



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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**DAVID R. CAREY
BOROUGH MAYOR**

MEMORANDUM

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

THRU: *DR Carey* David R. Carey, Borough Mayor

FROM: *MB* Max J. Best, Planning Director

DATE: August 26, 2009

SUBJECT: Ordinance 2009-43; An Ordinance approving Percy Hope and Discovery Park R-M, Mixed-Residential Local Option Zoning Districts and Amending KPB 21.46.030 and 21.44.230.

The Planning Commission reviewed the subject ordinance during their regularly scheduled August 24, 2009 meeting.

An amended motion to strike the following items, Section 2, 1(c) and 2(c) from the ordinance passed by unanimous consent.

SECTION 2.

- 1.(c) The total number of vehicles per dwelling unit whether operational or not is restricted to a maximum of two.

- 2.(c) The total number of vehicles per dwelling unit whether operational or not is restricted to a maximum of two.

A motion to recommend enactment of the ordinance as amended passed by unanimous consent.

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

AGENDA ITEM F. PUBLIC HEARINGS

2. Ordinance 2009-43; Ordinance approving Percy Hope and Discovery Park R-M, Mixed-Residential Local Option Zoning Districts and amending KPB Chapters 21.46.030 AND 21.44.230

Memorandum & Staff Report given by Crista Hippchen

PC Meeting: 8/24/09

These are two local option zoning districts that are proposed for Borough subdivisions in the Hope area. Planning and Land Management staff has been working with the Hope / Sunrise Advisory Planning Commission and the community members in Hope to get to this point to bring these two LOZ's forward. It has been about 3 years in the making that the APC has been having meetings. After consideration of the Hope / Sunrise Land Use recommendations for Borough lands in the area and also after several community meetings this type of hybrid LOZ has come before the commission.

KPB 21.44.030(A) provides that a local option zoning (LOZ) district may be proposed at the time of preliminary or final plat approval. The Kenai Peninsula Borough (KPB) is in the process of platting Percy Hope and Discovery Park Subdivisions, in the Hope area. Prior to the sale of parcels the property owner, KPB, is requesting Assembly approval of the subject ordinance to allow the formation of a local option zoning (LOZ) district for each subdivision.

The Hope/Sunrise Advisory Planning Commission (APC) recommended approval of the Percy Hope Subdivision plat at its May 22, 2008 meeting and recommended approval of the Discovery Park subdivision plat at its June 7, 2007 meeting. At its February 5, 2009 meeting, the APC unanimously recommended that both subdivisions be approved as R-M, Mixed Residential LOZ districts, with a request that the Assembly approve some modifications, as found in the APC meeting minutes and the ordinance. KPB 21.44.060 provides for modification by the Assembly of a proposed LOZ. This ordinance would also amend KPB 21.44.230 to add a definition of junkyard. At its July 22, 2009 meeting, the APC made final suggested revisions to the subject ordinance and voted unanimously to recommend that the Planning Commission support Assembly approval of the ordinance.

The maps depict the proposed Percy Hope and Discovery Park R-M LOZ districts. Because the property is under single ownership, LOZ Area and Petition Requirements (KPB 21.44.040) are not required as a part of the LOZ process. Public notice of the proposed LOZs was mailed to property owners and/or leaseholders within 600 feet of both subdivisions. Notice was also posted at the Hope post office. The Planning Commission's recommendation regarding this ordinance will be forwarded to the Assembly prior to the September 1, 2009 Assembly public hearing.

The permitted uses and development standards given for R-M, Mixed Residential, and C-3 Mixed Use LOZs are as follows:

21.44.180. Mixed residential district (R-M).

- A. Permitted Principal Use: Single (R-1)- and multi-family (MF) residential (no more than 4 units) dwelling units are permitted in this district.
- B. Permitted Secondary Uses: Secondary uses allowed in the R-M zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principle and accessory structures:
 - 1. Setbacks. Setbacks shall be 60 feet from the front yard line for MF units, 40 feet from the front yard line for R-1 units, 40 feet from the rear yard line for MF units, 20 feet from the rear yard line for R-1 units, 25 feet from the side yard lines for MF units, 15 feet from the side yard lines for R-1 units, and 50 feet from the shore and where

applicable subject to the provisions of KPB 21.18.

2. **Minimum lot size.** Minimum lot size shall be 80,000 square feet for MF units and 40,000 square feet for R-1 units.
 3. **Drainage Ways.** Existing natural drainage ways shall be retained.
 4. **Buffers.** To provide for screening, aesthetics, and the reduction of surface water run-off, no lot shall be clear-cut more than 50 percent of the total lot area except that trees may be selectively pruned and thinned, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. Undergrowth may be removed provided that the area is promptly re-seeded or sodded. A forested buffer of at least 30 feet shall be retained between the building site and the common drive or roadway. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.
 5. **Accessory Structures.** Accessory structures commonly associated with residential dwellings, i.e., garages, storage sheds, greenhouses, workshops, and a single, noncommercial guesthouse per parcel, are allowed within the district.
- D. **Home Occupations.** In addition to the home occupation uses listed in KPB 21.44.130, the following home occupations are allowed provided they do not violate any of the provisions of this title:
1. **Bed and breakfast;**
 2. **Guide and guide services.**

21.44.190 Mixed Use District (C-3).

- A. **Permitted Principal Uses:** Commercial, business, residential, institutional and public uses are permitted in this district.
- B. **Permitted Secondary Uses:** Secondary uses allowed in the C-3 zone are uses permitted in R-1 and R-M districts.
- C. **Development Standards.** Development standards apply to principle and accessory structures.
 1. **Setbacks.** Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 100 feet from the shore.
 2. **Minimum lot size.** Minimum lot size shall be 40,000 square feet.
 3. **Drainage Ways.** Existing natural drainage ways shall be retained.
 4. **Buffers.** A forested buffer of at least 20 feet shall be retained between the building site and the roadway. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.

The subdivisions related to the proposed local option zoning districts are not yet recorded; therefore the property descriptions for the Percy Hope and Discovery Park subdivisions in Section 2 of the subject ordinance should read:

21.46.050.A.

1. Percy Hope Subdivision, described as lots 1-14, Percy Hope Subdivision Preliminary Plat, KPB File No. 2008-129.
2. Discovery Park Subdivision, described as lots 1-13, Discovery Park Subdivision Preliminary Plat, KPB File No. 2008-108.

END OF MEMORANDUM & STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Marcus Mueller, Land Management Officer

Mr. Mueller was pleased to be at the meeting and stated this local option zone was a product in an effort that has been four years in the making. It is referred to as a hybrid LOZ that is based on the inputs of the Hope / Sunrise APC. It reflects the design and all the input that has been put into the subdivisions. There are a couple of unique features to this LOZ with one being that it is not entirely residential or any other zone but it takes into account lots that were designed for residential use and lots that were designed for limited commercial use. He was available to answer questions.

Chairman Bryson asked if there were questions for Mr. Mueller.

Commissioner Murphy was surprised that the maximum number of vehicles allowed per lot was two in both districts especially with this not being located in a public transportation area. She asked for clarification regarding this condition. Mr. Mueller replied that the elements that are in the LOZ are based on the recommendations made from the Hope / Sunrise APC. He understood the concern especially when there are more than 2 drivers in a household. There are circumstances that may be presented where there may be more than two vehicles in a yard as in a case with a small business or a get together. Mr. Mueller also expressed concerns regarding the implementation and enforcement by the Borough. He stated that zoning comes down to Borough enforcement.

Commissioner Murphy asked if the Code defined vehicle. Mr. Best replied there was no definition for vehicle in the Borough Code.

Commissioner Gross stated she only saw in the Hope / Sunrise APC minutes where they recommended restriction for only two non-operational vehicles per lot. Commissioner Murphy asked if that meant that she could have as many vehicles as she wanted as long only two were non-operational. Commissioner Petersen clarified that, according to the ordinance, the total number of vehicles per dwelling unit whether operational or not is restricted to a maximum of two. Commissioner Gross asked if that was a misprint because she didn't read that in the Hope / Sunrise APC minutes. Chairman Bryson stated it would be in the action taken on the last modified version.

Commissioner Petersen pointed out that potential buyers may balk at that condition but appreciated Hope's APC intent. Mr. Mueller replied it was not his intent to second guess the advisory planning commission but from the Land Management perspective and marketability the requirement for a two vehicle restriction per dwelling unit would be looked at unfavorably.

Commissioner Johnson asked how this could be enforced if a commissioner amended it to non operational vehicles only. He stated he has more than two drivers in his household with teenage drivers and also has many different vehicles for different purposes. Mr. Best agreed with Mr. Mueller in that he felt it would be an unmanageable restriction on the property and would create headaches. He also has the same problem with having two teenage drivers who are in and out of the house between fishing and school. There are many cars that sit in his driveway for several months at a time so he has concerns on how this ordinance was written especially that particular part of it.

Chairman Bryson asked if the underlined portion of the ordinance had been adopted by the Assembly. Mr. Best replied the underlined portion is added language to the ordinance. The ordinance has been introduced at

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the Assembly but not adopted.

Commissioner McClure expressed confusion regarding the following whereas statements that is in the proposed ordinance.

"WHEREAS, The Hope / Sunrise APC voted unanimously to request that the Assembly modify the proposed LOZs to restrict the number of vehicles allowed per dwelling unit at any given time to a maximum of five;"

"WHEREAS, at its July 22, 2009 meeting, the Hope / Sunrise APC voted unanimously to revise the vehicle regulation request to limit the total number of non-operational vehicles per lot to a maximum of two."

Then in Section 2 it reads that the *"total number of vehicles per dwelling until whether operational or not is restricted to a maximum of two."*

Ms. Hippchen replied that the advisory planning commission had made the original recommendation of five vehicles at their February 5, 2009 meeting. Then at the July 22, 2009 meeting they changed their recommendation from five to two vehicles per dwelling unit. Commissioner McClure stated it appeared it was revised to two non-operational vehicles. It went from five operational to two non-operational. Ms. Hippchen stated it might have been possible that she had a typographical error with operational and non-operational. She stated she would need to double check her notes of the APC meetings.

There being no further questions, the public hearing continued.

2. Pete Sprague, 188 Farnsworth, Soldotna

Mr. Sprague serves on the Assembly as the Soldotna Representative and was one of the co-sponsors of the ordinance. He was pleased to see what the Administration and the public was doing and supported the concept of the LOZ.

Mr. Sprague stated there was nothing in the original ordinance regarding limiting the number of vehicles per dwelling unit. That would be something that would be recommended from the APC to the Planning Commission and then to the Assembly for consideration. He had the same questions that Commissioner McClure had regarding the APC's recommendation of non-operational and operational vehicles. There were concerns expressed at the committee meetings with limiting it to two vehicles whether they were operational or not.

Mr. Sprague supported the ordinance as presented but welcomed any suggestions for modifications. He was available to answer questions.

Mr. Sprague clarified that the ordinance would not be amended until after public hearings were held on the ordinance.

Chairman Bryson asked if there were questions for Mr. Sprague. Hearing none the public hearing continued.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

MAIN MOTION: Commissioner Carluccio moved, seconded by Commissioner Isham to recommend enactment of KPB Ordinance 2009-43.

AMENDMENT MOTION: Commissioner Johnson moved, seconded by Commissioner Isham to strike the following items, Section 2, 1(c) and 2(c) from the ordinance.

SECTION 2.

- 1.(c) The total number of vehicles per dwelling unit whether operational or not is restricted to a maximum of two.
- 2.(c) The total number of vehicles per dwelling unit whether operational or not is restricted to a maximum of two.

Commissioner Murphy asked for clarification that Commissioner Johnson felt there should not be any restrictions with the number of vehicles. Commissioner Johnson replied that it would probably be a headache for the administration to enforce if the number of vehicles were restricted. He wanted to leave in that the use of any lot as a junkyard is prohibited within these districts which would take care of the typical dismantling and the Alaskan eyesore that can be seen in different areas of the Borough.

