

Introduced by: Mayor  
Date: 08/17/04  
Hearing: 09/21/04  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH  
ORDINANCE 2004-29**

**AN ORDINANCE AMENDING KPB 21.20.250 TO PROVIDE FOR A REDUCED FILING FEE, A PAYMENT PLAN, OR A WAIVER OF THE FILING FEE FOR APPEALS TO THE BOARD OF ADJUSTMENT BY INDIGENT APPELLANTS**

**WHEREAS**, there is a \$300 mandatory appeal fee for appeals to the board of adjustment pursuant to KPB 21.20.250; and

**WHEREAS**, the filing fee may prevent indigent access to a board of adjustment hearing and ultimately to court since a board of adjustment proceeding is required prior to an administrative appeal to court for a number of administrative actions; and

**WHEREAS**, the Supreme Court of Alaska has ruled that an alternative to the mandatory filing fee must be provided for indigents whose business or property interests are threatened by an administrative action; and

**WHEREAS**, the Supreme Court noted that a payment plan, or reduced or graduated fee schedule would be acceptable alternatives; and

**WHEREAS**, it is reasonable for the borough to charge an appeal fee to assist in defraying the cost of processing the appeal;

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

**SECTION 1.** That KPB 21.20.250 is hereby amended as follows:

**21.20.250. Appeal of planning commission decision to board of adjustment.**

A. Time; Fees. Any party of record may file an appeal of a decision of the planning commission within 15 days of the date of the notice of the decision with the borough clerk on the forms provided, and by paying the filing and records preparation fee of \$300.

B. An application to proceed with an appeal as an indigent may be filed with the borough clerk's office on a form provided by the borough clerk. The chair of the board of adjustment may allow an applicant who qualifies as an indigent a reduced filing fee, a payment plan, or a waiver of the filing fee where the chair is able to make a written finding, based on information provided by the applicant,

that payment of the appeal fee would be a financial hardship for the appellant. Based upon the information provided, the fee may be reduced or waived in accordance with the following schedule:

<u>Annual income as a Percent of current Health and Human Services (HHS) Poverty Guidelines for Alaska</u>	<u>Percent of fee reduced</u>
<u>1-100%</u>	<u>100% Waiver</u>
<u>101-149%</u>	<u>75% Waiver</u>
<u>150-174%</u>	<u>50% Waiver</u>
<u>175-199%</u>	<u>25% Waiver</u>
<u>200% plus</u>	<u>No Waiver</u>

Any appellants with income equal to or less than 200 percent of the HHS poverty guidelines for Alaska for the year in which the appeal is filed may apply for a payment plan in which the filing fee shall be paid in full within in six months of the date of filing.

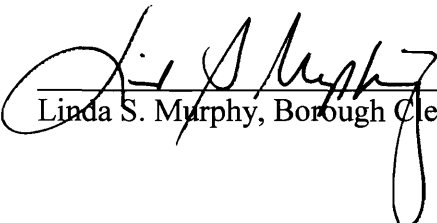
- C. All appeals shall be to the assembly sitting as a board of adjustment, and shall be conducted in accordance with the provisions of this chapter, unless otherwise provided by the Kenai Peninsula Borough Code.
- [B]D. Notice of appeal. The notice of appeal must 1) state the decision from which the appeal is taken; 2) state with specificity the errors asserted in the findings of fact or conclusions of law; and 3) state the relief sought on the appeal, including a statement of whether the decision should be reversed, modified, or remanded for further proceedings.
- [C]E. Entry of appearance. The borough clerk shall mail copies of the notice of appeal to all parties of record in the proceeding appealed within 15 days of the date of filing the notice of appeal. Any party desiring to participate in the appeal process must file an entry of appearance containing that party's name and address, or the address of the party's representative, within 15 days of the date of mailing of the notice of appeal by the borough clerk. Any party filing an entry of appearance may file additional designations of error or other alternative requests for modification or reversal of the decision.

**SECTION 2.** That this ordinance takes effect immediately upon its enactment.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF SEPTEMBER 2004.**

  
Pete Sprague, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

