

Introduced by: Bagley  
Date: 12/02/97  
Hearing: 04/07/98  
Action: Defeated as Amended  
Vote: 3 Yes, 4 No, 2 Absent  
Reconsideration: Filed by Bagley  
Action: Failed to Reconsider  
Date: 04/21/98  
Vote: 2 Yes, 7 No

**KENAI PENINSULA BOROUGH  
ORDINANCE 97-75**

**AN ORDINANCE AMENDING KPB 17.10 REGARDING CLASSIFICATION OF  
BOROUGH LANDS**

**WHEREAS,** KPB 17.10 contains numerous land use classifications used as a tool for managing borough land; and

**WHEREAS,** KPB 17.10.130(D) requires all conveyances of borough lands to restrict the use of the subject land to the applicable classification; and

**WHEREAS,** the property sold with land use restrictions is often surrounded by parcels not subject to similar land use restrictions, or parcels which may have been or may be developed inconsistently with the restricted parcels; and

**WHEREAS,** the borough has no mechanism of enforcement for the land use restrictions it places on deeds; and

**WHEREAS,** the assembly finds that land use classifications provide a useful management tool for lands which are retained by the borough but that the borough's best interests are not served by continuing to require deed restrictions on borough lands to be disposed in the future;

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

**SECTION 1.** That KPB 17.10.080(K) shall be amended as follows:

- K. All borough lands shall be classified as either retention or disposal lands. Lands classified as retention may also be subject to one or more of the following classifications: [ONE OF THE FOLLOWING:]

1. Agriculture
2. Residential
3. Commercial
4. Heavy Industrial
5. Light Industrial
6. Recreation
7. Preservation
8. Government
9. Resource Development
10. Resource Management
11. Institutional
12. Utility [TRANSPORTATION]
13. Waste Handling
14. Rural

[THE CLASSIFICATIONS ARE SPECIFICALLY DEFINED IN] Definitions for classifications are codified at KPB 17.10.250.

M. Lands classified as disposal for which the borough has yet to receive patent or clear title may be leased or otherwise used by the borough in its best interest until the borough has received clear title and the land is eligible for disposal.

N. Retention lands may be reclassified as disposal lands if the assembly finds there is no government or public purpose for retention.

**SECTION 2.** That KPB 17.10.130 (D) through (F) shall be amended as follows:

D. Except as may be otherwise required by law or ordinance approving the sale, all lands or interests in lands shall be conveyed by an instrument without deed restrictions as to use of the land. [CONTAINING RESTRICTIONS THAT RESTRICT THE USE OF LAND TO THAT CLASSIFICATION AND PROHIBIT THE USE OF THE LAND FOR ANY OTHER PURPOSE]

E. [AN INSTRUMENT CONVEYING LAND OR AN INTEREST IN LAND FOR AGRICULTURAL USE SHALL PROHIBIT SUBDIVISION.]

[F] E. Any deed restrictions as to land use for lands conveyed under classifications made under prior law may be modified by:

1. Submittal of a petition and accompanied by the appropriate fee to the land management officer requesting modification and stating the justification for the request;
2. Within 60 calendar days from the date of receipt of the petition, notice of the petition shall be published two times in a newspaper of general circulation in the local area in which the property is located. In areas not served by daily newspapers, the notice shall be posted in the post office of the impacted

community and sent to the appropriate advisory planning commission. The notice shall contain the description of the property, the general location, proposed restriction modification, where written comments may be submitted, the last date for which written comments may be submitted, and the date, time and location of the planning commission meeting. At the beginning of the notice period a copy of the notice shall be sent by regular mail to all owners and/or leaseholders of record of property located within a radius of one-half mile of the lands under petition. Notice shall also be sent to applicable local, state or federal government agencies, advisory planning commission and other interested groups. The public comment period shall not be less than thirty (30) calendar days from the date of the first publication of the notice.

3. The planning commission shall consider the petition and recommend an appropriate action to the assembly.
4. The assembly may by ordinance authorize the repeal of any restriction and cause the appropriate document to be filed in the appropriate recording district based upon findings of fact which may include: the location of the lands, surrounding uses and ownership, existing and future access, property characteristics including topography, soils and availability of utilities, any known encumbrances or permits, physical examination where necessary and feasible, and comments from an appropriate advisory planning commission, and be compatible with any land use plan adopted under the borough comprehensive plan or another plan approved by the assembly.

**SECTION 3.** That a new KPB 17.10.250 (G) and (EE) shall be inserted as follows and the clerk is instructed to renumber section 17.10.250 accordingly.

G. "Disposal lands" means all borough lands not needed by the borough for a public purpose.

EE. "Retention lands" means all borough lands needed by the borough for a public purpose.

**SECTION 4.** That KPB 17.10.250 is amended by deleting capital letters identifying definitions and placing all definitions in alphabetical order.

**SECTION 5.** That the following KPB 17.10.250 Definitions shall be amended as follows:

[A.] "Agriculture" means lands with suitable climate, location, and physical features [SUITED] for raising and harvesting crops and packing, treating, and storing the produce; feeding, breeding and management of livestock; dairying; or, other farm use or any combination of these. [ LANDS SUBCLASSIFIED AS "AGRICULTURE" SHALL BE RATED BASED ON THE SAME OR SIMILAR CRITERIA AS USED FOR THE "LAND EVALUATION AND SITE ASSESSMENT" PREPARED BY THE HOMER AND KENAI-KASILOF SOIL AND WATER CONSERVATION

DISTRICTS. PARCELS OF LAND QUALIFYING FOR THIS SUBCLASSIFICATION MAY VARY IN SIZE.]

- [D.] "Commercial" means lands suitable for development or location of [SERVICE ORIENTED] facilities engaged in the rental, barter, trade or sale of goods and services such as stores, offices, medical clinics, restaurants, lodges, vehicular service stations, hotels, and camper parks. Lands must be able to support on-sight water and sewer systems or capable of receiving water and/or sewer service, near public utilities and be in proximity to residential areas.
- [O.] "Government" means lands that may be or are required [FOR USE] by a federal, state or local governmental entity for a use beneficial to the public. Such uses include but are not limited to existing and future sites for schools; [SITES; SITES FOR] fire stations; maintenance stations; community halls; transportation facilities such as ports, harbors, roads, and airports or airstrips; solid waste facilities, and service area facilities; [OR, ANY GOVERNMENTAL USE DETERMINED TO BE BENEFICIAL TO THE PUBLIC].
- [P.] "Heavy Industrial" means lands suitable for [PROCESSING CHEMICALS OR MANUFACTURING FROM OR EXTRACTION OF RAW MATERIALS, STOCKYARDS, FISH PROCESSING PLANTS, DISTILLERIES, OR USES THAT MAY DISCHARGE WATER, CREATE HYDROCARBONS, EXCESSIVE NOISE, ODORS, DANGER OF EXPLOSIONS, OR WASTE MATERIAL, MAKING THEM INCOMPATIBLE WITH MOST OTHER LAND USES.] basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials or storage or manufacturing processes that potentially involve hazardous conditions or may discharge water, emit hydrocarbons or frequent or continuous off-site noise or odors. Such uses may include processing chemicals, slaughterhouses, stockyards, fish processing plants, distilleries, oil and gas treatment and processing plants, sewage treatment. Lands should not be located in or immediately adjacent to residential development; parcels should be of sizes reasonably appropriate to accommodate the activities together with sufficient buffers zones for the activity associated with this class of use. Appropriate access shall be available or feasible without going through residential areas. The lands shall be in a location that is reasonable[y] convenient to conduct the activity.
- [Q.] "Institutional" means lands [WHICH MAY BE OF VALUE] suitable for the location of private organizations. Private organizations may include churches, private schools, clubs, associations, and nonprofit organizations. [CEMETERIES]
- [R.] "Light Industrial" means lands suitable for manufacturing, predominately prepared from previously finished materials, products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products and basic industrial processing that does not

emit frequent and continuous off-site noise or odors. [INDUSTRIAL USES THAT GENERALLY DO NOT HAVE OFFENSIVE CHARACTERISTICS AND] These uses may include industrial uses that can be conducted primarily inside closed buildings[. SUCH USES] and may include warehousing[,] and storage inside enclosed areas, and light manufacturing not inside buildings.

[V.] "Preservation" means lands because of climate, physical features, or location that is needed and suitable for stabilization or maintenance of natural features, historic value, known nesting areas of migratory birds or required to maintain the integrity of certain types of easements or as buffers, green belts, water sheds or other reservations to preserve natural resources and aesthetic qualities. Soils may be [OF SUCH A NATURE AS TO NOT BE USABLE] unsuitable for construction of buildings.

[BB.] "Recreational" means lands because of climate, physical features, or location that is [LOCATED IN AN AREA WHERE THE POTENTIAL FOR RECREATIONAL USE EXISTS] suitable for recreational activities or access to recreational activity areas. Recreational activities are those which provide amusement, relaxation, play, or sport. [THIS MAY INCLUDE BOTH INDOOR AND OUTDOOR USES SUCH AS] Such lands may [INCLUDE] be suitable for either indoor or outdoor uses such as gun ranges, archery ranges, camping, golf courses, snow machine trails, cross country trails, skiing, boating, fishing, hiking, biking, and pedestrian trails, ice skating facilities or similar activities [WHICH MAY PROVIDE ACCESS TO THOSE ACTIVITIES. RECREATIONAL DOES NOT INCLUDE USE OF LANDS FOR AMUSEMENT PARKS. SITE CONDITIONS FOR ANY AUTHORIZED USE MUST BE APPROPRIATE AND SUITED FOR SUCH USES. RECREATIONAL LANDS DISPOSED OF TO PRIVATE PARTIES MUST ALLOW PUBLIC USE UNLESS SPECIFICALLY WAIVED ORDINANCE. IF RECREATIONAL LANDS ARE FOR SALE OR LEASE THEN RESTRICTIONS MAY BE IMPOSED FOR APPROPRIATE USES GIVEN CONDITIONS AND SURROUNDING USE. NOT ALL ACTIVITIES ARE SUITABLE FOR ALL SITES.]

[CC.] "Residential" means lands suitable for development [for single family or multifamily settlement with permanent dwellings. [OF A PERMANENT NATURE. RESIDENTIAL PARCELS MAY BE LOCATED ADJACENT TO EXISTING COMMUNITIES OR ARE DETERMINED TO BE NECESSARY FOR FUTURE COMMUNITY DEVELOPMENT.] Residential parcels must be able to support on-sight water and sewer systems or capable of receiving water and/or sewer service, have legal [ACCESS] and feasible physical access and suitable terrain for development. Residential development should not conflict with prior existing. [AND APPROPRIATE WITH THE GIVEN] surrounding uses.

[DD.] "Rural" means undeveloped lands which are located [IN A REMOTE AREA. THIS CLASSIFICATION WILL HAVE NO RESTRICTIONS.] outside cities organized

under Title 29 of the Alaskan Statutes which are not suitable or required for other classifications set forth in KPB 17.10.080(K). Subdivision alone does not mean a parcel is developed.

- [JJ.] "Utility[/TRANSPORTATION" (NOT INCLUDING OIL AND GAS AND ELECTRICITY GENERATION OR PRODUCTION FACILITIES)] means lands which may be [OF VALUE] suitable for [AIRPORTS, PORT AND HARBOR FACILINES,] power lines, pipelines, utility services, [RIGHTS-OF-WAY,] easements for these uses, and related activities, but does not include general and production facilities for oil and gas and electricity.
- [MM.] "Resource Development" means land containing natural resources of sufficient volume and quality and located so that on-going development or production of those resources would yield an overall net economic return. Lands so classified may be sold, [OR] leased, or permitted subject to appropriate restrictions concerning operations or future reclamation. Lands so classified may be retained by the borough and resources on those lands may be sold or permitted for use.
- [NN.] "Resource management" means land having resources which may be extracted as an interim use in manner which will not create a negative impact on the most appropriate use of the land. [THIS CLASSIFICATION IS NOT EXCLUSIVE AND MAY OVERLAP ANY OTHER CLASSIFICATION THEREBY ALLOWING OTHER NON-CONFLICTING USES.] Resources on these lands may be sold, leased or permitted for use.

**SECTION 6.** That this ordinance shall take effect immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \*, 1998.**

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Jack Brown, Assembly President

ATTEST:

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Linda S. Murphy, Borough Clerk