

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Mayor Navarre, Borough Mayor *MN*

FROM: Samantha Lopez, Acting Planning Director *SL*

DATE: January 12, 2023

RE: Ordinance 2022-46: Amending KPB 21.02.230 to modify the boundaries of the Nikiski Advisory Planning Commission.

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled January 9, 2023 meeting.

A motion passed by majority vote (9 Yes, 1 No, 2 Absent) to recommend approval of Ordinance 2022-46.

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

January 9, 2023 Planning Commission Draft Meeting Minutes

**ITEM E3 – ORDINANCE 2022-46
AMENDING KPB 21.02.230 TO MODIFY THE BOUNDARIES OF THE
NIKISKI ADVISORY PLANNING COMMISSION**

Staff report given by Senior Planner Samantha Lopez.

Commissioner Gillham asked staff if the Tyonek Native Corporation had made any attempts to secure representation on the APC. Ms. Lopez replied that no applicants for the APC had been received from any residents on the westside. Commissioner Gillham then asked if the reduced boundary size of the APC being put forth, is the same one the Planning Commission initially recommended to the Assembly. Ms. Lopez replied that it was. She noted the ordinance reducing the boundary size was brought forth by several assembly members in response to the letter from the Tyonek Native Association.

Chair Brantley opened the item for public comment.

Len Niesen; PO Box 8485, Nikiski, AK 99635: Ms. Niesen spoke in support of leaving the Nikiski APC boundaries as they are. She noted that the Tyonek Native Corporation had received the same notice about the formation of the APC as the other area residents. They had the same opportunity to make comments then, but they chose not to. They chose to lodge their complaint after the fact, after the APC boundaries were approved. The native corporation actually owns very little land on the westside. In addition, there are energy companies that own lands on the westside that are based in Nikiski, as well as 150-plus properties on the westside that are privately owned. She feels that by reducing the APC boundaries, all the folks who are not a part of the native corporation will be losing a voice that they have been given. The native corporation can choose to participate or not, however they are not losing anything by remaining within the APC boundaries. She noted that most of the lands on the westside are publicly owned lands (Federal, State & Borough) and have the potential of being developed in the future. Some of these public lands may one day be transferred into private hands. She does not believe that the voices of the private landowners in the area should be shut down. She believes the westside is completely attached to Nikiski. The westside is included in their service area and those land should remain within the APC boundary. Making this change, after the fact, does not sit well with her. She would ask that the commission recommend rejecting this proposal.

Commissioner Slaughter asked Ms. Niesen if the APC had reached out to the Tyonek Native Corporation to discuss this matter. Ms. Niesen replied that they had not. She noted that the APC just recently had their first meeting and believed the open meetings act prohibited them from reaching out directly. The APC has not really had the time or opportunity to reach out to them.

Commissioner Slaughter noted that no one from the westside appears to be on the APC. It also sounds like the Tyonek Native Association may not have received any notice about the formation of the APC. He asked staff what resources were put into notifying residents on the westside about the APC. Ms. Lopez replied that once the APC boundaries were set, a notice was sent out to all landowners within the adopted boundary, informing them of the new APC, and that they had lands that resided within the boundary. The notice also contained information on how to apply to be a member of the APC board.

Len Niesen; PO Box 8485, Nikiski, AK 99635: Ms. Niesen wanted it noted that the Nikiski APC would welcome participation from the residents on the westside. She would be happy to relinquish her seat to allow for that to happen

Heidi Covey; 46990 Two Junes Ave., Kenai, AK 99611: Ms. Covey spoke in support of leaving the Nikiski APC boundaries as they are. She stated she keeps hearing concerns being expressed about the size of the APC. She doesn't believe that should be a concern, as there is nothing in code or statute about limiting the size of an APC. The Tyonek Native Association received the same notices as all the other area residents. The native association appears to be saying that they were left out of the process and we know that they were not. They chose to speak up only after the APC was established. The native corporation states that they are not a part of the borough, however they do receive services paid for by borough tax payers. The native corporation is no different than any other area resident, they can exercise their civic duty and submit an application to be on the APC. She then noted that an owner of a business on the westside did just that, they submitted an application to sit on the APC. She stated that we need to be guided by the law and would encourage the commission to follow the law and allow the APC boundaries to remain as they were initially adopted.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Slaughter to forward to the Assembly a recommendation to adopt Ordinance 2022-46, amending KPB 21.02.230 to modify the boundaries of the Nikiski Advisory Planning Commission.

