

Introduced by: Policies &
Procedures Committee
Date: March 19, 1991
Hearing: April 16, 1991
Vote: 11 YES, 3 NO
Action: ENACTED

KENAI PENINSULA BOROUGH

ORDINANCE 91-12 (SUBSTITUTE)

AMENDING KPB 21.12 TO PROVIDE WRITTEN PROCEDURES FOR FILING COMPLAINTS, HOLDING HEARINGS BEFORE THE PLANNING COMMISSION, AND CONDUCTING APPEALS

WHEREAS, there are currently no established written procedures for initiating a complaint under KPB 21.12, or for handling the initial determination, or to govern the proceedings before the Planning Commission or the Board of Adjustment; and

WHEREAS, procedures are desirable for the benefit of the general public, the Planning Department, the Planning Commission, and the Assembly sitting as a Board of Adjustment; and

WHEREAS, the Policies and Procedures Committee, the Planning Commission and members of the public have participated in a work session to streamline the procedures and resolve the problems in the originally proposed Ordinance 91-12 and have reached a consensus for changes to be presented to the assembly; and

WHEREAS, these recommended changes have been incorporated in this substitute;

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

Section 1. That KPB 21.12 be amended by adding new sections to read as follows:

21.12.030 Complaint--Initiation. A. A complaint initiated under KPB 21.12 shall be in writing on forms provided by the Mayor and shall be signed by the complaining party or parties, and must:

1. State the activity that is the subject of the complaint; and
2. State or identify what aspects of the activity are claimed to be noxious, injurious or hazardous under the ordinance, and why. Complaints that do not identify the basis of the complaint with sufficient specificity or which consist of general allegations that an activity violates the ordinance without

identifying the claimed noxious, injurious or hazardous aspects will be deemed insufficient and will be rejected and not considered.

B. The complaint shall be filed with the Borough Planning Department.

21.12.040 Investigation--Initial Determination. A. The Planning Director shall cause an investigation of the complaint to be conducted and the preparation of a summary report of the investigation to be made, in writing.

B. After consideration of the summary report, the Planning Director shall make an initial written determination of probable merit. The decision shall be made within 20 days of the receipt of the complaint. A copy of the written determination shall be mailed to the complainants and a copy shall be included in the Planning Commission meeting packet as informational material.

1. If the Planning Director determines that the complaint does appear to have a meritorious basis and that the complained of activity may be noxious, injurious or hazardous, the matter shall be scheduled for public hearing upon payment of any applicable fees as may be established or authorized by the Assembly.
2. If the Planning Director determines that the complaint does not have sufficient merit or that it clearly does not involve noxious, injurious or hazardous activities, the complaint will be denied and the reasons will be set forth in the written denial. This denial will be mailed to the complainants by certified mail to the address provided on the complaint form.
 - a. A summary denial of merit may be appealed to the Planning Commission by any complainant of record by filing a notice of appeal with the Planning Director within 20 days of the date the decision was mailed.
 - b. The appeal of a summary denial of merit shall be on the record and shall be heard at a regularly scheduled Planning Commission meeting, however, public testimony shall not be permitted. The complainants may argue their perception of the law or public policy which they believe requires a hearing of the complaint by the Planning Commission.

- c. If the Planning Commission determines that the complaint appears to have a meritorious basis and that the complained of activity may be noxious, injurious or hazardous, the matter shall be scheduled for hearing upon payment of any applicable fees as may be established or authorized by the Assembly.

21.12.050 Planning Commission Hearing--Notice. A. Notice of the time and location of the hearing shall be given by regular mail to:

1. The complainants;
2. All persons named as respondents and any other persons the Planning Director reasonably believes may or should be considered to be respondents; and
3. All property owners of record within the Borough within a one-half mile radius from the legal boundary of the property on which the activity complained of is or will occur.

B. Planning Commission hearings shall be held not less than 20 days nor more than 40 days after the date of the decision to hold a hearing.

C. Notice of the hearing must be mailed at least 20 calendar days prior to the scheduled hearing.

21.12.060 Planning Commission Hearing--Procedure. A. At a hearing before the Planning Commission on a complaint brought under this chapter, presentations shall be made in the following order by:

1. The complainants;
2. The respondents; and
3. Any other person who claims to have an interest protected by 21.12.

B. A party's presentation shall include that party's testimony, the testimony of any witness the party calls to testify, and any demonstrative evidence that the party wishes to submit to the Planning Commission. At the conclusion of that party's turn, no further evidence or testimony shall be permitted by that party, except that relevant rebuttal testimony or demonstrative evidence shall be permitted after the presentation of the initial testimony and evidence of each party. The requirement that the second and further rounds of testimony and evidence be limited to rebuttal shall be strictly adhered to.

C. Evidence, including testimony, may address both the issues of whether the activity is a noxious, injurious or hazardous use and whether any exception may be granted. If the issue of exceptions is addressed, the evidence and testimony of a party shall include conditions which may or may not be appropriate for that exception.

D. At the close of the evidentiary portion of the hearing, each party shall be allowed a reasonable time to summarize their position.

E. Demonstrative or physical evidence such as photographs, documents, tapes, or other material to be offered as evidence for consideration by the Planning Commission shall be first submitted to the secretary for the Commission and assigned a number or letter for identification. The original or a certified or authenticated copy shall be left with the secretary if offered as evidence by that or any other party.

F. The Commission may reject or exclude evidence it deems irrelevant and may also reject or exclude testimony that pertains to technical or scientific issues unless the witness establishes competency or qualification to offer the testimony or opinions.

