



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Agenda Planning Commission

Jeremy Brantley, Chair – Ridgeway/Funny River/Sterling District

Pamela Gillham – Kalifornsky/Kasilof District

Virginia Morgan, Parliamentarian – Cooper Landing/Hope/East Peninsula District

Dawson Slaughter – South Peninsula District

Jeffery Epperheimer - Nikiski District

Diane Fikes – City of Kenai

Franco Venuti – City of Homer

Paul Whitney – City of Soldotna

Troy Staggs – City of Seward

Monday, January 27, 2025

7:30 PM

Betty J. Glick Assembly Chambers

Zoom Meeting ID: 907 714 2200

Remote participation will be available through Zoom, or other audio or video means, wherever technically feasible

ZOOM MEETING DETAILS

Zoom Meeting Link: <https://us06web.zoom.us/j/9077142200>

Zoom Toll Free Phone Numbers: 888-788-0099 or 877-853-5247

Zoom Meeting ID: 907 714 2200

The hearing procedure for the Planning Commission public hearings are as follows:

- 1) Staff will present a report on the item.
- 2) The Chair will ask for petitioner's presentation given by Petitioner(s) / Applicant (s) or their representative – 10 minutes
- 3) Public testimony on the issue. – 5 minutes per person
- 4) After testimony is completed, the Planning Commission may follow with questions. A person may only testify once on an issue unless questioned by the Planning Commission.
- 5) Staff may respond to any testimony given and the Commission may ask staff questions.
- 6) Rebuttal by the Petitioner(s) / Applicant(s) to rebut evidence or provide clarification but should not present new testimony or evidence.
- 7) The Chair closes the hearing and no further public comment will be heard.

8) The Chair entertains a motion and the Commission deliberates and makes a decision.

All those wishing to testify must wait for recognition by the Chair. Each person that testifies must write his or her name and mailing address on the sign-in sheet located by the microphone provided for public comment. They must begin by stating their name and address for the record at the microphone. All questions will be directed to the Chair. Testimony must be kept to the subject at hand and shall not deal with personalities. Decorum must be maintained at all times and all testifiers shall be treated with respect.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF CONSENT AND REGULAR AGENDA

All items marked with an asterisk () are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.*

If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the Chairman of your wish to comment.

1. Time Extension Request - None
2. Planning Commission Resolutions - None
3. Plats Granted Administrative Approval - None
4. Plats Granted Final Approval - None
5. Plat Amendment Request - None
6. Commissioner Excused Absences

Jeffrey Epperheimer, Nikiski District

7. Minutes

[KPB-6569](#) January 13, 2025 Planning Commission Meeting Minutes

Attachments: [C7. 01-13-25 PC Meeting Minutes](#)

D. OLD BUSINESS - NONE

E. NEW BUSINESS

1. [KPB-6570](#) Ordinance 2024-19-24: Authorizing the acquisition of 80 acres of real property located in Seward, appropriating \$1,200,000.00 from the Land Trust Investment Fund and \$50,000.00 from the Land Trust Fund for the purchase, and authorizing the mayor to enter into a memorandum of agreement with the State of Alaska Mental Health Trust Authority for the completion of a road access feasibility study.
Staff Person Responsible: Land Management Manager Aaron Hughes (aaronhughes@kpb.us)

Attachments: [E1. Ordinance 2024-19-24 Packet](#)

2. [KPB-6571](#) Ordinance 2025-02: Authorizing the disposal of real property located in Kenai necessary to resolve title matters related to the erroneous recording of a 1977 tax foreclosure deed.
Staff Person Responsible: Land Management Manager Aaron Hughes (aaronhughes@kpb.us)

Attachments: [E2. Ordinance 2025-02 Packet](#)

3. [KPB-6572](#) Ordinance 2025-03: Amending KPB Chapter 21.20 relating to hearing and appeals to a hearing officer.
Staff Responsible: Planning Director Robert Ruffner (rruffner@kpb.us)

Attachments: [E3. Ordinance 2025-03 Packet](#)

F. PLAT COMMITTEE REPORT

Plat Committee will review 3 plats

G. OTHER

H. PUBLIC COMMENT/PRESENTATION

(Items other than those appearing on the agenda or scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made)

I. DIRECTOR'S COMMENTS

J. COMMISSIONER COMMENTS

K. ADJOURNMENT

**MISCELLANEOUS INFORMATIONAL ITEMS
NO ACTION REQUIRED**

NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING

The next regularly scheduled Planning Commission meeting will be held Monday, February 10, 2025 in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley Street, Soldotna, Alaska at 7:30 p.m.

CONTACT INFORMATION**KENAI PENINSULA BOROUGH PLANNING DEPARTMENT**

Phone: 907-714-2215

Phone: toll free within the Borough 1-800-478-4441, extension 2215

Fax: 907-714-2378

e-mail address: planning@kpb.us

website: <http://www.kpb.us/planning-dept/planning-home>

A party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances. An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing and records preparation fees. Vacations of right-of-ways, public areas, or public easements outside city limits cannot be made without the consent of the borough assembly.

Vacations within city limits cannot be made without the consent of the city council. The assembly or city council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received within the specified period, it shall be considered that consent was given.

A denial of a vacation is a final act for which the Kenai Peninsula Borough shall give no further consideration. Upon denial, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

C. CONSENT AGENDA

***7. Minutes**

- a. January 13, 2025 Planning Commission Meeting Minutes**

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

**JANUARY 13, 2025
7:30 P.M.
UNAPPROVED MINUTES**

AGENDA ITEM A. CALL TO ORDER

Commissioner Brantley called the meeting to order at 7:30 p.m.

AGENDA ITEM B. ROLL CALL

Commissioners Present

Jeremy Brantley, Sterling / Funny River
Pamela Gillham, Kalifornsky/Kasilof District
Jeffery Epperheimer, Nikiski District
Dawson Slaughter, South Peninsula District
Diane Fikes, City of Kenai
Paul Whitney, City of Soldotna
Franco Venuti, City of Homer

With 7 members of a 9-member seated commission in attendance, a quorum was present.

Staff Present

Robert Ruffner, Planning Director
Walker Steinhage, Deputy Borough Attorney
Vince Piagentini, Platting Manager
Aaron Hughes, Land Management Officer
Ann Shirnberg, Planning Administrative Assistant
Jenny Robertson, Land Management Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDA

- *3. Plats Granted Administrative Approval**
- a. Airport Subdivision 2023 Replat; KPB File 2024-008
 - b. Atwood Homestead Estates; KPB File 2024-078
 - c. Burgin Subdivision; KPB File 2024-070
 - d. Cameron Subdivision; KPB File 2022-162
 - e. Caribou Crossing Subdivision; KPB File 2024-054
 - f. Clark Subdivision & Fritz Creek Acres Huyck 2024 Replat; KPB File 2024-036
 - g. Deitz Home Estates No. 5 Skinner 2023 Replat; KPB File 2023-096
 - h. Detling Homestead No. 3; KPB File 2024-047
 - i. Diamond View Estates 2024; KPB File 2024-040
 - j. Eagle Ridge Estates Part 3 2023 Replat; KPB File 2023-138
 - k. Fair Ridge Subdivision Part 7; KPB File 2024-055R1
 - l. Fort Raymond Subdivision Replat Number 6; KPB File 2023-109
 - m. Kasilof Alaska Subdivision 2023 Replat; KPB File 2023-147
 - n. Moose Range Meadows Bahr Replat; KPB File 2024-059
 - o. Ninilchik River Estates Wilson 2023 Addition; KPB File 2023-124R1
 - p. O'Rourke Subdivision Matranga Addition; KPB File 2022-124
 - q. Owl Perch Subdivision; KPB File 2024-049

- r. Peaceful Acres Redwine Addition; KPB File 2023-122
 - s. Quartz Creek Subdivision Wilkes Addition; KPB File 2024-053
 - t. Red Boat Subdivision; KPB File 2022-150
 - u. Sagerser Subdivision Trinity Center Replat; KPB File 2024-067
 - v. Scenic View No. 6 Lovett 2024 Replat; KPB File 2024-079
 - w. Seward Original Townsite Verhey Replat; KPB File 2023-108
 - x. Shoreline Heights 2014 Addition Phase 1 Bowlin Replat; KPB File 2024-063
 - y. Stream Hill Park 2018 Replat; KPB File 2018-129
 - z. Tatum Denise Subdivision Derks Lake Addition; KPB File 2022-155R1
 - aa. Tatum Denise Sub. Phase 1 Derks Lake Road SLEV; KPB File 2021-123V
 - bb. Waterfront Tracts Resubdivision; KPB File 2023-104
- *6. Commissioner Excused Absences**
- a. Virginia Morgan, Cooper Landing/Hope/Eastern Peninsula District
 - b. City of Soldotna – Vacant
- *7. Minutes**
- a. December 16, 2024 Planning Commission meeting minutes

Chair Brantley asked Ms. Shirnberg to read the consent agenda items into the record. He then asked if anyone wished to speak to any of the items on the consent agenda. Seeing and hearing no one wishing to comment, Chair Brantley brought it back to the commission for a motion.

MOTION: Commissioner Epperheimer moved, seconded by Commissioner Venuti to approve the consent and regular agendas.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 7	Brantley, Epperheimer, Fikes, Gillham, Slaughter, Whitney, Venuti,
Absent - 1	Morgan

Chair Brantley asked Administrative Assistant Ann Shirnberg to read the hearing procedures into the record.

AGENDA ITEM E. NEW BUSINESS

ITEM #1 – RESOLUTION 2025-X

AUTHORIZING THE BOROUGH TO ENTER INTO A TWO-YEAR LEASE AGREEMENT WITH A MONTH-TO-MONTH RENEWAL OPTION WITH TKC, LLC FOR THE CONTINUED OCCUPANCY OF COMMERCIAL OFFICE SPACE NECESSARY FOR DAILY OPERATIONS OF THE KENAI PENINSULA BOROUGH RISK MANAGEMENT DEPARTMENT.

Staff report given by Land Management Office Aaron Hughes.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Whitney moved, seconded by Commissioner Gillham to forward to the Assembly a recommendation to adopt Resolution 2025-X authorizing the Borough to enter into a two-year lease agreement with a month-to-month renewal option with TKC, LLC for the continued occupancy of commercial office space necessary for daily operations of the Kenai Peninsula Borough Risk Management Department.

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 7	Brantley, Epperheimer, Fikes, Gillham, Slaughter, Whitney, Venuti,
Absent - 1	Morgan

**ITEM #2 - RIGHT OF WAY VACATION
BRIDGE CREEK COOPERATIVE SUBDIVISION FARMWALD CIRCLE ROW VACATION**

KPB File No.	2024-133V
Planning Commission Meeting:	January 13, 2025
Applicant / Owner:	City of Homer / Jay & Wilton Farmwald
Surveyor:	Katie Kirsis / Seabright Surveying LLC
General Location:	Bridge Creek Watershed District, Near Homer, AK
Legal Description:	HM 81-5 Farmwald Road in Bridge Creek Cooperative Subdivision

Staff report given by Platting Manager Vince Piagentini.

Commissioner Venuti informed Chair Brantley that he had voted on this item in his capacity as a planning commissioner for the City of Homer and requested that he be recused. Chair Brantley approved his request.

Chair Brantley opened the item for public comment.

Jay Farmwald, 6600 Gunnison Drive, Anchorage AK 99516: Mr. Farmwald is one of the petitioners, he gave a brief history of the project and made himself available for questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Whitney to grant the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65.050(D), based on staff recommendations and subject to the four conditions set forth in the staff report.

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 6	Brantley, Epperheimer, Fikes, Gillham, Slaughter, Whitney
Recused - 1	Venuti
Absent - 1	Morgan

**ITEM #3 - RIGHT OF WAY VACATION
BAYVIEW SUBDIVISION LIGHTHOUSE VILLAGE REPLAT**

KPB File No.	2024-131V
Planning Commission Meeting:	January 13, 2025
Applicant / Owner:	Doyon Limited & Doyon Tourism, Inc.
Surveyor:	Katie Kirsis / Seabright Surveying LLC
General Location:	City of Homer
Legal Description:	B Street, South of Bay Avenue, Bayview Subdivision No 6, HM 839,

Staff report given by Platting Manager Vince Piagentini.

Commissioner Venuti informed Chair Brantley that he had voted on this item in his capacity as a planning commissioner for the City of Homer and requested that he be recused. Chair Brantley approved his request. Commissioner Venuti also requested to step down from the commission for this item as he wished to testify on this item as a member of the public.

Chair Brantley opened the item for public comment.

Zac Dunlap, Doyan Limited; 11500 Sukdu Way, Anchorage AK 99515: Mr. Dunlap is the petitioner for this vacation. He gave a brief history on this project and made himself available for question.

The following individuals spoke in support of the vacation request:

- Mike Stark; P.O. Box 2804, Homer AK 99603
- Mary Griswold; P.O. Box 1417, Homer, AK 99603

The following individuals expressed concerns or spoke in opposition to the vacation request:

- Susan Cushing; 1423 Bay Avenue, Homer AK 99603
- Karin Marks; 202 W. Pioneer Ave. #C, Homer AK 99603
- Rika Mouw; P.O. Box 212, Homer AK 99603
- Glenn Seaman; 1435 Bay Avenue, Homer AK 99603
- Franco Venuti; 818 Smoky Bay Way, Homer AK 99603

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Whitney to grant the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65.050(D), based on staff recommendations and subject to the four conditions set forth in the staff report.

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 6	Brantley, Epperheimer, Fikes, Gillham, Slaughter, Whitney
Recused - 1	Venuti
Absent - 1	Morgan

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner X report that the committee reviewed and granted preliminary approval to 9 plats.

AGENDA ITEM G. OTHER

- Planning Commission Training; Quasi-Judicial Matters (1/27/25): Commissioner Fikes noted that she will not be able to attend this training.

AGENDA ITEM H. PRESENTATIONS / PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

Chair Brantley asked if there was anyone who wished to comment on anything that was not on the agenda. There was no one who wished to comment.

AGENDA ITEM J. COMMISSIONER COMMENTS

- Commissioner Epperheimer stated that he will be out of town and may not be able to attend the 1/27/25 Planning Commission meeting.

AGENDA ITEM K. ADJOURNMENT

Commissioner Gillham moved to adjourn the meeting at 9:30 P.M.

Ann E. Shirnberg
Administrative Assistant

E . NEW BUSINESS

- 1. Ordinance 2024-19-24: Authorizing the acquisition of 80 acres of real property located in Seward, appropriating \$1,200,000.00 from the Land Trust Investment Fund and \$50,000.00 from the Land Trust Fund for the purchase, and authorizing the mayor to enter into a memorandum of agreement with the State of Alaska Mental Health Trust Authority for the completion of a road access feasibility study.**

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Peter Ribbens, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Peter A. Micciche, Mayor *PM*
Brandi Harbaugh, Finance Director *BH*
Robert Ruffner, Planning Director *RR*

FROM: Aaron Hughes, Land Management Officer *AH*

DATE: January 9, 2025

RE: Ordinance . 2024-19-___, Authorizing the Acquisition of 80 Acres of Real Property Located in Seward, Appropriating Funds from the Land Trust Investment Fund and Land Trust Fund for the Purchase, and Authorizing a Memorandum of Agreement for the Completion of a Road Access Feasibility Study (Mayor)

The Kenai Peninsula Borough (KPB) has placed an eighty-acre parcel in the Blueberry Hill area of Seward (the Blueberry Hill Parcel) under contract contingent upon Assembly approval and upon the completion of an access feasibility study to determine the potential for developed road access that complies with KPB road standards (the Study). Such access will provide a substantial future benefit to approximately 2,300 acres of adjacent KPB-owned or managed lands.

The Alaska Mental Health Trust Authority (MHT) owns land adjacent to the Blueberry Hill Parcel, and MHT also will benefit from the Study. Accordingly, MHT has agreed to participate by incorporating MHT-owned lands into the Study and by paying one half of the cost, not to exceed \$25,000.

Pursuant to the attached Purchase Agreement, the negotiated purchase price of the Blueberry Hill Parcel is \$1,200,000. An additional appropriation of \$50,000 is proposed to address costs related to the Study, additional due-diligence costs, and closing fees. The attached First Addendum to the Purchase Agreement provides for a closing on or before September 15, 2025.

The Ordinance authorizes the purchase of the Blueberry Hill Parcel and appropriates \$1,200,000 from the Land Trust Investment Fund to cover the purchase price and an additional \$50,000 from the Land Trust Fund for due-diligence costs and closing fees. The Ordinance also authorizes the Mayor to enter into a formal memorandum of agreement with MHT to memorialize KPB’s and MHT’s respective obligations relating to the Study.

Your consideration is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account: <u>250.27910</u>	Amt: \$ <u>50,000</u>
Account: <u>252.10790</u>	Amt: <u>\$1,200,000</u>
By: <u><i>CJ</i></u>	Date: <u>1/8/2025</u>

Introduced by: Mayor
Date: 01/21/25
Hearing: 02/04/25
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2024-19-**

AUTHORIZING THE ACQUISITION OF 80 ACRES OF REAL PROPERTY LOCATED IN SEWARD, APPROPRIATING FUNDS FROM THE LAND TRUST INVESTMENT FUND AND THE LAND TRUST FUND FOR THE PURCHASE, AND AUTHORIZING A MEMORANDUM OF AGREEMENT FOR THE COMPLETION OF A ROAD ACCESS FEASIBILITY STUDY

WHEREAS, the Kenai Peninsula Borough (KPB) has placed an eighty-acre parcel in the Blueberry Hill area of Seward (Blueberry Hill Parcel) under a contract to purchase through the attached Purchase Agreement; and

WHEREAS, the Purchase Agreement is contingent upon KPB Assembly approval; and

WHEREAS, the Blueberry Hill Parcel provides a potential means of access to approximately 2,300 acres of adjacent KPB-owned and managed lands, and Alaska Mental Health Trust Authority (MHT) land holdings; and

WHEREAS, the purchase of the Blueberry Hill Parcel also is contingent upon the completion of a feasibility study to determine the potential for developed road access that complies with KPB road standards (the Study); and

WHEREAS, the Blueberry Hill area in Seward has been identified as an important location for long-term future community expansion; and

WHEREAS, as an adjacent property owner, MHT likewise will benefit from Study for future road access and land-planning activities in the Blueberry Hill area; and

WHEREAS, it is in KPB’s best interests to share the Study’s cost with MHT through a memorandum of agreement (MOA) to memorialize the obligations of KPB and MHT relating to the Study; and

WHEREAS, the MOA therefore provides for KPB and MHT to equally divide the cost of the Study for Blueberry Hill access with a cost not to exceed \$25,000 from each entity; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of January 27, 2025, recommended _____;

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

SECTION 1. That pursuant to KPB 17.10.040, the Assembly finds that purchasing the Blueberry Hill Parcel, which is the following-described real property, is in KPB’s best interests as it secures potential vehicular access, long term development and community expansion, and increases the value and future utility of KPB-owned and Management Authority Lands:

THE N¹/₂N¹/₂NW¹/₄; THE S¹/₂NE¹/₄NW¹/₄, AND THE N¹/₂SE¹/₄NW¹/₄, ALL SITUATED IN SECTION 24, TOWNSHIP 1 NORTH, RANGE 1 WEST, SEWARD MERIDIAN, RECORDS OF THE SEWARD REORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (PARCEL NO. 12535007).

SECTION 2. That the terms and conditions of the Purchase Agreement accompanying this ordinance are hereby approved. The purchase price will be \$1,200,000 for the Blueberry Hill Parcel, plus closing and due diligence costs not to exceed \$50,000.

SECTION 3. That the Blueberry Hill Parcel will be classified as “RURAL” pursuant to KPB 17.10.080.

SECTION 4. That the purchase is conditioned upon the satisfactory completion of the Study and final review and approval of the Study findings by the Mayor.

SECTION 5. That the Mayor is authorized to enter into an MOA with the MHT to equally divide the cost of the Study for Blueberry Hill access in a form substantially similar to the draft accompanying this ordinance.

SECTION 4. That the Mayor is authorized to execute any and all documents necessary to purchase the Blueberry Hill Parcel described in Section 1 in accordance with the terms and conditions contained in this ordinance, the accompanying Purchase Agreement, and the accompanying First Addendum to the Purchase Agreement consistent with the applicable provisions of KPB Chapter 17.10.

SECTION 5. That the appropriation from the Land Trust Investment Account is within KPB 5.20.200 B and does not exceed 10 percent of the *market value* of the Land Trust Investment Fund in any year or 25 percent in any five-year period.

SECTION 6. That \$1,200,000 is appropriated from the Land Trust Investment Fund balance to Account No. 252.21200.25MHT.49999 for the purchase of the Blueberry Hill Parcel located in Seward, Alaska, and estimated due-diligence costs and closing fees.

SECTION 7. That \$50,000 is appropriated from the Land Trust Fund balance to Account No. 250.21210.25MHT.49999 for the Study, additional due-diligence costs and closing fees related to the purchase of the Blueberry Hill Parcel located in Seward, Alaska.

SECTION 8. That appropriations made in this ordinance are of project nature and as such do not lapse at the end of the particular fiscal year.

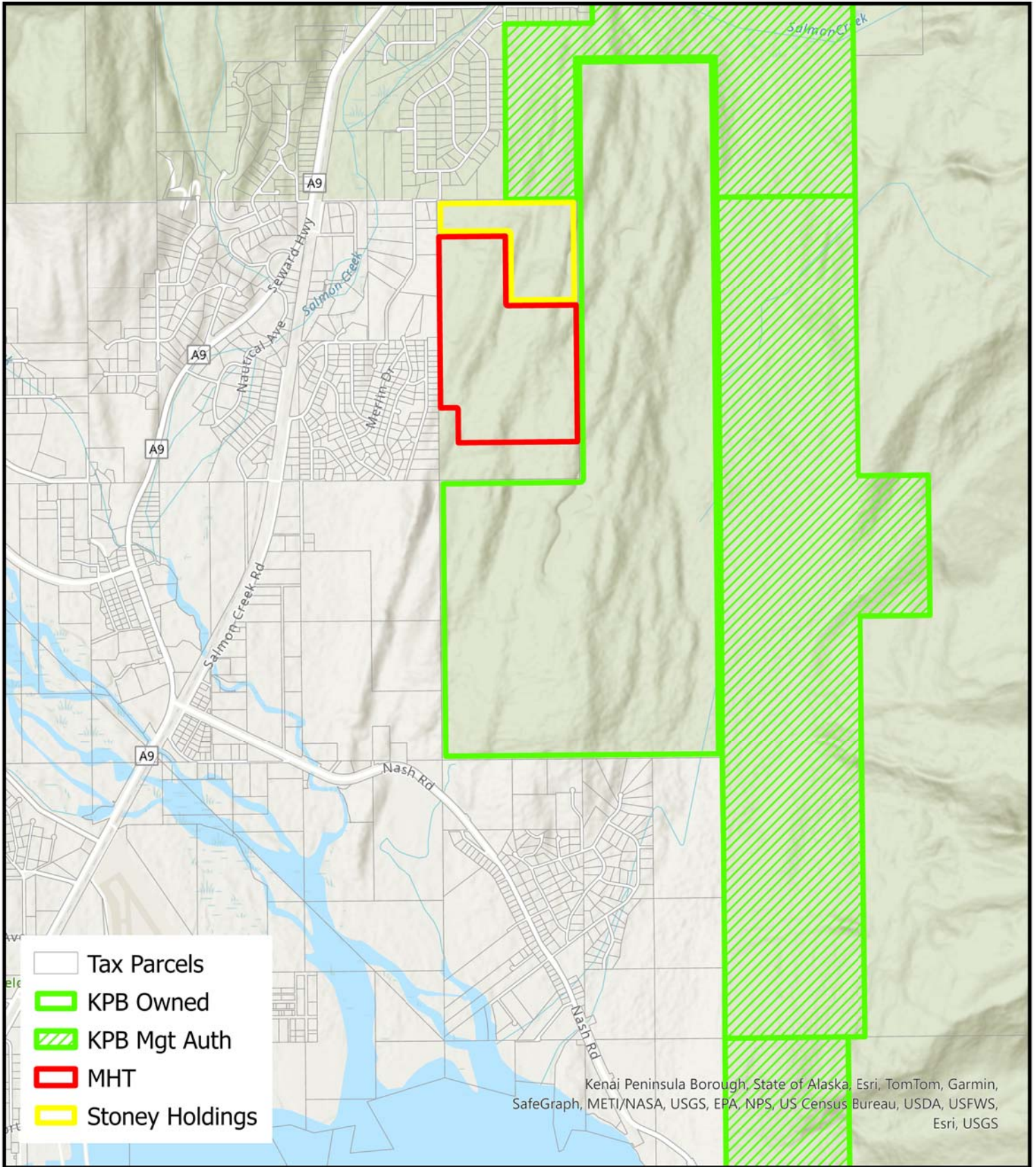
SECTION 9. That this ordinance shall be effective immediately.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS ____ DAY OF _____, 2025.

Peter Ribbens, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk



Kenai Peninsula Borough, State of Alaska, Esri, TomTom, Garmin, SafeGraph, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS, Esri, USGS

PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made by and between STONEY HOLDINGS, LLC, as seller, whose address is PO Box 1041, Talkeetna, AK 99676, ("Seller") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 ("KPB") (together, "the Parties").

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

THE N½N½NW¼; THE S½NE¼NW¼, AND THE N½SE¼NW¼, ALL SITUATED IN SECTION 24, TOWNSHIP 1 NORTH, RANGE 1 WEST, SEWARD MERIDIAN, RECORDS OF THE SEWARD REORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (PARCEL NO. 12535007) ("the Property"); and

WHEREAS, KPB has offered to buy, and Seller is willing to sell the Property as evidenced by this Agreement;

NOW THEREFORE, in consideration of the conditional 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 MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00). The purchase price must be paid by KPB at time of closing. The purchase of the Property and appropriation of funding for the purchase are subject to approval by the KPB Assembly.

2. EXPIRATION OF OFFER

Sellers must sign and return this Agreement to the Borough on or before **August 9, 2024, at 4:30pm**; otherwise, this offer shall terminate.

3. TITLE

Title must be delivered at time of closing by statutory warranty deed, which must be issued to KPB. Seller warrants and covenants that at the time of closing there will be no liens or judgments recorded against Seller in the same recording district in which the Property subject to this Agreement is situated. Title must be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record as agreed to by KPB.

Kenai Peninsula Borough, Alaska

Stoney Holdings, LLC / KPB – Purchase Agreement

MSW UC

4. ESCROW AND CLOSING COSTS

KPB agrees to pay for all buyer-related closing costs not otherwise addressed in this Agreement to include buyer closing, and recording fees. Seller agrees to pay for seller-related closing costs, not otherwise addressed in this Agreement to include the ALTA Standard Owners Title Insurance policy, and seller closing and recording fees. Property taxes for the current year, if any, will be prorated to the date of closing. Seller is responsible for realtor's commission, if any; all unpaid taxes for prior years, if any; and all unpaid outstanding assessments, if any. All costs will be paid in full at the time of closing.

5. CLOSING

Unless otherwise agreed to in writing, closing will occur on or before **December 13th, 2024**, or as specifically agreed to by both Parties. At closing, KPB will pay the balance of the purchase price. Both Parties will execute all documents required to complete the Agreement and, if applicable, establish an escrow account.

6. POSSESSION

Possession will be delivered to KPB at time of recording unless otherwise agreed to in writing by the Parties.

7. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the Property by KPB is subject to authorization by the KPB Assembly and appropriation of funds. If the KPB Assembly fails to authorize the purchase of the Property and appropriate funds, this Agreement will terminate without penalty.

8. EXCHANGE

If Seller intends for this transaction to be part of a Section 1031 like-kind exchange, KPB agrees to cooperate in the completion of the like-kind exchange provided KPB does not incur any additional liability or cost in doing so. If Seller intends for this transaction to be part of a Section 1031 like-kind exchange, Seller may assign its rights under this Agreement to a qualified intermediary or any entity expressly created for the purposes of completing a Section 1031 like-kind exchange.

9. DISCLOSURES

Seller hereby agrees to provide written property disclosures including any and all information regarding known defects, deficiencies, legal matters, environmental issues or hazards that may be personally known by the Seller. If said written disclosures present a matter unsatisfactory to KPB, KPB may terminate this Agreement without penalty.

9. CONTINGENT ON INSPECTION / REVIEW

Closing of the contemplated purchase is contingent upon the satisfactory completion of a feasibility study for road construction necessary to meet KPB road standards, and/or other inspections as deemed necessary by KPB to determine feasibility and future utility of the Property. The feasibility study provided for in this section must be completed prior to closing.

Copies of the work products resulting from this review will be made available to Seller at no cost, upon specific request. All inspections and reviews required by KPB under this Section will be conducted solely at KPB's expense.

10. HAZARDOUS MATERIAL

Seller covenants to the best of Seller's knowledge that, as of 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 will be located on, nor stored on the Property or any adjacent property owned or leased by the Seller, owner or contractors, nor will any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by Seller, its agents, employees, contractors, or invitees, prior to KPB's ownership, possession or control of the Property.

11. ENVIRONMENTAL CONTINGENCY

If, during the course of KPB's due diligence inspection of the Property pursuant to Section 9, KPB discovers the presence of environmental hazards on or released from the Property in any quantity or concentration exceeding the limits allowed by applicable law, or that is deemed undesirable by KPB, KPB will have the right to give notice to Seller accompanied by a copy or copies of the third-party report(s) disclosing and confirming the presence of such hazardous materials. The notice and accompanying third-party report must be given no later than 60 days from receipt of said report. The notice under this Section must state:

- (i) that KPB is terminating this Agreement due to the presence of such hazardous materials on or adversely affecting the Property; OR
- (ii) provide Seller 30 days from notice to provide a mitigation plan outlining steps taken by Seller to remedy said hazards to KPB's satisfaction at Seller's expense.

Following the notice and report described in this Section, the Parties may negotiate other resolutions as may be agreeable to the Parties in writing to be included as a part of this Agreement. In the event the Parties cannot agree in writing on a resolution to remedy any environmental concerns within 90 days of the notice, this Agreement will automatically terminate.

It is expressly understood that by execution of this Agreement, Seller hereby indemnifies KPB for any and all CERCLA-related claims, liabilities or matters, unless otherwise provided for in this Agreement. Said indemnification will survive closing and termination of this Agreement. Upon successful close of escrow said indemnification will continue for a period of not less than 12 months, from the date of closing unless otherwise provided for in this Agreement.

If this Agreement is terminated pursuant to any report detailing environmental conditions that may or may not exist on the Property, such report(s) will remain confidential and proprietary.

The report(s) will be marked as confidential and will not be released to a private individual, entity, or non-profit without express agreement of the Parties. Notwithstanding, the report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

12. 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, will be covenants constituting terms and conditions of the sale, and will continue in full force and effect until the purchase price is paid in full or this Agreement is earlier terminated.

13. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or Seller fail to make any payment required, or fail 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.

14. 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 Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts. KPB may cancel this Agreement without penalty in the event additional contracts required of this project are not secured.
- 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, must 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 may thereafter be so given, made or mailed. A notice given hereunder will be deemed received when deposited in a U.S. general or branch post office by the addressor.
- D. Interpretation. This Agreement will be deemed to have been jointly drafted by the Parties. It will be construed according to the fair intent of the language as a whole, not for or against either Party. The interpretation and enforcement of this Agreement will be governed by the laws of the State of Alaska. Any lawsuit brought arising from this Agreement must be filed in the superior court of the Third Judicial District, State of Alaska, located in the City of Kenai, Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- E. Condition of Property.

MSW UC

Seller will deliver the Property in its as-is condition.

- F. Confidentiality. This Agreement will be considered proprietary to the Parties until closing occurs. Following closing, this Agreement may be considered a public record.
- G. Counterparts. This Agreement may be executed in counterpart, and may be executed by way of copy, facsimile or verified electronic signature in compliance with AS 09.80, and if so, each of which will be deemed an original but all of which together will constitute one and the same instrument

KENAI PENINSULA BOROUGH:

SELLERS: Stoney Holdings, LLC

Peter A. Micciche, Mayor (Date)

Mark S. Wildermuth 8/8/2024

Mark S. Wildermuth, Member (Date)

Laura L. Caillet 8/8/2024

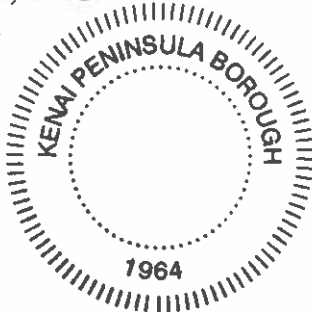
Laura L. Caillet, Member (Date)

ATTEST:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Michele Turner, CMC
Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney



FIRST ADDENDUM TO THE PURCHASE AGREEMENT BETWEEN STONEY HOLDINGS, LLC, AND THE KENAI PENINSULA BOROUGH

An agreement for the purchase of land was made on the 8th day of August 2024 (Agreement), by and between STONEY HOLDINGS, LLC, as seller, whose address is PO Box 1041, Talkeetna, AK 99676 (Seller), and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (KPB) (together, the Parties). This *First Addendum to the Purchase Agreement* (Addendum) is an addendum to that Agreement, and this Addendum is incorporated by reference into that Agreement.

WHEREAS, the Agreement contemplated the purchase of land; to wit, KPB Tax Assessor Parcel No. 12535007, more particularly described and defined in the Agreement as "the Property"; and

WHEREAS, pursuant to Section 12 of the Agreement, "Entire Agreement", the Parties wish to modify the terms of the Agreement as set forth below; and

WHEREAS, pursuant to Section 9 of the Agreement, "Contingent on Inspection/Review", closing is contingent upon the satisfactory completion of a road access feasibility study; and

WHEREAS, the feasibility study authorization has been delayed, which means the transaction will be unable to close on or before December 13, 2024, as Section 5 of the Agreement, "Closing", requires; and

WHEREAS, Seller currently uses the Property for seasonal tourism business purposes; and

WHEREAS, Seller is willing to extend the closing date, provided Seller is allowed to continue its existing business operations during the 2025 summer operating season, ending on or before September 15, 2025;

NOW THEREFORE, in consideration of the mutual covenants contained below, the Parties hereby agree that the following constitutes additional or amended terms and conditions to the original Agreement.

1. Section 5 of the Agreement, "Closing", is hereby amended to read as follows:

*Unless otherwise agreed to in writing, closing will occur on or before **September 15, 2025**, or as specifically agreed to by both Parties. At closing, KPB will pay the balance of the purchase price. Both Parties will execute all documents required to complete the Agreement and, if applicable, establish an escrow account.*

2. Section 9 of the Agreement, "Contingent on Inspection / Review", is hereby amended to read as follows:

*Closing of the contemplated purchase is contingent upon the satisfactory completion of a feasibility study for road construction necessary to meet KPB road standards, and/or other inspections as deemed necessary by KPB to determine feasibility and future utility of the Property. The feasibility study and any other due diligence provided for in this section must be completed by **July 1, 2025**. All inspections and reviews required by KPB under this Section will be conducted solely at KPB's expense.*

Except as otherwise expressly provided in this Addendum, all other terms, provisions and conditions of the Agreement remain unchanged and in full force and effect.

Buyer:
KENAI PENINSULA BOROUGH:

Peter A. Micciche
Peter A. Micciche, Mayor

Date: 12/12/24

Seller:
STONEY HOLDINGS, LLC

Mark S. Wildermuth 12/10/2024
Mark S. Wildermuth, Member Date

Laura L. Caillet 12/10/2024
Laura L. Caillet, Member Date

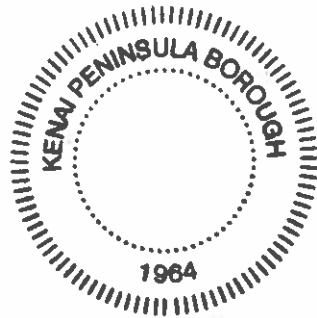
ATTEST:

Michele Turner
Michele Turner, CMC, Borough Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

A. Walker Steinhage
A. Walker Steinhage
Deputy Borough Attorney

Date: 12/11/2024



**MEMORANDUM OF AGREEMENT TO EQUALLY DIVIDE THE COST
OF A FEASIBILITY STUDY FOR BLUEBERRY HILL ACCESS BETWEEN
THE KENAI PENINSULA BOROUGH AND THE ALASKA MENTAL
HEALTH TRUST AUTHORITY**

ARTICLE 1. PARTIES

This Memorandum of Agreement (MOA) is made between the Kenai Peninsula Borough (KPB) whose address is 144 North Binkley Street, Soldotna, Alaska, 99669, and the Alaska Mental Health Trust Authority (MHT) whose address is 2600 Cordova Street, Suite 201, Anchorage, Alaska 99503 (together, the Parties).

ARTICLE 2. PURPOSE

KPB has placed an eighty-acre parcel in the Blueberry Hill area under a contract to purchase. The parcel is more particularly described as follows:

THE N¹/₂N¹/₂NW¹/₄; THE S¹/₂NE¹/₄NW¹/₄, AND THE N¹/₂SE¹/₄NW¹/₄,
ALL SITUATED IN SECTION 24, TOWNSHIP 1 NORTH, RANGE 1
WEST, SEWARD MERIDIAN, RECORDS OF THE SEWARD REORDING
DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (PARCEL
NO. 12535007) (the Property).

The purchase of the Property is contingent upon a feasibility study (the Study) to determine the potential for developed road access that would comply with current KPB road standards. The Property provides a potential means of access to adjacent KPB and Alaska Mental Health Trust Authority (MHT) land holdings. As an adjacent property owner, MHT likewise would benefit from the findings of the Study for future road access and land-planning activities in the Blueberry Hill area. The adjacent KPB land holdings are identified in Attachment 1, and the adjacent MHT land holdings are identified in Attachment 2.

This MOA defines the terms and Parties' obligations relating to equally dividing the cost of the Study.

ARTICLE 3. EFFECTIVE DATE AND PERIOD OF AGREEMENT

The effective date of this MOA is the date of the last signature of the Parties below. This MOA will expire upon the completion of the scope of work provided for in the Study.

ARTICLE 4. RESPONSIBILITIES OF KPB

KPB will:

- a. Provide a proposal quote request for the Study to MHT for review;
- b. Contract directly with the successful proposer upon award by KPB;
- b. Make all existing KPB land holdings in the Blueberry Hill area available for inclusion in the Study;
- c. Act as the project manager through its Land Management Division to oversee completion of the Study;

- d. Include MHT in calls and meetings concerning the Study with the Study contractor;
- e. Provide a copy of the completed Study to MHT; and
- d. Pay fifty percent (50%) of the contract amount for the Study, not to exceed \$25,000.

ARTICLE 5. RESPONSIBILITIES OF MHT

MHT will:

- a. Review the proposal quote request and all other Study-related contracting documentation in timely manner;.
- b. Include all existing MHT land holdings in the Blueberry Hill area as a part of the study and allow the Study contractor access to those properties to complete the Study;
- c. Provide any requested information regarding the MHT properties as it may relate to the Study;
- d. Participate in the development and completion of the project, including calls and meetings concerning the Study with the Study contractor.
- e. Pay fifty percent (50%) of the contract amount for the Study, not to exceed \$25,000) as provided for in Section 9 Payment for Services.

ARTICLE 6. COMPLIANCE WITH LAWS AND PERMITS

KPB and MHT will comply with all statutes, ordinances, rules, regulations, and requirements of federal, state, and local governments and agencies and departments thereof, which are applicable to KPB or MHT for the services provided under this MOA.

ARTICLE 7. APPLICABLE LAW

This MOA will be governed by and construed in accordance with the laws of the State of Alaska.

ARTICLE 8. CHANGES AND AMENDMENTS

Changes to this MOA must be by a written amendment that outlines in detail the exact nature of the change. Any amendment to this MOA must be executed in writing and signed by the authorized representative of each Party. The Parties signing this MOA and any subsequent amendment(s), represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person may be interpreted as amending or otherwise affecting the terms of this MOA. Any Party to this MOA may request that it be amended, whereupon the Parties will consult to consider such amendment.

ARTICLE 9. PAYMENT FOR SERVICES

The compensation for the matters covered under this MOA will be due in full within thirty (30) days of the notice of completion of the Study. If the payment is not received in full by the due date, KPB will e-mail notice of delinquency and add a fifteen percent (15%) delinquency fee in addition to any other delinquent fees that may be assessed by the contractor.

It is understood the KPB and MHT are both a governmental entities and payments herein provided for may be paid from legislative appropriations, and approval or continuation of an agreement may be contingent upon legislative appropriation by the KPB Assembly or the Alaska State Legislature. KPB reserves the right to terminate this MOA in whole or part if, in its sole judgment, the KPB Assembly fails, neglects, or refuses to appropriate sufficient funds as may be required. Further, in the event of non-appropriation, KPB will not be liable for any penalty, expense, or liability for general, special, incidental, consequential, or other damages resulting therefrom. MHT reserves the right to terminate this MOA in whole or part if, in its sole judgment, the Alaska State Legislature fails, neglects, or refuses to appropriate sufficient funds as may be required. Further, in the event of non-appropriation, MHT will not be liable for any penalty, expense, or liability for general, special, incidental, consequential, or other damages resulting therefrom.

KPB and MHT are not responsible for and will not pay local, state, or federal taxes. All costs associated with the MOA must be stated in U.S. currency.

ARTICLE 10. NOTICES

Notices by the Parties pursuant to this MOA must be sent to the following addresses:

Kenai Peninsula Borough
Attn: Land Management Division
144 North Binkley Street
Soldotna, Alaska 99669
E-mail: lmweb@kpb.us

Alaska Mental Health Trust Authority
Attn:
2600 Cordova Street, Suite 201
Anchorage, Alaska 99503
E-mail:

ARTICLE 11. INDEMNIFICATION AND HOLD HARMLESS

Each Party agrees that it will be responsible for its own acts and omissions including those of its officers, agents, and employees and each Party will indemnify, defend, and hold harmless the other, to the maximum extent allowed by law, from any claim of or liability for error, omission, or negligent act of whatever kind, including attorney fees, for damages to property or injury or death to persons occasioned by each Party's own acts or omissions in connection with this MOA. This agreement will continue after termination of this MOA.

ARTICLE 12. ENTIRE AGREEMENT

This document is the entire agreement of the Parties, who accept the terms of this MOA as shown by their signatures below. In the event the Parties duly execute any amendment to this MOA, the terms of such amendment will

Attachment 1

Kenai Peninsula Borough Owned and Managed Lands:

Owned:

THE SE¹/₄ OF SECTION 13, E¹/₂ OF SECTION 24, AND ALL OF SECTION 25, LOCATED IN TOWNSHIP 1 NORTH, RANGE 1 WEST, SEWARD MERIDIAN, SEWARD RECORDING DISTRICT, STATE OF ALASKA. (Parcel 12535010)

Management Authority:

THE E¹/₂SW¹/₄, AND A PORTION OF THE S¹/₂SE¹/₄NW¹/₄ OF SECTION 13, TOOWNSHIP 1 NORTH, RANGE 1 WEST, SEWARD MERIDIAN, SEWARD RECORDING DISTRICT, STATE OF ALASKA. (Portion of Parcel 12535014)

Attachment 2

Alaska Mental Health Trust Property:

TOWNSHIP 1 NORTH, RANGE 1 W., SEWARD MERIDIAN, ALASKA
SECTION 24: S1/2NW1/4NW1/4, SW1/4NW1/4, S1/2SE1/4NW1/4, N1/2SW1/4,
E1/2NW1/4SW1/4SW1/4, NE1/4SW1/4SW1/4, N1/2SE1/4SW1/4; ACCORDING TO
THE SURVEY MAP EXAMINED AND APPROVED BY THE U.S. SURVEYOR
GENERAL'S OFFICE IN JUNEAU, ALASKA ON JUNE 16, 1914.

