

MEMORANDUM

TO: Pete Sprague, Assembly President

Kenai Peninsula Borough Assembly Members

THRU: Dale L. Bagley, Mayor

THRU: Max Best, Planning Director

FROM: Paul Ostrander, Land Management Officer

DATE: May 22, 2003

SUBJECT: Ordinance 2003-23, amending KPB 17.10 regarding mandatory deed restrictions

Currently the borough code requires all borough lands be sold subject to a restriction limiting the allowed use of the land to the applicable borough classification, and prohibiting other uses. This restriction causes parcels to be subject to restrictions that may become incompatible with neighboring uses over time. There is no enforcement mechanism in place for these restrictions, and there are legal concerns with the enforceability of some of these restrictions.

The current deed restriction language in the code is narrowly drafted to prohibit all uses other than the one contained in the deed restriction. However, land is frequently subject to more than one use simultaneously. Therefore, the deed restrictions may encourage disputes over allowed uses and may have a negative impact on the future marketability of the restricted parcels.

Much of the land the borough conveys are stand-alone parcels, rather than subdivision sales. Deed restrictions on these parcels create an isolated land use prohibition while all surrounding parcels may be developed in a manner inconsistent with the restricted parcel. Where the borough is marketing a subdivision consistent with a local land use plan, KPB 21.44 Local Option Zoning, which was adopted in 2000, provides a more appropriate method than deed restrictions to regulate land use. A local option zone specifies permitted uses and provides a method for variances. KPB 21.44.150 provides a mechanism to address violations. Local option zones specify the minimum numbers of parcels for a zoning district to be created, thereby creating a zone of compatible uses instead of regulating isolated parcels.

Under the proposed amendment, the assembly may still require deed restrictions by ordinance when it deems restrictions to be appropriate. For example, deed restrictions are useful in negotiated sales where the assembly wants assurances that the land conveyed will continue to be used for the purchaser's stated purposes.