



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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DAVID R. CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Gary Knopp, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: *DK* David R. Carey, Borough Mayor

FROM: *MB* Max J. Best, Planning Director

DATE: March 30, 2011

SUBJECT: Ordinance 2011-*09*; Ordinance amending KPB Chapter 21.18 regarding
Prior Existing Uses and Structures in the Anadromous Stream Habitat
Protection District

The Planning Commission reviewed the subject Ordinance during their regularly scheduled March 28, 2011 meeting. A motion passed by majority consent to recommend approval of the ordinance. (*Bryson, Yes; Carluccio, Yes; Collins, Yes; Ecklund, Absent; Foster, Yes; Gross, Yes; Holsten, Yes; Isham, Yes; Lockwood, Yes; Martin, No; Parker, Yes; Ruffner, Yes; Tauriainen, Yes*)

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

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of March 28, 2011 recommended approval.

AGENDA ITEM F. PUBLIC HEARINGS

3. Ordinance 2011-____; Ordinance amending KPB Chapter 21.18 regarding Prior Existing Uses and Structures in the Anadromous Stream Habitat Protection District

Memorandum reviewed by John Czarnezki

PC Meeting: 3/28/11

The latest revision to the Habitat Protection Ordinance 21.18 was included in the mail out packet. The effort that staff and the commission have put into this version dates back to March 22, 2010. This ordinance includes proposed changes as discussed and generally agreed upon throughout this process.

On March 10, 2011 the Kenai River Special Management Area Board supported this ordinance and requested that the term primary structures be inserted to provide greater clarification. The term principle structure has been inserted in the proposed revision as this term is currently defined in the existing code as is accessory structure. I've included those existing definitions as follows:

- W. "Accessory structure" means a use or structure that is subordinate in size or purpose to the principal structure or use of the same lot or parcel of ground and serving a purpose customarily incidental to the use of the principal structure or use of land.
- X. "Principal structure" means a structure in which is conducted the principal use of the lot on which it is located.

Staff feels that this proposed ordinance meets the purpose section of the code, and provides a reasonable approach to deal with nonconforming structures within the Habitat Protection District. We would appreciate your review and a recommendation to the borough assembly.

Some of the basic points that are reflected in this Code change are as follows:

1. Doesn't require that the landowner abandon their home or structures.
2. Doesn't create any new non-conforming structures.
3. Treats principle structures different from accessory structures.
4. Distinguishes between arson versus accidental fire.
5. Allows for an appeal process to the Planning Commission for any decision on prior existing uses.
6. Creates a standardized procedure for the rebuilding process in the event of a disaster.

END OF MEMORANDUM & STAFF REPORT

Chairman Bryson opened the meeting for public comment. Seeing and hearing no one wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

MOTION: Commissioner Parker moved, seconded by Commissioner Lockwood to recommend to the Assembly the adoption of Ordinance 2011-____; Enacting Revisions to KPB 21.18.090, Prior Existing Uses and Structures.

Commissioner Gross asked for clarification on the following sentence, "*The right to reconstruct in nonconformity with the chapter is forever lost if the application for reconstruction or repair is not made within six months of the date of damage.*" She asked if six months from the date of damage was adequate time for a landowner to rebuild a structure. Mr. Czarnezki replied that it was their assumption that in the event of some type of disaster that most people with property would be very interested in what happened to their structure and would contact their neighbors and/or River Center staff. In most cases, they felt it was a reasonable timeframe however they were open to other considerations. He stated they followed the example that is in KPB 21.44, Local Option Zoning which also calls for the same amount of time. Commissioner Gross felt that 12 months would be a more reason amount of time for reconstruction.

Commissioner Tauriainen expressed concern regarding the classification of principle structures versus accessory structures and asked what was considered an accessory structure and what was considered a principle structure if a landowner has a home and a rental cabin on the same parcel. He felt that the definitions given did not clarify this issue and felt it could be penalizing a landowner. Commissioner Tauriainen also asked if a landowner could come before the Planning Commission to ask for a variance for rebuilding purposes. Mr. Czarnetzki replied that Legal Counsel stated that all structures on a parcel were considered primary if they had a home and rental cabins on the same parcel. He stated that a landowner could appeal to the Planning Commission if someone was not happy with the decision of staff in obtaining a permit to rebuild a structure. A landowner could also apply for a variance or could apply for a conditional use permit if it fits the criteria.

Commissioner Tauriainen agreed with Commissioner Gross regarding the fact that six months seemed too short to reconstruct a structure. He felt the timeframe for the application for reconstruction should be changed from 6 months to 9-12 months.

Commissioner Isham stated he read the ordinance and liked the language so he was ready to support it and vote on it. Commissioner Holsten agreed with Commissioner Isham.

Commissioner Gross referred to Section 4c which states, *"The applicant must document the specific circumstances that would prevent the accessory structure from being located outside of the habitat protection district in order to be permitted to repair, replace, or reconstruct the accessory structure within the habitat protection district."* She asked if staff could grant an exception. Mr. Czarnetzki replied that section was setting the standards for accessory structures. He stated the landowner would submit an application to staff and staff would make a determination.

Commissioner Martin expressed concern about the unintended consequences of restricting the reconstruction based on accidental damage, acts beyond owners' control, or intentionally caused. He thought the unintended consequence might be a lowering of the standards for the stewardship of the river. Commissioner Martin felt they had to get back to the reason why this ordinance was originally passed which was to protect the watershed. He believed they would have better stewards of the property with higher end structures and affluent landowners. He did not support the ordinance as written. Mr. Czarnetzki stated that staff talked about this issue and felt it was difficult to qualify or quantify or state the type of stewards based on their income. They felt a fairest way to go would be based on a set standard.

There being no further comments or questions, Chairman Bryson called for a roll call vote.

VOTE: The motion passed by majority consent.

BRYSON YES	CARLUCCIO YES	COLLINS YES	ECKLUND ABSENT	FOSTER YES	GROSS YES	HOLSTEN YES
ISHAM YES	LOCKWOOD YES	MARTIN NO	PARKER YES	RUFFNER YES	TAURIAINEN YES	11 YES 1 NO 1 ABSENT

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

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING

1. Vacate the 20-foot utility easement centered on the line common to Lots 2 and 3 granted by Simko Subdivision (Plat KN 83-101); within Section 23, Township 5 North, Range 9 West, Seward Meridian, Alaska; within the Kenai Peninsula Borough. KPB File 2011-016

Staff Report reviewed by Max Best

PC Meeting: 3/28/2011

Purpose as stated in petition: Unnecessary/duplication of other easement access.

Petitioners: Richard L. & Kristin E. Moran of Sterling, Molly L. Tatarka and Alessandro Rigutto of Anchorage,