



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2200 • **FAX:** (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2200

www.kpb.us

MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Mike Navarre, Borough Mayor *MN*

FROM: Max Best, Planning Director *MB*

DATE: July 21, 2016

SUBJECT: Ordinance 2016-25; An ordinance amending KPB 2.40, Planning Commission Membership & Appointment

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled June 13 and July 18, 2016 meetings. They also reviewed the amended ordinance during their regularly scheduled meeting of July 18, 2016.

A motion to recommend approval of Ordinance 2016-25, an ordinance amending KPB 2.40, Planning Commission Membership and Appointment failed by majority consent. (*Cartuccio, No; Collins, No; Ecklund, No; Ernst, Absent; Foster, Absent; Glendening, No; Holsten, No; Isham, No; Lockwood, Absent; Martin, Yes; Ruffner, Yes; Venuti, No; Whitney, No*)

A motion to recommend approval of the amendment to Ordinance 2016-25, an ordinance amending KPB 2.40.010 to reduce Planning Commission Membership failed by unanimous consent.

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

WHEREAS, at its meeting of July 18, 2016 the Planning Commission recommended denial of Ordinance 2016-25 by majority consent and recommended denial of the Amended Ordinance 2016-25 by unanimous consent.

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

AGENDA ITEM F. PUBLIC HEARING

3. Ordinance 2016-25; Amends KPB 2.40, Planning Commission Membership & Appointment.

Amended Memorandum & Staff Report given by Max Best

PC Meeting 7/18/16

This was postponed from the June 13, 2016 Planning Commission meeting. There is a motion on the floor which states: "*Commissioner Foster moved, seconded by Commissioner Isham to recommend approval of Ordinance 2016-25; An ordinance amending KPB 2.40.010 to reduce Planning Commission Membership.*"

Staff received a proposed amendment from the Borough Mayor, Mike Navarre and Assembly member Dale Bagley. It is an amendment which would take the City Commissioners down to four and eliminating one commissioner outside the cities and combining Kasilof, Clam Gulch, Ninilchik and Anchor Point. Additionally, they are using the cities with the four highest populations which eliminates Seldovia. Below is the amended ordinance.

One concern raised about this ordinance is the proposal to combine the Planning Commission seats for Soldotna and Kenai into one seat. Of the first-class and home rule cities in the borough, Kenai has the highest population and Soldotna has the third highest population. To address this concern we propose to amend this ordinance to reduce the total commission membership from 13 to 11, and provide that the four cities with the largest population shall have members on the commission. At this time those four cities are Kenai, Homer, Seward and Soldotna. Additionally we would need to add another seat for the areas outside the first-class and home rule cities for the apportionment to better fit with the statutory requirements. The proposed amendments are as follows:

- Amend Section 1 by deleting the language in ~~bolded strikeout~~ and inserting the **bold and underlined** language below.

SECTION 1. That KPB 2.40.010 is hereby amended as follows:

2.40.010. - Membership--Apportionment--Representation.

In accordance with AS 29.40.020(A):

A. The planning commission shall consist of [A MAXIMUM OF THIRTEEN] ~~nine eleven~~ members including [ONE MEMBER FROM EACH] ~~three four~~ members from the first class [OR] and home rule [CITY] cities of the borough and the remainder apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. ~~The members from the first class or home rule cities of the borough [ARE] shall include be appointed as follows:~~

1. KENAI
2. SOLDOTNA
3. SEWARD
4. HOMER
5. SELDOVIA]

~~One member each from the four cities having the largest population based on the most recent U.S. decennial census results. City of Seward, one member from either the City of Kenai or the City of Soldotna, and one member from either the City of Homer or City of Seldovia.~~

Members representing a city shall be selected by the mayor from a list of recommendations submitted by the city council and confirmed by the assembly.

B. One planning commissioner from outside of first class and home rule cities shall be appointed by the mayor and confirmed by the assembly from each of the following areas as generally described

below and depicted in the map on file at the borough clerk's office bearing the borough seal and identified as the planning commission apportionment map approved in Ordinance [2001-29] 2016-25. The sections described in the map and below provide guidelines from which deviations are permitted consistent with the intent that commissioners reside in areas throughout the borough:

1. [6.] East Peninsula;
2. [7.] Southwest Borough;
3. **Kasilof / Clam Gulch / Ninilchik / Anchor Point:**
[8. ANCHOR POINT / NINILCHIK] **Kasilof / Ninilchik / Anchor Point:**
4. [9. KASILOF / CLAM GULCH;]
5. [10.] Kalifornsky Beach;
6. **11.] Ridgeway / Sterling / Funny River:**
7. **6. Sterling:**
[12. STERLING;]
8. **13.] Northwest Borough.**

C. Nothing in this section shall be construed to mean that the Planning Commissioners represent only the city or area from which they were appointed.

- Amend Section 2 by deleting the language in **bolded strikeout** and inserting the **bold and underlined** language below.

SECTION 2. Transition. The existing seat of the planning commission member from the City of Seldovia shall terminate upon expiration of the current term for that seat. The Existing seats of the planning commission members from each the area within the four new Kasilof / Clam Gulch / Ninilchik / Anchor Point areas whose terms expires first shall not be filled.

END OF STAFF REPORT & MEMORANDUM

Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

MOTION ON THE FLOOR: Commissioner Foster moved, seconded by Commissioner Isham to recommend approval of Ordinance 2016-25; An ordinance amending KP.B. 2.40.010 to reduce Planning Commission Membership.

Commissioner Ecklund asked if the amended ordinance would need to be acted on. Chairman Martin replied yes.

Commissioner Venuti submitted a letter of opposition from the City of Homer to the Assembly President and Assembly members. He read the letter into the record, which is following.

"The City of Homer opposes Ordinance 16-25 which if passed would reduce the size of the Kenai Peninsula Borough Planning Commission to nine members. We recognize the need to reduce the size of the commission, but combining communities that are geographically separated by water leaves some communities without property representation.

The City of Homer and the City of Seldovia have vastly different economies, soils, topography and access. Combining Homer and Seldovia reduces oversight and does not provide adequate representation.

Thank you for your consideration.

*Respectfully submitted,
Mary Beth Wythe, City of Homer Mayor"*

Commissioner Venuti expressed concern when they start eliminating voices from the community. He felt it was just as important for the City of Seldovia to have a member on this commission as it is for the City of Homer, City of Kenai and City of Soldotna.

Chairman Martin asked what the current activity or participation level at the Seldovia Planning Commission. Commissioner Carluccio replied that the Seldovia Planning Commission meets every month and sometimes more than once a month. It is an active planning commission. Chairman Martin asked if that takes the place of the regional advisory planning commission since it was a city issue. Mr. Best replied yes, that was correct.

Commissioner Whitney stated that he would be voting in opposition of the ordinance as it is currently written. The City of Soldotna has taken a position that they don't feel it was a benefit to the community or the outlying areas in the borough.

Commissioner Holsten also stated that she would be voting in opposition of the ordinance. From the beginning, she felt like in one round of terms and two they would end up with basically being an urban borough planning commission just by the nature of who people know which creates a lack of awareness. It would be very unlike that somebody in Homer would run over to Seldovia and check on property issues. It seems like a poor idea to take the one isolated community where getting back and forth is the hardest and combine it with another community if they are really trying to make the commission representative. She reiterated that she was going to vote against both versions of the subject ordinance.

Commissioner Robert Ruffner arrived at the meeting at 7:46 p.m.

Commissioner Isham understood that the Borough gives \$50,000 to each city to complete a Comprehensive Plan. He asked if the City of Seldovia would lose that \$50,000 if the planning portion was taken away from them. Mr. Best replied that would not jeopardize the funding for the Comprehensive planning for the City of Seldovia since Title 29 regulates the platting, planning and land use regulations that each city represents. Each city can ask for and receive all of it or a portion of it.

Commissioner Glendening asked if staff received the City of Kenai's Resolution 2016-31 where the City Council unanimously opposed Ordinance 2016-25. Ms. Hartley stated that the Planning Department did not receive it but would make sure that the Assembly had a copy of it. Commissioner Glendening reiterated that the City Council unanimously opposed Ordinance 2016-25 because they recognize that the Borough retains the ultimate planning and platting authority. They are a keeper of the records and as a result in this function and these functions very important functions for the economy of the City. The borough is the 51% in these matters so it is important that they have a seat at the table.

Commissioner Ecklund stated that the City of Seward expressed opposition to this ordinance. She spoke in opposition of the original ordinance and the amendment that was before them. On account, the Cities of Homer, Seward, Soldotna, and Kenai are all against the ordinance. A letter was received from Cooper Landing Advisory Planning Commission who stated they were happy that they were staying intact. Commissioner Ecklund wasn't sure if the Assembly had a separate committee but the planning commission also has a plat committee and they find that at times they have a hard time getting a quorum. She expressed concern that it could even be more difficult to get a quorum from the members if the commission goes down to nine members.

