

To Whom It May Concern – Kenai Peninsula Borough

We are David and Shirley Sanders, we own lot 15 in the C&H Subdivision. We hope you will pass R-1 zoning.

We purchased this View Property in 1999 – and built a home in 2003-2004. We moved in May 3, 2004.

Approximately 3 ½ years ago a huge commercial building went up on the next lot – the lot to the East of us. The whole subdivision was shocked. The owner said he was going to build a house on the upper side of his lot. We had no reason to doubt his sincerity. It has definitely impacted our view (photo attached). A year later he wanted to sell the lot and building for \$450,000.

The majority of land owners had no idea that the original covenants could have been enforced.

We have concerns that the owner will continue to expand this property to express what is a commercial property, or sell it to someone that would have the same idea.

Please alleviate our concerns with a plan to get rid of this eye sore.

One of the other concerns my husband and I have is with the ordinance regarding farm animals. We are very interested in children exploring love of animals such as a 4H project that would require a larger animal, as long as this child would be respectful of others in the subdivision.

We are looking forward to all relationships with the Kenai Peninsula Borough being gracious.

If you are up in our neighborhood, stop by for a cup of coffee.

Sincerely,

David & Shirley Sanders



Kenai Peninsula Borough Assembly,

My husband and I are the owners and residents of the lot east of the lot with the boat barn under discussion.

Shortly after buying the lot the new owner stepped over while we were outside to tell us he would be building a boat barn at the top of his property and would later build a house farther down. Soon after, he started work close to the front of the lot.

The accompanying photo shows what I see when looking out my kitchen window. We live in a subdivision with view lots. Now whenever I prepare a meal or do baking this is my view.

I used to feel I was a part of our neighborhood. Now I feel very cut off. Now I see 2000 square feet of industrial building with a shiny roof glaring at our home and the same window for part of the year.

My greatest concern is what the owner can do next by selling the lot and warehouse and what he has done to our property value.

We are in favor of R-1 zoning for our subdivision to prevent further commercial or junkyard development on that or any other property in our neighborhood.

Sincerely,
Mary E. (Beth) Schroer



Turner, Michele

From: Blankenship, Johni
Sent: Tuesday, January 07, 2020 9:07 AM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>Ordinance 2019-35

Public comment

From: iniskin@gmail.com [mailto:iniskin@gmail.com]
Sent: Tuesday, January 07, 2020 8:58 AM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Ordinance 2019-35

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

I wish to support the implementation of Ordinance 2019-35. The property owners on Portlock Dr. are directly impacted by a nearly 400% uptick in traffic during the summer months. That traffic has to be business oriented as you may never see the same vehicle twice. Vehicle operators are a danger to Portlock Dr. residents, and pedestrians, particularly when speeding, (very common), and not paying attention to the road at all, (texting).

Some right to privacy must be established for example birders peering into neighborhood yards with binoculars .

Last but certainly not least is the issue of increased road maintenance. The borough at this time apparently does not have the ability to properly maintain heavily traveled gravel roads. A mere four years ago Portlock Dr. could sustain the traffic of that time. Portlock can no longer take a lot of traffic without further road maintenance, as each year sees more and more traffic. The dust generated in the summer months coats the roofs of our houses to nearly the point of what color is it? The health impact from that volume of dust can not be overstated. Calcium chloride is present in that dust. Calcium Chloride is extremely corrosive to such items as metal roofing. Can not imagine what it does to lungs.

I moved here 30 years ago, and the nice quite neighborhood has all but disappeared in the summer months.

Your support of this ordinance would be sorely appreciated. Thank you for your time.

Paul Vanderbrink
Owner Lot 38
40180 Portlock Dr.
Homer Alaska 99603
907 399-1255

Turner, Michele

From: Blankenship, Johni
Sent: Tuesday, January 07, 2020 9:14 AM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>C & H Subdivision

Public comment

From: Suzanne B [mailto:szannebishop@gmail.com]
Sent: Tuesday, January 07, 2020 6:19 AM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>C & H Subdivision

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Dear Assembly,
We voted in favor of the Residential zoning district (R-1 LOZD) for our subdivision. This email is to further encourage the Assembly to vote in favor of the proposed LOZD per majority vote of the landowners.
Sincerely,
Suzanne Bishop & Roch Duz

TO: Kenai Peninsula Borough Assembly Members
FROM: Craig Cutler, Applicant.
C & H Estates Single-Family Residential R-1 Local Option Zoning District
ORDINANCE 2019-35

Cc: KPB Clerk's Office: Johni Blankenship : jblankenship@kpb.us
Borough Mayor: Charlie Pierce: cpierce@kpb.us
Assembly Members:
Brent Hibbert: bhibbert@kpb.us Kelly Cooper: kellycooper@kpb.us
Kenn Carpenter: kcarpenter@kpb.us Tyson Cox: tysoncox@kpb.us
Hal Smalley: hsmalley@kpb.us Willy Dunne: wdunne@kpb.us
Brent Johnson: bjohnson@kpb.us Norm Blakely: nblakeley@kpb.us
Jesse Bjorkman: jbjorkman@kpb.us

DATE: January 7, 2020

SUBJECT: Ordinance 2019-35: An Ordinance Approving C & H Estates Single-Family-
Residential R-1 Local Option Zoning District and Amending KPB 21.46.040

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ATTACHMENTS are endnotes and numbered

A. INTRODUCTION

a-1. Preamble

The purpose of this memorandum is to provide supporting comments, facts and background information for the application of Ordinance 2019-35

Forty years ago, my wife and I first set foot on Drew's Homestead, just prior to its conveyance into subdivided residential lots named C&H Estates "(C&H)". Within months, we became the first to acquire a lot and build a home in the new subdivision.

Homes have since been constructed on the majority of the lots, mostly in conformance with the Covenants, which were recorded before the sale of any lots. Because the Covenants have largely fulfilled their original intent, and for many other reasons discussed in this memo, our ongoing common interest is to preserve residential character of the neighborhood with the establishment of an Residential Local Option Zoning District "(R-1)"

a-2. Public Support for the Ordinance

When the required 60% majority of parcel owners who put pen to paper in support of establishing R-1 was verified by the Planning Department, 75% of those returns had opted in favor of approving the ordinance.

Hearings regarding the ordinance have been ongoing for over half a year, including organized neighborhood meetings, a public meeting held by the Borough Planning Department in Homer, and a second public hearing before the Planning Commission in Soldotna.

a-3. Planning Commission Due Diligence and Unanimous Recommendation

At the public meeting held on September 23, 2019 in Soldotna, written and oral public comments were delivered before the Commission. After questioning the speakers the Commission members deliberated among themselves, and rendered a unanimous recommendation of approval which has been forwarded along with the above mentioned required signatures to the Assembly for the third public hearing on January 7, 2020

KPB Ordinance 2019-35 Legislation Details ¹

a-4. Origin and Brief History of C&H Residential Estates

One hundred years ago, according to BLM Federal land conveyance and patent records, Mister George Press applied for, and in 1926, received the land title transfer from the Federal government in order to homestead on what is now recorded on Plat 80-23 by the Kenai Peninsula Borough(KPB). George's daughter Margaret was heir to the land; she and her husband Joe Drew continued homesteading until, over half a century later, sold it to land developers who divided it into residential lots.

B. SUMMARY OF BENEFITS OF R-1 FOR BOROUGH AND PARCEL OWNERS

There are various financial and quality of life benefits for both the residents of the C&H Subdivision and the KPB including stable property taxes that would result by approving this ordinance.

The creation of R-1, will benefit the Borough with the reduction of road maintenance expenses by restricting commercial development and excessive and non-conforming land usage. It will also benefit the environmental health and general welfare of the district as a whole.

R-1 benefits the residents by permitting "home occupations", and at the same time benefits the Borough with business tax revenues, which augment concurrent property taxes.

R-1 will further benefit residents by preventing the collective economic devaluation of the residential estates. These are view lots. Restricting private enterprise from commercial land use such as parking or wrecked vehicle lots, boat repair yards, or dog lots will preserve the monetary value of the land and the homes on them. This in turn benefits the Borough by retaining the higher assessed value as view lot estate properties.

C. HARMONIZING R-1 WITH EXISTING COVENANTS AND THE HOA

c-1. Matters of the HOA

For the record regarding the HOA: In order to clarify the minutes transcription of my comments at the Planning Commission hearing meeting on September 23, 2019, the C&H Homeowner Association does exist as a legal entity.

The annual meeting date of the HOA, to be held in January or February as mandated in the bylaws, has yet to be announced by the Directors.

Some have agreed that with a Zoning District in place, there may be no need for the HOA, having served its purpose. That would be determined by a vote of the membership. Should the HOA continue, the membership will be able to exercise their ability to **amend the Covenants** so as to coexist and be in harmony with the ordinance, thus permitting or restricting certain land use activities that are otherwise not provided for or specified within the scope of the R-1 Ordinance Code.

c-2. Issues of the Covenants and HOA ; Separation of Powers

Even though the Covenants and the ordinance can coexist, it is understood that they are independent of one another pursuant to Chapter 21.44.080(B) of the ordinance.

This separation of powers follows our national model starting with the Constitution and Bill of Rights.

In the same way that States' rights allow for powers to be held for the state governments rather than the federal government, the Borough recognizes and respects private cooperative entities and their Covenants in their own right.

Both the Borough Zoning Ordinances and Covenants are legal instruments of law, helping to keep the peace. As an old saying goes, 'Peace is the gift of civilization made possible by conformance with laws'.

As unpleasant as the thought of restrictions are on our core feelings of freedom or so-called individual rights, laws are established for the protection of the public and private rights of all members of the group to whom they apply.

Although some may believe that such laws unfairly impact their individual rights, they fail to realize or respect the fact that by violating certain provisions of an agreement such as the

Covenants, they are in truth violating the protective rights of all of the other people affected by that agreement.

Our Covenants auto-renew every ten years, pursuant to article 9 therein, and are still in force according to information provided by Borough offices to an attorney retained by several of our lot owners in 2019.

Breaches of the Covenants have occurred and perpetuated, even in light of notices of non-compliance and denial to proceed by the HOA Directors and majority vote of the membership.

Other infractions have occurred and have continued without causing HOA or private action, due to the probability that they are not disturbing enough to the Association members to take issue with them, such as low impact quasi-commercial businesses operating in neighborhood homes. Enough of this has been occurring so as to dampen the motivation for finger pointing and corrective action.

When all of the relationships are considered, we have the collective experience of thousands of years living together as neighbors. Thus far, peace has prevailed, and as far as I am aware, there have been no wild-west incidents of civil disobedience. Nor am I aware of any matters of violation that have continued on to arbitration or litigation.

With your approval, the preservation of this peace and good will can be born and immortalized with the civilized instrument of the R-1 Ordinance.

c-3. The Need For R-1

As we have matured as a cooperative neighborhood with eyes on the future and a collective concern for the welfare of the subdivision, it is very clear, as demonstrated by the majority-in-favor support of R-1, that the restrictions and protections gifted by the zoning option for our subdivision are needed and wanted.

D. MISCELLANIOUS ISSUES AND CONCERNS

d-1 Livestock Control

Fortunately for everyone, livestock control is not currently a problem, which makes the decision to regulate it uncomplicated.

According to the minutes of the Planning Commission Hearing on September 23, 2019, "Commissioner Ecklund asked if there were currently any animals in the area that would be prohibited in R-1. Mr. Wall said he was not aware of any. He drove through the neighborhood."

In a single day, a few truckloads of hooved animals could literally be crowded onto a residential lot. This is a real potential problem, the impact from which carries undesirable consequences. Should a herd of cattle or other commercial livestock operation become established in an unregulated, mismanaged or ungoverned fashion, several issues would arise.

Excessive leeching of untreated organic matter and chemicals is compounded by soil churning,

windstorms, rain and flooding; This causes health and safety concerns for neighboring home owners, especially for those with wells. Other concerns apply which are detailed in the term "Nuisance" as it appears in definition section of the ordinance.

Although a single home owner with a commercial livestock yard may feel that his property value would be enhanced, it is not likely that a potential buyer of the house next door would agree, especially if that house was downwind and downhill, which brings us to the related topic of erosion.

d-2 Erosion

Erosion dissolves and absorbs money. Its best friend gravity keeps winning against the perpetual attacks on it from mankind. Steel and concrete provide only expensive temporary solutions. The war will go on until the earth escapes its orbit from around the sun.

By avoiding irresponsible acts of excavation, clear cutting or poisoning protective ground cover over natural waterways, expenses can be reduced for road rehabilitation. This extends to include the entire infrastructure associated with erosion, and the costs for the maintenance of other natural topographical features required for our survival.

Rainfall and normal road use have been cumulatively causing erosion damage in our subdivision, which is located on a hillside. Recent flooding caused more damages than did the previous 100-year flood, resulting in impasses on the main access road. Erosion washed sand down to and filled the entire extent of ditch on the lowest road in the subdivision, depositing mud and sand across it in several places.

Commercial development would also cause erosion of the residential character of the neighborhood.

Case in point: If **gravel pits** were to be permitted, erosion of the road, hillside parcels, and water channels would be intensified, big time. Because of the limited acreage available for harvesting on the hillside, there are not enough cubic yards available to benefit the community at large, or provide an ongoing revenue base for the Borough.

Without restrictions, over time it is likely that an individual gravel prospector will come along to try his hand at churning sand into dollars, which brings to the general topic of commerce.

d-3 Commerce Issues

Commerce is the most critical and complex of the land use issues affecting the Borough and the lot owners of the subdivision, because it involves interaction among its people, interaction of the people with the land, and interaction of the people in legal agreements with various governing authorities.

I have never seen a better opportunity to solve so many human struggles and conflicts with nature in this subdivision as are provided for in the single solution of the R-1 zoning option.

d-4 Residential / Commercial Issues Including Case Histories

The antonym of residential is commercial. That's all there is to it.

This discussion is about past and present small business operation issues in C&H, and future solution of the Home Occupation provision within R-1.

Residential is to home occupations as commercial is to big business.

To be commercial, or not to be commercial, that is the question.

Article 1 of the C&H Covenants begins with the following statement:

"That the property herein described shall not be used for any purposes other than for residential purposes..."

Following are some case histories of issues that could be resolved by, or serve as a protection mechanism to prevent the re-occurrence of the issues by amending the Covenants and adopting R-1.

A couple of large structures have been constructed within the subdivision that may appear to be commercial in appearance, and could easily be modified as such.

One is a recent construction of only a few years, without full time occupants. It may be considered to be a conforming use as an auxiliary building under R-1, but that evaluation would be left to the Borough to determine. As yet, no modifications to the structure have been made indicating activity or intent for commercial use.

Because of the waning effectiveness of the Covenants, implementation of R-1 will serve to prevent possible non-conforming use from occurring.

The other structure was built as a log home by an elderly couple in the early 1980's as is known to the many residents who have lived here since, and as made evident by HOA minutes.

Modifications have been conducted several times that have enlarged the structure, and it has been operated as a B&B by subsequent owners.

In cases where real estate is a target, investors zero in on location, location and location, and have been known to exploit and take advantage of environments that will satisfy their goals.

Properties are often marketed by deeming the startup venture to have a high growth potential.

Case in point: In 2019, an offer was made and accepted for the commercial use of one of the above mentioned properties. Upon learning of the existence of the Covenants, (which the buyer had not been made aware of), the buyer withdrew the offer to purchase, followed by an apology to our subdivision in the Homer News.

Ignorance is no excuse, and non-conforming or illegal use by a previous owner does not revoke standing laws or Covenant agreements which notwithstanding, are conveyed with the sale of a parcel. Nor does it permit new owners to continue violating other regulations in force.

However, not all such cooperative resolutions have been achieved.

Over the years, disregard of authorities by some new arrivals and existing lot owners has resulted in challenges to, disrespect or flat out defiance of the Covenant restrictions.

The intent to exercise those behaviors against restrictions of the zoning ordinance has been voiced by a couple opponents of the ordinance, as made evident from letters they have submitted to Borough offices and/or have been recorded and published from Planning Commission minutes. These testaments are posted on the Borough website hosting communications for this ordinance, or have been made available through public records law disclosure rights.

The grandfathering provision of the zoning option is an angel of fairness for those sitting on both sides of the fence, so-to-speak. It grants permission for currently existing land use (including some usage that would be non-conforming) to lot owners and their heirs that otherwise would not be allowed under R-1. This provision, of course, excludes any illegal activities that violate Federal, State or Borough rules under their respective jurisdictions.

In order to preserve the intent of a residential zone, R-1 will function to prevent future non-conforming land use.

E. C&H AND THE BOROUGH COMPREHENSIVE PLAN

The architects who have crafted, and the guardians who have protected the Borough areas for recreation, DNR acreage, resource development, commercial, business, industrial, waste management and school zones have also provided places to call home within residential zones.

You, as Assembly members are people that have helped to provide these safeguards for all of us who live here on the Peninsula. You have done so for the collective benefit of the future health, safety and wellbeing of the people within each of your respective districts. Fiduciaries such as yourselves are among those architects and guardians; working, representing and making important decisions that are all part of the long term, well managed Kenai Peninsula Borough Comprehensive plan.

I thank each of you individually for that, and collectively for your consideration to incorporate our subdivision into those plans by establishing C&H Estates as an R-1 Residential zone district.

Please enact the ordinance.

Craig Cutler

Endnote Links below

To return to document Press Cmd or Ctrl + Left arrow.

¹ KPB Ordinance 2019-35 Legislation Details
<https://kpb.legistar.com/LegislationDetail.aspx?ID=4249332&GUID=A7B67173-8C09-413A-95BC-651C4D5F9754&Options=&Search=>

Turner, Michele

From: Blankenship, Johni
Sent: Tuesday, January 07, 2020 6:48 PM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>Support

Public comment

From: Bill Noomah [mailto:noomah@gmail.com]
Sent: Tuesday, January 07, 2020 4:44 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Support

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I urge the Assembly to support the Ordinance Approving C & H Estates Single-Family Residential R-1 Local Option Zoning District and Amending KPB 21.46.040

Sincerely,
Bill Noomah