



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2200 • FAX: (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2200

www.borough.kenai.ak.us

DAVID R. CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Gary Knopp, Assembly President
Kenai Peninsula Borough Assembly Members

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

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

DATE: December 17, 2010

SUBJECT: Ordinance 2010-36 Substitute; Authorizing the Negotiated Lease at Less Than Fair Market Value of Certain Real Property to the Kenai Peninsula Racing Lions

The Planning Commission reviewed the subject Ordinance during their regularly scheduled December 13, 2010 meeting. A motion failed by majority consent to recommend approval of the ordinance. (*Bryson, Absent; Carluccio, Absent; Collins, Absent; Ecklund, Yes; Foster, No; Gross, No; Holsten, No; Isham, Yes; Lockwood, No; Martin, Yes; Parker, No; Ruffner, Absent; Tauriainen, Yes*)

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

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of December 13, 2010 denied recommendation approval.

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

AGENDA ITEM F. PUBLIC HEARINGS

2. Ordinance 2010-36 Substitute; Authorizing the Negotiated Lease at Less Than Fair Market Value of Certain Real Property to the Kenai Peninsula Racing Lions

Memorandums & Staff Report reviewed by Marcus Mueller

PC Meeting: 12/13/10

Ordinance 2010-36 which was introduced on September 21, 2010, proposed the negotiated sale of 157-acres to the Kenai Peninsula Racing Lions. Since that time the administration has had additional discussion with the Kenai Peninsula Racing Lions as well as the City of Kenai. Based on these discussions, the administration would like to propose a negotiated lease instead of a sale.

In order to move forward with a lease agreement a development plan must be prepared by the Racing Lions. After review and approval of the development plan a lease must be negotiated and drafted by the administration. This will take some time on the part of each party. The administration therefore respectfully requests the assembly move this substitute and subsequently postpone further action until January 4, 2011.

END OF MEMORANDUM

The lease proposal in front of the Planning Commission is for approximately 105 acres. The City of Kenai is interested in purchasing the property along the east boundary. With that staff was going to look at modifying the boundary that was presented to the Planning Commission so that the boundary goes to the north but then captures additional wetlands on the east. The actual acreage would be determined by consultation with a surveyor.

There are provisions in the lease that require access control which addresses the issues of concern regarding access to the facility is closed.

Section 7 of the lease is a provision that requires that the lease be open to the general public with the same rules and regulations applicable to the Kenai Peninsula Racing Lions members.

AMENDMENT MEMORANDUM

Proposed Amendment to Ordinance 2010-36 Substitute (Mayor) Authorizing the Negotiated Lease at Less Than Fair Market Value of Certain Real Property to the Kenai Peninsula Racing Lions

Ordinance 2010-36 Substitute (Mayor) amended the originally proposed sale instead to a lease. A number of places in the ordinance still refer to "sale" and should be updated to say "lease". Additionally, there are a number of blanks left to fill in. Therefore the following amendments are respectfully requested:

Amend the 5th Whereas as follows:

WHEREAS, the Kenai Peninsula Racing Lions have submitted an application for negotiated sale or lease at less than fair market value of [THE] approximately 157 acres [DESCRIBED IN SECTION 1 OF THIS ORDINANCE]; and

Amend the last Whereas by filling in the blanks as follows:

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of December 13, 2010 recommended _____; and

Amend Section 1 by filling in the blanks as follows:

SECTION 1. That leasing approximately 105 acres, more or less, described as: a portion of the NE1/4 Section 36, T6N, R11W, S.M. Excepting Beaver Creek Alaska Subdivision according to Plat No 81-101,

subject to survey, to the Kenai Peninsula Racing Lions at other than fair market value, pursuant to KPB 17.10.100 (I) and 17.10.120(D) is in the best interest of the borough based on the following findings of facts:

Amend Section 2, subsection 2.A as follows:

2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
 - A. This exception to the notice requirement is not necessary to preserve a substantial property right, and the assembly hereby authorizes exception to that finding requirement. For this negotiated **[SALE] lease**, the notice requirement is impractical, and compliance is not in the best interests of the borough due to the delay and unnecessary expense it would cause.

Amend Section 3 as follows:

SECTION 3. Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100 (I) to lease the land described in Section 1 above to the Kenai Peninsula Racing Lions for a period of 30-years at a rental rate of \$1.00 (One Dollar) per year subject to the terms and conditions of this ordinance and subject to the terms and conditions substantially similar to those contained in the lease accompanying this ordinance. The authorization is for **[SALE] lease** solely to the Kenai Peninsula Racing Lions and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity.

Amend Section 5 as follows:

SECTION 5. The Kenai Peninsula Racing Lions shall have until 180 days after enactment of this Ordinance to accept this offer by execution of a **[PURCHASE AGREEMENT] lease**.

END OF STAFF REPORT & MEMORANDUMS

Vice Chairman Martin opened the meeting for public comment.

1. Rick Koch, City of Kenai Manager
Mr. Koch just learned some new information and was not prepared to address those issues. There was a portion of the 157 acres that was originally spoken to for sale and lease that the city is interested in purchasing from the Borough. There are approximately 60 acres on the east side of this parcel that the City of Kenai would like to purchase.

The reason for that is that their primary water production well is in near proximity to the south of that well. It is their primary production well now but within the next 18 months that aquifer will become their exclusive producing aquifer. The City has a \$7,000,000 investment in an ongoing project of a construction of a water treatment plant and the drilling of at least two more production wells. The interest in the City is not in the development of that property but in providing an adequate wellhead protection from the direction in which the aquifer is served. Mr. Koch understood that 100 acres would remain in the lease. He sent a letter dated December 7, 2010 to the Borough Mayor regarding the 100 acres which was included in the Commissioner's desk packet.

The City did not have any objection to the Borough's action regarding the lease. Also, Mr. Koch clarified that the City did not have objection to the existing land use of that area by the Racing Lions. The reason he was present was to see if the City could obtain a portion of the property that was set aside for the city to purchase. Mr. Koch stated his concerns were not to impact the operations of the Racing Lions. He felt the 60 acres that the City is interested in purchasing would be very difficult to develop due to it being a wetland area. He was available to answer questions.

Vice Chairman Martin asked if there were questions for Mr. Koch.

Commissioner Tauriainen referred to the map on page 99-3 of the desk packet and asked if it was the 35 acres, 5 acres and 20 acres that the City was interested in purchasing. Mr. Koch replied that was correct. Commissioner Tauriainen thought the 5 acre piece would be used for parking expansion. He asked if the City was willing to only go with the 35 and 20 acre parcels. Mr. Koch thought that may be what they end up with. He felt it would not be an easy opportunity to develop any of the property outside the existing footprint. That 5 acre parcel was consistent with the rest of the wetland area. There appeared that that property had some amount of uplands which is where an expansion would take place.

Mr. Koch stated that the existing facility is a non-conforming use and would have to go through a conditional use process if there was any change or expansion of the facility's use. The City has no position of what those things may be since it is a process that goes through the City's Planning & Zoning.

Commissioner Holsten asked how the protection of the water source was linked to the lease by the Racing Lions. Mr. Koch replied that by having direct control of the area gives them the enhanced ability to ensure whatever land use happens on this property. Any land use in that area is dictated by the City with the primary goal of protecting the water source. He stated they are in the process of purchasing the DNR property. The City will have a significant investment there. It is the only wells that they have that produce sufficient quantities that doesn't have high levels of arsenic. This is a unique area that the City has found to produce water of good quality.

Commissioner Holsten asked how it was related to the Racing Lions. Mr. Koch replied that initially the City was under the impression that the entire 157 acre parcel was to be considered for lease.

Commissioner Foster asked if he looked at the report of findings from the limited environmental assessment. Mr. Koch replied he had which was initially one of the documents that raised the concerns with the City. They contact the Borough previously when there was discussion that this property may be up for sale. Their concerns were expressed from an environmental standpoint that it was a high concern since that was the area where the aquifer would be that they would be working out of.

Commissioner Foster expressed concern that it appeared that lead was at a level that exceeds the cleanup level. He asked if that was the City's concern that this would be the City of Kenai's exclusive water supply. Mr. Koch agreed that it was a concern to them which is why they want to drill multiple wells that have some distances between them in case there would be an unforeseen event such as a contamination happen. Every month they test for those contaminants. There are several layers of clay between the surface and the producing aquifer.

Commissioner Tauriainen asked if the water flowed north to south. Mr. Koch replied that was correct. Their hydrologist and engineers have determined that the flow of that aquifer flowed from north to south.

There being no further questions, the public hearing continued.

2. Steven Phelps, PO Box 196, Kenai, AK

Mr. Phelps family has owned his homestead that adjoins the raceway since the late 1940's. He expressed concern over the noise issues in the neighborhood which is more than they can take in the neighborhood. He read his following written comments into the record.

"In the past, the Twin City's Raceway was run as a circle track for stockcars and as such it only operated about 5 days per year. While it was a nuisance then it was tolerable for myself and neighbors living in peaceful enjoyment on our property. Then the motocross track was constructed.

After the 9-11-01 incident the motocross club was moved from the Soldotna airport to its current location. They tell me it was because of the Homeland Security Act. At least that's how the racing organization explained it to me. After speaking with the Kenai Peninsula Borough and others in the Soldotna area I was informed that one of the real reasons they

left the airport location was due to residential grievances waged against the organization regarding the noise.

About 5 years ago we set up an appointment at the motocross track to speak to the majority of its members to discuss the problem. They talked of moving the track to Sterling (A great idea), or to the far side of the raceway property, or even digging a pit to contain the noise was also discussed, but nothing was ever remedied.

They did send their vice president back to my residence with me to listen to the noise for himself. He informed them on his cell phone that the roar was as loud as being, right at the track. I am pretty easy going guy and did not want to have a confrontation with the racing lions, but they have done nothing to control their noise while they recognize that the problem exists.

Myself when it comes to government ideology I seem to lean a little Blue in a heavy Red state. I don't know if that labels me as a liberal but I always try to find a solution to work things out in a problem. Barney Phillips and I went into the hallway at the last borough meeting that we attended and shook hands 3 times and agreed to work on the noise problem of the track.

Barney and I have spoken several times on the phone trying to come up with a solution. We both agreed that the open continuous practice at the track is more annoying than the events themselves and that the only relief to the neighborhood would be to have all practices close at 8:00 PM and closed on Sundays & Mondays. My favorite and his too, was moving the motocross track from my backyard to his in Nikiski, which would be the perfect solution to solving the problem.

There is no one in this room tonight that dislikes the noise pollution from The Twin City's Raceway more than me, the Stockcars or the Motocross.

(Except maybe Dennis Barnard who has definitely had enough of the wing zing from the mosquito like swarm that comes from the Motocross). The noise pollution from the raceway is a serious problem in our neighborhood. It's like having loud rap music on your child's boom box when the bikes are on the track and quite a relief when they turn them off.

I have been researching some pro motocross websites. Their Noise Off program suggest ways that riders can quiet down their bikes, especially the newer and much louder 4 strokes so that riders don't lose more riding areas. Their slogan is "less sound"= more ground. Why can't we require the raceway that resides within our own city limits to have substantial noise reduction exhaust systems like the raceways in other areas. If there was no noise there would be no problem.

This local nuisance has gone on unabated for too many years now. Local neighbors have complained, both to law enforcement authorities and to the Racing Lions, to no avail. We request that the Kenai Peninsula Borough and the City of Kenai take action to restore the property rights and to protect the property value of the homeowners in the local area

Existing sound compliance rules should be applied to protect area residents from the harmful effects of noise pollution. We request the Kenai Peninsula Borough and the City of Kenai to protect local area residents from these hazards.

We believe that a comprehensive evaluation of the noise generated from the motocross activities in this area, in addition to the stock car activities should be under taken. It is my belief that the findings would be incompatible with residential homeowners and should be much more regulated if not prohibited.

I am opposed to giving a gift of a 30 year lease to the Motocross or the Stockcars, especially without well written rules, regulations and enforcement to protect our growing population.

From the information I have gathered from motocross Noise Off websites and from my own personal experience, I would like to quote their motocross motto: NOISE SUCKS."

Mr. Phelps stated that the noise has gotten so out of control that they can't enjoy their properties anymore.

Vice Chairman Martin asked if there were questions for Mr. Phelps.

Commissioner Tauriainen asked if the complaints were regarding the practice times during the week. Mr. Phelps replied, yes, the events aren't as bad as the practices because the practices are constant, never going away. He has been trying to work with Barney Philips who is the president to see what could be done to solve this problem. Mr. Phelps would like to accomplish something in that situation or would like to move them to Nikiski.

There being no further questions, the public hearing continued.

3. Dennis Barnard, 335 Dolchok Lane, Kenai

Mr. Barnard lives approximately one mile from this race track. His land sits on old Beaver Creek bed. The creek now runs north and south where it used to run along the side of his house. He has about a 35 foot bank that faces the race track.

At 9:00 p.m., he cannot call someone on his cell phone because of the noise from the track. Mr. Barnard thought a comprehensive evaluation of the sound noise problem would show that the people from the race track were subjecting him to harmful noise. Noise abatement throughout the nation has been a problem along race tracks. There are approximately 1300 lawsuits through an organization called Noise Off about tracks just like the one they are discussing. The people are bringing motor cross in and annoying their neighbors.

Mr. Barnard believed that the Kenai Peninsula Borough and the City of Kenai would be shucking their duties and responsibilities to him as property owner if they don't defeat any move by the Racing Lions to have a motor cross as a permanent thing at the race track. He was so dead against this that he promised whatever decision was made; he would take it to court. Mr. Barnard felt he shouldn't have to go to that extent to protect him from this nuisance noise.

Mr. Barnard had no problem with the stock car races but the continued every day, all day motor cross sucks. It has gotten so bad that he doesn't enjoy his garden or deck. He can't BBQ on his deck because of the noise from the race track. He believed this was a nuisance and noise like that has physical ramifications.

Mr. Barnard felt his peace and quiet in his home has been invaded by the motor cross noise. The people who moved the race track from Soldotna to Kenai had moved it to get away from the motor cross. He felt that motor cross was not compatible with a rural / residential zoning. It is the responsibility of the Borough to protect him and his property values from this assault. It is an assault on his property values as well as his well being. The peace and quiet of his home has been disturbed a great deal by this and He will not put up with it.

Vice Chairman Martin asked if there were questions for Ms. Barnard. Hearing none, the public hearing continued.

4. Jackie McGahan, 517 Maple Dr, Kenai

Mr. McGahan was the current president of the Kenai Peninsula Racing Lions as well as the president of the Circle Track Division. He appreciated Mr. Koch's comments regarding the land.

Mr. McGahan has been working with Mr. Mueller and Mr. Snarey regarding this lease agreement. To address the City's concerns, they have discussed the needs of the city on that parcel that goes to the east side. They have agreed to delete that out of their lease request. He requested that the 5 acre parcel be retained in the lease depending on where the line was because it has potential for parking expansion at the circle track on the spectator side.

Mr. McGahan also addressed the noise concerns. He has been president for two years and has only received one complaint regarding noise. That complaint was not so much about the race track and the noise it made but was because the kids in the Beaver Loop area were actually accessing the race track after hours through the ditch. There were concerns for the kids safety because they weren't respecting driveways, etc. Mr. McGahan stated there are open track hours. He understood that kids don't have ways of getting their bikes to the track so they will ride them but they don't condone that. It was also found that those kids weren't members of the association. The president of the motor cross organization has spent time trying to work with the neighbors in trying to come up with a reasonable plan.

Mr. McGahan has been a past motor cross champion but was now into stock cars. Personally, the time frame that was being discussed was very liberal in their favor. He believed they don't need that much time to practice and committed on his part that he would work with the motor cross group and limit that as much as possible. Mr. McGahan thought 10:00 p.m. was a ridiculous time to have kids out on a bike and also thought 9:00 p.m. was late. He understands that people get off work at 5:00 p.m. and they want to go out to ride which is what this facility is for in that realm. There was the belief that they could reduce the amount of days which could help satisfy the neighbors. That will be his commitment as they move forward. He reiterated and understood that motor cross makes a lot of noise. Mr. McGahan recognized that they have people that are sneaking around the gate which has given uncontrolled after hour usage.

From the standpoint of a non-profit organization, Mr. McGahan stated they could not get grants working from a year to year lease agreement with the Borough. It is their intention to move forward with this so that they could secure grants to secure this land and help the owners around the area. There is not a vehicle that is manufactured in the United States that does not meet minimum sound requirements. He appreciated the consideration of the Planning Commission.

Vice Chairman Martin asked if there were questions for Mr. McGahan.

Commissioner Ecklund asked if the City of Kenai had a noise ordinance. Mr. McGahan replied he was not sure but stated he understood that they needed to be done by 11:00 p.m. They target to be finished by 9:00 p.m. with a start time of 7:00 p.m. The motor cross division handles their own schedule and the circle track division tries to be done by 9:30 p.m. or 10:00 p.m. at the very latest 11:00 p.m.

Commissioner Tauriainen asked if the circle track group is usually done by 11:00 p.m. Mr. McGahan replied that 11:00 p.m. is usually the latest that they run. They begin qualifying at 6:00 p.m. with the races beginning at 7:00 p.m. with most of the events done by 9:00 p.m. If a fence or safety barrier is knocked down then they need to repair them which add to the concluding time. He stated that 80% of the time they are done by 10:00 p.m.

Commissioner Tauriainen asked if the 5 acre parcel could be used as additional parking. Mr. McGahan replied yes, they want to build an additional road into the facility so they could have better access and control with what is happening there.

Commissioner Tauriainen asked for clarification regarding the need for a long term lease so that they could obtain grants to improve the facility. He asked if there were plans to create an earth and berm area to block the sound and if there were fences around the track at this time. Mr. McGahan replied there was just a main gate at the road. The circle track has a partial fence around it but it was mainly for spectator protection during events. It is their long range plan to enclose the circle track completely for safety reasons.

Commissioner Tauriainen asked if there was intention to fence the motor cross track so that it was not accessible after hours. Mr. McGahan replied there was no intention to fence the motor cross track however it would be doable if there were the resources to make that happen.

Commissioner Holsten asked if the motor cross and race car groups under the same 501C nonprofit organization. Mr. McGahan replied yes, he responds to Lions International which is a world organization. He is the representative for that in this area. Under him, there are two sub parts, one circle track and one motor cross.

Commissioner Holsten asked what he has done regarding noise abatement efforts from the motor cross group. Mr. McGahan replied that he has only had one complaint over the years. He understood that the concerns that have been expressed at this meeting. Motor cross tracks by nature are long. Mr. McGahan wasn't sure there was a noise abatement that could be done to the machines to satisfy the group. He felt they needed to look at the time they spend on the track to limit the impact with the neighbors.

Commissioner Parker asked if he was the president of the Racing Lions, the Circle Track and the motor cross. Mr. McGahan replied that Barney Philips was the president of the motor cross group. As president of the Racing Lions, he carries a strong voice of what is done. The directions they choose to go are for the whole group so the motor cross group can't do something that would impact the circle track. He stated they govern as a body and the noise issue is a hot topic. A lot of the members don't like that they have to limit what can be done at the race track. It is the boards understanding and direction that they will limit what is done in trying to work with the neighbors.

Commissioner Parker asked what the limiting factors would be. Mr. McGahan replied they would limit the time allowed for motor cross. It could be 3 times a week for practice instead of 6 days a week however it would need approval from the motor cross group. He believed that was a fair amount with racing on weekends. They alternate their events between stock cars and motor cross because of the facility and the size of the parking.

Commissioner Holsten asked how many members the two organizations have. Mr. McGahan replied that it fluctuates between 60 to 95 paid memberships. They don't require a paid membership on race day but requires a membership to practice. The only people who should have approved access are members. There are approximately 60-70 active circle track racers of which 30 are paid members to the Racing Lions organization.

Commissioner Holsten asked what kind of supervision was given during the motor cross practices. Mr. McGahan replied that they currently don't have supervision but it is a concern that they will address.

Commissioner Foster asked if there were plans for winter snow machine races. Mr. McGahan replied that they have done that before but do not have any current plans to do that. He stated there have been requests for snow cross and snow drags but there are no plans for that type of racing.

Commissioner Foster referred to Ms. Campbell's written concerns about the inability to enforce and restrict access beyond the gate. He asked if that was being addressing especially regarding insurance liability. Mr. McGahan replied he wasn't sure what the cost of that would be. He would sleep a lot better if the entire facility was fenced but they do not have the financing to do that. The environmental and safety concerns that have been address would be a powerful ticket to lie on the table in support of a grant. It makes sense that someone would line up behind their groups so that they could protect the use and rights to the land by supporting these safety measures. There are a few members that have stepped forward and volunteered to write the grants for them if this lease goes through. They would all like to have the facility that the Borough can be proud of and that the neighbors can live with.

Commissioner Tauriainen asked if they would be open to a higher lease rate if the Borough agreed to fence the property. Mr. McGahan replied he would like to see what the expense would be since they only have \$1,500 in the bank when he took over. Things are looking better but there was no way their group could

commit to a huge expense but would be open to explore that. Mr. Mueller felt it was an interesting thought but not one that he thought of before. Generally, the Borough was not in the business of doing things like that however, he would have to get an idea of the cost.

Commissioner Tauriainen felt that the Borough government there for the service of the people. The Borough was looking at leasing this land as a public use. Fencing that land could be interpreted as good for the people because it would be keeping people out of the tracks who shouldn't be there and could potentially get hurt. It was also causing noise pollution to the neighbors at times when it shouldn't. The only possible way to keep the noise levels down to reasonable times is to have that property fenced. He suggested looking into getting a bid which could be negotiated into the lease.

Commissioner Holsten stated she hasn't seen a fence that a teenager couldn't get through and felt the concept of having volunteers who would police the area was a good idea. She also disagreed that it would be a high priority for the Borough's few dollars.

Commissioner Foster called a point of order in that they were in a public hearing and not commissioner deliberations.

There being no further questions, the public hearing continued.

5. Harold Hagedorn, PO Box 874, Soldotna

Mr. Hagedorn stated this was his third year in watching the races at the circle track. He agreed with the testimony of Mr. McGahan. This organization has grown over the last few years and has been very good for his family. Mr. Hagedorn stated this was the first time he heard concerns regarding the noise. He believed that Mr. McGahan will address that problem.

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

6. Richard McGahan, Sr.

Mr. McGahan helped clear the land originally in 1970 so he has been involved with this for a long time. He has been involved in the property and helped install the dirt track with the first race being held in 1972. He read his following written comments into the record.

"The track has always been operated by volunteer families since the time in his own personal time when he had three generations of racers involved. That is true of other families also. This has always been a public use family oriented volunteer built and operated facility.

During these years, the property has been developed and improved with volunteer labor, donated equipment and funds. In the past few years we have added \$300,000 to \$400,000 of material in the motor cross track, circle track and the parking lot. We have built a new 30x40 building for the announcer, timers, concessions and the meeting room. This building sits on two 40 foot connex's which are also used for storage. We also have fencings and guard rails, flag stand, race signal lights and of course the pits. We have bleachers for both grand stands and the pits. We have room for around 300 spectators at this time.

We race all summer and the whole facility is enjoyed by the community. It is truly a community motor sports complex. The uses have been in the past, stock car circle track races, sprint car races, truck races, monster truck competition (which we have had many from the lower 48 come and compete), drag races, quarter midget races, demolition derbies, tough truck races, bicycle races and motor cross races. (We even get the kids between the races who race their bicycles and even by foot around that track for family oriented fun.) The races of all types are fun for the racers, their families and friends, and their fans. The races also help the local economy.

State races are held at the track. Racers and their families come from all over the peninsula, from Anchorage and from Fairbanks. Just this fall we had over 50 cars racing at our track and they were here for three days from all over the State. The benefits are to local grocery stores, gas stations and parts stores, restaurants and others. It also benefits our Borough taxpayers by bringing in sales tax revenues.

The local racing group even with different leaders and different names have leased the same property from the Borough and paid the lease fees all these years. We would now like to lease the property. I don't know how many in the Borough administration or on the Assembly follow Nascar racing but the Talladega speedway in Alabama was originally bought from the City of Talladega for \$1. I bet they have no regrets.

Thank you for listening."

Mr. McGahan also mentioned that they have live in people at the track during the summer so they are controlling and overseeing the property. He stated the motor cross group used to run seven days practice except for the days they were racing but has been cut to five days. There are midget races for the ages of 6-7 on Wednesdays.

Mr. McGahan hoped the Planning Commission agreed that this is a family organization that has been there for a long time and hoped it would be there forever. He stated they have been working on this lease with the Borough for many years. They decided to have the lease so they could start obtaining grants. He thought if they took the line of parcel 04103050 and ran it straight north then that would give them more land available for parking.

Vice Chairman Martin asked if there were questions for Mr. McGahan.

Commissioner Tauriainen asked if there was a motor home at the facility during the summer. Mr. McGahan replied it was a motor home parked so that oversight can be done at the facility.

Commissioner Holsten asked if the motor cross group could build a dirt berm to help the noise issue. Mr. McGahan replied no because it was the room that they were having problems with. There is a certain portion of the property that is considered wetlands. He suggested they cut the hours back to 3-4 days a week with nothing after 8:00 p.m.

Commissioner Holsten asked if the water table was being hit if they dig out the dirt to pile up. Mr. McGahan assumed they could dig 5-7 feet down without hitting water in July.

Commissioner Ecklund asked if there were plans to build additional grandstands. Mr. McGahan replied yes. Commissioner Ecklund asked if it would be possible to build those grandstands in a direction that may provide additional sound barrier to the community. Mr. McGahan replied that was a very good idea which may be a help.

There being no further questions, the public hearing continued.

7. Karen McGahan

Ms. McGahan stated that her involvement was being the spouse to Richard McGahan and the grandmother and mother to racers so she is at the facility a lot.

Ms. McGahan spoke to a couple of the issues that have been expressed. She quoted Paul Moses as saying, "The secret to a happy marriage is a good dog and a shop a fair distance from the house." Two of her grandsons could take an engine out of a car and put it in easily which is from working with their grandfather and being involved at the race track. This is a great community organization run by volunteers. They don't have a lot of money which is why they joined the Lions organization a few years ago. She felt if they obtained a long term lease then they could get grants to help improve the property and facility.

Ms. McGahan has been involved in the paperwork of the things that have been required of them. The Development Plan has led to some of the people in the community to believe they are building a new track which is not true. In the Development Plan, she had to come up with and write down anything that might happen in the next 30 years.

Ms. McGahan expressed concern regarding the 5 acre parcel and hoped that it would not be part of the property that may be transferred to the City of Kenai. As a spectator, she has problems parking because the parking lot is full and they would like to use that 5 acre parcel for additional parking. As mentioned, there are times when they have racers from all over the State.

There is only one race of the season that goes late which is the last race of the season because they wait for the sun to go down. Businesses from the community donate the lights. They have the last races under the lights which sometimes go to 11:00 p.m. Normally the races aren't that late but it depends on how many cautions and yellow flags are received.

Ms. McGahan stated this has been a great organization for their family with lots of involvement for three generations. She asked that this ordinance be approved by the commission and that it be passed onto the Assembly.

Also, Ms. McGahan stated there are campground hosts onsite during the summer which has helped in the oversight of the facility. She felt the organization goes over and above regarding spill response. They don't have anything that spills since they don't have any storage on the property because it would most likely be stolen. The only thing that is used for dust control is water so there are no chemicals that go into the ground except for the occasional throwing of a rod. However, they have a great response team to clean that up. She stated that every one of the Board of Directors has a hazmat certificate and is in attendance at the races.

Vice Chairman Martin asked if there were questions for Ms. McGahan. Hearing none, the public hearing continued.

8. Robert Flanders, Beaver Loop and Togiak

Mr. Flanders lives at the corner of Beaver Loop and Togiak. Togiak Street is the extension of Lawton Drive and goes behind the high school and down by the Kenai golf course.

Mr. Flanders stated there are motorcycles that come from Kenai and ride down Lawton Drive headed to the race track. The road is a maintenance road for the City of Kenai sewer line. Those motorcycles drive by his house throwing dust so he can't have BBQ's or have friends over. He has called the Racing Lions organization and the City of Kenai as to express his concerns. Also, he has many emails from the City of Kenai in response to his calls.

Mr. Flanders expressed concern regarding the dust and noise. He is three quarters of a mile from the race track and has no problem hearing it. The trees and buffer that was once there was removed when the road was built. They can't hear the stock cars as bad as the motor cross bikes. It was the motor cross bikes that he has problems with regarding the noise and dust it creates.

Those that testified in support of the race track do not live around it and those who testified against it live around the facility. Mr. Flanders asked that conditions for noise be placed in the lease for this property. He understood that people need a place to ride but wished it wasn't near his place.

Vice Chairman Martin asked if there were questions for Mr. Flanders.

Commissioner Gross asked how many motorbikes go by his house in a typical summer evening. Mr. Flanders replied that it varies but could be anywhere from 2 to 3 and up to 10 to 15. He stated that a lot of them are considerate however some are not.

Commissioner Foster asked if these motorbikes are street legal. Mr. Flanders replied no, they are breaking the law however the police don't arrive in time to do anything. It is the noise that is still the issue. He also expressed concern regarding his well with the arsenic since that aquifer goes right under his house.

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 Parker moved, seconded by Commissioner Tauriainen to recommend adoption of Ordinance 2010-36 Substitute; authorizing the Negotiated Lease at Less Than Fair Market Value of Certain Real Property to the Kenai Peninsula Racing Lions.

Commissioner Ecklund asked if Mr. Mueller helped develop the lease. Mr. Mueller replied yes. Commissioner Ecklund if a condition could be added to the lease that states that a buffer zone would need to be added. Mr. Mueller replied that the lease before them provides for what currently exists. The Development Plan that was attached to the lease was for existing improvements uses only and does not expand the uses. He stated that a buffer could not be required due to there not being any expansion proposed at this time. There was no infringement on a buffer that was already there however, he stated they could add anything in the lease that they felt was in the public's best interest.

