

Introduced by: Mayor
Date: 02/05/02
Hearing: 03/12/02
Action: Postponed until 04/16/02
Action: Enacted as Amended
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH
ORDINANCE 2002-07**

**AN ORDINANCE CLARIFYING THE PROCESS FOR APPEAL OF PLANNING
COMMISSION DECISIONS AND FOR RECONSIDERATION OF PLAT COMMITTEE
DECISIONS BY THE FULL PLANNING COMMISSION**

WHEREAS, quasi-judicial decisions of the planning commission are appealable to the board of adjustment; and

WHEREAS, there is no definition of quasi-judicial in the code; and

WHEREAS, not all planning commission decisions are appealable, and, therefore, the code should be clarified as to which decisions are appealable; and

WHEREAS, the full planning commission reconsiders decisions of those members of the planning commission functioning as the plat committee; and

WHEREAS, there is a conflict in the code regarding the plat committee appeal procedure; and

WHEREAS, it is in the best interest of due process to afford interested parties a thorough reconsideration of a challenged plat committee action by the full planning commission;

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

SECTION 1. KPB 2.40.080 is hereby amended as follows:

2.40.080. Plat committee—Powers and duties—Hearing and [APPEAL] reconsideration procedures.

The planning commission (and the planning commission acting as the platting board) is authorized to delegate powers to hear and decide cases involving platting to a plat committee composed of those members of the planning commission present for such hearing so long as there are at least 4 members of the planning commission present. The following procedures are prescribed for hearings and [APPEALS] reconsideration:

A. Cases may be decided by a majority vote of the plat committee members present.

B. [APPEAL MAY BE TAKEN FROM THE] Reconsideration of a decision of the plat committee [TO] may be heard by the planning commission acting as platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for reconsideration shall be filed within 10 days after notification of the decision of the plat committee by personal service, service by mail, or publication. A request for reconsideration may be filed by any person or agency that participated at the plat committee hearing either by written or oral presentation. The notice of reconsideration must briefly state the reason for the reconsideration request and applicable provisions of borough code or other law upon which the request for reconsideration is based. Notice of the reconsideration hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

C. Cases [APPEALED FROM THE PLAT COMMITTEE] reconsidered shall be heard de novo by the planning commission acting as platting board.

SECTION 2. KPB 20.16.200 is hereby repealed.

SECTION 3. KPB 21.20.210 is hereby amended as follows:

21.20.210. Definitions.

A. For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

1. “Aggrieved party” means a party adversely impacted by the decision of the board of adjustment who participated in the board of adjustment hearing either by written or oral presentation.
2. The “appellant” is the party who pays the filing fee and initially files the notice of appeal.
3. The “appellee” is the petitioner for a borough entitlement or recipient of a borough enforcement order where another party is the appellant. The appellee is the borough where the appellant is the petitioner for a borough entitlement or the recipient of a borough enforcement order.
4. “Board” means the Kenai Peninsula Borough Board of Adjustment.
5. “Ex parte” means by or for one party; don for, on behalf of, or on the application of, one party only.
6. “Party of record” means:
 - a. The applicant before the planning commission,
 - b. Any person or government agency affected by the decision who appeared before the planning commission with either an oral or written presentation;
 - (1) A signature on a petition does not qualify the signatory as a party of record without a separate oral or written presentation to the planning commission.

- c. The person to whom an enforcement order is issued.
7. “Quasi-judicial decisions” are those decisions where general law or policy are applied or affect an individual’s property interests. Such decisions include but are not limited to vacations of public interest in land, preliminary and final plat approvals, conditional use permits, and exception and variance applications.
8. “Substantial evidence” means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

SECTION 4. KPB 21.20.230 is hereby amended as follows:

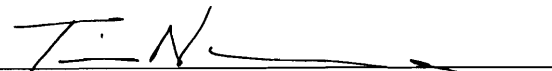
21.20.230. Jurisdiction.

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

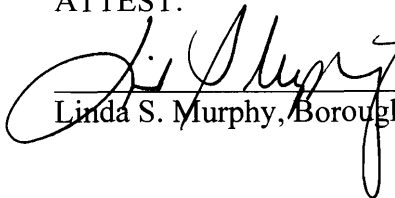
B. The assembly shall consider planning commission approved vacation petitions in accordance with the procedures in KPB Chapter 20.28.

SECTION 5. This ordinance shall take effect immediately upon its adoption.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF APRIL, 2002.


Timothy Navarre, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk

