

Introduced by:	Glick
Date:	10/12/93
Hearing:	11/16/93
Action:	Enacted as Amended
Vote:	Unanimous

**KENAI PENINSULA BOROUGH
ORDINANCE 93-51**

**AN ORDINANCE AMENDING THE KPB CODE OF ORDINANCES TO ENACT A
UNIFORM PROCEDURE FOR APPEALS OF PLANNING COMMISSION
DECISIONS TO THE ASSEMBLY SITTING AS BOARD OF ADJUSTMENT**

WHEREAS, KPB Code of Ordinances currently contains no express, uniform procedure for the conduct of appeals of Planning Commission decisions to the Assembly sitting as a board of adjustment; and

WHEREAS, the interests of providing an efficient and just system for conduct of Borough proceedings on such appeals of land use and subdivision issues, the Assembly believes that a uniform procedure should be expressly set out through the KPB Code of Ordinances;

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

SECTION 1. That the current KPB Code Sections 21.20.070, .080, and .090 are hereby repealed, and that new KPB Code Sections 21.20.070, .080, .090, .100, .110, and .120 are enacted to read as follows:

21.20.070. Appeal of Planning Commission Decision.

A. Any party of record may appeal a decision of the Planning Commission within 30 days of the date of the notice of the decision by filing a written notice of appeal with the Planning Department on the forms provided, and paying the filing and records preparation fee of \$200. All appeals of Planning Commission decisions shall be to the Assembly sitting as a Board of Adjustment, and shall be conducted in accordance with the provisions of this Chapter, unless otherwise expressly provided by the KPB Code. An appeal of denial of a vacation petition, as provided under KPB 20.28.110, shall be to the Assembly as a legislative body -- not as a Board of Adjustment.

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 appealed from within 15 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.

21.20.080. Procedure on Appeal to Board of Adjustment.

A. An appeal under this section shall be considered by the Assembly sitting as a Board of Adjustment, and shall be based on the record of the proceedings before the Planning Commission.

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

1. The filed application or complaint which initiated the proceedings before the Planning Commission;

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 (if any) 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 proceedings;

5. The decision of the Planning Commission; and

6. The minutes of the presentations before the Commission, or, if provided by a party, a verbatim transcript of the presentations before the Commission. All arrangements and costs for preparation of a transcript are the responsibility of the party desiring the transcript. Only a transcript prepared and certified as accurate by a Court Reporter shall be admitted. 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, 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 or hearing panel, 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.

21.20.090. Appellate Briefs.

A. Each party to the appeal shall state in writing a summary of its position with regard to the appeal, and such brief shall be filed with the Planning Director within 20 days of the certification date of the record on appeal. The brief shall include a statement of facts as derived from the record on appeal, a statement of the party's perception of the correctness of the Planning Commission 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 brief will result in dismissal of that party from the appeal.

B. Each party may submit a reply brief within 15 days of certification of service of filing of the initial brief by the opposing party, to be limited to response to matters specifically raised in the brief responded to.

C. The Planning Director, upon good cause shown, may grant an extension of time to any party or legal representative for the completion of any act required under this section, except for the filing of the notice of appeal where the remaining parties will not appear to be unduly prejudiced by the delay.

21.20.100. Board of Adjustment Hearing Procedure.

A. The Assembly President shall establish the date for consideration of the appeal by the Board of Adjustment on a date that is not less than 35 nor more than 90 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. The Board of Adjustment shall permit oral argument by any party who has filed a written brief. Oral argument shall not exceed 30 minutes per party, provided that the initial party may request to divide their oral presentation into an initial presentation and a rebuttal presentation. Extension of time for oral argument shall be granted only upon showing of exceptional circumstances. Oral argument shall be limited to the reasons advanced by that party within their brief(s) challenging the validity of the Planning Commission decision. Specifically:

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

C. Oral argument shall be conducted in the following order:

1. Appellant (the party who filed the appeal of the Planning Commission decision).
2. Appellee.
3. Appellant's rebuttal, if reserved by request prior to initial presentation

D. The Board of Adjustment may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement and meet at such other time as is convenient for deliberations until a decision is rendered. Deliberations need not be public and may be in consultation with the Borough legal counsel.

21.20.110. Appeal from Board of Adjustment.

Appeals from decisions of the Board of Adjustment shall be filed with the Superior Court of the State of Alaska at Kenai, and shall conform with the Rules of Appellate Procedure of the State of Alaska.

21.20.120. Computation of Time.

A. Except where expressly stated otherwise, 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, not the time from which the item was mailed. Facsimile transmissions do not constitute a filing.

SECTION 2. That KPB 2.40.080 D, E and F are hereby repealed.

SECTION 3. KPB 21.06.060 A(3) is amended as follows:

3. Those aggrieved by a decision of the planning commission, or any taxpayer, may appeal such decision to the Borough Assembly sitting as Board of Adjustment, as provided in AS 29.40.050.

SECTION 4. KPB 20.16.200 is amended to read as follows:

20.16.200. Appeals.

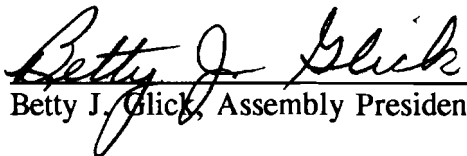
Appeals may be taken from a decision of the plat committee to the Assembly sitting as a Board of Adjustment, in compliance with the requirements of KPB Chapter 21.20.

SECTION 5. That a new KPB 20.24.010 C is enacted to read as follows:

C. An appeal of a decision of the planning commission made under this section shall be filed to the Assembly sitting as Board of Adjustment, in accordance with the requirements of KPB Chapter 21.20.

SECTION 6. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE KENAI PENINSULA BOROUGH ASSEMBLY THIS 17th DAY OF NOVEMBER, 1993.


Betty J. Glick, Assembly President

ATTEST:


Gaye J. Vaughan, Borough Clerk