

Introduced by:

Date:

Hearing:

Action:

Vote:

Mayor

06/03/03

07/08/03

Enacted as Amended

5 Yes, 4 No

**KENAI PENINSULA BOROUGH
ORDINANCE 2003-23**

**AN ORDINANCE AMENDING KPB 17.10 BY DELETING THE
REQUIREMENT FOR MANDATORY DEED RESTRICTIONS**

- WHEREAS,** KPB 17.10.130 (D) requires that all lands or interests in lands shall be conveyed by an instrument containing restrictions that restrict the use of land to that classification and prohibit the use of the land for any other purpose; and
- WHEREAS,** restricting the use of land by a deed restriction does not serve a useful purpose in controlling or directing land use when adjacent land is not restricted; and
- WHEREAS,** borough land sold with deed restrictions under KPB 17.10.130(D) is often surrounded by parcels not subject to similar land use restrictions, or parcels that may have been or may be developed inconsistently with the restricted parcels; and
- WHEREAS,** the borough has no mechanism other than injunctive relief to enforce the restrictive covenants it places in deeds; and
- WHEREAS,** local option zoning is available when the borough is marketing subdivision land with a development plan; and
- WHEREAS,** removing the KPB 17.10.130(D) requirement will not preclude the assembly from authorizing a deed restriction in circumstances where a deed restriction may be warranted; and
- WHEREAS,** objective 2 of goal 5.1 of the comprehensive plan is to establish disposal policies for the public benefit; and
- WHEREAS,** the assembly finds that land use classifications provide a useful management tool for lands that are retained by the borough but that the borough's best interests are not served by continuing to require deed restrictions on borough lands to be disposed in the future; and
- WHEREAS,** the Borough Planning Commission at its regularly scheduled meeting of June 23, 2003 recommended enactment by unanimous consent.

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

SECTION 1. That KPB 17.10.130(D) is hereby amended as follows:

17.10.130. Conveyance of the land.

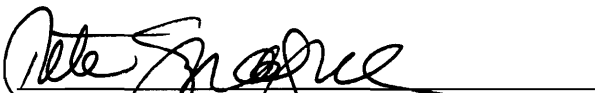
- A. The mayor shall execute all conveyance documents authorized by ordinance and said documents shall be recorded in the appropriate recording district.
- B. The purchaser shall be responsible for acquiring title insurance.
- C. The purchaser or lessee shall be responsible for all fees, which may include recording fees, closing fees, escrow setup fees, annual escrow fees, collection fees, surveying and platting fees if applicable, or other associated fees unless otherwise authorized.
- D. [ALL LANDS OR INTERESTS IN LANDS SHALL BE CONVEYED BY AN INSTRUMENT CONTAINING RESTRICTIONS THAT RESTRICT THE USE OF LAND TO THAT CLASSIFICATION AND PROHIBIT THE USE OF THE LAND FOR ANY OTHER PURPOSE.] Land shall be conveyed without deed restrictions unless otherwise provided by the assembly by ordinance.
- E. An instrument conveying land or an interest in land for agricultural use shall prohibit subdivision.
- F. Where the conveyance instrument contains deed restrictions, those [R]restrictions may be modified by:
 - 1. Submittal of a petition and accompanied by the appropriate fee to the land management officer requesting modification and stating the justification for the request;
 - 2. Within 60 calendar days from the date of receipt of the petition, notice of the petition shall be published two times in a newspaper of general circulation in the local area in which the property is located. In areas not served by daily newspapers, the notice shall be posted in the post office of the impacted community and sent to the appropriate advisory planning commission. The notice shall contain the description of the property, the general location, proposed restriction modification, where written comments may be submitted, the last date for which written comments may be submitted, and the date, time and location of the planning commission meeting. At the beginning of the notice period a copy of the notice shall be sent by regular mail to all owners and/or leaseholders of record of property located within a radius of one-half

mile of the lands under petition. Notice shall also be sent to applicable local, state or federal government agencies, advisory planning commission and other interested groups. The public comment period shall not be less than thirty (30) calendar days from the date of the first publication of the notice.

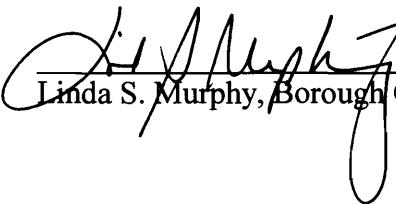
3. The planning commission shall consider the petition and recommend an appropriate action to the assembly.
4. The assembly may by ordinance authorize the repeal of any restriction and cause the appropriate document to be filed in the appropriate recording district based upon findings of fact which may include: the location of the lands, surrounding uses and ownership, existing and future access, property characteristics including topography, soils and availability of utilities, any known encumbrances or permits, physical examination where necessary and feasible, and comments from an appropriate advisory planning commission, and be compatible with any land use plan adopted under the borough comprehensive plan or another plan approved by the assembly.

SECTION 2. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 8TH DAY OF JULY, 2003.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk

