

Introduced by: Martin, Sprague
Date: 04/21/09
Hearing: 05/19/09
Action: Enacted as Amended
Vote: 8 Yes, 1 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-25**

**AN ORDINANCE AMENDING KPB CHAPTER 5.35, UTILITY SPECIAL
ASSESSMENT DISTRICTS, TO CLARIFY PROCEDURES FOR THE CREATION OF
UTILITY SPECIAL ASSESSMENT DISTRICTS**

WHEREAS, KPB Chapter 5.35 as authorized by AS 29.46.010, establishes procedures for the formation and approval of special assessment districts to finance the extension of service lines for public utilities regulated by the Regulatory Commission of Alaska or city-owned utilities to areas outside the boundaries of the city; and

WHEREAS, since its original enactment in 1992, following voter approval, the borough assembly has approved the formation of 18 Utility Special Assessment Districts; and

WHEREAS, issues have arisen regarding the formation and approval process for these public utility districts; and

WHEREAS, on February 3, 2009, a work session was held by the borough assembly with borough staff and representatives of various utility companies operating in the Kenai Peninsula Borough; and

WHEREAS, this ordinance is intended to implement code changes recommended by the assessing department and informally concurred with by the people in attendance at the work session as well as provide for the deferral of payments in hardship cases;

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

SECTION 1. That KPB 5.35.020 is hereby amended as follows:

5.35.020. Authorized capital improvements.

Special assessments may be utilized solely for financing of the extension of the lines of service of those public utilities regulated by the [ALASKA PUBLIC UTILITIES COMMISSION] Regulatory Commission of Alaska, or of city-owned utilities to areas outside the boundaries of the city.

SECTION 2. That 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 a petitioner 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 or the assessor's designee shall review it to determine whether the proposed boundary is improper or inappropriate. The boundary is improper or inappropriate if 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. The petitioner may modify and resubmit the boundary description to the assessor for the assessor's and mayor's approval as described in Section A above.
- C. If the assessor approves the proposed boundary, the boundary description shall be returned to the petitioner bearing the assessor's approval.
- D. If the proposed boundary is approved by the assessor and mayor, the petitioner may provide written notice to the Assessing Department of intent to proceed with assembly review of the petition application as provided in KPB 5.35.105. The mayor or the mayor's designee shall prepare for the assembly a resolution approving the petition application. [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].
- E. After written notice to proceed is received by the Assessing Department from the petitioner, the borough clerk shall provide notice of the proposed USAD to all parcel owners within the proposed USAD by certified mail, return receipt requested, at least 60 days prior to assembly review of the petition application as provided in KPB 5.35.105. The notice shall include the following:

1. a description of the special assessment district and proposed improvement;
2. a map of the proposed improvement;
3. the date of public hearing; and
4. notice that no subdivision, reversion of acreage, or lot line adjustment will be recognized for USAD assessment purposes after assembly approval of the petition application.

SECTION 3. That KPB 5.35.070 is hereby amended as follows:

5.35.070. Property assessed.

- A. The assembly may assess for an improvement any real property, or any interest in real property, benefitted by the improvement. The property to be assessed may include any property which is otherwise for any reason exempt from taxation by law.
- B. The legal description of parcels within the proposed district as of the date of the assembly's approval of the petition application will establish the parcels for assessment. No subdivision, reversion of acreage, or lot line adjustment will be recognized for USAD assessment purposes after assembly approval of the petition application.
- ~~[B]C.~~ In the case where the assembly determines that the district boundary as proposed by petition is improper or inappropriate, then the assembly may modify the petition terms and resubmit the petition to the utility for further consideration and resubmission with appropriate signatures by the petitioners.
- ~~[C]D.~~ In no case may a property be assessed an amount in excess of [TWENTY-ONE (] 21 [%)] percent of the fair market value of the property after giving effect to the benefit accruing from the improvement for which assessed.
- ~~[D]E.~~ In no case shall a special assessment district be approved where properties which will bear more than [TEN (] 10 [)] percent of the estimated costs of the improvement are delinquent in payment of borough property taxes from the immediately preceding tax year.

SECTION 4. That KPB 5.35.090 is hereby amended as follows:

5.35.090. Method of assessment.

The method[s] of assessment shall be an allocation of costs on a per lot basis so that each lot is charged an equal amount. [SET FORTH IN THIS SECTION WILL BE USED. THE DETERMINATION OF THE METHOD TO BE USED MAY INVOLVE DETERMINATIONS ON THE

CHARACTER OF THE PROPERTIES IN THE ASSESSMENT DISTRICT AND THE BENEFIT RECEIVED FROM THE IMPROVEMENT. FOLLOWING ARE THE METHODS:

- A. ALLOCATION OF COSTS ON A PER LOT BASIS SO THAT EACH LOT IS CHARGED AN EQUAL AMOUNT; OR
- B. ALLOCATION IN PROPORTION TO ASSESSED PROPERTY VALUATIONS FOR LAND.

THE METHOD PRESCRIBED IN SUBSECTION A OF THIS SECTION SHALL BE USED UNLESS THE CHARACTER OF THE PROPERTIES ARE SUCH THAT ONE OR MORE PARCELS ARE MORE THAN THREE TIMES THE SIZE OF THE TYPICAL LOT IN WHICH CASE THE ALLOCATION METHOD IN SUBSECTION B SHALL BE FOLLOWED; PROVIDED, HOWEVER, THE METHOD IN SUBSECTION A MAY BE USED DESPITE A DISPARITY IN LOT SIZE WHERE LEGAL OR PHYSICAL RESTRICTIONS EFFECTIVELY LIMIT THE LARGER LOT TO THE SAME USE AS THE TYPICAL LOTS IN THE ASSESSMENT DISTRICT, OR WHERE THE ASSEMBLY OTHERWISE DETERMINES THE METHOD IN SUBSECTION A WOULD MORE REASONABLY ALLOCATE THE COST IN PROPORTION TO THE BENEFIT RECEIVED.]

SECTION 5. That KPB 5.35.100 is hereby amended as follows:

5.35.100. Financing special assessment districts.

The mechanism for financing of special assessment districts shall be determined on a case by case basis and set out and approved by the assembly in the [RESOLUTION OF NECESSITY] Resolution to Form the District and Proceed with the Improvement adopted for each respective special assessment district.

SECTION 6. That KPB 5.35.105 is hereby enacted as follows:

5.35.105. Resolution approving petition application.

- A. The mayor or mayor's designee shall prepare for assembly resolution a petition application for assembly approval. The petition application shall include the following information:
 - 1. a description of the proposed improvement;
 - 2. the total estimated cost of the improvement supported by a written statement from the utility constructing the improvement;
 - 3. a map showing the boundary of the proposed district;
 - 4. the name of the record owner of each parcel in the proposed district;
 - 5. the tax parcel number of each parcel in the proposed district;

6. the assessed valuation of each parcel in the proposed district;
 7. an estimate of the amount to be assessed to each parcel in the proposed district;
 8. the status of tax payments of each parcel in the proposed district;
 9. whether there are other special assessment liens against any of the parcels in the proposed district;
 10. a description of any parcels that exceed the assessment-to-value ratio set forth in KPB 5.35.070(D);
 11. the method of proposed financing the improvement; and
 12. the total number of parcels to be assessed within the proposed district.
- B. The assembly shall exclude from the proposed district any real property, or any interest in real property that is not benefitted by the improvement. Property is not benefitted by the improvement if physical characteristics of the property make it unreasonable to develop or improve the property in manner that would enable the property to benefit from the proposed improvement.
- C. The assembly shall hold a public hearing on the resolution.
- D. After public hearing the assembly may adopt the resolution approving the petition application.

SECTION 7. That KPB 5.35.040 is hereby amended as follows and reenacted as KPB 5.35.106:

[5.35.040.] 5.35.106. Petition filing.

After the [PROPOSED BOUNDARY] petition application has been approved by the [ASSESSOR, THE UTILITY AND THE MAYOR] assembly, the petitioner shall file a petition with the [A]assembly through the borough clerk upon forms prescribed by the mayor or designee, including the approved boundary description.

SECTION 8. That KPB 5.35.050 is hereby amended and reenacted as KPB 5.35.107 as follows:

[5.35.050.] 5.35.107. Requirements of petition.

The petition shall include all information approved in the petition application by assembly resolution, a statement notifying the property owners to contact the applicable utility for any additional costs that may be required to utilize the improvement, and notification that any costs to connect to the main improvement are not included in the assessment. [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 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 of \$1000 (one thousand dollars) 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 9. That KPB 5.35.110, Resolution of necessity, is hereby repealed and reenacted as follows:

5.35.110. Resolution to form the district and proceed with the improvement.

- A. When the borough clerk has determined that a petition bears sufficient signatures, the mayor or mayor's designee shall prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement. The mayor or designee shall submit to the assembly with the resolution a report on the proposed district containing the information included in the assembly approved petition application.
- B. The assembly shall hold a public hearing on the resolution. The borough clerk shall give notice of the public hearing on the resolution:
1. by certified mail, return receipt requested, mailed not less than 35 days before the date of the hearing, to each record owner of a parcel in the proposed district; and
 2. by publication once a week for two consecutive weeks in a newspaper of general circulation in the borough, with the first publication appearing not less than 30 days before the date of the hearing.
- C. Each notice of the public hearing shall include the following:
1. a description of the special assessment district and the proposed improvement;

2. the date of public hearing;
 3. the place for reviewing the estimated assessment roll; and
 4. the procedure for presenting objections to the formation of the district.
- D. Written objections to the formation of the district may be filed with the borough clerk for a period of 30 days after mailing the notice of the public hearing. If written objections are filed by the owners of parcels bearing one-half or more of the estimated cost of the improvement, the assembly may not proceed with the improvement unless it revises the district so that parcels objecting to the district bear less than one-half of the cost of the improvement. The revised district shall be subject to notice and public hearing as provided in subsections B and C of this section.
- E. After public hearing, the assembly may or may not adopt the resolution to form the district and proceed with the improvement. The resolution shall:
1. describe the improvement and its location;
 2. describe the parcels benefitted by the improvement;
 3. approve the estimated cost of the improvement;
 4. include an estimated assessment roll showing the amount of the assessment against each parcel;
 5. authorize the mayor to proceed with the construction of the improvement; and
 6. require the clerk to record in the district recorder's office a copy of the resolution to form the district and proceed with the improvement and the estimated assessment roll.
- F. After passage of the resolution to form the district and proceed with the improvement, the improvement may be constructed by force account or by contract, or in any other manner provided by law.
- G. In the event that the lowest, responsive, responsible, qualified bid for labor and materials for the improvement exceeds the estimated cost for labor and materials by more than 10 percent, then no contract shall be entered without further assembly approval. Prior to such further approval, the borough clerk shall publish notice once in a newspaper of general circulation in the borough stating the time and place when owners of parcels to be assessed may be heard on the question and shall, by certified mail, return receipt requested, notify affected property owners of the time and place when they may be heard on the question. If written objections are not received by or on the date set for

consideration of the increased improvement costs from owners of parcels bearing at least one-half of the cost of the improvement, the assembly may approve the improvement contract.

SECTION 10. That KPB 5.35.120, Resolution to proceed, is hereby repealed.

SECTION 11. That KPB 5.35.130 is hereby amended as follows:

5.35.130. Effect of resolution to [PROCEED] form the district and proceed with the improvement.

Adoption of the resolution to [PROCEED] form the district and proceed with the improvement shall be a final determination that properties in the assessment district are properly included and subject to assessment for the improvement.

SECTION 12. That KPB 5.35.150 is hereby amended as follows:

5.35.150. Ordinance of assessment.

- A. After the actual cost of the public improvements [AUTHORIZED UNDER SECTION 5.35.090] has been ascertained, the borough assembly shall by ordinance assess against each lot and parcel of lands enumerated in the estimated assessment roll adopted under [SECTION] KPB 5.35.[090] 110. The final assessment roll shall be developed in the same proportion to the estimated assessment roll as the actual cost of the improvement bears to the estimated cost of the improvement. This assessment shall be payable in the manner provided in the resolution [OF NECESSITY] to form the district and proceed with the improvement adopted under [SECTION] KPB 5.35.1[0]10, and shall be final upon the adoption of the ordinance.

SECTION 13. That KPB 5.35.155 is hereby enacted as follows:

5.35.155. Deferral of payment.

- A. All of the assessments on real property owned and occupied as the primary residence and permanent place of abode by a resident who is economically disadvantaged may be deferred as provided in this section.
- B. For purposes of this section, a resident is economically disadvantaged if the person's income is less than 200 percent of the current U.S. Health and Human Services Poverty Guidelines for Alaska.
- C. The deferred assessment, including all accrued interest, becomes due and payable in full when the property ceases to be owned by the resident who qualified for the deferral. Any remaining balance due shall be paid on the same schedule as would have been in place if no deferral had applied.

SECTION 14. That KPB 5.35.160 is hereby amended as follows:

5.35.160. Notice of assessment.

- A. Within fifteen days after the adoption of an ordinance under section [5.35.120] 5.35.150 levying a special assessment, the finance director shall mail a statement to the owner of record of each property assessed. The statement shall designate the property, the assessment amount, the schedule of payments, the time of delinquency, and penalties.
- B. Within five days after the statements are mailed, the finance director shall publish a notice that such assessments have been mailed and that the assessment roll is on file in the office of the borough clerk.
- C. After enactment of an ordinance under section [5.35.120] 5.35.150 levying a special assessment, the clerk shall file in the office of the district recorder an appropriate notice of assessment on all lands assessed.


SECTION 15. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF MAY, 2009.

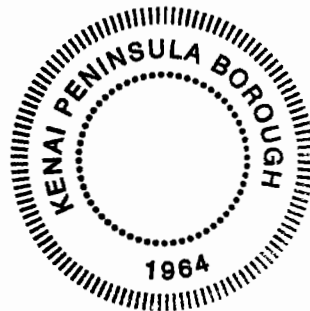


Milli Martin, Assembly President

ATTEST:



Johni Blankenship, Borough Clerk



Yes: Fischer, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: Knopp
Absent: None