



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:  David R. Carey, Borough Mayor

FROM:  Max J. Best, Planning Director

DATE: May 25, 2011

SUBJECT: Ordinance 2011-15, Substitute; Ordinance Amending KPB 14.04, Road Construction and Right-of-Way Acquisition and KPB 17.10.030, Acquisition of Lands and Resources, to authorize the Mayor to Acquire Easements for Road Improvement Projects without Assembly Approval.

The Planning Commission reviewed the subject substitute ordinance during their regularly scheduled May 23, 2011 meeting. A motion passed by unanimous consent to recommend adoption of the substitute ordinance.

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

WHEREAS, the Planning Commission at its regularly scheduled meeting of May 9, 2011 and May 23, 2011, considered this ordinance and recommended adoption by unanimous consent.

Attached are the unapproved minutes of the subject portion of the meeting.

AGENDA ITEM F. PUBLIC HEARINGS

5. Ordinance 2011-15, Substitute; Ordinance Amending KPB 14.04, Road Construction and Right-of-Way Acquisition and KPB 17.10.030, Acquisition of Lands and Resources, to authorize the Mayor to Acquire Easements for Road Improvement Projects without Assembly Approval.

Memorandum reviewed by Max Best

PC MEETING 05/23/2011

A substitute ordinance is recommended for ordinance 2011-15. The reasons for these amendments are that KPB 14.04 was initially adopted as part of the long defunct state of Alaska LSRT program wherein the legislature granted the boroughs directly the power to construct local service roads and trails (LSRT). In 2000 the borough adopted through popular vote of the people construction powers which are codified at KPB 16.41.190. In order to avoid confusion between KPB 14.04.010 and KPB 16.41.190 it is recommended that KPB 14.04.010 be repealed. Additionally, the planning commission upon review of this ordinance raised questions regarding the interpretation of the appraisal process for right-of-way acquisitions set forth in KPB 14.04.020. A revision that clarifies that the borough will not compensate someone for right-of-way above the highest appraised value, where both the borough and property owner have obtained appraisals, is also made. The vast majority of easements being acquired for road service area projects are given voluntarily with de minimus compensation as the property owner typically is enjoying the benefit of the improved road. The assembly approves funding the project which includes funds for acquiring easements. If ever there were an unforeseen circumstance where the cost of an easement would exceed the project budget the assembly would have to approve the appropriation of additional funds

Chapter 14.04, Road Construction and Right of Way Acquisition code was passed out because it was not included in the Planning Commission packet. When staff looked at this particular ordinance, the discussion centered around the processes of which the Borough acquires interest in lands. There are three administrative ways to gain an access for the Borough which is defined under 17.10.030(B) which states as follows:

1. Tax foreclosure;
2. Judgments entered by a court of competent jurisdiction as a result of legal action in which the borough is a party;
3. Dedications pursuant to the platting authority of the borough planning commission.

A fourth way would be added with the adoption of this ordinance which states:

4. The borough mayor may acquire easements from property owners for the purpose of road service area improvement and maintenance projects.

Section C of 17.10.030 gives nine other ways that the Borough acquires interest in lands. It is a resolution process that goes through the Assembly. KPB 17.10.040 contains the resolution contents. Not only does it list the ways that they can obtain interest in lands but also gives and points to what the content of that resolution would be.

Rather than come up with a whole different process to acquire right of ways, staff just pointed this ordinance back to KPB 17.10 process and lists the additional authority.

The Planning Commission's consideration is appreciated.

END OF STAFF REPORT

Chairman Bryson asked if there were questions for Mr. Best.

Commissioner Foster asked if it would include acquisition for bike paths / bike trails. Mr. Best replied only if it was already in the project. If there were a bike path or a pedestrian path that was necessary then they would have already acquired the necessary room through one of the nine avenues to construct it.

MOTION: Commissioner Isham moved, seconded by Commissioner Holsten to recommend adoption of Ordinance 2011-15; Ordinance amending KPB 14.04, Road Construction and Right of Way Acquisition and KPB 17.10.030, acquisition of lands and resources to authorize the Mayor to acquire easements for road improvement projects without assembly approval.

Commissioner Ruffner stated that he attended the Roads Service Area (RSA) Board meeting to see what their thoughts were regarding this ordinance. At the previous PC meeting, the Commission stated that they wanted this to be an open process, to understand what the expenditures would be and that a process would be followed.

Commissioner Ruffner came to understand from the RSA board meeting that the upgrade of roads would typically be done under capital improvement projects. The Borough has been fortunate the last few years to receive State Legislative money for various road improvements throughout the Borough. When roads are to be upgraded, an engineer's estimate of what it would cost to make the road upgrades would be done. They have a budget that gets appropriated for those particular projects. As was described last time, typically these additional access purchases are those that they need a little more room for drainage easements, etc to make the road fit and that it would meet all the Borough road standards. If the acquisition purchase fits within the budget that has been appropriated by the Assembly under the capital improvement projects then that is what this ordinance addresses.

Commissioner Tauriainen understood from the last meeting that most of the transactions were handshake deals where people wanted their road to be improved so they gave the Borough land for a small fee. He understood that the current ordinance allows for the purchase of property at the highest appraised value. Mr. Best stated there is a provision in the ordinance for acquiring right of way when the Borough and the property owner can't agree when compensation was being paid. That also gives the RSA negotiator an avenue and guidelines to move forward and go through a process. The policy is codified to acquire an appraisal from both parties then they could proceed to come to some kind of agreement.

Commissioner Tauriainen asked if that could be approved by the Mayor once that happened. Mr. Best replied that it wouldn't seem prudent to try to design a road where they didn't have the ownership. The ordinance gives them the ability to acquire the ownership prior to the project. Chairman Bryson asked if that was a situation that would happen early in the design prior to bidding documents. Mr. Best replied that was correct.

Commissioner Carluccio was under the impression that this was when they needed an additional foot or so to complete the construction of the road. Mr. Best replied that there were several things that were happening. KPB14.04.20 - Right of Way Acquisitions which gives methods that were already set forth as stated below.

- A. *Right-of-way acquisition may be accomplished by the methods set forth in KPB 17.10.030(A)(B)and (C).*

A is about the methods already set forth in Chapter 17.

- B. *In accord with KPB 17.10I030(B)(4) the borough mayor may acquire easements from property owners for the purpose of road service area improvement and maintenance projects.*

B gives the ability that when an additional easement is needed for road improvement or maintenance.

- C. *There is adopted a borough policy governing right-of-way acquisitions, to be effective when the borough administration and the private property owner(s) affected cannot reach agreement on the right-of-way acquisition as follows:*

1. *The borough administration shall have an appraisal made of the property. Property owner(s) may have additional appraisals made for assembly consideration at their own expense. The appraisal shall be conducted in accordance with procedures*

established by the Alaska Department of Transportation for acquisition of right-of-way.

2. The highest price paid for the land needed for the right-of-way shall not exceed the highest appraised value, or the assembly may elect not to acquire the right-of-way when the matter is presented to it.
3. The borough shall compensate the private owner(s) for the land needed for the right-of-way by payment of money, and not by any other method. Compensation for direct damage such as relocation of fences, septic systems, wells, etc., will also be paid.

C would be a process that would be utilized when right of way was being acquired for a construction project.

Commissioner Tauriainen referred to page 97 of the packet and asked what (B)(4) meant is stated below.

“B. In accord with KPB 17.10.030(B)(4) the borough mayor may acquire easements from property owners for the purpose of road service area improvement and maintenance projects.”

Mr. Best clarified that was the wording that will be added to KPB 17.10.030(B)(4). Following are the four methods that will be used in acquisition of land and resources.

1. Tax foreclosure;
2. Judgments entered by a court of competent jurisdiction as a result of legal action in which the borough is a party;
3. Dedications pursuant to the platting authority of the borough planning commission.
4. The borough mayor may acquire easements from property owners for the purpose of road service area improvement and maintenance projects.

Chairman Bryson asked if there was a substitute ordinance with the recommended changes. Mr. Best replied yes, the ordinance needs to be approved as 2011-15, Substitute.

Mr. Best

AMENDMENT: Commissioner Ruffner moved, seconded by Commissioner Isham to amend the main motion to recommend adoption of Ordinance 2011-15 Substitute.

AMENDMENT VOTE: The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO YES	COLLINS YES	ECKLUND ABSENT	FOSTER YES	GROSS YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD ABSENT	MARTIN YES	PARKER ABSENT	RUFFNER YES	TAURIAINEN YES	9 YES 4 ABSENT

MAIN MOTION VOTE: The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO YES	COLLINS YES	ECKLUND ABSENT	FOSTER YES	GROSS YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD ABSENT	MARTIN YES	PARKER ABSENT	RUFFNER YES	TAURIAINEN YES	9 YES 4 ABSENT

AGENDA ITEM G. ANADROMOUS STREAM HABITAT PROTECTION AREA (KPB 21.18)

1. A conditional use permit pursuant to KPB 21.18.090 to enclose and finish the interior of an existing 28-foot by 44-foot structure within the 50-foot Habitat Protection District of the Kenai River

This project is located on the right bank of the Kenai River at river mile 16.9, on Lot 176, Poachers Cove Planned Unit Development Amended, Section 19, T. 5 N., R. 10 W., S.M., AK, (KPB Parcel I.D:057-487-65). The street address of the parcel is 45552 Spruce Ave, Unit 176.