

Introduced by: Mayor
Date: 06/04/02
Hearing: 07/09/02
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2002-22**

AN ORDINANCE AUTHORIZING THE NEGOTIATED SALE OF TRACT A, ARNESS DOCK SUBDIVISION, LOCATED IN THE VICINITY OF NIKISKI HIGH SCHOOL, TO OFFSHORE SYSTEMS - KENAI

- WHEREAS**, the Kenai Peninsula Borough (KPB) owns Tract A, Arness Dock Subdivision; and
- WHEREAS**, the KPB has issued Offshore Systems – Kenai (OSK) a long-term lease for Tract A that expires 2041; and
- WHEREAS**, Tract A is surrounded by land owned by OSK making it of limited use to others; and
- WHEREAS**, developed access to Tract A is through land owned by OSK; and
- WHEREAS**, Tract A was previously used for a microwave tower site, but it is now vacant; and
- WHEREAS**, AT&T Wireless Services desires to lease the site from OSK for a telecommunication facility; and
- WHEREAS**, OSK will pay fair market value for the site; and
- WHEREAS**, the KPB Assessing Department has appraised the fair market value of Tract A at \$34,000; and
- WHEREAS**, the KPB Planning Commission conducted a public hearing during the regularly scheduled meeting of May 28, 2002 and recommended enactment.

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

SECTION 1. That the Assembly finds that selling Tract A, Arness Dock Subdivision, according to Plat No. KN 86-235, on file in the Kenai Recording District, Third Judicial District, State of Alaska to Off Shore Systems – Kenai (OSK), pursuant to KPB 17.10.100 (I) is in the best interest of the borough. The Assembly additionally makes exceptions to KPB 17.10.090 (requiring classification before sale), 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. OSK is the only feasible buyer as it holds a long-term lease that expires in 2041.
 - B. KPB has sold most of the surrounding land to OSK, and that land is not restricted.
 - C. The only existing access to Tract A is through OSK land, and developing other access will be difficult.
 - D. OSK intends to lease Tract A to AT&T Wireless for a cellular facility to service the local area, OSK offices, and the offshore platforms. AT&T Wireless does not enter into subleases with tenants due to the length of the term of the cellular lease and prefers to deal directly with the owner.
 - E. Classifying the land will not serve a useful purpose as the property is to be sold without a deed restriction and the intended use of Tract A is already specified.
 - F. Placing a use restriction in the deed as required by KPB 17.10.030 (D) will not serve a useful purpose when none of the immediately adjacent land is restricted and the intended use of Tract A is already specified.
 - G. The purpose of the KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase KPB land, and advertising this sole source sale to OSK will not serve a useful purpose.
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. OSK holds the long-term lease that expires in 2041 and therefore has a substantial property interest.
 - B. The lease is restricted for use as a communications link. The prior microwave tower has been removed. OSK desires to continue using the site for a communications link, but in order to do so must acquire the fee simple interest in the site in order to lease it to AT&T Wireless.


3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - A. OSK is the only feasible buyer as it holds a long-term lease that expires in 2041.
 - B. OSK owns the surrounding property and therefore the sale will not injure adjacent property.
 - C. Sale of Tract A to OSK will benefit the public and other property in the area when the communications link is established.

SECTION 2. Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100 (I) to sell the land described in Section 1 above to OSK for \$34,000 subject to the terms and conditions of this ordinance. The land shall be conveyed by Quitclaim Deed. The authorization is for sale solely to OSK, and it may not assign any rights to negotiate or enter an agreement for sale to any other person or entity. KPB shall be authorized to install, operate, and maintain a 911 antenna on the communication tower at no cost as a condition of the sale, and to enter the premises at any time for such purposes.

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

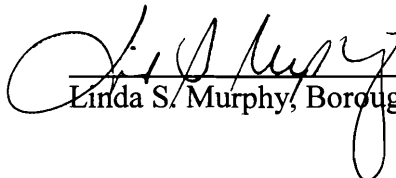
SECTION 4. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 9TH DAY OF JULY 2002.



Timothy Navarre, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

