

Introduced by: Mayor
Date: 08/03/99
Hearing: 09/07/99
Action: Failed
Vote: 0 Yes, 8 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 99-46**

**AN ORDINANCE AMENDING CHAPTER 20 BY ESTABLISHING A HEARING
OFFICER TO HEAR APPEALS FROM PLANNING COMMISSION DECISIONS**

WHEREAS, KPB 20.28.110 provides for an appeal of the denial of vacation petitions to either city council if within city boundaries or the borough assembly if outside city boundaries; and

WHEREAS, such appeals can consume significant resources and time from the Borough Assembly; and

WHEREAS, the code contains no formal procedures for hearing appeals other than notice requirements; and

WHEREAS, requiring appeals from Planning Commission decisions to be heard by a hearing officer would eliminate confusion as well as save citizens' time; and

WHEREAS, the Planning Commission held a public hearing at its regularly scheduled meeting of July 12, 1999 and recommended enactment by unanimous consent.

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

SECTION 1. That KPB 20.16.200, Appeals, is hereby repealed.

SECTION 2. 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 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] to the hearing officer. The appeal shall be filed in writing with the [APPROPRIATE MUNICIPAL] borough 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.] Notice shall also be sent to all parties of record to the petition before the planning commission. [ADVERTISING AND N] Notice fees for the appeal shall be as required by [EACH CITY COUNCIL OR BY THE ASSEMBLY AS APPROPRIATE] planning commission resolution. The municipal clerk shall notify the planning commission of the findings [OF THE COUNCIL OR ASSEMBLY] regarding the appeal so that further action concerning surveying and platting maybe initiated. Appeals from the decision of the hearing officer under this section shall be heard by the board of adjustment in accordance with the provisions of KPB 21.20.250. Granted vacation petitions shall be considered by the governing body pursuant to KPB 20.28.100, and are not subject to administrative appeal.

B. Upon denial by the planning commission, 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 where new evidence or circumstances exist that were not available or present when the original petition was filed.

SECTION 3. KPB Chapter 20 shall be amended by enacting Chapter 20.45 to read as follows:

Chapter 20.45 APPEALS

20.45.010. Planning Commission Appeals.

Final decisions of the planning director or plat committee governed by this title may be appealed to the planning commission. The hearing before the planning commission shall be de novo. Notice shall be given as required for the proceeding before the original decision maker.

20.45.020. Hearing Officer.

A. Hearing Officer Selection. One or more hearing officers shall be selected through a request for proposals. If a qualified, responsible, responsive proposal is not received the mayor may appoint a hearing officer without further competitive bidding. The hearing officer shall have a background in quasi-judicial proceedings and applications with platting or planning experience will be preferred.

B. Hearing Officer - Proceedings. Appeals from decisions of the planning commission which are subject to appeal and governed by this title shall be heard by a hearing officer. The hearing officer shall conduct the appeal in accordance with KPB 21.20, except that KPB 21.20.290 shall not apply, new testimony and evidence may be submitted, reply briefs are not allowed unless required by the hearing officer, all evidence other than witness testimony will be due on the day written arguments are due, and any rulings requested by parties pursuant to

KPB 21.20 shall be made by the hearing officer. The hearing officer may affirm, modify, reverse or remand the Planning Commission decision.

C. Fees. There shall be an appeal fee established by resolution of the planning commission.

SECTION 4. KPB 21.20.060(B) shall be amended as follows:

B. On each application or appeal, the planning commission shall, by separate motion or motions, approve the findings of fact supporting its decision, which findings shall be supported by substantial evidence. After any appeal to the [BOARD OF ADJUSTMENT] hearing officer is filed, the findings supporting the appealed decision shall then be documented on a separate written instrument entitled "Findings of Fact" which shall be signed by the planning commission chair and attested by the planning department administrative assistant.

SECTION 5. KPB 21.20.230 shall be amended 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 issued pursuant to KPB Title 21, and hearing officer decisions issued under title 20.

[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 APPROVED VACATION PETITIONS IN ACCORDANCE WITH THE PROCEDURES IN KPB CHAPTER 20.28.]

SECTION 5. KPB 21.20.250(A) shall be amended as follows:

A. Time; Fees. Any party of record may file an appeal to the Board of Adjustment of a decision of the planning commission or hearing officer as applicable, within 15 days of the date of the notice of the decision with the borough clerk on the forms provided, and by paying the filing and records preparation fee of \$300. All such appeals shall be to the assembly sitting as a board of adjustment, and shall be conducted in accordance with the provisions of this chapter, unless otherwise provided by the Kenai Peninsula Borough Code.

SECTION 6. This ordinance shall take effect immediately upon enactment.

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

Ronald Wm. Drathman, Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk