

Introduced by: Mayor
Date: 03/02/99
Hearing: 04/06/99
Action: Enacted
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH
ORDINANCE 99-13**

**AN ORDINANCE TO MODIFY A DEED RESTRICTION FROM A RESIDENTIAL TO
A COMMERCIAL CLASSIFICATION FOR TRACT 1-B, EXIT GLACIER
SUBDIVISION, FILED AS PLAT NUMBER 97-12, SEWARD RECORDING DISTRICT,
SAID PARCEL CONTAINING APPROXIMATELY 8.138 ACRES**

WHEREAS, Pursuant to Kenai Peninsula Borough Code of Ordinances, Chapter 17.10.130(F)(1) the KPB Land Management Division received a petition requesting a modification to a deed restriction from a Residential classification to a Commercial classification for subject parcel; and

WHEREAS, as authorized by KPB Ordinance 96-51 the subject parcel was conveyed to Robert H. Ferguson III by Warranty Deed, containing a deed restriction of Residential; and

WHEREAS, pursuant to KPB Chapter 17.10.130(F)(4) the assembly may by ordinance authorize the repeal of any restriction; and

WHEREAS, pursuant to KPB Chapter 17.10.130(F)(2) public notice was published and notification was sent to applicable agencies, interested parties, and land owners and/or leaseholders of record within one-half mile of the land proposed for modification of deed restriction from a Residential to a Commercial classification; and

WHEREAS, the Planning Commission held a public meeting on the proposed modification of a deed restriction February 8, 1999. The motion to recommend enactment of the modification of the deed restriction from a Residential to a Commercial classification passed by a majority vote of 6 to 2.

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

SECTION 1. That the assembly makes the following findings of fact with respect to the proposed deed restriction modification:

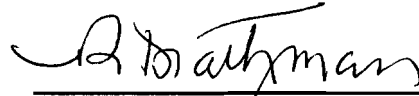
1. In 1996 the subject parcel was classified Residential per KPB Resolution 96-039.
2. The parcel was conveyed from the Borough to Robert H. Ferguson III, petitioner.
3. Petitioner's justification for a modification of a deed restriction states that a Commercial classification is consistent with adjacent developments.
4. The subject parcel is planned for further subdivision per Fjords Subdivision #2 (preliminary plat).
5. The parcel is situated in a flood plain and was inundated in the 1986 and 1995 floods.
6. KPBCMP staff recommends against granting this petition and discourages commercial development.
7. Any development, commercial or residential, is subject to KPB Chapter 21.06.
8. Access to the parcel is provided by the new alignment of Exit Glacier Road.
9. Surrounding land ownership includes private, borough, and state.
10. Surrounding land use includes commercial, residential, and undeveloped land.
11. Overhead power lines traverse the property with telephone and electric utilities available. No other utilities are currently available.
12. Commercial classification is consistent with surrounding developments which include a motel and restaurant (Wind Song Lodge), a trailer park, cabin rentals, RV parks, dog mushing tour, gravel extraction activities, hardware store (Spenard Building Supply), and one single family dwelling adjacent to the western boundary of the subject parcel which is owned by petitioner.
13. Eight written comments were received supporting modifying the deed restriction to commercial. No objections were received other than from the KPBCMP staff.
14. The new Exit Glacier Road, which this parcel fronts, was constructed in 1995, is paved, and serves as a dike to channel flood waters of the Resurrection River. The new Exit Glacier Road is the entrance to Exit Glacier in the Kenai Fjords National Park, attracting commercial traffic and tourism to this area. The subject parcel fronts approximately 571 feet along the new Exit Glacier Road and is situated for commercial development and to provide service to the tourism market.
15. Based on flood plain management standards, structures can be built to withstand flood events.
16. Planning Department staff recommended adoption of the proposed modified deed restriction.

SECTION 2. That the deed restriction shall be modified from a Residential to a Commercial classification for Tract 1-B, Exit Glacier Subdivision, filed as Plat Number 97-12, Seward Recording District, containing approximately 8.138 acres.

SECTION 3. That the Planning Department shall cause the appropriate document to be filed in the appropriate recording district to modify the deed restriction, pursuant to KPB Code of Ordinances, Chapter 17.10.130(F)(4).

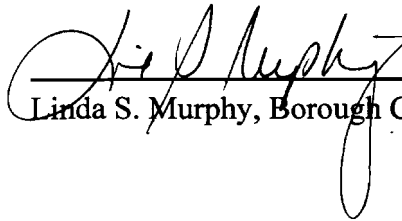
SECTION 4. That this ordinance shall become effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF APRIL, 1999.



Ronald Wm. Drathman, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

