



# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

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**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:** August 23, 2016, 2016

**SUBJECT:** Ordinance 2016-25 (Substitute); an ordinance amending KPB 2.40.010 to Reduce Planning Commission Membership

The Kenai Peninsula Borough Planning Commission reviewed the subject substitute ordinance during their regularly scheduled meeting of August 22, 2016.

An amendment motion passed by unanimous consent to recommend postponement to give the cities an opportunity to review and comment on the substitute ordinance.

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

*WHEREAS, at its meeting of August 22, 2016 the Planning Commission recommended postponement of Ordinance 2016-25, substitute, by unanimous consent.*

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

AGENDA ITEM F.

PUBLIC HEARING

5. Ordinance 2016-25 (Substitute); an ordinance amending KPB 2.40.010 to Reduce Planning Commission Membership

Memorandum given by Max Best

PC Meeting: 8/22/16

A substitute ordinance 2016-25 is proposed that would reduce the number of planning commissioners to 11. Through July 31, 2020 the proposal retains 13 planning commissioners. Five planning commissioners will be appointed from the first class and home rule cities. At least one first class city and home rule city must be represented on the planning commission. The remaining "city" seats are apportioned to reflect the borough population residing within those cities. The remaining commissioners are to be selected at large, but may be representative of the eight current planning commission districts. After July 31, 2020 two seats, one representing the first class and home rule cities, and one representing the area of the borough outside the cities, will be eliminated. There will be no more than one planning commissioner from each of the first class and home rule cities unless it is necessary to meet the statutory apportionment requirement in AS 29.40. Appointments will be made by the Mayor from a list presented by the city councils and the appointment shall be confirmed by the Assembly. Planning commissioners shall be appointed for their expertise and knowledge within the community and where practical commissioners will be selected to be representative of areas comprised of the current planning commission districts.

This proposal seeks the most qualified candidates while reducing the disproportionate representation of the cities on the commission. Few issues from the cities are presented to the full planning commission as all first class and home rule cities have been delegated the power to exercise land use regulation as well as the ability to adopt their own platting regulations while the borough retains the final authority for subdivision approval. The borough exercises the comprehensive planning power for all the cities providing grant money to the cities to fund the cities' planning efforts and provides them staff support as needed. However, the cities contract for the development of their comprehensive plans. The borough planning commission recommends and assembly approves each city's comprehensive plans.

Consideration of this substitute ordinance is appreciated.

End of Memorandum

Staff Report given by Mike Navarre

PC Meeting: 8/22/16

The genesis of the amendment is simply to try to fix the situation of complying with State law and borough code out into the future. The reason it was pushed out the way they proposed was to take away the imminent threat against anybody who feels like they are representing a community or a specific area of the borough. That is not what is required or what commission members do.

The borough finds that they are out of compliance with State law. Years ago, the Planning Director approached the Mayor stating that they need to add Planning Commission members in order to get into compliance with State law so they started looking into it. A former Planning Commission member, Brent Johnson who is currently an Assembly member took the bull by the horns and introduced an ordinance to reduce the number of planning commissioners in order to be brought back into compliance.

They discussed this and then received the Planning Commission and cities recommendations and figured it wasn't going to go anywhere fast. So they got together and did some brainstorming about what size the planning commission should be and how they could set it up in order to make sure that the borough would remain in compliance forevermore. The changes to the planning commission would end up being balanced. If a community like Sterling or Nikiski or both decided to incorporate then it would twist things the other way and allow for disproportionate representation for areas outside the city. The only thing that would happen now, was that when the population so dictates, one seat might be moved from a city representation to an area outside the city.

It was staff's goal and effort to bring something back to the planning commission for their consideration that would not address the situation immediately but make a change out into the future and limit the commission to a manageable number that would continue forevermore.

#### END OF STAFF REPORT

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.

**MAIN MOTION:** Commissioner Ruffner moved, seconded by Commissioner Isham to recommend approval of Ordinance 2016-25, (Substitute), an ordinance amending KPB 2.40.010 to Reduce Planning Commission Membership.

