

Introduced by: Martin  
Date: 05/18/04  
Shortened Hearing: 06/01/04  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH  
ORDINANCE 2004-16**

**AN ORDINANCE REVISING RIGHT-OF-WAY PERMIT REVIEW  
AND APPEAL PROCEDURES**

**WHEREAS,** KPB 14.40 authorizes the road service area (“RSA”) board to adopt policies regarding right-of-way construction and permitting with mayoral approval; and

**WHEREAS,** the RSA board revised and clarified the policy setting forth road construction permitting guidelines at its April meeting; and

**WHEREAS,** under the proposed policy, the roads director may refer permits to the RSA board for review; and

**WHEREAS,** it is helpful to the RSA for the board to have input on permits that may be complicated; and

**WHEREAS,** if a permittee disagrees with conditions placed on a permit, the board may be able to resolve the issue without time or effort of an appeal to court; and

**WHEREAS,** the borough code currently does not provide for board review of permits, and the code must be changed in order for the policy to be consistent with the code; and

**WHEREAS,** at its May 12, 2004 meeting, the RSA board unanimously voted in favor of adoption of Ordinance 2004-16:

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

**SECTION 1.** That KPB 14.40.120 is hereby amended as follows:

**14.40.120. Permit appeal—Permit review.**

A. Initial permit review. The director shall have seven days from the date the permit applications are received to issue a written denial or approval of the permits requested, unless for good cause stated, the director extends the time frame for permit determinations or refers the permit to the RSA board for initial review. The director shall, by first-class mail, facsimile, or hand-delivery transmit written notice of approval or denial to the applicant at the most recent address provided to the borough in writing by the applicant.

[B. RECONSIDERATION. THE APPLICANT MAY REQUEST THE DIRECTOR REVIEWING A PERMIT TO RECONSIDER THE DIRECTOR'S DECISION WITHIN FIVE DAYS OF THE DIRECTOR'S DECISION. RECONSIDERATION SHALL BE REQUESTED ON A FORM PROVIDED BY THE BOROUGH AND MAY BE BASED ON EITHER:

1. A MISTAKE IN LAW OR FACT IN THE INITIAL REVIEW OF THE PERMIT;
2. CLERICAL ERROR IN THE DIRECTOR'S DECISION; OR
3. NEW EVIDENCE RELEVANT TO PERMIT ISSUANCE.

THE DIRECTOR SHALL HEAR THE PETITION FOR RECONSIDERATION UPON AT LEAST FIVE DAYS' NOTICE TO THE APPLICANT. A WRITTEN DECISION UPON RECONSIDERATION SHALL BE ISSUED BY THE DIRECTOR WITH WRITTEN FINDINGS AND CONCLUSIONS.]

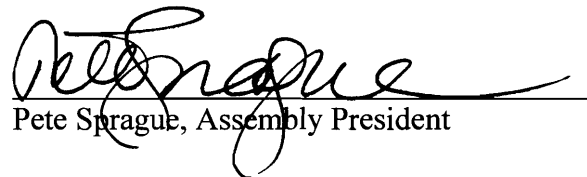
**SECTION 2.** That KPB 14.40.130 is hereby amended as follows:

**14.40.130. Permit appeal—[DIRECTOR'S] Decision final—Appeal.**

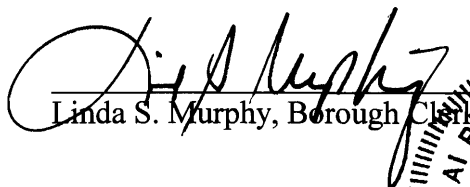
When the RSA director provides the initial permit review, his decision is appealable to the RSA board within seven days of the distribution of the RSA director's written decision. The appeal shall be in writing on a form provided by the RSA and shall state the reasons the appellant believes the director's decision to be in error and shall include reference to code sections violated by the director's decision. Whether the RSA board reviews a permit on appeal or provides the initial permit review, [T]the applicant for a permit may appeal the [DIRECTOR'S] RSA board's determination to the superior court in Kenai, Alaska, pursuant to Part 6 of the Alaska Rules of Appellate procedure. Nothing in this regulation shall prohibit utilization of a mutually-acceptable alternative dispute resolution procedure.

**SECTION 3.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF JUNE, 2004.**

  
Pete Sprague, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

