



## **KENAI PENINSULA BOROUGH**

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**DAVID R. CAREY**  
**BOROUGH MAYOR**

### **MEMORANDUM**

**TO:** Milli Martin, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** *DR* David R. Carey, Borough Mayor

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

**DATE:** March 12, 2009

**SUBJECT:** Ordinance 2009-09 Substitute; Creating a Flood Hazard District, outside the Flood Insurance Rate Map area, within the Seward-Bear Creek Flood Service Area to include the 1986, 1995 and 2006 KPB GIS Mapped Flood Data Areas

The Planning Commission reviewed the subject ordinance during their regularly scheduled March 9, 2009 meeting. A motion to recommend enactment of Ordinance 2009-09 substitute passed by majority consent. (*Bryson Yes; Carluccio Absent; Collins Absent; Foster Yes; Gross No; Isham No; Johnson Yes; Lockwood Yes; Martin No; McClure Yes; Murphy Yes; Petersen No; Tauriainen Yes*)

Draft, unapproved minutes of the subject portion of the meeting are attached.

AGENDA ITEM F. PUBLIC HEARINGS

6. Ordinance 2009-09 Substitute; Creating a Flood Hazard District, outside the Flood Insurance Rate Map area, within the Seward-Bear Creek Flood Service Area to include the 1986, 1995 and 2006 KPB GIS Mapped Flood Data Areas (**Postponed from February 23, 2009**)

Staff Report given by Max Best

PC Meeting: 2/23/09

Assembly member Long presented a substitute amendment to Ordinance 2009-09 at the last Assembly meeting. A copy of the substitute ordinance was included in the Planning Commission mail out packet.

The purpose of this ordinance came from the concern of people getting into the streams with their equipment, which was causing damage and creating problems. It was not meant to prohibit people from constructing.

It has been limited to the lot to where construction needs to be done and construction would need to be two feet above the highest point of the lot. The ordinance does not allow any work to be in the streams.

There is a sunset clause within the substitute ordinance, which would be in effect until the task force could meet and come up with more definitive rules for work within the Seward area.

The taskforce met on March 4 and will meet again on March 18, 2009.

The ordinance changed to utilizing the developable area within two feet on a particular lot. Additionally, the substitute ordinance talks about not damaging floodways or causing damage to the downstream property owners.

END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Robin Ward, Director of Real Estate Development for CIRI  
Ms. Ward stated that CIRI owns approximately 5 parcels totally 345 acres that could potentially be impacted by this ordinance. She expressed concern that this would be a temporary fix that would have long term and very wide reaching unintended consequences. Hypothetically, if a 200 acre parcel has one acre that falls within this Flood Hazard Zone then the entire parcel would be encumbered by the prescriptive requirements. Ms. Ward stated this may possibly or very likely devalue that property if it were sold today. She respectfully urged the Commission to postpone recommendation of this ordinance to allow the taskforce to completely evaluate this issue and come back with proper research rather than institute a temporary fix that could have very wide reaching economic consequences to the property owners of that area.

Chairman Bryson asked if there were questions for Ms. Ward.

Commissioner Johnson asked if Ms. Ward attended or will be attending the Seward taskforce meetings. Ms. Ward replied no but will be from now on. She stated they have a lot of incentive to follow this one.

Commissioner Johnson stated that he had no intention of voting on this until he heard from the taskforce.

Mr. Best asked if Ms. Ward was aware of the limits of the flooding that has taken place and how it affects development of their properties. Ms. Ward replied yes, they have a GIS department who has completely mapped all three of the floods that are listed and overlaid them on the FEMA map and then located all of their parcels to see how they are impacted. Mr. Best asked how long she had that information. Ms. Ward replied they had the information for about a week. Mr. Best stated that CIRI was still analyzing the information. Ms. Ward agreed and stated they are trying to quantify how this will affect them but wanted to let the Commission know they are very concerned about this issue.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

**RESTATED MOTION:** *Commissioner Foster moved, seconded by Commissioner Gross to recommend adoption of Ordinance 2009-09 creating a flood hazard district in the Seward area.*

**ADDENDUM MOTION:** Commissioner Murphy moved, seconded by Commissioner Lockwood to postpone action to the March 23, 2009 meeting.

Commissioner Petersen asked for more discussion on this issue.

Parliamentarian Commissioner Murphy stated the only discussion allowed on a postponement motion is the merits of postponement. If the commission wants further discussion on the main motion then the postponement motion needed to be voted down.

There being no further discussion or comments, Chairman Bryson called for a roll call vote.

**ADDENDUM VOTE:** The motion failed by unanimous consent.

BRYSON NO	CARLUCCIO ABSENT	COLLINS ABSENT	FOSTER NO	GROSS NO	ISHAM NO	JOHNSON NO
LOCKWOOD NO	MARTIN NO	MCCLURE NO	MURPHY NO	PETERSEN NO	TAURIAINEN NO	0 YES 11 NO 2 ABSENT

Commissioner McClure stated the taskforce does not have an end point and may be meeting well past October. She felt it was immaterial to continually postpone solely based on the results of the taskforce. Commissioner McClure also stated the Seward Bear Creek Flood Service Area Board recommended approval of the substitute ordinance.

Commissioner Petersen expressed disappointment that there were no minutes from the taskforce meeting last week. He appreciated Mr. Long and staff working on this ordinance but didn't see a dire need to enact the ordinance since there was a limited amount of development going on in Seward. The new FEMA Maps should be issued this summer which will give some baseline to any ordinance that was enacted. Commissioner Petersen felt the taskforce needed to run its course and realized this was a temporary measure however he felt it wasn't a dire need at this time.

Commissioner Johnson stated he was patient to allow the taskforce to do their job. He would be willing to make a recommendation to the Assembly when the Assembly was ready to vote on it.

Chairman Bryson asked for staff comments. Mr. Best believed Mr. Long will, whether the Planning Commission makes a recommendation or not, have the hearing and proceed to make a decision on this at the next Assembly meeting on March 24. He didn't think Mr. Long was going to wait since he wants to have this in place prior to the construction season.

Mr. Best didn't think the taskforce purview was going to include reviewing this ordinance. He felt they were onto other things such as gathering data and looking at and studying channel migration zones, LIDAR etc. Mr. Best felt the taskforce would have made a recommendation on this ordinance if it was on their agenda.

Commissioner Tauriainen asked if this ordinance was to keep people from developing anything else in this time period. Mr. Best replied this ordinance was an educational tool for those areas that have had prior flooding and to set minimum standards for development within those areas. He stated they did not want to stop development which is why they went from five feet down to two feet. The ordinance does have a sunset clause so it is not on the books forever. Mr. Best felt it wasn't too onerous but will help keep people out of the streams with their equipment. He stated it still allows the property owners to develop their property with notice that it could flood.

Commissioner Johnson stated it appeared the commission needed to decide on this ordinance now. He asked if the whole parcel was affected if only one small corner of the property was within the floodplain. Mr. Best stated a property owner would take the building site, draw a line down gradient towards the river to wherever it might cross the property and if it happens to be uphill to the river then they would need to build two feet above highest point between there and the river. Commissioner Johnson heard Mr. Best say that CIRI doesn't have a worry if they have a big parcel with the river coming across the corner of it because then the rest of their property would definitely be above two feet, above the floodplain of the river.

Commissioner Petersen asked what happens if someone has a 200 acre parcel and they want to develop 180 lots out of it. If they are all in this unmapped area then all of those lots would be affected.

Commissioner Johnson understood that if a creek goes across a corner of a parcel and someone wants to develop the whole parcel then only that corner of the property would be affected. There would be more of a problem if the creek goes down the middle of the parcel.

Commissioner Tauriainen asked for staff's confirmation if Commissioner Johnson's comments were true. Commissioner Johnson reiterated that if there was a parcel that was 200 acres and a portion of the parcel was in the floodplain and it got subdivided then the only portion of those 200 acres that would be affected was the portion that was in the floodplain. Mr. Best replied that was correct in any of the floodplain mapped areas. There was also an exemption clause that someone could apply to the Seward Bear Creek Flood Service Area to get their lot out of the floodplain. He stated they are concerned with the areas that had flooded previously and those areas that are within the floodplain.

Commissioner Johnson also stated that if the creek runs down the middle of the parcel then it would only affect that portion that was within the floodplain. The edges that are not in the floodplain are going to be two feet above and could be subdivided according to the Subdivision Code. Mr. Best replied that was correct.

Commissioner McClure referred to the ordinance and read the following, *"If any portion of a lot is included in the flood data mapped area, the entire lot shall be subject to the provisions of this chapter."* She asked if that said just the opposite of what was just said. Mr. Best referred to Section B of the ordinance which reads as follows, *"Exemption from application of SMFDA district. A property owner may request an exemption for application of SMFDA to his proposed development upon showing by substantial evidence that his property was not inundated by flood waters in the 1986, 1995, or 2006 floods; adverse bank erosion has not occurred during the property owner's ownership."* He stated it affects all the property but substantial evidence is that it is not within that area.

Commissioner Petersen stated the areas in this ordinance have not been mapped by FEMA at this time. The data that the ordinance is being based on is the GIS version of that map that shows what flooded in the past three major high water events. He reiterated that the FEMA maps should be out this summer which should revamp some of the areas they mapped before and the new LIDAR maps will include the whole area that is being talked about now. Commissioner Petersen felt it would be prudent to wait for that data.

Commissioner Johnson asked if the GIS information was accurate information. Mr. Best stated that Commissioner Petersen made a good point. He did not know how reliable that data was and felt there will be much better data coming at a later time. If a property owner could prove their property did not flood then they could ask for an exemption.

Commissioner Isham felt the Assembly will do what they need to do and the Commission needs to do what they will do. The Commission is an advisory to the Assembly. He supported postponement at this time.

Commissioner Lockwood asked if the Assembly will be taking this up at their meeting on March 24. Mr. Best replied yes. Commissioner Lockwood asked if the Commission could postpone until March 23 and then make a recommendation to the Assembly. Mr. Best replied absolutely. Commissioner Lockwood asked if additional information from the taskforce could be obtained between now and then. Mr. Best reiterated that this ordinance will not be under the purview of the taskforce. They are moving on to analyzing other data and other avenues to regulate flooding in the Seward area.

Commissioner Murphy assumed the taskforce would be discussing the ordinance. If no additional information will be coming from the taskforce then she was prepared to vote on this ordinance.

Commissioner Johnson stated he did not want to vote on the ordinance at this meeting because he needs additional information.

Commissioner McClure felt it was reasonable to have the taskforce discuss this at their next meeting and come to some consensus. She supported postponement until the next Planning Commission meeting. Commissioner McClure will recommend that the taskforce discuss this and will bring something back to the next Planning Commission meeting. Mr. Best stated that request could be made to the chairman of the taskforce.

Commissioner Johnson supported Commissioner McClure's suggestion.

Commissioner Petersen agreed with Mr. Best that this ordinance was not a taskforce issue. The taskforce was tasked to go beyond what was proposed in the ordinance. The ordinance was a stop gap measure by Mr. Long and doubted the taskforce would vote on it.

Commissioner Foster stated he was ready to vote on the ordinance. This ordinance was not restrictive but was just saying to be safe and stay out of the water. He felt this was a stop gap measure and not the end but will keep people safe.

**RESTATED MOTION:** Commissioner Foster moved, seconded by Commissioner Gross to recommend adoption of Ordinance 2009-09 creating a flood hazard district in the Seward area.

**AMENDED MOTION:** Commissioner Johnson moved, seconded by Commissioner Tauriainen to amend the motion to recommend enactment of Ordinance 2009-09, (Long) Substitute.

Commissioner Johnson asked for a unanimous.

There being no further comments or discussion, Chairman Bryson called for a roll call vote.

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

BRYSON YES	CARLUCCIO ABSENT	COLLINS ABSENT	FOSTER YES	GROSS NO	ISHAM NO	JOHNSON YES
LOCKWOOD YES	MARTIN NO	MCCLURE YES	MURPHY YES	PETERSEN NO	TAURIAINEN YES	7 YES 4 NO 2 ABSENT

**AGENDA ITEM G.** ANADROMOUS STREAM HABITAT PROTECTION (KPB 21.18) - None

**AGENDA ITEM H.** VACATIONS NOT REQUIRING A PUBLIC HEARING - None

**AGENDA ITEM I.** SPECIAL CONSIDERATIONS - None

**AGENDA ITEM J.** SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Johnson reported the Plat Committee granted conditional preliminary approval to 12 preliminary plats and postponed one preliminary plat.

**AGENDA ITEM K.** COASTAL MANAGEMENT PROGRAM CONSIDERATIONS

**AGENDA ITEM L.** OTHER/NEW BUSINESS

1. Kenai Peninsula Fish Habitat Partnership