

Introduced by:	Mayor
Date:	5/16/95
Hearing:	6/20/95
Action:	Enacted as Amended
Vote:	7 Yes, 2 No

**KENAI PENINSULA BOROUGH
ORDINANCE 95-19**

**AN ORDINANCE AUTHORIZING A LEASE WITH AN OPTION TO PURCHASE TO
MR. DENNIS J. SAMMUT FOR APPROXIMATELY 1,400 ACRES OF BOROUGH
LAND LOCATED ON THE EAST SIDE OF SIXMILE CREEK AT SUNRISE**

WHEREAS, an offer has been received by Mr. Dennis J. Sammut to purchase approximately 1,400 acres of Borough land located on the east side of Sixmile Creek at Sunrise for its appraised fair market value subject to certain reservations and covenants; and

WHEREAS, the fair market value of the subject property, subject to the preservation land use classification and a public access easement, is presently estimated at \$200,000 pursuant to an appraisal prepared by Dave Derry of Derry & Associates; and

WHEREAS, the Borough has received a final decision approving its selection of the subject land from the State of Alaska but has not yet received a patent deed; and

WHEREAS, the land is classified as preservation; and

WHEREAS, the July 1988 Community Land Use Plan for Borough Lands in Sunrise recommended that the subject land be held in public ownership;

WHEREAS, the Hope/Sunrise Advisory Planning Commission at its June 11, 1995 meeting recommended approval;

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of June 12, 1995 recommended approval;

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

SECTION 1. The mayor is authorized to deposit into the land bank the parcel generally described as:

The West one-half (W½) of Section 2; the Northeast one-quarter (NE¼) lying East of Six Mile Creek, the Southeast one-quarter (SE¼) lying East of Six Mile Creek,

Section 10; the West one-half (W½) of Section 11; the Northwest one-quarter (NW¼) of Section 14; that portion of section 15 lying East of Sixmile Creek; the Northeast one-quarter (NE¼) of Section 22; all being located in Township 9 North, Range 1 West; the Southeast one-quarter of the Southeast one-quarter (SE¼SE¼) of Section 34; the Southwest one-quarter (SW¼) of Section 35; all being located in Township 10 North, Range 1 West, Seward Meridian, in the Seward Recording District, Third Judicial District, State of Alaska.

SECTION 2. The mayor is authorized to reserve a conservation easement on the above described parcel to the borough with the terms and conditions contained in Attachment 1 as revised June 20, 1995, which includes the Deed Granting Rights of Refusal.

SECTION 3. The assembly finds that leasing this land to Mr. Sammut with an option to purchase is in the best interests of the public and the Borough. This finding is based on the following facts:

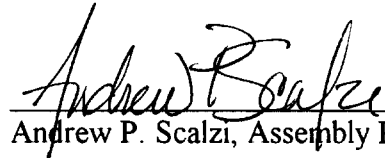
- a. The borough will receive income from the lease and subsequent sale of this land.
- b. The borough will retain a conservation easement in perpetuity protecting and preserving this land in its natural state, accomplishing goals established for this property in the comprehensive land use plan.
- c. The borough will benefit from Mr. Sammut's efforts to remediate the bark beetle infestation on this property.
- d. The borough will receive property taxes from this property.

SECTION 4. The mayor is authorized, pursuant to KPB 17.10.100(I), Negotiated Sale or Lease, to negotiate and enter into a lease with option to purchase the above described parcel to Mr. Dennis J. Sammut, subject to the conservation easement and to all lease and sale conditions required by this ordinance and the applicable consistent provisions of KPB 17.10. The authorization is for negotiation solely with Dennis J. Sammut or his heirs, and he may not assign any rights to negotiate or enter an agreement for sale to any other person.

SECTION 5. The negotiated lease shall contain provisions for lease payments not less than the fair market value of the leasehold interest conveyed. The option to purchase shall set the sale price at \$200,000, and shall be exercisable within one year of delivery of notice to Mr. Sammut that the borough has received patent to the land. The lease shall be for a term of not less than five years with options to renew for additional negotiated periods should the Borough not yet have received patent. The conveyance shall be subject to any restrictions and reservations imposed on the property by patent or other conveyance documents from the State of Alaska or the United States. The lease or sale of the subject land shall be further subject to the reservations and covenants contained in Attachment A, proposed EARNEST MONEY CONTRACT FOR SALE OF REAL PROPERTY.

