

Introduced by:	Dimmick
Date:	March 1, 1983
Hearing:	April 5, 1983
Action:	Failed to be set for Hear
Vote:	

KENAI PENINSULA BOROUGH

ORDINANCE 83-17

PROVIDING FOR DISPOSAL OF CERTAIN PARCELS OF BOROUGH SELECTED LANDS BY NEGOTIATED SALE

WHEREAS, the Borough has obtained title pursuant to the Borough Land Selection Act to certain lands suitable for conveyance to private parties; and

WHEREAS, the Borough has received a number of requests for negotiated sales of Borough selected property; and

WHEREAS, the Assembly has found it difficult to make arbitrary decisions in awarding special privileges in the sale of Borough lands to a few individuals with very broad criteria; and

WHEREAS, the current process for the disposition of Borough selected land on a negotiated sale basis needs adjustment;

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

Section 1. That a new Section 17.04.400 shall be added to the KPB Code of Ordinances entitled Negotiated Land Sales.
17.04.400 - Authority. Notwithstanding any other provisions of the Borough Code of Ordinances, this ordinance shall apply to negotiated land sales.

Section 2. 17.04.410 - Notice. In January of each year the Mayor shall cause a notice to the public to be published once a week for four (4) weeks in one or more newspapers of general circulation within the Central Peninsula, Homer and Seward areas of the Kenai Peninsula Borough the intent to dispose of Borough selected lands under the terms and conditions of this ordinance. The public notice shall contain the following information:

- A. Who may apply.
- B. The manner in which to apply.
- C. The last date for applications to be received.

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D. Where to apply.

E. The prescribed filing fee of \$150.00 to cover advertising and other related fees.

Section 3. 17.04.420 - Public Hearings. That within 90 days after the closing date for filing of applications, the Mayor shall transmit to the Planning Commission all applications for comment and public hearing. The Planning Commission shall hold one public hearing on the applications for negotiated land sale within 30 days after the Mayor's transmittal of the applications and after 10 days' notice to the public in one or more newspapers of general circulation in the Central Peninsula, Homer and Seward areas of the Borough. The applicants will be notified by certified mail of the public hearing. The Planning Commission shall determine if the applications meet all of the specified minimum requirements and may place additional conditions as deemed necessary in the Borough's best interest. Specific reasons for granting or denying the applications shall be clearly stated in the minutes of the Planning Commission proceedings.

Section 4. 17.04.430 - Minimum qualification requirements. The minimum requirements for qualifying for a negotiated land sale are:

- A. That the applicant notified the Borough in the prescribed manner as set forth in Section 1(A) through (E) and within the specified time as delineated in the public notice.
- B. That one or more of the following conditions exist and will be verified by at least three notarized affidavits if necessary or required.
 - 1. The applicant must clearly show a valid claim to the parcel under one or more of the following conditions:
 - (a) That sale of the land could adversely affect access or decrease land value of applicant's present land or fish site. A fish site is defined as a one-family or partnership location and not the number of nets fished; provided, however, that a negotiated land sale to accommodate a fish site shall not exceed two acres, unless justified by topographical data or purposes of access and the holder of the fish site does not own any real property within one mile of the site.

(b) Prior or existing state lease.

2. The land applied for is a land-locked parcel or remnant parcel created by erosion or the taking of land for highway right-of-way purposes.
- C. The sale of the negotiated lands will not deny access to other private or Borough lands.
- D. The sale is in the best interest of the Borough.
- E. The applicant's previous and current years' taxes are paid in full.
- F. The applicant is 18 years of age or older and is currently a resident of the State of Alaska.

Section 5. 17.04.440 - Planning Commission recommendation
The Planning Commission shall submit its recommendations to the Assembly within 15 days after holding public hearing.

Section 6. 17.94.450 - Assembly authorization -- Terms and conditions. The Assembly may authorize the Mayor to dispose of any or all of the negotiated sale lands upon the following terms and conditions:

- A. All sales will be made by immediate cash payment in full, or by [REAL ESTATE CONTRACT] promissory note secured by a deed of trust with those persons who have applied and met the requirements of Section 2 above. The sale shall be at 100% of the current year's assessed value of the parcel as determined by the Borough Assessor. The Borough shall make no representations as to actual market value of the parcel at the time of sale and all parcels shall be valued on the basis of the estimated acreage of the parcel as shown by the Borough Assessor's records.
- B. The eligible purchaser shall be required to deposit with the Finance Director the necessary down payment and to sign the appropriate real estate contract for any tracts required by Subsection (K) or (N) to be surveyed and platted or replatted pending conveyance, or the deed of trust and promissory note for any tract not requiring platting or replatting as prepared by the Borough within 30 calendar days after notification of eligibility by certified mail or his or her rights shall be forfeited. The filing of an application for purchase shall not in any way vest any right in the applicant to the land or to the use of the land. Any such unauthorized use shall constitute a trespass.

- C. The eligible purchaser of any parcel must deposit with the Borough Finance Director a downpayment in the form of cash, certified check or cashier's check, equal to at least 15% of the total purchase price of the parcel. The principal balance shall be paid in 10 equal annual installments on balances up to \$30,000, and in 20 equal annual installments on balances of \$30,000 or more. Simple interest at the annual rate of 10% will accrue on the unpaid balance and shall be paid annually with principal payment.
- D. The Borough will cause the [PROPER DOCUMENTS] warranty deed and deed of trust to be recorded in the appropriate recording district of the recorder's office at no cost to the Borough. The [REAL ESTATE CONTRACT] warranty deed, promissory note and deed of trust shall be made out in the name of the applicant as filed and no substitutions, alternations or changes will be permitted. In the event of a default for non-payment or other reason, the interest of the purchaser shall be forfeited.
- E. Upon final payment of all sums due under the purchase, a [WARRANTY] deed of reconveyance [SUBJECT TO RIGHTS AND RESERVATIONS OF RECORD] shall be conveyed by the [BOROUGH] title company to the purchaser.
- F. Timber and gravel resources may only be utilized on the parcel on which they are located until the payment in full for the parcel has been made.
- G. All parcels are sold "as is" and the [PURCHASER SHALL] warranty deed to the purchaser shall be subject to purchasers obligation to ascertain the condition of the site and the extent of any easements, encroachments, alterations, or infringements upon the parcel.
- H. The Borough shall reserve the right to reserve monuments, historical sites, graveyards, cemeteries and other public interest memorabilia and to adjust the sales price and legal description of the parcel.
- I. The Borough will make a reasonable effort to disclose all types of information available to the Borough to assist interested persons in determining soil conditions, wetlands, flood plains, easements and other encroachments, and in the event that certain other rights to the parcel have been previously granted by the Borough or the state of Alaska, or any previous owner, then the sale of the parcel shall be made subject to them. The purchaser shall be charged with putting himself on notice of the possibility

that other pre-existing rights may exist and that further inquiry is required, and the warranty deed shall be subject to those limitations.

- J. The Borough shall not permit the subdivision of any sale land upon which there exists an unpaid principal balance, and such condition shall be included in the deed of trust.
- K. The Borough may, as a condition of sale, require the combining of parcels to prevent the presence of substandard lots. In the case of an application for a larger parcel, the Borough may subdivide and sell to an applicant a portion of any parcel of land qualifying for negotiated sale if it is deemed to be in the public interest, such costs to be borne equally by the Borough and the applicant(s).
- L. In the event that more than one applicant meets all of the qualifications for a negotiated sale of the same parcel, the Borough Assembly shall decide the most equitable manner for disposal of the parcel. This may include but shall not be limited to subdivision of the parcel or sealed bid by the individuals involved.
- M. The Borough will not be liable for the surveying and platting of any properties disposed of or for the identification and provision of access to the parcels, it being expressly understood that these are responsibilities of the prospective and actual purchaser.
- N. To alleviate access problems, facilitate exchanges or other conditions of sale, the eligible purchaser may be required to plat the sale parcel in accordance with KPB Code of Ordinances Chapter 20 within one year of approval of sale by the Assembly.
- O. Real estate contracts shall not be recorded and shall provide for automatic termination within one year of Assembly approval of the sale. At any time prior to the expiration of that period the purchaser may present the appropriate approved plat and sign the promissory note and deed of trust and receive the appropriate warranty deed. All payments made pursuant to contract shall be held in trust until the signing of the deed or the contract termination date. In no event the contract is terminated for noncompliance all payments received from that person shall be returned less actual costs incurred by the Borough.

Section 7. Until such time as the Borough receives its entire land entitlement from the State of Alaska, the Mayor and Planning Commission may evaluate requests for negotiated sales of Borough lands.

Section 8. That this ordinance takes effect upon its adoption.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 1983.

Donald E. McCloud, Assembly President

ATTEST:

Borough Clerk

