

Introduced by: Mayor
Date: 08/09/22
Hearing: 08/23/22
Action: Enacted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-31**

**AN ORDINANCE AUTHORIZING THE RELEASE OF A COMMERCIAL DEED
RESTRICTION ON A PARCEL OF LAND LOCATED IN COOPER LANDING
ORIGINALLY CONVEYED BY THE KENAI PENINSULA BOROUGH**

WHEREAS, Parcel D, Quartz Creek Subdivision, according to Plat No. 94-1, Seward Recording District, was conveyed by quitclaim deed from the Kenai Peninsula Borough (Borough) to Jon James as part of the 2000 General Land Sale authorized by Ordinance 99-55; and

WHEREAS, as required under then-existing KPB code, a “commercial use” deed restriction was placed on the deed at the time of that conveyance provided, “The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited”; and

WHEREAS, the original Parcel D of Quartz Creek Subdivision has been further subdivided into two parcels now known as Tract D-1 and Tract D-2, Quartz Creek Subdivision James Addition; and

WHEREAS, Tract D-2 currently is under contract for sale from Shirley Ann Kuznicki as seller to Onie Ray Wilkes as buyer with the intention of obtaining residential financing; and

WHEREAS, on the date of the conveyance, KPB Code 17.10.130(D) stated “All lands or interests in lands shall be conveyed by an instrument containing restrictions that restrict the use of the land to that classification and prohibit the use of the land for any other purpose”; and

WHEREAS, KPB Code 17.10.130(D) was amended by Ordinance 2003-23 to read “Land shall be conveyed without deed restriction unless otherwise provided by the assembly by ordinance”; and

WHEREAS, the Cooper Landing Land Use Plan identifies the intended classification for parcels in the Quartz Creek Subdivision as Commercial; and

WHEREAS, the proposed purchaser, Onie Ray Wilkes, has submitted a written petition to modify the deed restriction and deposited the non-refundable fee per 17.10.130(F); and

WHEREAS, Mr. Wilkes has stated that he is unable to obtain a residential mortgage because the property is restricted to commercial use in an otherwise unrestricted area and the best use for the property is a single-family residence; and

WHEREAS, public notice has been published per KPB 17.10.130(F)(2); and

WHEREAS, the Cooper Landing Advisory Planning Commission at its regularly scheduled meeting of August 3, 2022, recommended enactment; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of August 8, 2022, recommended enactment by unanimous consent;

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


SECTION 1. That pursuant to KPB 17.10.130 (F)(4), the mayor is hereby authorized to release the commercial deed restriction pertaining to Tract D-2, Quartz Creek Subdivision James Addition, according to the official plat thereof, filed under Plat Number 2005-14, Records of the Seward Recording District, Third Judicial District, State of Alaska, as created in that Quitclaim Deed Recorded August 21, 2000 as Book 102, Page 68, Seward Recording District based on the following findings of fact:

- a. The original parcel (Parcel D) was conveyed with a commercial deed restriction to satisfy then KPB 17.10.130(D). KPB Code 17.10.130(D) was later amended by Ordinance 2003-23 to remove deed restrictions from conveyances.
- b. The subject parcel is otherwise unrestricted.
- c. The applicant is unable to proceed with closing of the purchase of the property because the commercial deed restriction impacts his ability to obtain a residential mortgage.
- d. Public notice of the proposed actions was delivered and published in accordance with KPB 17.10.130(F)(2).

SECTION 2. The mayor is authorized to sign a *Release of Deed Restriction*, respective to Tract D-2, Quartz Creek Subdivision James Addition, and any other documents necessary to effectuate the intent and purpose of this ordinance.


SECTION 3. That this ordinance is effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 23RD DAY OF AUGUST, 2022.

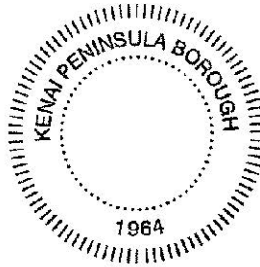


Brent Johnson, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Ecklund, Elam, Hibbert, Tupper, Johnson
No: None
Absent: Derkevorkian