AMENDMENT VOTE: The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO YES	COLLINS YES	FOSTER YES	GROSS YES	ISHAM YES	JOHNSON YES
LOCKWOOD YES	MARTIN ABSENT	MCCLURE YES	MURPHY YES	PETERSEN YES	TAURIAINEN YES	12 YES 1 ABSENT

Commissioner Foster stated that the City of Homer was wrestling with situations like this. He thought setting it up like the cash for clunkers deal with the requirement that vehicles would have to be registered and insured for the past year. It would be that when there was a problem then the owner could show that the vehicle was registered and insured and if they were not then they would be breaking the local option zone. Commissioner Foster thought the restriction wasn't totally unenforceable. Chairman Bryson stated that part of the enforcement would be the logistics of the location.

Commissioner Isham stated he has lived in subdivision that had covenants that says the same thing. If it was a covenant then the enforcement would go to the courts to determine what was operational and non-operational.

Commissioner Carluccio referred to the "whereas" statements that covers the operational and non-operational and stated it was already in the ordinance. Chairman Bryson stated that "whereas" statements are not part of the ordinance restrictions nor are they enforceable.

AMENDMENT MOTION: Commissioner Gross moved, seconded by Commissioner Isham to amend the motion that the total number of non-operational vehicles per dwelling would be no more than two for both subdivisions.

Commissioner Johnson felt it would be an enforcement headache.

There being no further discussion or comments, Chairman Bryson called for a roll call vote.

AMENDMENT VOTE: The motion failed by majority consent.

BRYSON NO	CARLUCCIO NO	COLLINS NO	FOSTER YES	GROSS YES	ISHAM YES	JOHNSON NO
LOCKWOOD NO	MARTIN ABSENT	MCCLURE NO	MURPHY YES	PETERSEN YES	TAURIAINEN NO	5 YES 7 NO 1 ABSENT

Commissioner Foster asked if two non-operational vehicles would be in the definition of a junkyard. Ms. Hippchen replied it would depend if they were being sold, dismantled, compressing, etc.

Commissioner Petersen felt that vehicle requirement would negatively affect sales.

Commissioner Tauriainen was sympathetic to Commissioner Johnson and would hate to restrict hard working

folk with vehicles that have to be stored on a person's lot. However, this is a tough issue and he would like to see people's junk cars out of there. To put a hardship on other people that are working and using the vehicles is unfair and would be stepping on people's rights at that point.

Commissioner Johnson felt it was good that there was still the restriction that junkyards were prohibited. In his mind, he knows what a junkyard is and felt comfortable with that restriction.

There being no further discussion or comments, Chairman Bryson called for a roll call vote.

MAIN MOTION VOTE: The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO YES	COLLINS YES	FOSTER YES	GROSS YES	ISHAM YES	JOHNSON YES
LOCKWOOD YES	MARTIN ABSENT	MCCLURE YES	MURPHY YES	PETERSEN YES	TAURIAINEN YES	12 YES 1 ABSENT

AGENDA ITEM G. ANADROMOUS STREAM HABITAT PROTECTION (KPB 21.18) - None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None

AGENDA ITEM I. SPECIAL CONSIDERATIONS – None

AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Carluccio reported the Plat Committee reviewed and conditionally approved 6 preliminary plats.

AGENDA ITEM K. COASTAL MANAGEMENT PROGRAM CONSIDERATIONS

AGENDA ITEM L. OTHER/NEW BUSINESS

AGENDA ITEM M. ASSEMBLY COMMENTS

Pete Sprague, Assemblyperson

Mr. Sprague informed the Commission that the Assembly enacted Ordinance 2009-37, An ordinance amending KPB 17.10.185 to provide authority to enter into agreements that provide for third party management of public trails on Borough lands. He recognized and appreciated the work that was put into this ordinance by Mr. Mueller.

There were a few amendments proposed by Assemblyperson Martin and Assemblyperson Sprague. They wanted to make sure that the ordinance would provide additional tools for the administration to manage borough lands and to be clear that the intent language in the Whereas portion will not negatively impact the existing lease agreements with such organizations as the Tsalteshi Trails Association and the Kachemak Nordic Ski Club.

Mr. Sprague was available to answer questions. Hearing none, the meeting proceeded.

AGENDA ITEM N. DIRECTOR'S COMMENTS

Mr. Best reported on the following Assembly actions.

- A. Confirmed Appointments to the KPB Cooper Landing Advisory Planning Commission
 - 1. Sandra Key Holsten, Seat E
 - 2. Karl Romig, Seat F