

Introduced by: Hudson, Johnson, Elson
Date: February 3, 1976 /Hear: 3/2/76
Vote: Unanimous (135)
Action: Enacted Mar. 2 , 1976
Date: March 2, 1976

KENAI PENINSULA BOROUGH

ORDINANCE 76-4

AN ORDINANCE TO AMEND CHAPTER 21.76 PROVIDING FOR CONDITIONAL USE PERMITS FOR SURFACE EXTRACTION OF NATURAL RESOURCES WITHIN THE KENAI MUNICIPAL DISTRICT.

WHEREAS, the standards set out in KPB 21.76.140 B 2 for issuance of conditional use permits for extraction of natural resources have not been adequate to guide the discretion of the Planning Commission and the Board of Adjustment in making decisions on such matters; and

WHEREAS, the Kenai Advisory Planning and Zoning Commission and the Council for the City of Kenai have developed new, more detailed standards for the issuance of conditional use permits for the surface extraction of natural resources; and

WHEREAS, it is desirable to enact such new standards; Now Therefore,

BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1: KPB 21.76.140 B 2 is hereby amended to read as follows:

2. Development and extraction of natural resources which can be mined underground without substantially disturbing the surface of the land [together with the necessary buildings and apparatus may be permitted] may be permitted together with the necessary buildings and apparatus provided that the following conditions are met:

Sub-paragraphs a and b of KPB 21.76.140 B 2 remain unchanged.

Section 2: KPB 21.76.140 B is hereby amended by adding a new paragraph 3 which shall read in its entirety as follows:

3. Surface extraction of natural resources may be permitted provided that the standards set out in Section 21.76.144 are met and the procedures set out in Sections 21.76.141 to 21.76.148 are followed. The usual procedures for conditional use permits contained in Section 21.76.220 of this chapter shall not be applicable to conditional use permits for the surface extraction of natural resources.

Section 3: KPB 21.76 is hereby amended by adding new sections 21.76.141 to 21.76.148 which shall read in their entirety as follows:

Section 21.76.141 Application for Conditional Use Permit for Surface Extraction of Natural Resources.

An application for a Conditional Use Permit to engage in the surface extraction of natural resources shall be in writing on a form supplied by the City of Kenai and shall be filed with the Administrative Official as defined by Section 21.76.200.A of this Chapter, along with the requisite fees. All applications shall be accompanied by the following documents and information:

1. A site plan, drawn to scale, containing the following:
 - a. Graphic (and legal) description of the proposed area, including dimensions in feet and number of acres or square feet.
 - b. Existing topographical contours with not less than 10 foot contour intervals.
 - c. Proposed Finished topographical contours (when extraction is completed) with not less than 10 foot contour intervals.
 - d. Existing and proposed buildings and structures on the site.
 - e. Principal access points which will be used by trucks, and equipment including ingress and egress points and internal circulation, especially the haul road from the public road to the proposed site of the pit.

- f. Indication of the existing landscape features, including cleared areas, wooded areas, streams, lakes, marsh areas and so forth.
 - g. Location and nature of other operations, if any, which are proposed to take place on the site.
2. A narrative statement containing the following information:
- a. Soil surveys with reference to the average year around water table throughout the entire acreage. Piezometers may be used to determine an average water depth.
 - b. Estimated amount of material to be removed from the site over the entire period of operation.
 - c. Estimated length of time to complete the operation, or, if the pit is to be operated on a continuing basis, a statement to that effect.
 - d. Proposed hours of operation.
 - e. Method of fencing or barricading the petition area to prevent casual access.
 - f. Amount and location of natural screening provided by trees and vegetation, if any, between the property lines and proposed site of pit.
 - g. Plans, if any, to construct artificial screening.
 - h. Description of operations or processing which will take place on the site during and after the time the material is extracted.
 - i. Plan or program of regrading and shaping the land for future use.
 - j. Method of back-filling and/or replacing top soil.
 - k. Proposed future use of the land after resources extracted, including a proposed development plan showing location of houses, parks, lakes, etc.

