

Introduced by: Mayor
Date: 05/02/17
Hearing: 05/16/17
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2017-10**

**AN ORDINANCE AUTHORIZING THE EXCHANGE OF CERTAIN LANDS WITH
JAMES ROUKEMA AND ELIZABETH EHAMA NEAR MILEPOST 7.8
KALIFORSKY BEACH ROAD**

WHEREAS, the Kenai Peninsula Borough ("borough") owns bluff lands along the Cook Inlet without road frontage; and

WHEREAS, James Roukema and Elizabeth Ehama ("Roukema-Ehama") own a strip of land between Kalifornsky Beach ("K-Beach") Road and borough-owned land; and

WHEREAS, the borough and Roukema-Ehama can each benefit from an exchange of lands which creates properties with both road and bluff frontage; and

WHEREAS, the borough's Land Management Division and Roukema-Ehama have worked together to design an exchange that provides for good use of the property and a fair trade to both parties; and

WHEREAS, prior to the exchange of this land it must be platted to show the changed lot lines; and

WHEREAS, the Planning Commission at its regularly scheduled meeting of May 8, 2017, reviewed this ordinance and recommended approval by unanimous consent;

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

SECTION 1. That the Assembly finds that exchanging lands within Section 24, T4N, R12W, S.M. West of K-Beach Road described below with Roukema-Ehama pursuant to KPB 17.10.100 (C) is in the best interest of the borough:

Property to be conveyed to Roukema-Ehama:

The north 132 ft. of Government Lot 6, T4N, R12W, Section 24, Seward Meridian, Alaska, containing 1.47 acres more or less, subject to subdivision by plat, substantially as shown on Exhibit A - Plan of Survey attached hereto and incorporated by reference.

Property to be conveyed to the borough:

The south 528 ft. of Tract B-2, Shadura Creek Subdivision Number Two, Plat No. 94-14, Kenai Recording District, Third Judicial District, State of Alaska, containing 1.95 acres more or less, subject to subdivision by plat, substantially as shown on Exhibit A - Plan of Survey attached hereto and incorporated by reference..

The finding that this exchange is in the best interest of the borough is based on the following findings of fact:

- a) The Kenai Peninsula Borough owns bluff lands without sufficient road frontage.
- b) James Roukema and Elizabeth Ehama own a strip of land that has road frontage, but lacks depth and coastal amenity along the portion of the road frontage where the borough land is situated.
- c) Standing alone, neither the borough property, nor the Roukema-Ehama property, realize their value potential, as each property benefits from added depth and neither property has both road and bluff amenities.
- d) The borough property and the Roukema-Ehama property, if combined and reconfigured, would yield property with both road and bluff frontage amenities.
- e) The proposed exchange will add substantial value to both parties' land holdings in comparison to the present configuration of the parcels.
- f) This negotiated exchange equally benefits both parties, and no monies will be exchanged, except for the \$500 application fee collected by KPB.

SECTION 2. That pursuant to KPB 17.10.230, the assembly hereby authorizes exceptions to KPB 17.10.080 (requiring classification prior to transfer), KPB 17.10.110 (that notice of this sale be published four times in the thirty-day period immediately prior to the date), and KPB 17.10.120(A) (terms of a land sale and requiring the date of sale be listed in the ordinance) based upon the following findings of fact:

1. That special circumstances or conditions exist:
 - A. That an exchange with the abutting landowner is the most practical method to provide access to the borough property;
 - B. That the reconfigured parcel resulting from the exchange makes the borough property more useable;
 - C. As this is a negotiated exchange with a neighboring land owner, advertising the exchange and providing a "sale date" would not serve any

public purpose.

2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical means of complying with the intent of KPB Chapter 17.10:
 - A. The purpose of the KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land and advertising this sole source exchange will not serve a purpose advanced by Title 17.
 - B. That stating a date of sale for negotiated exchange is not necessary as during the process of transfer there may be unforeseen delays and this is only directed to a single buyer. Waiving the classification and date of sale requirements are consistent with the intent of KPB Chapter 17.10 in that no other interest would be damaged by waiving these requirements;
 - C. Purchasing an ad giving notice to the public of this pending exchange would serve no practical purpose as this is not competitive sale.
3. That granting of the exception will not be detrimental to the public welfare or injurious to other property in the area:
 - A. The public will receive notice of the pending sale through the ordinance notification process.
 - B. The intent is to exchange with one entity so providing the specific date of sale in the ordinance is not necessary.
 - C. This exchange benefits the borough's land inventory by enhancing value, access, and potential use of the subject lands. The public will receive notice of this sale through the ordinance process.


SECTION 3. That the mayor is authorized to execute the Exchange Agreement substantially in the form of the one accompanying this ordinance and any and all documents necessary to effectuate this ordinance.

SECTION 4. That prior to closing the parcels shall be replatted and the plat recorded.

SECTION 5. That the proposed classification of the land acquired by the borough through this exchange is residential.

SECTION 6. That Sections 1-4 of this ordinance takes effect immediately upon enactment and Section 5 of this ordinance shall become effective upon recordation of a conveyance document.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
16TH DAY OF MAY, 2017.

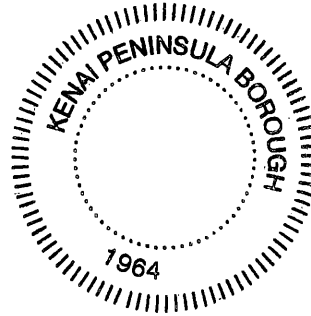


Kelly Cooper, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Bagley, Carpenter, Dunne, Fischer, Hibbert, Ogle, Schaefer, Welles, Cooper
No: None
Absent: None

Legend

\\ Borough_Parcel

Cook Inlet

SEASHORE AVE

Cul-de-Sac

Lot 1

Borough Land
to be conveyed
(1.47 Acres)

Lot 2

Lot 3

Lot 4

Roukema-Ehmama
to be conveyed
(1.95 Acres)

20' x 50'
Common
Dwy Esmt

KALIFORNISKY BEACH RD

SUSIE CIR

LOTTIE DR

MP
8

NORTH

0 100 200 400 Feet

Exhibit A - Plan of Survey

EXCHANGE AGREEMENT

This Agreement is made on this _____ of _____, 2017, by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB") and James Roukema and Elizabeth Ehama, husband and wife, whose address is 4715 Desert Candle Drive, Pueblo, CO 81001 (hereinafter referred to as "ROUKEMA-EHAMA").

1. KPB PARCEL

Subject to other applicable provisions of this Agreement and KPB Ordinance 2017-_____ enacted _____ the KPB will convey to ROUKEMA-EHAMA, the following described parcel of land ("KPB Property"). The KPB makes no warranties, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the KPB Property, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability or fitness of the KPB Property for any particular purpose. ROUKEMA-EHAMA represents that he accepts title to KPB Property after having had a full opportunity to inspect the KPB Property and associated title records, and has determined them suitable for the purposes addressed by this Agreement.

Property Description

The north 132ft. of Government Lot 6, T4N, R12W, Section 24, Seward Meridian, Alaska, containing 1.47 acres more or less, subject to subdivision by plat, substantially as shown on Exhibit A - Plan of Survey attached hereto and incorporated by reference.

2. ROUKEMA-EHAMA PARCEL

Subject to other applicable provisions of this Agreement, ROUKEMA-EHAMA will convey to KPB, the following described parcel of land ("ROUKEMA-EHAMA Property").

Property Description

The South 528ft. of Tract B-2, Shadura Creek Subdivision Number Two, Plat No. 94-14, Kenai Recording District, Third Judicial District, State of Alaska, containing 1.95 acres more or less, subject to subdivision by plat, substantially as shown on Exhibit A - Plan of Survey attached hereto and incorporated by reference.

3. CONSIDERATION

KPB and ROUKEMA-EHAMA agree that the property exchange serves to reconfigure each party's land holdings and thereby alters the value of the property owned by each party. Presently, KPB lacks good access to its bluff property and ROUKEMA-EHAMA's property is relatively narrow and lacks bluff frontage but has substantial road frontage. This exchange will provide each party with bluff property with road access. Each party agrees this exchange has been negotiated fairly with each party's interest in mind. Each party agrees that the land exchanged represents the entire compensation due each party for the respective land being conveyed, subject to the distribution of closing and surveying costs incurred under this exchange as provided in this agreement. The parties agree that a replat is necessary to effectuate this agreement and will cooperate to accomplish this replat.

4. TITLE

A. KPB Property

Title shall be delivered at time of closing by **quitclaim deed**. KPB conveys only its interest in the property, if any, without warranty of any kind or nature whatsoever. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record. KPB warrants and covenants that at the time of closing there shall be no liens or judgments recorded against KPB in the same recording district in which the property subject to this purchase agreement is situated. Such quitclaim deed will convey, as provided above.

B. ROUKEMA-EHAMA Property

Title shall be delivered at time of closing by **quitclaim deed**. Title shall also be subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record. ROUKEMA-EHAMA warrants and covenants that at the time of closing there shall be no liens or judgments recorded against ROUKEMA-EHAMA in the same recording district in which the property

subject to this purchase agreement is situated. Such quitclaim deed will convey, as provided above.

5. ESCROW AND CLOSING COSTS

Unless agreed otherwise, KPB and ROUKEMA-EHAMA will be responsible for their respective costs under this Agreement. Survey and platting costs incurred to facilitate this agreement will be shared 50/50 by KPB and ROUKEMA-EHAMA, settlement for which shall occur no later than the date of closing.

6. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days of recordation of the plat required by section 3 of this Agreement. KPB and ROUKEMA-EHAMA will execute all documents required to complete the Agreement and, if applicable, establish an escrow account.

7. POSSESSION

Possession shall be delivered at time of recording.

8. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or ROUKEMA-EHAMA fails to make any payment required, or fails to submit or execute any and all documents and papers necessary for closing and transfer of title within time period specified in this agreement, then the other party may terminate this agreement.

9. DEFENSE AND INDEMNIFICATION

ROUKEMA-EHAMA shall indemnify, defend, save and hold the KPB, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from ROUKEMA-EHAMA's performance or failure to perform in accord with the terms of this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the KPB or its agents which are said to have contributed to the losses, failure, violations, or damage. However, ROUKEMA-EHAMA shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the KPB, its agents, or employees.

10. HAZARDOUS MATERIAL

- A. ROUKEMA-EHAMA covenants and agrees that no hazardous substances or wastes shall be located on or stored on the ROUKEMA-EHAMA or KPB property, or any adjacent property owned by ROUKEMA-EHAMA or KPB; nor shall any hazardous substance be owned, stored, used, or disposed of on the KPB property or any adjacent property by ROUKEMA-EHAMA, his agents, employees, contractors, or invitee's, prior to ROUKEMA-EHAMA's ownership, possession, or control of the property.

11. ASSIGNMENTS

This agreement may not be assigned without prior written approval by the KPB.

12. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes additions or deletions hereto must be made in writing and signed by both KPB and ROUKEMA-EHAMA or their respective successors in interest. Provisions of this agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the exchange, and shall continue in full force and effect and will survive closing.

13. MISCELLANEOUS

- A. Covenants. KPB and ROUKEMA-EHAMA agree to comply with any Declaration of Covenants, Conditions, and Restrictions of record, affecting the respective Property.
- B. Residential Real Property Transfers Act. The parties mutually agree that this transfer will not be covered by the Residential Real Property Transfers Act, AS 34.70.010 et. seq.
- C. Development. KPB and ROUKEMA-EHAMA agree to comply with all federal, state, and borough regulations regarding use and development of the property, which includes but is not limited to State of Alaska, Department of Environmental Conservation regulations regarding water and sewer installation; and if applicable, regulations of the U.S. Army Corps of Engineers regarding filling or draining any area within the property designated as wetlands by the appropriate authority.
- D. Time. Time is of the essence in performance of this Agreement.

- E. Cancellation. This agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement. This exchange agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- F. Entry or Re-entry. In the event that this agreement is terminated, canceled or forfeited, KPB or its agents, servants or representatives, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor.
- G. Fire Protection. ROUKEMA-EHAMA shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
- H. Notice. Any notice or demand, which under the terms of this agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.
- I. Responsibility of Location. It shall be the responsibility of the KPB and ROUKEMA-EHAMA to properly locate improvements on the subject parcels.
- J. Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture of a sale agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument
- K. Rights-of-way. All trails or roads in existence at the time the land is conveyed may be considered to be an easement for public use. Nothing herein contained shall prevent the mayor or planning director when applicable from specifically reserving such additional easements and rights-of-way across KPB lands as deemed reasonable and necessary prior to the sale thereof.

L. Sanitation. ROUKEMA-EHAMA agrees to comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for promotion of sanitation. Premises under purchase agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of waters and lands.

M. Construction. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be constructed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.

This Agreement has been executed by the parties on the day and year first above written.

KENAI PENINSULA BOROUGH:

ROUKEMA-EHAMA:

Mike Navarre, Mayor

James Roukema

Dated: _____

Dated: _____

Elizabeth Ehama

Dated: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Holly B. Montague,
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by James Roukema.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of
_____ 2017, by Elizabeth Ehama.

Notary Public in and for Alaska
My commission expires: _____