

Introduced by: Mayor  
Date: 10/26/04  
Hearing: 12/07/04  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH  
ORDINANCE 2004-37**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED LEASE AT FAIR MARKET VALUE OF GOVERNMENT LOTS 5 AND 8, SECTION 34, T1N, R13W, S.M. ALASKA CONTAINING APPROXIMATELY 10 ACRES TO MARATHON OIL COMPANY FOR A NATURAL GAS DRILLING/PRODUCTION PAD**

**WHEREAS**, the Kenai Peninsula Borough (KPB) owns the surface estate and Marathon Oil Company (MOC) has a controlling interest in the oil and gas leasehold estate to the subject 10-acre site; and

**WHEREAS**, MOC has submitted an application to lease the surface estate for a natural gas drilling/production pad; and

**WHEREAS**, the KPB has issued a Land Use Permit to MOC to enter upon the subject KPB land for the purpose of constructing a drilling/production pad and drilling a gas well and water well; and

**WHEREAS**, MOC will need to enter into a long-term lease with the KPB should a commercially viable natural gas reservoir be discovered; and

**WHEREAS**, the land is suitable for the proposed use; and

**WHEREAS**, continued oil and gas development is necessary for the economic health of the Kenai Peninsula; and

**WHEREAS**, MOC will pay a market value rental rate generating an income stream for the borough; and

**WHEREAS**, the KPB Planning Commission at its regularly scheduled meeting of November 22, 2004 recommended enactment by unanimous consent.

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

**SECTION 1.** That the Assembly finds that leasing Government Lots 5 and 8, Section 34, T1N, R13W, S.M., Alaska, containing 10 acres more or less to Marathon Oil Company, pursuant to KPB 17.10.100 (I) is in the best interest of the borough.

**SECTION 2.** That the Assembly additionally makes an exception to KPB 17.10.090 requiring classification prior to disposal. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
  - A. Marathon Oil Company owns the underlying mineral estate and has the right to develop its interest.
  - B. Oil and Gas Development is necessary for the continued economic health of the Kenai Peninsula Borough.
  - C. KPB 17.10.080(A) states, classification of property is for review, plan implementation and management purposes. The classification system designates the most appropriate uses for land and thereby guides borough management of such lands and implementation actions to provide for the identified uses. Classification immediately prior to disposal of borough land that has been specified for a certain use does not accomplish these purposes.
  - D. The classification will not restrict Marathon Oil Company's use of the land. Land use will be restricted by the terms of the lease.
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 lease is necessary to facilitate Marathon Oil Company's development of its interest in the mineral estate.
  - B. This ordinance authorizes subject land to be leased to Marathon Oil Company on a non-competitive basis, at market value pursuant to KPB 17.10.100(I). Classification will be redundant and not serve a useful purpose based on the findings of No. 1 above.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
  - A. Lease of the subject land to Marathon Oil Company will benefit the public by developing an additional natural gas well.
  - B. The proposed use is compatible with adjacent land uses.
  - C. Marathon Oil Company will need to comply with federal and state permitting requirements.

**SECTION 3.** That the Assembly additionally makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
  - A. This ordinance authorizes subject land to be leased to Marathon Oil Company on a non-competitive basis, at market value pursuant to KPB 17.10.100(I).
  - B. Marathon Oil Company owns the underlying mineral estate and has the right to develop its interest.
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. Marathon Oil Company owns the underlying mineral estate and has the right to develop its interest.
  - B. 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 lease to Marathon Oil Company will not serve a useful purpose.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
  - A. Property owners in the area do not have the necessary controlling interest in the oil and gas leasehold estate to enter into this lease.

**SECTION 4.** That the Assembly additionally makes an exception to KPB 17.10.240 (L)(M) removal or reversion of improvements. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
  - B. Marathon Oil Company will be improving the property with a valuable road, gravel pad and water well. The KPB may desire that these improvements be left in place when Marathon Oil Company abandons the site. The KPB 17.10.240(L) (M) code requirement to remove improvements after termination of a lease agreement is not applicable in this situation.

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.
  - C. The KPB, as surface owner, has a right to insure that the land is left in a desirable condition. The code requirement to remove improvements after termination of a lease agreement is not applicable in this situation.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
  - D. Leaving valuable improvements such as a road, gravel pad and water well will not be detrimental to the public welfare or injurious to other property in the area.

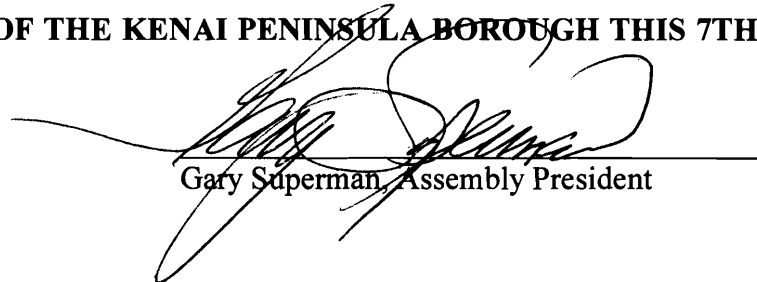
**SECTION 5.** Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100 (I) to lease the land described in Section 1 above to Marathon Oil Company for an annual rental of \$12,200.00 for the first six years of this lease, which is based on the appraised fair market value of this property. The lease provides for five renewal options of five years each, which may be exercised at the lessee's option. The annual lease rental for each of the five-year renewal option terms shall be 10 percent of fair market value appraisal. The authorization is for lease solely to Marathon Oil Company and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity. Once entered, the lease may be assigned or subleased pursuant to the terms of the lease agreement.

**SECTION 6.** The mayor is authorized to sign any documents necessary to effectuate this ordinance including a lease with substantially similar terms to the one attached.

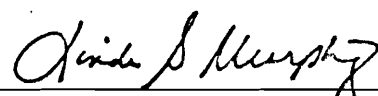
**SECTION 7.** Marathon Oil Company shall have until July 1, 2005 to execute the lease document.

**SECTION 8.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF DECEMBER, 2004.**

  
Gary Superman, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

