

Introduced by: Superman, Knopp
Date: 01/06/09
Hearing: 02/03/09
Action: Postponed until 03/03/09
Date: 03/03/09
Action: Tabled
Vote: 8 Yes, 0 No, 0 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-03**

**AN ORDINANCE AMENDING KPB CHAPTER 5.35, SPECIAL
ASSESSMENTS—PUBLIC UTILITIES, TO REDEFINE BENEFITTED PARCELS TO
INCLUDE THOSE WHOSE OWNERS APPROVE THE ASSESSMENT DISTRICT AND
INTEND TO CONNECT TO THE MAIN UTILITY LINE**

WHEREAS, to establish a utility special assessment district (“USAD”), the existing KPB Chapter 5.35 requires that 70 percent of the property owners in a proposed USAD sign a petition to approve the district; and

WHEREAS, while all benefitted parcels must be included in the USAD, the assembly is given great discretion in defining “benefit”; and

WHEREAS, at this time, all properties adjacent to the main utility line, including those whose owners do not plan to use the utility, are included in the district and subject to an assessment lien for their portion of the associated costs; and

WHEREAS, if any property owners in the district fail to pay their assessed amounts, the borough is authorized by statute and code to foreclose on the property and take title to the property following the same process as is used for property tax foreclosures; and

WHEREAS, redefining benefitted parcels as including those who sign the petition supporting formation of the district and indicating their intent to connect to the line would ensure that only properties directly benefitted would be assessed;

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

SECTION 1. KPB 5.35.030 is hereby amended as follows:

5.35.030. Initiation of improvement proposal—Preclearance—Resubmission.

- A. A special assessment district proposal shall be initiated by submitting a map or detailed description of the proposed geographic area subject to inclusion in the special assessment district in the manner prescribed by the mayor. Upon receipt of a description the assessor shall review it to determine

whether the proposed boundary is improper or inappropriate. The boundary is improper or inappropriate if it includes properties the owners of which have not consented in writing to be included in the district and have not indicated their intent to connect to the main utility line. [1) ANY PROPERTY ADJACENT TO THE PROPOSED DISTRICT WILL BE BENEFITED BY THE PROPOSED UTILITY AND IS CLEARLY EXCLUDED FOR THE PRIMARY PURPOSE OF ENABLING THE INCLUDED PROPERTIES TO MEET ASSESSMENT PERCENTAGE AND SIGNATURE REQUIREMENTS OF THIS CHAPTER OR 2) SUCH OTHER GROUNDS AS MAY HAVE BEEN ESTABLISHED BY REGULATION.] The assessor shall consult with the utility whose service is sought to be extended and obtain written acknowledgment that the proposed boundary meets the requirements of the utility and that the utility approves and will support construction of the extension. The assessor shall also obtain the approval of the borough mayor prior to approving the proposed boundary.

- B. In the event that the assessor determines the proposed boundary is improper or inappropriate the boundary description shall be returned to the petitioner along with a written explanation describing how the petition is improper or inappropriate.
- C. If the assessor approves the proposed boundary, the boundary description shall be returned to the petitioner bearing the assessor's approval.
- D. The petitioner may modify and resubmit the approved boundary description in accordance with the above procedure at any time prior to filing the completed petition.

SECTION 2. That KPB 5.35.050 is hereby amended as follows:

5.35.050. Requirements of petition.

The petition shall include a description of the proposed improvements, the estimated cost, a description of the proposed geographic district subject to the special assessment as previously approved by the assessor pursuant to 5.35.030. The petition shall contain the signatures of [(A)] the owners of record of all parcels adjacent to the proposed main utility line who agree to support the district formation and have stated their intent to connect to the main utility line [MORE THAN SEVENTY PERCENT OF THE TOTAL NUMBER OF PARCELS SUBJECT TO ASSESSMENT WITHIN THE PROPOSED DISTRICT; AND (B) THE OWNERS OF RECORD OF PROPERTIES WITHIN THE DISTRICT WHICH WOULD BE SUBJECT TO GREATER THAN SEVENTY PERCENT OF THE TOTAL ASSESSMENT UNDER THE PETITIONER'S PROPOSAL.] The petition must contain or be accompanied by a statement from an authorized officer or employee of the utility whose service is sought to be extended acknowledging that the project as proposed by the petition meets the requirements of the utility and that the utility approves and will support construction of the extension. A nonrefundable filing fee shall be

remitted with the petition in an amount to be determined by the mayor. No property owner may withdraw his approval of the proposed improvement for a period of six (6) months after the date of filing of petition, and this six (6) month approval shall be expressly stated upon the petition. Nothing in this section shall be construed to preclude a property owner from filing an objection as provided in KPB 5.35.110(D) within the time provided by ordinance or regulation.

SECTION 3. That KPB 5.35.080 is hereby amended as follows:

5.35.080. Costs assessed.

The assembly shall assess [ONE HUNDRED] 100 percent of all costs of a public improvement against the parcels of property benefitted by the improvement, less the filing fee or any other costs prepaid prior to assessment. Benefitted properties include all properties adjacent to the proposed main utility line for which the owners have signed the petition supporting the utility district and have stated in writing their intent to connect to the main utility line within ten years of the enactment of the ordinance of assessment. The total costs for an improvement shall include the actual costs of the improvement, including costs of acquisition of interest in land for the improvement, design, engineering, administration, overhead, professional services, bond costs, financing costs, and interest incurred as a result of the improvement, and all other costs resulting from the construction of the improvement.

SECTION 4. This ordinance shall not apply to USADs for which the nonrefundable filing fee has been paid and the completed petition approved in accordance with KPB 5.35.050 as it read prior to enactment of this ordinance.

SECTION 5. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2009.

Milli Martin, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

VOTE ON MOTION TO TABLE:

Yes: Fischer, Knopp, Long, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None

Abstention: Pierce