Commissioner Isham asked what the purpose was in having at large members. Mr. Navarre replied that it was to make sure that if one area of the borough outside the cities grew, then they wouldn't be limited to a geographic area. The areas described outside the cities were guidelines, not specific requirements that a commissioner member would be appointed from those areas.

Commissioner Ecklund asked if letters or comments were received from the cities regarding this proposed substitute ordinance. Mr. Navarre believed that the cities have not had the opportunity to review this subject ordinance. At this point the borough has not received any updated comments.

Commissioner Carluccio understood that from 2020, the whole commission was going to be apportioned. Mr. Navarre replied that as of 2020, the Planning Commission would be apportioned according to what the population at that time would dictate. The Commission size would be 11 members. Commissioner Carluccio also understood that there could be three members from cities and the rest could be from outside the cities depending upon what the population would be. Mr. Navarre replied yes, that could happen if the population in the area outside the cities grew at that rate so that the formula would dictate apportionment based on populations inside the city and outside the city. The most likely scenario would be that it would be seven outside the city and four inside the city in 2020. It would depend on population trends.

Commissioner Carluccio asked if the seats would be dissolved as a commissioner's reappointment comes up. She stated that the City of Seward and the City of Soldotna seats come up for reappointment in 2017 which means that their terms would expire in 2020. Mr. Navarre replied yes, that was correct. Commissioner Carluccio thought in that case, there would be only one person who would be reappointed between those two cities in 2020. She stated that one of those cities would lose their representation. Mr. Navarre replied that there was often a misunderstanding that representatives from the cities represent those cities but they don't. They represent all the cities interests so that apportionment has to be inside and outside the cities. That is the most likely scenario is that one of those would not be appointed. The way that is somewhat regulated is that it was also confirmed and approved by the Assembly.

Mr. Navarre stated that at the end of the day, the most difficult city to maintain a seat on the Assembly is Seldovia simply because of the numbers. It doesn't mean that a representative from the Seldovia area can't be on the commission representing areas outside the city. The most likely scenario at the end of the day just because of the way politics and policy would work. Mr. Navarre also stated that Seldovia also skews the numbers the most. Commissioner Carluccio understood that but Seldovia doesn't come up for renewal until 2021. She thought the way this ordinance was written is that Seldovia would lose its seat earlier. Mr. Navarre replied no, the likely scenario is that one of those two cities (Soldotna or Seward) would not have a representative for a year. At the end of the year, the Mayor at that time may choose to reappoint the person from Seldovia or based on recommendations from other cities may appoint from another city in the borough.

Commissioner Carluccio stated that the ordinance lists what the qualifications are but it makes it very political because it doesn't really say what kind of expertise a commissioner should have other than knowledge of the community. Mr. Navarre replied that was consistent with the way planning commissioners are appointed now. It is based on an application process where it is reviewed and a determination is made and put before the Assembly for their review.

Commissioner Carluccio understood that Seldovia would not have representation on this planning commission unless Seldovia has a disproportionate influx of people. Mr. Navarre replied no, he was not saying that. They specifically took out designations for the cities to just say that cities may not have more than one member on the commission. The way it is in code now is that there is a requirement to have one commissioner from each of the cities. He stated that under the new rewrite it states that no city may have more than one. Currently, there could be all five representatives from one city under State law but Borough code does not allow it so they were trying to find a compromise between the statutory requirements and Borough Code.

Commissioner Ecklund asked if the seat that would be selected from those two cities (Seward and Soldotna) would be based on population in 2020 when this goes into effect. Mr. Navarre replied no, it would be based on application or recommendation from the city and a decision made by the mayor of who would be appointed. Commissioner Ecklund asked if it was about proportion. Mr. Navarre replied that they need to try to keep the apportionment also which is why at the end of the day; the most likely scenario is that Seldovia ends up being the odd first class city out. Commissioner Ecklund stated that the Seldovia seat doesn't come up for reappointment again until a year later. Mr. Navarre replied yes, that was correct. They didn't try to time it in any specific fashion. Over time, they felt that these things will work their way out.

Commissioner Ecklund understood that this ordinance is to come into compliance with Alaska State Statutes and not to save \$35,000 by cutting a few seats. She asked why wasn't the increase to assembly members considered if that would have met the statutory requirements. Mr. Navarre replied that they can't apportion the same way that the Assembly member seats are apportioned. They have to have specific representation from the areas inside the cities.

Commissioner Foster asked what community was being talked about when it states "*expertise and knowledge of the community*". Mr. Navarre replied community meant the Kenai Peninsula Borough. The idea was being that the commissioners represent the Borough's interest. The areas identified for having consideration for those areas are sort of sub-regions of the borough and that care should be taken so that some community knowledge from each of those diverse areas are represented on the commission. It is not required but is a guideline.

Commissioner Whitney asked when this will be up for action by the Assembly. Mr. Navarre replied that the Assembly will be reviewing this ordinance at their August 23, 2016 meeting. It could be postponed until the cities review the substitute ordinance if that was the will of the Assembly and the recommendation of the Planning Commission.

Commissioner Glendening stated that there has always been the 800 pound elephant in the room of what constitutes good governance. He thought it would be prudent to obtain feedback from the City Councils because this fundamentally changes the established relationship with the Borough.

Commissioner Glendening tended to agree with the approach and what was trying to be done. He suggested that this take the form of a resolution rather than an ordinance and continue to flesh out the details. The reduction of membership on the commission affects the south borough in losing in Anchor Point and in Seldovia. He asked if that was thought through at all or if that was a reflection of population trends. Mr. Navarre replied that it was partly a reflection of population trends but was also that nobody loses anything. It would really depend on how good of a job future mayors and assemblies do in appointing and confirming which is something that is outside their control.

Commissioner Glendening thought that everything would be just fine if they could freeze frame the relationship that they have between the cities and the borough. In the past, there has been a provident revelation of governance. He again suggested that this take the form of a resolution rather than an ordinance with the idea that they would have time to see the practicality of their action and perhaps get some input from the cities and advisory planning commissions.

Commissioner Glendening felt that they were on the right track but thought they need to take a deep breath and make sure this is the direction they want to take. The number 11 was good but they could throttle between 11 and 13 but no more than 13. He didn't want to see a bond issue to increase the size of the room

to accommodate more than 13. Also, he felt they have a very good working group, a good relationship with staff and that the cities are in harmony with what they are doing.

Commissioner Carluccio referred to the term "at large" and understood that a person doesn't necessarily have to live in the area they represent. She understood it to mean that a person from Seldovia could represent the southwest district. Mr. Navarre replied that currently there are guidelines for areas that commission members should be appointed from under Borough code. There is currently no requirement that they appoint from those areas and yet mayors have chosen to look at those recommendations in the code and appoint according to that. It doesn't mean that someone from the Seldovia area couldn't serve however it would not be someone within the City because that would throw it out of balance in terms of population representation. Commissioner Carluccio understood that it couldn't be someone from the City. Mr. Navarre replied yes, that was correct.

Commissioner Carluccio stated that no matter how they looked at it, Seldovia still wouldn't have representation. Mr. Navarre replied that Seldovia would have representation. It would be the city interests from the other communities if the mayor did not choose someone from Seldovia. Someone from Seldovia could still represent the city's interest which would balance the apportionment because it doesn't represent the City of Seldovia but represents the interests of the city.

Commissioner Ecklund understood that in 2020, if a representative from the City of Seward was not selected to be on the commission then she couldn't be appointed for East Peninsula unless she moved out of the city of Seward. Mr. Navarre replied yes was correct. Commissioner Ecklund stated that she couldn't serve that area because she lives within the city of Seward even though she lived out of the city before, been on a road board, worked at a title office, been on this commission, and been a city clerk, etc. and may have some expertise. Mr. Navarre replied yes, that was correct. That is a State Statutory requirement about the apportionment from inside the cities and outside the cities based on population.

Commissioner Ruffner felt this was not a pressing issue for a recommendation from the Planning Commission. Mr. Navarre replied that the ordinance takes effect immediately but the triggering mechanism to reduce the commission size from 13 to 11 doesn't take place until 2020.

**AMENDMENT MOTION:** Commission Ruffner moved, seconded by Commissioner Ecklund to postpone action so that the cities and advisory planning commissions have time to review and comment on this ordinance.

Commissioner Carluccio stated that the problem she has with that is that it is up for review at the Assembly meeting on Tuesday. She thought they could recommend that the Assembly postpone action on it but they may not postpone it and may decide to vote on it. If they vote on it, they would be voting on it without any kind of recommendation from the Planning Commission.

Commissioner Foster agreed with that. He suggested making a recommendation that the Assembly postpone action on the substitute ordinance until they receive comments from the cities and advisory planning commissions.

Commissioner Ruffner stated that in his experience, it was implied that the recommendation from the planning commission was also directed to the Assembly when they have an issue that comes before them.

Commissioner Foster asked Ms. Hartley to repeat the amendment motion. Ms. Hartley replied that the motion was to postpone action until the cities and advisory planning commission could review and comment on the subject ordinance.

Commissioner Carluccio asked if they could make a recommendation to the Assembly to postpone action until information and comments were received from the advisory planning commissions and cities. Commissioner Glendening thought the intent of the amendment motion was to forego any direct action until a time when comments were received from the City Councils and Advisory Planning Commissions.

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

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

CARLUCCIO YES	COLLINS YES	ECKLUND YES	ERNST YES	FOSTER YES	GLENDENING YES	ISHAM YES
LOCKWOOD ABSENT	MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	12 YES 1 ABSENT

**AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18)**

**1. Project Overview**

A Conditional Use Permit is sought in order to construct a 16-foot by 32-foot principal structure on the applicant's parcel within the 50-foot Habitat Protection District.

KPB Planning Commission Resolution 2016-27

Staff Report given by Karyn Noyes

PC MEETING: August 22, 2016

**Applicant:** Meckstroth Family 2002 Trust  
37775 Mackey Lake Road  
Soldotna, Alaska 99669

**Project Location:** This project is located on the right bank of the Kenai River at River Mile 17, Poacher's Cove planned unit development amended lot 97, Section 19, T5N, R10W, SM, AK, (KPB Parcel # 057-489-16).

**Proposed Action:** The KPB Planning Commission is requested to take action on a Conditional Use Permit (CUP) application for construction of a principal structure within the Habitat Protection District.

**Project Details:** The project details for the portion of the project that falls within the Kenai River Habitat Protection District (HPD) are:

**A. Principal Structure**

1. Construct a two-story 16-foot by 32-foot principal structure with a 6-foot x 16-foot covered deck, primarily within the 50-foot HPD.

Proposed mitigation measures:

- a. An existing 4-foot by 8-foot wood walkway on the ground will be removed. An existing cinder block on the bank will be removed. Native vegetation will be planted where these items had been.
- b. Existing vegetation between the structure and the north edge of the lot will be maintained and enhanced to reduce surface water runoff.

**Background Information**

The purpose of the project is to construct a 16-foot by 32-foot principal structure with a 6-foot by 16-foot covered deck. The proposed structure will primarily be within the 50-foot HPD, as only an 8-foot by 27.5-foot portion of the parcel is outside the HPD. Between the parcel and the river's edge, there is a Poacher's Cove Homeowner's Association 5-foot wide pedestrian access walkway and a common area approximately 6-feet wide (See site plan on the last page of the application document).

**Application Completeness and Compliance:** The proposed project will occur above the ordinary high water mark of the Kenai River and within the 50-foot Habitat Protection District. The River Center found the application complete and scheduled a public hearing for August 22, 2016.