

E. NEW BUSINESS

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

Introduced by:	Johnson, Ecklund, Tupper
Date:	12/13/22
Hearing:	02/07/23
Action:	Failed
Vote:	4 Yes, 4 No, 1 Absent
Action:	Notice of Reconsideration was given by Ecklund
Date:	02/21/23
Action:	Ordinance 2022-46 was Reconsidered
Vote:	7 Yes, 2 No, 0 Absent
Date:	02/21/23
Action:	Postponed to 03/14/23
Vote:	6 Yes, 3 No, 0 Absent
Date:	03/14/23
Action:	
Vote:	

KENAI PENINSULA BOROUGH ORDINANCE 2022-46

AN ORDINANCE AMENDING KPB 21.02.230 TO MODIFY THE BOUNDARIES OF THE NIKISKI ADVISORY PLANNING COMMISSION

WHEREAS, the assembly has previously created local advisory planning commissions (“APCs”) within the Kenai Peninsula Borough (the “Borough”) for the purpose of providing recommendations to the Borough Planning Commission on land use planning and public land management issues which may affect the existing and/or future character of their communities; and

WHEREAS, Goal 2 of the 2019 Borough Comprehensive Plan is to “Proactively manage growth to provide economic development opportunities on the Kenai Peninsula Borough while preserving what residents and visitors value about the area’s natural features”; and

WHEREAS, Goal 2, Objective E states, “Actively work with interested communities outside of the incorporated cities to help develop locally-driven community plans and Strategy 4: Near-Term: Encourage unincorporated communities to engage with their established local Advisory Planning Commission (“APC”) and encourage establishment of new APCs for communities not currently represented”; and

WHEREAS, at its regular meeting on September 20, 2022, the assembly enacted Ordinance 2022-41, which established the Nikiski APC; and

WHEREAS, since the Nikiski APC’s establishment, there have been no applicants outside of the new boundaries proposed in this ordinance; and

WHEREAS, the Nikiski APC encompasses 3,500,000 acres, which is 13 times larger than the other existing APCs within the Borough; and

WHEREAS, the Tyonek Native Corporation and the Native village of Tyonek object to inclusion within the boundaries;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section to be numbered 21.02.230, which shall read as follows:

21.02.230. Nikiski Advisory Planning Commission.

An advisory planning commission is established for the community of the borough known as Nikiski with boundaries as follows:

[COMMENCING AT THE TOWNSHIP LINE BETWEEN T5N AND T6N R17W S.M., AND THE MEAN HIGH WATER LINE ON THE WESTERLY SHORE OF COOK INLET;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T5N AND T6N TO THE WESTERLY BOUNDARY OF THE KENAI PENINSULA BOROUGH;

THENCE NORTHERLY AND EASTERLY ALONG THE BOUNDARY OF THE KENAI PENINSULA BOROUGH THROUGH COOK INLET TO THE PROTRACTED NORTHEAST CORNER OF T11N R5W IN TURNAGAIN ARM;

THENCE SOUTHEASTERLY TO THE INTERSECTION OF THE SOUTHERLY MEAN HIGH WATER LINE OF TURNAGAIN ARM AND THE 150TH MERIDIAN WEST OF GREENWICH WITHIN T10N R4W S.M.;

THENCE SOUTHERLY ALONG THE 150TH MERIDIAN TO THE TOWNSHIP LINE BETWEEN T8N AND T9N R4W;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T8N AND T9N TO THE NORTHWEST CORNER OF T8N R9W S.M.;

THENCE SOUTHERLY ALONG THE RANGE LINE BETWEEN R9W AND R10W TO THE SOUTHEAST CORNER OF T6N R10W S.M.;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T5N AND T6N TO THE SOUTHEAST CORNER OF SECTION 32 T6N R10W;

THENCE NORTHERLY ALONG THE SECTION LINE BETWEEN SECTIONS 32 AND 33 TO THE NORTHEAST CORNER OF SECTION 32;

THENCE WESTERLY ALONG THE SECTION LINE TO THE NORTHWEST CORNER OF SECTION 31 T6N R10W ON THE CORPORATE BOUNDARY OF THE CITY OF KENAI;

THENCE NORTHERLY AND WESTERLY ALONG THE CORPORATE BOUNDARY OF THE CITY OF KENAI TO THE INTERSECTION WITH THE MEAN LOW WATER LINE OF COOK INLET AND THE SECTION LINE BETWEEN SECTIONS 23 AND 26 T6N R12W S.M.;

THENCE WESTERLY ALONG THE SECTION LINE EXTENDED THREE MILES INTO COOK INLET;

THENCE SOUTHWESTERLY TO THE PROTRACTED SOUTHEAST CORNER OF T6N R14W IN COOK INLET;

THENCE WESTERLY ALONG THE PROTRACTED TOWNSHIP LINE BETWEEN T5N AND T6N TO THE MEAN HIGH WATER LINE ON THE WESTERLY SHORE OF COOK INLET THE TRUE POINT OF BEGINNING.]

Beginning at the intersection of the southerly mean high water line of Turnagain Arm and the 150th meridian west of Greenwich within T10N R4W S.M.;

Thence southerly along the 150th meridian to the township line between T8N and T9N R4W;

Thence westerly along the township line between T8N and T9N to the northwest corner of T8N R9W S.M.;

Thence southerly along the range line between R9W and R10W to the southeast corner of T6N R10W S.M.;

Thence westerly along the township line between T5N and T6N to the southeast corner of Section 32 T6N R10W;

Thence northerly along the section line between Sections 32 and 33 to the northeast corner of Section 32;

Thence westerly along the section line to the northwest corner of Section 31 T6N R10W on the corporate boundary of the city of Kenai;

Thence northerly and westerly along the corporate boundary of the city of Kenai to the intersection with the mean high water line of Cook Inlet and the section line between Sections 23 and 26 T6N R12W S.M.;

Thence northerly and easterly along the mean high water line on the easterly shore of Cook Inlet, and easterly along the southerly mean high water line of Turnagain Arm, to the point of beginning.

SECTION 2. That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

02/07/23 Vote on Motion to Enact Ordinance 2022-46:

Yes: Cox, Ecklund, Tupper, Johnson
No: Chesley, Derkevorkian, Elam, Ribbens
Absent: Hibbert

02/21/23 Vote on Motion to Reconsider Ordinance 2022-46:

Yes: Chesley, Cox, Ecklund, Hibbert, Ribbens, Tupper, Johnson
No: Derkevorkian, Elam
Absent: None

02/21/23 Vote on Motion to Postpone Ordinance 2022-46 to 03/14/23:

Yes: Chesley, Derkevorkian, Elam, Hibbert, Ribbens, Johnson
No: Cox, Ecklund, Tupper
Absent: None

Yes:

No:

Absent:

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Brantley, Gillham, Hooper, Horton, Martin, Slaughter, Staggs, Stutzer, Taufest, Venuti
Absent - 2	Fikes, Morgan

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

ITEM E4 – ORDINANCE 2023-xx

AUTHORIZING AN AMENDMENT TO THE KENAI PENINSULA ARCHERS LEASE TO PROVIDE A TEN-YEAR EXTENSION OF THE TERM AND A TEN-YEAR RENEWAL OPTION

Staff report given by Marcus Mueller.

Chair Brantley opened the item for public comment.

Steve Latz, Kenai Peninsula Archers; P.O. Box 1892, Kenai, AK 99611: Mr. Latz is the Gaming Officer for the club and spoke in support of approving the lease amendment. He also made himself available for questions.

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

MOTION: Commissioner Slaughter moved, seconded by Commissioner Gillham to forward to the Assembly a recommendation to adopt Ordinance 2022-XX, authorizing an amendment to the Kenai Peninsula Archers lease to provide a ten-year extension of the term and a ten-year renewal option.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Brantley, Gillham, Hooper, Horton, Martin, Slaughter Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Fikes, Morgan