

Introduced by:	Mayor
Date:	01/22/02
Hearings:	02/05/02, 02/19/02
Action:	Postponed until 02/19/02
Action:	Postponed until 03/12/02
Action:	Enacted
Vote:	8 Yes, 0 No, 1 Absent
Date:	03/12/02

**KENAI PENINSULA BOROUGH  
ORDINANCE 2002-04**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LONG-TERM  
GRAZING LEASE OF BOROUGH LAND TO MR. DON JOHNSON AT  
OTHER THAN FAIR MARKET VALUE FOR SIX YEARS WITH THREE  
FIVE-YEAR RENEWAL OPTIONS LOCATED NEAR SWANSON RIVER  
ROAD CONTAINING 40.01 ACRES MORE OR LESS**

**WHEREAS,** pursuant to KPB 17.10.100(I) the KPB Land Management Division received an application from Mr. Don Johnson to lease approximately 40.01 acres of borough land described as Government Lot 3, Section 1, T5N, R9W, Seward Meridian, Alaska; and

**WHEREAS,** Kenai Peninsula Borough received State of Alaska Patent No. 2410, recorded in Book 85, Page 469, Kenai Recording District for subject parcel; and

**WHEREAS,** the KPB Planning Commission at its regularly scheduled meeting of January 28, 2002 recommended enactment of Ordinance 2002-04; and

**WHEREAS,** the Kenai Peninsula Borough Code of Ordinances requires the assembly to classify land prior to disposal by lease; and

**WHEREAS,** KPB Resolution 2000-038 classified subject land as waste handling with an overlay of Resource Management;

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

**SECTION 1.** The assembly finds that leasing borough land described as Government Lot 3, Section 1, T5N, R9W, Seward Meridian, Alaska containing 40.01 acres more or less to Mr. Don Johnson for an amount other than fair market value is in the best interest of the public and the borough.

The finding is based on the following facts.

1. Permissible Use (legal): Use of this land for grazing purposes is legally permissible. KPB has no building or zoning code restrictions for this area. A 20-foot building setback is required from any road right-of-way.
2. Possible Use: Based on comments from agency review, the subject parcel is capable of supporting livestock grazing. Because of the past use of this parcel, existing site characteristics, and ongoing waste site monitoring, the site's potential for other development is limited.
3. Economically Feasible: Use of this land for grazing purposes will produce income to the borough through lease fees and property tax assessments.
4. Road Access: Legal access to this parcel is gained from a gravel road built from Swanson River Road to the parcel within a 50-foot wide section line easement. If further improvements are made to the road or driveway, a borough permit is required.
5. Lease Value: A lease at other than fair market value is in the best public interest. Assessing Department stated the cost of appraising a special case with few comparables within the state would exceed revenue that could be derived from a grazing lease.

**SECTION 2.** The period of time during which this offer may be accepted is 60 days from enactment of this ordinance.

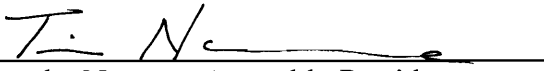
**SECTION 3.** That the mayor is authorized, pursuant to KPB 17.10.100(I), Negotiated Sale or Lease, to negotiate the lease of the land described in Section 1 solely with Mr. Don Johnson or his successor subject to the lease conditions required by this ordinance and applicable consistent provisions of KPB 17.10. The lease shall be substantially in the form of the lease agreement attached as Exhibit A and shall carry the following restrictions:

- a. The lease shall be for a period of six years at the annual lease rate of \$300, due and payable in installments of \$100 on or before the first day of May, June, and July of each year. Upon mutual agreement of the borough and Mr. Johnson or his successor, this term may be extended for three additional five-year periods on the same terms and conditions except that the rental rate may be adjusted based primarily upon a reappraisal of the annual rental value at the sole discretion of the borough. Such reappraisal may be performed by the assessing department or an independent appraiser selected by the borough.
- b. The parcel shall be restricted to waste handling with resource management overlay classifications.
- c. Lessee shall provide a development plan for this parcel as required by KPB 17.10.140(A) which must be approved by the planning director or his designee.

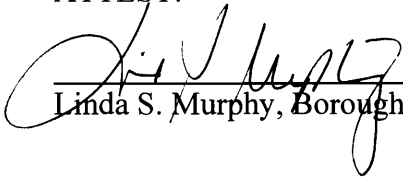
- d. Lessee's allowed use of this land shall be to graze livestock. No improvements may be placed upon the properties by lessee without prior written approval of the borough mayor or his designee or as authorized in the approved development plan.
- e. The closed landfill area including all material underneath the protective barrier described by KPBSolid Waste will not be penetrated. All activity on the landfill closure cap including plowing, tilling, grazing, and irrigation must be pre-approved by the KPBSolid Waste Director or designee.
- f. KPBS responsibility to maintain the solid waste site will have precedence over lessee's use of the property. All or a portion of the lease area may be periodically restricted or closed as needed by KPBSolid Waste with no change in the lease rate unless such closure substantially deprives lessee of all reasonable use of the premises. In such case, the rent may be prorated based upon the time period of such closure.
- g. Lessee shall comply with all applicable local, state, and federal laws and regulations concerning grazing livestock.
- h. KPBS may terminate the lease on thirty days' notice with the understanding that lessee will have 90 days to remove property and close the lease in accordance with the agreement.
- i. This lease shall be subject to all applicable terms and conditions of KPBS 17.10.140(A).

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

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 12TH DAY OF MARCH, 2002.**

  
 Timothy Navarre, Assembly President

ATTEST:

  
 Linda S. Murphy, Borough Clerk

