

Introduced by: Mayor, at request  
of Planning Commission  
Date: Feb. 17, 1981  
Hearing: March 3, 1981  
Vote: 15 Yes, 1 No  
Action: Enacted

KENAI PENINSULA BOROUGH

ORDINANCE 80-64

(AMENDED)

PROVIDING FOR THE CONTRACT REZONING OF CERTAIN PARCELS OF REAL PROPERTY LYING WITHIN BAYVIEW SUBDIVISION, CITY OF HOMER.

WHEREAS, the owners of certain parcels of real property lying within the Homer Municipal District have requested that parcels be zoned by contract from "Commercial" use to "Industrial" use, so long as the provisions of an agreement between the Borough, the City of Homer and the owners are faithfully performed; and

WHEREAS, Chapter 21.63 of the Borough Code of Ordinances provides for zoning by contract in the Homer Municipal District; and

WHEREAS, the lands in question are described as Lots 165 B-1 and 165 B-2 of Bayview Subdivision, City of Homer and lie at the intersection of the Homer Spit Road and Ocean Drive, City of Homer; and

WHEREAS, the Homer Advisory Planning Commission, after public notice and hearing, approved the request for contract zoning of these lots, subject to execution of a contract embodying the underlying agreement between the municipalities and the owners; and

WHEREAS, the Homer Advisory Planning Commission found that the proposed land uses compatible with development in adjacent zones, that existing public facilities, services and utilities can accommodate the proposed use, and that the proposed contract zoning does not constitute "spot zoning"; and

WHEREAS, the Borough Planning Commission, after consideration of the proposed contract and the recommendations of the Homer Advisory Planning Commission, upheld the recommendations of the Homer Advisory Planning Commission and recommended that the Assembly zone the land by contract from "Commercial" District to "Industrial" District; and

Kenai Peninsula Borough  
Ordinance 80-64  
Page 1 of 2 Pages.

WHEREAS, the proposed use of the property will be beneficial to the Homer Municipal District if the conditions of the proposed contract between the municipalities and the owners are faithfully performed;

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

Section 1. That the following real property shall be zoned by contract to permit an "Industrial" use in the "Commercial" District, subject to execution within ninety (90) days of the enactment of this Ordinance of a contract between the Borough, the City of Homer, and all owners of the parcels to be zoned. The contract shall be executed upon terms substantially similar to the proposed contract annexed to this Ordinance as Attachment A. The parcels to be zoned by this contract are described as:

Lot 165 B-1 and Lot 165 B-2 of Bayview Subdivision, City of Homer, Section 21, T6S, R13W, S.M., Alaska, plat #128 Homer Recording District.

Section 2. That the parcels authorized to be zoned by contract to "Industrial" usage shall be subject to all conditions and restrictions set forth in the executed contract, and the Borough Assembly reserves the right to rescind the contract zoning upon a finding by the Borough Planning Commission that a breach of contract has occurred. In that event, the parcels affected by this Ordinance shall immediately revert to the "Commercial" zoning district and the nonconforming uses created by revocation of this contract zoning shall be abated immediately.

Section 3. That this Ordinance takes effect immediately upon its enactment provided, however, that it shall be deemed repealed if the contract required by Section 1 is not fully executed by all of the owners within ninety (90) days after enactment of the original Ordinance 80-64.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH  
ON THIS 3rd DAY OF March, 1981.

Paul A. Fischer  
Paul Fischer, Assembly President

ATTEST:

Francis Bryner  
Borough Clerk

Kena Peninsula Borough  
Ordinance 80-64  
Page 2 of 2 Pages.

ATTACHMENT A  
TO  
ORDINANCE 80-64

CONTRACT

THIS CONTRACT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1981, by and between ABL INVESTMENTS, CAMPFORD FISHERIES, the KENAI PENINSULA BOROUGH, and the CITY HOMER,

WHEREAS, Chapter 21.63 of the Kenai Peninsula Borough Ordinances provides for Contract Zoning in the Homer District; and

WHEREAS, CAMPFORD has submitted a petition for contract zoning to the Homer Advisory Planning Commission; and

WHEREAS, the Homer Advisory Planning Commission has approved the petition and has made the following specified Findings of Fact pertaining to the requested usage:

1. The land use proposed by petitioners can be developed in a manner to be compatible with development in adjacent zoning districts.
2. Existing public facilities, services and utilities can accommodate the proposed use without any detrimental effect on adjacent zoning districts.
3. The rezoning to be accomplished under the terms and conditions of the CAMPFORD petition does not constitute "spot zoning".
4. Rezoning to allow the use proposed by petitioners would permit other uses which would not be compatible with the adjacent land use.

NOW, THEREFORE, CAMPFORD, BOROUGH and CITY agree as hereinafter set forth:

1. USES PERMITTED. The following uses shall be permitted under this contract, for the subject property:

(a) Freezing, handling, processing and storage of various seafood products including salmon, crab, shrimp, halibut, cod and other bottomfish and herring, with the exception of herring roe, the processing of which is specifically prohibited.