Commissioner Carluccio stated as the representative from the City of Seldovia, she personally expressed opposition to the original ordinance as well as to the amended ordinance. She felt that in both cases, Seldovia get short changed. Even though they are a small community and are on the other side of the bay, they are affected by things that go on in the rest of the Borough. Commissioner Carluccio commented that it behooves them to have a seat on this planning commission. If there was a different way to arrange it then it would be a lot easier to reduce the number of people on this commission. As long as they are dealing with State Statute then she didn't see how they could let Seldovia out because of its size. She stated that if they are going to give it to First Class Cities and Home Rule Cities then the City of Seldovia deserves representation because it is a First Class city.

Commissioner Isham stated that the Assembly wasn't so much opposed to having 13 commissioners but was opposed to going higher to 15 commissioners. That is where they need to try to come up with a solution and he wasn't sure how they can get there if they don't do some eliminating. He stated he was not in favor of that but the end result was that the Assembly was going to make a ruling on it.

Commissioner Isham spoke with Assembly member Brent Johnson who was also a planning commissioner at one time. When Mr. Johnson was a planning commissioner there were a few surveyors on the commission. He felt it was important to have surveyors on this body. There are a lot of talented people on the commission but there aren't any surveyors currently on the commission. If they had surveyors on it then he would be more comfortable in going down to a small number.

Commissioner Carluccio asked how the proposed Soldotna annexation factors into changing how much of the Borough was in the cities and how much was in the borough. Mr. Best replied that he wasn't sure they would lose as much as they gain but the apportionment isn't the same. It would have a little effect but wasn't sure if it would make a lot of affect but it depended on how much they would annex and how many people were involved.

Commissioner Collins stated that small areas need to have a voice in the borough government. She expressed concern that this would be eliminating the outlying areas and would hate to see that any government. Pretty soon there are only the big urban areas speaking for the whole and that was not the way it was supposed to be.

Chairman Martin stated that the State has given them the unfunded mandate.

Commissioner Holsten stated that she doesn't see an easy answer. She stated they don't have any economic figures in front of them to judge on how to save money which was part of the purpose of the subject ordinances. One of the things she struggled with is the incorporate cities have planning commissions, mayors and city councils all who have the phone numbers and personal relationships with Borough staff and mayor. These rural communities have nothing so their planning commission representative was it. Commissioner Holsten expressed frustration that they haven't seen what was really costing them if that was what was really driving this.

Commissioner Ecklund asked if the borough was contacted by the State to increase the number of commissioners to 15. Mr. Best replied that it was discussed at the census reapportionment committee with the Assembly since the census was done. Commissioner Ecklund asked if it was State law that the borough followed for their ratio set. Mr. Best replied yes, that was correct. It is a conflict with the Borough code. The State laws are probably ok because it states that they can have a minimum of five and go up from there. The representation in the cities needs to be apportioned to the people outside the cities. He stated that Borough Code states that there will be one commissioner from each of the First Class or Home Rule city. That is where they get stuck with having a minimum of five and now with the population grows outside. That is the number that keeps growing and they become less and less apportioned outside the cities because the cities have five representatives. There is a disproportion between the cities and outside the cities by leaving the apportionment at 13 commissioners because the cities have more power. Mr. Best stated that the commissioners do a very good job separating themselves as cities and represent the borough very well. He stated it was just a conflict between the code and statutes which one or the other needs to be changed.

Commissioner Ecklund asked if they were legally bound to change this. Mr. Best replied that they have not been given any direction to do that from the State. They have not been called out by anybody. He felt it would eventually be some kind of lawsuit that would push them into making this decision.

Commissioner Ecklund asked if the Plat Committee was established by Statute. Mr. Best replied that the State gives them the option. It used to all be handled at the Planning Commission meeting. There can be as few as three members be a plat committee.

Commissioner Isham spoke to the Mat-Su Borough who handled a similar situation by giving all planning

powers to the cities. They only have seven planning commission members. Mr. Best stated that the cities can ask for platting powers and the borough can give it to them but they need to ask. It can be taken away if the borough doesn't think they are doing a good job. He thought the cities were happy with the borough handling platting at this point.

Commissioner Glendening asked if the school board went from seven members to nine members in recent history. Mr. Best replied he wasn't aware of the composition of the school board.

Commissioner Holsten asked what the total yearly cost was for each planning commissioner. Mr. Best replied that it was approximately \$6,000 per person per year. He stated that it was double that for the commissioner from Seldovia.

Commissioner Ecklund stated that the borough would be saving approximately \$24,000 by going from 13 to nine commissioners and if they would add to then it would cost \$12,000 more. She felt it doesn't seem like a big number in the realm of the borough budget.

Commissioner Venuti asked if the borough has identified where the additional commissioners would come from if the planning commission was expanded to 15 members if they followed Alaska Statutes. Mr. Best replied no, not at this time. They have population figures for each of the districts outside the cities. He thought they would have to draw the lines somewhere and add two commissioners.

Commissioner Venuti asked if there has been a problem recruiting planning commissioners. Mr. Best replied that they set districts the last time they reapportioned the commissioner which was around 1997. Prior to districts, it was difficult to find planning commissioners so staff tried to pick commissioners from different areas. He stated that there have been only several times where they have had multiple people apply. The longer he is at the borough, the less recruiting they have to do.

Commissioner Ecklund stated that the original subject ordinance states that representation will be from Seward, Soldotna or Kenai, and Homer or Seldovia. She wasn't sure how these things would be picked and felt that this was making it very divisive and was not what grass roots government should be.

Commissioner Glendening stated that they are all citizens of the borough. He was City of Kenai's representative but gladly looks out for the overall welfare of the borough. The commission represents certain cities and certain areas but good governance and representation suggests that they are all together.

Chairman Martin researched history back in the 1920's when the United States House of Representatives was dealing with the ever increasing population of the nation and continuing to add more and more representatives. They continued to add more and more representatives from areas that were growing whereas in the areas that stagnated or stopped growing did not want to lose their representative until they decided that 435 was unattainable and they should stop. He stated had they not stopped they would have had over 1,400 representatives right now.

Commissioner Holsten asked what the population of the borough. Mr. Best replied that it was roughly 55,000.

Commissioner Isham asked if the borough was currently out of compliance now or was going to be out of compliance. Mr. Best replied that the borough is out of compliance now. Commissioner Isham asked how long the borough has been out of compliance. Mr. Best replied that the borough has been out of compliance since the 2010 census.

Chairman Martin stated they were out of compliance but didn't know it until they counted everyone.

Commissioner Holsten asked if they could put a note in the file that they would deal with this when the census was done again. Mr. Best replied that it would depend on the Administration and what direction they give.

Commissioner Ruffner apologized for being late to the meeting and asked if he was allowed to vote on this matter since he joined the discussion midstream. Ms. Montague thought it was ok in this case because he

was present at the first meeting where this was discussed in length and this was an advisory vote to the Assembly.

There being no further comments or questions, Chairman Martin called for a roll call vote.

VOTE: The motion failed by majority consent.

CARLUCCIO NO	COLLINS NO	ECKLUND NO	ERNST ABSENT	FOSTER ABSENT	GLENDENING NO	HOLSTEN NO
ISHAM NO	LOCKWOOD ABSENT	MARTIN YES	RUFFNER YES	VENUTI NO	WHITNEY NO	2 YES 8 NO 3 ABSENT

MOTION: Commissioner Isham moved, seconded by Commissioner Carluccio to recommend approval of the amendment to Ordinance 2016-25, an ordinance amending KPB 2.40.010 to reduce Planning Commission membership.

Commissioner Carluccio stated that this amendment changes the composition but still leaves Seldovia out of the picture. She spoke in opposition of the amendment for all the reasons she stated before and for the reasons presented by the Seldovia City Council.

Commissioner Ruffner understood that the amendment would not consolidate Kenai and Soldotna and Homer and Seldovia but would nix Seldovia and Anchor Point / Ninilchik.

Commissioner Ecklund stated that all though she likes that the largest and third largest cities were retaining their representation but felt that Homer and Seldovia need their representation. It is about representation with more local knowledge on the local items that come before them even though they don't all live in that area. They work together as a body and not individually. She did not want to be in any area that did not have the proper representation.

Commissioner Holsten tended to not dislike the amendment as much as the original ordinance. She felt they have done an admirable job of looking at issues borough wide and not whether it is rural or Seldovia or Homer. The difference for her is the knowledge of a local situation and knowledge of how residents view things. People in Hope view things a little different than people in Cooper Landing. If the areas are made too big then she felt they would lose some of that.

Chairman Martin fully agreed but they were against State Statutes.

Commissioner Glendening stated that he would be voting in opposition of the amended ordinance. He thought the State Statutes was a strongman argument that has been festering for six years. They will soon to have another census and with the LNG coming in would tip the numbers. Until the State comes and says they are wrong then they should carry on as they have. To do otherwise on short notice is poor governance. He is all for local representation and will support his brothers in rural areas.

Commissioner Whitney felt that the State wasn't going to worry about two people on a planning commission with a \$3 billion deficit.

There being no further comments or questions, Chairman Martin called for a roll call vote.

VOTE: The motion failed by unanimous consent.

CARLUCCIO NO	COLLINS NO	ECKLUND NO	ERNST NO	FOSTER ABSENT	GLENDENING NO	HOLSTEN NO
ISHAM NO	LOCKWOOD ABSENT	MARTIN NO	RUFFNER NO	VENUTI NO	WHITNEY NO	0 YES 10 NO 3 ABSENT