**CITY OF SEWARD**

P. O. Box 167
410 Adams Street
Seward, Alaska 99664

City Manager's Office

907.224.4047

January 16, 2025

RE: Support Letter for KPB Land Acquisition

To the Kenai Peninsula Borough Assembly,

We are all aware of the negative impacts that a lack of residential housing and available land have on our local economies. Due to the geography of the Seward area, there are not many existing areas for land expansion for residential development, inside or outside of city limits.

Over the last few years, the KPB Land Management Division and the City of Seward have developed a collaborative relationship to problem solve the issue. We've had many conversations where we discuss potential areas, current land ownership, and strategies to get land into play for future development.

City Administration supports the acquisition of parcel #12535007 as it will create an access from a currently developed neighborhood to otherwise islanded Borough land parcel. It is a strategic acquisition that would create potential for significant future residential development for the Seward Area.

Regards,

Jason Bickling, Deputy City Manager

jbickling@cityofseward.net

907-491-0803 (mobile)

907-224-4066 (office)

E . NEW BUSINESS

- 2. Ordinance 2025-02: Authorizing the disposal of real property located in Kenai necessary to resolve title matters related to the erroneous recording of a 1977 tax foreclosure deed.**

Kenai Peninsula Borough
Planning Department – Land Management Division

MEMORANDUM

TO: Peter Ribbens, Assembly President
Members, KPB Assembly

THRU: Peter A. Micciche, Mayor
Robert Ruffner, Planning Director *RR*

FROM: Aaron Hughes, Land Management Officer *AH*

DATE: January 9, 2025

RE: Ordinance 2025-____, Authorizing the Disposal of Real Property Located in Kenai Necessary to Resolve Title Matters Related To The Erroneous Recording Of A 1977 Tax Foreclosure Deed (Mayor)

In 1970, the Kenai Peninsula Borough (KPB) generated a tax bill in error for property owned by the United States Department of the Interior and under lease by a private entity (the Parcel). Believing the Parcel to be in private ownership, KPB applied for a tax foreclosure clerk's deed in 1972. After the clerk's deed was granted in 1975, KPB sold the Parcel at a tax foreclosure land sale in 1977. A deed was issued to the purchasers of the Parcel as a result of that land sale (the 1977 Tax Foreclosure Deed).

In 1984, the State of Alaska received patent to the Parcel from the United States Department of the Interior. KPB selected the Parcel as part of KPB's municipal entitlement selection. In order to expedite the resolution of the title cloud created by the 1977 Tax Foreclosure Deed, KPB requested that the State of Alaska consider the Parcel as a priority for conveyance in 1985. KPB was awarded management authority of the Parcel in 2015.

The Land Management Division applied for patent to the Parcel in 2023. As part of the final title review process, the State of Alaska Division of Mining, Land, and Water Conveyance Section has requested that KPB agree to convey its interest in the Parcel to the current property owner as a condition of the patent being issued. Approval of the Ordinance will satisfy that request. The recording of the patent from the State of Alaska and subsequent recording of a quitclaim deed from KPB to the current property owner will resolve the title cloud and perfect title to the Parcel on behalf of the current property owner.

Your consideration is appreciated.

Introduced by: Mayor
Date: 01/21/2025
Hearing: 02/04/2025
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2025-**

**AN ORDINANCE AUTHORIZING THE DISPOSAL OF REAL PROPERTY LOCATED
IN KENAI NECESSARY TO RESOLVE TITLE MATTERS RELATED TO THE
ERRONEOUS RECORDING OF A 1977 TAX FORECLOSURE DEED**

WHEREAS, the Kenai Peninsula Borough (KPB), a second-class borough, is authorized to conduct tax foreclosure proceedings pursuant to AS 29.45.290 et seq. to dispose of real property deeded to KPB for delinquent payment of taxes; and

WHEREAS, in 1970 a KPB tax bill was generated in error for a parcel of real property under ownership of the United States Department of the Interior and encumbered by a leasehold interest, and which is the Parcel particularly described in Section 1 below; and

WHEREAS, the 1970 tax delinquency was not resolved by the lessee resulting in a delinquent tax foreclosure action against the Parcel; and

WHEREAS, KPB applied for and was awarded a clerk’s tax foreclosure deed as a result of that tax foreclosure action identified as Civil Case No. 72-5056 in the Superior Court for the State of Alaska, Third Judicial District on October 23, 1975, and recorded as document 1975-004602-0, Kenai Recording District; and

WHEREAS, the Parcel was sold by KPB at a tax foreclosure land sale on April 23, 1977, for \$740.00 to Fred Sturman and Mac Chesney, and financed by KPB for a ten-year term; and

WHEREAS, a tax foreclosure deed was issued to Fred Sturman and Mac Chesney (the 1977 Tax Foreclosure Deed) as a result of that sale; and

WHEREAS, on January 12, 1984, Mac Chesney conveyed his interest in the Parcel to Fred Sturman by quitclaim deed recorded as document 1984-000385, Kenai Recording District; and

WHEREAS, on June 1, 1984, the State of Alaska received patent to the Parcel from the United States Department of the Interior; and

WHEREAS, on July 16, 1984, KPB selected the Parcel as part of its municipal entitlement selection from the State of Alaska under ADL 220458; and

WHEREAS, on February 14, 1985, KPB released the seller financing originally obtained by Fred Sturman and Mac Chesney as part of their 1977 tax foreclosure land sale purchase; and

WHEREAS, on October 9, 1985, KPB submitted a request to the State of Alaska Department of Natural Resources, Division of Mining, Land, and Water to consider the municipal entitlement selection for the Parcel a priority necessary to resolve the title cloud created by the 1977 Tax Foreclosure Deed; and

WHEREAS, on January 23, 2015, the State of Alaska issued a final finding and decision document to KPB approving the selection of the Parcel under ADL 2220458; and

WHEREAS, on September 16, 2021, a personal representative’s deed was recorded as document No. 2021-010329-0, Kenai Recording District, conveying interest from the Estate of Fred Sturman, as grantor, to Mary A. Sturman, as grantee; and

WHEREAS, as a condition of KPB receiving its municipal entitlement conveyance to the Parcel, and in order to resolve the clouded title created by the 1977 Tax Foreclosure Deed, a subsequent conveyance from KPB as grantor, to Mary A. Sturman, or her successors and/or assigns, as grantee is necessary; and

WHEREAS, the KPB Planning Commission, at its regular meeting of January 27, 2025, recommended _____;

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

SECTION 1. That pursuant to KPB 17.10.100, the Assembly finds the disposal of the following described 1.9-acre parcel, is in KPB’s best interest as it serves to resolve a title cloud created by the 1977 Tax Foreclosure Deed:

GOVERNMENT LOT 21, WITHIN SECTION 14, TOWNSHIP 6 NORTH, RANGE 12 WEST, SEWARD MERIDIAN, KENAI RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (PARCEL NO. 01714006) (the Parcel).

SECTION 2. That resolution of the title cloud will satisfy the initial intent of KPB’s municipal selection and any remaining requirements from the State of Alaska DNR necessary to issue patent to the KPB, perfecting title to the Parcel initially conveyed in error.

SECTION 3. That the assembly makes an exception to KPB 17.10.080 requiring classification prior to disposal. This exception is based on the following findings of fact pursuant to KPB 17.10.230:

1. “That 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 KPB management of such lands and implementation action to provide for the identified uses. This ordinance serves to set the management plan and future intent of the identified property.

b. Conveyance of the Parcel will resolve the title cloud resulting from the 1977 Tax Foreclosure Deed, and classification of the Parcel is therefore unnecessary to designate the most appropriate use for the Parcel at this point.

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”:

The preservation of a substantial property right is applicable to this case. Exception to classification, which has no impact on land uses upon disposal, provides the most practical and cost-effective manner to resolve the title cloud.

3. “That the granting of the exception will not be detrimental to the public or injurious to other property in the area”:

The title cloud created by that 1977 Tax Foreclosure Deed is specific to the Parcel. Resolution of the title cloud will benefit the Parcel by providing a clear chain of title increasing the Parcel’s future utility and value, which will potentially provide indirect benefit to other property in the area.

SECTION 4. The Assembly makes an exception to KPB 17.10.100. This exception is based on the following findings of fact pursuant to KPB 17.10.230:

1. “That special circumstances or conditions exist”:

The purpose of KPB 17.10.100 (Methods of Disposition) is to identify means for a public opportunity to purchase or lease KPB land. The disposal of the Parcel is for the sole purpose of resolving a cloud on title created by the erroneous recording of the 1977 Tax Foreclosure Deed.

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”:

This exception will serve to preserve and improve a substantial private property right through the resolution of a title cloud.

3. “That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area”:

The title cloud created by that 1977 Tax Foreclosure Deed is specific to the Parcel. Resolution of the title cloud will benefit the Parcel by providing a clear

chain of title increasing the Parcel’s future utility and value, which will potentially provide indirect benefit to other property in the area.

SECTION 5. The assembly makes an exception to KPB 17.10.110 (notice of disposition). This exception is based on the following findings of fact pursuant to KPB 17.10.230:

1. “Special circumstances or conditions exist”:

The purpose of KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land. Advertising this conveyance to the general public will not serve a useful purpose, as the disposal is only being authorized to cure a title defect.

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”:

For this proposed disposal, the notice requirement is impractical, and compliance is not in the best interests of the KPB. Notice will only serve to cause unnecessary delay, expense, and potential confusion in this case which is specific and necessary for the purposes of resolving a cloud on title.

3. “That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area”:

The proposed disposition is advertised by publication of the ordinance as required in KPB code and on KPB’s web page. Notice of the proposed disposition is also published by the Planning Commission agenda, and a public hearing is held at the Planning Commission level. Additional notice is not necessary to comply with the intent of KPB 17.10 nor to protect the public welfare.

SECTION 6. The Mayor is authorized to sign any documents necessary to effectuate this ordinance within 180 days of Assembly approval.

SECTION 7. That this ordinance shall be effective immediately.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS _____ DAY OF _____, 2025.

Peter Ribbens, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk



KENAI PENINSULA BOROUGH Land Management

Parcel No.: 01714006





KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

DON GILMAN
MAYOR

September 21, 1977

Fred Sturman and Mac Chesney
P. O. Box 513
Soldotna, AK 99669

Dear Messrs. Sturman and Chesney:

It gives us great pleasure to enclose the original of that recorded TAX FORECLOSURE DEED #K77-6.

Please call on us for any assistance concerning the point in question.

