

Introduced by: Mayor, Long  
Date: 04/15/08  
Hearing: 05/20/08  
Action: Amended by Ordinance 2008-11 (Mayor, Long) Substitute

**KENAI PENINSULA BOROUGH  
ORDINANCE 2008-11**

**AN ORDINANCE AUTHORIZING THE SALE OF LAND TO THE COOPER LANDING  
SENIOR CITIZEN CORPORATION, INC. AT LESS THAN FAIR MARKET VALUE  
FOR SENIOR HOUSING PURPOSES**

- 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,** Goal 6.1 of the Comprehensive Plan is to obtain clear title to and manage and dispose of borough-owned land, timber, and gravel resources for the benefit of borough residents; and
- WHEREAS,** 28 percent of the Cooper Landing population is age 60 or older, and no senior housing is available within 35 miles of Cooper Landing; and
- WHEREAS,** Cooper Landing Senior Citizen Corporation, Inc. (CLSCCI), a nonprofit corporation, is dedicated to serving the well-being of senior citizens within the Cooper Landing area; and
- WHEREAS,** CLSCCI has created a senior campus development plan and has successfully completed Phase 1 of that plan on adjacent lands purchased under Ordinance 2005-6 (Mayor) Substitute; and
- WHEREAS,** 10.352 acres of land remain under lease by CLSCCI; and
- WHEREAS,** CLSCCI has secured funding to continue to develop additional senior housing; and
- WHEREAS,** making available affordable senior housing and assisted living strengthens communities and protects the health and welfare of aging residents; and
- WHEREAS,** the Kenai Peninsula Borough is the primary landowner in the Cooper Landing area that can make property available for development and community purposes; and
- WHEREAS,** CLSCCI has made \$27,288.70 in payments to KPB and is current with all obligations on the subject 10.352-acre parcel; and

**WHEREAS,** sale of the subject parcel at other than fair market value based on the best interest findings contained in this ordinance is authorized by the borough's land management and disposal powers authorized by AS 29.35.090 and codified in KPB Chapter 17.10, subject to other provisions of law; and

**WHEREAS,** maintaining an appropriate deed restriction with right of reversion ensures beneficial utilization of the property and protects the borough's interest in ensuring the property is used for this public purpose; and

**WHEREAS,** the Cooper Landing Advisory Planning Commission voted to support Phase II of the Eagleview Senior residential complex at its October 3, 2007, meeting; and

**WHEREAS,** at its regularly scheduled meeting of April 9, 2008, the Cooper Landing Advisory Planning Commission recommended \_\_\_\_\_; and

**WHEREAS,** at its regularly scheduled meeting of May 12, 2008, the KPB Planning Commission recommended \_\_\_\_\_;

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

**SECTION 1.** That the Assembly finds selling the real property described as Lot 2 Cooper Landing Senior Campus Subdivision according to plat no. 2005-24, Seward Recording District, within Section 34, T5N, R3W, Seward Meridian, Alaska, pursuant to KPB 17.10.100(I) for an amount other than fair market value pursuant to KPB 17.10.120 (D) is in the best public interest based on the following findings of fact:

- A. There is a demonstrated need and desire for additional organized senior housing and assisted living in Cooper Landing which can be best accomplished by working cooperatively with the Cooper Landing Senior Citizen Corporation, Inc.
- B. The subject property is well suited for the proposed senior campus. Additionally the Cooper Landing Senior Citizen Corporation, Inc. is the most appropriate entity to administer such development.
- C. Selling the property for other than fair market value will make the continuation of the senior housing project significantly more feasible and likely to succeed, and will provide for of the benefits to the borough described in this ordinance.
- D. CLSCCI's project is funded primarily through government program grants; a reduced sale price will allow those grant dollars from public sources to further accomplish the project objectives.

- E. Cooper Landing Senior Citizen Corporation, Inc. has successfully demonstrated through the completion and operation of its Phase 1 development that it is capable and dedicated to providing affordable senior housing in the community of Cooper Landing.
- F. CLSCCI's senior campus project is an important form of community development that strengthens communities and enhances the health and welfare of residents.
- G. The senior housing is available to the community at large, and the provision of such housing is a legitimate public purpose.
- H. CLSCCI will be accountable for using the property for senior facilities, and such commitment will be secured by the deed restriction described in Section 5(A) below.
- I. The Borough has received rent payments from CLSCCI related to this property in the amount of \$27,288.70.
- J. Deed restrictions provide good and valuable consideration that partially compensates KPB for the difference between fair market value and the sale amount.
- K. In 2005, David M. Derry, MAI, valued the approximate 12.5 acres at \$94,000.

**SECTION 2.** That the Assembly hereby makes exception to KPB 17.10.110 (notice of a land sale) based on the following findings of fact pursuant to KPB 17.10.230:

- 1. Special circumstances or conditions exist.
  - A. The Cooper Landing Senior Citizen Corporation, Inc. has a current interest in the property in the form of a lease with option 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. This exception to the notice requirement is not necessary to preserve a substantial property right, and the assembly hereby authorizes exception to that finding requirement.
  - 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. Advertising this sole source lease and sale to Cooper Landing Senior Citizen Corporation, Inc. 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. The proposed use of the subject land is consistent with the intent of the Cooper Landing Land Use Plan to locate senior facilities in the Cooper Landing area.
  - B. The proposed use of the subject land has the support of the Cooper Landing community.
  - C. The public has been notified of this lease and sale through publication of the Cooper Landing Advisory Planning Commission, Planning Commission, and Assembly meeting agendas.

**SECTION 3.** Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100(I) and KPB 17.10.120(D) to convey by quit-claim 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. 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 into a purchase agreement regarding any portion of this property to any other person.

**SECTION 4.** The purchase price shall be \$1.00. The purchaser shall be responsible for acquiring title insurance and shall pay all fees associated with sales 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 Section 5 constitute good and valuable consideration for the purchase of this property and shall be specifically required in the purchase agreement and/or other appropriate documents.

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

- A. 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 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.

- B. Legal access to the subject property from Snug Harbor Road shall be by dedicated right-of-way. Road construction within a dedicated right-of-way shall be in accordance with KPB 14.06, Road Standards.
- C. Design of the senior center building shall include a conference room, which shall be made available to the Kenai Peninsula Borough free of charge on an as-needed basis for public meetings.
- D. The restrictions set forth in this section shall remain on the parcel and run with the land upon conveyance to CLSCCI unless and until they are removed by the assembly by ordinance.

**SECTION 6.** 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 7.** The mayor is authorized to negotiate and sign any documents necessary to effectuate this ordinance.

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

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \* 2008.**

\_\_\_\_\_  
Grace Merkes, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, Interim Borough Clerk

Yes:

No:

Absent: