



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7599
BUSINESS (907) 262-4441 FAX (907)262-1892

DALE BAGLEY
MAYOR

MEMORANDUM

RECEIVED
2004 OCT - 8 AM 9:20
KPB
CLERK'S OFFICE

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

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

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

DATE: October 6, 2004

SUBJECT: Ordinance 2004-19-13 an ordinance authorizing the acquisition of Lots 5, 6 & 7, Block 3, Hillcrest Subdivision, Plat No. KN 1514, Kenai Recording District for an addition to the Central Emergency Services facility and appropriating \$75,500.00 from the Land Trust Fund to acquire the property

The Planning Commission reviewed the subject ordinance during their regularly scheduled September 27, 2004 meeting. A motion to recommend enactment of the ordinance passed by majority vote.

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

Due to the relatively short adoption process timeframe, the Plan will be provided to the members of the Planning Commission for consideration during their September 27 and October 11 meetings.

END OF STAFF REPORT

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

MOTION: Commissioner Clark moved, seconded by Commissioner Isham to continue public hearing to the next meeting, October 11, 2004.

VOTE: The motion passed by unanimous consent.

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

AGENDA ITEM F. PUBLIC HEARINGS

- 4. Ordinance 2004-19-13 an ordinance authorizing the acquisition of Lots 5, 6 & 7, Block 3, Hillcrest Subdivision, Plat No. KN 1514, Kenai Recording District for an addition to the Central Emergency Services facility and appropriating \$75,500.00 from the Land Trust Fund to acquire the property

Ordinance 2002-19-35 authorized the acquisition of Lots 3,4,5 & 6, Block 2, Airport Subdivision for a future site for a new administrative building for Central Emergency Services. Subject lots are adjacent to Lots 3, 4, 5 & 6, Block 2, Airport Subdivision and will provide needed site area and alternative access for a new administrative building for Central Emergency Services.

The owners have signed an Earnest Money Receipt and Purchase Agreement to sell subject lots for \$73,500.00. Ordinance 2004-19-13 appropriates funds from the Land Trust Fund for this acquisition to include closing costs and prorated 2004 taxes. It is expected that when a facility is constructed on this site, the facility owner and/or occupants will reimburse the Land Management Trust Fund for the full cost of this property pursuant to Section 6 of the subject ordinance. The KPB Planning Commission will consider this ordinance at its regularly scheduled meeting of September 27, 2004, and the action taken will be reported to the assembly

END OF STAFF REPORT

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

MOTION: Commissioner Clark moved, seconded by Commissioner Gross to recommend adoption of Ordinance 2004-19-13.

Commissioner Gross asked what is the acreage of the three lots. Mr. Ostrander stated that each parcel is .288 acres or 9/10th of an acre.

Chairman Bryson stated that according to the staff report the Land Trust funds are going to be used to acquire the property, which is a general fund for Borough wide use. He asks if full liability could go to Central Emergency Service Area since this is for them. Mr. Ostrander commented this ordinance is basically written as the ordinance was written when they acquired the four lots in Airport Subdivision. He stated the Land Trust funds will be used to initially pay for this but whoever is in the facility will reimburse those acquisition costs back to the Land Trust Fund. This facility will probably be a central emergency facility not just a Central Emergency Service Area facility.

Commissioner Isham commented that it seems like the commission has seen this before. He stated that the last time they looked at property near this it went to the Assembly who looked at the Prism facility. Commissioner Isham asked whatever happened to that. Mr. Ostrander answered that there was discussion whether the Prism facility would be adequate for these purposes. He commented he does not know the reason that Central Emergency Services and other folks who will be occupying this building do not want to use the Prism Building but want to construct a new one.

UNAPPROVED MINUTES

Commissioner Clark stated that the Borough owns a lot of property and won't sell any of it because the public might use it someday. He feels the Borough should sell all their property and reacquire as needed.

Commissioner Hohl asked where the \$73,500 came from. Mr. Ostrander stated this property was not originally listed and they contacted the owners. The owners came back with their counter offer of \$73,500.

Commissioner Hutchinson commented that he checked the appraisal records of similar properties and found that this price is a fair price.

Commissioner Troeger asked if the Assembly already approved Ordinance 2002-19-35 authorizing acquisition for Lots 3, 4, 5, and 6. Mr. Ostrander stated that yes; the Assembly has already approved the acquisition of the four adjacent parcels.

Chairman Bryson called for a roll call vote.

VOTE: The motion passed by majority consent.

BRYSON NO	CLARK NO	FOSTER NO	GROSS YES	HOHL YES	HUTCHINSON YES	ISHAM YES
JOHNSON YES	MARTIN ABSENT	MASSION ABSENT	PETERSEN YES	TAURIAINEN YES	TROEGER YES	8 YES 3 NO 2 ABSENT

AGENDA ITEM G **KENAI RIVER HABITAT PROTECTION (KPB 21.18)**

1. An amended Conditional Use Permit Pursuant to KPB 21.18 for the previous repair of highway infrastructure caused by the floods of November 2002, and for the current maintenance, repair, and retrofit of highway infrastructure resultant from the October and November 2002 Floods. Work has and will occur along the following regulated KPB streams: Niniichik River, Stariski Creek, Anchor River, North Fork of the Anchor River, Kenai River, and Deep Creek.

This project includes the clearing of vegetation, the placement of fill and riprap, excavation, for the purpose of restoring roads and related facilities damaged via the floods of 2002.

KPBPC Resolution 2003-37 Amended

This public hearing was postponed until brought back by staff per staff recommendations.

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

2. A Conditional Use Permit Pursuant to KPB 21.18 for the construction of a 14-foot by 2-foot wide ELP walkway connecting an existing 24-foot by 6-foot ELP walkway to a new downstream 24-foot by 6-foot ELP walkway. This project is located on the right bank of the Kenai River at River Mile 20.7, located on Lot 1, Riverview Subdivision, Schwankle Addition, Section 32, T. 5 N., R. 10 W., S.M., AK, (KPB Parcel I.D.: 060-041-05).

KPBPC Resolution 2004-58

Staff Report read by John Mohorich

PC MEETING: September 27, 2004

Applicant: Dennis Merkes, Merkes Builders, PO Box 404, Soldotna, AK 99669

Property Owner: Richard Daum,

Project Location: Section 32, T5N, R10W, S.M., AK
 Lot 1, Riverview Subdivision, Schwankle Addition
 KPB Parcel 060-041-05
 Kenai River at River Mile 20.7, right bank

**EARNEST MONEY RECEIPT
AND
PURCHASE AGREEMENT**

This Agreement is made on this _____ day of _____, 2004, by and between JOHN BEER and JANE PHILLIPS BEER, husband and wife, whose address is 1450 Calle Altura, La Jolla, CA 92037 (hereinafter referred to as "SELLER") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB").

WHEREAS, SELLER is the owner of that real property located in the Kenai Recording District, Third Judicial District, State of Alaska, (hereinafter referred to as "Property") and more particularly described as follows:

Lots 5, 6 and 7, Block 3, Hillcrest Subdivision, according to Plat No. K-1514, records of the Kenai Recording District, Third Judicial District, State of Alaska. (Assessor Parcel No. 060-115-05, 06 & 07)

WHEREAS, KPB has offered to buy, and SELLER is willing to sell the above-described Property as evidenced by this Purchase Agreement;

NOW THEREFORE, in consideration of the promises herein contained, SELLER hereby agrees to sell to KPB, and KPB hereby agrees to buy from SELLER, the property on the terms and conditions as set forth below:

1. PURCHASE PRICE

The purchase price of the Property is Seventy-three Thousand Five Hundred dollars and NO cents (\$73,500.00). The purchase price shall be paid by KPB at time of closing. The purchase of the property and appropriation for the purchase are subject to borough assembly approval.

2. EARNEST MONEY RECEIPT

A down payment of \$1,000.00 paid by KPB is being held in the trust account of Southcentral Title Agency to be applied towards the purchase price of the Property.

The purchase of the property is subject to the approval of the KPB assembly as specified in paragraph 7 of this Purchase Agreement. If the KPB assembly fails to authorize the purchase or if the SELLER breaches any of the terms of this agreement, the \$1,000.00 shall be returned to the KPB.

The purchase of the property is further subject to the property being free of environmental contamination as specified in paragraph 8 of this Purchase Agreement. The KPB may terminate this agreement, and the \$1,000.00 shall be returned to the KPB, if environmental contamination is found on the property.

3. TITLE

Title shall be delivered at time of closing by Warranty Deed, which shall be issued to KPB. The Warranty Deed shall be in the form shown in Attachment A. SELLER warrants and covenants that at the time of closing there shall be no liens or judgments recorded against SELLER in the same recording district in which the Property subject to this purchase agreement is situated. Title shall be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record.

KPB shall order within 15 days of signature on this agreement a preliminary commitment for title insurance from SouthCentral Title Agency.

4. ESCROW AND CLOSING COSTS

In addition to the purchase price, KPB agrees to pay for one-half closing costs, not to exceed \$2,000.00, in connection with this Agreement, including without limitation all escrow fees, title insurance charges, recording fees and bank charges. Taxes will be prorated as of the date of closing. All costs will be paid in full at the time of closing.

5. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days of execution of this Purchase Agreement. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

6. POSSESSION

Possession shall be delivered to KPB at time of recording warranty deed.

7. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the above described Property by the Kenai Peninsula Borough is subject to authorization by the Kenai Peninsula Borough Assembly and appropriation of funds. If the Kenai Peninsula Borough fails to enact an ordinance authorizing the purchase of the subject land and appropriation of funds, this agreement shall be terminated without penalty.

8. HAZARDOUS MATERIAL

SELLER covenants to the best of SELLER'S knowledge, that as of the date of this Agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. SELLER agrees that no hazardous substances or wastes shall be located on or stored on the Property, or any adjacent property by seller, owner or contractors, nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by SELLER, its agents, employees, contractors, or invitees, prior to KPB'S ownership, possession, or control of the Property.

The KPB or its contractor is authorized to enter the property for the purpose of digging test holes and taking soil samples. Minimal clearing is authorized to allow for one test hole per parcel, and no trees shall be cleared greater than 8 inches in diameter. All costs associated with digging test holes and taking soil samples shall be paid by the KPB.

9. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and SELLER or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the sale and of the agreement to finance the sale, and shall continue in full force and effect until the purchase price is paid in full or this agreement is earlier terminated.

10. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or SELLER fails to make any payment required, or fails to submit or execute any and all documents and

papers necessary for closing and transfer of title within the time period specified in this agreement, the SELLER or KPB may terminate this Agreement.

11. MISCELLANEOUS


- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by SELLER and the mayor. This Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.
- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be constructed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.

KENAI PENINSULA BOROUGH:

SELLER

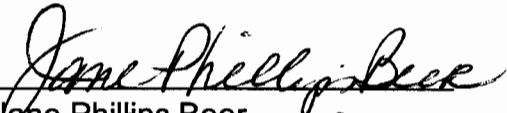
Dale L. Bagley, Mayor

Dated: _____



John Beer

Dated: 1 Sept 04



Jane Phillips Beer
AKA Jane P Beer
Dated: Aug. 28, 2004

ATTEST:

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

Linda S. Murphy,
Borough Clerk

Holly B. Montague,
Assistant Borough Attorney

ALL-PURPOSE ACKNOWLEDGEMENT

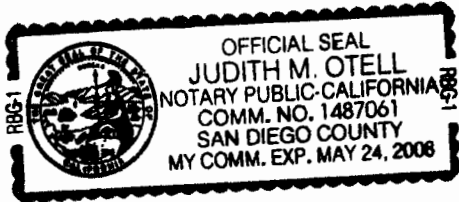
State of California

County of San Diego } SS.

On August 28, 2004 before me, Judith M. Otell, Notary Public,
(DATE) (NOTARY)

personally appeared Jane P. Beer
SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Judith M. Otell
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Earnest Money Receipt and Purchase Agreement
TITLE OR TYPE OF DOCUMENT

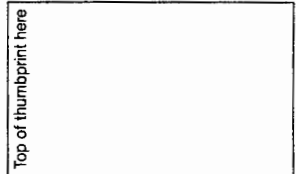
NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMBPRINT
OF
SIGNER



NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by Dale L. Bagley, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
Sacramento COUNTY)

The foregoing instrument was acknowledged before me this 1st day of September, 2004, by John Beer and ~~Jane Phillips Beer~~ JDB



Charlyn A. Hinz
Notary Public in and for California
My commission expires: March 27, 2007

ATTACHMENT A

WARRANTY DEED

The GRANTOR (S), JOHN BEER and JANE PHILLIPS BEER, husband and wife, whose address is 1450 Calle Altura, La Jolla, CA 92037, for ten dollars (\$10.00) and other good and valuable consideration receipt of which is hereby acknowledged, conveys and warrants unto the GRANTEE, KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669, the following described real property:

Lots 5, 6 and 7, Block 3, Hillcrest Subdivision, according to Plat No. K-1514, records of the Kenai Recording District, Third Judicial District, State of Alaska. (Assessor Parcel No. 060-115-05, 06 & 07)

TOGETHER WITH all the improvements thereon, if any, and all rights of the Grantor to any and all hereditaments and appurtenances hereto, and

SUBJECT TO any taxes and assessments, exceptions, reservations, restrictions, conditions, covenants, easements, rights-of-way, and encroachments of record.

Dated this _____ day of _____, 2004.

GRANTORS:

JOHN BEER

JANE PHILLIPS BEER

Dated: _____

Dated: _____

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
_____ COUNTY)

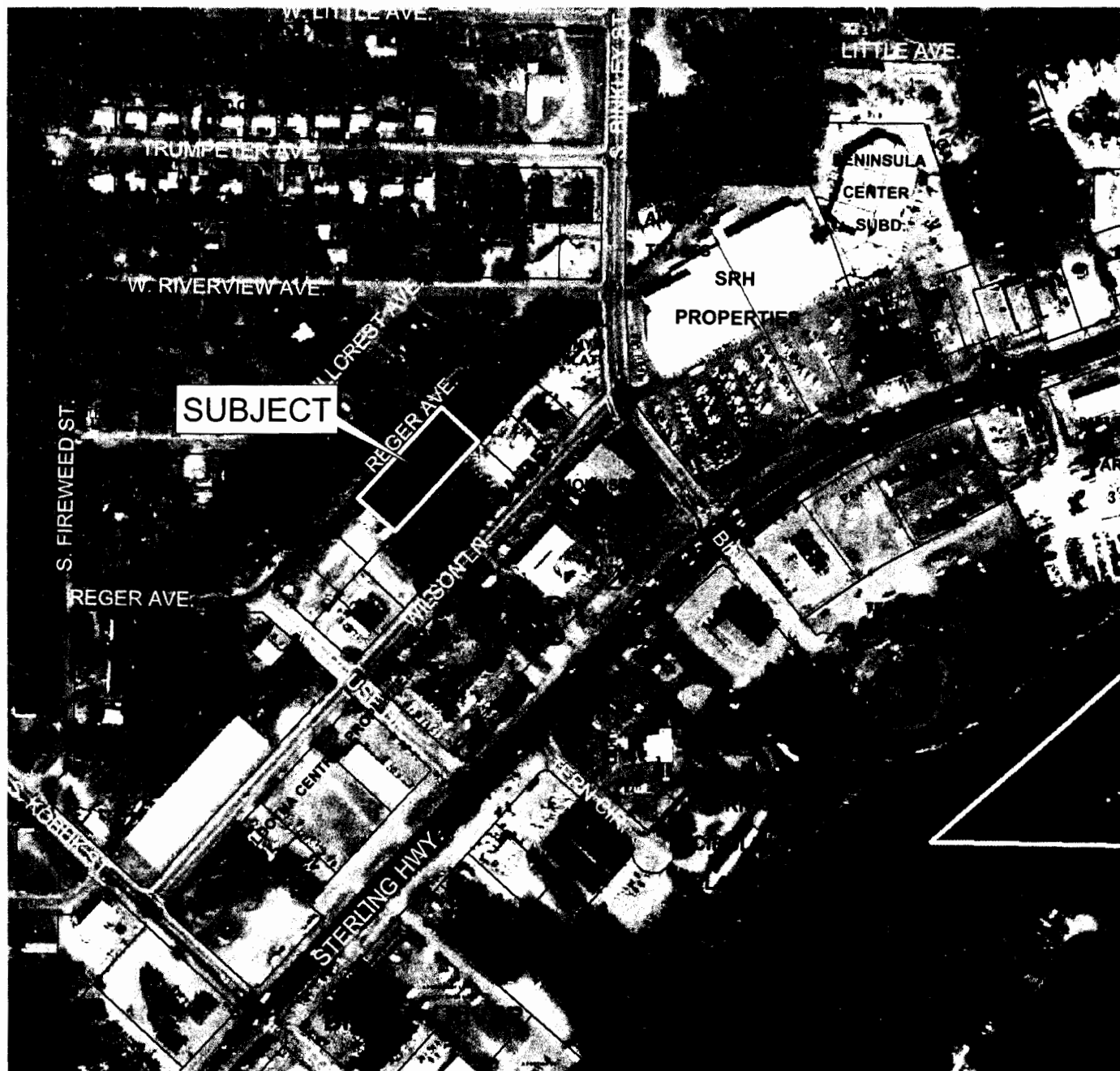
The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by John Beer and Jane Phillips Beer.

Notary Public in and for California

My commission expires: _____

Please return to: GRANTEE

Lots 5, 6, & 7, Block 3, Hillcrest Subdivision, Plat No. K-1514



0 312.5 625 1,250 Feet



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.