

Introduced by: Mayor  
Date: 09/21/10  
Hearing: 10/26/10  
Action: Amended by Substitute  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2010-36**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED SALE AT LESS THAN FAIR  
MARKET VALUE OF CERTAIN REAL PROPERTY CONTAINING  
APPROXIMATELY 157 ACRES TO THE KENAI PENINSULA RACING LIONS**

- WHEREAS,** the Kenai Peninsula Borough (KPB) owns the property described in Section 1 of this ordinance encompassing the facility commonly known as Twin City Raceway; and
- WHEREAS,** the State of Alaska entered into a lease of 45 acres of land with the City of Kenai for Recreational purposes on April 24, 1972, which was subsequently assigned to various recreation motor sports interests; and
- WHEREAS,** the State of Alaska approved the borough's municipal entitlement selection of the subject land on January 28, 1982, at which time the 45-acre recreational lease was held by Twin City Raceway, Inc; and
- WHEREAS,** the lease lapsed in 2002 and since that time the Kenai Peninsula Racing Lions have operated the former leased premises under borough issued land use permit; and
- WHEREAS,** the Kenai Peninsula Racing Lions have submitted an application for negotiated sale at less than fair market value of the approximately 157 acres described in Section 1 of this ordinance; and
- WHEREAS,** in May 2009 the KPB Assessing Department estimated the fair market value of the subject 157 acres at \$125,000; and
- WHEREAS,** the subject land is classified as Recreational pursuant to KPB Resolution 96-057; and
- WHEREAS,** the subject land is within the City of Kenai and is zoned Rural Residential; and
- WHEREAS,** entering into a negotiated sale of the property to the Kenai Peninsula Racing Lions for recreational motor sports purposes, subject to a deed restriction for that use, provides for the continuation of a facility that is beneficial to the public, while reducing the KPB's liability toward such activities; and
- WHEREAS,** the KPB Planning Commission at its regularly scheduled meeting of October 11, 2010, recommended \_\_\_\_\_;

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

**SECTION 1.** That selling 157 acres, more or less, described as: 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:

- A. A restriction to the property's title which ensures that the property is used for a public purpose, as described in Section 4 below, likely affects the market value of that title.
- B. KPB has received and estimated \$44,224 in lease and permit fees from the various motor sport leaseholders since 1983 for the 45 acre lease/permit portion of the subject land.
- C. The Kenai Peninsula Racing Lions and its predecessors have made substantial improvements and investments into the property which receive public enjoyment.
- D. The Kenai Peninsula Racing Lions desire to develop additional racing facilities that would require additional land.
- E. The continuation of the regulated, organized, maintained, recreational motor sports facilities on the Central Peninsula benefits the health and safety of area residents.
- F. The conveyance to the Kenai Peninsula Racing Lions eliminates the borough's potential liability for activities undertaken on the property by the Kenai Peninsula Racing Lions.

**SECTION 2.** The Assembly additionally makes an exception to KPB 17.10.110 (notice of disposition). This exception is based on the following findings of facts pursuant to KPB 17.10.230:

- 1. Special circumstances or conditions exist.
  - a. The purpose of the KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land, and advertising this negotiated sale to the Kenai Peninsula Racing Lions will not serve a useful purpose.

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, 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.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
  - a. The planned use as a recreational motor sports facility has been demonstrated since 1972 to be compatible with the site and other surrounding uses.
  - b. The proposed disposition is advertised by publication of the ordinance in newspapers of general circulation and on the borough's Web page. Notice of the proposed disposition is also published by the planning commission agenda in newspapers of general circulation, and a public hearing is held at the planning commission level. Additional notice is not necessary to comply with the intent of KPB 17.10 or to protect the public welfare.

**SECTION 3.** Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100 (I) to sell and convey, through quitclaim deed, the land described in Section 1 above to the Kenai Peninsula Racing Lions for \$1.00 (One Dollar) subject to the terms and conditions of this ordinance. The authorization is for sale 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.

The purchaser shall be responsible for acquiring title insurance and shall pay all fees associated with this sale including recording fees, closing costs, escrow setup fees, annual escrow fees, collection fees, surveying and platting fees to the extent applicable, and other associated fees for this sale. All other applicable terms and conditions of KPB Chapter 17.10 shall apply to this sale unless inconsistent with this ordinance.

**SECTION 4.** The conveyance document shall contain an "Open to the Public Recreational Motor Sports Restriction." The property conveyed to Kenai Peninsula Racing Lions is subject to the restriction that the land conveyed by this deed shall be used solely for pleasure, recreation, and hobby associated with amateur recreational motor sports and motor vehicle operation education and related activities. Grantee shall have the right to regulate use; however, the property must be made available for public use as described in paragraph 8 of the "Application to Request the Negotiated Purchase, Lease or Exchange of Borough Owned land dated August 25, 2010, regardless of

race, color, religion or sex. In the event grantee does not use, or ceases to use, the land conveyed by this deed as specified herein, grantor or grantor's assigns may reenter and repossess the premises.

**SECTION 5.** The mayor is authorized to sign any documents necessary to effectuate this Ordinance.

**SECTION 6.** 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.

**SECTION 7.** That this Ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \*  
DAY OF \* 2010.**

\_\_\_\_\_  
Gary Knopp, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

Yes:

No:

Absent: