

Introduced	Mayor
Date:	01/23/01
Hearing:	02/20/01
Action:	Enacted
Vote:	9 Yes, 0 No

**KENAI PENINSULA BOROUGH  
ORDINANCE 2001-01**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED SALE OF THAT PORTION OF  
GOVERNMENT LOT 15, SECTION 25, T3S, R15W, S.M., ALASKA, LYING  
SOUTHEASTERLY OF THE STERLING HIGHWAY, EXCLUDING THE SOUTH 30  
FEET ADJACENT TO DANIEL AVENUE, TO ROBERT AND KATE BOYAN**

**WHEREAS,** the Kenai Peninsula Borough (KPB) owns that portion of Government Lot 15, Section 25, T3S, R15W, S.M., Alaska, lying southeasterly of the Sterling Highway, excluding the south 30 feet adjacent to Daniel Avenue ("the KPB parcel"); and

**WHEREAS,** the As-built Survey by Ability Surveys dated July 15, 2000 shows that the Boyan's house and satellite dish are on Government Lot 14 and encroach into the above-described KPB parcel; and

**WHEREAS,** the encroachments existed at the time the Boyans purchased Government Lot 14; and

**WHEREAS,** the KPB parcel is triangularly shaped and is 0.536 acres in size. Because the KPB parcel is less than 40,000 square feet it may not support its own well and septic system, making the Boyans the only feasible buyers; and

**WHEREAS,** the KPB parcel is surplus to KPB needs; and

**WHEREAS,** the Boyan trespass can be resolved by selling the Boyans the KPB parcel pursuant to KPB 17.10.220(C); and

**WHEREAS,** the Boyans have submitted an application for the negotiated sale of the KPB parcel at fair market value to resolve the trespass; and

**WHEREAS,** Daniel Avenue and Sharon Avenue abut and adjoin the subject parcel; and

**WHEREAS,** right-of-way dedications will be given at time of platting approval to bring Sharon Avenue and Daniel Avenue to full 60-foot rights-of-way; and

**WHEREAS,** a public notice has been sent to all owners or leaseholders within ½ mile of the KPB parcel; and

**WHEREAS,** the KPB Planning Commission conducted a public hearing at its regularly scheduled meeting of January 22, 2001, and recommended enactment.

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

**SECTION 1.** That the Assembly finds that selling that portion of Government Lot 15, Section 25, T3S, R15W, S.M., Alaska, lying southeasterly of the Sterling Highway, Homer Recording District, Third Judicial District, State of Alaska, excluding the south 30 feet adjacent to Daniel Avenue is in the best interest of the borough pursuant to KPB 17.10.220(C) and KPB 17.10.100(I). The Assembly additionally authorizes exceptions to KPB 17.10. 090 (requiring classification prior to transfer, KPB 17.10.130(D) (requiring a deed restriction), and KPB 17.10.110 (notice of a land sale). These exceptions are based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
  - A. The proposed negotiated sale will resolve an unintentional trespass.
  - B. The Boyans are the only feasible buyers of subject Government Lot 15.
  - C. Right-of-way dedications will be given at time of platting approval to bring Sharon Avenue up to a full 60-foot right-of-way
  - D. KPB 17.10.100(I) provides that land to be sold or leased to resolve a land use conflict or unintentional trespass may be excluded from classification, deposit into the land bank, and notice of disposition if the land to be sold or leased is a portion of a larger parcel, and the most appropriate use and the highest and best use of the larger parcel is not changed, and the land to be leased or sold is not more than one acre. Sale of the subject portion of Government Lot 15 to the Boyans meets these criteria.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
  - A. The Boyans were unaware of trespass when they purchased their property.
  - B. Sale of the KPB parcel to the Boyans will cure their unintentional trespass, bring Sharon Avenue up to a full 60-foot right-of-way, and sell at fair market value an undevelopable parcel of borough land.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
  - A. The Boyans are the only feasible buyers of subject portion of the KPB parcel.
  - B. Other property in the area will benefit by Sharon Avenue being brought up to a full 60-foot right-of-way.

**SECTION 2.** Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100(I) and KPB 17.10. 220(C) to sell the land described in section 1 above to Robert and Kate Boyan subject to the terms and conditions of this ordinance. The land shall be conveyed by Quitclaim Deed. The authorization is for sale solely to the Boyans, and they may not assign any rights to negotiate or enter an agreement for sale of this parcel to any other person or entity before replat is complete. The sale shall be at fair market value as established by the borough assessing department, with payment in full due at closing. Purchasers shall pay all costs associated with platting and surveying the affected parcels and all closing costs associated with this sale. All conditions in KPB 17.10.130 and 17.10.240 shall apply unless clearly inconsistent with this ordinance.

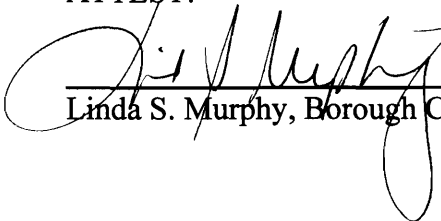
**SECTION 3.** The mayor is authorized to sign any documents necessary to effectuate this ordinance.

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

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF FEBRUARY, 2001.**

  
Timothy Navarre, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

