



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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JOHN J. WILLIAMS
BOROUGH MAYOR

MEMORANDUM

TO: Grace Merkes, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: John J. Williams, Borough Mayor 

FROM: Max J. Best, Planning Director 

DATE: September 12, 2008

SUBJECT: Ordinance 2008-19-18, an ordinance accepting and appropriating a grant of \$1,369,125 from the Natural Resource Conservation Service and appropriating a local match of \$456,375 for conducting a voluntary buyout program in the Old Mill Subdivision located in the Seward area.

The Planning Commission reviewed the subject ordinance during their regularly scheduled September 8, 2008 meeting. A motion to recommend adoption of the ordinance passed by majority consent. (Bryson, Absent; Carluccio, Yes; Collins, Yes; Foster, Yes; Gross, Yes; Isham, Yes; Johnson, Yes; Lockwood, Yes; Martin, No; McClure, Yes; Murphy, Absent; Petersen, Yes; Tauriainen, Yes)

Draft, unapproved minutes of the subject portion of the meeting are attached.

Agenda Item N.4

Committee FINANCE

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AGENDA ITEM I. SPECIAL CONSIDERATIONS

2. Ordinance 2008-19-18, an ordinance accepting and appropriating a grant of \$1,369,125 from the Natural Resource Conservation Service and appropriating a local match of \$456,375 for conducting a voluntary buyout program in the Old Mill Subdivision located in the Seward area.

Staff Report given by Marcus Mueller

PC Meeting: September 8, 2008

This ordinance would accept funds from the Natural Resource Conservation Service through their Emergency Watershed Protection program, which is a legislative appropriation. The grant is on a reimbursable basis, a 75% grant requiring a 25% local match which may in the form of cash or in kind services. The program is intended to target specific watershed issues within specific areas. It is a local needs program.

In the Seward area, flooding is a major issue. Over the course of the last series of floods, the Borough through its Office of Emergency Management has been discussing with several Federal Agencies including the Natural Resource Conservation Service on how to address the issues. The idea of an emergency watershed protection program came up. The State's NRCS was looking for appropriate EWP projects so this was presented.

This EWP program has been administered by NRCS and is a voluntary program. Ten properties within the Old Mill Subdivision were identified as being ones that were most subject to reoccurring flooding. The program would be to do a voluntary buyout. The implementation of these funds would create an offer to the ten property owners for them to participate in the program. The applicants, if they so chose to participate would fill out forms and the property would be ranked. The money within this program would not be enough money to buyout all ten properties.

The properties would be appraised and would be offered to be bought out at fair market value. The property owners would have the option of selling their entire property or retaining the salvage rights of their structures. The end result would be that all the improvements on the properties would be removed. If a property owner wanted to move their house then they would receive compensation for moving the house but would not receive compensation for the value of the house. Any remaining cleanup would then take place. The property of the owners who chose to sell their property in full would be demolished or salvaged and cleaned up to a like natural condition.

The Borough would end up with title to this any properties that were purchased through this program. The properties would be subject to a Perpetual Conservation easement, which would limit the uses of the property. The purpose of this would be to remove the properties from harms way as well as restoring functions of the floodplain.

The amount of money available for this program was calculated out to what it would cost to save these properties or restore these properties for a period of ten years if they were not bought out.

END OF STAFF REPORT

Vice Chairman Martin opened the meeting for public testimony but there were no members of the public present.

MOTION: Commissioner Johnson moved, seconded by Commissioner McClure to recommend adoption of Ordinance 2008-19-18.

Commissioner Petersen referred to the photo and asked why a piece of property was not included in the property to be bought. Mr. Mueller understood that there were some properties that were not an inhabitable structure so it did not receive priority. If there was money left over then the property not included may be eligible.

Commissioner Petersen asked what the consequences would be if people don't participate in the buyout. He

asked if the Borough would still maintain the creek and take care of it for that one resident that doesn't sell out. Mr. Mueller wasn't sure he could adequately address that but hoped that the purchasing of the property would alleviate the maintenance or responsibilities for this area. Again he reiterated this was a voluntary program.

Commissioner Johnson asked if there was anything on the books or in the Code that would prevent anyone from subdividing on other property like this Seward area. Ms. Toll replied no.

Commissioner Isham asked if there were more grants on the horizon. Mr. Mueller replied this was limited funding but may be a step forward towards doing further remediation work and looking at different alternatives for addressing some of the flood issues in Seward. He couldn't say there would be a continuation of further buyouts since this just happens to be an opportunity.

