

Introduced by: Mayor
Date: 08/20/02
Hearing: 09/17/02
Action: Failed to be Introduced
Vote: 1 Yes, 6 No, 2 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2002-37**

**AN ORDINANCE AUTHORIZING THE SALE OF APPROXIMATELY 0.159 ACRES
OF LAND TO HERMAN AND IRENE FANDEL TO RESOLVE A LONG STANDING
TRESPASS ON BOROUGH LAND LOCATED WITHIN THE CITY OF KENAI**

WHEREAS, since 1975 Herman and Irene Fandel have improved and occupied without specific authorization an approximately 28,000 square foot portion of borough land located in the northwest corner of Government Lot 2, Section 4, T5N, R11W, S.M., Alaska; and

WHEREAS, KPB 17.10.220(C) promotes the resolution of unintentional trespass by conveyance of small areas; and

WHEREAS, the Fandels desire to acquire approximately 0.159 acres of the subject parcel that lies between their home and a storm drain easement pursuant to KPB 17.10.100(I) in order to resolve their trespass under KPB 17.10.220(C); and

WHEREAS, the Fandels will pay market value for the subject parcel along with platting and all other costs; and

WHEREAS, this land sale will resolve a long-standing trespass issue; and

WHEREAS, the western ½ of Government Lot 2 has been considered for sale by the borough; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of _____, 2002 recommended _____;

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

SECTION 1. That the Assembly finds that selling an approximately (80' x 154') or 0.159± acre parcel located in the northwest corner of Government Lot 2, Section 4, T5N, R11W, S.M., Alaska, Kenai Recording District, Third Judicial District, State of Alaska to Herman and Irene Fandel is in the best interest of the borough pursuant to KPB 17.10.220(C) and KPB 17.10.100(I). The Assembly additionally makes exceptions to 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 fact pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist in that the trespass has continued since 1975.
 - A. The proposed sale will resolve a long-standing trespass.
 - B. The borough intends to dispose of the larger parcel, and selling the subject parcel to the Fandels will not inhibit the borough's ability to dispose of the remainder.
 - C. The borough will have to expend additional funds should it evict the trespass.
 - D. KPB 17.10.100(I) provides that land to be sold or leased to resolve a land use conflict or unintentional trespass may be excluded from classification, deposit into the land bank, and notice of disposition if the land to be sold or leased is a portion of a larger parcel, and the most appropriate use and the highest and best use of the larger parcel is not changed, and the land to be leased or sold is not more than one acre. The land proposed for sale to the Fandels meets these criteria.
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. Herman and Irene Fandel have improved and occupied the subject borough land since 1975.
 - B. Herman and Irene Fandel consider the subject borough land an extension of their yard and plan to maintain it as part of their home.
 - C. The intent of the code as embodied in KPB 17.10.100(I) and KPB 17.10.220(C) is to resolve unintentional trespass of small parcels by conveyance to the private party.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - A. The proposed exchange will resolve a long-standing trespass
 - B. The borough intends to dispose of the larger parcel and selling the subject parcel to the Fandels will not inhibit the borough's ability to dispose of the remainder.

C. The Fandels will incorporate the subject parcel into Lots 1 and 2, Block 4, Inlet View Subdivision, First Revision, according to Plat No. K-1515, Kenai Recording District by subdivision plat prior to conveyance of title. KPB shall prepare survey and platting instructions.

SECTION 2. Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100(I) and KPB 17.10. 220(C) to sell the land described in Section 1 above to the Fandels subject to the terms and conditions of this ordinance and after the land has been subdivided as required by law. The land shall be conveyed by Quitclaim Deed. The authorization is for sale solely to the Fandels and they may not assign any rights to negotiate or enter an agreement for sale to any other person or entity before replat is complete. The sale price shall be \$8,000.00 with payment in full due at closing. The Fandels shall also pay all costs associated with platting and surveying the affected parcels and all closing costs associated with this sale. All conditions in KPB 17.10.130 and 17.10.240 shall apply unless clearly inconsistent with this ordinance.

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 * DAY OF * 2002.

Timothy Navarre, Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk