



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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MIKE NAVARRE
BOROUGH MAYOR

M E M O R A N D U M

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Mike Navarre, Borough Mayor *MN*

FROM: Max Best, Planning Director *MB*

DATE: December 13, 2016

SUBJECT: Ordinance 2016-44; Amending KPB 20.10 and KPB 21.50 Regarding Violations and Enforcements.

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled December 12, 2016 meeting.

A main motion passed by unanimous consent to recommend approval of Ordinance 2016-44, Amending KPB 20.10 and KPB 21.50 regarding Violations and Enforcements.

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

WHEREAS, the planning commission at its regular meeting of December 12, 2016 recommended approval by unanimous consent.

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

AGENDA ITEM F. PUBLIC HEARINGS

1. Ordinance 2016-44; Amending KPB 20.10 and KPB 21.50 Regarding Violations and Enforcements.

Staff Report given by Max Best

PC Meeting: 12/12/16

A new enforcement code was adopted for land use regulations (KPB Title 21) in 2011. This process entails a system wherein violations are adjudicated by a hearing officer. Violators have an opportunity to correct the violation at a warning stage or through a stipulated agreement prior to being issued an enforcement notice which leads to the hearing. The process has worked effectively. Planning staff has been able to resolve 250 violations as a result of issuing a warning. The borough has entered 16 stipulated agreements and two matters have gone to hearing. Approximately \$37,350 in fines has been collected using this process.

After having worked with the ordinance for five years some housekeeping modifications would provide a more efficient process and would clarify some sections of the code.

A major change was adding the following paragraph in order to save borough resources. This allows the parties to enter into an agreement pre-enforcement hearing which reduces the work required of the hearing officer and need for a hearing. This primary revision is the codification of the "enforcement agreement" process that has been successfully used by staff and respondents, reducing the time and expense of using the hearing officer when the parties can agree to a remedy after an enforcement notice is issued prior to the scheduled hearing. There have been a couple of situations where the applicant was willing to pay the fine and correct the violation but staff didn't have anything in the code to do that. This would be adding a step to gain compliance with an applicant.

"The borough and a property owner may enter an enforcement agreement as provided herein. An enforcement agreement between the borough and a property owner or occupant shall constitute an admission and acknowledgement by the property owner or occupant of the alleged code violation. The enforcement agreement shall include an agreement to remedy the violation and pay civil fines as described within the agreement within the timeframe agreed upon. The enforcement agreement shall be submitted for signature of the hearing officer as an enforcement order. The hearing officer shall approve the agreement upon finding it is in compliance with KPB 21.50. It shall have the full force and effect of an enforcement order issued under KPB 21.50.130(G)."

Additionally, extending KPB 21.50 for violations of the subdivision code is also proposed to address situations such as illegal subdivisions as authorized by AS 29.40. Staff proposes adding the subdivision code violations to the fine schedule since there wasn't anything in Title 20 for violations of any platting actions.

A table highlighting the revisions the ordinance would make to the current code is provided for the assembly's ease of reference.

Staff recommends that the Planning Commission recommend to the Assembly the adoption of the new changes and also the amendment as proposed by staff.

END OF MEMORANDUM & 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.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Carluccio to recommend approval of Ordinance 2016-44; Amending KPB 20.10 & KPB 21.50 regarding Violations and Enforcements.

Commissioner Ruffner stated that it appeared that the penalties are being doubled and asked how many penalties have they enforced over the last year. He also asked what the reasoning was of going from a \$500 to a \$1,000 fine. Mr. Best replied that those are enforcement order issues that have been doubled which are allowed by Statute. Staff found that people that are in violation are not stopping work but just adding it to the

cost of doing business. The \$500 fine was not much of a deterrent so staff proposed raising it to \$1,000 to try to bring them into compliance and stop. He stated that Platting issues was a standard \$300 fine for each one.

Commissioner Ruffner asked how many people have been fined. Mr. Best replied that there were 250 violations over the last 5-6 years that were issued warnings. All but 16 or 17 of those decided they would take the warning and be in compliance. The Stipulated agreement was the process by which they didn't comply, was issued one more chance before going to hearing which was fix it, give a minimum fine then from there go to hearing where the Hearing Officer would impose a fine. The Hearing Officer was the only one that could establish the fines. The next process which was just added would be one that the violator could come into compliance and fix it before a hearing was set. Staff did not have a mechanism to fine someone and get them to fix it without going to a hearing. He stated that most of the fines of \$37,350 were two gravel pit operators that were fined the majority of that.

Commissioner Foster asked if the \$300 fine was per day which was for a violation of a conditional land use permit for a material site. Mr. Best replied that was correct, it was per day, per violation. Commissioner Foster understood that the \$500 fine was considered to be just a cost of doing business which was why it was increased to \$1,000. He asked why the \$300 fine was not increased when someone violates a conditional land use permit. Mr. Best replied that they are trying to treat everyone the same. They didn't have a hard time convincing violators that the \$300 was a pretty good fine. The \$300 fine was not increased because it was gaining compliance.

Commissioner Glendening asked what the mechanism was and when the time for the fine began. Mr. Best replied that it varied but typically it starts that day. A hearing has to be held within 20-30 days so staff states they will fine that person for 20 days; \$300 per violation, per day so for 3 violations at \$300 would be \$900 per day for 20 days. Any amount of that could be forgiven by the Hearing Officer. It starts at the time staff says that an item was going to a hearing. He stated first a person was given a warning that a violation needs to be fixed, if it's not fixed then there was a stipulated agreement and if they don't do that then it will cost them a lot of money and go to hearing.

Commissioner Ruffner stated that this seems to be in line to him and knows that the Planning Department tries to work with the people. He asked staff if they are ready for this to go to the Assembly for approval. Mr. Best replied yes.

VOTE: The motion passed by unanimous consent.

CARLUCCI YES	ECKLUND YES	ERNST YES	FOSTER YES	GLENDENING YES	ISHAM YES	LOCKWOOD YES
MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY YES		12 YES

AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) - None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING – None

AGENDA ITEM I. SPECIAL CONSIDERATIONS

1. Request for Review of Plat Committee Conditional Preliminary Approval of Carson-Diamond Subdivision; KPB File 2016-133 [Integrity / Carson, Diamond] Location: Towe Avenue/Prosser Street/Weldin Avenue, Caribou Hills

Staff Report given by Max Best

PC Meeting: 12/12/16

1. *Date of written notice of Plat Committee decision:* November 16, 2016
2. *Brief description of the Plat Committee decision for which you are requesting review by the Planning Commission.*