



KENAI PENINSULA BOROUGH

144 N. BINKLEY · SOLDOTNA, ALASKA 99669-7520
BUSINESS (907) 262-4441 FAX (907) 262-1892

JOHN J. WILLIAMS
MAYOR

MEMORANDUM

TO: Ron Long, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: John J. Williams, Borough Mayor 

FROM:  Max J. Best, Planning Director

DATE: March 29, 2006

SUBJECT: Resolution 2006-29⁰; Petition to reclassify approximately 1.00 acre of Borough land located in the Sunrise Area as Residential Pursuant to KPB Code of Ordinances, Chapter 17.10.080(F)

The Planning Commission reviewed the subject resolution during their regularly scheduled March 27, 2006 meeting. A motion to recommend adoption of the resolution passed by unanimous consent.

Draft, unapproved minutes of the subject portion of the meeting are attached.

KPB
CLERK'S OFFICE

2006 MAR 30 AM 10:20

RECEIVED

Agenda Item P. 2. * a.

Committee Lands

Page Number 157

AGENDA ITEM F. PUBLIC HEARINGS

1. **Petition to reclassify approximately 1.00 acre of Borough land located in the Sunrise Area as Residential Pursuant to KPB Code of Ordinances, Chapter 17.10.080(F)**

Staff report reviewed by Marcus Mueller

PC Meeting March 27, 2006

Petitioners: Eric and Michelle Holloway, Anchorage Alaska (petition attached)

Basis for Classification: Petitioners desire to enter into a negotiated purchase of the subject land. Classification provides direction for the management of Borough land.

Current Classification: Preservation per Resolution 95-022.

Proposed Reclassification: Residential.

Residential

Residential means lands suitable for development for single family or multifamily settlement 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-site water and sewer systems or capable of receiving water and/or sewer service, have legal access and feasible physical access, suitable terrain and appropriate with the given surrounding uses.

Preservation

Preservation means lands needed 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 for construction of buildings.

Description of Borough Land Proposed for Reclassification: A portion of Government Lot 1, Section 3, T9N, R1W, S.M., Alaska, containing approximately 1.00 acre as shown on Attachment A.

Public Notice: Public notice was published in the Peninsula Clarion, February 19 and 26, 2006. Notices were sent by regular mail to all owners and/or leaseholders of record within a one-half mile radius of the land proposed for reclassification. The notice consists of a cover letter, map, and list of land classification definitions. Written public comments were requested to be returned by 5:00 p.m., March 6, 2006.

Public Comment: As of the writing of this report, 3 written comments were received expressing concern for the proposed dedicated right-of-way and classification of adjacent State land as Heritage Resource. Comments received by the Planning Department after the writing of this report will be presented at the Planning Commission Hearing.

Hope / Sunrise Advisory Planning Commission (H/S APC): At the March 2, 2006 meeting the H/S Advisory Planning Commission voted on a motion to recommend approval of the reclassification of LMD 05-43 from preservation to residential. Although there were 3 votes in favor and 1 vote against, the motion failed. (NOTE: KPB 21.02.110.F states: "Four commission members shall constitute a quorum. Any recommendations forwarded to the planning commission, or to the assembly upon assembly request by majority vote, shall require the affirmative vote of four commission members.") (Unapproved minutes attached)

Department / Agency Review: Written comments received from departments and agencies stated no comment and no objection to the proposed reclassification.

Background: Eric and Michelle Holloway submitted a petition for reclassification and a negotiated sale application to the borough to reclassify and purchase subject land (Ordinance 2006-08). The Holloway's desire to purchase enough borough land, that when combined with their parcel will create a buildable site for a small cabin. Currently the Holloway parcel (Lot 10, U.S. Survey 2789) is not feasible for development due to a steep slope.

Findings of Fact:

1. **Title/Status:** The borough received State patent for subject land and subsequently classified it as Preservation per KPB Resolution 95-022. The borough issued a land use permit to the State Division of Forestry for hazard tree mitigation purposes in this area.
2. **Surrounding Land Use:** Adjacent land to the west of subject parcel is bordered by the Hope Highway; land to the southeast is residential; and land to the east is the undeveloped "Holloway" parcel. The Sunrise City Historic District (SCHD) also lies east of and adjacent to the borough land; the exact location/boundary of the SCHD has not been established. (See Map--Attachment B) The nomination of the SCHD to the register of historic places was supported by KPB Resolution 97-016. The SCHD is comprised of several historical features, including Point Comfort Cemetery, cabin ruins, root cellars, small pit depressions, and remnants of domestic items. No archaeological testing has been done on these features, nor does it appear that any of the identified features are within the land proposed for reclassification. Point Comfort Cemetery is located on State land, north of subject land. It was established in 1897 and restored in the early 1900's. Other historical features of the SCHD are located on private land.
3. **Surrounding Land Ownership:** Surrounding land ownership includes Borough, State, and private land.
4. **Access:** An existing road / trail begins at approximately Mile Post 8.2 of the Hope Highway and continues across Borough and State land, providing access to Point Comfort Cemetery and other land-locked parcels. This road turns into a trail leading to Six Mile Creek. According to State records (ADL 227448) the establishment and use of the road / trail was unauthorized and is considered an illegal access (trespass). This road / trail is approximately 10 feet wide and is traversed by 4-wheel drive vehicles. The first 50 feet of the road, from the highway, is a steep grade (18% ±). The borough granted an appurtenant driveway easement over a portion of this road for access to Lot 10, U.S. Survey 2789 (Holloway Parcel).
5. **Utilities:** Electric and telephone utilities are available along the Hope Highway. No other utilities are available at this time.
6. **Topography:** Subject borough land, east of the Hope Highway, drops to a benched area. Continuing further east onto the Holloway parcel, the topography drops again as it slopes sharply down to Six Mile Creek. The remainder of the borough land, going north, includes some rolling terrain with some relatively flat areas as the benched area parallels the highway. Trees within this area are predominately spruce with some beetle kill. The State Division of Forestry is currently removing beetle-killed trees from this area.

Analysis: The borough has identified subject area as a possible access point that would benefit the greater borough parcel. The existing access road / trail coming off of the Hope Highway splits the borough parcel, creating a remnant parcel. Optimum use of the remnant parcel and the land proposed for reclassification includes a proposed full-width dedicated right-of-way. Feasibility and alignment of a right-of-way will need to be verified by a field survey. A dedicated right-of-way would be the beginning of providing legal access to the cemetery and other land-locked parcels while opening up access to the rest of the borough land. The borough land lying east of the proposed dedicated right-of-way would contribute little utility to the rest of the borough parcel and would be surplus to borough needs. The surplus area has limited use as there is a steep slope to the south, the existing road / trail to the west, and the Holloway parcel to the east. (See Map—Attachment A)

Conclusion: The proposed area to be reclassified, as Residential would be compatible with a future dedicated right-of-way and allow the borough to dispose the surplus property, east of the proposed right-of-way, to the Holloway's as they are the only feasible buyers. The borough would benefit by receiving revenue from the sale and subsequent property taxes. The borough would also benefit by having the Holloway's pay the platting and surveying cost to determine a feasible road alignment. The Sunrise community would benefit by giving utility to an otherwise undevelopable parcel.

STAFF RECOMMENDATION:

Based on the findings of fact, analysis, and conclusion, staff recommends that the Planning Commission recommend that the resolution for a Residential reclassification be adopted. It is further recommended that upon adoption of the reclassification resolution and enactment of the sale ordinance, that the land be surveyed so as to determine the feasibility of a full-width dedicated right-of-way and to identify the exact boundaries of the land to be disposed of to the Holloway's.

END OF STAFF REPORT

Chairman Bryson read the rules by which public hearings are conducted.

Chairman Bryson opened the meeting for public comment.

1. Chuck Graham

Mr. Graham is a resident of Hope, AK. His primary concern is the right of way going to the cemetery because of the topography. Mr. Graham stated this is the only practical route. He expressed his uneasiness about the sequence of events that took place. Before action is taken, Mr. Graham asked to see a survey showing the location of the existing road and the proposed right of way.

Mr. Graham commented he is the Chairman of the Hope Advisory Planning Commission. He felt the Holloway's knew that this lot was side hilled in its entirety at the time they bought it. They are now dependent on the Borough so they can buy a lot big enough to build a house on. This specific area is also the only practical access to a much larger area of Borough land.

Mr. Graham reiterated his request that a survey be done showing where everything is at before any action takes place. His reason for this is that the Hope Highway was surveyed in 1962. He looked for monumentation and found none. Mr. Graham felt it would be necessary to get some sort of road right of way boundary so this area could be defined. He spoke with the State of Alaska Right of Way Department who had a plat of this area. They said it probably wasn't worth the paper it was printed on since it is full of errors and not to be trusted.

Mr. Graham requested that the Planning Commission keep in mind that the existing road or trail has been there for many years and is the only practical access. His main concern is that this road remains inside the proposed right of way.

Chairman Bryson asked if there were questions from the Commissioners. Hearing none, the public hearing continued.

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

MOTION: Commissioner Clark moved, seconded by Commissioner Tauriainen to recommend adoption of unnumbered resolution in reclassifying certain Borough land in the Sunrise area pursuant to KPB Code of Ordinances.

Commissioner Hohl commented this is a conceptual plan. She asked staff if it could be modified when the actual survey was done based upon the approved plat. Mr. Mueller replied that is correct. The sequence of events is that prior to entering into the negotiated sale a plat would be done. This would create a parcel that could be disposed of to the Holloway's. The plat would accurately describe the lands and would be classified as what would be in the boundaries of that plat. Mr. Mueller stated this is only a conceptual plan at this time.

Chairman Bryson asked if there was the possibility that there would be inadequate room on the property for a road capable of accessing the Hope Highway given the lack of a field survey. Mr. Mueller stated they are not sure what the results will be in terms of a right of way. They are also not sure what the result will be in terms of a buildable site. The right of way will take priority. It may be such that no right of way could be constructed but staff felt that a right of way could be constructed. It will take survey work to determine that and what would be surplus would be what would be left after a right of way was designed.

Commissioner Foster stated this might be mute if the right of way had to be moved to the east and there was not sufficient property left to be a stand alone residential lot. He felt it might be better to wait for the survey. Mr. Mueller replied that the applicant was willing to pay for the surveying costs. The applicant does understand that staff is not sure what will be required for a right of way. There may be little or no valuable land remaining but the applicant is willing to assume that risk.

Commissioner Foster asked if the property was open for anyone to purchase or would it have to be linked to a larger piece of property so that is was a suitable size. Mr. Mueller commented they would be left with a remnant parcel, which would leave only one feasible buyer.

Commissioner Hohl stated that the parcel that would be left would probably be less than the minimum size allowed by

Code. She asked if the owners would be required to combine this parcel to their existing parcel so there isn't a small parcel that could be sold separately. Mr. Mueller replied that is correct. As a requirement for platting, the remnant parcel would be combined with the Holloway's lot. Their current lot is 4.3 acres, which doesn't contain a building site. It would meet platting requirements once it is combined.

Commissioner Johnson felt this is a win, win situation where the applicant has the opportunity to make his lot big enough to be worth something. The Borough will get someone to pay for a survey. He stated he would vote in favor of the motion.

There being no further discussion or comments, the commission proceeded to vote.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS ABSENT	HEIMBUCH YES	HOHL YES	HUTCHINSON ABSENT
ISHAM YES	JOHNSON YES	MARTIN YES	MASSION YES	PETERSEN ABSENT	TAURIAINEN YES	10 YES 3 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

- Ordinance 2006-08; An ordinance authorizing the negotiated sale at fair market value of a .6 acre +/- parcel located adjacent to Government Lot 10 U.S. Survey 2789 in Sunrise to Eric and Michelle Holloway.

Memorandum reviewed by Marcus Mueller

PC Meeting: 3/27/06

Eric and Michelle Holloway are owners of Government Lot 10, USS 2789 in Sunrise, which abuts a parcel owned by the Borough. The Holloway's property is 4.3 acres in size but lacks a suitable building area due to steep terrain. The Holloway's have submitted an application for the negotiated sale at fair market value of a small piece of borough land in order that they may acquire a building site.

The borough has identified this area as a critical access point for the greater borough parcel. Currently, the borough does not have sufficient information to determine what, if any, part of the subject area is surplus to borough needs considering the need for access. The Holloway's are willing to pay for a topographic survey and professional identification of an acceptable right-of-way alignment, which is a prerequisite for this proposed sale. Upon identification of a right-of-way that meets borough standards, the borough would, at the applicants' expense, plat the stub right-of-way and the remaining remnant parcel would be combined with Lot 10 and sold to the Holloway's. Therefore it is appropriate that the Assembly move on this ordinance to clarify the borough's willingness to sell the property prior to the Holloway's making an investment into the necessary professional costs.

An appraised square-foot value of the property will be available for the April 4th hearing. A resolution for a residential reclassification will also be brought forward, concurrently, at the April 4th meeting.

The administration respectfully requests your consideration of the attached ordinance.

END OF MEMORANDUM

REVISED MEMORANDUM

Revised memorandum reviewed by Marcus Mueller

PC Meeting: 3/27/06

The KPB Assessing Department has limited information on which to base an appraisal of fair market value on the subject property in the community of Sunrise. An independent professional appraisal of the fee simple value of the subject property is thus needed to establish the sale price. The Land Management Division will recommend splitting the cost of such an appraisal with the applicant, 50/50, which is agreeable with the applicant. It is recommended by the Land Management Division that the assembly rely on an independent appraisal by a qualified professional appraisal to establish the fair market value sale price for this proposed sale once a preliminary subdivision plat has been approved by the borough.