



KENAI PENINSULA BOROUGH

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**DAVE CAREY
BOROUGH MAYOR**

MEMORANDUM

TO: Milli Martin, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Dave Carey, Borough Mayor

FROM: Scott Bloom, Assistant Borough Attorney

DATE: November 6, 2008

SUBJECT: Ordinance 2008-35, amending KPB Chapter 14.31, Special Assessments—
Road Improvements

At its October 21, 2008 meeting, the Road Service Area Board recommended changes to KPB Chapter 14.31, Special Assessments—Road Improvements, to expand the reach of the program to include new road construction. KPB Chapter 14.31 in conjunction with KPB 5.20.170 currently provides a means for neighboring property owners to share in the cost and process with the Road Service Area (RSA) of bringing non-maintained existing borough roads in rights-of-way up to RSA standards. Once the roads are brought up to standards, they are most often certified for road maintenance and the RSA takes over responsibility for maintaining the roads.

The code change is recommended because the RSA is frequently presented with requests from property owners who own property on undeveloped rights-of-way to build a nonstandard road so that they can access their lot(s). With few exceptions, the RSA requires all roads in the rights-of-ways to be built to KPB 14.06 road standards. The costs for one individual property owner to build a road to KPB 14.06 standards is often prohibitive. Allowing neighboring benefitted property owners to form Road Improvement Assessment Districts (RIADs) will benefit both the property owners and the Borough by ensuring that good roads are constructed in the borough's rights-of-way.

While match funding is available under the current RIAD program, the RSA Board recommends maintaining the match funding limitation to existing roads, as funding is limited and the RSA Board prioritizes improving existing roads above building new roads. Additionally, maintaining

the match funding limitation to existing roads only will better ensure that public funds are not used by private developers for private economic benefit.

Finally, the RSA Board recommends changing the filing fee for RIAD projects based on a sliding scale. The filing fee is used to fund engineer's project estimates, and the current filing fee of \$1,000.00 has not been sufficient to cover the costs of the estimates recently.

The following provides a sectional analysis of each material change, in legislative format:

1. 14.31.020. Authorized capital improvements.

Special assessments may be levied under this chapter [ONLY] for the improvement of existing roads or construction of new roads in dedicated public rights-of-way to meet or exceed road construction standards adopted in KPB Chapter 14.06[.030] that are in effect at the time of the formation of the special assessment district in which the assessments are levied.

- The changes shown above authorize new road construction in the RIAD program, along with minor housekeeping.

2. 14.31.050. Review of petition application.

A. After receiving an application for a petition to form a special assessment district, the borough assessor shall determine the boundaries of the proposed district after consulting with the road service area director. Once the borough assessor makes an initial determination that formation of the proposed district is feasible based on the proposed boundaries and criteria set forth in KPB 14.31.080, a filing fee based on the cost of obtaining a professional civil engineer's estimate of the total project costs and petition preparation shall be paid pursuant to one of the methods below, as determined by the road service area board:

1. The petition sponsor shall pay a nonrefundable filing fee consistent with the following table:

| <u>Assessed Value of Property Subject to Assessment</u> | <u>Filing Fee</u> |
|---|-------------------|
| <u>\$2,000,000.00 or less</u> | <u>\$1,000.00</u> |
| <u>\$2,000,000.01 to \$3,000,000.00</u> | <u>\$1,400.00</u> |
| <u>\$3,000,000.01 to \$4,000,000.00</u> | <u>\$1,800.00</u> |
| <u>\$4,000,000.01 to \$5,000,000.00</u> | <u>\$2,200.00</u> |
| <u>Assessed Value of Property Subject to Assessment greater than \$5,000,000.00 shall require a filing fee consistent with the scale in this table.</u> | |

- The above changes reflect the boards recommended sliding scale approach for a filing fee used to offset the costs of an engineers project estimate.

3. 14.31.055. Road service area match program.

A. There is established pursuant to KPB 5.20.170 a borough match program for RIAD projects that upgrade existing roads as follows:

- The above changes limit available match funds to improvement of existing roads only consistent with the RSA priorities of improving existing roads over constructing new roads,

and ensuring that borough funds are not used by private developers for private economic gain.

4. **14.31.080. Restrictions on district formation.**

A. A special assessment district may not be formed if it violates any of the following restrictions, determined as of the date of filing the petition to form the district with the borough clerk:

1. The estimated amount of the assessment to be levied against each parcel in the district may not exceed [TWENTY-ONE (21%)] 21 percent for gravel improvements to an existing road, or [TWENTY-FIVE (25%)] 25 percent for paving improvements, or 40 percent for construction of a new road, of the current assessed value of the parcel. For the purposes of this restriction, the estimated amount of the assessment against a parcel will be reduced by the amount of a prepayment of the assessment for the parcel that is received by the borough before the assembly acts on the resolution to form the district and proceed with the improvement. If the assembly does not approve the resolution to form the district and proceed with the improvement, the borough will refund the prepayment.
 2. A special assessment district may not be formed if parcels in the proposed district which would bear more than [TEN (10)] 10 percent of the estimated cost of the improvement are delinquent in payment of borough real property taxes in the immediately preceding tax year.
 3. A special assessment district for the upgrade of an existing road, including paving, may not be formed if unimproved parcels represent more than 40[%] percent of the total assessed value of real property in the district. A parcel is improved under this subsection if it contains operable water and waste-water disposal systems or a dwelling or a building suitable for commercial use.
 4. For construction of new roads, a special assessment district may not be formed if one owner owns more than 40 percent of the parcels to be benefited.
- The above changes to section 1 are recommended to protect the Borough's investment related to new road construction. The higher threshold for the assessment to value ratio reflects the higher risk and difficulty in recovering funds from undeveloped lots that would likely abut undeveloped rights-of-way for new road construction should the assessments not be timely paid.
 - The above changes to section 4 are recommended to ensure that the RIAD program is used for its intended purpose of allowing neighboring property owners to share in the costs of new roads, as opposed to private developers using the program for private economic gain. Other changes to KBP. 14.31.080

5. **14.31.160. Definitions.**

“Arterial road” means a road intended to carry traffic from local and subdivision roads to major highways. Such roads primarily accommodate relatively large volumes of traffic for relatively long distances at relatively high speeds.

“Benefit” means an advantage gained from the improvement greater than that shared by the general public under this ordinance. Improved access is one way of ascertaining that a parcel is benefited.

“Collector road” means roads that provide both land access and carry traffic from local or subdivision roads to arterial or major highway systems.

“Improved parcel” means a parcel that contains operable water and a wastewater disposal system or a dwelling or a building for commercial use.

“Local road” means a road designed and intended to serve local areas. Such roads primarily accommodate land access to abutting property. Local roads feed traffic into collector and arterial street systems.

- The above change merely includes a definition of improved parcel in the definition section for clarity.