

Introduced by: Long
Date: 02/03/09
Hearings: 02/17/09 and 03/03/09
Date: 02/17/09
Action: Amended by Substitute
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-09**

**AN ORDINANCE CREATING A FLOOD HAZARD DISTRICT, OUTSIDE THE
FLOOD INSURANCE RATE MAP AREA, WITHIN THE SEWARD-BEAR CREEK
FLOOD SERVICE AREA TO INCLUDE THE 1986, 1995, AND 2006 KPB GIS MAPPED
FLOOD DATA AREAS**

- WHEREAS,** flooding has occurred in the Seward-Bear Creek Flood Service Area (SBCFSA) repeatedly; and
- WHEREAS,** a federal disaster has been proclaimed within SBCFSA three times since 1986; and
- WHEREAS,** the Flood Insurance Rate Maps (FIRMs) are outdated and inaccurate; and
- WHEREAS,** the Federal Emergency Management Agency (FEMA) is in the process of preparing new FIRMs; and
- WHEREAS,** there have been millions of dollars in damage to private properties and public infrastructure caused by flooding events in the area; and
- WHEREAS,** flooding places the public health and safety at risk; and
- WHEREAS,** gravel deposits are steadily and rapidly increasing in SBCFSA streams, and the risk of flooding and related loss increases; and
- WHEREAS,** subdivision and development in SBCFSA has increased dramatically since 1996, increasing flood loss potential; and
- WHEREAS,** FEMA Disaster Assistance only provides a minimal amount of funding to repair damages to a home not covered by insurance to return it to a safe, sanitary, and functioning condition, but not to rebuild the home to current codes; and
- WHEREAS,** merely returning the structures to their preexisting condition results in potential for repeated flood damage and destruction to the same properties; and

WHEREAS, according to the 2005 KPB comprehensive plan, enforcement of floodplain requirements is primarily through voluntary compliance and assistance from mortgage companies since the borough does not require building permits or inspections; and

WHEREAS, the City of Seward has permitting regulations in place to assist with flood issues in the area of the SBCFSA within city limits; and

WHEREAS, KPB Chapter 21.06 contains the minimal regulations required by FEMA for floodplain management, and these regulations alone have not proved an effective tool for mitigating flood damage in the SBCFSA; and

WHEREAS, goal 6.7, objective 1, implementation action G of the comprehensive plan is to identify wetlands, floodplains, and erosion areas and minimize adverse impacts of flooding or erosion on neighboring properties; and

WHEREAS, goal 6.7, objective 2, of the comprehensive plan is to increase local participation in decisions regarding development in floodplains and wetlands; and

WHEREAS, goal 6.7, objective 3, implementation action A of the comprehensive plan is to improve the borough's floodplain ordinance; and

WHEREAS, at its _____, 2009, meeting, the SBCFSA board recommended _____; and

WHEREAS, at its _____, 2009, meeting, the Kenai Peninsula Borough Planning Commission recommended _____;

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

SECTION 1. That KPB 21.06.020 is hereby amended by adding the following definitions:

- Q. SMFDA” means the 1986, 1995, and 2006 KPB GIS mapped flood data area within the Seward-Bear Creek Flood Service Area.
- R. Primary structure” means a dwelling or building suitable for commercial use, or any structure which will be served by water or wastewater disposal systems or a fuel storage tank.

SECTION 2. That KPB 21.06.030(B) is hereby amended as follows:

- B. Basis for establishing flood hazard areas. Flood hazard areas are identified as follows:

1. By the flood insurance rate maps with an effective date of May 19, 1981, revised on July 5, 1983 and December 6, 1999. The map panels numbered 020012-1350 and 1700 have been deleted and the areas depicted by these panels are not subject to the terms of this chapter. Excluding these panels, the flood insurance rate maps are adopted by reference and declared to be a part of this chapter. The flood insurance rate maps are on file at the planning department.
2. The 1986, 1995, and 2006 KPB GIS mapped flood data area within the Seward-Bear Creek Flood Service Area (SMFDA). A map showing this floodplain and flood data and a list of properties represented by this map shall be retained by the planning department and made available to the public. If any portion of a lot is included in the flood data mapped area, the entire lot shall be subject to the provisions of this chapter. Special provisions for development permits in the KPB mapped flood data area are set forth in KPB 21.06.045. Where the provisions applicable to the SMFDA district conflict with the provisions for development permits in the FIRM area, the provisions governing the SMFDA district shall control.

SECTION 3. That KPB 21.06.045 is hereby enacted as follows:

21.06.045. KPB GIS mapped flood data area.

- A. Base flood elevation in the SMFDA district. Base flood elevation in the SMFDA district is established by a licensed professional registered land surveyor at the highest point within 500 feet from the specific location of the proposed construction site measured down slope to the nearest ordinary high water mark of a stream.
- B. Exemption from SMFDA district. A property owner may request the borough assembly remove a parcel from the SMFDA upon a showing by substantial evidence that his property was not inundated by flood waters in the 1986, 1995, or 2006 floods. The planning commission shall make a recommendation to the assembly regarding removal of a parcel from the SMFDA district.
- C. Conditions. Only primary structures and floodway development in the SMFDA district require a development permit. The permits in the SMFDA district are subject to the following conditions:
 1. Primary structures in the SMFDA district shall be a minimum of five feet above base flood elevation. Below-grade supports shall be at a two-to-one ratio as compared to the support above grade;

2. Foundations shall have an erosion resistant design; and
3. Where applicable, the standards for the permit is subject to the standards set forth in KPB 21.06.050; and

D. Floodways within the SMFDA district. Any development in the floodways in the SMFDA district located within the Resurrection River watershed, Spruce and Sawmill Creeks, shall be subject to the permitting requirements of KPB 21.06.050(C).

E. If a preliminary review of the permit application by staff indicates that meeting the conditions set forth in KPB 21.06.045(C) may increase flood damage to adjacent or downstream property or public infrastructure, staff may require a project-specific design be submitted to the planning commission by a licensed professional civil engineer. The planning commission shall make written findings of fact supporting its grant or denial of a permit. The planning commission may place conditions on the permit to protect downstream or adjacent properties or public infrastructure from flood damage.

F. Waivers. The variance procedure in KPB 21.06.060 only applies to permitting in the FIRM area. A project-specific design prepared by a licensed professional civil engineer or architect may be submitted for consideration to the planning commission in lieu of meeting the conditions set forth in KPB 21.06.045(C). Based upon written findings of fact, the planning commission may grant or deny the permit and place conditions on the permit it grants in order that the risk of flood damage to downstream or adjacent property or flood damage to public infrastructure will not be increased. The grant or denial of a permit may be appealed to the Board of Adjustment within 15 days of distribution of the planning commission's written decision.

SECTION 4. That this ordinance is effective on the date of its enactment. The ordinance is not applicable to parcels where the "actual start of construction" has commenced as defined by KPB 21.06.020(M) prior to the date of enactment.

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

Milli Martin, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Yes:

No:

Absent: