



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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DAVID R. CAREY
BOROUGH MAYOR

M E M O R A N D U M

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

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

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

DATE: June 17, 2010

SUBJECT: Ordinance 2010-23; Ordinance amending certain sections of KPB Chapter 21.44 by approving an R-W, Residential Waterfront Local Option Zoning District, adding certain definitions and clarifying language.

The Planning Commission reviewed the subject ordinance during their regularly scheduled June 14, 2010 meeting. A motion passed by unanimous consent to recommend enactment of the ordinance.

In the Ordinance, please make the following amendment to the last WHEREAS:

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of June 14, 2010 recommended approval.

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

2. Ordinance 2010-23; Ordinance amending certain sections of KPB Chapter 21.44 by approving an R-W, Residential Waterfront Local Option Zoning District, adding certain definitions and clarifying language.

Memorandum reviewed by Crista Cady

PC Meeting: 6/14/10

Borough code allows property owners to petition the assembly for a greater restriction on land uses and development standards than are otherwise provided for in the rural district. The process for achieving these greater restrictions is found in KPB 21.44 Local Option Zoning. Currently there are six (6) zone types from which property owners can choose when proposing the formation of a local option zone (LOZ):

- Single Family Residential (21.44.160)
- Rural Residential (21.44.170)
- Mixed Residential (21.44.180)
- Mixed Use (21.44.190)
- Industrial (21.44.200)
- Residential Conservation (21.44.210)

Local option zoning (LOZ) is a mechanism that allows property owners to impose greater restrictions on land use than the borough otherwise provides. Reasons for establishing KPB 21.44 in 2000 included developing a step-by-step, user-friendly system for forming a district, and providing a "menu of different types of local option zones" from which property owners could select the most suitable type for their property and location. The formation of an LOZ may be proposed at the time of platting a subdivision, or later by property owners within an area defined by sponsors of the district, in cooperation with the planning department. The boundaries of a district are ultimately approved by the assembly.

The existing local option zone types are:

- **Single-family residential**, allowing as principal use single-family dwellings;
- **Rural residential**, allowing as principal use single family dwellings on lots approximately 2-1/2 acres in size;
- **Mixed residential**, allowing as principal use single family dwellings and up to four unit multi-family dwellings;
- **Mixed use**, allowing commercial, business, residential, institutional, and public uses as principal uses;
- **Residential conservation**, allowing a mechanism for residential planned unit developments which may increase the tax base, conserve environmentally sensitive areas, and create open space; and
- **Industrial**, allowing as principal uses light and heavy industrial uses, utility, and transportation uses.

The Intent of this ordinance is to adopt an additional zone type of Waterfront Residential. After ten years of administering the current LOZ code, planning staff feels the proposed new zone type may be useful in the future as more property owners seek to preserve the character of certain areas within the borough.

For several months, the planning department has been working with a group of property owners who wish to form an LOZ. After a thorough examination of the area proposed for the LOZ we have found that the types of restrictions the property owners wish to impose on themselves do not exactly fit into any of established zones, with regard to minimum lot size, allowed home occupations, and other concerns. Therefore, after several meetings between the property owners, and planning and legal staff, a new zone type is being proposed that suits the area for which it is intended, and may be suitable for other areas of the borough, as well.

Since the adoption of the current code, there have been 7 LOZs approved by the assembly:

<u>LOZ Name</u>	<u>Date Approved</u>	<u>LOZ Type</u>
• Ten Mar Ranch	Approved 10/24/00	Single Family Residential
• Russian Gap	Approved 10/9/01	Rural Residential
• Birch and Grouse Ridge	Approved 8/3/04	Rural Residential
• Grandville Heights One	Approved 9/17/04	Single Family Residential

• Funny River Grove	Approved 11/18/08	Single Family Residential
• Discovery Park	Approved 9/1/09	Mixed Residential
• Percy Hope	Approved 9/1/09	Mixed Residential

The table provides a profile of the characteristics found in the current LOZ districts, as well as the proposed district.

KPB 21.44.040. *Area and petition requirements*, stipulates that a minimum of 12 lots is required to form an LOZ (except for industrial districts where only 6 lots are required). Staff supports amending this section to include a requirement that at least thirty percent of the lots within a proposed R-W LOZ must be directly adjacent to the water. At a minimum, this would allow the owners of 4 waterfront lots and 8 contiguous lots to petition the assembly for the formation of an R-W LOZ. The inclusion of more waterfront lots would allow for the inclusion of more contiguous, non-waterfront properties. The amendment would necessitate adding a new Section 2 to the subject ordinance as shown below and renumbering the subsequent sections:

SECTION 2. *That KPB 21.44.040(A) is hereby amended as follows.*

21.44.040. Area and petition requirements.

A. *Except as otherwise provided, the minimum area that may be included in a local option zoning district is 12 lots. The minimum area that may be included in a local option zoning district in an industrial district as described in KPB 21.44.200 is six lots. At least thirty percent of the lots within a proposed R-W district must be directly adjacent to the water. Two-thirds of the parcels within the proposed district must be of the average size prevailing within the proposed district. However, districts with disparate parcel sizes may be formed where 100 percent of the parcels vote in favor of the district. Lots and parcels in a petition area must be contiguous or separated only by a street, alley, right-of-way, or easement. Petitioners shall coordinate with the Planning Department to designate appropriate districts.*

Consistent with current code, commercial uses in the proposed zone type which are in operation at a time a zone is formed will be granted non-conforming use status (grandfather rights). Likewise, existing structures will be legal, as pre-existing the adoption of the zone. Procedures for requesting nonconforming use status are provided in the code.

The proposed new zone type is the result of many months of cooperative effort between borough staff and concerned property owners, who did not feel that anyone existing zone type could provide the regulation they sought. The Waterfront Residential type is suitable for many areas of the borough where property owners on or adjacent to waterbodies seek to preserve their neighborhood's character and quality. It also allows limited guest accommodations and guide services which is not found in a single family residential zone. The limitations on the density of these activities that are listed within the zone are meant to protect residential quality of the neighborhood and discourage pedestrian and vehicular traffic in these ecologically sensitive waterfront areas. As with the other residential zones, the shoreline setback is 50 feet and is consistent with KPB 21.18. The limitations on domestic livestock and the pit toilets was meant to reduce excrement run off into the adjacent waterbodies.

Included in this memo is the language for the proposed new zone type, *Residential Waterfront*, which is intended to promote orderly development adjacent to anadromous water bodies as defined by Alaska Statute 41.17.950(1). AS 41.17.950(1) defines an *anadromous water body* as the portion of a fresh water body or estuarine area that:

- (A) is cataloged under AS 41.14.870 as important for anadromous fish; or
- (B) is not cataloged under AS 41.14.870 as important for anadromous fish but has been determined by the deputy commissioner to contain or exhibit evidence of anadromous fish in which event the anadromous portion of the stream or waterway extends up to the first point of physical blockage.

21.44.175 Residential Waterfront (R-W).

A. *Purpose.* The purpose of this district is to promote orderly development adjacent to anadromous water bodies as defined by AS 41.17.950(1)

B. *Allowed Principal Use.* One of the following uses is allowed per lot for a permanent residence in this district:

1. No more than two single-family dwellings;
2. One Duplex

A. *Allowed Secondary Uses.* Secondary uses allowed in the R-W zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations as provided in 21.44.175(D).

B. *Development Standards.* Development standards apply to principle use and accessory structures:

1. *Setbacks.* Setbacks shall be a minimum 30 feet from the front yard line, a minimum of 20 feet from the rear yard line, a minimum of 15 from the side yard lines, and 50 feet from the mean high water mark of the river/lake, and where applicable subject to the provisions of KPB 21.18.
2. *Maximum Building Height.* Maximum building height shall be 2½ stories above ground or 35 feet above average grade, whichever is less.
3. *Minimum lot size.* Minimum lot size shall be 40,000 square feet.
4. *Drainage Ways.* Existing natural drainage ways shall be retained.
5. *Buffers.* A forested buffer of at least 20 feet shall be retained between the building site and the right-of-way. Dead and diseased trees within the buffer area which are a safety hazard or which threaten structures may be removed. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.
6. *Accessory Structures.* Accessory structures commonly associated with residential dwellings, i.e. garages, storage sheds, hobby greenhouses, hobby workshops, and a single, noncommercial guesthouse per parcel, are allowed within the district.
 - a. The owner of the property shall not sub-lease, sub-contract, or brokerage the property for non-allowed uses.
 - b. No more than two travel trailers or motor homes may be kept on each lot.
 - c. Windmills or wind generators are not allowed.
 - d. Pit-style outhouses are not allowed.
7. *Dog Lots.* Dog lots and kennels are prohibited.
8. *Domestic farm animals.* Domestic farm animals are prohibited.

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 & breakfast
2. Guide & guide services

- a. Licensed fishing guide operations are limited to two boats per lot, each not exceeding twenty-two (22) feet in length.
3. One rental cabin, not to exceed 500 square feet, may be occupied from May 1-October 31.

This zone is both more permissive and more restrictive than the currently LOZ's.

END OF MEMORANDUM & STAFF REPORT

Vice Chairman Martin opened the meeting for public comment.

1. Jane Madison, 34435 Keystone Drive, Soldotna
Ms. Madison read her written comments which are as follows:

"I am here today to speak in support of changes and additions to the Borough's Zoning Regulations.

We have lived full-time in the Borough for almost 14 years. During that time, we have seen a lot of development on the Borough's rivers, lakes, and streams. We have seen very nice homes and lodges, with a commercial auto repair shop nearby. We have seen areas of housing right next to a large child care center. We have seen property owners raising chickens, ducks, and geese for personal consumption, not considering the consequences of attracting bears to his property or the neighboring properties.

We have envisioned problems with someone starting a boat rental, small engine repair, or RV repair business in our neighborhood. Without zoning, it is possible that someone could open a furniture manufacturing business, or sawmill, or a horse rental business. Someone might open an animal and fish processing facility, or a campground, or a junk yard among our homes.

We knew that we, as well as many other neighborhoods, needed zoning. We realized that once the nuisances were established, it would be too late. We wanted to preserve the value of our properties and the character of our neighborhood. We decided to be pro-active, putting zoning in place before there is a problem.

We first formed a neighborhood Steering Committee. We then looked at the Borough's Single-Family, Mixed-Residential, and Residential Conservation Codes and quickly realized that with a high number of B&B's and Guide Services, those regulations did not fit our neighborhood. We then looked at the Rural-Residential Code, and discovered that many of the lots on a lake or river were too small to qualify. We wanted to maintain a primarily residential neighborhood, and found the Mixed-Use District to be not restrictive enough – it allowed more retail, wholesale, institutional, and public facilities than we would like.

It appeared that a new set of rules in the Code would help us. We began working with the Borough Planning and Legal Departments. The changes before you are the result of a great deal of work on their part. And we would like you to know that they were very helpful, exceptionally knowledgeable, and gave us excellent service. They have spent many hours writing, researching, and discussing this ordinance among themselves, and with us, and we appreciate their hard work.

The proposed new R-W section of the Code allows neighborhoods such as ours, or Longmere Lake, or other waterfront areas in the Borough to remain primarily residential, with the addition of what we call "quiet" and "non-disruptive" businesses inside homes. It allows the B&B's, Lodges, and Guide Services that are already established on so many of our rivers and lakes, but limits them to a residential appearance, limits the number of commercial guide boats

allowed, and limits the number of travel trailers, motor homes, and rental cabins on each lot.

The new section allows more types of home occupation than before, but limits them to no more than an average of 10 round-trip customers per day. It allows hobby greenhouses and workshops, but prohibits commercial and retail operations. It allows families to own pets, but prohibits dog kennels and farm animals that would become bear attractants. It allows in-home catering services, but prohibits the establishment of a busy restaurant or bakery. It prohibits businesses that are noisy or produce offensive odors, and helps us maintain the residential character and quality of our neighborhood.

As we worked with the Borough Planning and Legal Departments, we quickly realized that they take their responsibilities very seriously, and we appreciate their willingness to work with us. The new section of the Code will appeal to many neighborhoods. And we hope it will appeal to enough of our neighbors that we become the first Local Option Zone to utilize it.

We hope you will send this Ordinance to the Assembly with your recommendation for approval.

Thank you."

Vice Chairman Martin asked if there were questions for Ms. Madison.

Commissioner Johnson commended Ms. Madison for the work that was done. He asked if the only concern with the prohibition of farm animals was it being a bear attractant. Ms. Madison replied they wanted to start with bear attractants because the bears were already feeding there before they were there so the bears will continue to go through their properties. She wanted to assure they weren't stopping along the way to eat an animal. The other reasons for prohibition of farm animals had to do with noise and the excrement washing into the water.

There being no further questions, the public hearing continued.

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

MOTION: Commissioner Carluccio moved, seconded by Commissioner Gross to recommend enactment of Ordinance 2010-23; amending certain sections of KPB Chapter 21.44 by approving a R-W, Residential Waterfront, Local Option Zoning District, adding certain definitions and clarifying language.

Commissioner Foster asked if there was an allowance for a property owner to put in zoning on a large piece of property prior to subdivision so that it was protected without having to go through a Conservation Easement process. Ms. Cady replied that the Borough Code states that a Local Option Zone can be established at the time of subdivision. Commissioner Foster asked if it could be established prior to the subdivision process. Vice Chairman Martin stated that if someone owns 80 acres then they control what happens on those 80 acres. Commissioner Foster stated it would be a way of protecting it in perpetuity without going through the Conservation easement process. It may be in conjunction with the Conservation easement process. Ms. Cady stated that it was typically done at the time of final plat approval.

Commissioner Ecklund asked if this LOZ could be brought forward if 30% of the properties are on the waterfront. Ms. Cady replied that was correct. Commissioner Ecklund asked if there were a certain percentage of lots within a subdivision that would need to be in support of being classified as an LOZ in the other classifications. Ms. Cady replied that a minimum of 12 lots could constitute a local option zone except for Industrial which would be a minimum of 6 lots. Within those 12 lots, ¾ of the record property owners need to consent to the formation of a LOZ. Commissioner Ecklund asked if that was the same with this LOZ plus having 30% being on a waterway. Ms. Cady replied yes, unless there was 100% agreement to establish a LOZ. Commissioner Ecklund asked if there were a percentage of lots that would have to be classified as industrial if she had 6 industrial lots and wanted to do a local option zone. Ms. Cady replied she was not aware of that. Vice Chairman Martin stated that was what makes this unique in that it was a natural land feature

rather than a proposed use.

Ms. Cady commented that in other sections of the Code greenhouses are not specified as non-commercial as it is specified in this new zone. Staff agreed that rather than specifying only non-commercial in the new zone type and having the other reference to greenhouses in the definitions portion that it would be more consistent to make an amendment to Chapter 21.44 with adding a new definition for non-commercial greenhouse.

Commissioner Foster asked if the new zone addressed windmills. Ms. Cady replied that it had been considered but had not proposed any language for this particular ordinance.

VOTE: The motion passed by unanimous consent.

BRYSON ABSENT	CARLUCCIO YES	COLLINS YES	ECKLUND YES	FOSTER YES	GROSS YES	ISHAM ABSENT
JOHNSON YES	LOCKWOOD ABSENT	MARTIN YES	MURPHY YES	PETERSEN ABSENT	TAURIAINEN ABSENT	8 YES 5 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

3. Ordinance 2010-24; Adopting the City of Homer Comprehensive Plan as the Official Comprehensive Plan for that portion of the Borough within the boundaries of the City of Homer.

Staff report given by Max Best

PC Meeting: 06/14/10

The Kenai Peninsula Borough provides for planning on an area wide basis in accordance with AS 29.40. Additionally as provided in KPB 21.01.025(E), cities requesting extensive comprehensive plan amendments may recommend to the Kenai Peninsula Borough Planning Commission a change to the city comprehensive plan.

The City of Homer's previous comprehensive plan was adopted in 1999, and the adoption of a new plan will help guide the development of the City of Homer. The City of Homer has adopted city Ordinance 09-04(S) recommending approval of a comprehensive plan for that area of the borough within the boundaries of Homer.

Public comments were received, and numerous public hearings were held regarding the draft comprehensive plan.

On April 26, 2010, the Homer City Council adopted Ordinance 09-40(S), approving the 2008 City of Homer Comprehensive Plan and recommended adoption of the plan by the Kenai Peninsula Borough Assembly.

This is the second of two public hearings with the public hearing being continued to this meeting of June 14, 2010.

STAFF RECOMMENDS to continue the public hearing, take testimony and recommend adoption of Ordinance 2010-24; Adopting the City of Homer Comprehensive Plan as the Official Comprehensive Plan for that portion of the Borough within the boundaries of the City of Homer.

END OF STAFF REPORT

Vice Chairman Martin opened the meeting for public comment.

1. Rick Abboud, Homer City Planner
Mr. Abboud stated that he has worked on this plan for approximately two years with staff working on it longer than that. There has been a lot of hard work and effort done on this plan. He was available to answer questions.

Vice Chairman Martin asked if there were questions for Mr. Abboud. Hearing none the public hearing