Commissioner Tauriainen asked if the ready opportunity be that the organization would like to obtain a long term lease with the Borough and a requirement of that lease would be that they would have to put in a buffer zone. Mr. Mueller replied that a buffer zone in terms of distance does not apply in this case because there was not an expansion contemplated and it wasn't encroaching on any boundaries at this time. Commissioner Tauriainen stated that he meant an earth and berm developed to create a sound barrier. Mr. Mueller replied yes, it could be negotiated into the lease. The institutionalizing of a berm or fence comes from the gravel pit ordinance that the Borough has in place.

Commissioner Isham asked if this qualified for a conditional use permit. Mr. Mueller replied that the Borough's involvement in terms of land use was because it is on Borough land. The instrument being used to authorize it would be a lease. This property is in the City of Kenai so land use regulations fall under the City of Kenai. The city has indicated that the uses that exist are non-conforming but if the use was expanded then a conditional use permit would be required.

Commissioner Isham was pleased to see the Spill Prevention Control and Counter Measure Plan.

Commissioner Holsten asked if it was possible to grant a lease for five years contingent upon the lessee coming up with noise abatement within those five years. If noise abatement was obtained then the lessee would have the opportunity to extend the lease another 25 years which would allow the organization to seek grants.

Commissioner Lockwood expressed concern that they didn't hear anyone speak from the motor cross group.

Commissioner Ecklund stated she sees this lease as an expansion. Mr. Mueller replied yes, it is expanded in terms of the boundary of what the lease applies to. The history of the lease and permits were for 45 acres and this lease expands that boundary out. He spoke to what the footprint and the uses that they currently have when he mentioned expanded use. This development is for what is there today. Mr. Mueller stated the way their lease works is what was approved in the development plan. A lease holder or applicant comes to them and says what they want to do and conveys it through a development plan. The development plan goes through a review and approval process. He stated whatever is approved is what goes into the lease which specifies what use is authorized. What is in the development plan isn't anything that's not there currently.

Commissioner Foster stated that there was no doubt this was an excellent family organization, family oriented spectator sport and family oriented participant sport with an incredible amount of infrastructure already in place. There is a concern about the water so the city requested a buffer yet it doesn't sound like the

organization is open to that because it would infringe upon their parking. There is also a problem of security, noise and then the attractant of the Borough's lease to illegal activities of non-street legal motor bikes. He felt this may not be the best place for this facility.

Commissioner Isham asked if the City of Kenai had ordinance on decibels levels. He asked if Mr. Koch was still present so he could ask questions. Mr. Koch had already left the meeting. Mr. Mueller stated he did not have an answer to that question.

Commissioner Tauriainen asked if the should make an amendment to the lease or postpone action so that changes could be discussed and negotiated. Mr. Mueller replied this ordinance is scheduled to go before the Assembly on January 4, 2011. He pointed out that a survey will need to be done to put this lease in place. The lines don't currently exist in terms of the legal boundaries of the properties. As an example, they could create a line that splits the 5 acre parcel into two 2.5 acre parcels. His intention is to allow the lines to float, have a surveyor look at the uplands versus wetlands and draw the delineations in the field to come up with lines that make sense. It would provide the uplands to the upland user and provide the wetlands to the party who is interested in preserving them for wellhead protection.

Commissioner Tauriainen understood that they don't need to make any changes at this time. Mr. Mueller replied that was correct.

Commissioner Tauriainen asked if a condition of the construction of an earth and berm could be added to the lease for sound abatement. Mr. Mueller stated that would be a new point of discussion and would like to have conversations with the Racing Lions to see where they stand on that issue. He stated he has a little bit of time to respond to the Assembly regarding tonight's meeting. His point is to have that discussion to see if there is room to add that to the agreement or come up with some voluntary conditions.

Jackie McGahan: Mr. McGahan made additional comments regarding the earth and berm discussion. Last fall, the motor cross group brought in a substantial amount of dirt and built about a 15 foot earth and berm on the south side which is the Beaver Loop side. The intent of that berm was to add more parking area. He recommended they forego the parking lot expansion and use that earth and berm to see if they have created a buffer.

Commissioner Isham stated they only make recommendations to the Assembly. The Assembly has the final authority to approve or deny the lease. He encouraged the members of the public to attend the Assembly meeting to present their comments and concerns.

Commissioner Holsten asked if there would be a problem if they postponed action to the February Assembly meeting. Mr. Mueller replied the ordinance is set to go before the Assembly on January 4, 2011. The Assembly would have to respond to the Planning Commission's decision if they deferred their action. He does not have the discretion whether or not it goes before the Assembly on January 4, 2011.

Commissioner Parker asked why the Gun Club was able to purchase the property yet the Racing Lions are required to enter into a 30 year lease. Mr. Mueller stated they do not have a written policy. What they rely on is the precedence in what has gone before the Assembly and how they have acted on the issues before. In terms of the Snowshoe Gun Club, an ordinance was brought before the Assembly for a negotiated sale to them a couple of years ago. That negotiated sale was approved by the Assembly and was for less than fair market value but was for terms that the Assembly was able to reconcile that the value had been achieved. He thought the purchase amount was \$70,000. With a \$1 proposal for a negotiated lease, this mirrors a different model and that is the model of offering a lease which is an authorization for land use for a term of time where the Borough still holds the land when the Borough finds that it is in the public's interest and under the model as a public purpose. This lease was more consistent with the Tsateshi Trails model, the Peninsula Archers, etc. lease.

Vice President Martin asked if the sale of the property was part of the original discussion. Mr. Mueller replied yes, the original proposal of the original ordinance was to offer for sale for \$1 for 157 acres. It was introduced to the Assembly but then the substitute ordinance was brought forward.

There being no further discussion, Vice Chairman Martin called for a roll call vote.

VOTE: The motion failed by majority consent.

BRYSON ABSENT	CARLUCCIO ABSENT	COLLINS ABSENT	ECKLUND YES	FOSTER NO	GROSS NO	HOLSTEN NO
ISHAM YES	LOCKWOOD NO	MARTIN YES	PARKER NO	RUFFNER ABSENT	TAURIAINEN YES	4 YES 5 NO 4 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 Martin reported the Plat Committee reviewed and conditionally approved 6 preliminary plats.

AGENDA ITEM K. COASTAL MANAGEMENT PROGRAM CONSIDERATIONS - None

AGENDA ITEM L. OTHER/NEW BUSINESS

1. New Plat Committee (January, February & March 2011)
- 5 Members / 2 Alternates

MEMBERS

- a. Mari Anne Gross, Southwest Borough
- b. Harry Lockwood, Ridgeway
- c. Blair Martin, Kalifornsky Beach
- d. Lisa Parker, City of Soldotna

ALTERNATES

- a. Cindy Ecklund, City of Seward
- b. Sandra Holsten, East Peninsula
- c. Jim Isham, Sterling

AGENDA ITEM M. ASSEMBLY COMMENTS

No Assembly person present.

AGENDA ITEM N. LEGAL REPRESENTATIVE COMMENTS

AGENDA ITEM O. DIRECTOR'S COMMENTS

Mr. Best reported the following December 7, 2010 Assembly actions.

1. **APPROVED:** Vacate a portion of the 50-foot radius cul-de-sac right-of-way and associated utility easement located at the west end of Ava Zaree Court, adjacent to Lots 8 and 9, dedicated and granted by Betty Warren Estates No 3 (Plat KN 2010-43); within Section 29, Township 7 North, Range 11 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough. KPB File 2010-168. Petitioner: William F. Warren of Kenai, Alaska. Location: On Ava Zaree Court in Nikiski
2. **APPROVED:** Vacate a portion of Pokiak Avenue, a 30-foot right-of-way, along the south boundary adjacent to Lot 9; and vacate a 10-foot utility easement along the north side of Lot 9, dedicated and

granted by Morgan's Acres Subdivision (Plat KN77-149), within Section 20, Township 5 North, Range 8 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough. KPB File 2010-170. Petitioners: Charles E. and Sheila Dickson of Soldotna, Alaska. Location: On Inuvik Lane in Soldotna

AGENDA ITEM P. COMMISSIONER COMMENTS

Commissioner Tauriainen welcomed Commissioner Parker. He hoped the issues with the Twin City Raceway get resolved. It is a great thing for the community and hoped that common ground is found at the Assembly meeting so that it works out with most of the people.

Commissioner Parker stated it was an honor to be at the Planning Commission meeting. Her opposition for the Racing Lions lease ordinance to the Twin City Raceway was because she felt it needed more work before it goes before the Assembly. She stated it was unclear with the City of Kenai coming in at the last hour saying they wanted some property but not being clear what exactly what was being leased and not leased. Commissioner Parker felt it needed more work before it is approved. She hoped that the Racing Lions take into consideration the concerns of the neighbors.

Commissioner Lockwood, Commissioner Isham, Commissioner Holsten, Commissioner Gross, Commissioner Foster and Commissioner Ecklund also welcomed Commissioner Parker.

Commissioner Lockwood's concern with the Racing Lions lease ordinance was with the motor cross division of the organization.

Commissioner Holsten spoke to the president of the Racing Lions that she felt there was a solution to help with noise issue and probably bind closer the motor cross and racing understanding of being a good neighbor. It sounded like most of the concern for noise was from the motor cross group.

Commissioner Gross hoped the concerns of the Planning Commission were brought forward to the Assembly regarding the Racing Lions lease as well as their recommendation for denial.

Commissioner Foster expressed concerns regarding the security of the race track as well as the quickness of this lease going before the Assembly. He felt it could be addressed and hoped that it would be worked out at the Assembly level. Commissioner Foster requested an excused absence from the January 3 meeting.

Commissioner Ecklund wished everyone Happy Holidays and Merry Christmas. She hoped for another 38 years of the Racing Lions organization and that it would be cheered on by the neighborhood as well as working on the abatement issues.

Vice Chairman Martin wished everyone a Merry Christmas and Happy New Year.

AGENDA ITEM Q. PENDING ITEMS FOR FUTURE ACTION

AGENDA ITEM R. ADJOURNMENT

MOTION: Commissioner Tauriainen moved, seconded by Commissioner Holsten to adjourn the meeting at 9:28 p.m. Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Patti Hartley