

Introduced by: Johnson
Substitute Introduced:
O2014-32 (Mayor) See Original for Prior History
Hearing:
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2014-32
(JOHNSON) SUBSTITUTE**

AN ORDINANCE AUTHORIZING THE SALE OF BOROUGH PROPERTY TO DAN AND TERESA STERCHI SUBJECT TO A DRAINAGE EASEMENT AND THE ACQUISITION OF A 4.3 ACRE DRAINAGE EASEMENT ON PROPERTY ALONG KALIFORNISKY BEACH ROAD FROM PAULA AND TIMOTHY KEOHANE

WHEREAS, in the fall of 2013, certain areas along Kalifornsky Beach (“K-Beach”) road experienced high groundwater and surface water; and

WHEREAS, additional surface outlets to receive collected waters would benefit the road system in the K-Beach area; and

WHEREAS, the Kenai Peninsula Borough, through its Office of Emergency Management, Road Service Area and other departments, as well as other State and Federal agencies have been actively engaged in responding to drainage concerns, including the identification of important drainage assets within the borough’s authority; and

WHEREAS, Paula and Timothy Keohane (Keohanes) own Tract 1, Kingswood Estates Subdivision, a 9.2 acre parcel at the intersection of Karluk Avenue and K-Beach Road, which contains approximately 4.3 acres that is ideally situated to manage drainage waters collected by the Karluk Avenue road ditch system; and

WHEREAS, the Keohanes are reluctant to sell any part of their 9.2 acre parcel and have based that reluctance on two reasons: (1) the property has been owned by their family for many years, and (2) they would prefer to convey a drainage easement in exchange for another piece of property, which would avoid expenditure of borough money; and

WHEREAS, a borough-owned property (known as “N1/2 of Government Lot 13”) at Mile 12.1 K-Beach Road is classified as “government” to preserve the drainage outlet that runs through the south portion of that property; and

WHEREAS, the borough parcel is 1.84 acres according to assessing records of which approximately 0.9 acres is needed to serve long-term drainage purposes and approximately 0.94 acres could be considered for other uses; and

WHEREAS, reserving a 0.9 acre drainage easement on the property known as N1/2 of Government Lot 13, and conveying the Kenai Peninsula Borough's remaining interests in the 1.84 acres to Keohanes in consideration of the 4.3 acre drainage easement efficiently provides for identified drainage needs of the area and furthers the drainage management intent of the borough parcel; and

WHEREAS, during public testimony the property owner adjacent to the N1/2 of Government Lot 13 testified that many years ago he asked the borough to sell the property to him, and that he and his wife are emphatic that they are willing to buy this property subject to a drainage easement and drainage construction easement; and

WHEREAS, the best interest of the borough, the Keohanes and the Sterchis may be secured by a three-party transaction in which the borough sells the usable portion of the N1/2 of Government Lot 13 to Dan and Teresa Sterchi, then the borough pays the equivalent of the funds received from the Sterchi sale to the Keohanes as compensation for the 4.3 acre drainage easement on property adjacent to Karluck Avenue; and

WHEREAS, the borough's parcel (N1/2 of Government Lot 13), Tax No. 055-360-19, has an assessed value of \$101,700 in its unencumbered condition; and

WHEREAS, the Keohanes' parcel, Tax No. 055-300-07, has an assessed value of \$45,500 in its unencumbered condition; and

WHEREAS, this proposal favors the significant functional value of the drainage assets for public purposes over the monetary property value of the lands subject to the exchange; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of _____ recommended _____;

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

SECTION 1. That the Assembly finds that the acquisition of a drainage easement by the Kenai Peninsula Borough from Paula and Timothy Keohane and the conveyance of a parcel subject to a drainage easement to Dan and Teresa Sterchi pursuant to KPB 17.10.100(I) is in the best interest of the borough:

The North 1/2 Government Lot 13 Section 30, T5N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska containing 1.84 acres more or less, subject to the reservation of a drainage easement thereon encumbering 0.9 acres more or less along with a supporting construction easement encumbering the south 100' of the property; and a vegetative

preservation easement along the bluff and inland 50-feet from the bluff-line; is to be sold for fair market value to Dan and Teresa Sterchi.

An amount equal to the proceeds from sale to the Sterchis shall be paid to Paula and Timothy Keohane for granting an easement described as: The North 627 Feet of Tract 1 Kingswood Estates Subdivision, Plat No. 76-22, Kenai Recording District, Third Judicial District, State of Alaska encumbering 4.3 acres more or less.

The negotiated sale to the Sterchis is for fair market value based on the following findings of fact:

- a) That securing this 4.3 acre drainage easement is a cost effective means within the borough's authority to provide an effective outlet for the Karluk Avenue road ditch system.
- b) That reserving this 0.9 acre drainage outlet easement at mile 12.1 as set forth in the proposed quitclaim deed accomplishes the intent of the "Government" land classification of the borough parcel in accordance with KPB Resolution 94-055.
- c) That the proposed 0.9 acre reserved easement on parcel No. 055-360-19 would allow for the continuation of existing drainage functions as well as allow for future drainage improvements to be established by the borough, the State of Alaska, or other entity having similar jurisdiction to manage waters.
- d) The unencumbered remainder of the borough parcel provides consideration for the 4.3 acre easement without limiting the borough's management intent of drainage purposes, thereby furthering the management goals for the property.
- e) The proposed sale and acquisition has nominal budgetary impact.
- f) The encumbrance created in preserving the drainage management intent for the N1/2 of Government Lot 13 limits its appropriateness for disposition. Its usefulness is maximized by conveying it to the adjacent land owner.
- g) This negotiated sale and acquisition mutually benefits all three parties, as the borough will have the benefit of two necessary drainage easements for the benefit of the borough road system and borough residents, the Keohanes are able to retain fee interest in their property, the Sterchis will acquire property they have long been interested in owning, and selling the property to the Sterchis will add it to the borough's tax rolls, thus benefitting all borough residents.

SECTION 2. That the Sterchis will pay the borough \$_____ due at closing for the borough parcel. The conveyance of the borough parcel shall be subject to the easements set forth in section 1 of this ordinance. The borough parcel shall be conveyed by quitclaim deed. The Sterchis shall pay costs of closing and title insurance.

SECTION 3. The borough shall pay \$_____ to the Keohanes for the drainage easement on the Keohane parcel described in section 2 of this ordinance.

SECTION 4. That the Assembly makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
 - a. This ordinance authorizes a land sale to Dan and Teresa Sterchi on a noncompetitive basis pursuant to KPB 17.10.100(I).
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
 - a. The purpose of the KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land and advertising this sole source land sale easement acquisition will not serve a useful purpose.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - a. This negotiated sale and acquisition preserves the management intent for the borough owned property for drainage purposes and extends that public purpose through the easement being acquired.
 - b. Notice of the disposition is provided through the public process required for the hearing of ordinances.

SECTION 5. That \$_____ is appropriated from fund 250.21210.xxxxx.48610 for the purchase of the easement on the Keohane parcel.

SECTION 6. That the mayor is authorized to execute the Drainage Easement and Quitclaim Deed with Reservation of Drainage Easement substantially in the form of those accompanying this ordinance and any and all documents necessary to effectuate this ordinance.

SECTION 7. That if the Sterchis fail to buy the N1/2 of Government Lot 13 within 90 days of receiving the paperwork to do so from the borough, the mayor is authorized to convey the property to Keohanes subject to the easements set forth in Section 1 of this ordinance in exchange for the 4.3 acre drainage easement on the Keohane parcel described in Section 2 of this ordinance.

SECTION 8. That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS *
DAY OF * 2015.**

Dale Bagley, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent: