

Introduced by: Sprague
Date: 07/09/02
Hearing: 08/06/02
Action: Failed
Vote: 2 Yes, 7 No

**KENAI PENINSULA BOROUGH
ORDINANCE 2002-28**

AN ORDINANCE AMENDING KPB 21.20.220 TO PROVIDE FOR AN APPOINTED BOARD OF ADJUSTMENT AND AMENDING OTHER CODE SECTIONS TO DELETE REFERENCES TO THE ASSEMBLY SITTING AS THE BOARD OF ADJUSTMENT

WHEREAS, Alaska Statute 29.40.050 authorizes the assembly to provide by ordinance for the composition, appointment, and terms of office of a board of adjustment or other body established to hear appeals from administrative actions in planning, platting, and land use matters; and

WHEREAS, currently, KPB 21.20.220 provides that the borough assembly serves as the board of adjustment; and

WHEREAS, matters coming before the board of adjustment are quasi-judicial matters, which require that all members be impartial and avoid engaging in ex parte contact with any party of record or members of the public from the time the matter is first presented to the borough administration, which can be months before it reaches the board of adjustment; and

WHEREAS, appointing community members to serve on the board of adjustment would help free the assembly from this constraint; and

WHEREAS, the assembly finds that the best interests of the public would be served by providing for a citizen board of adjustment;

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

SECTION 1. That KPB 20.16.200 is hereby amended as follows:

20.16.200. Appeals.

Appeals may be taken from a decision of the plat committee to the [ASSEMBLY SITTING AS A] board of adjustment, in compliance with the requirements of KPB Chapter 21.20.

SECTION 2. That KPB 20.24.010(C) is hereby amended as follows:

20.24.010. Exceptions to regulations—Procedure—Commission authority.

C. An appeal of a decision of the planning commission made under this section shall be filed to the [ASSEMBLY SITTING AS] board of adjustment, in accordance with the requirements of KPB Chapter 21.20.

SECTION 3. That KPB 21.01.010 is hereby amended as follows:

21.01.010. Powers of the borough and the cities.

A. The borough shall exercise all planning, zoning and platting powers on an areawide basis within that portion of the borough designated as the rural district by Section [21.040.010(B)] 21.04.010(B). [THE BOROUGH ASSEMBLY SHALL BE THE BOARD OF ADJUSTMENT FOR APPEALS MADE FROM DECISIONS OF THE BOROUGH PLANNING COMMISSION.] Appeals from decisions of the borough planning commission shall be made to the board of adjustment.

B. The borough planning commission shall exercise jurisdiction within the rural district and the municipal districts regarding planning, platting, subdivision approval, the siting of borough schools, buildings and other borough facilities, the planning and development of transportation networks and related facilities, the overall economic development of the borough, and regarding borough lands and natural resources. The decisions made by the borough planning commission under this subsection shall take into consideration the recommendations of the affected municipalities.

SECTION 4. That KPB 21.06.060(A)(3) is hereby amended as follows:

21.06.060. Variance procedure.

A. Appeal Board.

3. Those aggrieved by the decision of the planning commission, or any taxpayer, may appeal such decision to the [BOROUGH ASSEMBLY SITTING AS] board of adjustment, as provided in AS 29.40.050.

SECTION 5. That KPB 21.20.220 is hereby amended as follows:

21.20.220. Board of adjustment—Established; quorum.

A. Established. The board of adjustment is established to perform the appellate functions required by AS 29.40.050.

B. Composition. The board [OF ADJUSTMENT IS COMPRISED OF THE BOROUGH ASSEMBLY] shall consist of five members selected from the public. An alternate shall be appointed to serve in the event there are fewer than five members present for a proceeding. The alternate shall meet the qualifications for board membership.

C. Qualifications. Two or more members shall have previous experience in planning or platting, and preference shall be given to applicants who have quasi-judicial experience. Additionally, each member shall be a resident of the borough.

[C] D. Quorum. Five members of the board [OF ADJUSTMENT] must be present and qualified to deliberate and vote on the matter before the board [OF ADJUSTMENT]. If membership of the board [OF ADJUSTMENT] changes while an appeal is pending the new member may participate only by making an oral or written statement on the record that the member has reviewed the record and proceedings thus far and feels qualified to render an informed and impartial decision.

[D. CHAIRPERSON. THE ASSEMBLY PRESIDENT OR HIS DESIGNEE IS THE CHAIR OF THE BOARD OF ADJUSTMENT.]

E. Officers.

1. The board annually shall select from its membership a chairperson and vice chairperson. The chairperson shall preside at meetings of the board and shall represent the board as directed by its membership.
2. The vice chairperson shall act in the absence of the chairperson.
3. The borough clerk shall act as secretary to the board.

F. Appointment. Board members shall be appointed by a majority vote of the borough assembly.

G. Term. Board members' terms shall be three years with the first board appointed so that expiration dates of terms shall be staggered.

H. Vacancies. A vacancy is created under the following conditions and upon a declaration of vacancy by the board:

1. Fails to take office within 30 days after his or her appointment;
2. Is physically absent from the borough for a 90-day period, unless excused by the board;
3. Resigns and the resignation is accepted;
4. Is physically or mentally unable to perform the duties of his or her office;
5. Is removed from office;
6. Misses three consecutive regular meetings unless excused;
7. Is convicted of a felony or of an offense involving a violation of his or her oath of office;
8. Changes his or her residency to a location outside of the borough for a period longer than 60 days.

A vacancy on the board shall be filled by assembly appointment of a person qualified to serve under this section for the unexpired term, or for a three-year term if no unexpired term remains.

I. Compensation and reimbursement. Board members shall be compensated at the rate of \$100 per meeting. Board members shall be reimbursed for actual

expenses incurred on authorized board business at the same rate as are Kenai Peninsula Borough employees.

SECTION 6. That KPB 21.20.250(A) is hereby amended as follows:

21.20.250. Appeal of planning commission decision to board of adjustment.

A. Time; Fees. Any party of record may file an appeal of a decision of the planning commission within 15 days of the date of the notice of the decision with the borough clerk on the forms provided, and by paying the filing and records preparation fee of \$300. All appeals shall be to the [ASSEMBLY SITTING AS A] board of adjustment, and shall be conducted in accordance with the provisions of this chapter, unless otherwise provided by the Kenai Peninsula Borough Code.

SECTION 7. That KPB 21.20.310(A) is hereby amended as follows:

21.20.310. Board of adjustment hearing procedure.

A. *Time.* The [ASSEMBLY PRESIDENT] board of adjustment chairperson shall establish the date for consideration of the appeal by the board of adjustment on a date that is not less than 35 nor more than 90 days after the service of the notice of certification of the record. The [ASSEMBLY] board of adjustment may for good cause shorten or extend the hearing date.

SECTION 8. That KPB 21.25.100 is hereby amended as follows:

21.25.100. Appeals.

An aggrieved party may appeal the denial, modification, approval or revocation of a permit by filing an appeal to the [ASSEMBLY, SITTING AS A] board of adjustment[,] within fifteen (15) days of the date of notice of the decision. Appeals from actions taken under this chapter shall be conducted in accordance with the appellate procedures established in Chapter 21.20 of this code.

SECTION 9. That KPB 21.30.110(B) is hereby amended as follows:

22.30.110. Compensation—Allowances—Benefits—Waiver.

B. When sitting as a member of the [BOARD OF ADJUSTMENT OR THE] board of equalization, assembly members shall be compensated at the rate of \$100.00 per session for each session, subject to a maximum payment of \$100.00 per day. This is in addition to allowances for expenses provided elsewhere in this code.

SECTION 10. That this ordinance shall automatically expire on August 6, 2003, unless the assembly by ordinance has altered or extended that date.

SECTION 11. That this ordinance takes effect immediately upon adoption.

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

Timothy Navarre, Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk