

Introduced by:	Mayor
Date:	02/14/12
Shortened Hearing:	02/28/12
Action:	Enacted as Amended
Vote:	8 Yes, 1 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2011-19-71**

**AN ORDINANCE APPROPRIATING \$35,000 TO PAY FOR OUTSIDE COUNSEL TO
DEFEND THE KENAI PENINSULA BOROUGH AGAINST A LAWSUIT FILED BY
KAHTNU VENTURES, LLC RELATING TO THE CERTIFICATES OF NEED FOR AN
AMBULATORY SURGERY CENTER PROPOSED TO BE BUILT BY KAHTNU IN
KENAI AND AN OPERATING ROOM TO BE BUILT IN THE CENTRAL PENINSULA
HOSPITAL**

WHEREAS, in 2004 the Central Peninsula General Hospital, Inc. (CPGH, Inc.) obtained a certificate of need (CON) from the State of Alaska authorizing the construction of the mountain tower addition to Central Peninsula Hospital (CPH) including the construction of four operating rooms by December 31, 2010; and

WHEREAS, the fourth operating room was not built by that date; and

WHEREAS, on September 30, 2011, CPGH, Inc. filed a letter requesting a determination from the state of whether a CON is required for construction of the fourth operating room in the mountain tower of CPH; and

WHEREAS, in a letter of November 14, 2011, the State of Alaska determined that a CON was not required for construction of that operating room as the project cost estimates did not exceed the current legal threshold of \$1,350,000; and

WHEREAS, Kahtnu Ventures, LLC submitted a certificate of need application on or about November 18, 2011, seeking authorization to construct an ambulatory surgery center in the city of Kenai which would include one operating room and one procedure room in a stand-alone facility; and

WHEREAS, the CON application was deemed complete by the State on December 21, 2011, and is under consideration; and

WHEREAS, the Kenai Peninsula Borough Assembly adopted resolution 2012-003 which opposes the issuance of a CON to Kahtnu Ventures, LLC for an ambulatory surgery center in Kenai, Alaska for the reasons stated therein; and

WHEREAS, on or about January 19, 2012, Kahtnu Ventures, LLC filed a lawsuit in Anchorage superior court against CPGH, Inc., the State of Alaska Department of Health and Social Services, and the Commissioner of the Department of Health and Social Services asking that the court enjoin the hospital from proceeding with construction of the operating room in the hospital and that operating room not be considered in determining whether the community needs the ambulatory surgery center proposed by Kahtnu Ventures, LLC; and

WHEREAS, Kahtnu Ventures, LLC has amended its complaint again to sue the Kenai Peninsula Borough (“Borough”) in the pending lawsuit, and served the Borough on February 21, 2012; and

WHEREAS, in-house counsel lacks sufficient time and expertise to adequately represent the Borough in this litigation and also perform other duties as required by the borough and school district; and

WHEREAS, the legal department contract services account currently has an available balance of approximately \$32,500 which is not expected to be sufficient to cover the expected upcoming legal expenses for this fiscal year if used to defend the Borough in this lawsuit; and

WHEREAS, the best interests of the Borough as owner of Central Peninsula Hospital are served by providing an adequate defense to the pending litigation; and

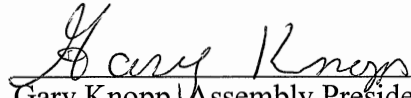
WHEREAS, at its meeting of February 13, 2012, the Central Kenai Peninsula Hospital Service Area Board considered this ordinance and recommended approval;

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

SECTION 1. That the sum of \$35,000 is hereby appropriated from the General Fund fund balance to Account No. 100.11310.00000.43011, Contract Services, to be used for costs and expenses associated with defending the Kenai Peninsula Borough in the case brought by Kahtnu Ventures, LLC against the State of Alaska, CPGH, Inc. and the Kenai Peninsula Borough.


SECTION 2. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
28TH DAY OF FEBRUARY, 2012.

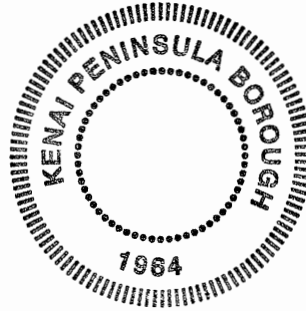


Gary Knopp, Assembly President

ATTEST:



Johni Blankenship, Borough Clerk



Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Knopp
No: Tauriainen
Absent: None