Commissioner Gillham stated that she thought when the commission initially recommended reducing the size of the boundary it was to give the westside the opportunity to create an APC and to have their own voice. It does not appear that the native corporation wants to do that. There are still other lands on the westside that are not apart of the native corporation and it seems to be unwise for them to not have any representation. Initially she supported the small boundary for this APC but she is now leaning towards supporting that the boundaries remain as they are. Just because the native corporation doesn't want a voice doesn't mean the other residents on the westside shouldn't have one. The borough already doesn't tell the native corporations what to do with their lands, so this APC won't negatively affect them.

Commissioner Staggs stated since the native corporation doesn't want to participate in the APC, the commission could just make a recommendation to remove the native corporation lands from the APC boundaries.

Commissioner Martin stated that he agrees with what the two testifiers and commissioner Gillham has said. He is inclined to vote against recommending approval of the ordinance.

Commissioner Stutzer asked what kind of jurisdiction does the borough have over federal and native lands? If we really don't have much jurisdiction over federal and native lands, he doesn't see how the APC would negatively affect them. If that is true, then he is inclined to recommend that the boundaries be left as they currently are. Ms. Lopez replied as far as what kind of lands are subject to the borough, it is her understanding that federal and native lands are still subject to code. For instance, any time there is any type of platting action, whether on private or public lands, those plats will still come before the commission for approval. The same would be true for conditional use and conditional land use permits. However, when it comes to the APC developing a land use plan, it would only apply to borough owned lands. Borough Attorney Walker Steinhage added generally in cases where federal and local laws are in conflict, federal law will control. The issue of the relationship of laws between native corporations/tribes and state/local municipalities are rapidly evolving and changing. Having said that, he doesn't believe that this would be implicated at the APC level, because the purpose of the APC is to give locals a voice and make recommendations. The APC is not a decision-making body.

Commissioner Brantley noted that the last time this came before the commission there was a lot of discussion about why the boundaries of this APC should be smaller. He noted that APCs are not in any way tied to the size of a service area. The service areas and APCs are two different bodies, that perform very different functions. The westside of the inlet is so unique, and while some would say that it is a part of Nikiski, it really isn't. It is a very different place to Nikiski. It would be like claiming that he, as a resident of Sterling, should have a say as to what goes on in Cooper Landing. These are two completely different areas. If the westside wants to represent themselves he believes that another APC would be appropriate. He hasn't changed his mind from the last time this came before the commission. He will be voting to recommend adopting the smaller boundary area. He also reminded the commission that the westside is represented by them. The Planning Commission represents the entire borough, so it is not like the westside is going without any representation.

Commissioner Horton stated he agreed with Commissioner Brantley. It would be like him, a resident of Sterling, saying that he should be making recommendations for the Funny River area.

Commissioner Gillham stated she believes it is beneficial to have a local voice, and she was concerned that the residents of the westside would be going without a local voice. She has noticed that a number of the APCs have had difficulties finding residents willing to serve. She had been thinking that at least there were folks on the Nikiski APC willing to speak up for the westside. She recognizes that the westside is unique and it would be great if the Nikiski APC could get residents from over there to join their board. However, she agrees that the westside is not without representation, as they are represented by the KPB

Planning Commission.

Commissioner Stutzer stated that he agreed with Commissioner Brantley. He doesn't believe that as a Homer resident, that he should be making recommendations for another community further up the peninsula. He is not from the area and the conditions in the area could be very different.

Commissioner Brantley stated he understands that the westside is a large area and noted that Tyonek is the town of the westside. Tyonek has stated that they do not want to be a part of the Nikiski APC. Perhaps in the future they may want to form an APC for the westside. The ordinance before us was what we originally recommended to the Assembly.

Commissioner Venuti stated he understands that Tyonek does not want to participate in the APC. One thing he has not heard discussed is how they would participate. Living in Homer he has reliable internet connections, he wonders what it is like on the westside. Being remote, the westside might be at a disadvantage. He wonders if this issue might play into their decision. Commissioner Brantley replied that Tyonek may be showing how much they do not want to participate by choosing to not participate at all.

Commissioner Slaughter says that he supports the smaller APC boundary. He has served on an APC and he believes it is beneficial to have the community involvement. However, if Tyonek does not want to participate in the APC he does not believe they should be forced to. The westside is not without representation, they do have the planning commission and the assembly. He will be voting in favor of adopting this ordinance.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY MAJORITY VOTE:

Yes - 9	Brantley, Gillham, Hooper, Horton, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 1	Martin
Absent - 2	Fikes, Morgan

DESK PACKET

(Items submitted after the packet publish date of 12-30-22)

- 5. Ordinance 2022-46: Amending KPB 21.02.230 to modify the boundaries of the Nikiski Advisory Planning Commission.**

Raidmae, Ryan

From: richardmcgahan <boulderpoint@alaska.net>
Sent: Friday, January 6, 2023 3:35 AM
To: Raidmae, Ryan
Subject: <EXTERNAL-SENDER>Comments to the Planning Commission re: Ordinance 2022-46

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hello Ryan,
Please forward the following comments to the Planning Commission. I believe they need to be sent by 1:00 today. These comments are from us as residents of Nikiski.
Thank you,
Karen

Dear Commissioners:

We are asking that your recommendation to the Kenai Peninsula Borough Assembly is NOT to pass Ordinance 2022-46, and NOT to amend the boundaries of the Nikiski Advisory Planning Commission. The boundaries need to stay the same as the Nikiski Fire Service Area which was created and has been serving the west side of the Inlet, including Tyonek since 1969. This not only includes money, but the Nikiski Fire Department gives Tyonek equipment, monthly training of their volunteers, And a building to house the equipment. The other service areas in Nikiski, (North Peninsula Recreation and Senior Services) also serve Tyonek. There will be new activity near Tyonek with the new gas line possibly as soon as 2024. The residents of Tyonek have every opportunity to join any of these boards, including the APC.

Please recommend the boundaries of the Nikiski APC stay as they are currently.
Thank you,

Richard C. McGahan, Sr.
Karen S. McGahan

Nikiski Residents

January 6, 2023

To the Members of the Planning Commission

I am a resident of Nikiski and was very pleased to see that an APC was formed to serve us. I was not involved in the petition and didn't sign it, but I was so happy that it was created that I applied to serve as a commissioner and offer my time to serve. That said, I am writing as an individual and constituent.

I did attend the July meeting where boundaries were discussed with the public. As I understand it, every single person and business that would be within those boundaries received the same notice and the same opportunity to comment, including Tyonek Native Corporation (TNC) and Native Village of Tyonek (NVT). I'm disappointed that we are back once again, discussing the boundaries, because this one group – which forms a very small part of the Nikiski APC (NAPC) area – is complaining after the fact.

While I understand the desire to respond with respect to TNC and NVT, the proposed changes to our boundaries being suggested in Ordinance 2022-46 are overkill. Mr. Johnson and Ms. Ecklund have unfortunately conflated "Tyonek" with "West Cook Inlet." These are not the same. I have provided a map, which was also entered into record at the NAPC meeting, that shows all of the land owned by the two entities, TNC and NVT, on the west side of Cook Inlet, and it is a very small portion of the land in the NAPC boundaries. I counted some 150 properties owned by individuals not apparently affiliated with TNC/TNV located all over the west side of the NAPC's boundary area. The vast majority of lands on the west side within NAPC's boundary are public lands, held by the Federal, State and Borough governments. Even if you decide to recommend to the assembly that TNC/TNV's land be removed, there is no need to remove the rest of the land on the west side of NAPC.

The Kenai Peninsula Borough states that the purpose of an APB is to provide an additional avenue to participate in land use planning. Retaining our current boundaries, including Tyonek land, does not take Tyonek's voice away; it adds an additional avenue to speak. There is really no downside for Tyonek to be included, in that case. On the other hand, you WOULD be removing this additional voice for the many individual landowners on NAPC's west side, and that would be wrong, given that you have already told them they had that voice.

With all of this said, if the Planning Commission feels it is imperative to concede to TNC/NVT in this matter, I would support removing Tyonek Native Corporation's and Native Village of Tyonek's land on the west side of Cook Inlet from NAPC's boundary area. If you feel you must act, then that would be a measured response in keeping with the wishes expressed by TNC/TNV in their letter.

The size of the NAPC area has been mentioned a few times. There are no size limits to an APC in law, statute or ordinance; size is limited only by the vision of the community as to what will affect their future. As to the question of how we would communicate with residents on the west side, including Tyonek, we would do it the same way the Assembly and Planning Commission have done it for many years. In this day of technology, Zoom meetings are a norm. If you think about it, ONE Assembly member has been representing the entire area that the NAPC covers – both sides of Cook Inlet – and that is only one person; we are seven people, so it should be easier.

I'd like to correct a misstatement made by an Assembly member. When Mr. Johnson proposed this new ordinance, he stated in meeting that the Assembly asked about Tyonek and was told that the petitioners

“have checked out the people on the west side and they are all on board with this.” That was a misstatement. The actual question asked by the Assembly when the original boundaries were approved was (from Ms. Ecklund), “Did any citizens from the west side sign the petition?” and clarified that she meant from any community on the West Side; Ms. Broussard answered that of the more than 20 signatures that were needed and provided, none were specifically from any of the villages. Ms. Ecklund asked, “So there are some from people who live on the West Side or have property on the West Side?” and Ms. Broussard answered that yes, she believed so, that they have businesses there, but she would need to check the signatures. Ms. Oliva stated that there are many people in Nikiski who travel back and forth to the West Side regularly. These were the questions that were asked, and the answers given. It is important to note that the petitioners did not misrepresent the facts.

Nikiski’s economy is inextricably linked to the west side. We have businesses and individuals who own land and businesses there, and our workers travel back and forth regularly. My own son’s business requires that he fly over to various locations on the west side of Nikiski regularly. As you know, the boundaries of our fire, senior and Recreation service areas are identical to the boundaries of NAPC. Our budget dollars for those groups serve Tyonek. Our fire personnel went out as first responders for the 2014 wildfire that came within 2 miles of Tyonek and kept the fire away from them. Tyonek votes on the same ballot as Nikiski. If TNC and NVT do not wish to be within the NAPC boundaries, perhaps they should rethink being within the other boundaries. The future plans of Nikiski, particularly in the development of energy resources as described recently by a rep of AGDC, will always be economically linked with the western part of NAPC’s boundary area. This will become apparent when the NAPC is tasked with creating a comprehensive plan.

The NAPC recommended retaining the entire boundary, and I support that decision, as did everyone who attended the meeting from Nikiski. The exclusion of TNC and NVT’s lands would be a concession rather than a preference.

Thank you for your consideration of this subject. It is a matter of importance to Nikiski, and I believe there were good reasons for the boundaries and those reasons have not changed. The decision on this matter will be a reflection of the respect that the Borough has for Nikiski.

Sincerely,

Lenora Niesen

Assembly Members,

Please consider keeping the current Nikiski boundaries set forth in KPB 21.02.230. Our family has commercial land in the area and appreciate the opportunity to be represented by the Nikiski Advisory Planning Commission.

Thank you for your time.

Kelly Brewer

P.O. Box 8223

Nikiski, AK 99635

907-776-7516