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| Introduced by:           | Bagley, Wiley |
| Date:                    | 9/03/96       |
| Hearing:                 | 10/08/96      |
| Action:                  | Defeated      |
| Vote:                    | 3 Yes, 4 No   |
| Reconsideration noticed: | 10/08/96      |
| Action:                  | Defeated      |
| Vote:                    | 3 Yes, 5 No   |

**KENAI PENINSULA BOROUGH  
ORDINANCE 96-43**

**AN ORDINANCE AUTHORIZING THE MAYOR TO CONDITIONALLY SELL REAL  
PROPERTY LOCATED IN THE COOPER LANDING VICINITY TO PIXIE SMITH**

- WHEREAS,** a certified check for \$79,000.00 has been received from Pixie A. Smith, with an offer to purchase borough-selected land described as Tract B, Quartz Creek Subdivision, according to Plat No. 94-11, on file in the Seward Recording District, Third Judicial District, State of Alaska, containing 13.59 acres more or less; and
- WHEREAS,** the borough selected this property pursuant to the Municipal Entitlement Act and received a final decision from the State of Alaska approving its selection; and
- WHEREAS,** the purpose of municipal entitlement land is to encourage development and expansion of local communities, and Ms. Smith intends to use this land for development purposes that will benefit the community; and
- WHEREAS,** in Ordinance 91-20 the borough assembly authorized Sherman C. "Red" Smith to lease with an option to buy this property, with the lease rate to be based on the appraised value of the land, and with each appraisal remaining in effect for five (5) years for purposes of establishing the lease rate; and
- WHEREAS,** with borough approval, Mr. Smith has assigned his interest in the lease and purchase option to his daughter Pixie Smith; and
- WHEREAS,** the fair market value was appraised at \$79,000.00 as of December 18, 1993 by an appraiser selected by the Kenai Peninsula Borough; and
- WHEREAS,** Mr. Smith, and now, Ms. Smith, have consistently been interested in purchasing rather than leasing this land, and establishing the purchase price at \$79,000.00 will give the Smiths more certainty in financing, and planning the development activities; and
- WHEREAS,** in the June 18, 1991 assembly meeting during consideration of Ordinance 91-20, the Planning Director estimated patent would be received within six months of completing survey requirements, and it was anticipated that surveying would be completed shortly, but the state has not yet received patent and may not do so for years; and
- WHEREAS,** in the Final Decision approving the borough's selection of this land the state authorized the borough to conditionally sell this land, as allowed in Alaska Statute 29.65.070(b); and

**WHEREAS,** pursuant to KPB 17.10.230, the assembly has been presented with substantial evidence by Mr. Smith and Ms. Smith justifying an exception to the KPB code provision prohibiting the sale of borough land unless the borough has clear title to the land;

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

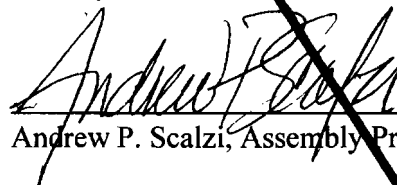
**SECTION 1.** That the assembly finds special circumstances exist in this case in that it would be unjust for the borough to profit from the delay in receiving patent at the Smiths' expense, Mr. Smith has been trying for over thirty-seven years to acquire this or similar land in the Cooper Landing area for development purposes, which purposes are consistent with the purposes this land was conveyed to the state and the borough, Ms. Smith has offered to pay the full purchase price in cash for this property, and it is in the best interests of the Kenai Peninsula Borough and the parties concerned to proceed with development in an orderly and timely fashion.

**SECTION 2.** That the assembly finds granting this exception is necessary for the preservation and enjoyment of a substantial property right by providing Ms. Smith with sufficient certainty regarding her ownership interest so that she may invest in and properly develop this property promptly, and that granting this exception will not be detrimental to the public welfare nor injurious to other property in the area.

**SECTION 3.** That the Mayor is authorized to accept the \$79,000.00 as the full purchase price and to conditionally sell the above-described property to Pixie Smith, subject to the fifty-foot conservation easement around the perimeter of the site, and ingress and egress limitations as described in the Real Property Lease entered February 29, 1996, and subject to the condition that, until the borough receives patent and transfers this land in fee simple, this land may not be transferred or conveyed to any third party without the advance written consent of the borough mayor. This sale shall be canceled in whole or part in the event the borough is denied title to the lands, and shall be subject to applicable provisions in KPB 17.10.240. In the event the sale is canceled for this reason, the borough shall refund the \$79,000 only. In that event, interest that would have accrued on the \$79,000 shall be considered roughly equivalent to the fair rental value of the property for each year of Ms. Smith's use.

**SECTION 4.** That this ordinance shall take effect immediately upon its adoption.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \_\_\_\_ DAY OF \_\_\_\_\_, 1996.**

  
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Andrew P. Scalzi, Assembly President

ATTEST:

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Gaye J. Vaughan, Borough Clerk