

Introduced by:  
Date:  
Hearing:  
Action:  
Vote:

Mayor  
02/03/04  
03/16/04  
Failed  
0 Yes, 9 No

**KENAI PENINSULA BOROUGH  
ORDINANCE 2004-03**

**AN ORDINANCE AUTHORIZING THE SALE OF APPROXIMATELY 0.25 ACRES OF  
LAND TO HERMAN AND IRENE FANDEL TO RESOLVE A LONG STANDING  
TRESPASS ON BOROUGH LAND LOCATED WITHIN THE CITY OF KENAI**

**WHEREAS,** Herman and Irene Fandel have improved and occupied since 1975 an approximately 28,000 square foot portion of borough land located at the corner of Lawton Drive and Rogers Road within the City of Kenai and described as the Northwest corner of Government Lot 2, Section 4, T5N, R11W, S.M., Alaska; and

**WHEREAS,** the Fandels desire to resolve the trespass by obtaining title to a small portion of the subject parcel that lies between their home and a storm drain easement; and

**WHEREAS,** KPB Chapter 17.10 provides methods to resolve trespass and land use conflicts; and

**WHEREAS,** the Fandels desire to acquire approximately 0.251 acres pursuant to KPB 17.10.220(C) in order to resolve their trespass; and

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

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

**WHEREAS,** the western ½ of Government Lot 2 is being considered for sale by the borough; and

**WHEREAS,** the KPB Planning Commission at its regularly scheduled meeting of February 9, 2004 recommended that the Assembly ...

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

**SECTION 1.** That the Assembly finds that selling an approximately (71' by 154') or 0.25± 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 17.10.230, the assembly additionally authorizes an exception to KPB 17.10.110 (notice of land sale) and KPB 17.10.080 (classification of borough land) based on the following findings of fact:

1. Special circumstances or conditions exist.
  - A. The proposed sale will resolve a long-standing trespass that has continued since 1975.
  - B. The borough intends to dispose of the larger parcel and selling the subject parcel to the Fandel's will not inhibit the borough's ability to dispose of the remainder.
  - C. The borough will have to expend additional funds should it have to evict the trespass.
  - D. The purpose of the advertising requirement is to notify the public of an opportunity to purchase.
  
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 trespass area an extension of their yard and plan to maintain it as part of their home.
  - C. KPB 17.10.220 (C) provides a method to resolve trespass through the sale of small parcels to the affected party.
  - D. This exception to the classification and advertising requirements is not necessary to preserve a substantial property right, and the assembly hereby authorizes this exception to that finding requirement as it is impractical, and compliance is not in the best interests of the borough due to the delay and unnecessary expense it would cause.
  - E. Advertising this sale and classifying the property will add additional unnecessary expense to the borough and unnecessarily delay completion of the sale.
  
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 sale will resolve a long-standing trespass.
  - B. The borough intends to subdivide and sell the larger parcel and selling the subject parcel to the Fandel's 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. The borough will prepare survey and platting instructions.
- D. After the property is subdivided and the plat is recorded, excepting this from the classification and advertising requirements will have no effect on surrounding property or public welfare as there is no proposed deed restriction, and advertising would not serve the purpose of giving other parties an opportunity to buy the parcel.

**SECTION 2.** Based on the foregoing, after the subdivision plat is recorded, the mayor is hereby authorized, pursuant to KPB 17.10.100 (I), KPB 17.10.220 (C), and KPB 17.10.230 to sell the land described in Section 1 above to the Fandels subject to the terms and conditions of this ordinance. 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 \$12,200 with payment in full due at closing. The Fandels shall pay all costs associated with surveying and platting 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 \*, 2004.**

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Pete Sprague, Assembly President

ATTEST:

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Linda S. Murphy, Borough Clerk