(b) Retail sales of seafood products to be located on Lot 165 B-2, BAYVIEW SUBDIVISION only.

No uses or construction upon the subject property shall be permitted, except as provided in this contract, unless prior approval and all necessary building permits are obtained by CAMPFORD from the City.

2. TIME SCHEDULE. CAMPFORD has caused to be built a metal building 60' x 100'. This building, completed in April, 1980, will house a facility to include the uses set forth in paragraph 1 of this contract. The project will be completed in accordance with the following schedule:

(a) Building is complete.

(b) Processing equipment to be installed in place by September 1, 1980.

(c) Paving and fencing to be accomplished by October 1, 1980.

(c) Extensions of time may be granted in writing by the City Manager with a review of such extension by the

Advisory Planning Commission either as to the commencement or completion dates. A request for an extension must be made by CAMPFORD at least thirty (30) days prior to the expiration of the initial completion date.

(e) Failure of CAMPFORD to complete the project within the foregoing time period or extensions thereof shall result in the automatic termination of the project re-zoning, and the zoning classification shall revert to that which existed prior to the approval of the CAMPFORD petition.

3. REPORTS AND CERTIFICATES REQUIRED: COMPLIANCE WITH EXISTING LAW. The developers shall submit to the

City copies of the following reports and/or certificates of compliance:

- (a) Fire Marshal inspection.
- (b) Plumbing inspection.
- (c) Parking, drainage and driveway plans.
- (d) Engineering report on waste disposal system confirming system will work as installed.
- (e) Sewer and water approval reports by state and city.
- (f) As-built plans.
- (g) Letter confirming availability of waste disposal site in Seward.

CAMPFORD further agrees to construct the project in accordance with all applicable federal, state, borough and municipal laws and ordinances.

4. PERFORMANCE STANDARDS. CAMPFORD shall comply with the following performance standards, the intent of which is to

avoid creation of nuisances or unsanitary conditions:

(A) Air Pollution.

1. Smoke: The emission of any air contaminant greater than 20 percent opacity from any chimney, stack, vent, opening or process shall not be permitted.
2. Odors: The emission of odors in such quantities as to be objectionable to any person with normal sensitivities at any point beyond the property line is prohibited. Noxious, toxic and corrosive gas emissions shall be treated by full control techniques.
3. Particulate Matter: All facilities will be designed and operated with the highest and best emission control equipment practical.

Firms responsible for a suspected source of air pollution upon the request of the City, shall provide quantitative and qualitative information regarding the discharge that will adequately and accurately describe operation conditions. The firm shall be prepared to have its plans and specifications reviewed by the State Department of Environmental Conservation prior to final approval of the plans by the City.

(B) Noise.

All noise shall be muffled so as not to be objectionable due to intermittance, beat, frequency, or shrillness. Off-site noise shall not exceed 50 decibels

between 10:00 p.m. and 6:00 a.m. and 80 decibels at all other times.

(C) Vibration.

No vibration which is discernible by a person of normal sensitivities without instruments other than that caused by highway vehicles or aircraft shall be permitted beyond the property line of the use concerned.

(D) Waste Material.

All materials, including wastes, shall be stored and all properties maintained in a manner which will not attract or aid the propagation of insects, birds or rodents or in any way create a health hazard.

(E) Water and Solid Waste Pollution.

No liquid or solid waste disposal will be allowed on site or into adjacent drainage ditches, storm sewers, sloughs or other waterways. The discharge of treated or untreated sewage or wastes into the sanitary sewer systems shall conform to the codes and ordinances of the City.

(F) Materials and Equipment Storage.

The open storage of materials and equipment is permitted under the following conditions:

1. If storage abuts a residential use or district, the area must be screened from view by a wall, fence,

or other sight-obscuring material. No materials or equipment shall project above the screening.

2. All materials including wastes shall be stored and all grounds maintained in a manner that will not attract or aid the propagation of insects, birds, or rodents, or create a health hazard.

(G) Lighting.

Exterior lighting shall be of such intensity as to adequately illuminate the project site without being harsh or offensive to adjoining residential areas. Illumination shall not exceed .2 ft. candle at any point on the outer perimeter of the property as measured at the property line.

(H) Paving, Fencing, and Screening.

CAMPFORD shall pave parking and access areas on the project site. Fencing along adjoining property lines shall also be provided, and the Advisory Planning Commission shall give prior approval to such screening as may be architecturally adequate and proper.

5. APPROVAL OF CONSTRUCTION PLANS. The building has been completed in accordance with the plans submitted in conjunction with the City of Homer building permit #79-9-64. The approved plans are by this reference specifically incor-



porated in this contract as though fully set forth therein and compliance with said plans is made an express condition of this contract.

6. ENFORCEMENT. CAMPFORD agrees that enforcement of any zoning requirements shall be by single service by certified mail or by personal delivery upon a local agent designated for that purpose. The local agent is

Price and Yoshida  
Attorneys at Law  
Bartlett Street  
Box 176  
Homer, Alaska 99603

CAMPFORD shall likewise serve any response, notices, etc. upon the City by certified mail.

7. COVENANTS TO RUN WITH THE LAND. It is expressly understood and agreed that all conditions subject to a zoning reclassification (see paragraph 10 - Future Re-Zoning), covenants and restrictions contained in this contract shall govern the use of the re-zoned property and shall run with the land to all subsequent owners. The parties agree that any future deeds or other documents of conveyance shall incorporate such covenants and conditions by reference.

Upon execution by all parties, the original of this contract shall be kept by the City Manager for the purpose of recording after passage by the Borough Assembly of the proposed re-zoning. If not approved the contract shall be returned to CAMPFORD without recording.

8. NON-OBJECTION TO FUTURE PUBLIC IMPROVEMENT DISTRICTS.

CAMPFORD agrees that it will not object to or in any way protest the future formation of any public improvement district that may encompass the re-zoned property.

9. ADMINISTRATION AND ENFORCEMENT AUTHORITY. The City shall have the authority to administer and enforce all terms, conditions and covenants in this contract zoning agreement, and of any other applicable zoning law.

Notice of any violation shall include a statement of the violation, procedures for remedy, and the time in which such remedy shall be achieved. Such time limit shall be determined by the City Manager as the exigencies of the situation warrant but in no case shall the time limit be less than twenty-four (24) hours.

If a violation is not remedied within the time specified, the City may take any step deemed appropriate to correct the violation. Such action may include entering onto the property to make repairs, to remove a violation or to terminate water service until the violation is remedied. Any costs incurred by the City to correct a violation shall be paid by CAMPFORD.

10. FUTURE RE-ZONING. If the subject property is re-zoned at some future date to a classification wherein the uses described in this contract are permitted outright,

the covenants and terms and conditions of this contract zoning agreement shall become subject to such re-zoning classification.

11. REAL PROPERTY SUBJECT TO THIS AGREEMENT. Lots 165 B-1 and 165 B-2, Bayview Subdivision as shown in Plat 79-128 filed in the Homer Recording District are the subject of this agreement and of the contract zoning.

THIS AGREEMENT shall be binding upon and inure to the benefits of the parties, their heirs, assigns and successors in interest.

IN WITNESS WHEREOF, the parties have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 1980.

ABL INVESTMENTS

CAMPFORD FISHERIES

By: \_\_\_\_\_  
C. E. Abeldgaard

By: \_\_\_\_\_

By: \_\_\_\_\_  
Robert L. Stewart

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Lloyd V. Owen

CITY OF HOMER

ATTEST: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Larry C. Farnen  
City Manager

ATTEST: \_\_\_\_\_  
Borough Clerk

KENAI PENINSULA BOROUGH

By: \_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY

By: \_\_\_\_\_  
Borough Attorney

STATE OF ALASKA )  
 )ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_  
1981, before me, the undersigned Notary Public in and for Alaska,  
duly commissioned and sworn as such, personally appeared  
\_\_\_\_\_, having identified himself to me as  
the duly designated and authorized officer of CAMPFORD FISHERIES,  
acknowledged before me the execution of this instrument as his  
free and voluntary act for the uses and purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
my notarial seal the day and year in this certificate first above  
written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA )  
 )ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_  
1981, before me, the undersigned Notary Public, in and for Alaska,  
duly commissioned and sworn as such, personally appeared  
LARRY C. FARNEN, known to me to be the City Manager of the  
CITY OF HOMER, ALASKA, and he acknowledged to me the execution of  
the foregoing CAMPFORD FISHERIES contract for and on behalf of the  
City of Homer, Alaska, and further acknowledged to me that said  
instrument was signed and sealed by him on behalf of the City of

Homer, Alaska, pursuant to authorization duly adopted by the  
Common Council of Homer, Alaska.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my notarial seal the day and year in this certificate  
first above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_  
1981, before me, the undersigned Notary Public, in and for Alaska,  
duly commissioned and sworn as such, personally appeared  
\_\_\_\_\_, known to me to be the MAYOR of the  
Kenai Peninsula Borough, and he acknowledged to me the execution of  
the foregoing CAMPFORD FISHERIES contract for and on behalf of  
the Kenai Peninsula Borough, pursuant to authorization granted  
to him by the Borough Assembly in Ordinance 80-64.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_,  
1981, \_\_\_\_\_ appeared before me, a duly  
authorized Notary Public in and for the State of Alaska and  
acknowledged the voluntary execution of the foregoing CAMPFORD  
FISHERIES contract for the uses and purposes set forth above.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT )

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FISHERIES contract for the uses and purposes set forth above.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT )

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FISHERIES contract for the uses and purposes set forth above.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_