

Introduced by: Mayor
Date: 10/14/03
Hearing: Postponed until 12/16/03
Action: Enacted as Amended
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH
ORDINANCE 2003-41 (MAYOR'S) SUBSTITUTE**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED SALE OF A PARCEL OF
LAND LOCATED IN THE COOPER LANDING AREA TO THE COOPER LANDING
SENIOR CITIZEN CORPORATION, INC.**

- WHEREAS,** the Kenai Peninsula Borough (KPB) owns the subject land; and
- WHEREAS,** the subject land is classified Institutional by KPB Assembly Resolution 2003-93; and
- WHEREAS,** the Cooper Landing Land Use Plan identified a need to provide for senior housing, and the Cooper Landing community has shown support for the development of a senior campus; and
- WHEREAS,** 28 percent of the Cooper Landing population is age 60 or older, and no senior housing is available within 50 miles of Cooper Landing; and
- WHEREAS,** Cooper Landing Senior Citizen Corporation, Inc. (CLSCCI), a nonprofit corporation, is the only entity in the Cooper Landing area dedicated to serving the needs of senior citizens; and
- WHEREAS,** CLSCCI has created a senior campus development plan and secured funding through the Alaska Housing Finance Corporation, Greater Opportunities for Affordable Living Program, to begin implementing that plan; and
- WHEREAS,** CLSCCI has submitted an application for the negotiated purchase, at less than fair market value, of the subject property for the purpose of developing a senior campus; and
- WHEREAS,** a gift of land for housing construction is not authorized by the borough's areawide senior powers, which are limited to providing grant funding for operations and programs for senior citizen organizations; and
- WHEREAS,** a sale of the parcel at other than fee simple fair market value is authorized by the borough's land management and disposal powers, subject to other provisions of law; and

WHEREAS, 14+/- acres, containing approximately 11.6 “developable” acres, have been identified as suitable for the development of the desired senior campus; and

WHEREAS, the Kenai Peninsula Borough Assessing Department originally determined the current fair market value of the subject 14 acres to be \$193,600, or approximately \$13,800 per acre; and

WHEREAS, authorizing the sale of the approximately 14 acres at other than fair market value to the CLSCCI, including cash and other consideration, and conveying the said 14 acres in increments created through subdivision on an as-needed basis meets the needs of the CLSCCI, maximizes the developable ground, and assures proper utilization of the land; and

WHEREAS, KPB will issue a land use permit to the CLSCCI prior to any conveyance to look for water and a suitable septic system location to assure that the proposed senior campus is feasible; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of December 8, 2003, recommended enactment of the substitute ordinance with due consideration given to the amendments proposed by Assembly Member Long and CLSCCI passed by unanimous consent;

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

SECTION 1. That the Assembly finds that selling 14+/- acres substantially as shown on Attachment A “CLSCCI Land Boundary and Proposed Right-of-Way Dedications” pursuant to KPB 17.10.100(I) is in the best interest of the borough. The Assembly additionally makes exceptions to KPB 17.10.110 (notice of a land sale) and 17.10.120(C)(1) and (C)(3) (terms 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.
 - A. Providing land to the Cooper Landing Senior Citizen Corporation, Inc. for developing a senior campus is in the best interest of the public.
 - B. The proposed site is the best available location for senior housing needs.
 - C. The purpose of the KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land, and advertising this sole source sale to Cooper

Landing Senior Citizen Corporation, Inc. will not serve a useful purpose.

- D. Allowing a period longer than ten years for the purchase of this land and waiving the 10 percent down payment required by KPB 17.10.120(C) will allow the CLSCCI to own the parcel and obtain grant funding, while affording it time to raise money for the purchase price of the land and the project.
- 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. The Cooper Landing Senior Citizen Corporation, Inc. is the only entity in the Cooper Landing Area with the resources, commitment, and support to reasonably serve the senior facility needs that is the designated purpose for the subject land.
 - 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 use of the subject land is consistent with the intent of the Cooper Landing Land Use Plan.
 - B. The proposed use of the subject land has the support of the Cooper Landing community.

SECTION 2. The Assembly authorizes the sale of land described in Section 1 above for an amount other than fair market value pursuant to KPB 17.10.120 (D) because it is in the best public interest based on the following findings of fact:

- A. There is a demonstrated need and desire for organized senior housing in Cooper Landing which can best be accomplished by working cooperatively with the Cooper Landing Senior Citizen Corporation, Inc.
- B. Cooper Landing Senior Citizen Corporation, Inc. must have an interest to the land in order to utilize grant funds.
- C. The land described in Section 1 above is the best available and most appropriate location for the proposed use. Additionally the Cooper Landing Senior Citizen Corporation, Inc. is the most appropriate entity to administer such development.

- D. Providing the property for other than fair market value will make the project significantly more feasible and likely to succeed, and will allow for provision of the above-described benefits to the borough.

SECTION 3. Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100(I) to sell and convey, through quitclaim deed, the land described in Section 1 above to the Cooper Landing Senior Citizen Corporation, Inc. subject to the terms and conditions of this ordinance. The land shall be conveyed to the Cooper Landing Senior Citizen Corporation, Inc. incrementally in subdivided parcels sized appropriately for each phase of the development. This authorization is for sale solely to the Cooper Landing Senior Citizen Corporation, Inc., and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity.

SECTION 4. The sale amount for each parcel shall be calculated using the following equation:

(acreage of the parcel as quantified by survey) X (\$8,970) = cash or promissory note sale amount.

Financing of each parcel will be offered at the prime rate on the date of closing plus 2 percent. A down payment will not be required at the time of closing. The period for total payment shall be no more than 30 years with payments to be in equal installments on a monthly, semi-annual, or annual basis as agreed by the parties. The sale shall be secured by a first deed of trust against the property provided that the administration may subordinate that position for construction funding purposes including AHFC administered grants and/or AHFC term loans. The purchaser shall be responsible for acquiring title insurance and shall pay all fees associated with this sale including recording fees, closing costs, escrow setup fees, annual escrow fees, collection fees, surveying and platting fees to the extent applicable, and other associated fees for this sale. All other applicable terms and conditions of KPB Chapter 17.10 shall apply to this sale unless inconsistent with this ordinance.

In addition to the above consideration, the items listed in Sections 5 and 6 constitute good and valuable consideration for the purchase of this property and shall be specifically required in the sale agreement and/or other appropriate documents.

SECTION 5. The conveyance of this land is subject to the following:

1. Primary access to the senior campus from Russian Gap Road across the subject 14 acres shall be constructed by CLSCCI within a dedicated right-of-way. CLSCCI shall construct all roads within dedicated rights-of-way

to meet borough road construction standards for category IV roads. Temporary access ways are allowed; however, roads within dedicated rights-of-way shall be brought to category IV standards prior to first occupancy of the facility, which said roads are intended to serve.

2. All land conveyed to CLSCCI shall include a “senior restriction” on the deed. This restriction shall limit the use of the land to construction and operation of senior facilities, i.e., senior housing and a senior center, for recreational uses exercised by the public in the areas designated for recreational uses, as agreed by the parties and approved by the borough, and other associated public purposes. If the parcel is not primarily used for these public purposes for any continuous period of one year, the Kenai Peninsula Borough may foreclose the deed of trust, or if the parcel has been purchased it will be forfeited to the borough, for failure to comply with this condition unless otherwise agreed upon in writing by the borough and CLSCCI. “Used for these public purposes” in this section includes planning, design, site preparation and development as well as on-site uses.
3. Design of the senior center building shall include a conference room, which would be made available to the Kenai Peninsula Borough free of charge on an as-needed basis for public meetings.
4. The restrictions set forth in this section shall remain on the parcel after the deed of trust is paid in full unless and until they are removed by the assembly.

SECTION 6. Subdivision of the land is subject to the following:

1. CLSCCI shall be responsible for all subdivision designs, corner monumentation, and plat submittals.
2. The first subdivision design shall include three separate right-of-way dedications and shall define the east boundary of the “remainder” parcel substantially as shown on Attachment A “CLSCCI Land Boundary and Proposed Right-of-Way Dedications.”

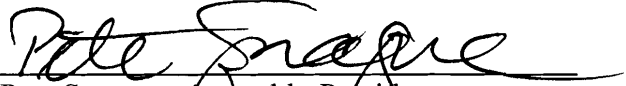
SECTION 7. This authorization to sell the subject 14+/- acres, according to the terms set forth in Section 3 above, is valid for a period of 30 years from the date of enactment of this ordinance. Any portion of the subject 14+/- acres not conveyed to the Cooper Landing Senior Citizen Corporation, Inc. during that 30-year period will no longer be authorized for sale by this ordinance.

SECTION 8. Cooper Landing Senior Citizen Corporation, Inc. shall have 120 days from the date an offer is extended by the administration pursuant to this ordinance to accept the offer.

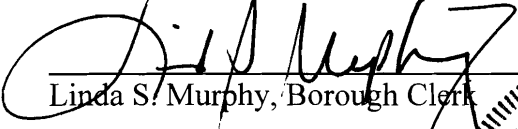
SECTION 9. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

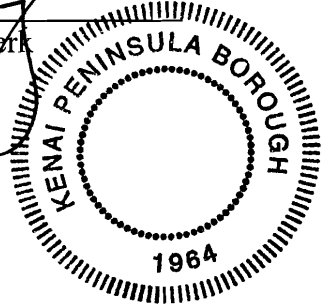
SECTION 10. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF DECEMBER, 2003.


Pete Sprague, Assembly President

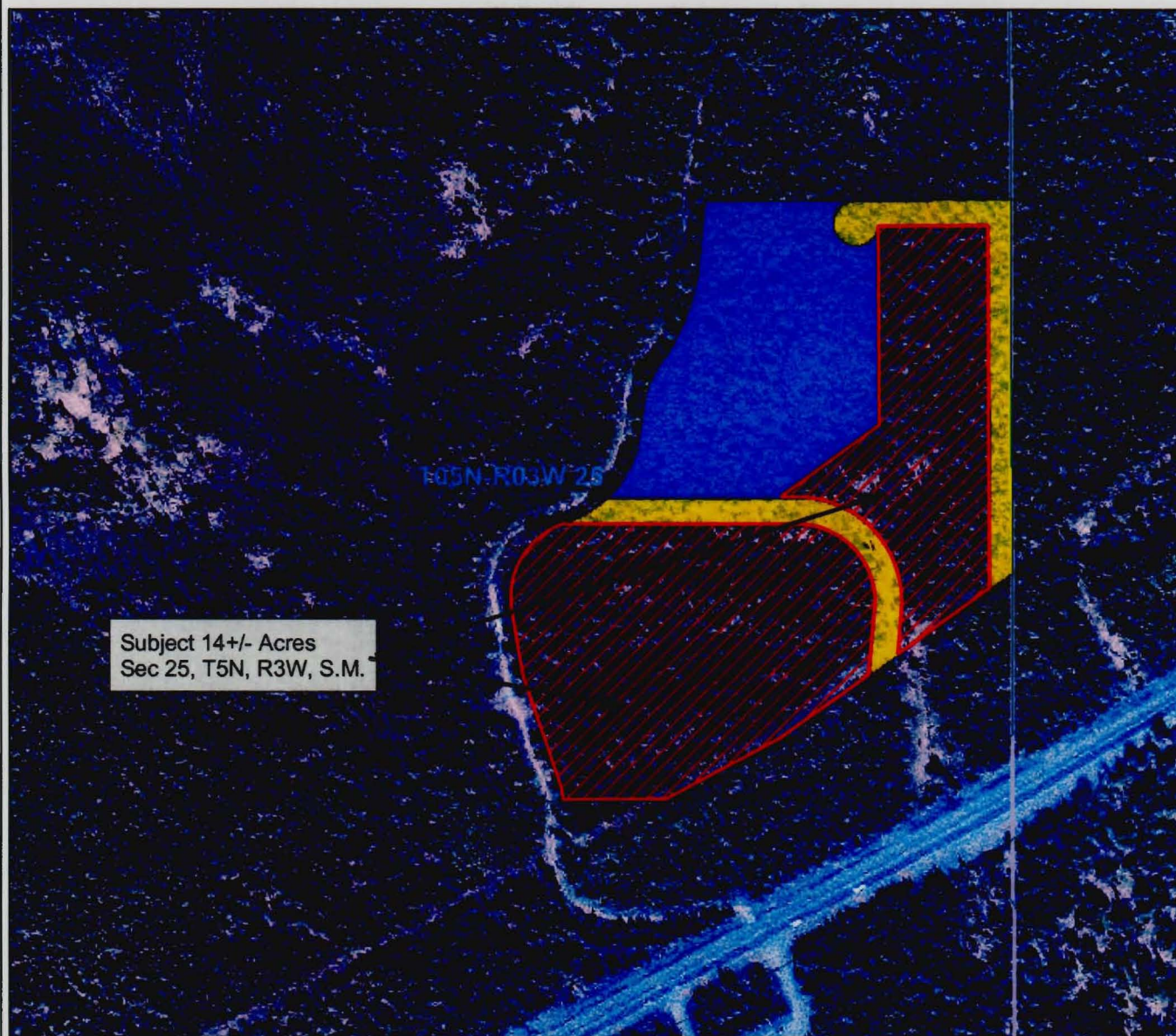
ATTEST:


Linda S. Murphy, Borough Clerk



CLSCCI LAND BOUNDARY AND PROPOSED RIGHT-OF-WAY DEDICATIONS

ATTACHMENT A OF ORD 2003-41 (MAYOR) SUBSTITUTE

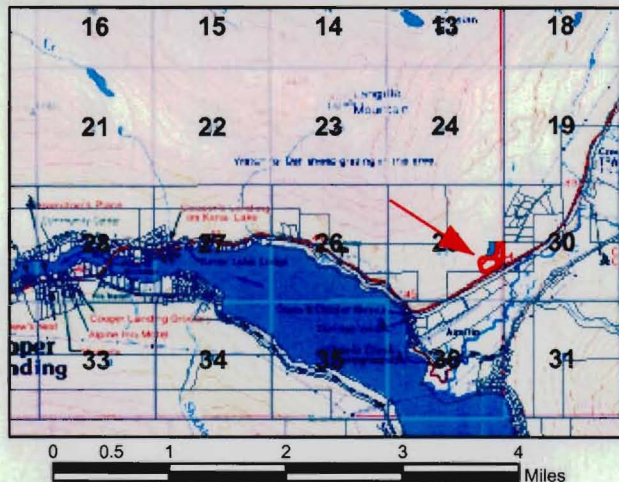


0 250 500 1,000 Feet

Legend

- Subject 14 Acres +/-
- Property**
- ROW Dedication
- Remainder
- Parcels

A Portion of the NE1/4SE1/4
Section 25, T5N, R3W, S.M.
Containing 14 +/- Acres



The information depicted hereon is for a graphical representation only of the best available sources.
The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

November 25, 2003