

Introduced by: Brown
Date: 03/13/01
Hearings: 04/17/01 & 05/15/01
Action: Failed
Vote: 1 Yes, 7 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2001-08
(MAYOR) SUBSTITUTE**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED SALE OF BOROUGH LAND
FOR GRAVEL TO PROVIDE A GRAVEL RESOURCE FOR THE NORTH ROAD
EXTENSION PROJECT**

- WHEREAS,** the borough supports the extension of the North Kenai Road as evidenced by its application and receipt of a TEA-21 grant of \$6 million from the federal government for the road extension; and
- WHEREAS,** the grant requires a 20 percent match from the borough that may be in kind including gravel used for construction of the road; and
- WHEREAS,** the borough desires that the TEA-21 grant be used in a manner that will extend the North Kenai Road the greatest distance possible; and
- WHEREAS,** gravel is a significant cost item in the extension of the North Kenai Road; and
- WHEREAS,** an engineers report indicates that it would cost \$89,950.00 to construct the access road to the borough gravel source; and
- WHEREAS,** James T. Hall is constructing the access to the gravel source on his land and will abide by conditions place on the extraction and negotiated sale.
- WHEREAS,** James T. Hall is willing to give the borough the exclusive right to extract gravel on his land at a price of 91 cents a cubic yard and accept as consideration the land described in Section 1 of this ordinance; and
- WHEREAS,** the KPB Planning Commission at its regularly scheduled meeting of _____, 2001 recommended . . .

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

SECTION 1. That the assembly finds that selling the parcels identified below to James T. Hall in exchange for an equal value of gravel on his land described as the W½SE¼, Section 22, T8N, R11W, S.M., Assessor Parcel No. 013-020-37 is in the pubic interest:

Borough Parcels:

Assessor Parcel No. 013-020-12

Government Lots 2 & 3, Section 22, T8N, R11W, S.M., Alaska, containing 59.77 acres more or less.

Assessor Parcel No. 013-020-11

E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, excluding the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 22, T8N, R11W, S.M., Alaska, containing 115.00 acres more or less.

Portion of Assessor Parcel No. 013-020-13

W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 22, T8N, R11W, S.M., Alaska, containing 20 acres more or less.

SECTION 2. The mayor is authorized, pursuant to KPB 17.10.100(I) and KPB 17.10.120(D) to negotiate the sale of the land described in Section 1 above with James T. Hall. The borough land shall be conveyed by quitclaim deed. The authorization is for negotiation solely with James T. Hall, and he may not assign any rights to negotiate or enter an agreement for exchange to any other person or entity without the borough's written approval. The borough's agreement with Mr. Hall shall include the following provisions:

- Mr. Hall will construct access to gravel resource on his land.
- Mr. Hall will obtain a gravel extraction permit from the borough for his parcel.
- Mr. Hall will grant the borough the sole right to extract gravel on his land until the North Kenai Road Extension is completed.
- Mr. Hall will sell gravel to the borough at the price of .91 cents a cubic yard for all gravel extracted that exceeds the value of borough land.
- The gravel will be extracted from Mr. Hall's land for the sole purpose of constructing the North Kenai Road Extension and the borough, upon completion of the North Kenai Road Extension, will close the gravel extraction site.
- The borough will prepare a site development and extraction plan.
- The borough will open, develop, and extract gravel pursuant to the approved extraction plan.
- The borough will be responsible for site closure and reclamation.

SECTION 3. Pursuant to KPB 17.10.120(D) the assembly authorizes the sale of land for an amount other than fair market value based on the following standards:

1. a finding that sale for an amount other than fair market value is in the best public interest;
2. a statement of the facts on which the finding is based; and
3. the period of time during which the offer may be accepted.

Findings: It is in the public's best interest that the borough receive more than fair market value for the property it is conveying by this ordinance based on the following facts: The borough needs a gravel source close to the NRE project to minimize the cost of that project. The gravel source may be used as an in-kind match for the federal grant for the NRE further minimizing the cost of the NRE project to the borough. The gravel the borough wishes to acquire is valued at an in bank value of \$1.50 per cubic yard. A negotiated sale is justified because a value certain cannot be placed on the gravel source without Federal Highway Administration ("FHWA") approval, and further negotiation may be necessary after the FHWA approves the gravel as an in-kind match. The borough is not giving away any public assets for which it is not being compensated as they are receiving a higher value in this sale. A competitive sale is not feasible for this borough land because of the borough's immediate need for gravel in close proximity to the NRE project and the fact that the source of that gravel is located on property owned by James T. Hall whose property abuts or is adjacent to the three borough parcels and who is willing to offer gravel as the purchase price for those parcels.

SECTION 4. The time period in which the borough's offer to negotiate the exchange based on the terms of this ordinance expires on July 31, 2001.

SECTION 5. Conveyance of the borough land shall comply with the provisions of KPB 17.10.130(A), (B), (C), and (D) and 17.10.240 where applicable.

SECTION 6. Pursuant to KPB 17.10.070 the assembly authorizes the parcels set forth in section 1 of this ordinance for withdrawal from the land bank for disposal by negotiated sale with James T. Hall. Pursuant to KPB 17.10.230 an exception to establishing the date and time of the sale of the parcels under KPB 17.10.070 is approved based on the following findings for the standards set forth immediately below:

1. That special circumstances or conditions exist;
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;
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

Findings: Special circumstances exist in that this is a negotiated sale and since further negotiations are necessary a sale date cannot be established at this time. Granting this exception promotes and protects the borough's interest in completing the NRE project and is the most practical way of complying with the code since the value of the gravel has not been established upon which the sale and date of sale are contingent. The exception promotes the public welfare as it assists the borough in meeting an in-kind match and reducing costs of the NRE project. The exception is not injurious to other property in the area because

establishing the date of sale is not relevant to whether there would be physical harm to any property.

SECTION 7. The sale of the borough parcels set forth in Section 1 is conditional on FHWA approval of the quality and value of the borough gravel for the match and further testing of the Hall parcel to verify an adequate quantity of gravel for the NRE project. Hall will provide a licensed professional civil engineer's report verifying that there is 500,000 cubic yards of gravel meeting the criteria of FHWA for the NRE. The report must be submitted to the borough by June 15, 2001.

SECTION 8. That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS *
DAY OF MAY, 2001.**

Timothy Navarre, Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk