

Introduced by: Brown
Date: 07/13/99
Hearing: 08/17/99
Action: Defeated
Vote: 2 Yes, 5 No, 2 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 99-42**

**AN ORDINANCE PROVIDING THAT APPEALS FROM DENIALS OF VACATION
PETITIONS SHALL BE HEARD BY THE BOARD OF ADJUSTMENT INSTEAD OF
THE ASSEMBLY**

WHEREAS, KPB 20.28.110 currently provides for an appeal by a petitioner whose vacation petition has been denied to the city council if the vacation lies within city boundaries, or to the assembly if it is outside of the city boundaries; and

WHEREAS, the code contains no formal procedures for hearing such appeals other than notice requirements, and the assembly recently amended KPB 21.20 to provide detailed appeal procedures for the board of adjustment; and

WHEREAS, requiring appeals from denials of vacation petitions to be heard by the board of adjustment would eliminate confusion that occurs when such appeals are heard by the assembly during the full assembly meeting.

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

SECTION 1. KPB 20.28.100 shall be amended to read as follows:

20.28.100. Vacation consent—City council or assembly.

No vacation of a city street, right-of-way, public area or easement located within an incorporated city may be approved without the consent of the city council. No vacation of a street right-of-way, public area or easement within the borough outside of the limits of cities may be made without the consent of the borough assembly. The assembly or council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the city or borough shall be considered to have given consent to the vacation. For purposes of calculating the veto deadline, final approval of a vacation petition approved by the board of adjustment on appeal shall be deemed to have occurred on the date the board of adjustment issues a written decision approving the vacation petition.

SECTION 2. That KPB 20.28.110 shall be amended to read as follows:

20.28.110. Action after denial of vacation petition.

A. Upon denial of a vacation petition, no further consideration shall be given unless the denial is appealed by the petitioner to the board of adjustment in accordance with the procedures contained in KPB 21.20.250. The appeal shall be conducted in accordance with the provisions of KPB 21.20.200 through KPB 21.20.370. [CITY COUNCIL IF THE VACATION LIES WITHIN THE INCORPORATED CITY BOUNDARIES OR TO THE ASSEMBLY IF THE VACATION LIES OUTSIDE THE BOUNDARIES OF AN INCORPORATED CITY. THE APPEAL SHALL BE FILED IN WRITING WITH THE APPROPRIATE MUNICIPAL CLERK WITHIN 8 CALENDAR DAYS OF THE PLANNING COMMISSION ACTION. THE APPEAL SHALL BE CONDUCTED AS A PUBLIC HEARING AND NOTICE PROVIDED AS REQUIRED UNDER SECTION 20.28.080. ADVERTISING AND NOTICE FEES FOR THE APPEAL SHALL BE AS REQUIRED BY EACH CITY COUNCIL OR BY THE ASSEMBLY AS APPROPRIATE.] The municipal clerk shall notify the planning commission of the findings of the board of adjustment [COUNCIL OR ASSEMBLY] regarding the appeal so that further action concerning surveying, [AND] platting and consent if applicable, may be initiated.

B. Upon denial by the planning commission, or veto by the governing body, and when no appeal is filed or when an appeal is filed and denied, no reapplication or petition concerning the same vacation may be filed within 1 calendar year of the date of the final denial action except in the case when new evidence or circumstances exist that were not available or present when the original petition was filed.

SECTION 3. That KPB 21.20.230 shall be amended to read as follows:

21.20.230. Jurisdiction.

A. Unless a different appellate procedure is provided by this code, the board of adjustment is authorized to hear and decide appeals from planning commission decisions.

B. [APPEALS FROM PLANNING COMMISSION DENIALS OF VACATION PETITIONS SHALL BE HEARD, BASED ON THE RECORD, BY THE ASSEMBLY IN ACCORDANCE WITH THE PROCEDURES IN KPB CHAPTER 20.28.] The assembly shall consider planning commission and board of adjustment approved vacation petitions in accordance with the procedures in KPB Chapter 20.28.

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

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS * DAY OF *, 1999.

Ronald Wm. Drathman, Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk