



AGENDA ITEM N. 4. (Lands Committee)  
**KENAI PENINSULA BOROUGH**

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**MEMORANDUM**

TO: Pete Sprague, Assembly President  
Kenai Peninsula Borough Assembly Members

THRU: *DLB* Dale L. Bagley, Borough Mayor

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

DATE: August 26, 2004

SUBJECT: Ordinance/Resolution 2004-27 An Ordinance approving Birch and Grouse Ridge Subdivision Local Option Zoning District as a Rural-Residential (R-R) District and Amending KPB Chapter 21.46.030

The Planning Commission reviewed the subject ordinance during their regularly scheduled August 23, 2004 meeting.

An amendment motion to recommend to the Assembly that section 2.2b (The 40 foot rear yard setback required by KPB 21.44.170(C)(1) does not apply to the lots within this district) is deleted by majority consent. A motion to recommend enactment of the ordinance passed by unanimous consent.

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

1. Ordinance 2004-27 An Ordinance approving Birch and Grouse Ridge Subdivision Local Option Zoning District as a Rural-Residential (R-R) District, and Amending KPB Chapter 21.46.030.

Memorandum as read by Crista Cady

PC Meeting 8-23-04

The Kenai Peninsula Borough (KPB) is in the process of platting Birch and Grouse Ridge Subdivision in the Cooper Landing area. Prior to the sale of parcels the owner, KPB, is requesting an LOZ district be formed that includes the entire subdivision. Because the property is under single ownership, LOZ Area and Petition Requirements (KPB 21.44.040) are not required.

The Cooper Landing Advisory Planning Commission unanimously recommended approval of the Birch and Grouse Ridge subdivision plat and R-R LOZ district at its February 24, 2004 meeting. On August 23, 2004, the KPB Planning Commission will make a recommendation regarding the formation of the R-R district, and that recommendation will be reported to the Assembly.

The accompanying map depicts the proposed R-R LOZ district. Pursuant to KPB 21.44.170, an R-R district allows single-family residences and secondary uses including parks, playgrounds, schools, community centers, libraries, churches, and some home occupations. The minimum lot size for R-R districts is 100,000 square feet. Due to topographical constraints, the R-R rear yard setback of 40 feet will not apply to the lots in this district.

Development and sale of parcels in the Birch and Grouse Ridge Subdivision will be done in phases. The Land Management Division plans to conduct the sale of phase 1 parcels in the fall of 2004, subject to assembly approval.

#### END OF STAFF REPORT

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

**MOTION:** Commissioner Clark moved, seconded by Commissioner Massion to recommend the adoption of Ordinance 2004-27.

Chairman Bryson directed a question to the staff regarding the deletion of the rear yard setback. Director Best stated that after discussions with the Mayor and the Cooper Landing Community, they did not want to eliminate the 40-foot rear yard setback. It was the intention to request for the removal of that since there was a large preservation area and buffer already in place. They wanted to maximize the view of those lots and the potential for a better sale. It is coming back from the community that they want the 40-foot rear yard setback.

Commissioner Hohl asked if the administration is taking the 40-foot setback out of the resolution. Chairman Bryson stated that it is in the motion to include the 40-foot rear yard setback. Chairman Bryson corrected himself that as part of the motion the 40-foot setback requirement is being proposed to be deleted.

**AMENDMENT MOTION:** Commissioner Troeger moved, seconded by Commissioner Hohl that the Planning Commission recommends to the Assembly that section 2.2b be deleted which is the requirement of the 40-foot rear yard setback does not apply.

Commissioner Martin asked the staff if they had any speculation on the reduction of demand for these lots if the 40-foot setback was being enforced. Director Best stated there was no way to speculate.

Commissioner Clark asked staff if the buildable area would be significantly reduced if the 40-foot setback was enforced. Director Best replied that he doesn't know if the buildable area would be significantly reduced. In some situations, the optimum view might be minimized. The ridge runs along the edge of property boundary.

Commissioner Hohl commented she did not realize it could be changed when Local Option Zoning was done. She thought that the reason there was uniform zoning was so it would be the same in all areas. Director Best stated that with that particular ordinance the Assembly could adopt, modify or disapprove. It would be up to the Assembly if they want to change it. It was the intent that the variance procedure would be used when the ordinance was drafted. Commissioner Hohl stated that one size doesn't always fit.

Commissioner Johnson asked Director Best what lot this requirement would make the most difference on. Director Best referred this question to Mr. Ostrander. Mr. Ostrander stated the lot that would be most affected would be the most easterly lot, Lot 40. Lots 40, 39, 38, 37, 36, and 35 would all be affected because they are all in the same situation where their south property boundary line follows the top of the ridge. Any setback from the top of the ridge will affect the landowner's ability to place their structure to optimize the view.

Commissioner Hohl asked if the property owners could apply for a variance. Chairman Bryson replied that yes, if the requirement was retained, they could apply for a variance

Commissioner Clark commented that you take the best lots and you preclude the amount of buildable view. Then complaints are heard that the Borough put out this land sale and made about \$30,000 less than anticipated because part of the view was taken. The potential of a variance mitigates that somewhat. A cheaper lot can be bought and then be brought back to the Borough for a variance.

Chairman Bryson stated that one of the primary purposes of a rear yard setback is to keep structures off that area so debris can be piled up and not affect the neighbors. This is the opposite where this is a habitat protection area. Chairman Bryson does not see a need for a rear yard setback whatever the rationale is.

Commissioner Troeger made the motion to recommend to the Assembly because of the Local Advisory Planning Commission recommended it. He is supporting the Local Advisory Planning Commission.

**AMENDMENT VOTE:** The amendment motion passed by majority consent.

BRYSON NO	CLARK NO	FOSTER YES	GROSS YES	HOHL YES	HUTCHINSON YES	ISHAM ABSENT
JOHNSON NO	MARTIN YES	MASSION YES	PETERSEN ABSENT	TAURIAINEN NO	TROEGER YES	7 YES 4 NO 2 ABSENT

Planning Commission voted on the motion to recommend to the Assembly the adoption of Ordinance 2004-27.

**VOTE:** The motion passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS YES	HOHL YES	HUTCHINSON YES	ISHAM ABSENT
JOHNSON YES	MARTIN YES	MASSION YES	PETERSEN ABSENT	TAURIAINEN YES	TROEGER YES	11 YES 2 ABSENT