



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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DAVID R. CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Hal Smalley, Assembly Vice President
Kenai Peninsula Borough Assembly Members

THRU: David R. Carey, Borough Mayor *Signature for D. Carey*

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

DATE: October 26, 2010

SUBJECT: Ordinance 2010-40; Authorizing the Equal Value Exchange of Two Substandard Lots in Kasilof for a 0.69-acre Right-of-way Easement for the Relocation of Woods Drive With Cook Inlet Region, Inc.

The Planning Commission reviewed the subject Ordinance during their regularly scheduled October 25, 2010 meeting. A motion failed by majority consent to recommend passage of the ordinance. (Bryson, Yes; Carluccio, Absent; Collins, No; Ecklund, No; Foster, No; Gross, Yes; Holsten, Absent; Isham, No; Lockwood, No; Martin, No; Tauriainen, No)

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

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of October 25, 2010 failed to recommend approval.

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

AGENDA ITEM F. PUBLIC HEARINGS

6. Ordinance 2010-40; Authorizing the Equal Value Exchange of Two Substandard Lots in Kasilof for a 0.69-acre Right-of-way Easement for the Relocation of Woods Drive With Cook Inlet Region, Inc.

Staff Report reviewed by Marcus Mueller

PC Meeting: 10/25/10

The Kenai Peninsula Borough has been working toward the relocation of the first one-half mile of Woods Drive from its original alignment to an improved alignment crossing borough land. However in order to connect back into Woods Drive, right-of-way is needed from the adjacent landowner, Cook Inlet Region, Inc. ("CIRI"). CIRI has been consulted regarding this project and has offered to grant an easement in exchange for two borough-owned substandard-size tax foreclosed parcels in Kasilof which adjoin CIRI property. The conveyance of these lands to CIRI would be possible, consistent with the borough's 2009 substandard lot sale provisions. CIRI has further been consulted regarding the proposed Widgeon Woods Subdivision and has allowed the borough to draw the plat with the inclusion of a portion of the CIRI land in order to optimize the subdivision and achieve the desired road alignment.

Roads Service Area inquired with Land Management a few years ago with the knowledge that there was funding opportunities in the near future if the first half mile could be relocated along Borough lands. Land Management has been working with them since that time and has developed a new alignment to bring that right of way across 80 acres of Borough land however to reconnect that new alignment with the existing alignment of Woods Drive there is a section that would have to be tied into which is on CIRI property which is why this easement was needed.

As shown on the aerial map, the parcels that are shown in green that state 2009 sale were parcels that were part of the substandard lot sale that was initiated a year ago. That sale was to start to rid the inventory of tax foreclosed properties that the Borough had retained for the public purpose of them being substandard in size. There is a condition that the sale could only be to adjoining property so they could be combined to other lots which would effectively make the lots bigger. The issue of public retention was that small lots that don't meet Borough Code for platting size requirements do not have the ability to have sewer and water on the property. The opportunity to cure that public purpose could be achieved by combining them with adjacent properties thereby making all the properties larger and serving the purpose of relieving that substandard lot size condition. Three lots in green were conveyed to CIRI through the 2009 sale. At that time, CIRI was interested in the properties that were marked in yellow which were not part of that sale. It was determined that it was an appropriate way to have CIRI acquire these two parcels when this issue of needing an easement was identified. It was the Borough's interest in acquiring the easement which is where the land exchange came from.

This ordinance would authorize the Mayor to enter into an agreement to facilitate the acquisition of the required easement in exchange for two substandard-size tax foreclosed lots in Kasilof. Shortened hearing is requested in order to allow work on the project to commence before the ground freezes. Consideration of this ordinance is appreciated.

END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Brent Johnson, 20773 Porcupine Lane, Clam Gulch
Mr. Johnson was opposed to staff's recommendation to make this land swap. When this first came before him, he was the President of the Historical Society. The current property of the historical society is very close to the property line so he was asked to contact the owner of the property that was highlighted in green and yellow on the aerial map to see if they could buy some of the lots. He did not contact the owner since he was told they were substandard lots. Mr. Johnson stated that if the owner of those five substandard lots would combine the lots and remove the lot lines then there would be one standard lot. The historical society actually wanted those properties donated which he felt was not appropriate. He stated hat some time later they heard that the owner passed away.

Mr. Johnson heard the Borough was obtaining the property so he thought it would be a golden opportunity for the historical society to swing a deal with the Borough in purchasing the property. They entered into discussions with Mayor Carey, Planning Director Max Best and Assemblyman Fisher. Assemblyman Fisher introduced language, an ordinance to see if the historical society could purchase the property. He found out that the Borough had already obtained ownership of the property so Assemblyman Fisher tried to pay the back taxes which was the issue but found out he couldn't pay the back taxes to prevent the land from going to the Borough. As it was the land went to the Borough.

Mr. Johnson had no idea that CIRI had entered into a discussion with the Borough regarding this land swap. This property was never advertised to anyone except to CIRI. He found out that when dealing with substandard size lots there was no need to advertise to anyone so CIRI entered into an agreement with the Borough. The lots were sold to CIRI without letting the historical association know which was 83 feet away.

The problem with that is that each of these substandard lots are 0.15 acres with one of them being 0.18 acres so that grand total would be 27,400 square feet which means it was still a substandard size lot. Mr. Johnson felt the correct thing that should have been done was to have the Borough combine all five lots into one lot and offer them in public auction so that everyone in the Borough had an opportunity to purchase those lots. He was not opposed to CIRI but was opposed to the fact that nobody had an opportunity to buy the lots. Mr. Johnson thought those lots were sold as much less value than the Borough could have gotten if they were combined and sold in public auction because they were assessed as substandard lots. He felt that if they were combined then they would be assessed as a standard lot.

Mr. Johnson thought the land at Woods Drive should be bought by the Borough and these two lots be sold in public auction.

Chairman Bryson asked if there were questions for Mr. Johnson.

Commissioner Ecklund asked if the building near the property line was the historical society. Mr. Johnson replied yes, the building has been there a long time. He stated there were a number of encroachments but that building was not one of them.

Commissioner Ecklund asked if the historical society would move their building if they bought the two yellowed lots as noted on the aerial map. Mr. Johnson replied that the historical society wants to vacate some right of ways. If they were able to get the green colored property then they could have swung the right of way to the south and solved the easement problem. If the historical society was able to purchase these lots they could have possibly worked out some sort of deal with CIRI in trading lots. He felt that if this swap is done then the historical association will not have an ace in trying to work something out. Mr. Johnson wrote a letter to CIRI stating they would be interested in purchasing those lots but received a letter from them stating they were not interested in selling those lots. He felt that would not have been such a bad position if all the lots would have been put up for public auction.

Chairman Bryson asked about the acreage of the property. Mr. Mueller clarified that Mr. Johnson referred to the acreage of the green lots and what was in the packet relates to the yellow lots. Mr. Johnson stated that the acreage of the four lots was 27,442 sq feet which is not a standard size lot.

Commissioner Tauriainen asked if he recommended that the Borough purchase the land to combine the lots. He asked if that was the only way it could have gone to auction. Mr. Johnson stated the Borough didn't need to purchase any land, they obtained the lots through tax foreclosure.

Commissioner Tauriainen asked for clarification that he was not asking that additional property be purchased but that one lot be created with the property the Borough already owns. Mr. Johnson clarified that this was a land swap of the two yellow shaded lots that were being traded for land on Woods Drive. The Borough has been reconfiguring land and needs additional right of way so that Woods Drive could be built. CIRI owns the

right of way so the Borough is trading the two lots for property on Woods Drive. Mr. Johnson stated he proposed that the Borough purchase property on Woods Drive from CIRI and not do a land swap. He also felt that the property should be put up for auction.

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

MOTION: Commissioner Foster moved, seconded by Commissioner Gross to recommend passage of Ordinance 2010-40, authorizing the equal value exchange of two substandard lots in Kasilof for a .69 acre right of way easement for the relocation of Woods Drive with Cook Inlet Region, Inc.

Commissioner Isham asked if staff had additional comments after hearing the testifier's comments. Mr. Mueller replied no, with these being substandard lots that were retained for public purpose there is only one way that they could dispose of them which was to an adjoining property owner. There is no opportunity for the Borough to offer the lots in public auction. There has been no opportunity for the historical association or for anyone else other than the immediate adjoining property owner to purchase these lots. It goes back to the State Statutes that are applied under Tax Foreclosure. It has to do with the fact that they were retained for a public purpose which was their size. There is only one way to cure that size which was to attach them to adjoining property.

Commissioner Foster understood that the Planning Commission offers a recommendation to the Assembly and the Assembly will make the final decision regarding the ordinance. Mr. Mueller replied that was correct.

Commissioner Ecklund asked if the lot would be a legal lot size if the two yellow shaded lots were combined. Mr. Mueller replied no, these lots were both .26 acres so combined they would be .52 acres. He stated that staff looked at all five lots to see if they could be combined and then put up for public auction. That was their preference and would have done that if they could have.

Commissioner Ecklund reiterated that this was a situation that would have been good to have legal representation present so that questions could have been asked. She understood that there was no way that these properties could have been put up for auction. Mr. Mueller replied that State statute says that a municipality upon taking property through tax foreclosure may retain it for public purpose. When property is obtained through foreclosure then they are abolishing all the rights and interests of the owner of record which is not done lightly. When a public purpose is declared then it is being declared that there was a specific reason why that last owner's rights were being extinguished therefore management of that property needs to be consistent. By curing the size issue and by helping to relieve the issue that caused public purpose retention then that is what State statute contemplates.

Commissioner Tauriainen asked for clarification regarding the State statute of public purpose. He felt that the historical society was a public purpose facility and asked if it wouldn't be advisable to allow them to purchase the land for the good of the public. Mr. Mueller replied that the historical society uses are not the public purpose for which the Borough retained these lots. The public purpose retention is the health and safety which is the reason why the Code states that lots must be 40,000 sq ft. They don't have the opportunity to change the direction since they weren't retained for historical uses. The program that was established through the 2009 substandard lot sale drove right to the issue of the public purpose retention for substandard lots sales.

Commissioner Ecklund asked if the historical society also an adjoining property owner. Mr. Mueller replied no, they were separated by a dedicated right of way. Commissioner Ecklund asked if a legal lot was 40,000 sq ft. Mr. Best replied that 40,000 sq ft was a legal lot in the rural area of the Borough without city water or sewer. A 20,000 sq ft lot could also be a legal lot with a community water or sewer.

Commission Lockwood asked if this would go before the Assembly if they did not approve the ordinance. Chairman Bryson clarified that this would go to the Assembly if this was approved or not approved by the Planning Commission.

There being no further questions or comments, Chairman Bryson called for a roll call vote.

VOTE: The motion failed by majority consent.

BRYSON YES	CARLUCCIO ABSENT	COLLINS NO	ECKLUND NO	FOSTER NO	GROSS YES	HOLSTEN ABSENT
ISHAM NO	LOCKWOOD NO	MARTIN NO	TAURIAINEN NO			2 YES 7 NO 2 ABSENT

Chairman Bryson stated the Planning Commission's vote would be forwarded to the Assembly.

AGENDA ITEM G. ANDROMOUS STREAM HABITAT PROTECTION (KPB 21.18) - None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None

AGENDA ITEM I. SPECIAL CONSIDERATIONS

1. Appeal from Citation and Enforcement Order by Marlis Schmid, "Amended lots 50 and 51, Poachers Cove Planned Unit Development KRD 87-69".

Issue has been resolved and compliance has been adhered to therefore this has been withdrawn from the agenda. No further action was needed.

AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Martin reported the Plat Committee reviewed and conditionally approved 8 preliminary plats.

AGENDA ITEM K. COASTAL MANAGEMENT PROGRAM CONSIDERATIONS - None

AGENDA ITEM L. OTHER/NEW BUSINESS

AGENDA ITEM M. ASSEMBLY COMMENTS

Assembly person Brent Johnson sent greetings from the Assembly.

AGENDA ITEM N. LEGAL REPRESENTATIVE COMMENTS

AGENDA ITEM O. DIRECTOR'S COMMENTS

Mr. Best referred to the Homer Spit Comprehensive Plan. In 2008, the City of Homer plan was adopted by the Borough. In that plan, it indicated that the Homer Spit Plan would be handled separately and individually. Comments on the plan could be made through Borough staff or to the City of Homer directly. The City will be recommending adoption and holding a public hearing on December 1, 2010. The plan will go through the process with final plan being brought before the Planning Commission for recommendation to the Assembly.

Chairman Bryson asked if there were questions for Mr. Best. Hearing and seeing none, the meeting continued.

AGENDA ITEM P. COMMISSIONER COMMENTS

Commissioner Tauriainen extended condolences to the Zimmerman family. Their son, Takoda passed away. He fought hard against a debilitating disease. A memorial service will be held at Nikiski High School on Friday, October 29, 2010 at 5:00 p.m. Mr. Best stated that the Planning Commission renamed the street that the Zimmerman's live on to Takoda Ave a number of years ago. He stated they honored him by renaming their street after him.