



# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

**PHONE:** (907) 714-2215 • **FAX:** (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2215

[www.kpb.us](http://www.kpb.us)

**MIKE NAVARRE  
BOROUGH MAYOR**

## **M E M O R A N D U M**

**TO:** Kelly Cooper, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** Mike Navarre, Borough Mayor *MN*

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

**DATE:** ~~June~~ *August* 14, 2017

**SUBJECT:** Resolution 2017-054; A resolution authorizing the acceptance of a certain 4.3 acre drainage easement at Karluk Avenue as a cash equivalent payment through the Over-The-Counter Land Sale.

The Kenai Peninsula Borough Planning Commission reviewed the subject Resolution during their regularly scheduled August 14, 2017 meeting.

A motion passed by unanimous consent to recommend approval of Resolution 2017-054 thereby the acceptance of a certain 4.3 acre drainage easement at Karluk Avenue as a cash equivalent payment through the Over-The-Counter Land Sale.

In the Resolution, please make the following amendments to the last WHEREAS statement:

*WHEREAS, the Planning Commission at its regularly scheduled meeting of August 14, 2017, reviewed this resolution and recommended approval by unanimous consent.*

A copy of the unapproved minutes of the subject portion of the meeting will be forwarded to the Assembly when completed.

AGENDA ITEM F.

PUBLIC HEARING

3. Resolution 2017-054; A resolution authorizing the acceptance of a certain 4.3 acre drainage easement at Karluk Avenue as a cash equivalent payment through the Over-The-Counter Land Sale.

Memorandum given by Marcus Mueller

PC MEETING: August 14, 2017

During the fall flooding in 2013 it became evident that the Karluk Avenue Road ditch system had no outlet except a neighboring property immediately adjacent to the lowest extent of the ditch. The administration communicated with the owners, Paula and Timothy Keohane, who were gracious in permitting use of the property under those circumstances. The location became known as the "Karluk Basin", which was a location that emergency operations were conducted to install a pipe under K-Beach road thereby making it possible to mechanically pump water to the Cook Inlet once the Keohane property reached its estimated 3 million gallon capacity to store water. As the water management function on this property was demonstrated to be a low cost alternative to other means of road ditch extension, the acquisition of a drainage easement was identified as being in the long term interests of the borough.

In 2014, a proposal was brought forward under Ordinance 2014-32 which proposed acquiring an easement by means of a land exchange. That ordinance was defeated. Similarly, Ordinance 2016-19-36 proposed to purchase the easement for a negotiated amount of \$60,000 which was also defeated. The administration has continued to seek a workable alternative and presents this proposal which allows acquisition of the drainage easement through the over-the-counter land sale scheduled to open on a first come-first served basis on October 2, 2017. The over-the-counter sale contains properties authorized for sale that were previously offered by sealed bid, but which have not sold. This proposal would allow the easement to be accepted by the borough as a form of payment towards property offered in the over-the-counter sale.

This resolution would authorize the acceptance of 4.3 acre drainage easement. This is the same easement and same location that was proposed in two previous ordinances. That easement was appraised at \$51,000. The way this would work would be that it would allow for that easement to be accepted as a cash equivalent at the amount of \$51,000 or up to \$51,000.

In participation of the over-the-counter sale, the holder of that property could participate and could offer the easement as a credit or cash equivalent bid and then any remainder value would be according to standard terms, cash or finance. There would be no credit given, if the \$51,000 value was exceeded then the bid amount for a parcel or parcels.

The planning commission will consider this ordinance at its August 14, 2017 meeting and the action taken will be reported to the assembly. Consideration of this resolution is appreciated.

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Paula Keohane, 35554 Baranof St., Kenai

Ms. Keohane stated that she and her husband own the property on Karluk. In the summer, they live on 35554 Baranof St in Kenai. In the winter, they live at 340 Harrington Rd, Coupeville, Washington.

Ms. Keohane has not spoken at any of the public hearings in the last 3.5 years since this has event happened, until now. She felt the need to speak now because the narrative has changed so much from what she envisioned her participation was. They thought they were helping. It has been characterized that they are trying to take something from them but she was not.

Ms. Keohane stated that it was not just that event but that water continues to come down that ditch and go into that parcel. It does not fill up because it drains out. Many years it was dry. It is a continuing drainage onto the property. She hadn't bermed it off because she believed she was going

to come to an agreement that would both fit with what the Borough needed and not conflict to what she dreamed for her property.

Ms. Keohane stated that she returned to the property after college and began working with the fields. She had a farm development plan with Soils & Water Conservation District with the most recent one being in 2012. When she spoke with Mayor Navarre and staff, she was at a disadvantage as she didn't want to build condominiums on the property. Then she wouldn't mind having on that drainage on the property. That was not what she meant; she meant that she wanted to make it pretty as she has worked hard to make it pretty. Ms. Keohane thought they could work out something that would meet the Borough's needs and not conflict with hers.

Ms. Keohane stated that the maps shown predict where the water was going and that was where it went; north of Karluk. The water goes from the culverts coming across from the north to the south to the ditch that was dug to her property.

When Ms. Keohane came to the original first meeting she thought they were going to talk about how they were going to get the property back to before the sewage and flooded garages were dumped onto the property. Her thought was to test it and see what's on there and then put it back to agricultural purposes. She didn't come demanding compensation when she heard that the property was needed for future or continued use. This property was her family homestead and she wasn't interested in selling it. Ms. Keohane believed that they could work something that would work for both herself and the Borough which was what she has tried to do. She tried to solve a community problem and try to have it work for both of them. She was available to answer questions about the property.

Mr. Best asked here to elaborate on the digging of the pits or how that became a basin. Ms. Keohane replied that she was born in Seward and then left Seward in 1957. Her dad drove to the end of Kalifornsky Beach Rd, which was then Cannery Rd and snowshoed in about a mile and staked their homestead of 120 acres. They all moved onto the homestead. That spring, Union Oil Co extended K-Beach Rd right through their homestead. In two parts of their homestead, they dug sand pits to build the road. They also did not put it on the section line easement. When they came, those sand borrow pits were on the homestead. She stated they put a trailer at the south end of one of the pits at what is now called Bouy Ave. Karluk Ave was not there and neither was Bouy Ave. Ms. Keohane stated that they did not homestead in the wetlands. The development of the property around there has created a bunch of dams and now she doesn't see why it was reasonable to just put all that drainage without working with her.

Commissioner Carluccio asked how much of the homestead she still had. Ms. Keohane replied that she has 20 acres and her brother has 40 acres.

Commissioner Carluccio asked if she was in agreement with this resolution. Mr. Keohane replied yes.

Commissioner Ruffner stated that it was hard to predict what was going to happen with this scenario. He asked if she thought about if this would have been a little bit worst by taking up more land. Ms. Keohane thought that there was a diagram included in their packet of what it looked like now. Union Oil finally came in and filled in the borrow pit that was up against Bouy Ave but they didn't fill it in very well. She agreed through these negotiations that if they needed to increase the capacity that she would be amenable to that however she couldn't gauge how much that would be. Ms. Keohane believed it was possible to increase the capacity if needed to that still wouldn't preclude her use and enjoyment of the property.

Commissioner Ecklund appreciated her effort in trying to help her neighbors. She asked when Karluk Ave road was put in. Ms. Keohane replied she doesn't remember when Karluk Ave was constructed. Commissioner Ecklund asked if this sand pit filled with water in 1986 or other high water events prior to Karluk Ave being constructed. Ms. Keohane replied no. Commissioner Ecklund understood that it did not fill with water until Karluk Ave was constructed. Ms. Keohane replied it still flows in down that ditch. It didn't flood until the ditch and culverts were installed. The adjoining property owners' property didn't flood when they bought their property.

Commissioner Lockwood asked if the remaining parcels that did not flood were on the bluff side of K-Beach Rd. Ms. Keohane replied no, they are adjacent to the basin.

There being no further comments or questions, the public hearing continued.

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

**MOTION:** Commissioner Ecklund moved, seconded by Commissioner Carluccio to recommend approval of Resolution 2017-054, authorizing the acceptance of a certain 4.3 acre drainage easement at Karluk Ave as a cash equivalent payment through the over-the-counter land sale.

Commissioner Ecklund asked if they were limiting this to the over-the-counter land sale. She asked if they could use the \$51,000 credit to a future land sale. Mr. Mueller replied that the intent would be that it would be for the upcoming, already scheduled land over-the-counter land sale. He stated they had not thought about other land sales in the future. If that was the wish then he would have no reason to object to that. Commissioner Ecklund stated that she wasn't sure how long they wanted to leave this trade on the books and suggested there be a time limit on it.

Commissioner Whitney understood that this was a sealed bid over-the-counter land sale. He thought it may become a moot point that someone could outbid on the property that was available. Mr. Mueller replied that an over-the-counter land sale was actually a fixed price, first come, first serve basis. The sealed bid land sale occurred last spring and the residual of properties that didn't sell would be offered in an over-the-counter land sale at a fixed price, first come, and first serve basis with the minimum bid being a fixed price.

Commissioner Carluccio asked if they could purchase two properties up to \$51,000. Mr. Mueller replied that the intent was that it would be applicable to one or more properties during this sale. Commissioner Carluccio understood that they could purchase more than one piece of property. Mr. Mueller replied yes, that was correct. There are a variety of parcels that are within the \$15,000 - \$30,000 range.

Commissioner Ruffner assumed that they are not looking at modifying the land but the easement would be held by the borough. Mr. Mueller replied that the intent would be to acquire that easement interest and hold it in its current condition. The terms of the easement allow for modification of doing drainage improvements with the limitations that it not be with a concrete line. It would be re-contoured in a way that would be compatible with agricultural tech uses. Commissioner Ruffner understood that there might be something in the future within the 4.3 acres which is spelled out in the conditions. Mr. Mueller replied that was correct.

Commissioner Lockwood understood that the idea was to get the water to the Inlet in the event of another 2013 event. Mr. Mueller replied yes, that was correct. If there was an excess volume, the strategy that they set forth had a pipe system. It ended up working like a syphon so once the pipeline was running the pumps got shut off and water just syphoned out. It did so at a rate that exceeded the input. Chairman Martin asked what size the pipes were. Mr. Mueller believed they were eight inch pipes.

Commissioner Lockwood expressed concern regarding erosion on the bluff with the potential work that was being done by the Department of Transportation. He expressed concern with erosion of the bluff if they are running that large of piping system to the bluff.

Commissioner Ruffner stated that he has worked with the Department of Transportation hydrologist and some of their other planners. He felt that they would not do something willy-nilly. He was assured that they would be very careful about protecting their road.

Chairman Martin stated that the discussion he was involved in would be that the affluent would be quite

some distance off of the end of the Inlet so there wouldn't be any possible erosion.

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

BENTZ YES	CARLUCCIO YES	ECKLUND YES	ERNST YES	FIKES YES	FOSTER YES	ISHAM YES
LOCKWOOD YES	MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI ABSENT	WHITNEY YES	12 YES 1 ABSENT

Chairman Martin called a 5-minute recess at 9:14 p.m. Chairman Martin reconvened the meeting at 9:22 p.m.

AGENDA ITEM G. ANADROMOUS WATERS 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 Ecklund reported that the Plat Committee reviewed and conditionally approved 11 preliminary plats and postponed one revised preliminary plat.

AGENDA ITEM K. OTHER/NEW BUSINESS

1. Revised Material Site Code discussion – KPB 21.29

Staff Report given by Max Best

PC Meeting: 8/14/17

The planning commission requested a work session regarding possible changes to the material site code. The draft amendment to KPB 21.29 is a starting point based on concerns frequently heard by the planning commission and staff. Following is a sectional analysis of the proposed amendments.

• **21.25.030. - Definitions.**

A definition of development plan is added to clarify that sites upon which extraction occurs as part of an on-site building project are exempt from the material site permit requirements.

A definition of "disturbed" is added and the definition of "exhausted" is deleted as the term exhausted resulted in lack of compliance with reclamation plans as operators claimed their sites were not yet "exhausted" and were not required to be reclaimed.

A definition of "permit area" is added to help define what areas of a parcel subject to a CLUP are actually considered part of the material site plan.

• **KPB 21.29.010. - Material extraction exempt from obtaining a permit.**

New subsection (D) exempts extraction incidental to site development from the permit process when a site development plan is on file with the planning director. This exemption allows excavation that is necessary for an on-site building project to proceed without obtaining a material site permit as these projects are for a specific purpose and are not subject to the indefinite lifespan of a material site with its associated long-term impacts on the surrounding land uses.

• **KPB 21.29.030. - Application procedure.**

(A)(5) - Reworded to require the elevation of the proposed excavation, rather than the depth of excavation, as typically the landscape of a material site is not flat but changing in elevation.

(A)(7) - Surface water protection measures is moved from the site plan to the application section as not all site plans will require surface water protection measures for adjoining parcels.