1. Other information which may pertain to the particular site.
3. Proof that the applicant has obtained or is eligible to obtain the necessary licenses required by State or Federal agencies.
4. Proof that the applicant is the owner of the subject property.

Section 21.76.142 Review of Application for Conditional Use Permit for Surface Extraction

The Administrative Official shall place the application for conditional use permit on the agenda of the Kenai Advisory Planning and Zoning Commission (hereinafter called "Kenai Planning Commission") for the first meeting of the Commission for which it is eligible based on the date of filing with the Secretary and the applicable rules of the Commission at that time. At that meeting the Commission shall review the application and accompanying information and shall determine if it meets the requirements of Section 20.30.151 hereof. If the requirements have not been met the Commission shall specify the deficiencies therein and shall request that a supplement to the application be filed. The Commission may, in its discretion, request additional information pertinent to the particular site to be supplied by the applicant. Such additional information shall not be requested unless it can be obtained by the applicant at a reasonable cost. The issue of reasonable cost may be appealed by the applicant directly to the Board of Adjustment before further proceeding by the Kenai Planning Commission.

Section 20.30.153 Hearing on Application for Conditional Use Permit for Surface Extraction.

The Kenai Planning Commission shall hold a public hearing on the application at the first regular meeting following the meeting at which their initial review was made, if no additional information is requested, or, if additional information is requested, at the first meeting following a determination by the Commission that the supplement to the application contains the requested information. Official notice of the date of hearing shall be mailed to the applicant not less than 10 days before the date of the hearing by certified mail. In addition the Kenai Planning Commission shall cause to be sent to each owner of property within a distance of 300 feet of the exterior boundary of the lot or parcel described in such

application notice of the time and place of the public hearing. Such notice shall be sent by certified mail and shall contain a description of the property, a map showing the approximate location of the proposed surface extraction, and a statement as to the nature of the proposed extraction operation. For the purpose of this section, "property owner" means that owner shown on the latest tax assessment roll.

Section 21.76.144 Issuance of Conditional Use Permit for Surface Extraction.

A. On the basis of the application with accompanying information, any supplemental information filed, and such information as may be presented at the public hearing provided for in Section 21.76.143, the Kenai Planning Commission shall make a determination as to whether each of the following requirements has been met:

1. The application is in substantial compliance with the requirements of Section 21.76.141 of this chapter.

2. The boundaries of the proposed excavation at its greatest extent, including back slopes, are at least 200 feet from any road or public right of way and at least 150 feet from other surrounding property lines.

3. The buffer strips between the excavation site and roadways and property lines contain sufficient natural screening to obscure the entire excavation from sight of roadways and inhabited areas. If there is not sufficient natural screening, site plan must provide for artificial screening.

4. Site plan provides that back slopes be a minimum of a 2:1 slope, except for the contiguous working face.

5. Site plan does not provide for excavation below the water table except where a reasonable method of drainage is available at the particular site or where proposed future development plan provides for a lake on the site of the excavation.

6. If excavation is to be below the water table and site is likely to endanger the public safety, the site plan provides for fencing of the work area.

7. Proposed use of land after extraction is completed is feasible and realistic and is a use permitted in the zone in which the property is located.

8. The extraction does not destroy the land for the purposes for which it is zoned.

9. The need for the particular natural resource within the City of Kenai outweighs any detrimental effects the operation may have on surrounding property owners.

10. Applicant is the owner of the subject property.

If the Kenai Planning Commission determines that all requirements have been met, the Commission shall direct the Administrative Official to issue a conditional use permit to the applicant. The permit shall be issued for an indefinite period and shall be subject to the provisions of Sections 21.76.145 through 21.76.148 hereof and shall so state.

B. The permit may be expressly conditioned by the Commission upon the erection of artificial screening. If the permit is so conditioned, the Planning Commission shall specify the type of screening to be erected. Such screening shall obscure the entire extraction operation from view from any public roadway or inhabited area and shall be compatible with the general character of the neighborhood. No extraction of resources can take place until the artificial screening provided for has been erected and approved by the Kenai Planning Commission.

C. Appeals from decisions of the Kenai Planning Commission hereunder shall be made in accordance with the provisions of 21.76.230-240 of this Chapter.

Section 21.76.143 Operation by Surface Extraction Permit Holders

During the period of the conditional use permit the permit holder shall comply with the following provisions:

1. The pit shall be operated substantially in accordance with the site plan and statements that accompanied the application for conditional use permit, as such may be amended from time to time in accordance with Section 21.76.148. of this Chapter.
2. The permit holder shall submit a yearly report to the Administrative Official within thirty days following the anniversary of the issuance of the conditional use permit. Such report shall show the area which has been cleared during the previous year, the current working area and any area which has been reclaimed or partially reclaimed, and shall state the quantity of material which was actually removed during the preceding work year. The report shall also contain projections of the same information for the next work year.
3. No part of the extraction operation is visible from public roadways or inhabited area.

Section 21.76.146 Yearly Review of Operation of Surface Extraction

The Administrative Official shall review the operations of the permit holder each year within sixty days following the anniversary of the issuance of the conditional use permit to determine whether such permit holder is in compliance with the provisions of Section 21.76.145. He shall compile a report based on his review and shall submit his report along with the report of the permit holder under Section 21.76.145 to the Kenai Planning Commission.

Section 21.76.147 Termination of Surface Extraction Permit by Administrative Official

A. If the Administrative Official determines, based on his yearly review or any other investigation undertaken by him, that the conduct of

the operation is not in compliance with the provisions of 21.76.145, he may revoke the permit. He shall not revoke the permit, however, unless and until the permit holder has been notified of the violation and given a reasonable opportunity to correct it. In the event that a pit is unused for a period of three years, the Administrative Official may revoke the Conditional Use Permit.

B. Appeals from decisions of the Administrative Official hereunder shall be made in accordance with the provisions of Sections 21.76.230 -240 of this Chapter.

Section 21.76.148 Amendment or Transfer of Surface Extraction Permit

A. No conditional use permit issued hereunder shall be transferred until the proposed transferee has made application for transfer in writing filed with the Administrative Official, which application shall state that he intends to be bound by the plan and statements contained in the application of the permit holder or shall contain the amendments to the plan his proposed operation would mandate. The Commission shall approve the application for transfer and in so doing amend the site plan and statements if such amendments as are contained in the application for transfer would have been approved had they been contained in the original application.

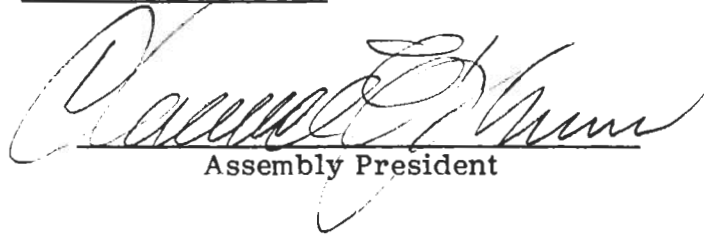
B. A permit holder may amend his site plan and statements by filing an application for amendment in writing with the Administrative Official. The Commission shall approve the application for amendment if the original application would have been approved had it contained the provisions of the application for amendment.

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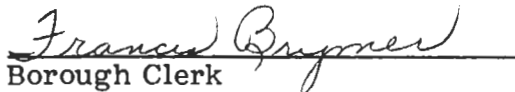
Section 4: KPB 21.76.220 A is hereby amended to read as follows:

A. Conditional Use Permits. There are some uses which are compatible with principal uses in some zones if certain conditions are met. Most of these conditional uses have been listed in Section 21.76.140. The Planning Commission shall permit these uses if the conditions and requirements listed in this chapter are met and if the procedures provided for applicable law are followed. The provisions of this section shall not apply to application for conditional use permits for the surface extraction of natural resources.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
THIS 2 DAY OF March, 1976.


Assembly President

ATTEST:


Borough Clerk