Sincerely,

Carolyn Nugent
Land Management Agent
Assessing Department

CN:lrh

Enclosure

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered..... 15¢
 Show to whom, date, & address of delivery.. 35¢
 RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢
 RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
 Fred Sturman & Mac Chesney
 P. O. Box 513
 Soldotna, AK 99669

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | 05658 |

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY: 9-23 POSTMARK: SEP 23 1977

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:
 017-190-0600
 173-040-1400

CLERK'S INITIALS

☆ GOP: 1976-O-203-456

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Kenai Recording District

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7-2-87

TAX FORECLOSURE DEED
#K77-6

The GRANTOR, KENAI PENINSULA BOROUGH, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and sufficient consideration, does hereby convey to the GRANTEES, FRED STURMAN AND MAC CHESNEY, whose address is Box 513, Soldotna, Alaska 99669, all of its right, title and interest in the tax foreclosed parcel of real property, more particularly described as follows:

Government Lot 21, within Section 14,
Township 6 North, Range 12 West, Seward
Meridian, in the Kenai Recording District,
Third Judicial District, State of Alaska;

also identified as Kenai Peninsula Borough
Tax Parcel No. 017-140-0600.

TO HAVE AND TO HOLD without warranty or representation of any kind, and subject to any and all restrictions of record, zoning ordinances, and any and all plat requirements and covenants, and including government patents and oil and mineral reservations, if any, and the conditions of this deed.

This conveyance is made by the Grantor to the Grantees, on the condition that the premises shall not be subdivided or sold for subdivision or otherwise sold, alienated, or disposed of in whole or in part, until and on the further condition that each and every payment will be made on a certain promissory note which has been given as a part of the consideration for the conveyance of this tax foreclosure deed by the Grantor to the Grantees, and on the further condition that Grantees assume and agree to pay all future real property taxes assessed against the parcel conveyed as

ANDREW R. SARISKY
BOROUGH ATTORNEY
KENAI PENINSULA BOROUGH
BOX 450
SOLDOTNA, AK. 99669
262-4441

BOOK 112 PAGE 863
Kenai Recording District

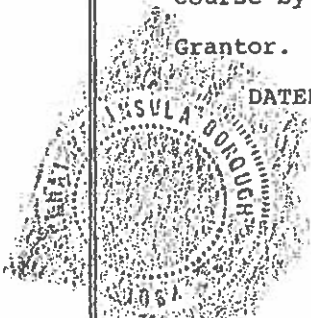
they become due and payable.

The Grantor reserves a reversionary interest on condition broken, and in the event that any or all of these conditions be broken by the Grantees, the right, title and interest under this conveyance shall immediately revert to and revest the interest under this deed in the Grantor without any further proceedings in a court of law, subject only to the filing with the appropriate district recorder of an instrument entitled "Reverter of Reversionary Interest on Condition Broken", without further or any recourse by the Grantees, or any claim whatsoever against the Grantor.

DATED: August 19, 1977

KENAI PENINSULA BOROUGH

By: Donald E. Gilman
Donald E. Gilman, Mayor



ATTEST:

Francis R. Brymer
Borough Clerk

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

Andrew R. Sarisky
Andrew R. Sarisky
Borough Attorney

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on this 19th day of August, 1977, DONALD E. GILMAN, being personally known to me or having produced evidence of identification, appeared before me and acknowledged the voluntary execution of the foregoing instrument for the municipality named and in the capacity indicated in the execution thereof.

Carolyn Nugent
Notary Public in and for Alaska
My Commission Expires: 11-4-79

ANDREW R. SARISKY
BOROUGH ATTORNEY
KENAI PENINSULA BOROUGH
204 300
KENAI, AK 99549
262-4441

77-005413

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REC'D

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KPB



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

October 9, 1985

Arlan DeYong
Municipal Entitlements
State of Alaska - DNR
Division of Land & Water Management
3601 C Street
Pouch 7-005
Anchorage, Ak 99510-7005

RE: Municipal Selection Priorities

Dear Arlan:

On September 12, 1985, Tom Hawkins sent a letter to the KPB regarding our request for priority conveyance of the Granite Point selections together with seven (7) other selections of lesser priority.

We have looked at these seven (7) other priorities and found that some are of greater importance than others. The selections which have been made for future school facilities or expansion of existing facilities are of the greatest importance. These are:

1. Municipal Selection ADL 55732
T5N, R9W, S.M.
Sec. 19: E1/2NW1/4 80 acres
2. .810 Application ADL 220460
T5N, R10W, S.M.
Sec. 30: SE1/4SW1/4 40 acres
3. .810 Application ADL 220818
T3N, R11W, S.M.
Sec. 31: W1/2 Lot 4 & Lot 15 31.25 acres

An application of equal importance, although not related to a school project is:

4. Municipal Selection ADL 220458
T6N, R12W, S.M.
Sec. 14: Lot 21 2.5 acres

Arlan DeYong
RE: Priorities/Selections
October 9, 1985
Page 2 of 2

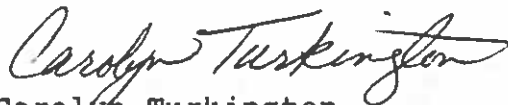
It is necessary that the KPB receive patent to the above Lot 21 in order to clear up a title problem which was created when the KPB believed the parcel to be in private ownership, foreclosed on it for delinquent taxes, sold it at a tax foreclosure sale and issued a deed to the purchaser.

The remaining three selections are the lowest in priority.

5. .810 Application ADL 220459
T1N, R1W, S.M.
Sec. 22: SW1/4SE1/4, SE1/4SW1/4 80 acres
6. Municipal Selection ADL 220785
T7N, R11W, S.M.
Sec. 30: Lots 8, 9 & 10 73.95 acres
7. .810 Application ADL 206472
T10N, R1W, S.M.
Sec. 33: Uplands of SE1/4 80 acres (m/l)

Please contact me if you have any questions.

Sincerely,



Carolyn Turkington
Land Management Officer

E . NEW BUSINESS

- 3. Ordinance 2025-03: Amending KPB Chapter 21.20 relating to hearing and appeals to a hearing officer.**

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Peter Ribbens, Assembly President
Members, KPB Assembly

THRU: Peter A. Micciche, Mayor *PMM*
Robert Ruffner, Planning Director *RR*
Sean Kelley, Borough Attorney *SK*

FROM: A. Walker Steinhage, Deputy Borough Attorney *AWS*

DATE: January 9, 2025

SUBJECT: Ordinance 2025-____, Amending KPB Chapter 21.20 Relating to Hearings and Appeals to a Hearing Officer (Mayor)

The Ordinance amends KPB Chapter 21.20, Hearings and Appeals.

A new section (KPB 21.20.225) establishes the criteria for standing to appeal quasi-judicial decisions of Planning Department Staff and/or the Planning Director, the Planning Commission, and the hearing officer. Additionally, the Ordinance provides a process for appealing quasi-judicial decisions of Planning Department Staff and/or the Planning Director to the Planning Commission. Presently, KPB Code lacks a process even though various KPB Code provisions mandate such an appeal.

Other Code changes reflected in the Ordinance require the appellant to pay a record transcription fee; authorize the hearing officer to dismiss an appeal upon motion by an appeal party if the appellant's notice of appeal is deficient for lack of standing, specificity, or reasoning; and provide the KPB clerk the authority to administratively consolidate appeals filed on the same decision and which involve a common question of law or fact.

The Ordinance also replaces the current model of filing simultaneous opening and reply statements with a staggered, more traditional appellant opening/appellee response/appellant reply format. Finally, the current time period for the hearing officer to file a decision with the clerk is extended from fifteen to forty-five days.

Your consideration is appreciated.

Introduced by: Mayor
Date: 01/21/25
Hearing: 02/25/25
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2025-XX**

**AN ORDINANCE AMENDING KPB CHAPTER 21.20 RELATING TO HEARINGS
AND APPEALS TO A HEARING OFFICER**

WHEREAS, various KPB Code provisions provide for appeals of a quasi-judicial staff decision to be heard by the Planning Commission without setting forth an appeal procedure to allow for such appeals; and

WHEREAS, this ordinance amends KPB Chapter 21.20 to provide that the Planning Commission will sit as the Hearing Officer for appeals of the Planning Director and/or staff decisions; and

WHEREAS, this ordinance further amends KPB 21.20 to provide for administrative consolidation when multiple appeals are filed on the same decision, and adds a section regarding standing, specifies filing and transcript fees, updates hearing procedure, timelines, and other clarifying edits to improve administration of KPB Chapter 21.20; and

WHEREAS, the Planning Commission at its regularly scheduled meeting held on January 27, 2025, recommended _____;

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

SECTION 1. That KPB Chapter 21.20, Hearings and Appeals, is hereby amended as follows:

CHAPTER 21.20. - HEARINGS AND APPEALS

21.20.210. Definitions.

A. For the purposes of this chapter, the following definitions [shall] apply unless the context clearly indicates or requires a different meaning:

[1.]"Aggrieved party or person" means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.

[2.]The "appellant" is the party who files the notice of appeal and pays the filing and transcription fees [AND INITIALLY FILES THE NOTICE OF APPEAL].

[3.]The "applicant" is the party that made application with the planning department for a permit, plat, variance or other entitlement subject to a quasi-judicial process under KPB Title 20 or 21.

[4.]"Ex parte" means by or for one party; done for, on behalf of, or on the application of, one party only.

"Good cause" means adequate grounds based on a serious condition or event beyond a party's control to justify a party's request or failure to act; or, the party was not provided a prior opportunity to act.

[5.]"Party of record" means:

- a. The applicant [BEFORE THE PLANNING COMMISSION],
- b. Any party or person aggrieved by the decision where the decision has or could have a[N] material adverse effect on value, use or enjoyment of real property [OWNED BY THEM] in which they have a vested private property interest within the notification radii and who appeared before the planning commission with either an oral or written presentation, and who owns lands within the notification radii. A signature on a petition does not qualify the signatory as a party of record.
- c. A government agency affected by the decision which appeared before the planning commission with either a written or oral presentation.

[6.]"Quasi-judicial decisions" are those decisions where general law or policy are applied or affect an individual's property interests. Such decisions include but are not limited to preliminary and final plat approvals, conditional use permits, and exception and variance applications.

[7.]"Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

21.20.225. – Standing.

A. Only the following have standing to appeal a quasi-judicial staff decision to the Planning Commission:

1. The applicant;
2. A government agency affected by the decision and which has received notice of the application or decision required by relevant borough code or other; and
3. Any party or person who: 1) was affected by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property in which they have a vested private property interest; and 2) has received notice of the application or decision required by relevant borough code or other applicable law.

B. Only a "party of record" as defined in KPB 21.20.210 has standing to appeal a final decision of the Planning Commission to a hearing officer.

C. Standing to appeal the final decision of a hearing officer is governed by KPB 21.20.360.

21.20.220. Hearing officer—Established.

[A. *ESTABLISHED.*] The hearing officer performs the appellate functions required by AS 29.40.050.