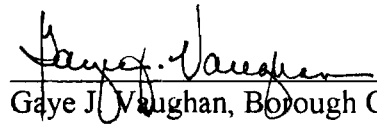
SECTION 6. That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20th
DAY OF JUNE, 1995.**

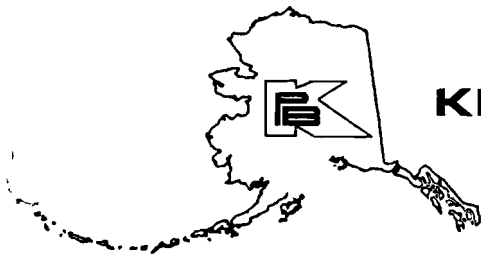


Andrew P. Scalzi, Assembly President

ATTEST:



Gaye J. Vaughan, Borough Clerk



KENAI PENINSULA BOROUGH

144 N. BINKLEY SOLDOTNA, ALASKA 99669-7599
BUSINESS (907) 262-4441 FAX (907) 262-1892

MEMORANDUM

DON GILMAN
MAYOR

TO: Andrew P. Scalzi, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: *Bonnie Golden*
for Don Gilman, Borough Mayor

THRU: *Richard P. Troeger*, Planning Director

FROM: *Roy E. Dudley*, Land Management Officer

DATE: May 3, 1995

SUBJECT: Ordinance 95-19

The subject ordinance presents an offer by Dennis J. Sammut to acquire Borough land as shown on the attached map, Exhibit A. The offer is to acquire the land at its appraised fair market value. Mr. Sammut has submitted a payment for the appraised value of \$200,000 with his offer. The Borough has not yet received a patent from the State of Alaska for this property. KPB 17.10.090 specifies that lands shall not be sold unless the Borough has clear title to the land. To meet this requirement a lease with an option to purchase is proposed.

An appraisal by Derry & Associates estimated market value of the property as of March 1, 1995 to be \$200,000. The appraisal is subject to the legal constraints consisting of the Preservation land use classification (modified to prohibit subdivision, replatting, etc.) and a public access easement (200-foot corridor parallel to Sixmile Creek). The Assessing Department is reviewing this appraisal.

The Hope/Sunrise Advisory Planning Commission will meet June 7 or June 8, 1995 to make a recommendation on whether the property should be sold. The Borough Planning Commission will meet June 12, 1995 to make its recommendations.

The Assessing Department's review of the Derry & Associates appraisal, the Hope/Sunrise Advisory Planning Commission and Borough Planning Commission recommendations will be provided prior to the June 20, 1995 public hearing.

Attachment

125 N. Willow Street, Suite 100
Kenai, Alaska 99611
Phone (907)283-7167
x (907)283-8435

C. R. Baldwin
Lawyer

C. R. Baldwin
James N. Butler, III

May 4, 1995

Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, AK 99669

Attention: Don Gilman, Mayor

Re: My client - Dennis J. Sammut

Dear Mayor Gilman:

By letter dated March 31, 1995, my client delivered an offer to purchase certain property located in the Sunrise area from the Kenai Peninsula Borough. Based on subsequent discussions with and recommendations of your staff, that offer was subsequently amended by my letter dated May 1, 1995. I understand from talking with the Borough Attorney's office that if this transaction is to go forward at the present time under the Borough's existing ordinance it may be necessary for the Borough Assembly to make certain findings as provided in KPC 17.10.120(d). In view of the fact that the Borough has already been tendered a check in the full amount of the fair market value of the property, I would question whether this section has applicability to this transaction. Nevertheless, I offer the following facts in support of the staff's and Mr. Sammut's contention that this transaction is in the public interest.

First, as indicated above, the fair market value cash price of the property has been tendered to the Borough and the Borough currently has the use of those funds. Under the terms of the transaction the Borough will continue to have use of the funds until such time as the option expires by its terms. If the property appreciates in value between now and the time the Borough can give clear title to the property, any increase in value will certainly be offset by the interest received by the Borough on the money which it will have held.

If the transaction goes forward, the land will be subject to property tax payments which the Borough would not otherwise be receiving, thereby further increasing the income to the Borough as a result of this transaction.

As indicated in my previous letter to you significant urgency exists with respect to completing the transaction so that my client can undertake a program of bark beetle remediation on the property. To that end, he has budgeted the sum of \$50,000 for 1995, based upon his assumption that this transaction will have been finalized by the end of May. There is still the opportunity to protect some of the timber on the property from bark beetle infestation. Given the scenic value of the property, it is in the public interest to allow that bark beetle remediation program to go forward beginning at the earliest possible date.

TURNAGAIN ARM

34

2

9

10

11

6

15

14

1

22

23

TURNAGAIN CREEK

[illegible]

THE INFORMATION DEPICTED HEREON
IS FOR A GRAPHIC REPRESENTATION
ONLY IS BEST AVAILABLE SOURCE
THE PENAL PENINSULA BOROUGH
ASSUMES NO RESPONSIBILITY FOR
ANY ERRORS ON THIS MAP

ORDINANCE 95-19
EXHIBIT A

SCALE: 1" = 1/2 MI DATE: JAN 16, 1995

EARNEST MONEY CONTRACT
FOR SALE OF REAL PROPERTY

THIS AGREEMENT, made and entered into this _____ day of _____, 1995,
by and between KENAI PENINSULA BOROUGH, whose address is 144 N. Binkley, Soldotna,
Alaska 99669, hereinafter called Seller; and DENNIS J. SAMMUT, whose address is 659
Huntington Avenue, San Bruno, CA 94066, hereinafter called Buyer.

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, the following-
described real property:

The West one-half (W1/2) of Section 2; the Northeast one-quarter (NE1/4) lying East of Six Mile Creek, the Southeast one-quarter (SE1/4) lying East of Six Mile Creek, located in Section 3; the East one-half (E1/2) lying East of Six Mile Creek, located in Section 10; the West one-half (W1/2) of Section 11; the Northwest one-quarter (NW1/4) of Section 14; the East one-half (E1/2) located in Section 15; the Northeast one-quarter (NE1/4) of Section 22; all being located in Township 9 North, Range 1 West; the Southeast one-quarter of the Southeast one-quarter (SE1/4 SE1/4) of Section 34; the Southwest one-quarter (SW1/4) of Section 35, all being located in Township 10 North, Range 1 West, Seward Meridian, in the Seward Recording District, Third Judicial District, State of Alaska.

for the price and upon the terms and conditions as follows.

1. Full purchase price is Two Hundred Thousand Dollars (\$200,000.00), tendered herewith by Buyer.

2. Buyer shall purchase any title insurance policy required by Buyer. If the title be found to be unmerchantable, Buyer or its attorney shall notify the Seller or its attorney in writing, prior to the date set for closing this transaction, specifying the defects which exist with respect to the title to the property, and Seller shall have a period of sixty days after receipt of such written notice within which to cure said defects in title to the reasonable satisfaction of the attorney for Buyer or the title insurance company, and this sale shall be closed within ten days after written

Kenai Peninsula Borough
Don Gilman, Mayor
May 4, 1995
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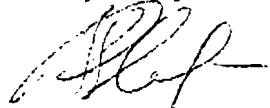
Based upon the recommendation of staff and in an effort to expedite the transaction, Mr. Sammut retained the services of an appraiser at an approximate cost of \$8,000. If the actual purchase price of the property must now await determination at some unspecified future date, the money he spent in good faith will have been wasted.

Finally, this transaction is in the public interest because it seeks to accomplish the goals articulated by the Sunrise Community and shared by Mr. Sammut that the property be held in a state of natural preservation, free from the threat of changing political philosophies on the one hand or whims of an owner on the other. By holding the underlying title to the property in an individual and holding the development rights in the Borough, preservation of the property in its natural state will virtually be ensured for generations to come. Mr. Sammut is willing to pay for the privilege of assisting in that goal.

The Borough has before it a rare opportunity to place land in the private sector, ensure that it is preserved in the public interest, reap property taxes from the property and have a private party pay for the care and preservation of the property which, by all accounts, is and will continue to be inaccessible.

Thank you for your attention to this matter. I hope that the foregoing adequately sets forth a statement of facts sufficient to satisfy the terms of KPC 17.10.120(d).

Very truly yours,



C. R. BALDWIN

CRB/hs

cc: Dennis J. Sammut, by fax

notice of such curing to Buyer or its attorney. Upon Seller's failure to cure defect, of which written notice has been given, within the time limit aforesaid, at the option of Buyer, all rights and liabilities arising hereunder shall terminate, or Buyer may, at its option, waive any such title defect whereupon the parties shall close the sale as if no such title defect existed.

3. Subject to the aforesaid curative period, this sale shall be closed, and the Deed shall be delivered on or before the first day of June, 1995, and Seller agrees to deliver occupancy and possession of said property to Buyer on or before said date.

4. Recording fees, escrow closing fees, or any other fees necessary to the proper closing of this transaction shall be paid by Buyer. Each party shall bear its own attorney's fees.

5. Upon payment in full of the purchase price, Seller agrees to convey title to the property to Buyer, at Seller's offices in Soldotna, Alaska, by warranty deed free and clear of all liens and encumbrances, except:

- (a) Final conveyance of the property by the State of Alaska to Seller;
- (b) Reservations and restrictions contained in Final Decision dated August 23, 1989.
- (c) Reservations and Covenants set forth in Attachment 1.

6. If Buyer desires a survey of the property, Buyer shall survey the property at its expense. Seller will support any efforts by Buyer to close the property to mineral entry.

7. Buyer's obligation to perform under this agreement shall be conditioned upon a determination by Buyer, to Buyer's reasonable satisfaction, that the property is in compliance with all applicable state and federal laws and regulations pertaining to health, safety or environmental protection. Buyer shall have reasonable access to the property for the purposes of making any

investigations related to the foregoing condition.

8. No agreements, unless incorporated in this Contract, shall be binding upon any of the parties.

9. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above mentioned.

SELLER:

KENAI PENINSULA BOROUGH

By: _____
Title: _____

BUYER:



DENNIS J. SAMMUT

Attachment 1

RESERVATION

RESERVING unto the Grantor, its successors and assigns forever, an easement consisting of the following:

1. The right of view of the Property in its natural, scenic, and open condition;
2. The right of the Grantor, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the covenants set forth below. The Grantor, or its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act;
3. The right to enter the Property at all reasonable times for the purpose of inspecting the Property to determine if the Grantee, or Grantee's heirs or assigns, is complying with the covenants and purposes of this reservation.

And in furtherance of these affirmative rights, the Grantor makes and conveys the Property subject to the following covenants, on behalf of Grantor's self, heirs and assigns, which covenants shall run with and bind the Property in perpetuity:

COVENANTS

Without prior express written consent from the Grantor, on the Property:

1. There shall be no clear-cutting of trees or brush;
2. There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials nor any change in the topography of the land in any manner excepting the maintenance or construction of trails;
3. There shall be no construction or development which would be visible from any lot within United States Survey 2789 (except a lot held in common ownership with the Property) or otherwise diminish the value of the Property for aesthetic or scenic purposes;
4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, and no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils;
5. There shall be no manipulation or alteration of natural water courses, marshes or other water bodies or activities or uses detrimental to water purity.

Without prior express consent from the Grantor, the Property shall not be subdivided, either

by plat or by deed.

The Grantee agrees that the terms, conditions, restrictions, and purposes of this reservation will be inserted in any subsequent deed, or other legal instrument, by which the Grantee is divested of either the fee simple title to or possessory interest in the Property.

Except as expressly limited in this easement, the Grantor conveys to Grantee, his heirs and assigns, all rights as owner of the Property, including the right to use the property for all purposes not inconsistent with this reservation.

The covenants established, and agreed to and the terms, conditions, restrictions, and purposes imposed with this reservation shall not only be binding upon the Grantee but also Grantee's agents, personal representatives, heirs and assigns, and all other successors in interest and shall continue as a servitude running in perpetuity with the Property.