

Introduced by:	Mayor
Date:	10/13/09
Shortened Hearing:	10/27/09
Action:	Enacted
Vote:	7 Yes, 1 No, 0 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-48**

**AN ORDINANCE OF ASSESSMENT CONFIRMING THE ASSESSMENT ROLL FOR
THE CARDWELL SUBDIVISION UTILITY SPECIAL ASSESSMENT DISTRICT AND
ESTABLISHING THE METHOD FOR TERMINATING ASSESSMENTS AND
MAKING REFUNDS TO PROPERTY OWNERS**

- WHEREAS,** the assembly, by Resolution 2008-088 established the Cardwell Subdivision Utility Special Assessment District (the "District"); and
- WHEREAS,** the assembly, by Ordinance 2008-19-36, appropriated \$80,392.00 for the Cardwell Subdivision Natural Gas Line Utility Special Assessment District; and
- WHEREAS,** the assembly, by Resolution 2009-007, authorized the construction of the improvement for the District; and
- WHEREAS,** the total cost of constructing the improvements, including all allowable amounts as provided in KPB 5.35.080 and AS 29.46.110 ("Costs"), are now known; and
- WHEREAS,** the District's special assessment roll has been prepared and the total costs of the improvement spread equally among all the lots and tracts within the District; and
- WHEREAS,** the borough clerk has published a notice of the filing of the assessment roll once in a newspaper of general circulation within the borough stating that such assessment has been made and is on file in the office of the borough clerk, and providing notice of the time and place for the hearing held October 27, 2009, where objections would be heard; and
- WHEREAS,** the assembly, on October 27, 2009, held hearings on the assessment roll at which time all persons objecting to assessments were given an opportunity to present their objections; and
- WHEREAS,** notice of the assessment and hearing was mailed to each owner of record as shown on the rolls of the Borough Assessor not less than ten days before the hearing; and
- WHEREAS,** the assembly found no errors or inequalities in the roll; and
- WHEREAS,** the assembly finds that the roll should be confirmed; and

WHEREAS, the mainline has been constructed and any necessary property acquisitions completed for the natural gas pipeline in the District (the "Project"); and

WHEREAS, special assessments of \$4,019.60 will be levied on properties in the District that are specially benefited by the Project, and said special assessments, with interest thereon, will be sufficient (together with other amounts) and available to pay the actual cost to the borough of the improvements plus interest; and

WHEREAS, hearing on shortened time is necessary to minimize the cost to the borough associated with financing the project.

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

SECTION 1. Classification. That this ordinance shall be a non-code ordinance.

SECTION 2. Confirmation of Roll. That the assessment roll for Cardwell Subdivision Utility Special Assessment District, attached as Exhibit A to this ordinance, as presented to the assembly on October 13, 2009, in the total amount of \$80,392.00 is confirmed.

SECTION 3. Notice of Assessment. That within fifteen days after the enactment of this ordinance, the finance director shall mail to the record owner of each property assessed a statement designating the property, the assessment amount, the schedule of payments, the time of delinquency, and penalties. Within five days after the statements are mailed, the finance director shall publish a notice that the statements have been mailed and that the assessment roll is on file in the office of the borough clerk. After enactment of this ordinance the clerk shall file in the office of the Kenai District Recorder a notice of assessment on all parcels assessed within the utility special assessment district.

SECTION 4. Payment of Assessment. That the entire assessment may be prepaid without interest or penalty within thirty days of the date of mailing of the assessment statement. Thereafter, the assessment may be prepaid in whole or in part with interest to the payment date. Interest on the unpaid amount of the assessment shall accrue at the rate of (5.25%) per annum. Assessments that are not prepaid shall be paid in ten equal annual installments on March 31 of each year, commencing March 31, 2010. Installments shall include principal plus accrued interest.

SECTION 5. Delinquencies. That if an installment of the assessment is delinquent, the balance of the assessment, plus accrued interest, becomes due and delinquent thirty days after the date of notice of the installment delinquency. Notice of the delinquency shall be mailed to the owner of record. The notice must contain notice of the nonpayment of the installment and that the balance of the assessment, plus accrued interest, will become due and delinquent if the installment, interest and penalty are

not paid within thirty days of the date of the notice. The penalty for delinquent installment and assessment payments is the same as the penalty for delinquent real property taxes in effect on the date of the delinquency.

SECTION 6. Establishment of Reserve and Refund Accounts.

- A. That there is established the District Reserve and Refund Account (the "Reserve and Refund Account").
- B. That there shall be paid into the Reserve and Refund Account:
 - 1. All monies received from ENSTAR Natural Gas Company that are refund entitlements arising out of new customers connecting to the gas line installed with the District, and
 - 2. The final refund due under the ENSTAR line extension tariff, and
 - 3. Interest on the average Reserve and Refund Account balance at the rate determined by the Finance Director to be the average interest earned on Borough investments during the year.

SECTION 7. Distribution of Reserve and Refund Account Funds.

- A. The borough shall refund the funds in the Reserve and Refund Account at the end of each fiscal year an amount equal to the fund balance divided by the number of lots within the District provided the refunded amount is greater than or equal to \$25.00 per parcel. If the amount is under \$25.00, the refund will be carried over to the following fiscal year. The order of refund will be: First, to ANY outstanding balance applied in the order of unpaid costs, penalty, interest and then principal; and, Second, to the owner of record as shown on the most recent records of the Borough Assessor. If any lot or tract within the District is divided into two or more lots, the refund for such re-subdivided lots shall be computed by counting the re-subdivided lots as a single lot for purposes of determining the initial refund entitlement. If any lots or tracts are consolidated, the converse shall apply. The initial refund entitlement shall then be divided equally among the subject lots. If an account is in a delinquent or foreclosure status, any such refund shall be applied against the delinquent balance in the order described above.
- B. That upon the repayment to the Borough of all indebtedness incurred for this assessment district or after the borough receives the final refund entitlements arising out of new customers connecting to the gas line, any funds remaining in the Reserve and Refund Account shall be distributed as provided under this section.

SECTION 8. Termination of Assessment and Refund of Pro Rata Share of Assessment Prepayments.

- A. That upon the discharge of all indebtedness to the Borough, all unpaid, non-delinquent assessment installments are cancelled. The Finance Director shall refund to the owner of record as shown on the records of the Borough Assessor an amount equal to the fund balance divided by the number of lots within the District.
- B. That for any lot upon which foreclosure proceedings to recover delinquent assessment installments has been commenced prior to the cancellation of remaining assessment installments, the amount due shall be recomputed as provided in subsection A, except there will be no refund.

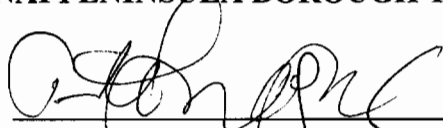
SECTION 9. Appropriation. That there is appropriated for the purposes set out in this ordinance the refunds from ENSTAR attributable to the District, all assessments and interest in the District, assessment foreclosure proceeds and interest earned on the funds as provided in Section 6(B)(2). The appropriation under this section does not lapse until after the final refund required under section 7(B) has been made.

SECTION 10. Authority for Ordinance. That the borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this ordinance is necessary in order to carry out and effectuate the purposes of the Borough in accordance with our constitution and statutes of the State of Alaska, and the Code of Ordinances of the Kenai Peninsula Borough.

SECTION 11. Severability. That if any one or more of the covenants and agreements provided in this ordinance to be performed on the part of the borough shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreements or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance.


SECTION 12. Effective Date. That this ordinance shall take effect immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 27TH DAY OF OCTOBER, 2009.



Pete Sprague, Assembly President

ATTEST:



John Blankenship, Borough Clerk



Yes: Fischer, Haggerty, Knopp, McClure, Smalley, Smith, Sprague

No: Superman

Absent: None

Abstention: Pierce