consistent with applicable provisions of KPB Chapter 17.10.

SECTION 6. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF FEBRUARY, 2020.

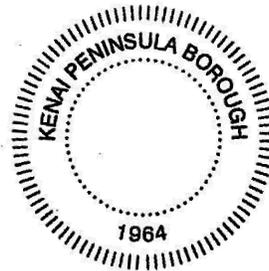


Kelly Cooper, Assembly President

ATTEST:



Johni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: Dunne

PURCHASE AGREEMENT

This Agreement is made by and between Basil S. Bolstridge, surviving spouse of Elizabeth W. Bolstridge, and James L. Rott and Susan I. Rott, husband and wife whose address is 23806 35th Ave W. Brier, WA 98036 ("SELLER") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 ("KPB").

WHEREAS, SELLER is the owner of that real property located in the Seward Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

Government Lot 4, Section 35, Township 1 North, Range 1 West, Seward Meridian, Alaska (KPB Parcel ID No. 145-022-24) ("Property").

WHEREAS, KPB has offered to buy the above-described Property, subject to KPB Assembly authorization and appropriation of funds, and SELLER is willing to sell the Property as evidenced by this Purchase Agreement ("Agreement");

NOW THEREFORE, in consideration of the promises herein contained, SELLER hereby agrees to sell to KPB, and KPB hereby agrees to buy from SELLER, the Property on the terms and conditions as set forth below:

1. PURCHASE PRICE

The purchase price of the Property is One dollar and No cents (\$1.00). The purchase price shall be paid by KPB at time of closing. The purchase of the Property and appropriation for the purchase are subject to KPB Assembly authorization and appropriation of funds.

2. TITLE

Title shall be delivered at time of closing by Statutory Warranty Deed, which shall be issued to KPB. SELLER warrants and covenants that at the time of closing there shall be no liens or judgments recorded against SELLER in the same recording district in which the Property subject to this purchase agreement is situated. Title shall be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record.

4. ESCROW AND CLOSING COSTS

In addition to the purchase price, KPB agrees to pay for closing costs in connection with this Agreement, including without limitation all escrow fees, title insurance charges, and recording fees up to \$600, and 2020 real property taxes. SELLER is responsible for Realtor's commission, if any. All costs will be paid in full at the time of closing.

5. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days of authorization by the KPB Assembly and appropriation of funds. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete this Agreement and, if applicable, establish an escrow account.

6. POSSESSION

Possession shall be delivered to KPB at time of recording.

7. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the Property by the Kenai Peninsula Borough is subject to authorization by the KPB Assembly and appropriation of funds. If the KPB Assembly fails to authorize the purchase of the subject land and appropriate funds, this agreement shall be terminated without penalty.

8. RISK OF LOSS

The risk of loss by destruction or damage to the property by fire or otherwise prior to closing of the sale is that of the SELLER. If all or a substantial portion of the improvements on the property are destroyed or damaged prior to the closing KPB shall have the option to cancel this Agreement with a prompt refund of the earnest money, or KPB may elect to continue with the purchase at a renegotiated price. The renegotiation of the purchase price shall occur within 45 days of the damage or destruction unless otherwise agreed in writing by the parties.

9. HAZARDOUS MATERIAL

SELLER covenants to the best of SELLER'S knowledge, that as the date of this agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. SELLER agrees that no hazardous substances or wastes shall be located on or stored on the Property, or any adjacent property by seller, owner or contractors, nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by SELLER, its agents, employees, contractors, or invitee's, prior to KPB'S ownership, possession, or control of the Property.

10. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and SELLER or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the sale, and shall continue in full force and effect until the purchase price is paid in full or this agreement is earlier terminated.

11. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or SELLER fails to make any payment required, or fails to submit or execute any and all documents and papers necessary for closing and transfer of title within the time period specified in this agreement, the SELLER or KPB may terminate this Agreement.

12. MISCELLANEOUS

- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by SELLER and the KPB mayor. This Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall

be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- E. Personal Property. The purchase includes all improvements and fixtures to the real property whether or not attached, unless otherwise stated in this agreement. All personal property shall remain the property of the SELLER, and shall be removed from the property by the SELLER prior to closing.
- F. Subject To. Purchase of this property is subject to an acceptable site inspection, title report, and an environmental review. This Agreement will allow the KPB to enter the property to conduct site inspections, perform an as-built survey, and take soil samples. The KPB shall notify the seller 24-hours in advance prior to entering the property.

This Agreement has been executed by the parties on the day and year first above written.

KENAI PENINSULA BOROUGH:

SELLER:

Charlie Pierce, Mayor

Basil S. Bolstridge

Dated: _____

Dated: _____

SELLER:

SELLER:

James L. Rott

Susan I. Rott

Dated: _____

Dated: _____

ATTEST:

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

Johni Blankenship,
Borough Clerk

Sean Kelley,
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

