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Introduced by: McGahan,
Date: July 5, 1983
Hearing: Aug. 2, 1983
Vote:
Action: *See below*

KENAI PENINSULA BOROUGH

ORDINANCE 83-53

AMENDING KPB 20.04.040 A. TO PROVIDE FOR A WAIVER OF SUBDIVISION PLANNING REQUIREMENTS ACCORDING TO THE TERMS OF AS 29.33.170 IN COMPLIANCE WITH THE SUPREME COURT DECISION IN KENAI PENINSULA BOROUGH VS. KENAI PENINSULA BOARD OF REALTORS, INC., ET AL.

WHEREAS, KPB 20.04.040 A. previously provided "Subdivisions of land outside limits of first class cities into aliquot parts no one of which is less than 40 acres are hereby approved and no presentation to the commission is required"; and

WHEREAS, this provision was amended by Kenai Peninsula Borough Ordinance 81-28, enacted May 19, 1981, to provide "Subdivisions of land into aliquot parts of 10 acres or more are hereby approved and no presentation to the commission is required. Within the limits of first class cities such subdivisions may be prohibited by ordinance."; and

WHEREAS, the Supreme Court of the State of Alaska, in Kenai Peninsula Borough the Kenai Peninsula Board of Realtors, Inc., et al, (opinion No. 2576 decided on October 15, 1982) that the Kenai Peninsula Borough Ordinance 81-28 was void because it directly conflicted with AS 40.15.010 requiring that all subdivisions be submitted for approval to the planning authority and also conflicting with AS 29.33.170 that permitted waiver, on an individual basis, of the platting requirement when specified findings are made by the platting authority because the ordinance provided for dispensing with any submission of the subdivision to the planning authority for approval or waiver; and

WHEREAS, this decision would also make invalid KPB 20.04.040 A. as it existed prior to amendment by Ordinance 81-28; and

WHEREAS, it is desirable to bring KPB 20.04.040 A. into compliance with the Alaska Statutes as interpreted by the Alaska Supreme Court and to provide for waivers as required or permitted under Alaska Statutes;

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

Section 1. That KPB 20.04.040 A. and all its subsections are hereby repealed and a new KPB 20.04.040 A. is hereby enacted which shall read as follows:

A. Any subdivision for which the commission has waived preparation, submission for approval, and

recording of plat pursuant to the terms of
AS 29.33.170.

1. The following certificate of waiver shall be placed on conveyances for which platting has been waived pursuant to this section:

Pursuant to the terms of AS 29.33.170, the Kenai Peninsula Borough Planning Commission, acting as the Platting Board, on _____, 198__ waived the preparation, submission for approval, and recording of a plat with respect to the subdivision effected by this conveyance and approved its recording.

Chairperson

2. The Borough Administration will prepare forms for completion by, and use of, parties seeking such a waiver in order to advise the Platting Board of the circumstances which require a waiver under the provision of AS 29.33.170(a) or which would make reasonable and equitable a grant of waiver under the provisions of AS 29.33.170(b).

Section 2. That this ordinance shall take effect immediately upon its enactment.

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

Donald L. McCloud, Assembly President

ATTEST:

Borough Clerk