21.12.070 Planning Commission Hearings--Decision. A. At the close of the hearing, the Planning Commission may immediately enter deliberations or it may take the matter under advisement. Deliberations need not be public and may be in consultation with the Borough legal counsel. The Commission shall make specific written findings of fact and conclusions of law in support of its written decision. If the activity is determined to be a noxious, injurious or hazardous use under the ordinance, the Commission shall also determine whether an exception can be granted and the conditions for an exception based upon the evidence and testimony of record. The decision shall be rendered within 21 days of the close of the hearing.

B. The decision of the Planning Commission shall be mailed immediately upon its issuance to all parties of record in the proceeding before the Commission as defined in this chapter.

21.12.080 Appeal--Board of Adjustment--Notice--Parties. A. Any party of record may give written notice of appeal within 30 days of mailing of the decision by filing the notice of appeal with the Planning Department on the forms provided, and paying the filing and record preparation fee of \$200 .

B. The notice of appeal must 1) state the decision from which the appeal is taken; 2) state with specificity the errors asserted in the findings of fact or conclusions of law; and 3) state the relief sought on the appeal, including a statement of

whether the decision should be reversed, modified, or remanded for further proceedings.

C. The Planning Director shall mail copies of the notice of appeal to all parties of record in the proceeding within 5 days of the date of filing the notice of appeal. Any party desiring to participate in the appeal process must file an entry of appearance containing that party's name and address, or the address of the party's representative, within 15 days of the date of mailing of the notice of appeal by the Planning Director. Any party filing an entry of appearance may also file additional designations of error or other alternative requests for modification or reversal of the decision.

21.12.090 Appeal--Board of Adjustment--Record--Briefs. A. The appeal shall be considered on the record of the proceeding before the Planning Commission.

B. For the purposes of appeal, the record shall be limited to:

1. The filed complaint which initiated these proceedings;
2. All informational materials supplied to the Commission by the Planning Director or staff which were entered into the record or minutes of the proceeding before the Commission;
3. The report of the initial investigation by the Planning Director;
4. All testimony and all documents or other evidence received by the Planning Commission from the parties or other witnesses during the proceeding;
5. The decision of the Planning Commission;
6. The minutes of the presentations before the Commission, or upon payment of the additional transcription fee, a verbatim transcript of the presentations before the Commission; and
7. Verbatim transcripts of the hearing before the Planning Commission or will be a part of the record, if prepared. The transcript must be prepared by some person other than the party and must contain a notarized certification that it is a complete and accurate transcript. All arrangements and costs for preparation of the transcript are then the responsibility of the party desiring the transcript. Copies of tapes for transcription will be provided for a \$5.00 per tape copying fee.

C. Any minutes, transcripts, or recordings of the deliberations of the Planning Commission shall not be included in the record on appeal.

D. The Planning Director shall certify the paginated and indexed record and minutes on appeal which shall include the transcript of the proceedings before the Commission if prepared and offered by a party, within 15 days of filing of the first notice of appeal. One copy shall be provided to the party paying the initial filing fee. Copies may be provided to other parties or any other persons upon payment of a handling charge of 25 cents per page. If a party has requested a transcript of the hearing before the Planning Commission, an additional 15 days shall be allowed for the completion of the transcript which shall be added to the completed record. Completion of a transcript within the time specified is the responsibility of the party requesting the transcript.

21.12.100 Appeal--Board of Adjustment--Briefs. A. Each party to the appeal shall state in writing a summary of its position with regard to the appeal, and such position paper must be filed with the Planning Director within 20 days of the certification date of the record on appeal. The position paper may also include that party's perception of the correctness of the decision, a list of asserted errors, and any legal authority for the position taken by the party to the appeal. Failure to timely submit the written position paper will result in dismissal of the appeal of that party.

B. The Clerk, upon good cause shown, may grant an extension of time to any party or their legal representative for the filing of the position paper required under this section where the remaining parties will not be unduly prejudiced by the delay.

21.12.110 Appeal--Board of Adjustment--Procedure. A. The Assembly President shall establish the date and time for consideration of the appeal by the Board of Adjustment. The date shall be not less than 35 nor more than 60 days after the certification of the record by the Planning Director. The Assembly may for good cause shown shorten or extend the hearing date.

B. All members attending a full hearing on any day other than the date of a regular or special assembly meeting or Board of Equalization hearing shall receive a stipend of \$100 per day plus per diem and mileage authorized for members of the Assembly. No stipend or expenses will be allowed for days not authorized under this section.

C. The Board of Adjustment shall permit oral argument by any party who has filed a written position paper. Oral argument shall not exceed 15 minutes per party, provided that a party first presenting may request to divide the presentation into an initial presentation and a rebuttal presentation. Oral argument shall be limited to the reasons advanced by that party that the Board of Adjustment should construe the facts or apply the law or public policy. The order of presentation shall be appellant(s),

respondent and appellant's rebuttal unless both the complainant and respondent before the Planning Commission both appeal in which case the respondent before the commission shall present first.

1. No new facts or evidence may be advanced during oral argument.
2. No questions may be asked by any Board members that would tend to elicit information not contained in the record.
3. No person, board member or party, may refer to documents or other proceedings that are not a part of the record.

D. The Board of Adjustment may undertake immediate deliberations upon the conclusion of the time set for oral argument or take the matter under advisement and meet at such other time as is convenient for deliberations until a decision is rendered. The decision must be rendered within 21 days.

21.12.120 Computation of Time--Filing. A. In computing any time period prescribed under this chapter, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period is to be included unless the last day falls on a Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

B. Under this chapter, the time of filing means the time of actual delivery to the required office by the close of borough office hours, not the time from which the item was mailed. Facsimile transmissions do not constitute a filing.

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

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 21st DAY OF May, 1991.


James W. Skogstad, Assembly President

ATTEST:


Teresa Hudson
Acting Borough Clerk