[B. *QUALIFICATIONS. THE HEARING OFFICER SHALL HAVE THE QUALIFICATIONS SET FORTH IN KPB 21.50.110.*]

21.20.230. Jurisdiction.

A. Unless a different appellate procedure is provided by this Code, the hearing officer is authorized to hear and decide appeals from quasi-judicial planning commission decisions.

B. Unless a different appellate procedure is provided by this Code, the planning commission is authorized to hear and decide appeals from quasi-judicial staff decisions. For purposes of this chapter, the term “hearing officer” includes the planning commission when the planning commission sits as a body to decide appeals from staff decisions. The procedure set forth under this chapter applies when the planning commission sits as the hearing officer under this section and the chair of the planning commission will serve as presiding officer and will sign the decision.

21.20.240. Conflict of interest—Ex parte contact.

A. Conflict. A hearing officer may not hear or decide a case:

1. In which the hearing officer:

- a. Has a direct or indirect financial interest in the property that is the subject of the case, or that is located within 500 feet of property that is the subject of the case;
- b. Is related by blood, adoption, or marriage to any party to the case or to an owner of property that is the subject of the case, or who resides at or owns property within 500 feet of property that is the subject of the case.

2. In which either:

- a. A party demonstrates that, due to factors external to the case, the ability of the hearing officer to make an impartial decision is actually impaired, or
- b. Reasonable persons would conclude the ability of the hearing officer to make an impartial decision is impaired due to circumstances of the proceeding, including without limitation instances in which the hearing officer or an immediate family member is a party, material witness or represents a party.

B. Ex parte contact. A hearing officer shall be impartial in all administrative decisions, both in fact and in appearance. A hearing officer may not receive or otherwise engage in ex parte contact with any party of record, or members of the public, concerning an application filed pursuant to KPB Title 20 or 21 from the time the application is submitted through any

period of time the matter is submitted for decision or subject to reconsideration before the hearing officer.

21.20.250. Appeal of planning commission decision to hearing officer.

- A. *Time; fees; preparation of record and transcript.* Any party of record may file an appeal of a decision of the planning commission or planning department within 15 days of the date of the notice of the decision with the borough clerk on the forms provided, and by paying the filing, transcription, and records preparation fees in the amounts listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. An appeal may be filed by personal delivery or mail as long as it is complete and received in the clerk's office by 5:00 p.m. on the day the notice of appeal is due. Unless the borough and the appellant agree otherwise, or the hearing officer orders otherwise, the appellant must pay the borough for preparation of the record and transcripts of the proceedings. The borough will notify the appellant of the total cost. The appellant must pay the fee for record and transcript preparation within thirty days of the borough's notice of cost, otherwise the appeal may be dismissed.
- B. An application to proceed with an appeal as an indigent may be filed with the borough clerk's office on a form provided by the borough clerk in lieu of the filing fee and fee for record and transcript preparation. The hearing officer may allow an applicant who qualifies as an indigent a reduced filing fee, a payment plan, or a waiver of the filing fee where the hearing officer is able to make a written finding, based on information provided by the applicant, that payment of the appeal fee would be a financial hardship for the appellant. Based upon the information provided, the fee may be reduced or waived in accordance with the following schedule:

Annual income as a Percent of current Health and Human Services (HHS) Poverty Guidelines for Alaska	Percent of fee reduced
1—100%	100% Waiver
101—149%	75% Waiver
150—174%	50% Waiver
175—199%	25% Waiver
200% plus	No Waiver

Any appellants with income equal to or less than 200 percent of the HHS poverty guidelines for Alaska for the year in which the appeal is filed may apply for a payment plan in which the filing fee shall be paid in full within in six months of the date of filing.

- C. All appeals [SHALL]will be to the hearing officer, and [SHALL]will be conducted in accordance with the provisions of this chapter, unless otherwise provided by the Kenai Peninsula Borough Code.
- D. *Notice of appeal.* The notice of appeal must:
 - 1.[D)] State the decision from which the appeal is taken;
 - 2. state the grounds for standing as a party of record as defined in this chapter to bring the appeal;

[2)] 3. State, with specificity, the errors asserted in the findings of fact or conclusions of law;

[3)]4. State the relief sought on appeal, including a statement of whether the decision should be reversed, modified, or remanded for further proceedings; and

5. Provide an e-mail address for electronic service of pleadings, notices, and orders.

E. Dismissal by Hearing Officer. Upon motion by a party to the appeal, an appeal must be dismissed by the hearing officer if the notice of appeal:

1. Fails to satisfy the grounds for standing as a party of record as defined in this chapter to bring the appeal;

2. Fails to identify specific errors in the findings of fact, conclusions of law; or

3. Fails to identify the reason the decision is contrary to applicable law.

[E]E. *Entry of appearance.* The borough clerk [SHALL]will e-mail, mail or otherwise deliver copies of the notice of appeal to all parties of record in the proceeding appealed within 15 days of the date of [FILING THE NOTICE OF APPEAL] the deadline to file an appeal under KPB 21.20.250(A) above. All parties of record must provide an e-mail address that may be used for electronic service of pleadings, notices, and orders. Proof of service upon each party [SHALL]will accompany the notice of appeal. Any party desiring to participate in the appeal process must file an entry of appearance containing that party's name and address and signature, or the name and address of the party and the name and address and signature of the party's representative, within 15 days of the date of mailing of the notice of appeal by the borough clerk. If borough staff is not participating in the appeal beyond providing the required staff overview, a notice of non-participation will be filed with the borough clerk. Proof of service of the entry of appearance upon each party [shall]will be made in the manner prescribed in KPB 21.20.280(D). Any party filing an entry of appearance may file additional designations of error or other alternative requests for modification or reversal of the decision.

G. Consolidation. In the event multiple appeals are filed on the same decision and involve a common question of law or fact, the clerk will administratively consolidate the appeals. For consolidated appeals, the records preparation and transcription fee under KPB 21.20.250(A) will be prorated according to the number of appellants. Upon motion by a party, to avoid prejudice or to economize, the hearing officer may separate the appeals or separate the hearing on appeal.

21.20.260. Stay on appeal.

Upon commencement of an appeal, any entitlement granted is stayed until a final decision is issued by the hearing officer. If an entitlement has conditions associated with it that must be performed within a certain time period, the time frame for performance or compliance does not start until the hearing officer's final decision is distributed or as otherwise specified by the hearing officer.

21.20.270. Record on appeal.

A. *Record; contents.* For the purposes of appeal, the record shall include:

1. The filed application or complaint which initiated the proceedings before staff or the planning commission;
2. All informational materials supplied to staff or the commission or relied upon by the planning director or staff in making its report or recommendations to the planning commission;
3. All informational materials which were entered into the record or minutes of the proceeding before the commission;
4. The report of the initial investigation by the planning department, and where applicable the enforcement order or decision of the planning director;
5. All testimony and all documents or other evidence received by the planning commission from the parties or other witnesses during the proceedings;
6. The decision of the planning commission;
7. The planning commission's findings of fact; and
8. The minutes of the planning commission and a verbatim transcript of the planning commission hearing.

B. *Record; preparation.* The planning department [SHALL]will complete and file the transcript with the borough clerk within 30 days after the deadline for filing entries of appearance. The planning director [shall] must certify the paginated and indexed record and minutes on appeal within 30 days after the deadline for filing entries of appearance. [ONE COPY OF THE RECORD SHALL] BE PROVIDED A PARTY PAYING THE RECORD PREPARATION AND TRANSCRIPTION FEE. AN ELECTRONIC COPY SHALL ALSO BE PROVIDED TO THE APPLICANT IF THE APPLICANT IS NOT THE APPELLANT] A notice of certification of record and electronic copy of the record [SHALL]will be provided to all parties who have timely entered an appearance in the case. For records too large to send by e-mail, the record will be posted online or made available through a file sharing service. A paper copy [Copies] of the record may be provided [to other parties or any other persons] upon request and payment of a \$100 flat labor fee and [HANDLING CHARGE]per page charge for copies in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

C. *Appeal on the record; new evidence.* Appeals to the hearing officer [SHALL]will be on the record and based on the information and evidence before the original decisionmaker. No new evidence, or illustrative documents or attachments to written statements, may be filed without prior approval of the hearing officer after a showing by the moving party that there exists cause for supplementing the record and that even with due diligence the new evidence could not have been provided at the public hearing before the planning commission and a reasonable opportunity is provided for all other parties of record to submit comments on the request prior to the hearing officer's decision. Evidence or documentary information submitted to the clerk upon filing the notice of the appeal will not be accepted.

21.20.280. Written statements.

- A. Appellant’s *Opening statement*. Appellant(s) must submit a written statement to the hearing officer as an opening statement within 30 days of the clerk notice of certification of record. All other parties of record who entered an appearance in the appeal must submit a written response statement to the hearing officer [WHICH SHALL BE FILED WITH THE BOROUGH CLERK] within [20]15 days of the date of submission of the appellant’s opening statement. [CLERK ISSUING NOTICE THAT A COMPLETED RECORD AND TRANSCRIPT HAVE BEEN FILED]. The written statement may include a statement of facts as derived from the record on appeal, a statement of the party's perception of the correctness of the [PLANNING COMMISSION] original decisionmaker, a list of asserted errors, and any citations to applicable statutes, ordinances, regulations or other legal authority for the position taken by the party to the appeal. Failure to timely submit [the] a written opening or response [WRITTEN] statement will result in dismissal of that party from the appeal. Multiple parties may preserve their party status by filing a single written statement; however, the written statement must clearly identify all parties filing the single statement. The hearing officer may waive irregularities in the content of the notice of appeal or written statements. In appeals where staff does not enter an appearance, the staff overview may be provided in writing when opening statements are due.

- B. *Reply statement*. [EACH PARTY FILING AN OPENING STATEMENT] Appellant(s) may submit a reply statement within [2]10 days of the [FILING DEADLINE FOR THE INITIAL WRITTEN STATEMENTS] filing of the [OPPOSING] response statements. The reply [SHALL] must be limited to response to matters specifically raised in the other parties' response [OPENING] statement. A party may only file a single reply statement [IN RESPONSE TO ALL OPENING STATEMENTS FILED].

- C. *Extension*. The hearing officer, upon good cause shown, may grant a motion for an extension of time to any party or legal representative for the completion of any act required under this section, except for the filing of the notice of appeal, where the remaining parties will not appear to be unduly prejudiced by the delay. [AN EXTENSION PERMITTED ONE PARTY SHALL BE EXTENDED TO ALL PARTIES BY NOTICE FROM THE BOROUGH CLERK. MOTIONS FOR EXTENSIONS SHALL COMPLY WITH THE PROVISIONS OF KPB 21.20.280(D) AND 21.20.300.]