Commissioner Tauriainen asked if the money was also for cleaning up the land. He asked what the plan was to help alleviate flooding in other areas. Mr. Mueller replied the requirements of this program were that all the structures would be removed to the extent that the Borough was looking for contributions for in kind services. The properties clean up might be able to be used as the required match amount the Borough was required to make. If the clean up of the property were not taken care of through the match then it would come from the original dollars. There are details that need to be worked out. One of the things they were looking for in the utilization of the property was access to the streams so they can be cleaned out in the future.

Mr. Mueller stated the goal of the Natural Resource Conservation Services would be that the lands would be placed in a conservation status to serve floodplain functions and not to have structures that require response. These properties would probably be vacant and turned over to their natural state.

Commissioner Foster asked if the Comp Plan had guidelines relating to development within a floodplain. Mr. Mueller replied the Comp Plan in itself does not create the law. There are no restrictions on development from the Comp Plan. Commissioner Foster stated the Comp Plan provides guidelines for future ordinances as well as if there are concerns.

Ms. Toll stated there was nothing in the Borough Code to stop subdivision within a floodplain at this time. That's not to say that under the guidance of the Comp Plan it may not be looked at sometime in the future.

Commissioner Petersen understood the Borough wouldn't stop any subdividing within a floodplain but in order to build within a floodplain there would need to be Borough approval. A floodplain development permit would need to be issued anytime development was below base flood elevation.

Commissioner Carluccio asked why this was such a rush. Mr. Mueller replied the rush was because of the timing of the grant. They received word that funding was available two or three weeks ago. It was introduced to the Assembly on August 19 and needs to be heard by the Assembly by September 16 because funding was only available until September 22. He stated a contract needed to be in place by September 22. Mr. Mueller apologized this came to the Commission in lay down form. He stated the Borough Attorney brought this to his attention over the weekend and that the Planning Commission needed to make a recommendation on this ordinance. There will be a follow up to this action when the details of how this program would be conducted. Mr. Mueller stated the ordinance before the Commission contemplates that there would be a subsequent agreement between the Borough and NRCS that speaks to the details of how this will be carried forward. This ordinance is to secure the funding. The contract of how this program would be carried forward would come through in future Assembly action. He hoped that future action would come before the Commission in a timelier manner.

Commissioner Carluccio stated it bothered her that this entailed a lot of money and the Borough was to provide matching Borough funds of half a million dollars. The Commission was asked to recommend approval on something that they don't have a full plan on. She realized it was a grant and timing was short but thought it put them in a difficult position. Normally they have heard from the Service Area Board or the City before it comes before the Commission. Now they are the first ones that have to make a recommendation on it and the Commission doesn't have all the information.

Mr. Mueller stated they don't have all the information on the program yet since this came to them fast. The Borough attorney was working with NRCS to work out the details of the program. He empathized with the Commission with regard to the lack of information and how quickly the timing of which this came before them.

Commissioner Johnson appreciated Commissioner Petersen's point on this issue of development within a floodplain. He asked if a Floodplain Development Permit was required for other anchor rivers not just the Kenai River. Mr. Mueller replied yes, wherever there was a mapped floodplain. Any particular property that was within a floodplain would be subject to the Borough floodplain rules, which was administered through the Kenai River Center.

Commissioner Foster believed the Borough participated in a flood science workshop two to three years ago. Both the Kachemak Heritage Land Trust and the State Floodplain Manager discussed this property as a prime purchase. They were actively involved in trying to get funding. He stated the Borough anticipated the matching fund to be obtained from in kind services. Commissioner Foster supported the motion.

Commissioner Lockwood asked what the interest was that the Department of Military, Veteran Affairs and Homeland Security had in this project. Mr. Mueller replied the Director of Emergency Management Office has been in touch with that office of the State as a potential funding source to cover a portion of the in kind match. He was not sure how they were structured but that office could give some sort of administrative grant to fill in some of the local match gap.

Commissioner Petersen felt the creeks in Seward were different from the Kenai River and other creeks in the Borough in that they are all glacier fed. The bed load increases every year and if it were not removed then the water levels get higher and higher. He stated the glaciers affect the major streams in Seward.

Vice Chairman Martin asked what the priority was in determining the properties of this area. Mr. Mueller replied the program was designed with the priority of removing the inhabited structures from harms way which is why the one property was not included in the proposal. There would be a ranking that would be predefined before this goes out on the street so that when any given property owner apply for it they would fall within rank depending upon the criteria that was involved. They would look at the susceptibility towards flooding, the amount of response, cost, etc. that may be generated by staying there.

Commissioner Johnson felt there was potential that money would be spent with the possibility of all kinds of impropriety things to happen. He heard Commissioner Petersen state that the government spends a few million dollars every few years taking gravel out of the creek. Commissioner Johnson asked if the local property owners were aware of this ordinance and the possibility of the buyout. Mr. Mueller replied there have been some conversations but no direct meeting with the individual property owners.

Commissioner Johnson asked if a property owner had the choice to walk away or would the owner have the responsibility to remove the structures on the property once he sold it to the Borough. He also asked if the stream would continue to be cleaned out for the property owners that did not sell their property.

Mr. Mueller replied that the responsibility to demolish would be covered under this program where the property would be purchased with the landowner walking away. The property would be salvaged with the structures being demolished, which would be funded by this program. He stated the property owner could salvage the house, which would be a different procedure. Odds are that all the properties would not be purchased because there was not enough funding to purchase all properties so there will be remaining properties left.

Mr. Mueller stated the priority ranking would hopefully give them logical order where the properties are purchased. If one owner doesn't want to buy into this program they don't have to since it is voluntary. He stated it would mean that there would need to be future response and effort levels to maintain the stream. There was a bridge affected by that portion of the stream so there would need to be some maintenance of the stream. He could not speak whether a property owner would receive any less attention in the future.

Commissioner Isham asked if the owners of the property had been notified. Mr. Mueller replied the property owners have not been informed directly of this program. Commissioner Isham asked if they would be notified.

He suspected that if they did know there would have been people here at the meeting to testify. Mr. Mueller understood from the Office of Emergency Management is that 37 people within the Old Mill Subdivision signed a petition that they needed help from the Borough and other agencies. He reiterated that this was a very targeted program that affects 10 property owners. There will be community meetings once this program was implemented.

Commissioner Foster stated it was not only to protect the individual properties but also to consider the adverse impacts downstream. He felt there was a concern that a big structure could get flooded and moved downstream that could affect neighboring properties as well as the bridge.

Commissioner Petersen supported the motion but had heartburn over some of the items Mr. Mueller stated. He stated that the majority of the subdivision lives on the other side of the bridge. He was worried that the Borough won't look at the creek as often with landowners selling their property. Commissioner Petersen also expressed concern regarding the bridge because of the flood two years ago where people couldn't get out of this subdivision for several days. He stated eventually it would affect everything downstream.

Commissioner Johnson asked where the bridge was located. Commissioner Petersen stated the bridge was on the road that goes north across the creek. He also expressed concern regarding Grouse Creek and Lost Creek where it builds up and floods the property on the east side of the creek.

Commissioner Johnson expressed appreciation for the maps that they receive from the Planning Department staff.

Commissioner Tauriainen asked if the land purchased would have a conservation easement attached to it so it would not have the risk of being sold again in 20 years. Mr. Mueller replied a conservation easement would be attached so the property would be locked up and preserved for floodplain purposes. There could be a case where the property could be conveyed for recreational purposes.

Commissioner McClure expressed concern that the landowners haven't been approached about this so there was no knowledge if there was interest to sell their property. Obviously, there was not going to be enough money to buy out everyone and demolish the structures. The people who are left will still need to have bed load removal. She asked what the gain was to this ordinance. Mr. Mueller replied the Office of Emergency Management was working closely with this project. He stated the dynamics would change in terms of what type of attention that stream would need to get if some properties remained and others were bought out. The maintenance would be targeted as a whole system versus maintenance to protect the adjacent properties. Another advantage would be savings when it comes to physical response for those that are in harms way along with the FEMA recovery costs to restore properties.

Commissioner Johnson asked what would happen to the 1.3 million dollars if no property owner sells their property. Mr. Mueller understood that the leftover money could be shifted to another area within the watershed. If not one dollar were spent then it would go back to the State of Alaska EWP program.

Commissioner Carluccio felt this ordinance was opening up a problem area since they didn't know how many people would participate in the program. She understood the money might possibly be reprogrammed in another area in Alaska with a similar situation so she reluctantly supported the ordinance.

There being no further comments or questions, Vice Chairman Martin called for a roll call vote.

VOTE: The motion passed by majority consent.

BRYSON ABSENT	CARLUCCIO YES	COLLINS YES	FOSTER YES	GROSS YES	ISHAM YES	JOHNSON YES
LOCKWOOD YES	MARTIN NO	MCCLURE YES	MURPHY ABSENT	PETERSEN YES	TAURIAINEN YES	10 YES 1 NO 2 ABSENT

AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS