

Introduced by: Mayor
Date: 05/19/98
Hearing: 06/16/98
Action: Enacted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 98-20**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED SALE OF FIVE LEASE
PARCELS LOCATED IN NORTH KENAI AT FAIR MARKET VALUE: LOTS 8, 9, 10,
13 AND 14, BERNICE LAKE ALASKA INDUSTRIAL SUBDIVISION**

WHEREAS, pursuant to KPB 17.10.100 (I) an application has been received from Jesse Wade, d.b.a. Wade Oil Field Service Company to purchase five lease lots at fair market value; and

WHEREAS, the five lots were conveyed by State Patent Number 7537 subject to existing State leases with terms of 55 years; and

WHEREAS, the five lots were listed in Ordinance 86-19 (Substitute) which authorized for two years the sale of borough patented land to holders of State issued long term leases; and

WHEREAS, Jesse Wade is the lessee of the five lots, has leased the five lots for more than 20 years, and has built permanent commercial structures on some of the lots; and

WHEREAS, a notice was sent by regular mail to all owners and/or leaseholders of record within a radius of ½ mile of the land to be sold; and

WHEREAS, Planning Commission recommended enactment of this ordinance at its March 23, 1998 meeting by unanimous consent.

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

SECTION 1. That the Assembly finds that selling the following borough land to Jesse Wade at fair market value is in the best interest of the public and the borough.

Lots 8, 9, 10, 13, and 14 Bernice Lake Alaska Industrial Subdivision, filed as Plat No. 1560, Kenai Recording District, Third Judicial District, State of Alaska, except that portion of the North Kenai right-of-way per State of Alaska right-of-way map, Alaska Project No. S-0490 (2).

This finding is based on the following facts:

- a. The borough will receive full value from the sale of this land without incurring marketing expenses.
- b. Mr. Wade is the reasonable buyer as existing lessee for over 20 years, and has substantial leasehold improvements.


SECTION 2. The period of time during which this offer may be accepted is 60 days from enactment of this ordinance. Acceptance of this offer shall be effected by execution of an Earnest Money Contract for Sale of Real Property.

SECTION 3. That the mayor is authorized, pursuant to KPB 17.10.100 (I), Negotiated Sale or Lease, to negotiate the sale of the land described in Section 1 to Jesse Wade subject to the sale conditions required by this ordinance and applicable consistent provisions of KPB 17.10. The sale price shall be \$177,800.00 and Jesse Wade shall pay closing costs. The sale shall be further subject to substantially the same terms and conditions contained in Attachment A, EARNEST MONEY CONTRACT FOR SALE OF REAL PROPERTY. This authorization is for negotiation and sale solely with Jesse Wade or, in the event of his demise, his heirs.

SECTION 4. That the mayor is authorized to sign any documents necessary to effectuate the ordinance.

SECTION 5. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 1998.



Jack Brown, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk



EARNEST MONEY RECEIPT AND AGREEMENT TO PURCHASE

This Agreement is made on this _____ day of _____, 1998, by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB") and Jesse Wade, whose address is Box 3266, Kenai, Alaska 99611 (hereinafter referred to as "BUYER").

WHEREAS, KPB is the owner of that real property located in the Kenai Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

Lots 8, 9, 10, 13, and 14 Bernice Lake Alaska Industrial Subdivision, filed as Plat No. 1560, Kenai Recording District.

WHEREAS, Buyer has offered to buy, and KPB is willing to sell the above-described PROPERTY as evidenced by KPB Ordinance 98-_____, enacted by the Assembly of the Kenai Peninsula Borough on _____.

NOW THEREFORE, in consideration of the promises herein contained, KPB hereby agrees to sell to BUYER, and BUYER hereby agrees to purchase from KPB, the PROPERTY on the terms and conditions as set forth below:

1. PURCHASE PRICE

The purchase price of the PROPERTY is One Hundred Seventy-seven Thousand Eight Hundred dollars and NO cents (\$177,800.00) to be paid as follows:

- A. Earnest Money of One Thousand dollars (\$1,000.00) in the form of a check or money order is herewith submitted to the KPB as earnest money on and as partial payment for the PROPERTY described above and shall be held by the KPB until closing. This \$1,000.00 shall be applied to the down payment or until this Agreement is otherwise terminated. This payment shall be credited towards the purchase price and costs unless

this Agreement is otherwise terminated, in which case it shall be disbursed in accordance with the applicable provisions of this Agreement.

- B. Down payment of Seventeen Thousand Seven Hundred Eighty dollars and NO cents (\$17,780.00), [includes \$1,000.00 earnest money] , representing ten percent (10%) of the Purchase Price, in the form of a check or money order shall be paid by buyer in the form of a check or money order at time of closing.

- C. One Hundred Sixty Thousand Twenty dollars and NO cents (\$160,020.00), representing the balance of the Purchase Price, shall be paid pursuant to a Deed of Trust Note executed by BUYER in favor of KPB and secured by a Deed of Trust on the PROPERTY, with interest at the rate _____percent (_____%) per annum, payable in one hundred and twenty (120) equal monthly installments.

2. TITLE

At BUYER's expense, KPB shall provide an owner's policy of title insurance, to the BUYER as the insured, which indicates the condition of title subject only to reservations, easements, rights-of-way, covenants, conditions and restrictions of record and further subject to restrictive covenant pursuant to KPB 17.10.130(D), and for subject parcel which will be created by the conveyance from KPB to the BUYER. Any such insurance shall further show no liens or judgments against BUYER at the time of closing. BUYER warrants and covenants that at the time of closing there shall be no liens or judgments recorded against BUYER in the same recording district in which the PROPERTY subject to this Earnest Money Agreement is situated. Title shall be delivered at time of closing by quit claim deed which shall be issued to BUYER.

3. ESCROW AND CLOSING COSTS

In addition to the purchase price, BUYER agrees to pay for all closing costs in connection with this Agreement, including without limitation all escrow fees, title insurance charges, recording fees and bank charges. All costs must be paid in full at the time of closing.

4. CLOSING

At closing, buyer will pay the balance of the purchase price for all cash sales, or the balance of the down payment for financed sales, with a certified check. Both

parties will execute all documents required to complete the Earnest Money Agreement and, if applicable, establish an escrow account.

5. POSSESSION

Possession shall be delivered to BUYER at time of recording.

6. BREACH BY BUYER; REMEDIES OF KPB

Prior to the closing of the sale, in the event that BUYER fails to make any payment required, or fails to submit or execute any and all documents and papers necessary in examination of BUYER's financial background, or with closing and transfer of title within the time periods specified in this Agreement, up to \$300.00 of BUYER's deposit shall be retained by KPB as liquidated damages. Additionally, other funds may be retained for out-of-pocket expenses incurred, and this Agreement shall be terminated.

In addition to the foregoing, in the event of a default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, either prior to or after the closing of the sale, and such default continues thirty days after written notice of the default, KPB may cancel the agreement or take any legal action for damages or recovery of the PROPERTY. No improvements may be removed during the time which the contract is in default. This provision shall survive the execution of sale documents and shall continue in full force and effect until either the purchase price is paid in full or the sale is otherwise terminated.

7. NOTICE OF DEFAULT. Notice of the default will be in writing as provided hereinbelow. A copy of the notice will be forwarded to all lienholders or others who have properly recorded their interest in the Earnest Money Agreement with KPB.

8. REMOVAL OR REVERSION OF IMPROVEMENTS UPON CANCELLATION OF EARNEST MONEY AGREEMENT OR LEASE.

- A. BUYER covenants that improvements owned by the BUYER on KPB land shall, within thirty calendar days after the termination of the agreement, be removed by BUYER; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor may extend the time for removing such improvements in cases where hardship is proven. The retiring BUYER may, with the consent of the mayor when applicable, dispose of BUYER'S improvements to the succeeding BUYER.

- B. If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the BUYER, under the terminated or canceled contract, be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former BUYER, lessee, or permittee who placed such improvements and/or chattels on the land, or his successors in interest, after paying to KPB all monies due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of KPB, on such improvements and/or chattels. The bid money shall be taken from the fund to which said land belong, and the fund shall receive all moneys or other value subsequently derived from the sale or leasing of such improvements and/or chattels. KPB shall acquire all the rights, both legal and equitable, that any other BUYER could acquire by reason of the purchase.
- C. If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, the BUYER, lessee, or permittee shall convey said improvements and/or chattels by appropriate instrument to KPB.
- D. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the BUYER and placed on the land during BUYER'S tenure with or without BUYER'S permission and remaining upon the premises after the termination of the contract shall entitle KPB to charge a reasonable rent therefor.

9. DEFENSE AND INDEMNIFICATION

BUYER covenants and agrees that it shall defend, indemnify and hold harmless KPB from and against all claims, demands, judgments, costs, expenses, and fines (including actual attorney's fees) which may arise, for any reason, from BUYER's use of or presence on the PROPERTY.

10. HAZARDOUS MATERIAL

- A. BUYER covenants and agrees that no hazardous substances or wastes shall be located on or stored on the PROPERTY, or any adjacent PROPERTY, nor shall any such substance be owned, stored, used, or disposed of on the PROPERTY or any adjacent property by BUYER, its agents, employees, contractors, or invitees, prior to BUYER's ownership, possession, or control of the PROPERTY.
- B. BUYER covenants and agrees that if the presence of hazardous material on the PROPERTY is caused or permitted by BUYER, its agents, employees, contractors, or invitees, or if contamination of the PROPERTY by hazardous material otherwise occurs on the PROPERTY, BUYER shall defend, indemnify, and hold harmless KPB from any and all claims, judgements, damages, penalties, fines, costs, liabilities, or losses (including, but not limited to, sums paid in the settlement of claims, attorney's fees, consultant fees and expert fees) which may arise as a result of such contamination. This defense and indemnification includes, without limitations, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state or local government on or under the PROPERTY. As used herein, the term "hazardous material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local government authority, the State of Alaska, or the United States Government.

11. ASSIGNMENTS

BUYER may assign the land upon which BUYER has an agreement only if approved by the mayor. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the provisions and regulations applicable thereto.

12. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and BUYER or their respective successors in interest. The provisions of this agreement, unless inapplicable on their face, shall be covenants constituting

terms and conditions of the sale and of the agreement to finance the sale, and shall continue in full force and effect until the purchase price is paid in full, or this agreement is earlier terminated.

13. MISCELLANEOUS

- A. BUYER agrees to comply with any Declaration of Covenants, Conditions, and Restrictions of record, affecting the PROPERTY.
- B. BUYER acknowledges its responsibility to inspect the PROPERTY and agrees KPB assumes no liability for matters which would have been disclosed to the BUYER by an inspection of the PROPERTY. BUYER further acknowledges that KPB makes no warranties, either expressed or implied, nor assumes any liability whatsoever, regarding the social, economic or environmental aspects of the PROPERTY, to include without limitation, the soil conditions, water drainage, physical access, availability of personal use wood supplies now or in the future, or natural or artificial hazards which may or may not exist or merchantability, suitability, or profitability of the PROPERTY for any use or purpose. The parties mutually agree that this transfer will not be covered by the Residential Real Property Transfers Act, AS 34.70.010 et. seq.
- C. BUYER agrees the construction and maintenance of any improvements, roads, drainage systems and common areas shall be the responsibility of the BUYER. BUYER further agrees to comply with all federal, state, and borough regulations regarding the use and development of the PROPERTY, which includes but is not limited to; State of Alaska, Department of Environmental Conservation regulations regarding water and sewer installation; and if applicable, regulations of the U.S. Army Corps of Engineers regarding filling or draining any area within the PROPERTY designated as wetland by the appropriate authority.
- D. Time is of the essence in the performance of this Agreement.
- E. Cancellation. This agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by the BUYER and the mayor. This Earnest Money Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.
- F. Entry or Re-entry. In the event that this agreement is terminated, canceled or forfeited, or in the event that the demised land, or any part

thereof, should be abandoned by the BUYER during the agreement term, or prior to the payment in full of the purchase price, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said land or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.

- G. Fire Protection. The BUYER shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.
- H. Notice. Any notice or demand, which under the terms of this agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.
- I. Responsibility of Location. It shall be the responsibility of the BUYER to properly locate himself and his improvements on the purchased, leased, or permitted land.
- J. Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture of a sale agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the sale agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument. Any party acquiring an agricultural purchase or lease agreement must meet the same requirements as the original BUYER or lessee.
- K. Rights-of-way. All trails or roads in existence at the time the land is sold may be considered to be an easement for public use. Nothing herein contained shall prevent the mayor from specifically reserving such additional easements and rights-of-way across KPB land as deemed reasonable and necessary prior to the sale thereof.

- L. Sanitation. The BUYER, lessee, or permittee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The premises under purchase or lease agreement, or permit shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and land.
- M. Shore Land Public Access Easement. As established by AS 38.05, KPB land sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.
- N. Violation. Violation of any provision of Chapter 17.10 of KPB Code of Ordinances, or of the terms of the agreement of sale may expose the BUYER to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of BUYER's interest in accordance with state law.
- O. Written Waiver. The receipt of payment by KPB, regardless of knowledge of any breach of the Earnest Money Agreement by the BUYER, or of any default on the part of the BUYER, in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of KPB to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.
- P. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be constructed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.

This Agreement has been executed by the parties on the day and year first above written.

KENAI PENINSULA BOROUGH:

BUYER(S):

Mike Navarre, Mayor

Jesse Wade

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

Linda S. Murphy,
Borough Clerk

Colette G. Thompson,
Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 1998, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 1998, by Jesse Wade.

Notary Public in and for Alaska
My commission expires: _____

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