- D. *Service*. [SERVICE OF WRITTEN STATEMENTS SHALL BE MADE ON ALL PARTIES OF RECORD FOR BRIEFS AND ON PARTIES PERMITTED TO FILE MOTIONS AND RESPOND TO MOTIONS BY KPB 21.20.300. SERVICE SHALL BE MADE BY THE BOROUGH CLERK EITHER BY MAIL OR PERSONAL DELIVERY WITHIN TWO BUSINESS DAYS OF THE FILING DEADLINE. SERVICE BY EMAIL OR FACSIMILE IS PERMITTED WHEN THE PARTY TO BE SERVED HAS AFFIRMED IN WRITING THE ACCEPTANCE OF ALTERNATE FORMS OF SERVICE.] All notices, orders, or service of other documents required under this chapter will be served by electronic mail (email). All parties must provide an email address for service and parties will be considered to have received documents sent to the email address they provide. Parties are responsible for serving documents filed with the clerk or the hearing officer on all other parties who have entered in appearance in the case. Any document, pleading, or written statement filed with the clerk or the hearing officer must be served by the filing party on all other parties to

the appeal by email delivery. The filing party must certify on the document that the document and all attachments have been served on the other parties. Certificates of service must be signed by the individual who cause the document to be served on the party as provided. The following certificate of service may be used:

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document including a total of _____ pages was served via email delivery on the following parties and at the email address listed below:

{list all parties and corresponding email address for the parties }

{Signature or electronic signature of filing party }

- E. *Additional written statements.* Unless the hearing officer requests supplemental written statements from the parties of record or staff, no additional written statements [shall] may be accepted. If the hearing officer requests supplemental written statements after the hearing, the hearing officer will provide a deadline for submission of the supplemental written statements. The time for decision under KPB 21.20.340(C) will toll for the duration of time from the hearing to the deadline for submission of supplemental written statements.

[21.20.290. Reserved.]

21.20.300. Motions.

- A. *Parties.* Motions for continuances, shortened time, or other matters may be filed by a party who timely enters an appearance in the matter [the following parties and served in the manner prescribed by KPB 21.20.280(D).]:
 1. THE APPELLANT;
 2. THE APPLICANT IF THAT PARTY IS NOT THE APPELLANT;
 3. A BOROUGH OFFICIAL IF BOROUGH STAFF ENTERS AN APPEARANCE IN THE MATTER.]
- B. *Response.* Any nonmoving party may file a response to a motion within 5 business days of the motion being filed. The response must be served in the manner prescribed by KPB 21.20.280(D). The hearing officer may shorten or extend the time to file a response for good cause. [THE HEARING OFFICER SHALL ALLOW A TIME FOR RESPONSE TO A MOTION BY THE NONMOVING PARTIES SET FORTH IN KPB 21.20.300(A). ANY RESPONSE SHALL BE IN WRITING AND MADE WITHIN THE TIME FRAME REQUIRED BY THE HEARING OFFICER. THE RESPONSE SHALL BE SERVED IN THE MANNER PRESCRIBED BY KPB 21.20.280(D).]
- C. Reply
- D. *Ruling.* The hearing officer [SHALL] will consider and rule on the motion within 30 days of the reply statement being due or on the scheduled hearing date, whichever occurs first.

21.20.310. Hearing procedure.

- A. *Time.* [THE HEARING OFFICER SHALL ESTABLISH THE DATE FOR CONSIDERATION OF THE APPEAL ON A DATE THAT IS NOT LESS THAN 40 DAYS NOR MORE MORE THAN 90 DAYS AFTER THE SERVICE OF THE NOTICE OF CERTIFICATION OF THE RECORD. THE HEARING OFFICER MAY FOR GOOD CAUSE SHORTEN OR EXTEND THE HEARING DATE.] The hearing officer will set the hearing date. The hearing date must be set for a date within 90 days of the date the appellant's opening statement is due. The hearing officer may extend the hearing date for good cause.

- B. *Participants.* The hearing officer [SHALL]will permit oral argument by any party who either filed the appeal or an entry of appearance and has filed a written argument. [IF MORE THAN ONE APPEAL IS FILED FROM THE SAME PLANNING COMMISSION DECISION THE APPEALS SHALL BE CONSOLIDATED AS A SINGLE APPELLATE PROCEEDING. EACH PARTY SHALL BE ENTITLED TO FILE MOTIONS, WRITTEN STATEMENTS, AND PRESENT ARGUMENTS AS SET FORTH IN KPB 21.20.280-310.]

- C. *Agenda.* Argument [SHALL]will be conducted in the following order:
 - [1] STAFF OVERVIEW—EXPLANATION OF PROCEEDINGS AND DECISION BEFORE THE PLANNING COMMISSION, 10 MINUTES.]
 - [2]1. Appellant, 15 minutes.
 - [3]2. KPB, if participating in the appeal, 10 minutes.
 - [4]3. Applicant, if the applicant is not an appellant, 15 minutes.
 - [5]4.[Persons filing entries of appearance supporting applicant's position]All other parties, 5 minutes each.
 - [6]5. Applicant rebuttal, if the applicant is not an appellant, 5 minutes
 - [7]6. Appellant's rebuttal, 5 minutes.

- D. *Agenda flexible.* The hearing officer may question any party at any time. [but the time for questions and answers shall not count against the time allotted to that party for argument. The hearing officer may revise the agenda set forth in section C. for good cause] The time for questions and answers will not count against the time allotted to that party of argument. The hearing officer may revise the agenda for good cause, fairness to the parties, and so long as all the parties are provided an opportunity to be heard. The hearing officer may limit argument by any person to reduce cumulative or repetitive argument. [THE HEARING OFFICER FOR GOOD CAUSE SHOWN MAY GRANT ADDITIONAL TIME FOR ORAL ARGUMENT TO THE APPELLANT OR APPLICANT. IN SUCH EVENT, THE OPPOSING PARTY, IF ANY, SHALL BE GRANTED EQUAL ADDITIONAL TIME. FAILURE TO OBSERVE THE PROCEDURES SET FORTH IN SECTION C. MAY NOT AFFECT THE VALIDITY OF THE HEARING OFFICER'S DECISION SO LONG AS THE PARTIES HAVE HAD REASONABLE OPPORTUNITY TO BE HEARD.]

- E. *Deliberations.* The hearing officer may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement. Deliberations and development of findings may be done by or in consultation with legal counsel.

21.20.320. Scope of appellate review.

After the hearing the hearing officer shall apply the following rules to its decision:

1. The hearing officer may exercise independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law; however, due consideration shall be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.
2. The hearing officer shall defer to the judgment of the planning commission regarding findings of fact if they are supported in the record by substantial evidence.
3. The hearing officer may revise and supplement the planning commission's findings of fact. Where the hearing officer decides that a finding of fact made by the planning commission is not supported by substantial evidence, the hearing officer may make a different finding on the factual issue, based upon the evidence in the record developed before the planning commission if it concludes a different finding was supported by substantial evidence, or may remand the matter to the planning commission as provided in KPB 21.20.330(B).

21.20.330. Remand by hearing officer.

- A. *Changed circumstances.* An appeal alleging changed circumstances or new relevant evidence, which with due diligence could not have been presented to the planning commission, shall be remanded to the planning commission.
- B. *Lack of findings.* Appeals from planning commission decisions which lack findings of fact and conclusions by the planning commission or contain findings of fact and conclusions which are not supported by substantial evidence shall be remanded to the planning commission with an order to make adequate findings of fact and conclusions.
- C. *Findings for remand.* The hearing officer shall make findings of fact and conclusions setting forth the basis for the remand and shall include instructions to the planning commission regarding whether additional evidence, notice, hearing or findings are required.

21.20.340. Decision.

- A. *Scope of decision.* The hearing officer shall base the hearing officer's decision upon the record. The hearing officer may remand, affirm, or reverse, or modify, in whole or in part, the appealed decision or order. The decision, where appropriate, may include further instructions to staff or the planning commission to affect the hearing officer's decision. If the hearing officer does not remand the decision or order appealed, the decision or order of the hearing officer is final.
- B. *Written decision.* The hearing officer's decision shall be in writing and shall state that it is a final decision, include the hearing officer's findings of fact and conclusions, and notify the parties of their right to appeal. The findings shall be reasonably specific so as to provide the

parties, and where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision.

- C. *Time.* The decision shall be filed with the clerk within [15]45 calendar days after the completion of the hearing.
- D. *Service.* The hearing officer's decision [SHALL BE MAILED OR PERSONALLY DELIVERED, WITHIN 10 DAYS AFTER THE WRITTEN DECISION IS SIGNED BY THE HEARING OFFICER, TO THE PARTIES OF RECORD WHO FILED A WRITTEN ARGUMENT]will be emailed to all parties who entered an appearance and filed an opening statement in the matter.
- E. *Similar petitions.* An applicant aggrieved by a hearing officer's decision may not submit a substantially similar petition to the lower level decision maker as that which was appealed to the hearing officer unless a significant change of circumstances has occurred. The mere passage of time is not a change in circumstances.

21.20.350. Reconsideration by hearing officer.

- A. Within 14 days of issuance of the written decision a party that participated in the hearing may request reconsideration of a hearing officer's decision based only on the following criteria:
 - 1. The hearing officer overlooked, misapplied, or failed to consider a code provision directly controlling;
 - 2. The hearing officer overlooked or misconceived a material fact;
 - 3. The hearing officer overlooked or misconceived a material question in the case; or
 - 4. Fraud or misrepresentation by a party.
- B. Motions for reconsideration are prohibited more than 14 days after the hearing officer's written decision is issued.
- C. The hearing officer shall rule on a motion for reconsideration or request the other party to respond within 10 days after the date of filing the motion with the borough clerk. If 10 days pass without the hearing officer issuing a decision on the motion or providing the other parties an opportunity to respond, the motion is considered denied. The motion for reconsideration shall not be granted without giving the parties not filing the motion an opportunity to respond to the motion. Where an opposition to the motion for reconsideration has been requested by the hearing officer and filed with the borough clerk by the respondent, the hearing officer shall issue a written decision on the matter within 10 days of the deadline for filing an opposition or the date the opposition is filed, whichever occurs first.
- D. The filing of a motion for reconsideration suspends the time in which an appeal must be taken to superior court. The time period in which to file an appeal shall begin when the hearing officer issues the decision on reconsideration or 10 days after the motion for reconsideration is filed if the hearing officer does not issue a decision on the motion.
- E. An appeal from a hearing officer decision under this section may be filed in the superior court within 30 days after the date of distribution of the hearing officer decision to the parties, and is governed by Part 6 of the Alaska Rules of Appellate Procedure. A hearing officer decision remains in effect while an appeal is pending unless stayed by the superior court.

21.20.360. Appeal from hearing officer.

- A. Pursuant to AS 29.40.060, appeals by an aggrieved party from the final written decisions of the hearing officer shall be filed with the State of Alaska Superior Court at Kenai, Alaska, and shall conform with the Rules of Appellate Procedure of the State of Alaska, Part VI.
- B. The borough clerk shall estimate the cost of preparing the transcript of the proceeding and compiling the record on appeal. The appellant to the court shall deposit the estimated costs with the clerk in advance. Upon completion of the record on appeal, the clerk shall refund

any excess deposit or charge the appellant for costs exceeding the deposit. The record may not be released to the appellant until full payment is made.

SECTION 6. That this ordinance shall be effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2025.

Peter Ribbens, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk