

Turner, Michele

From: Wall, Bruce
Sent: Monday, January 06, 2020 8:10 AM
To: Blankenship, Johni; Turner, Michele
Subject: FW: Zoning for certain commercial activities!

From: K, E, & E Martin <keeconstructionllc@yahoo.com>
Sent: Sunday, January 5, 2020 9:14 PM
To: Wall, Bruce <bwall@kpb.us>
Subject: Zoning for certain commercial activities!

My comment :

This,

AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055 REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND PROCEDURES.

is nothing more than Zoning for certain commercial activities in this Borough and is in violation of Powers "NOT APPROVED by a Vote of the people! STOP THIS ACTION . It is in simple terms, is "an overreach of government locally & duplication of State & Federal jurisdiction! This is a jobs killer and a costly burden on consumers & will future eliminate needed basic resources in future development of lands private & public! Vote NO! Ed Martin Jr

KEE Construction, LLC

Turner, Michele

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Sunday, January 05, 2020 8:19 PM
To: Hibbert, Brent
Cc: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Tuesday Assembly meeting

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Assembly Member: Mr. Brent Hibbert

Thank you for voting NO on the gravel ordinance rewrite at the last meting. Thank you for using your voice for those who have no voice (the eagles who nest in the area, the water shed) and for those who 's voices have been **ignored** by planning and various committees.

- Please don't change your mind.
- Please don't even revisit it!
- This rewrite is worse then the first..

Sincerely

Shirley Gruber,

Anchor Pt.

Turner, Michele

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Sunday, January 05, 2020 8:21 PM
To: Cox, Tyson
Cc: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Tuesday Assembly Meeting

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Assembly Member: Mr. Tyson Cox,

Thank you for voting NO on the gravel ordinance rewrite at the last meting. Thank you for using your voice for those who have no voice (the eagles who nest in the area ,the water shed) and for those who 's voices have been ignored by planning and various committees.

- Please don't change your mind.
- Please don't even revisit it!
- This rewrite is worse then the first..

Sincerely

Shirley Gruber,

Anchor Pt.

Turner, Michele

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Sunday, January 05, 2020 8:31 PM
To: Bjorkman, Jesse
Cc: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Tuesday Assembly Meeting

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Assembly Member: Ms. Jesse Bjorkman

Thank you for voting NO on the gravel ordinance rewrite at the last meting. Thank you for using your voice for those who have no voice (the eagles who nest in the area, the water shed) and for those who 's voices have been **ignored** by planning and various committees.

- Please don't change your mind.
- Please don't even revisit it!
- This rewrite is worse then the first..

Sincerely

Shirley Gruber,

Anchor Pt.

Turner, Michele

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Sunday, January 05, 2020 8:33 PM
To: Carpenter, Kenn
Cc: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Tuesday Assembly Meeting

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Assembly Member: Mr. Kenn Carpenter

Thank you for voting NO on the gravel ordinance rewrite at the last meeting. Thank you for using your voice for those who have no voice (the eagles who nest in the area, the water shed) and for those who 's voices have been ignored by planning and various committees.

- Please don't change your mind.
- Please don't even revisit it!
- This rewrite is worse then the first..

Sincerely

Shirley Gruber,

Anchor Pt.

Turner, Michele

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Sunday, January 05, 2020 8:39 PM
To: Dunne, Willy
Cc: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Tuesday Assembly Meeting

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Assemble Member: Mr. Willy Dunne,

We spoke and emailed, awhile back, about the Anchor Point Beachcomber's Gravel permit, and you reassured me that you cared about us in Anchor point, but I guess you only meant one of us, since you voted in favor of the new gravel ordinance rewrite, which by the way, is worse than the original. The rewrite is not needed, except that the planning department manipulates the Planning Board into believing they have no authority and do not know how to interpret the existing code. This was vary apparent during the Beachcombers Gravel Permit request.

Won't you please vote **NO** to the rewrite and don't even revisit it! Please do this **one** thing for the Anchor Point community and prove them wrong, those who told me that you do not care about our small insignificant community, please prove them Wrong! so that my believing in you was **not** foolish. I still believe in you.

Your previous vote to approve the new gravel ordinance is extremely worrisome, please don't let me down and make your **no** vote proof to the contrary, show me you care.

Please say no....

Sincerely

Shirley Gruber

Anchor Point.

Turner, Michele

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Sunday, January 05, 2020 8:24 PM
To: Smalley, Hal
Cc: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Tuesday Assembly Meeting

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Assembly Member: Mr. Hal Smalley

Thank you for voting NO on the gravel ordinance rewrite at the last meting. Thank you for using your voice for those who have no voice (the eagles who nest in the area, the water shed) and for those who 's voices have been ignored by planning and various committees.

- Please don't change your mind.
- Please don't even revisit it!
- This rewrite is worse then the first..

Sincerely

Shirley Gruber,

Anchor Pt.

Turner, Michele

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Sunday, January 05, 2020 8:27 PM
To: Blakeley, Norm
Cc: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Tuesday Assembly Meeting

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Assembly Member: Mr. Norm Blakeley

Thank you for voting NO on the gravel ordinance rewrite at the last meeting. Thank you for using your voice for those who have no voice (the eagles who nest in the area, the water shed) and for those who 's voices have been ignored by planning and various committees.

- Please don't change your mind.
- Please don't even revisit it!
- This rewrite is worse then the first..

Sincerely

Shirley Gruber,

Anchor Pt.

Turner, Michele

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Sunday, January 05, 2020 8:51 PM
To: Johnson, Brent
Cc: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Tuesday Assembly Meeting

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Assemble Member: Brent Johnson

Sir, I realize you have a duty to represent your area of the Kasilof and there like in Anchor Point have large quantities of gravel, as we both know of course this is due to those rivers: the Kasilof and the Anchor Point. However, this rewrite is not the solution to the permitting issues that come before the planning board. The real solution is the proper interpretation, or should I say the original intent of the existing code.

It has come to the attention of many that the planning department manipulates the planning board by telling them how to interpret the code, how their authority is restricted and limited. The Beachcomber Gravel Permit request is a fine example of this issue, which seems to reinforces the need for an ordinance rewrite, But this rewrite makes the new ordinance worse than the first. It should not go forward if it does nothing to protect the community and help the person trying to remove gravel from sensitive areas. A newly written version of the ordinance will not fix the manipulating planning department nor does it live up to the needs in order to fix the real problems.

I know you voted Yes at the previous meeting, and probably would vote yes again if nothing else at the very least to revisit it. I sense with your vote you believe a new ordinance is easier to enforce, and will help the most, yet, truly in the long run for your Kasilof community, and others like them, please understand that you really are not helping them; not your community nor the development of them by doing a full rewrite, Especially when this one is worse than the original one.

Please work to make the existing ordinance enforceable and not the way planning department alone interprets it, because it is obvious the planning department's interpretations have been interchangeable based on the planning departments whims, or special treatment which is dependent upon who apply for such permits.

Sincerely

Shirley Gruber,

Anchor Point

Turner, Michele

From: Blankenship, Johni
Sent: Monday, January 06, 2020 11:52 AM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>KPB Ordinance 2019-30 / 2019-30 SUB

Public comment

From: Larry Smith [mailto:dlconst.smith@gmail.com]
Sent: Sunday, January 05, 2020 8:59 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>KPB Ordinance 2019-30 / 2019-30 SUB

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Madam Clerk,

Please forward my comments on this Ordinance to the Mayor and all Assembly members. Thank you.

My name is Larry Smith. My brother and I own a construction company and three gravel pits in the KPB. I was a contractor / gravel pit owner member of the KPB Material Site Working Group. I was the only member of that group to vote NO on the changes forwarded to the Planning Commission and the Assembly. I oppose this Ordinance and urge you to vote NO on these new and unnecessary regulations.

I oppose this Ordinance for some of the following reasons;

- 1) It attempts to regulate "viewshed" and there is no right to a viewshed. Viewshed is "feel good" language and you will not be able to enforce it;
- 2) Mining noise (equipment noise) is already regulated by the Mining Safety & Health Administration and both Federal and State OSHA. The decibel level proposed is not reasonable for heavy equipment and trucks and you will not be able to enforce it;
- 3) If you pass this ordinance how do you propose to enforce it and what will it cost KPB taxpayers? I asked this question of the Planning Director at the MSWG meeting(s) and was told it would not require any more money or staff.

There are already over 350 material sites and this just seems an unreasonable number to regulate with these new regulations and your existing staff and funding;

- 4) The State of Alaska has a number of material sites in the KPB that have no reclamation. How do you propose to enforce these new regulations with regards to these sites? And, if you can not, how can you then enforce them against private material site owners?;
- 5) Material site owners are not the only ones who make noise and create dust. Aren't you discriminating against material site owners if you do not impose these regulations against every other entity who makes noise and dust? For example, airplanes operating off gravel runways, garbage trucks when picking up large dumpsters and when backing up, maintenance equipment under contract to the KPB Roads department when maintaining KPB roads;
- 5) During the MSWG meetings it was determined that the Planning Commission was improperly administering the buffers relative to material sites. The Planning Commission was stacking buffer zones, six foot high berms and fences when the existing and proposed Ordinance specifically says "OR" relative to these. Will the Planning Commission continue to stack?;

Please vote NO on this Ordinance.

--

Larry Smith

President

D & L Construction Co., Inc.

(907) 262-6160

(907) 262-6163 Fax

(907) 398-4284 Cell

Turner, Michele

From: Blankenship, Johni
Sent: Monday, January 06, 2020 11:53 AM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>Email Related to KPB Assembly Meeting January 7, 2020

Public comment

-----Original Message-----

From: Gary and Eileen Sheridan [mailto:twoshar@acsalaska.net]
Sent: Sunday, January 05, 2020 2:22 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Email Related to KPB Assembly Meeting January 7, 2020

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Dear Ms Blankenship:

Please forward this email to KPB Assembly members: Brent Hibbert, Tyson Cox, Hal Smalley, Norm Blakeley, Jesse Bjorkman, and Kenn Carpenter before the January 7, 2020 KPB Assembly Meeting. Thank you.

Dear KPB Assembly Members:

My wife and I spent a great deal of time last year trying to add what we felt were significant changes and additions related safety to the draft Material Site Work Group's proposed gravel pit regulations. We were met with distane and indifference. There are no changes in the proposed code related to public safety in movement of gravel and related materials by huge gravel trucks. Only one committee member who represented the public interest tried to get these important changes adopted.

We wish to praise you for voting no in the last vote on the proposed gravel pit regulations. These proposed regulations need to be sent back to a new committee that is more balanced between gavel operators and the public.

Please vote no again. Thank you

Gary and Eileen Sheridan

PO Box 661
Anchor Point, Alaska 99556

907-235-5542

Turner, Michele

From: Blankenship, Johni
Sent: Monday, January 06, 2020 11:53 AM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>Kenai Peninsula Aggregate and Contractors Association 2019-30

Public comment

From: Kpac Association [mailto:kpacassociation@yahoo.com]
Sent: Sunday, January 05, 2020 8:14 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Kenai Peninsula Aggregate and Contractors Association 2019-30

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Please put this letter in record and distribute to the assembly. Thank you!

To whom it may concern:

The Kenai Peninsula Aggregate and Contractors Association does not support ordinance 2019-30 (Mayor) substitute. We feel that it is flawed in many ways, and in some respects, impossible to follow.

First and foremost, the use of aesthetics, view, unsightliness, or any term that insinuates regulating view shed rights is not a power afforded to the KPB. After many hours of research, we have found that there are only 3 ways view shed rights have been regulated or transferred in the USA. The federal government regulates view shed on federal land containing historical sites and parks. Local first class governments have zoning power. Some local governments have regulated through zoning, view shed rights over large zones containing all parcels of land within. There is no precedent of any government regulating view shed on singular parcels of land pertaining to one industry. The KPB is a second class government with no zoning power. Last, we have found some instances where view shed rights have been transferred in the private sector through purchase.

This ordinance was founded by its initial goals. Those goals contained view shed language and concerns. Therefore, the ordinance was given wrong direction from its inception. All language concerning view must be stricken from its contents.

The definition of "disturbed" should not include "stockpiles" as it is used in 21.29.060 (b). The intent of reclamation is to put the land back to a suitable condition after operations have ceased. If operations have truly ceased, and the land has been put back to a suitable condition, there will be no stockpiles.

Eliminating the term "exhausted" was counter productive in the intent of the original use of the land.

The definition of "haul route" and its use in the ordinance is unfairly singling out one industry as many other haul commercially in the KPB. Also, we are already regulated by KPB 21.29.050 (8), KPB 14.40.175, and subject to KPB 14.40.

The definition of “vicinity” is too broad and can give other residents not effected by operations by geographic and topographic locations the ability to diminish operations such as processing. Adjacent was a better term used.

21.29.030 (8) is already regulated by the federal government through SWPPP plans. This is unneeded, and a further burden to the KPB and the operator.

21.29.030 (9) (f) the timeframe from May to December does not coincide with construction season. Many bids come out before May for the upcoming season and a contractor will have to speculate and possibly apply for a permit before bidding a project. This will only burden the public to unnecessary costs and safety by denying the opportunity to obtain a close source of material.

21.29.040 (a) (3,4,5) the definition of “minimizes” and the inclusion of “protects against” is an unobtainable condition. “Minimizes” allowed the operator the ability to mitigate the situation. “Protects against” insinuates the absolute disbursements of, and is an impossible and unfair condition. It also contradicts other conditions levied in this ordinance. (3) is impossible as written, as dust moves naturally. It is not only unfair, because everyone creates dust, such as a parking lot on a windy day, or a homeowner mowing their lawn, but impossible to comply to because one particle across the property line defies the law. (4) is already regulated by the federal government agency MSHA. This is a further burden on the KPB and the operator. (5) is unlawful for the KPB to regulate as it insinuates the taking of view shed rights and the KPB is a second class government with no zoning power.

(8) also includes the term “protects against” and is an impossible condition. As soon as an operator uses a public road to travel, they will impact traffic just by their presence. We have the right to travel by federal law, 5th amendment to the U.S. constitution.

21.29.050 (2) we feel the changes in the buffer zones were negotiated on incorrect information by KPB staff. Our representatives were misinformed as well as the rest of the MSWG and public as to the current distance and application of buffers conditioned to the applicant. As we read the current law, you may impose a combination of buffer requirements on an application, but only one in any geographical location. “Stacking” is prohibited. For instance, you may have a 50ft natural vegetative buffer on the north border and a minimum 6ft fence on the west, and a minimum 6ft berm on the east, but not all on one border. The word “or” in (2) (a) supports that. The KPB has already misused this law by asking for or requiring operators to comply with “stacking”. We feel the MSWG and the public did not receive the correct data to make an informed decision or to give public comment. A 100ft maximum buffer is an unnecessary burden to the applicant as it locks up a rare and high demanded commodity.

(2) (b) is in conflict with other conditions such as noise and undisturbed natural vegetation. How can we remove and replace material near or on the border of our site with heavy machinery if we cannot make noise, dust, or disturb vegetation?

(3) the use of “vicinity” is too broad. A property over a large hill, across a forest, on another road, may effect the use of processing even though they cannot see, hear, or be troubled in any way.

(4) we feel that the changes from 2 vertical ft. to 4ft is unnecessary. We don’t feel the MSWG was really given the option to go the other way and scientific data to make an informed decision. To our knowledge, there has been no conflict proven in the KPB with a 2ft separation. Many sites in Alaska mine in the water table. Some right here in the KPB. There is no precedent to support the taking of 2ft of resources away from an operator. We feel this section could have been abolished in its entirety and section (5) is sufficient.

(6) Again, we feel this is a product of lack of scientific data and there is no precedence to support the taking of 100ft of horizontal distance. State mining law is very different and allows for a much closer distance.

(17) this is also conceived by lack of scientific knowledge. Also, we are already regulated by the federal agency MSHA. This should be abolished in its entirety.

(18) this is unfairly enforcing a regulation on one industry. The KPB doesn't want to get involved in the type of safety equipment used. If an accident occurred, the KPB could be held liable. Also, we cannot control other possible members of the industry from outside the KPB who may not have these devices and come here to work for the season.

(19) this is unfair to the operator as we have the right to travel on any road. The possible burden to an operator could be massive because of topography and diminish the opportunity to access resources.

(20) this is unfair to the industry. We already supply dust suppression as good neighbors and stewards of the land. This is singling out one industry as almost all industries on the KPB are involved with a heavy truck creating dust on a road at some point. School busses create the same dust.

(21) Again, already regulated by federal SWPPP plans.

(22) unnecessary. Mining in the water table is common throughout Alaska.

21.29.060 (b) the use of "disturbed" includes basically, the whole site, including stockpiles. This is unrealistic. If there was more industry input, the MSWG would know that in general, the geology on the KPB is quite scarce of suitable topsoil. Every time you move it, you lose some. If we constantly reclamated our sites, we won't have the material to finish the job. Also, this doesn't have the provisions for other uses of the site such as a commercial property or parking lot needing no reclamation. The bonding requirement is also an undue burden as the State requires only \$750.

21.29.120 (c) we feel this is unjust to current operators. While to all it is reneging on the deal they agreed to at time of origin, some PEU's aren't required to submit a reclamation plan with the state and have no way of complying. This is just a way for government to not hold up their end of a deal struck with a citizen and harass them. It is not very becoming of the KPB to do so.

So as you can see, the Kenai Peninsula Aggregate and Contractors Association and its members, families, and dependents, can find inconsistencies and faults in almost every aspect of this ordinance. We urge you to vote no on 2019-30 substitute to save us all the conflict and burden it will surely cause.

Thank you for your consideration, Ed Martin III, President, KPACA.

Sent from my iPad

Turner, Michele

From: Blankenship, Johni
Sent: Monday, January 06, 2020 3:32 PM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>Thank you for gravel vote

-----Original Message-----

From: Pete Kinneen [mailto:biocharalaska@gmail.com]
Sent: Monday, January 06, 2020 3:30 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Thank you for gravel vote

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Brent Hibbert, Hal Smalley, Jesse Bjorkman, Tyson Cox, Norm Blakeley, and Kenn Carpenter

Gentlemen:

An appreciation here for your NO vote on the proposed gravel ordinance rewrite. It was the right choice.

If it is reconsidered I ask you to then postpone any final vote, allowing public input to proposed changes. That is only fair.

I am one of several who individually spent HUNDREDS of HOURS following and testifying this matter.

There is reason EVERYONE testified against it. Glad you listened, sorry your fellow Assembly members did not.

Again, thank you. This is a serious matter affecting literally thousands of your constituents.

Pete Kinneen 435-7183
Biocharalaska@gmail.com

Sent from my iPhone

Turner, Michele

From: Blankenship, Johni
Sent: Tuesday, January 07, 2020 9:08 AM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>FW: Substitute Gravel ordinance
Attachments: Substitute Gravel Ordinance response.docx

Public comment

From: Emmitt Trimble [mailto:emmitttrimble@gmail.com]
Sent: Tuesday, January 07, 2020 8:39 AM
To: Blankenship, Johni <JBlankenship@kpb.us>
Cc: emmitttrimble@gmail.com
Subject: <EXTERNAL-SENDER>FW: Substitute Gravel ordinance

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Oops here is attachment

Hi Johni,
Please delete the first email I sent you in the middle of the night. I made an error in calculation that I have corrected here. Please forward to all Assembly Members if possible.
Emmitt

Turner, Michele

From: Blankenship, Johni
Sent: Tuesday, January 07, 2020 9:24 AM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>Gravel Rewrite proposal

Public comment

-----Original Message-----

From: Pete Kinneen [mailto:biocharalaska@gmail.com]
Sent: Monday, January 06, 2020 4:11 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Gravel Rewrite proposal

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Kelly Cooper, Willy Dunne, Brent Johnson:

A brief request that if gravel ordinance is reconsidered and amendments added, you postpone vote to allow public comments.

There is reason EVERYONE testified against the proposal. It does exactly the opposite of what you think and say it does.

It effectively would put into code several poison pills that would Prevent any denial!

The Planning Commission fought hard for the clarification to allow them to deny, arguing that otherwise they were a mere rubber stamp for the administration.

They voted for clarification of their authority to deny. The proposal tosses in a few words saying "deny" is a legal possibility. But only after it completely neuters that very ability.

I bet that the language was changed after the Planning Commission approved what they thought they were voting on.

May I cite a mere example of the trickery involved here?

Existing code calls for a MINIMUM of 50' of buffer for protection of existing neighbors. Proposed change calls for a maximum of 100' of buffer to protect neighbors. That is the alleged 'compromise' but it is a trick.

The Planning Department is fond of saying that a single blade of grass provides visual buffer. In their hands the existing buffer goes from "at least 50 feet" to never anymore than 100 feet. No minimum!!!

A blade of grass is well within the 100' maximum. As is 1 foot. If you think staff would never be so devious, ask yourself why the official record is 97-0.

The proposed rewrite is horrendous. It kills any sense of fair play. Gravel people and neighbors all hate it. Please open your ears to what those of us in the public bring to the party.

There is a very easy five minute fix that would pass legal muster and satisfy the sense of fairness for both neighbors and pit owners. What you three are holding is not it!

Pete Kinneen 435-7183
Biocharalaska@gmail.com
Sent from my iPhone

MERKES BUILDERS, LLC

PO BOX 404, SOLDOTNA, ALASKA 99669

DENNIS MERKES (Registered Agent) 907-398-3369

d.merkes@alaska.net General Contractor #38473 Ak. Bus Lic#983764

To KPB Assembly;

I own a gravel pit in the Sterling area. My family has operated this pit for about 50 years. I also own and operate numerous other businesses in the Kenai Peninsula Borough. My family considers ourselves “locals” and are very community minded. I appreciate all the time and effort that has been spent on this issue.

I operate my gravel pit, trying to be a “good neighbor”. I am careful of the environment, respectful of the noise levels emitted, considerate about the time of day we work and try to take care of the dust we create. To set the record straight; if this ordinance was passed, because of PEU, and the size of my pit, I think I would actually benefit financially from it... However, this ordinance is not good for the future of our Borough. It is bad for business and it is bad for the people. We need to look ahead and be responsible for the future generations. There are very few large tracts of land available to develop into new pits and the existing pits are being mined out. This ordinance would make it very difficult to establish a new smaller pit.

I am a member of the Kenai Peninsula Aggregate and Contractors Association. I believe in responsible development. I am NOT against fair, equitable, well-balanced ordinances and laws that help better the lives of people in our borough and that helps the borough as a whole. This ordinance will do neither. It is much too biased against one industry and very short sighted.

Ordinance 2019-30 is over reaching and will put the Borough in overlapping authority in numerous areas where other state and Federal agencies already have authority. I have concerns about my tax money being spent to try to control, regulate and enforce items that are already being done by other government agencies. Because it is so flawed it should be scrapped in its entirety.

There are too many issues with this ordinance to list here. Following are a few of the many issues (this list is by no means exhaustive);

- (1) In my opinion, the Material Site Working Group was biased and stacked from the beginning. If the borough wants to find fair, well-balanced, equitable solutions to a borough-wide problem, then it is imperative to bring all sides to the table in a balanced way. Have open discussions and let science, reason and facts prevail. This did not happen. Most of the public testimony was based on a few “site specific” problem cases. We should NOT be making borough wide changes to ordinances based on opinions and emotions stemming from site specific cases. Very little dialog with professional industry operators was solicited during these meetings. I have yet to find one of my fellow pit operators that was invited to these meetings or workshops. I found out about them “thru the grapevine”, after many meetings had already taken place! For comparison; when the DEC proposes a change or new regulation, I receive notifications and information inviting me “to the table” to be involved with the proposed changes. This invite never happened from the borough during this process, so important professional dialog and input has been missed completely, so the result is a very biased end product.
- (2) I went back over the minutes of your meetings and workshops, and I noticed lots of discussions and energy has been spent on trying to regulate items like; “view shed”, “aesthetics”, “unsightliness” and the such. I’m quite sure our 2nd class Borough doesn’t have the authority to regulate or spot zone

“view shed” or any of these other items specifically for gravel pits. If the borough decides to take on zoning, then they need to be looking at zoning in a borough wide lens, not discriminating against one industry. What about the ugly fish sites, ugly junk yards, ugly homesteads, the list could go on and on. Why are you just looking at zoning gravel pits? This is discriminating against the gravel pit owners and is “spot zoning” and is not legal. This could lead to litigation?

- (3) (21.29.030 A,8) Surface water protection measures; as a contractor we continually deal with storm water prevention plans or SWPP’s and are already highly regulated. ADEC has oversight on our storm water discharges and is active in handing out fines. Complying with Storm Water Prevention Plans already cost us tens of thousands of dollars and are a huge burden to contractors. Why would the borough try to take on this additional duplicate requirement? What borough engineer would enforce it? Where would the money come from to administer this? I sure don’t want my borough taxes being spent on duplicating something the State of Alaska is already doing.
- (4) (21.29.040 A,3,4,5) Changing the wording from “minimizes” to “protects against” makes it nearly impossible for the pit owner to comply. How am I going to protect against the neighbor seeing my pit when they drive by? Once again, the borough is “spot zoning” when they tell me I have to protect against visual impacts, yet it is allowed for other “ugly sites” to be left alone.
- (5) (21.29.040A8) Protects against traffic impact; once again this is discriminating and singling out one industry. What about the traffic impacts from the fuel truck, the septic pump truck, the delivery truck or any other truck? Why does it only pertain to the gravel truck?
- (6) (21.29.050.A17a) Sound from pit. A vacuum or dishwasher can emit sound levels at 75 db. A washing machine can emit sound level at 78 db. Once again, if we are going to put in a sound ordinance it must be borough wide and not discriminating only one industry. What about the airplanes taking off from Longmere and Mackey Lakes, they emit sound levels well over these db limits.
- (7) (21.29.050.A18) Reverse signal alarms. OSHA issued an interpretation letter for “white noise” back up alarms, dated May 27, 2004. They stated, (and I am quoting) “a white noise type alarm, may be allowed if it meets their criteria, however they don’t have the data or the resources to evaluate if it would meet the standard.” So, basically, OSHA sidestepped this issue. They absolutely DID NOT say they meet the standard! If the borough requires us to use these and an employee gets run over and killed, is the borough going to support us in the ensuing court battle from the deceased family?
- (8) (21.29.120.C) &1 &2) Prior Existing Uses. Numerous PEU pits meet the requirements under AS 27.19.010f and are exempt from an approved reclamation plan, so the borough requiring proof of compliance is null and void. Annual proof of compliance would also be null and void.

The above list is just a fraction of the flaws, problems, discriminations and discrepancies with this ordinance. Please vote NO on passing it.

Thank you for your service to our communities and for taking the time to listen to my comments, please feel free to contact me with questions or comments at 398-3369.

Respectfully submitted

Dennis Merkes

President

Merkes Builders LLC and Merkes Enterprises LLC

This is how it started:

MSWG 2nd meeting February 14 2018 Excerpts from minutes:

Discussion on proposed mission statement

"To **evaluate our existing KPB codes** with respect to material sites (gravel extraction) to ensure that we collectively believe the **appropriate balance** exists to meet the need for **affordable development** while also **protecting quality of life** for our residents."

Vice Chair Ogle asked how this process got started. Best stated the Planning Commission requested more tools to help mitigate impacts on surrounding property owners. Ogle appreciated the words "**appropriate balance**" in the mission statement as it was his hope to find balance for both home and business owners.

This is what the KPB Legal and Planning Departments thought about application of the existing code to Beachcomber LLC's appeal of a permit denial.

Excerpt from KPB legal opening statement in Beachcomber LLC appeal of Planning Commission denial of permit application:

DISCUSSION

1. WHAT IS SUFFICIENT?

This material site is located in the rural district of the borough. The rural district is unzoned. KPB 21.04.01 0. As such this is not a case where a conditional use is being allowed in a residential zone where it would normally be prohibited. Subject to some protections afforded surrounding property owners as set forth in the code, a material site can be placed almost anywhere in the rural district of the borough. Given the wealth of gravel deposits in the Anchor Point area it should not be surprising that this parcel would be utilized for a material site.³ Further, prior to Beachcomber's application for a conditional use permit it had operated a material site on the parcel under the one-acre exemption. [T.23, pp.86-87] The material had actually been used on surrounding properties for local projects. [T.23, p.86] The planning commission made two findings to support the denial as follows:

1. The noise will not be sufficiently reduced with any buffer or berm that could be added.
2. The visual impact to the neighboring properties will not be reduced sufficiently.

The findings turn on the noise and visual impacts not being "sufficiently" reduced. The findings beg the question: what is sufficient? If one adjacent property owner can view the material site but other properties

have some visual screening provided is a denial of the material site justified? Likewise, if some properties are more exposed to the noise generated by the material site than other more protected properties is that sufficient to deny the material site? Does seeing the material site from a second floor justify denial of a material site if the view is buffered from the first floor? [T.3,p.9] Given the one-half mile radius for notice to surrounding property owners,⁴ some of those property owners will be more protected by their distance from the material site and the proposed buffers. **However, there will always be at least some noise and visual impacts to adjacent properties from a material site operation.** Many material sites could be denied based on "insufficient" screening. In the history of the material site ordinance there has not been an interpretation that all surrounding properties must not be able to see or hear the material site at all. Rather, the interpretation over the course of the 96 material site permits that have been issued since 1996 is a reduction in certain negative impacts is the goal of the material site regulations. Full elimination of negative secondary impacts has never been discussed or required, nor is it feasible. Attempting to judge whether a permit should be denied based on how many people claim they are not sufficiently protected ultimately will lead to arbitrary decision making. Rather than relying on evidence this approach relies on surrounding property owners stacking the hall-whether a permit is approved or denied becomes a numbers game. If a large number of people oppose the material site it will be denied, regardless of whether other material sites that may have similar attributes have been approved. Such "negative community sentiment" is not a valid reason to deny a permits

KPB 21 .25 houses the general notice and hearing requirements for conditional uses. KPB 21 .25.080 provides that the planning commission shall approve, modify, or deny an application. However, the more specific language regulating material sites (KPB 21.20) governs interpretation issues.⁶ In the case of the material site code a list of standards is provided and a set of mandatory conditions associated with those standards are imposed along with a sentence that specifically states only the mandatory conditions may be imposed to meet the standards. Little flexibility is given to the planning commission. Denials are possible. However, generally denials are not probable given the language of the code. For example, if a material site were not able to locate outside 100 feet from a riparian wetland it would be the basis for a denial because it clearly violates a mandatory condition . KPB 21.29.050(A). The planning commission also has some discretion in denying various components of a material site permit even when denial of the permit itself is not possible. One area of flexibility involves requests for variances to the material site regulations which have an additional set of standards authorized by AS 29.40 and KPB 21.05. Another area of flexibility is waiving or reducing the setback for processing. Staff recommended that the Beachcomber processing waiver be denied .⁷ [R .19] The planning commission also has the flexibility to fashion buffers to

protect surrounding areas within parameters set forth in KPB 21.29 .050. The planning commission may also waive buffers. Under KPB 21.29.050(E) buffers around the material site may be waived based on the topography making the buffers either not feasible or not necessary. It would have been consistent with the code for the commission to waive the buffers if they believed staff's proposal of additional buffers to protect adjacent properties was useless, rather than denying the permit. **Given the mandate from the assembly that material sites be subject only to certain mandatory conditions a denial based on a conclusory statement that the buffers are insufficient to protect against noise and visual impacts cuts against the grain of the code. Rather, if the buffers that can be fashioned are entirely useless to protect surrounding uses the answer is a waiver of the buffer requirements under KPB 21.29.050(E), not an unauthorized denial of the permit.**

The planning commission's findings are required to be supported by the substantial evidence in the record. The "substantial evidence" in the record required to support the planning commission's findings is not the same as a substantial number of people opposing the material site. Substantial evidence is defined as relevant evidence that a reasonable mind might accept to support a conclusion. KPB 21.20.210(A)(7). In its discussion the planning commission made a reference to "topography" and a reference to the planning commission being given pictures and maps. This sort of evidence just as readily supports the enhanced buffers proposed by staff, as opposed to a denial. For example, there is evidence that supports increasing the six-foot berm to a 12-foot berm as recommended by staff. Staff did not believe buffering would be useless and recommended enhanced buffers to afford increased protection over and above what the minimum buffers set forth in the code would require.

Given the four to eight-foot higher elevation of one of the adjacent properties (KPB parcel# 169-230-19) the increase to a 12-foot berm along the southern boundary of the material site results in the six-foot of berm protection required by the code.⁹

In addition to the aforementioned lack of findings the planning commission's rush to judgment has at least two negative impacts on the formation of a well-reasoned decision. First, it is unknown whether all the evidence submitted was considered by the planning commission. A significant amount of information was submitted to the planning department after the planning commission's meeting packet was posted to them.¹⁰ Additional evidence from both the applicant and opponents of the permit had been submitted. This late-filed testimony and evidence could not become available until given to the commission at the meeting or at best was not available to the commission until the afternoon of the meeting;¹¹ therefore, staff requested a continuance to allow the commission to consider this new evidence¹².

¹⁰ One of nine commissioners indicated they read the information. One other commissioner indicated she had read "a bit" of the information and assumed it would be verified by what she heard in the testimony.

Second, the rules were suspended in order to extend the meeting past the 11 :00 pm deadline. This made sense in order for people who had traveled to testify. However, it was unnecessary and ill-advised to make the decision that night, that late. There is a reason for mandatory adjournments -- they prevent hasty ill-reasoned decisions. Two issues that were raised as potential findings - an unclear well location and a lack of seasonal high water determination - would have justified postponement for clarification rather than a denial. [T.27, p.1 02] In this case the commission did not take the usual time it does to consult with the applicant about volunteered conditions. Volunteered conditions in various forms regarding buffers, back up beepers and hours of operation are often offered by an operator in response to commission's request.¹³ This opportunity to gain more accommodations whether it be in the form of buffers, hours of operation, or noise softening equipment was a missed opportunity for the commission, the operator, and the surrounding property owners. **Yet another concern with the planning commission's denial based on the "insufficiency" of the buffers is that it doesn't allow for 14 other conditions, including possible volunteered conditions, to be considered as reducing the negative impacts of the material site. KPB 21.29.050.**

MANDATORY CONDITIONS.

KPB 21.25 .020 provides:

It is the purpose of this chapter to require advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.

Essentially opponents proposed that this material site permit should be denied based on the general public's health, safety, and welfare. What is in the best interest of public health, safety and welfare is subject to debate. The assembly has attempted to balance the health, safety, and welfare of the property owners adjacent to material sites by providing a list of mandatory conditions in KPB 21.29.050 that must be applied to each material site permit. It is through these conditions that the assembly has determined the extent to which the health, safety, and welfare will be protected in the material site permitting process. KPB 21 .50.040 is clear that the only conditions that may be placed on a material site permit are those set forth in KPB 21.50.050. The standards applicable to material site permits are as follows:

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may

be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to other properties;
3. **Minimizes** off-site movement of dust;
4. **Minimizes** noise disturbance to other properties;
5. **Minimizes** visual impacts; and
6. Provides for alternate post-mining land uses.

Several of the concerns raised are not issues addressed by the standards for material sites set forth at KPB 21.29.040. For example, potential lowering of property values, water quality, wildlife preservation, a material site quota, and traffic safety are not subject to material site standards. Other issues such as dust, noise, and water quantity are addressed by the standards. However, those standards can only be met through the KPB 21.50.050 conditions such as the requirement that the operator stay two feet above groundwater and not dewater to protect lowering water sources, limiting hours on rock crushing to decrease noise, and calcium chloride/water application within the pit to mitigate the off-site migration of dust.

The borough assembly has adopted specific standards applicable to material sites in KPB 21.29.040 which is how the assembly protects the public, health, safety and welfare in relationship to material sites. KPB 21.29.040 is clear that only the conditions in KPB 21.29.050 may be applied to permits, with the exception of conditions volunteered by the applicant, which also must meet the standards set forth in KPB 21.29.040. It is within the assembly's purview to limit the standards and conditions placed on material sites. Staff and the planning commission must follow the rules the assembly has adopted for material sites unless and until those standards and the conditions authorized by those standards are altered by the governing body.

A superior court decision has upheld the borough assembly's authority to adopt an ordinance that favors material site operations. This order further held that it is the planning commission's responsibility to abide by the legislative standards the assembly has established.¹⁴ (See, Memorandum Decision and Order, *Warrington v. KPB*, Case No. 3KN-05-206 Cl , pgs. 8 -1 0.)

Planning authorities are 'bound by the terms and standards of the applicable zoning ordinance, and are not at liberty to either grant or deny conditional use permits in derogation of legislative standards.' ...
The assembly has specifically adopted ordinances that are protective of material site operators and rejected proposed ordinances that make it more

difficult for the same to receive project approval. In adopting the material site code language, the Borough Task Force rejected language that placed a larger burden on the permit applicant The Planning Commission would have violated the KPB Code by imposing conditions not authorized by the code.

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Since the *Warrington* decision from Judge Huguelet was entered the material site ordinance was amended to make it even clearer that only the conditions set forth in KPB 21.20.050 may be imposed on a material site. Recent administrative appeal decisions have also interpreted KPB 21.29.040 as only allowing the mandatory conditions set forth in KPB 21.29 .050(A) and any volunteered conditions to be imposed on the permit. The planning commission cannot deny a permit rather than place the mandatory conditions on the permit - especially where the basis for denial are conditions that can be enhanced by the planning commission (buffers). This is not to say a material site permit cannot be denied, but rather it cannot be denied based on inadequate buffers, when under the code either enhancing the buffers or waiving the buffers are the authorized resolution to a situation where buffers are not feasible. KPB 21.29 .050(1) (e) .

Conclusion:

After the February 14th MSWG meeting the “**Mission Statement**”:

“To evaluate our existing KPB codes with respect to material sites (gravel extraction) to ensure that we collectively believe the **appropriate balance exists** to meet the need for **affordable development** while also **protecting quality of life** for our residents.” .

was never addressed or discussed again. At the next and subsequent meetings, without the critical analysis of the existing ordinance, many additional restrictive regulatory changes were proposed and discussed. In not one instance was there a discussion of the over-reaching restrictions in the existing ordinance or consideration of modifying in any way its shortcomings.

There was never a discussion of the legality of controlling the view of an operator’s private property at the whim and discretion of other property owners or tenants. Further, is it sound or noise? Do you prefer Rap or Country music. The existing Ordinance, on just the illegal restrictions regarding sound and view TAKES hundreds of thousands of dollars in value from the operator’s private property with zero compensation from the Borough or the public in return.

Robert Ruffner, MSWG Chairman, explained that there has never been a proven instance of degradation of aquifer quality or quantity from digging in the aquifer and extracting valuable gravel, yet we have to stay 2 feet above the aquifer currently, and for no explainable reason, are proposing increasing to four feet of separation. Currently we must be 100 feet from a water body, flood plane line, or Riparian wetland. It is proposed to increase that separation to 200 feet with no stated justification. Applied to my 27 acre permitted pit, under the new proposal, I would give up to an uncompensated taking of the value, of approximately 112,846 yards of gravel based on these two relatively undiscussed changes. Sounds like the makings of a great federal civil rights violation given the wild swing toward being unwarrantedly and oppressively restricted as an industry, that has been singled out for attack by the very people we elected, in order to placate a few complainers who are unwilling to take any steps at all to minimize their exposure by measures taken on their own property, at their own cost.

A YES VOTE WILL LONG BE REMEMBERED BY THIS LARGE ASSOCIATION OF OPERATORS, CONTRACTORS, DEVELOPERS, INVESTORS, AND MUNICIPAL AND STATE PLANNERS WHO WILL ABSORB HUGE COST INCREASES FOR MATERIAL. THE EXISTING ORDINANCE SHOULD BE SCALED BACK, BUT A NO VOTE MIGHT JUST LET THE BEAR GO BACK TO SLEEP.