



Kenai Peninsula Borough  
Planning Department

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**MEMORANDUM**

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

THRU: Charlie Pierce, Borough Mayor 

FROM: Melanie Aeschliman, Planning Director 

DATE: January 29, 2021

RE: Ordinance 2021-03, Amending KPB 21.06.040. Administration, and KPB 21.06.070, "Development" Definition, for Floodplain Management Purposes.

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The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled January 25, 2021 meeting.

A motion passed by unanimous vote (11Yes, 0 No) to recommend approval of Ordinance 2021-03.

In the ordinance, please amend the last WHEREAS statement:

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of January 25, 2021 recommended approval by unanimous vote.

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

him a buffer and give him access to bring supplies right up to his property. Commissioner Martin stated it look like it could be a win-win situation for the neighbor, with the Clements providing the whole 30' feet of the right-of-way and Mr. Jones getting better access to his property. Ms. Clements stated they did consider using Lot 3 for the new easement but it is very swampy and would make it difficult to build and use. The area they are proposing for the new easement is on higher and dry ground.

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

**MOTION PASSED BY MAJORITY VOTE:**

Yes	8	No	3	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Martin, Morgan				
No	Gillham, Ruffner, Venuti				

**AGENDA ITEM E. NEW BUSINESS**

- 3. Ordinance 2021-03: Amending KPB 21.06.040, Administration and KPB 21.06.070, "Development" Definition, for Floodplain Management Purposes

Staff report given by Samantha Lopez.

Floodplain management within the borough is a critical service that the borough provides dating back to 1988. Per guidance issued by the Federal Emergency Management Agency (FEMA), small or minor projects that do not involve filling, grading, or excavating may not be considered "development" for purposes of floodplain management regulations. Such projects do not increase the natural grade, do not obstruct floodwaters, and do not increase flood stages. FEMA has thus determined that minor projects may not meet the definition of "development", and are too small to warrant a full hydrologic and hydraulic (H&H) analysis, commonly referred to as a No-Rise Certification.

By amending the definition of "development", the code will align with FEMA's requirements, while also allowing the floodplain administrator to more objectively determine which projects do not meet the definition of development because it is a minor project. Should this code change fail, then moving forward all developments, even minor projects, in the floodway will require H&H analysis.

This ordinance will also amend borough code to clarify that the borough's planning department, as delegated to the borough's floodplain administrator, is responsible for issuing a final written determination as to whether or not a proposed project falls within the definition of development and therefore requires a permit for purposes of KPB 21.06 Floodplain Management.

**END OF STAFF REPORT**

Chair Martin open the item for public comment. Seeing and hearing no one from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Carluccio moved, seconded by Commissioner Ecklund to forward to the Assembly a recommendation to adopt Ordinance 2021-03, Amending KPB 21.06.040, Administration, and KPB 21.06.070, "Development" definition, for floodplain management purposes.

Commissioner Carluccio asked staff for an example of the new definition of development. Ms. Lopez replied it would be projects like a simple garden box or removal of six inches of overburden to be replaced with topsoil for a garden, projects like these would not require a permit. The current definition defines any manmade changes as development, which would require a permit. The new definition would make it easier for constituents to do small low impact projects within the floodplain without having to get a permit

Commissioner Bentz asked staff in considering developments that do not involve filling, grading or excavating, for instance a building on pilings, how does increasing impervious surfaces play into this change? Especially considering the potential to speed of surface runoffs. The effects that might have on rainfall runoff characteristics on the property as they related to a stream. Ms. Lopez replied if someone were to build a structure within the floodplain, the floodplain regulations would still apply. The floodplain

codes do not have much in the way of regulatory teeth when addressing impervious surfaces. Where that is addressed under 21.18 the Habitat Protection code. If the project is within 50 feet of a stream it will be addressed under 21.18 and not floodplain regulations.

Commissioner Ruffner asked staff any development permitted within the 50' Habitat Protection District (HPD) it will come under KPB 21.18 and not floodplain regulations. Ms. Lopez replied that he was correct. Ms. Lopez noted there is nothing in the floodplain code that would override KPB 21.18. While there may be an area that is within both the floodplain and the HPD – any activity within the HPD will come under 21.18. Commissioner Ruffner then asked projects that do not involve fill, such a spruce tree bank revetments, how does FEMA looks at these activities? He would assume this type of activities would be considered a minor development and would not require an expensive H&H study. He then asked if this type of work would be considered fill under the new definition. Ms. Lopez replied FEMA would not consider most bank revetment projects major developments as you are replacing what was once there. Going off the maps we have for the Kenai River, which are 40 years old; it is safe to assume that the banks have experienced erosion during that time. FEMA does have guidelines that allow for the bank to be returned to its natural grade. It is on the landowner to prove that the project is returning the bank to its natural grade and that the work is not going beyond that.

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No	None				

**AGENDA ITEM E. NEW BUSINESS**

4. Ordinance 2020-19-17 , Authorizing the Acquisition of Real Property Located at 4135 Hohe Street, Homer, Alaska on Behalf of South Peninsula Hospital, Appropriating \$315,000 from the South Peninsula Hospital Plant Replacement and Expansion Fund for the Purchase, and Authorizing an Amendment to the SPH, Inc. Operating Agreement

Staff report given by Marcus Mueller.

Property located adjacent to the South Peninsula Hospital (SPH) campus at 4135 Hohe Street has become available for purchase. SPH faces a shortage of area available parking and infrastructure. Acquiring the property would support SPH operations by providing room for future expansion.

The property, along with other hospital properties, is located within the City of Homer's Residential Office Zoning District, which allows for hospitals and medical clinics by conditional use permit.

The negotiated purchase price is \$300,000, which is the independently appraised fair market value. Prior to completing the purchase, the property would be inspected for structural and environmental conditions. The purchase agreement provides up to 180 days to close and the borough is responsible for all closing costs. Closing costs, prorated taxes and purchase investigation costs are not expected to exceed \$15,000. The unused balance of the appropriated funds will revert to the SPH Plant Replacement and Expansion Fund (PREF).

The attached ordinance would authorize the purchase of the property and appropriate \$315,000 from the PREF to cover the costs associated with the purchase, and would provide for an amendment to the SPH Operating Agreement to add the property to the list of leased property under the operating agreement.

**END OF STAFF REPORT**

Chair Martin open the item for public comment. Seeing and hearing no one from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Venuti moved, seconded by Commissioner Bentz to forward to the Assembly a