



KENAI PENINSULA BOROUGH

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DAVID R. CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Pete Sprague, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: ~~Allen~~ David R. Carey, Mayor
MB Max Best, Planning Director

FROM: ~~AM~~ Marcus A. Mueller, Land Management Officer

DATE: February 11, 2009

SUBJECT: Ordinance 2010-04 Authorizing the Mayor to Amend the Aardvark Waste Disposal Lease: Clarifying staff's position on negotiated leases for private interests

Discussions of Ordinance 2010-04 regarding the Aardvark land lease has generated interest in why the Borough finds itself leasing public land for private interests. This memo is intended to clarify some of the reasoning.

KPB 17.10.100(I) provides for the negotiated sale or lease of borough land. A negotiated sale or lease may occur when the borough finds it to be in its best interest and an ordinance is required to fix the terms and provides the process to guard and promote the borough's best interest.

Negotiated sales and leases are applied to facilitate a public purpose or community development, to generate revenue, to cure unintentional trespass, and to assemble land where only one feasible buyer exists.

In the case of leasing land for private interests, the prominent consideration is often revenue. Revenues collected from land leases support the land trust fund and are one of the most important revenue sources to the land trust because they are reoccurring and the land asset is retained in the borough's land inventory.

Another common factor in negotiated leases for private interests is the reliance of the proposed land use on a certain location. The borough has not historically sought to promote the leasing of public land or made efforts to compete against private land owners for revenue opportunities. Rather negotiated leases most often are generated when a private interest identifies that its land use needs can best be met on property owned by the borough. Examples of such include the communication tower near Skyview, and a number of oil and gas related leases on lands strategically located for such use. The administration weighs these factors when it presents a lease to the assembly weighs these factors as well when it considers a lease proposal.

The other factor that is present in determining whether any lease is in the best interest of the borough is ensuring that the borough's interests are adequately protected against liability. As each land use presents their own risk factors, each lease has written provisions to protect against liability caused by the land use backed by appropriate levels of insurance and bonding where necessary.

In the specific case of the Aardvark lease, four primary factors were present which compelled the borough to find that the lease was in the best interest of the borough. First, the lease was negotiated at fair market value yielding a positive revenue stream. Second, the location of the proposed land use was seemingly well placed; being in the landfill buffer, removed from potentially conflicting land uses, and on land suitable for such use. Third, it was presented that the type of facility to be developed was of local importance and the borough recognized that there is benefit to borough residents to have properly managed septic disposal facilities serving the peninsula. Fourth, that the borough could be reasonably guarded from liability through provisions of liability insurance coverage, environmental contamination insurance, and the reliance on DEC permitting to ensure proper development and operation of such a facility.

I hope that this information is useful to the assembly as it considers the current ordinance and provides perspective for future land issues.