



Kenai City Council - Regular Meeting

September 07, 2022 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

**** Telephonic/Virtual Information on Page 3****

www.kenai.city

Agenda

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. Consent Agenda (*Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED PUBLIC COMMENTS (*Public comment limited to ten (10) minutes per speaker*)

C. UNSCHEDULED PUBLIC COMMENTS (*Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

D. PUBLIC HEARINGS

1. **Ordinance No. 3304-2022** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds for Kenai Municipal Airport Disadvantage Business Enterprise Program Updates. (Administration)
2. **Ordinance No. 3305-2022** - Conditionally Granting Certain Foreclosed City-Owned Properties Described as Lots 8 & 11, Block 9 and Lot 4, Block 10, Mommsen's Replat of Additions No. 1 & 2 (Parcel Numbers 03910211, 03910208 and 03910304) to Central Peninsula Habitat for Humanity, Inc. for Construction of Housing. (Administration)
3. **Resolution No. 2022-62** - Supporting the Kenai Peninsula Borough's Application for a Safe Streets and Roads for All Action Plan Grant and Authorizing the City of Kenai to be Included as a Joint Applicant. (Administration)
4. **Resolution No. 2022-63** - Awarding a Professional Services Agreement and Corresponding Purchase Order for Professional Mechanical and Electrical Engineering Services for the Kenai Municipal Airport (KMA) Operations Building HVAC Controls and Boiler Replacement Project. (Administration)

E. MINUTES

1. *Regular Meeting of August 17, 2022. (City Clerk)

F. UNFINISHED BUSINESS

G. NEW BUSINESS

1. ***Action/Approval** - Bills to be Ratified. (Administration)
2. ***Action/Approval** - Purchase Orders Over \$15,000. (Administration)
3. ***Ordinance No. 3306-2022** - Amending Kenai Municipal Code 7.15.020 Purchases Requiring Council Approval, to Provide Increased Flexibility for the Administration to Conduct City Business while Maintaining Sufficient Safeguards to Protect the Public Interest. (Baisden)
4. ***Ordinance No. 3307-2022** - Amending Kenai Municipal Code 7.25.020 – City Budget Control, to Provide Increased Flexibility in the Expenditure of Funds and Management of City Budgets while Maintaining Adequate Internal Controls to Protect the Public’s Interest. (Baisden)
5. ***Ordinance No. 3308-2022** - Accepting and Appropriating a Grant from the State of Alaska for the Purchase of Library Materials. (Administration)
6. ***Ordinance No. 3309-2022** - Accepting and Appropriating Funds from the Public Library Association and AT&T for the Kenai Community Library’s Participation in the PLA Digital Literacy Workshop Training Incentive. (Administration)
7. ***Ordinance No. 3310-2022** - Increasing Estimated Revenues and Appropriations in the General Fund, Police Department, for the Receipt of a Vehicle Forfeited to the State of Alaska. (Administration)
8. ***Ordinance No. 3311-2022** - Determining that Real Property Described as Lot 5, Block 1, Gusty Subdivision Addition No. 1, According to Plat No. 83-126 KRD, City-Owned Airport Land Located Outside the Airport Reserve, is not Needed for a Public Purpose, Waiving KMC 22.05.095 Methods of Sale or Disposal and Authorizing the Sale of the Property to Aaron Swanson DBA Forever Business Plaza LLC. (Administration)
9. ***Ordinance No. 3312-2022** - Determining Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended is not Needed for a Public Purpose and Approving the Execution of a Lease with an Option to Purchase between the City of Kenai and Aaron Swanson for the Property. (Administration)
10. ***Ordinance No. 3313-2022** - Accepting and Appropriating Funds from the State of Alaska Department of Natural Resources, Division of Forestry and the United States Department of Agriculture, Forest Service to Support the City’s Spruce Beetle Mitigation and Hazard Fuel Reduction Program and Authorizing the City Manager to Execute a Memorandum of Agreement for this Funding. (Administration)
11. ***Ordinance No. 3314-2022** - Extending the Time Period for Completion of the Action Items Necessary for the Conditional Donation of an Approximate 2 Acre Parcel to be Subdivided from a Portion of the 6.8 Acre More or Less Portion of the East of Tract 4A, Baron Park 2020 Replat (KPB Parcel No. 04501035) to Triumvirate Theatre for the Development of a Theatre Facility. (Administration)
12. ***Ordinance No. 3315-2022** - Increasing Estimated Revenues and Appropriations in the General Fund and Public Safety Capital Project Fund for Costs in Excess of Budgeted Amounts for the fire Department Apparatus Bay Floor Refinishing Project. (Administration)
13. **Ordinance No. 3316-2022** - Amending Kenai Municipal Code 14.20.150-Conditional Use Permits, to Further Clarify Roles and Responsibilities of Applicants, the Planning Director, and the Planning Commission in the Conditional Use Process. (Glendening)

H. COMMISSION / COMMITTEE REPORTS

1. Council on Aging
2. Airport Commission
3. Harbor Commission
4. Parks and Recreation Commission
5. Planning and Zoning Commission
6. Beautification Committee
7. Mini Grant Steering Committee

I. REPORT OF THE MAYOR**J. ADMINISTRATION REPORTS**

1. City Manager
2. City Attorney
3. City Clerk

K. ADDITIONAL PUBLIC COMMENT

1. Citizens Comments (*Public comments limited to five (5) minutes per speaker*)
2. Council Comments

L. EXECUTIVE SESSION**M. PENDING ITEMS****N. ADJOURNMENT****O. INFORMATION ITEMS**

1. Purchase Orders Between \$2,500 and \$15,000

The agenda and supporting documents are posted on the City's website at www.kenai.city. Copies of resolutions and ordinances are available at the City Clerk's Office or outside the Council Chamber prior to the meeting. For additional information, please contact the City Clerk's Office at 907-283-8231.

Join Zoom Meeting

<https://us02web.zoom.us/j/83817445954>

Meeting ID: 838 1744 5954 **Passcode:** 821903

OR

Dial In: (253) 215-8782 or (301) 715-8592

Meeting ID: 838 1744 5954 **Passcode:** 821903



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3304-2022**

AN ORDINANCE INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE AIRPORT SPECIAL REVENUE AND AIRPORT IMPROVEMENTS CAPITAL PROJECT FUNDS FOR KENAI MUNICIPAL AIRPORT DISADVANTAGE BUSINESS ENTERPRISE PROGRAM UPDATES.

WHEREAS, Title 49 Part 26 – Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs requires recipients of airport funds authorized by Title 49 U.S.C. 47101 for planning, or development, who award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year to maintain a DBE Program; and,

WHEREAS, significant changes in the DBE Program must be submitted to the concerned operating administration; and,

WHEREAS, the current Kenai Municipal Airport (ENA) DBE Program projected Program participation goals through fiscal year 2021; and,

WHEREAS, ENA planning, and development projects through fiscal year 2026 exceed \$250,000 in expended FAA funds; and,

WHEREAS, the DBE Program ensures a good faith effort to achieve a DBE goal or other requirements of Title 49 CFR Part 26; and,

WHEREAS, 93.75% of the costs associated with this Ordinance are grant eligible under the U.S. Department of Transportation FAA Order 5100.38D, Airport Improvement Program Handbook, Chapter 3. Section 11. 3-67.; and,

WHEREAS, approval of this Ordinance is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the following budget revision is authorized:

Airport Special Revenue Fund:

Increase estimated Revenues –		
Appropriation of Fund Balance		<u>\$19,620</u>

Increase Appropriations –		
Transfer to Airport Improvement Capital Project Fund		<u>\$19,620</u>

Airport Improvement Capital Project Fund:

Increase Estimated Revenues –		
Transfer from Airport Special Revenue Fund		<u>\$19,620</u>

Increase Appropriations:		
Professional Services:		<u>\$19,620</u>

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 7TH DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: _____

Introduced: August 17, 2022
Enacted: September 07, 2022
Effective: September 07, 2022



MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Eland Conway, Airport Manager

DATE: August 8, 2022

SUBJECT: **Kenai Municipal Airport (ENA) Disadvantage Business Enterprise (DBE) Program updates. Ordinance 3304-2022**

In accordance with 49 CFR Part 26, ENA is required to maintain a current DBE Program. The Program ensures that ENA is making good faith efforts to achieve a predefined percentage goal based on demonstratable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on airport contracts.

The DBE Program seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contract;
3. To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The estimated cost to update the ENA DBE Program of \$19,620 is reimbursable under the FAA Airport Improvement Program (AIP) at 93.75%:

ENA DBE Update	\$19,620.00
FAA Share 93.75%	<u>18,393.75</u>
ENA share 6.25%	<u>\$ 1,226.25</u>

Thank you for your consideration.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3305-2022**

AN ORDINANCE CONDITIONALLY GRANTING CERTAIN FORECLOSED CITY-OWNED PROPERTIES DESCRIBED AS LOTS 8 & 11, BLOCK 9 AND LOT 4, BLOCK 10, MOMMSEN'S REPLAT OF ADDITIONS NO. 1 & 2 (PARCEL NUMBERS 03910211, 03910208 AND 03910304) TO CENTRAL PENINSULA HABITAT FOR HUMANITY, INC. FOR CONSTRUCTION OF HOUSING.

WHEREAS, Kenai Municipal Code 22.05.095(b)(iii) allows the Council, by Ordinance, to grant or devote a piece of real property to a nonprofit corporation; and,

WHEREAS, Central Peninsula Habitat for Humanity, Inc. is a nonprofit charitable housing organization and has identified Lot 8 & 11, Block 9, and Lot 4, Block 10, Mommsen Subdivision Replat Addition No. 1 & 2, (parcel Numbers 03910211, 03910208 and 03910304) as properties meeting the needs of their organization; and,

WHEREAS, the above-referenced properties were acquired through tax and special assessment foreclosures (judgement year was 1987); and,

WHEREAS, Ordinance 1414-91 declared the properties were not needed for a public purpose and could be sold; and,

WHEREAS, the recently adopted City of Kenai Land Management Plan reestablished the properties are not needed for a public purpose and recommends disposal; and,

WHEREAS, Ordinance 2942-2017 authorized the City Manager to transfer these lots to Habitat for Humanity, Inc. at less than fair market value for the sole purpose of construction of single-family residences subject to conditions; and,

WHEREAS, due to COVID-19 pandemic workplace guidance procedure as issued by the Center for Disease Control, the outlined schedule of construction in Ordinance 2942-2017 could not be met; and,

WHEREAS, it is advantageous to the City of Kenai to grant these lots to Central Peninsula Habitat for Humanity, Inc. to provide needed safe affordable low income housing over the next few years, which will produce tax revenue for the City of Kenai, rather than having these lots remain vacant; and,

WHEREAS, the lots are zoned and of appropriate size for the intended development; and,

WHEREAS, The Imagine Kenai 2030 Comprehensive Plan outlines goals, objectives, and action items for the City, including the following supporting this application: Objective Q- 4 - Promote the siting and design of land uses that are in harmony and scale with surrounding uses: Objective ED-1 - Promote the infill of existing, improved subdivision lots, and;

WHEREAS, at their regular meeting of June 22, 2022 the Planning and Zoning Commission recommended donation of the above lots to Habitat for Humanity, Inc.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the Kenai City Council hereby authorizes the City Manager to execute the transfer of title of certain foreclosed City-owned real properties described as Lot 8 and 11, Block 9, and Lot 4, Block 10, Mommsen’s Replat of Addition No. 1 & 2 (Parcel Numbers 03910211, 03910208 and 03910304) to Habitat for Humanity, Inc. for less than market value and for sole purpose of the construction of single-family residences, subject to the following conditions:

1. Central Peninsula Habitat for Humanity, Inc. shall pay the sum of taxes and assessments owed to the Kenai Peninsula Borough and the City of Kenai upon transfer of ownership to Central Peninsula Habitat for Humanity, Inc.
2. Up to three parcels will be granted for construction to Central Peninsula Habitat for Humanity, Inc. Upon timely completion of the first project, a second parcel may be conveyed. Upon completion of the second project, a third parcel may be conveyed. All projects must be completed by December 31, 2028.

Section 2. That the Kenai City Council further finds the disposal of the subject parcel to be in the best interests of the citizens of the City of Kenai and the public interest shall be served by disposing of the property interest for less than fair market value, in accordance with the recitals above which are incorporated herein.

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 7TH DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: _____

Introduced:	August 17, 2022
Enacted:	September 7, 2022
Effective:	October 7, 2022



MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Max Best, Interim Planning Director

DATE: August 17, 2022

SUBJECT: **Donation of Lots to Central Peninsula Habitat for Humanity, Inc. Ordinance 3305-2022**

On February 6, 1991 the Kenai City Council passed Ordinance No. 1414-91 declaring certain foreclosed properties were not needed for a public purpose and could be sold.

On January 21, 2009, the Council passed Ordinance 2373-2009, approving the donation of certain foreclosed City-owned lots in Mommsens Subdivision Replat of Additions 1 & 2 to Habitat for Humanity for construction of housing, so long as the sum of taxes and assessments owed to the Kenai Peninsula Borough and the City of Kenai are paid at the time of transfer. Five homes were constructed by 2015 under Ordinance 2373-2009 with a collection of water and sewer service fees and a taxable value of over one million dollars.

Subsequently, on April 5, 2017 the Council passed Ordinance 2942-2017 approving the donation of five additional lots in Mommsens Subdivision to Habitat for Humanity with similar transfer conditions and timelines as required in Ordinance 2373-2009. Due to COVID-19 pandemic workplace guidance procedures as issued by the Center for Disease Control the timeline in the ordinance for additional projects was not met and only one house was completed.

On May 30, 2022, staff received a letter from the Central Peninsula Habitat for Humanity, Inc. requesting to continue construction of housing on Second Street parcels as agreed to in Ordinance 2942-2017 for conditional donation, which has expired.

After public notification, Amy Fisher an adjoining property owner submitted a requested for purchase of a Habitat for Humanity selected lot adjacent to her residence on Second Avenue. After discussions with Amy Fisher, Habitat for Humanity agreed to withdraw 1107 Second Street from the request for conditional donations for construction of housing. The proposal is now for three parcels: Lots 8 & 11, Block 9, and Lot 4, Block 10 Mommsens Subdivision Replat of Additions 1 & 2.

It is advantageous to the City to donate the lots in accordance with timelines and conditions contained in the Ordinance to Habitat for Humanity, Inc. and have residences constructed on the lots over the next few years. Having residences on the lots as opposed to vacant lots would

provide revenue from payment of property taxes levied by the Kenai Peninsula Borough. In addition, the City will receive water and sewer payments of the services provided to the homeowners.

Thank you for your consideration.



MEMORANDUM

TO: Planning and Zoning Commission
FROM: Ryan Foster, Planning Director
DATE: June 17, 2022
SUBJECT: **Action/Approval: Recommending the City Council Approve Ordinance No. XXXX-2022 – Approving the Conditional Donation of City Owned Parcels to the Central Peninsula Habitat for Humanity, Inc.**

On May 30, 2022, staff received a letter from the Central Peninsula Habitat for Humanity, Inc. requesting to continue with the construction of housing on Second Street parcels agreed to in Ordinance 2942-2017 for a conditional donation, which has expired. In the letter, it was noted that Habitat for Humanity has not built homes for the past two years due to COVID-19. After discussions with Amy Fisher, Habitat for Humanity agreed to withdraw 1107 Second Street from their request for conditional donations for construction of housing. The proposal is now for:

- 1109 Second Street (#03910208)
- 1106 Second Street (#03910304)
- 1103 Second Street (#03910211)

The parcels are within the Suburban Residential (RS) Zone. Pursuant to KMC 14.20.065, the purpose of the RS Zone is intended to provide for medium density residential development in areas which will be provided with common utility systems. The construction of single family homes would be consistent with this zoning district. Both City sewer and water services are located adjacent to the subject properties.

The Imagine Kenai 2030 Comprehensive Plan outlines goals, objectives, and action items for the City, including the following supporting this request:

Objective Q- 4: Promote the siting and design of land uses that are in harmony and scale with surrounding uses.

Objective LU-2: Promote the infill of existing, improved subdivision lots.

Please review the attached materials.

Does the Commission recommend Council approve the conditional donation of City owned parcels to the Central Peninsula Habitat for Humanity, Inc.?

Attachments:

Letter Requesting Conditional Donation to Habitat for Humanity

Email Withdrawing 1107 Second Street from Their Request

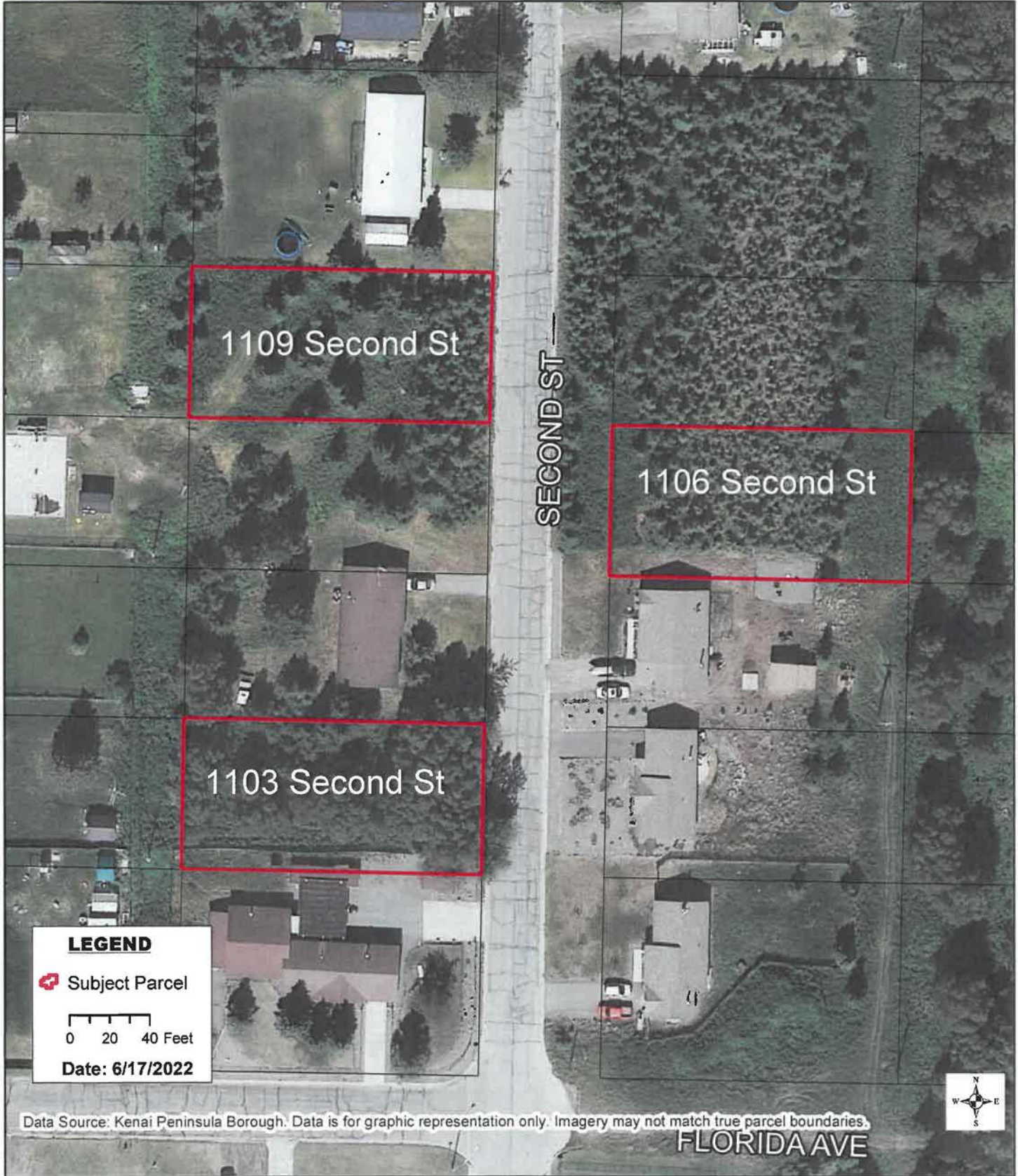
Ordinance 2942-2017

Requested Second Street Parcels Map





1109 Second Street (#03910208)
1106 Second Street (#03910304)
1103 Second Street (#03910211)



Data Source: Kenai Peninsula Borough. Data is for graphic representation only. Imagery may not match true parcel boundaries.

FLORIDA AVE



Sponsored by: City Manager

CITY OF KENAI
ORDINANCE NO. 2942 - 2017

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, CONDITIONALLY DONATING CERTAIN FORECLOSED CITY-OWNED PROPERTIES DESCRIBED AS LOTS 8, 9, AND 11, BLOCK 9, AND LOTS 4 AND 5, BLOCK 10, MOMMSENS SUBDIVISION REPLAT OF ADDN. 1 & 2, ADDN. NO. 2, (PARCEL NUMBERS 03910208; 03910209; 03910211; 03910304 AND 03910305) TO CENTRAL PENINSULA HABITAT FOR HUMANITY, INC. FOR CONSTRUCTION OF HOUSING.

WHEREAS, Kenai Municipal Code 22.05.125 allows the Council, by Ordinance, to donate foreclosed real property no longer needed by the City for public purpose to a non-profit corporation, for consideration agreed upon between the City and Grantee without a public sale, if it is advantageous to the City; and,

WHEREAS, Central Peninsula Habitat for Humanity, Inc. is a non-profit charitable housing organization and has identified Lots 8, 9, and 11, Block 9, and Lots 4 and 5, Block 10, Mommsens Subd. Replat Addn. No. 1 & 2, Addn. No. 2 (Parcel Numbers 03910208; 03910209; 03910211; 03910304; and 03910305) - (See Attachment B) as properties meeting the needs of their organization; and,

WHEREAS, the above-referenced properties were acquired through tax and special assessment foreclosures (judgement year was 1987); and,

WHEREAS, Ordinance No. 1414-91 declared the properties were not needed for a public purpose and could be sold; and,

WHEREAS, the subject properties have been included in public foreclosure sales in 2005 and 2007 where no bids to purchase were received; and,

WHEREAS, it is advantageous to the City of Kenai to donate these lots to Central Peninsula Habitat for Humanity, Inc. to provide needed safe affordable low income housing over the next few years, which will produce tax revenue for the City of Kenai, rather than having these lots remain vacant; and,

WHEREAS, at their regular meeting of March 22, 2017 the Planning and Zoning Commission reviewed the subject Ordinance and recommends the Council of the City of Kenai enact this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that:

Section 1. Form: That this is a non-code ordinance.

Section 2. That the Kenai City Council hereby authorizes the City Manager to execute the transfer of title of certain foreclosed City-owned real properties described as Lots 8, 9, and 11, Block 9, and Lots 4 and 5, Block 10, Mommsens Subd. Replat Addn. No. 1 & 2, Addn. No. 2 (Parcel Numbers 03910208; 03910209; 03910211; 03910304; and

03910305), to Habitat for Humanity, on a form approved by the City Attorney, for less than fair market value and for the sole purpose of the construction of single-family residences, subject to the following conditions:

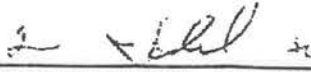
1. Central Peninsula Habitat for Humanity, Inc. shall pay the sum of taxes and assessments owed to the Kenai Peninsula Borough and the City of Kenai, upon the transfer of ownership to Central Peninsula Habitat for Humanity, Inc. from the City of Kenai.
2. Up to five parcels will be granted for construction to Central Peninsula Habitat for Humanity, Inc. The grants will be according to the following timeline: One parcel will be granted for the 2017 construction season. Construction must be complete on the parcel by the end of 2018. Upon timely completion of that project, the second parcel may be granted. The second project must be completed by the end of 2020. Upon timely completion of the second project, a third parcel may be granted. The third project must be completed by the end of 2022. Upon timely completion of the third project, a fourth parcel may be granted. That project must be completed by the end of 2024. Upon timely completion of the fourth project, a fifth parcel may be granted. The fifth project must be completed by the end of 2026.

Section 3. That the Kenai City Council further finds the disposal of the subject parcel to be in the best interests of the citizens of the City of Kenai and that the public interest shall be served by disposing of the property interest for less than fair market value, in accordance with the recitals above which are incorporated herein.

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

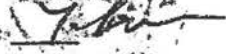
Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this Ordinance shall take effect 30 days after adoption.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 5th day of April, 2017.


BRIAN GABRIEL, SR., MAYOR

ATTEST:

Sandra Modigh, City Clerk

Approved by Finance: 

Introduced: March 15, 2017
Adopted: April 5, 2017
Effective: May 5, 2017

Attachments: A - C



Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2022-62**

A RESOLUTION SUPPORTING THE KENAI PENINSULA BOROUGH'S APPLICATION FOR A SAFE STREETS AND ROADS FOR ALL ACTION PLAN GRANT AND AUTHORIZING THE CITY OF KENAI TO BE INCLUDED AS A JOINT APPLICANT.

WHEREAS, the Infrastructure Investment and Jobs Act authorizes up to \$108 billion to support public transportation and establish the new Safe Streets and Roads for All (SS4A) discretionary program with \$5 billion in appropriated funds over the next five years; and,

WHEREAS, for Federal FY22 there is up to \$1 billion available for regional, local and tribal initiatives through grants to prevent roadway deaths and serious injury; and,

WHEREAS, one type of SS4A grant is Action Plan Grants that include the planning, designing, and development of activities including projects and strategies for a community requiring safety data and economic analysis which would be found in a community's Action Plan; and,

WHEREAS, neither the Kenai Peninsula Borough (KPB) or any of its communities have an Action Plan in place and therefore are not eligible to apply for Implementation Grants that may be available under the Infrastructure Law; and,

WHEREAS, applicants are encouraged to apply for regional Action Plan grants that engage multiple jurisdictions to ensure collaboration and leverage local expertise; and,

WHEREAS, as the regional government, the KPB has agreed to apply as the lead applicant with participating municipalities included as joint applicants for the SS4A Action Plan Grant in the total project amount of \$1,200,000 with a 20% local match; and,

WHEREAS, if approved, all participating communities and the KPB would share in the local match obligation, with the City's share of the cost at approximately \$21,500; and,

WHEREAS, developing an Action Plan, the City of Kenai will be able to pursue Implementation Grants through the SS4A program in the future and to pursue other grant funding focused on improving roadway safety and improvements to transportation infrastructure; and,

WHEREAS, it is the best interest of the City of Kenai to support the KPB's application and participate as a joint applicant for the SS4A Action Plan Grant.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. The City of Kenai supports the Kenai Peninsula Borough's application for a Safe Streets and Roads for All Action Plan Grant, and authorizes the City to sign on as a joint applicant for the purposes of developing a comprehensive safety action plan for the Kenai Peninsula Borough and the incorporated cities.

Section 2. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 7TH DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk



MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
FROM: Paul Ostrander, City Manager
DATE: September 7, 2022
SUBJECT: Resolution No. 2022-62, Supporting Kenai Peninsula Borough's Application for Safe Streets and Roads for All Planning Grant

The Infrastructure Investment and Jobs Act authorizes up to \$108 billion to support public transportation. This law establishes the new Safe Streets and Roads for All (SS4A) discretionary program with \$5 billion in appropriated funds over the next five years. For Federal Fiscal Year 22 there is up to \$1 billion available for regional, local and tribal initiatives through grants to prevent roadway deaths and serious injury.

There are two types of SS4A grants: Action Plan Grants and Implementation Grants. Action Plans include the planning, designing, and development of activities including projects and strategies for a community. The preponderance of Federal transportation grants require safety data and economic analysis which would be found in a community's Action Plan. Neither the Kenai Peninsula Borough (KPB) nor any of its communities have an Action Plan in place and therefore are not eligible to apply for Implementation Grants that may be available under the Infrastructure Law.

KPB has agreed to apply as the lead applicant for a Regional Action Plan grant. The total project amount would be \$1,200,000 with participating communities, including the City of Kenai as joint applicants. Once an Action Plan is developed, the City of Kenai will be able to pursue Implementation Grants through the SS4A program in the future and to pursue other grant funding focused on improving roadway safety and improvements to transportation infrastructure.

It is the best interest of the City of Kenai to support the KPB's application and participate as a joint applicant for the SS4A Action Plan Grant. If the grant is approved, the Action Plan will be funded at an 80/20 cost share rate. It is estimated that the City's share would be \$21,500 which can be either in-kind or monetary payments.

Your consideration is appreciated.



Sponsored by: Administration

**CITY OF KENAI
RESOLUTION NO. 2022-63**

A RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT AND CORRESPONDING PURCHASE ORDER FOR PROFESSIONAL MECHANICAL AND ELECTRICAL ENGINEERING SERVICES FOR THE KENAI MUNICIPAL AIRPORT (KMA) OPERATIONS BUILDING HVAC CONTROLS AND BOILER REPLACEMENT PROJECT.

WHEREAS, the City of Kenai formally released a Request for Proposals (RFP) on July 19, 2022 with proposals due on August 16, 2022 to provide bid ready Construction Documents for the replacement of an existing boiler and associated controls at the KMA Operations Facility that are now beyond their useful life; and,

WHEREAS, the following three proposals were received and evaluated by the City:

Firm	Score	Cost
MBA Consulting Engineers LLC	188	\$47,728.00
Respec	173	\$119,152.80
Design Alaska	153	\$107,250.00

; and,

WHEREAS, MBA Consulting Engineers LLC was determined as the highest scoring responsible respondent; and,

WHEREAS, award of this agreement and issuance of a purchase order to MBA Consulting Engineers LLC is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the Kenai City Council authorizes a contract award and corresponding purchase order to MBA Consulting Services LLC in the amount of \$47,728 to provide professional mechanical and electrical engineering services for the KMA Operations Building HVAC Controls and Boiler Replacement Project.

Section 2. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 7TH DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Paul Ostrander, City Manager
FROM: Scott Curtin, Director of Public Works
DATE: August 27, 2022
SUBJECT: Resolution for KMA Operations Facility HVAC Controls & Boiler

The purpose of this Memo is to request Council's approval to award a Professional Services Agreement to provide bid ready construction documents for the Kenai Municipal Airport (KMA) Operations Facility HVAC Controls and Boiler Replacement Project. Funding for this project is included within the current FY23 budget, Fund 328 – Airport Operations Facility Improvement Capital Project Fund.

The project is intended to address HVAC controls issues and a cracked heat exchanger on one of the existing boilers. The Department had requested and received funding for the Controls with the FY21 budget and the Boiler Replacement within the FY22 budget. However, Shop staff in coordination with our Buildings Department staff were able to make a brazing repair to the cracked heat exchanger which has extended the existing boiler's life for over a year now.

This repair is not anticipated to last long term, and because of the long lead times often associated with equipment like this, the project is moving forward now with the intent of having the new boiler and equipment operational for the 2023/2024 heating season. We believe the existing boiler will make it through the 2022/2023 heating season. The Department typically likes to see boilers reach a useful life of 25 years, this particular boiler is just under 20 years currently which is why we continue to try and get as much use out of the unit as possible.

Photos below are from the facility. The back boiler with the cover off is the one to be replaced. Controls equipment associated with the work are also shown.

Completion of this work now will improve the efficiency of the facility, reduce utility costs, and safeguard the HVAC system for years to come. Staff will continue to monitor the 2nd existing boiler and are hopeful it will reach the intended 25 years before replacement for that unit requires consideration.

Council support and approval is respectfully requested.



**KENAI CITY COUNCIL – REGULAR MEETING
AUGUST 17, 2022 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
MAYOR BRIAN GABRIEL, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai City Council was held on August 17, 2022, in City Hall Council Chambers, Kenai, AK. Mayor Gabriel called the meeting to order at approximately 6:00 p.m.

1. Pledge of Allegiance

Mayor Gabriel led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Brian Gabriel, Mayor
Teea Winger
Glenese Pettey
Henry Knackstedt

James Baisden
Deborah Sounart
Jim Glendening, Vice Mayor

A quorum was present.

Also in attendance were:

**Silas Thibodeau, Student Representative
Paul Ostrander, City Manager
Scott Bloom, City Attorney
Max Best, Interim Planning Director
Scott Curtin, Public Works Director
Dave Ross, Police Chief
Shellie Saner, City Clerk

3. Agenda Approval

MOTION:

Council Member Knackstedt **MOVED** to approve the agenda and suspend the rules to address agenda item F. Unfinished Business prior to agenda item D. Public Hearings. Council Member Pettey **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

4. Consent Agenda

MOTION:

Council Member Knackstedt **MOVED** to approve the consent agenda. Council Member Pettey **SECONDED** the motion.

The items on the Consent Agenda were read into the record.

Mayor Gabriel opened the floor for public comment; there being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED PUBLIC COMMENTS

1. "Introduction to Executive Director" Peter Evon, Executive Director of the Kenaitze Indian Tribe.

Mr. Evon provided an update on the Kenaitze Indian Tribe's current projects and activities, including the grand opening of the education campus; development of a community hall and harvest pavilion on the waterfront; the Tribal Court; construction on maintenance warehouse-transportation building; and a grant awarded to them through U.S. Department of Housing and Urban Development for elder housing facility. He discussed the opportunity for partnership with Administration and Council in the future.

C. UNSCHEDULED PUBLIC COMMENTS

Jake Phillips addressed the Council regarding the Kenai Central High School Marching Band; discussed the upcoming Fiesta Bowl event and noted that funds from the fundraising website would help students pay for travel to the event; and requested contact information from anyone interested in donating.

Marion Nelson reminded everyone that the Kenai Art Center's Harvest Auction is returning this year on September 24; explained that most of the auction items will be art, which will be on display through the month of September; and discussed this month's art show which features two artists.

F. UNFINISHED BUSINESS

1. **Ordinance No. 3298-2022** - Enacting Kenai Municipal Code Chapter 14.30 - Floodplain Management, within Title 14 - Planning and Zoning, to Regulate Land Use within the Flood Plain and Authorizing the City to Participate in the National Flood Insurance Program. (Administration)
[Clerk's Note: At the Meeting of August 3, 2022 this Ordinance was Postponed to this Meeting; a Motion to Enact is on the Floor.]

- **Substitute Ordinance No. 3298-2022** - Enacting Kenai Municipal Code Chapter 14.30- Floodplain Management, Within Title 14-Planning and Zoning, to Regulate Land Use within the Flood Plain and Authorizing the City to Participate in the National Flood Insurance Program. (Administration)

[Clerk's Note: The motion to enact Ordinance No. 3298-2022 was on the floor from the August 3, 2022 Regular City Council Meeting.]

MOTION:

Council Member Knackstedt **MOVED** to amend Ordinance No. 3298-2022 by Ordinance No. 3298-2022 Substitute. Council Member Pettey **SECONDED** the motion.

UNANIMOUS CONSENT was requested on the motion to amend by substitute.

VOTE: There being no objection; **SO ORDERED.**

Interim Planning Director Best reported that the interactive flood plain map presented to the Planning & Zoning Commission was unavailable due to the host website being down; explained that the new map is accurate and an improvement of the old system; stated that the six properties with potential issues had been rectified with FEMA; provided a summary of requirements for constructions in the floodways; and clarified that this ordinance would allow the City to work with the Army Corps of Engineers for the Bluff Stabilization project.

Mitch Paine, FEMA Flood Plain Management Specialist noted that when a community joins NFIP technical assistance from FEMA is provided for set up and regulation interpretations.

There was discussion related to adding minimum standards to code being required to participate in the NFIP; clarification that there would be very little impact to the land within the Kenai Waterfront Revitalization Feasibility Study; potential reduction in insurance rates for property owners and their eligibility for flood insurance; and it was clarified that this came forward as a result of the agreement with Army Corps of Engineers.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

VOTE:

YEA: Winger, Knackstedt, Gabriel, Glendening, Baisden, Sounart, Pettey

NAY: None

**Student Representative Thibodeau: YEA

MOTION PASSED UNANIMOUSLY.

D. PUBLIC HEARINGS

- 1. Ordinance No. 3300-2022** – Increasing Estimated Revenues and Appropriations in the General Fund FY22 Budget– Police Department and Accepting Grants from the United States Department of Justice and Alaska Municipal League Joint Insurance Association (AMLJIA) for the Purchase of Ballistic Vests. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3300-2022. Council Member Sounart **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

VOTE:

YEA: Knackstedt, Gabriel, Glendening, Baisden, Sounart, Pettey, Winger

NAY: None

**Student Representative Thibodeau: YEA

MOTION PASSED UNANIMOUSLY.

- 2. Ordinance No. 3301-2022** – Increasing Estimated Revenues and Appropriations in the General Fund FY22 Budget – Police Department and Accepting a Grant from the Alaska High Intensity Drug Trafficking Area (AK HIDTA) for Drug Investigation Overtime Expenditures. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3301-2022. Council Member Winger **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

VOTE:

YEA: Gabriel, Glendening, Baisden, Sounart, Pettey, Winger, Knackstedt

NAY: None

**Student Representative Thibodeau: YEA

MOTION PASSED UNANIMOUSLY.

- 3. Ordinance No. 3302-2022** – Increasing Estimated Revenues and Appropriations in the Water and Sewer Special Revenue and Wastewater Treatment Plant Improvements Capital Project Fund and Authorizing a Construction Agreement and Purchase Order for the Sludge Press Replacement Project. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3302-2022. Council Member Winger **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

Clarification was provided regarding the purpose of a sludge press; construction costs coming in more than the engineer's estimate; that costs increase to other items identified in the design process for this project were included in the resolution; and improvements resulting in greater energy efficiency and cost savings.

VOTE:

YEA: Glendening, Baisden, Sounart, Pettey, Winger, Knackstedt, Gabriel

NAY: None

**Student Representative Thibodeau: YEA

MOTION PASSED UNANIMOUSLY.

- 4. Ordinance No. 3303-2022** – Increasing Estimated Revenues and Appropriations in the Water Sewer Special Revenue Fund for Operational Chemical Costs in Excess of Budgeted Amounts. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to enact Ordinance No. 3303-2022. Council Member Sounart **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

There was discussion regarding the cost for operational chemicals; current budget amounts were based on historical data; the significant increase in costs for these chemicals this year; potential alternatives to save future costs; that approximately 60-90 days of chemical supplies were kept in stock; and contracting for a utility rate study, which may recommend adjustments to the fee schedule.

VOTE:

YEA: Baisden, Sounart, Pettey, Winger, Knackstedt, Gabriel, Glendening

NAY: None

**Student Representative Thibodeau: YEA

MOTION PASSED UNANIMOUSLY.

- 5. Resolution No. 2022-61**– Authorizing the City Manager to Extend the Restaurant Concession Agreement in the Kenai Municipal Airport for an Additional Year. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to adopt Resolution No. 2022-61. Council Member Winger **SECONDED** the motion.

Mayor Gabriel opened the floor for public comment. There being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

E. MINUTES

1. *Special Meeting of July 26, 2022.
2. *Regular Meeting of August 3, 2022. (City Clerk)

F. NEW BUSINESS

1. ***Action/Approval** – Bills to be Ratified. (Administration)

Approved by the consent agenda.

2. ***Ordinance No. 3304-2022** - Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds for Kenai Municipal Airport Disadvantage Business Enterprise Program Updates. (Administration)

Introduced by the consent agenda and Public Hearing set for September 7, 2022.

3. ***Ordinance No. 3305-2022** - Conditionally Granting Certain Foreclosed City-Owned Properties Described as Lots 8 & 11, Block 9 and Lot 4, Block 10, Mommsen's Replat of Additions No. 1 & 2 (Parcel Numbers 03910211, 03910208 and 03910304) to Central Peninsula Habitat for Humanity, Inc. for Construction of Housing. (Administration)

Introduced by the consent agenda and Public Hearing set for September 7, 2022.

4. **Action/Approval** - Purchase Orders Over \$15,000. (Administration)

MOTION:

Council Member Knackstedt **MOVED** to approve Purchase Orders Over \$15,000. Council Member Pettey **SECONDED** the motion.

Clarification was provided that the payment to HDL Engineering Consultants was contingent on the enactment of Ordinance No. 3302-22.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

G. COMMISSION / COMMITTEE REPORTS

1. Council on Aging

No report, next meeting September 8, 2022.

2. Airport Commission

No report, next meeting September 8, 2022.

3. Harbor Commission

Council Member Pettey reported on the August 8, 2022 meeting.

4. Parks and Recreation Commission

No report, next meeting September 1, 2022.

5. Planning and Zoning Commission

Vice Mayor Glendening reported on the August 10, 2022 meeting.

6. Beautification Committee

No report, next meeting September 13, 2022.

7. Mini-Grant Steering Committee

No report, next meeting August 26, 2022.

H. REPORT OF THE MAYOR

Mayor Gabriel reported on the following:

- Alaska Bycatch Review Task Force had met several times and will be bringing recommendations to the full Task Force on October 14, 2022.
- Discussed regarding effect of bycatch on recreational fisheries during his attendance at the Kenai River Sportfishing roundtable.
- Industry Appreciation Day being scheduled for Saturday, August 20th at the park strip.

I. ADMINISTRATION REPORTS

1. City Manager – City Manager Ostrander reported on the following:

- John Harris was hired as the new Deputy Fire Chief, replacing Mark Anderson who is retiring after 23-years with the City.
- Lana Metcalf was hired as the City’s new Controller, replacing Sue Best who is retiring after seven-years with the City.
- He thanked Interim Planning Director Max Best and Interim Planning Assistant Willie Anderson, who did a great job maintaining the Planning and Zoning Department while the City was recruiting for a new Director and Assistant.
- Linda Mitchell was hired as the new Planning Director and starting by September 26th.
- Participation with the Kenai Peninsula Borough for the “Safe Streets and Roads for All” grant.
- A Joint Work Session on September 21, 2022 with all City Commissions to receive an update from McKinley Group on the Kenai Waterfront Revitalization Study.
- Review of the Bluff Stabilization project with DOT Commissioner Ryan Anders and discussed opportunities to work with DOT on projects and funding opportunities.
- The Dipnet wrap up meeting identified some operational changes for implementation next year to alleviate traffic.
- Bluff Stabilization project construction bids will go out on April 3, 2023.

2. City Attorney – No report.

3. City Clerk – No report.

J. ADDITIONAL PUBLIC COMMENTS

1. Citizen Comments (*Public comments limited to (5) minutes per speaker*) – None.

2. Council Comments

Council Member Pettey noted that on Saturday, August 20th there will be a Soup Supper that benefits the Food Bank, and encouraged everyone to attend.

Student Representative Thibodeau thanked the Council for considering the KCHS Marching Band fundraiser, noted that it was the second day of the new school year and reported on upcoming football games.

Council Member Sounart thanked City Clerk Saner for her long hours working on the election, and noted that it was good that turnout was higher than usual.

Council Member Winger thanked Interim Planning Director Max Best and Willie Anderson for managing the Planning Department through the summer season; congratulated John Harris on his promotion, and wished the best for Sue Best and Mark Anderson.

Vice Mayor Glendening thanked Administration for their reports, stated that he hopes to hear about the new plan for plowing snow in the City, and thanked Director Best for his work while on board with the City.

Council Member Baisden thanked all election workers and the Clerk for running a successful election.

K. EXECUTIVE SESSION – None.

L. PENDING ITEMS – None.

M. ADJOURNMENT

N. INFORMATIONAL ITEMS

1. Purchase Orders Between \$2,500 and \$15,000.

There being no further business before the Council, the meeting was adjourned at 8:04 p.m.

I certify the above represents accurate minutes of the Kenai City Council meeting of August 17, 2022.

Michelle M. Saner, MMC
City Clerk

*** The student representative may cast advisory votes on all matters except those subject to executive session discussion. Advisory votes shall be cast in the rotation of the official council vote and shall not affect the outcome of the official council vote. Advisory votes shall be recorded in the minutes. A student representative may not move or second items during a council meeting.*

PAYMENTS OVER \$15,000.00 WHICH NEED COUNCIL RATIFICATION
COUNCIL MEETING OF: SEPTEMBER 7, 2022

VENDOR	DESCRIPTION	DEPARTMENT	ACCOUNT	AMOUNT
PERS	PERS	VARIOUS	LIABILITY	104,718.92

INVESTMENTS

VENDOR	DESCRIPTION	MATURITY DATE	AMOUNT	Effect. Int.
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**PURCHASE ORDERS OVER \$15,000.00 WHICH NEED COUNCIL APPROVAL
COUNCIL MEETING OF: SEPTEMBER 7, 2022**

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
EARTHSCAPES LLC	LANDSCAPE DESIGN FOR AIRPORT TERMINAL	A/P TERMINAL MODIFICATIONS	CONSTRUCTION	28,255.00
FIREWEED FENCE	DOG PARK FENCING	MUNICIPAL PARK IMPS.	CONSTRUCTION	24,901.50

INCREASE OF EXISTING PURCHASE ORDER

VENDOR	DESCRIPTION	P.O. # - DEPT.	REASON	AMOUNT	TOTAL PO AMT
POLAR NORTH CONSTRUCTION	WELL HOUSE RELOCATION	123113 - W/S CAPITAL PROJ.	SITE EARTHWORK & GRADING	9,792.13	252,964.38



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Scott Curtin, Director of Public Works

DATE: August 30, 2022

SUBJECT: Purchase Order to Earthscapes LLC

The Public Works Department released a Request for Proposals for Landscape Design Services for the Kenai Municipal Airport Terminal on July 14, 2022 with Proposals due on July 28, 2022. Proposals were received and evaluated for the following firms:

Firm	Cost	Score
Earthscape LLC	\$28,255	277.50
Design Alaska	\$32,000	267.60

Earthscape LLC was determined to have provided the highest scoring proposal with a total cost of \$28,255. This project was approved and funded with the passing of the FY2023 budget as indicated on page 219 of the budget manual. This purchase order will provide bid ready construction documents for landscaping improvements at the Terminal facility. The Department anticipates an Invitation for Construction Bids first quarter of 2023 with construction improvements starting in May 2023.

Council's approval and support is respectfully requested.



MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Scott Curtin, Director of Public Works

DATE: August 30, 2022

SUBJECT: Purchase Order to Fireweed Fence

The City of Kenai released a Request for Quotes for the Kenai Dog Park Fence Project. Multiple firms were approached to provide quotes including Fireweed Fence, Four Seasons Fence, AAA Fence and Acme Fence with Fireweed Fence providing the lowest installed price.

The project consists of the installation of 960' of 6' tall 11 gauge chain link fencing with top rail, 250' of 4' tall 11 gauge chain link fencing with top rail, three single manway gates and one double swing maintenance gate. Total cost of the work is \$24,901.50. Sufficient funding for this work resides under Activity Code 402 in account 116-450-8098.

Fireweed has materials in stock and weather pending will have the fencing complete prior to the end of September. Council's approval is respectfully requested. Photo below is from August 25th with pavilion pad prepped for concrete and entry ramp roughed in.



MEMORANDUM

TO: Mayor Gabriel and Council Members
THROUGH: Paul Ostrander, City Manager
FROM: Scott Curtin, Director of Public Works
DATE: August 29, 2022
SUBJECT: Purchase Order Increase to Polar North Construction

Polar North Construction is nearing completion of the Well house Relocation Capital Project. This project as Council may recall provides for the relocation of Well house 1’s steel building which had settled during the 2018 earthquake. The well has now been decommissioned and the building has been relocated and permanently installed on a new concrete foundation at the Water Treatment Facility property on Shotgun Dr.

The requested Purchase Order increase will account for Change Order 1 costs associated with additional required site fill earthwork and grading, totaling \$9,792.13. Purchase Order 123113 will be increased from \$243,172.25 to \$252,964.38, an approximately 4% increase. Photo below is of the building being relocated to the site earlier this summer. Council support and approval is respectfully requested.





Sponsored by: Council Member Baisden

**CITY OF KENAI
ORDINANCE NO. 3306-2022**

AN ORDINANCE AMENDING KENAI MUNICIPAL CODE 7.15.020 PURCHASES REQUIRING COUNCIL APPROVAL, TO PROVIDE INCREASED FLEXIBILITY FOR THE ADMINISTRATION TO CONDUCT CITY BUSINESS WHILE MAINTAINING SUFFICIENT SAFEGUARDS TO PROTECT THE PUBLIC INTEREST.

WHEREAS, KMC 7.15.020 establishes thresholds for and the types of purchases which require approval of the City Council prior to them being made; and,

WHEREAS, the limits of KMC 7.15.020 were last amended by Ordinance 2121-2005 which was adopted on September 21, 2005; and,

WHEREAS, the \$15,000 limit imposed by KMC 7.15.020 is overly restrictive and limits the Administration's ability to react to situations that arise during each budget year, especially with four or more weeks between some City Council Meetings; and,

WHEREAS, KMC 7.15.020 provides no ability for the Administration to issue change orders to contracts or purchase orders, causing delays in projects or requests for Council approval/ratification after the fact; and,

WHEREAS, seeking approval again for the purchase of items for which funds were approved with the adoption of the annual budget is redundant and causes delays in the purchase of needed equipment, supplies and services; and,

WHEREAS, review of other municipal codes shows that most only require further action by councils/assemblies when the purchase amount exceeds the amount at which formal solicitation for the purchase was required; and,

WHEREAS, KMC 7.15.040 requires formal solicitation for any purchase of \$35,000 or more; and,

WHEREAS, increasing the amount in KMC 7.15.020 to \$35,000, the same amount for which formal solicitation is required by KMC 7.15.040, will reduce delays and after-the-fact approvals by Council; and,

WHEREAS, inclusion of provisions to accommodate change orders to contracts will increase the efficiency of operations when unforeseen circumstances are encountered; and,

WHEREAS, the annual budget process, the purchasing policies promulgated in KMC 7.15 and the proposed amended limits will ensure sufficient controls to protect the public interest remain; and,

WHEREAS, providing a procurement system with sufficient controls without overly burdensome requirements is needed for the efficient administration of the City and is in its best interest.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. Amendment of Section of Kenai Municipal Code: That Kenai Municipal Code, Section 7.15.020 is hereby amended as follows:

7.15.020 Purchases requiring Council approval.

(a) Every contract for, or purchase of, thirty-five [FIFTEEN] thousand dollars \$35,000.00 [(\$15,000.00)] or more of supplies, materials, equipment, professional or contractual services shall require the prior approval of the Council. The only exceptions will be:

- (1) Utility bills (i.e., electricity, gas, fuel, and telephone);
- (2) City’s routine investment purchasing;
- (3) Monthly payments for payroll deductions (i.e., income tax, F.I.C.A., retirement, and fringe benefits), including both employer’s and employee’s share;
- (4) Authorized debt; or
- (5) Monthly contracted janitorial service.

(b) All such exceptions will be paid when they fall due and payments will be ratified by Council at the next regular Council meeting.

(c) Purchase order amendments.

(1) Purchase order amendments may not be used to avoid procurement by the competitive procedures established under this chapter.

(2) A purchase order amendment may not be executed by administration without Council approval if the amendment will cause the purchase order, as amended, to exceed:

(i) Thirty-five thousand dollars \$35,000.00; or

(ii) One hundred fifteen percent 115% of the original purchase order amount if the original purchase order exceeded \$35,000.

Section 2. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 3. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	October 21, 2022



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Council Member James Baisden

DATE: August 31, 2022

SUBJECT: **Ordinance 3306-2022 Amending Kenai Municipal Code (KMC) 7.15.020, Purchases Requiring Council Approval.**

The purpose of this memo is to request your support for adoption of Ordinance 3306-2022 which will amend KMC 7.15.020. KMC 7.15.020 establishes thresholds for the types of purchases which require approval of the City Council prior to them being made. The \$15,000 or greater threshold requiring Council approval prior to the purchase has not increased since 2005 when it increased from \$2,500 to \$15,000.

The \$15,000 threshold is too restrictive, which delays the Administration in its efforts to provide services to the Citizens of Kenai. Limits are important to ensuring the public's interest is protected but should not be so restrictive as to limit the ability to effectively provide City services. In addition, KMC 7.15.020 is silent on change orders to contracts or purchase orders requiring additional council approval prior to issuance when the existing or amended contract amount exceeds the established threshold.

In preparing this Ordinance the limits of other governments were examined for comparative purposes. Municipal codes varied from least restrictive being the Kenai Peninsula Borough on which there is no limit on the Mayor's authority to contract or purchase to the City of Homer where no approval is needed for items specifically identified in the annual budget or \$10,000. The proposed change is modeled after the City of Wasilla's code which requires formal solicitation for purchases in excess of \$30,000, and allows contract or purchase order amendments up to 10% with no additional council action.

Proposed changes to KMC 7.15.020 will

1. Increase the threshold for purchases needing prior approval of Council to the same amount at which formal solicitation is required for purchase, \$35,000.
2. Add provisions for contract amendments which allow the Administration to increase PO's and contracts previously approved by Council by 15% without the need for additional Council action.

These proposed changes will maintain adequate controls and safeguards to protect the public while enhancing the Administration's ability to provide services to the citizens of Kenai. Your support is respectfully requested.



Sponsored by: Council Member Baisden

**CITY OF KENAI
ORDINANCE NO. 3307-2022**

AN ORDINANCE AMENDING KENAI MUNICIPAL CODE 7.25.020 – CITY BUDGET CONTROL, TO PROVIDE INCREASED FLEXIBILITY IN THE EXPENDITURE OF FUNDS AND MANAGEMENT OF CITY BUDGETS WHILE MAINTAINING ADEQUATE INTERNAL CONTROLS TO PROTECT THE PUBLIC’S INTEREST.

WHEREAS, the Kenai City Council adopts an annual budget which creates the legal authority to expend funds up to a fixed amount and within specific accounts by fund; and,

WHEREAS, amendments to the adopted budget are made by Council and Administration throughout the year within the specified limits of KMC 7.25.020; and,

WHEREAS, the limits on allowable administrative adjustments to the budget within KMC 7.25.020 were last amended by Ordinance 2120-2005, adopted on September 21, 2005; and,

WHEREAS, the \$5,000 limit on the authority of the City Manager to move funds in line item accounts imposed by KMC 7.25.020 is overly restrictive and limits the Administration’s ability to react to situations that arise during each budget year; and,

WHEREAS, waiting for Council action for budget adjustments with four or more weeks between some Council Meetings creates delays in the ability to provide essential services; and,

WHEREAS, the proposed amendments will not increase the authorized spending limit, the authority to increase this amount will remain the exclusive authority of Council, and the ability to transfer budget between different funds of the City is and will remain prohibited without an Ordinance of Council; and,

WHEREAS, the proposed amendments limit the Administration’s ability to move budgeted amounts between departments, within a fund, to \$10,000, twice the current limit of \$5,000; and,

WHEREAS, the proposed amendments will remove the now \$5,000 limit to move budgeted amounts between accounts within the same department of a fund; and,

WHEREAS, the proposed amendments will remove the monthly reporting requirement for amendments to capital project accounts, but the ability to increase the overall budget of a project will remain at the sole discretion of Council; and,

WHEREAS, the proposed amendments will increase the flexibility to initiate budget revisions, will enhance the Administration’s and Council’s ability to conduct business, will maintain sufficient controls to protect the public interest, and is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. Amendment of Section of Kenai Municipal Code: That Kenai Municipal Code, Section 7.25.020 is hereby amended as follows:

7.25.020 City budget control.

- (a) After approval by the Finance Director as to availability of unencumbered balances, transfers [IN AMOUNTS LESS THAN FIVE THOUSAND DOLLARS (\$5,000.00)] up to the amount of available funds may be made in line item accounts within [THE GENERAL FUND, SPECIAL REVENUE FUNDS, DEBT SERVICE FUNDS, ENTERPRISE FUNDS AND INTERNAL SERVICE FUNDS WITHOUT APPROVAL BY THE CITY COUNCIL] a department of a fund and by up to ten thousand dollars (\$10,000.00) between the accounts of a department within a fund. The City Clerk may make such transfers within the General Fund Department of the City Clerk, and the City Attorney may make such transfers within the General Fund Department of Law. The City Manager may make such transfers in all other areas except in the Legislative Department, which may be made by the Mayor or designee. The budgetary level of control will be the project level for Capital Project Funds. [OBJECT LEVEL TRANSFERS OF FIVE THOUSAND DOLLARS (\$5,000.00) OR MORE WITHIN A PROJECT WILL BE REPORTED TO THE COUNCIL ON A MONTHLY BASIS.]
- (b) The City Council, by resolution, may make transfers in any amounts of unencumbered balances of line item accounts within a Department or within a fund.
- (c) The City Administrator is directed to charge all disbursements to “cost centers” established by the budget. A “cost center” is de-fined as a provision for expenditure specified by the budget of the City of Kenai for a department or activity specifically so recognized.

Section 2. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 3. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	October 21, 2022



MEMORANDUM

TO: Mayor Gabriel and Council Members
FROM: Council Member James Baisden
DATE: August 31, 2022
SUBJECT: **Ordinance 3307-2022 Amending Kenai Municipal Code (KMC) 7.25.020, City Budget Control**

The purpose of this memo is to request your support for adoption of Ordinance 3307-2022 which will amend KMC 7.25.020. KMC 7.25.020 authorizes who may and under what circumstances transfers can be made in the City's annually adopted budget. Currently any budget transfers of \$5,000 or more requires the approval, by resolution, of the City Council except those for line items within capital projects for which revisions may be made in any amount within a project, but must be reported to Council monthly. The \$5,000 limit has not increased since 2005 when it increased from \$2,500 to \$5,000.

These limits are too restrictive and limiting, requiring numerous resolutions annually which inhibits the Administration in its efforts to provide services to the Citizens of Kenai. Limits are important to ensuring the public's interest is protected, but should not be so restrictive as to limit the ability to effectively provide City services.

In preparing this Ordinance the limits of other governments were examined for comparative purposes. City codes varied from least restrictive being Seward which allows its City Manager to move unlimited amounts within a fund to the City of Kenai's being most restrictive. The proposed change mirrors the City of Wasilla's code.

Propose changes to KMC 7.25.020 will

1. Limit the Administration's ability to move budget between departments of a fund to \$10,000. The limit is currently \$5,000 between accounts within a fund.
2. Allow for the city manager to move unlimited budgeted funds within a department of a fund.
3. Reduce the number of legislative items brought to Council for budget revisions which almost always pass by unanimous consent or a unanimous vote of Council.
4. Eliminate the need for reporting budget revisions between capital project accounts for which the budgetary control is unchanged at the project level.

The Authority to increase the budget will remain solely within Council's authority. These proposed changes will maintain adequate controls and safeguards to protect the public while enhancing the Administration's ability to provide services to the citizens of Kenai. Your support is respectfully requested.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3308-2022**

AN ORDINANCE ACCEPTING AND APPROPRIATING A GRANT FROM THE STATE OF ALASKA FOR THE PURCHASE OF LIBRARY MATERIALS.

WHEREAS, the Kenai Community Library received a FY 2023 Public Library Assistance grant of \$7,000 from the State of Alaska, Department of Education and Early Development, Division of Library, Archives & Museums; and,

WHEREAS, the funds will be used to purchase library materials; and,

WHEREAS, it is in the best interest of the City of Kenai to appropriate these grant funds for the purpose intended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept this grant in the amount of \$7,000 and to execute grant agreements and to expend the grant funds to fulfill the purpose and intent of this Ordinance.

Section 2. That the following budget revision is authorized:

General Fund:

Increase Estimated Revenues –
Library—State Grants \$7,000

Increase Appropriations –
Library—Books \$7,000

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022



MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Katja Wolfe, Library Director

DATE: August 29, 2022

SUBJECT: **Accepting and Appropriating a Grant for the Purchase of Library Materials**

The Library has been awarded an annual Public Library Assistance Grant by the State of Alaska, Department of Education and Early Development, Division of Library, Archives & Museums. As per the grant award, the amount of \$7,000 is to be used for the purchase of library materials.

The Library Director completes an application each year in order to receive these funds. Certain minimum standards must be met in order to receive this grant. These include reporting requirements on expenditures and collection statistics, the number of hours that the library is open to the public, minimum educational requirements for the Library Director and continuing education requirements.

Your consideration is appreciated.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3309-2022**

AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDS FROM THE PUBLIC LIBRARY ASSOCIATION AND AT&T FOR THE KENAI COMMUNITY LIBRARY’S PARTICIPATION IN THE PLA DIGITAL LITERACY WORKSHOP TRAINING INCENTIVE.

WHEREAS, the Kenai Community Library is one of 160 libraries nationwide selected to participate in the PLA Digital Literacy Workshop Incentive 2022-2023 program; and,

WHEREAS, the PLA Digital Literacy Workshop Training Incentive is offered by the American Library Association through its division the Public Library Association and supported by AT&T; and,

WHEREAS, the purpose of this incentive program is to expand digital literacy learning opportunities and help bridge the digital divide in our community; and,

WHEREAS, the library will offer instructor-led workshops that focus on basic yet essential digital literacy skills; and,

WHEREAS, funds from this incentive program will be used to purchase updated computer manuals, supplies for workshops (e.g., food, flash drives, and handouts), and computer equipment and supplies; and,

WHEREAS, it is in the best interest of the City of Kenai and the Kenai Community Library to appropriate these grant funds for the purpose intended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept funds in the amount of \$4,000 and to expend them as authorized by this ordinance and in line with the requirements of the incentive program.

Section 2. That the following budget revision is authorized:

General Fund:

Increase estimated revenues –	
Library—Miscellaneous Donations	\$4,000
Increase appropriations –	
Library—Books	\$500
Library—Operating and Repair Supplies	\$500
Library—Advertising	\$500
Library—Small Tools and Minor Equipment	\$2500

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares

that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022



MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Katja Wolfe, Library Director

DATE: August 29, 2022

SUBJECT: **PLA Digital Literacy Workshop Training Initiative**

The Kenai Community Library has been selected through a competitive application process to participate in the PLA Literacy Workshop Training Initiative, an education initiative created to expand digital literacy learning opportunities and help bridge the digital divide in our community.

Through this initiative, we will offer instructor-led workshops that focus on basic yet essential digital literacy skills. We are planning a program series for more general audiences and a program series specifically geared to the needs of our senior residents. The former will be presented at the library and the latter will be held at the senior center. Funds will be used to purchase updated computer manuals, supplies for the workshops (e.g., food, flash drives, and handouts), and computer equipment.

This program is made possible by the American Library Association through its division the Public Library Association and supported by AT&T.

Thank you for your consideration.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3310-2022**

AN ORDINANCE INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL FUND, POLICE DEPARTMENT, FOR THE RECEIPT OF A VEHICLE FORFEITED TO THE STATE OF ALASKA.

WHEREAS, the police department has use for a vehicle that has been forfeited to the State of Alaska and has been offered to the Kenai Police Department; and,

WHEREAS, the vehicle is valued at approximately \$30,000 and will be transferred to the City at no cost; and,

WHEREAS, it is anticipated that this vehicle will replace another vehicle currently used by the police department that was previously obtained in a similar fashion; however once accepted the vehicle may be used or traded for a different vehicle that will best suit the needs of the Department.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept this forfeited vehicle to be put to use or traded for another vehicle of similar value.

Section 2. That estimated revenues and appropriations be increased as follows.

General Fund

Increase estimated revenues – Forfeiture	\$30,000
 Increase appropriations – Police Department Machinery & Equipment	 \$30,000

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect upon adoption.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022



MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council
THROUGH: Paul Ostrander, City Manager
FROM: David Ross – Police Chief
DATE: August 29, 2022
SUBJECT: **Ordinance No. 3310-2022, Forfeited Vehicle**

The Kenai Police Department participates in the regional drug task force. The Department has consistently been able to get and replace the vehicles for use in that task force through State Forfeiture. Accepting this forfeiture vehicle will allow the replacement of a high mileage vehicle. This forfeited vehicle may be put to use or traded for a vehicle that best suits the needs of the Department. The estimated value of the vehicle is approximately \$30,000, and it will be transferred to the City at no cost.

I am respectfully requesting consideration of the ordinance accepting this vehicle forfeiture from the State.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3311-2022**

AN ORDINANCE DETERMINING THAT REAL PROPERTY DESCRIBED AS LOT 5, BLOCK 1, GUSTY SUBDIVISION ADDITION NO. 1, ACCORDING TO PLAT NO. 83-126 KRD, CITY-OWNED AIRPORT LAND LOCATED OUTSIDE THE AIRPORT RESERVE, IS NOT NEEDED FOR A PUBLIC PURPOSE, WAIVING KMC 22.05.095 METHODS OF SALE OR DISPOSAL AND AUTHORIZING THE SALE OF THE PROPERTY TO AARON SWANSON DBA FOREVER BUSINESS PLAZA LLC.

WHEREAS, the City of Kenai received a quitclaim deed from the Federal Aviation Administration (FAA) on December 1, 1963, to nearly 2,000 acres of land subject to certain restrictions, including that no property shall be used, leased, sold salvaged, or disposed of for reasons other than for airport purposes; and,

WHEREAS, the City of Kenai received a deed of release from the Federal Aviation Administration (FAA) on January 16, 1984, for Gusty Subdivision Addition No.1, subject to certain reservations and conditions, that protect the Airports continued use for airport purposes; and,

WHEREAS, the City has received a request to purchase Lot 5, Block 1, Gusty Subdivision Addition No. 1, according to Plat No. 83-126, from the current Lessee; and,

WHEREAS, KMC 22.05.110 – Determination as to need for public purpose, provides that the City Council, may determine whether land is no longer needed for public purpose; and,

WHEREAS, the Property is leased to Aaron Swanson, dba Forever Business Plaza, for private commercial use and is not needed for a public purpose; and,

WHEREAS, Resolution No. 2018-12 amended the City's Policy for sale of specific Airport Land Lots and the subject property is one of the properties addressed in the policy; and,

WHEREAS, Resolution No. 2018-12 did not authorize the sale of these lands but only a method for sale; and,

WHEREAS, Resolution No. 2018-12 had a sunset of July 6, 2021 however the prior, now deceased lessee, was unable to take advantage of the policy timely; and,

WHEREAS, the sale of this property under the same terms and conditions established by Resolution No. 2018-12 is in the best interest of the City and Airport and encourages new development and/or improvements to the property; and,

WHEREAS, all provisions of KMC 22.05.100 - Sale procedure, shall be followed; and,

WHEREAS, the provision of KMC 22.05.095, Methods of Sale or Disposal, are hereby waived in recognition of the City's prior policy regarding the parcel and unique circumstances of the prior lessee and is in best interest of the City; and,

WHEREAS, at their regular meeting on September 14, 2022, the Planning and Zoning Commission reviewed the sale application and recommended _____ by the City Council; and,

WHEREAS, at their regular meeting on September 8, 2022, the Airport Commission reviewed the sale application and recommended _____ by the City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. Form: That this is a non-code ordinance waiving KMC 22.05.095 – Methods of Sale or Disposal.

Section 2. Statement of Ownership: That the City of Kenai is the owner of Lot 5, Block 1, Gusty Subdivision Addition No.1, according to plat 83-126 KR, (the Property).

Section 3. Public Purpose and Best Interest Findings: That the Property is not needed for future public municipal or airport purposes. Under the Airport Layout Plan, the Property is designated for non-aviation commercial or light-industrial uses. The sale of the Property is in the best interests of the City and Airport, as it serves a purpose of continuing commercial growth and investment in the City.

Section 4. Authorization of Sale: That the Kenai City Council hereby authorizes the City Manager to sell the City-owned lands described as Lot 5, Block 1, Gusty Subdivision Addition No. 1, according to Plat No. 83-126, under the procedures and terms established for the sale of lands, as set forth in KMC 22.05.100 et seq. and subject to the following additional essential terms and conditions of sale [under the Policy for Sale of Specific Airport Leased Lands approved by City of Kenai Resolution No. 2018-12]:

a) The sale will be made through a negotiated sale to Aaron Swanson, dba Forever Business Plaza LLC, for a sum not less than fair market value of the land excluding lessee-constructed improvements as determined by an appraisal and a minimum new investment in the construction of new permanent improvements on the premises equal to 25% of the fair market value of the land within three (3) years of sale.

Section 5. Title: That title shall be conveyed by quitclaim deed. Any instrument conveying title to the Property shall include the conditions covenants and reservations as described Deed of Release, recorded in Book 227, Page 416 and 417 KR.

Section 6. Proceeds of Sale: That should a sale of the Property be finalized, all revenues from the sale shall be deposited in the Airport Land Sale Permanent Fund for use in the development, improvement, and operation of the Kenai Municipal Airport and as otherwise required in the Deed of Release dated December 12, 1984.

Section 7. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 8. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	October 21, 2022



MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Max Best, Interim Planning Director

DATE: September 14, 2022

SUBJECT: **Ordinance No. 3311-2022 - Determining that real property described as Lot 5, Block 1, Gusty Subdivision Addition No. 1, city-owned airport land located outside the airport reserve, is not needed for a public purpose and authorizing the sale of the property to Aaron Swanson, dba as Forever Business Plaza LLC**

The City has received a request to purchase the above City-owned leased land outside the Airport Reserve with substantial constructed leasehold improvements.

Aaron Swanson, dba Forever Business Plaza, LLC, is the current lessee of Lot 5, Block 1, Gusty Subdivision Addition No. 1, which was obtained by transfer on April 27, 2022. The current use is for an office building and includes substantial recent improvements to the building made by the Lessee. The 99-year lease term expires on October 10, 2082 and is in good standing.

On January 16, 1984, the Federal Aviation Administration (FAA), released the property for sale for other than airport purposes, allowing the property to be sold at fair market value. All revenues from the sale would be deposited in the Airport Land Sale Permanent Fund for use in the development, improvement, and operation of the Kenai Municipal Airport as required by the Deed of Release.

Resolution No. 2018-12 amended the City's Policy for sale of specific Airport Land Lots and the subject property is one of the properties addressed in the policy. The policy did not provide for the sale of any specific property, but only a method for such sale, subject to the Ordinances of the City of Kenai. The policy was in effect until July 6, 2021. Any specific sale must be separately approved by the City Council, which may approve or disapprove any such sale, in its sole discretion. Administration recommends sale of the property under the same terms and conditions established by Resolution No. 2018-12 to encourage responsible growth and development to support a thriving business community. Aaron Swanson, dba Forever Business Plaza, LLC, requests to purchase the property at fair market value of the land excluding lessee-constructed improvements as determined by an appraisal and a minimum new investment in the construction of new permanent improvements on the premises equal to 25% of the fair market value of the land within three (3) years of sale.

Aaron Swanson, dba Forever Business Plaza, LLC, submitted a good-faith deposit and the City ordered an appraisal to be performed on the property as-if vacant. The fair market value of the property of \$135,000 was determined by an appraisal performed by MacSwain Associates, LLC on May 18, 2021. Based on the amount of the appraisal, Aaron Swanson, dba Forever Business Plaza, LLC, is committing to invest a minimum of \$33,750 in the construction of new permanent improvements on the premises.

If the City Council approves the sale, City Administration may proceed with a sale.

Thank you for your consideration.

Attachment A: Aerial Map of 11568 Kenai Spur Highway

Attachment B: Application

Attachment C: Resolution 2018-12





Basic Tools

Tool Labels X



☆ 04327015

PARCEL ID: 04327015
Municipal Commercial

Owner:
KENAI CITY OF
210 FIDALGO AVE STE 200
KENAI, AK 99611

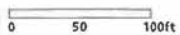
Legal:
T 5N R 11W SEC 5 SEWARD MERIDIAN
KN 0840183 GUSTY SUB ADDN NO 1
AMD LOT 5 BLOCK 1

Physical Addresses:
11568 KENAI SPUR HWY

[Add to Results](#) [View Additional Details](#)
[Run a Report](#)



Lot: 5, Block: 1, Gusty Subdivision Add. No. 1
K E N A



RECEIVED
CITY OF KENAI
6/28/22 DATE
PLANNING DEPARTMENT



City of Kenai
Competitive Land
Purchase Application

2022-18

Application Date: 6/28/2022

Applicant Information

Name of Applicant:	Aaron Swanson						
Mailing Address:	37190 Aspenwood Ct	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	Home Phone: 907-252-3069		Work/ Message Phone:				
E-mail: (Optional)	aaronswanson907@gmail.com						
Name to Appear on Deed:	Forever Business Plaza						
Mailing Address:	37190 Aspenwood Ct	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	Home Phone: 907-252-3069		Work/ Message Phone:				
E-mail: (Optional)							
Type of Applicant:	<input type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Government <input checked="" type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other _____						

Property Information

Legal description of property (or, if subdivision is required, a brief description of property):
Lot 5 Blk 1 Gusty Sub

Does the property require subdivision? (if Yes, answer next question) YES NO

Subdivision costs are the responsibility of the applicant unless the City Council determines a subdivision serves other City purposes

1. Do you believe the proposed subdivision would serve other City purposes? YES NO

2. If determined it does not, applicant is responsible for all subdivision costs. Initials _____

If an appraisal is required to determine the minimum price on the land, applicant is responsible for the deposit to cover costs associated with appraisal. If a sale is approved, the cost of the appraisal will be either refunded or credited toward the purchaser. Initials *AS*

It is the responsibility of the applicant to cover costs associated with title insurance. Initials *AS*

It is the responsibility of the applicant to cover recording costs associated with the purchase. Initials *AS*

The purchaser must pay not less than 50% of the costs of sale associated with a sale at not less than fair market value as determined by an appraisal or 100% of the costs of sale if the sale is at less than fair market value. Initials *AS*

Requested closing date: *February 2023*

Proposed Use and Improvements

Proposed Use (check one): Aeronautical Non-Aeronautical

Type of Land Use: Commercial Residential Industrial Public/Institutional Tidelands Other

Do you plan to construct new or additional improvements? (if Yes, answer next 3 questions) YES NO

1. What is the estimated value of the improvement? *Repair existing structure both interior & exterior*

2. What is the type of improvement? Building Land Other: *\$100,000 plus*

3. What are the dates construction is estimated to commence and be completed? (Generally within two years)

Estimated Start Date: *Summer 2022* Estimated Completion Date: *Summer 2023*

If you do not plan to construct new improvements, how does the proposed use benefit the community?

Describe the proposed business or activity intended:

existing businesses include hair salon & dog groomer. Additional space for

How does the proposed purchase benefit the City of Kenai and support a thriving business, residential, recreational, or cultural community? *future tenants*

Bring older run down building back to life with potential new tenants incoming along with current business tenants

Submitting an application to purchase does not give the applicant a right to purchase or use the land requested in the application. If the land is sold in a competitive public sale set in response to this Competitive Land Purchase Application to anyone other than the applicant, the application fee and any deposit made to cover the cost of appraisal or subdivision will be refunded in total to the applicant. If the land is sold to the applicant, any deposit, after deducting the City's expenses, will be credited to the purchaser at closing.

Signature:  Date: *6/28/2022*

Print Name: Aaron Swanson Title: owner

For City Use Only:	Date Application Fee Received: <i>6/28/22</i>
Account: <input type="checkbox"/> General Fund <input checked="" type="checkbox"/> Airport Fund	Date Application Determined Complete: _____
Method of Sale (check one):	30-Day Notice Publication Date: _____
<input type="checkbox"/> Public Auction <input type="checkbox"/> Over-the-Counter	City Council Ordinance: _____
<input type="checkbox"/> Leased Land with Option to Purchase	Account Number: _____



Sponsored by: Mayor Brian Gabriel
Vice Mayor Tim Navarre
Council Member Henry Knackstedt

CITY OF KENAI

RESOLUTION NO. 2018-12

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, APPROVING AN AMENDED POLICY FOR THE SALE OF TEN SPECIFIC CITY-OWNED AIRPORT FUND LEASED LANDS OUTSIDE THE AIRPORT RESERVE WITH SUBSTANTIAL CONSTRUCTED LEASEHOLD IMPROVEMENTS.

WHEREAS, the City of Kenai received a Quitclaim Deed through the Federal Aviation Administration (FAA) on December 1, 1963, to nearly 2,000 acres of land subject to certain restrictions, including that no property shall be used, leased, sold, salvaged, or disposed of for reasons other than for Airport purposes; and,

WHEREAS, in 2016, the City identified ten specific leases on Airport lands, as identified on Attachment A, that were, or were intended to be outside the Airport Reserve in the very near future, on which the lessees had constructed substantial improvements; and,

WHEREAS, the ten leased properties have been, or are available to be released for sale by the FAA; and,

WHEREAS, the City Council passed Resolution No. 2016-32, approving and adopting a policy for ten specific Airport owned leased lands on July 6, 2016 to provide an equitable and uniform purchase procedure for the current lessees to purchase the specific ten Airport-owned parcels; and,

WHEREAS, since the policy was adopted, none of the current lessees subject to the policy have elected to purchase the property they lease from the City; and,

WHEREAS, Administration formed a working group of City staff involved in land management to evaluate and develop recommendations related to the City's land sale and lease program to encourage growth, development, and a thriving business community through reasonable and responsible land policies and practices; and

WHEREAS, an alternative whereby the net present value of the leasehold is partially offset by the economic benefits provided by existing thriving businesses in the City such as job creation, economic activity, and stimulation of the business climate meets these goals; and,

WHEREAS, a third alternative that encourages investment in existing businesses on these leaseholds meets these goals as well; and,

WHEREAS, it is in the best interest of the City, Airport and lessees to approve an amendment to the temporary policy that provides alternative methods for the sale of these properties consistent with a City-wide land management approach.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the following policy adopted for the specific ten City-owned leased lands as identified on Attachment A attached hereto shall be amended as follows:

POLICY FOR SALE OF SPECIFIC AIRPORT LEASED LANDS

Purpose: To implement a policy regarding the sale of Airport owned property outside the Airport reserve currently leased with substantial leasehold improvements. This Policy is intended to provide an equitable and uniform purchase procedure for the current Lessees to purchase the specific ten Airport owned parcels identified in Attachment A.

Disclaimer: This Policy does not provide for the sale of any specific property, but only a method for such sale, subject to the Ordinances of the City of Kenai. Any specific sale must be separately approved by the City Council, which may approve or disapprove any such sale, in its sole discretion. It is intended that this Policy remain in effect [FOR A PERIOD OF NO MORE THAN FIVE YEARS] until July 6, 2021, however, it is recognized by the City Council and Administration, and should be recognized by any affected Lessee, that the City Council of Kenai may amend, modify, or rescind this Policy, or applicable City Ordinances which could affect this Policy, at any time.

Sale Conditions:

A. If a sale is approved by the City Council of any one of the ten specified leased properties, the sales price acceptable to the City shall be one of the following alternatives:

i. 125% of [A] the fair market value of the [RAW] land excluding lessee-constructed improvements as determined by an appraisal[.]; or,

ii. The fair market value of the land excluding lessee-constructed improvements as determined by an appraisal for properties in which minimum development requirements have been met according to the following calculation:

Value of Improvements greater than or equal to four times the Appraised Fair Market Value of the Land

; or,

iii. The fair market value of the land excluding lessee-constructed improvements as determined by an appraisal and a minimum new investment in the construction of new permanent improvements on the premises equal to 25% of the fair market value of the land within three (3) years of sale.

B. In order for such sale to occur subject to this Policy, the following conditions must be met:

1. Lessee has constructed lease-hold improvements exceeding current appraised value of [AIRPORT] the leased property.
2. Lessee is current with all financial obligations with the City.
3. Lessee will pay the City to perform a survey (if required).
4. Lessee will pay for the City to obtain an appraisal.
5. Property is outside of the Airport Reserve Boundary.
6. Property has been released for sale by the FAA.
7. Property is determined as not needed for a public purpose.

[B]C. Any conflicting provision, procedure, law or policy provided in Kenai City Code has precedent over this Policy.

Section 2. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 21st day of February, 2018.



BRIEN GABRIEL, MAYOR

ATTEST:



Jamie Heinz, City Clerk





"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
 Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Kenai City Council

FROM: Mayor Brian Gabriel
 Vice Mayor Tim Navarre
 Council Member Henry Knackstedt

DATE: February 13, 2018

SUBJECT: **Resolution No. 2018-12 – Amending a Policy for the Sale of Ten Specific City-Owned Airport Fund Leased Lands**

In 2016, the City Council passed Resolution No. 2016-32, approving and adopting a policy for City-owned leased lands in a distinct land management group to provide an equitable and uniform purchase procedure for those Lessees to purchase the property they lease from the City at 125% of the fair market value of the land. The ten specific City-owned Airport Fund parcels are located outside the Airport Reserve and the lessees have completed development requirements pursuant to their lease with the City.

Resolution No. 2018-12 amends the policy approved and adopted by Resolution No. 2016-32 by providing two alternative methods for the sale of these properties consistent with the City's new City-wide land management approach. These alternatives encourage investment in existing businesses on leaseholds, avoid land speculation, and recognizes that capital investments made by existing businesses in the City, have created jobs, increased economic activity, and stimulated the business environment.

The first added alternative allows for a sale of the land at fair market value to lessees that have met a minimum development requirement. The minimum development is calculated at four times the appraised fair market value of land. Four times the fair market value of the land represents the investment amount that equals or exceeds the net present value of leasing the land by quantifying the economic value of the investment to the City. Building valuation data as published by the International Code Council was also utilized to estimate construction costs to assure that the capital investment required is realistic. For example, land appraised at \$100,000 or less requires a minimum development of \$400,000.



Page 2 of 2
Resolution No. 2018-12

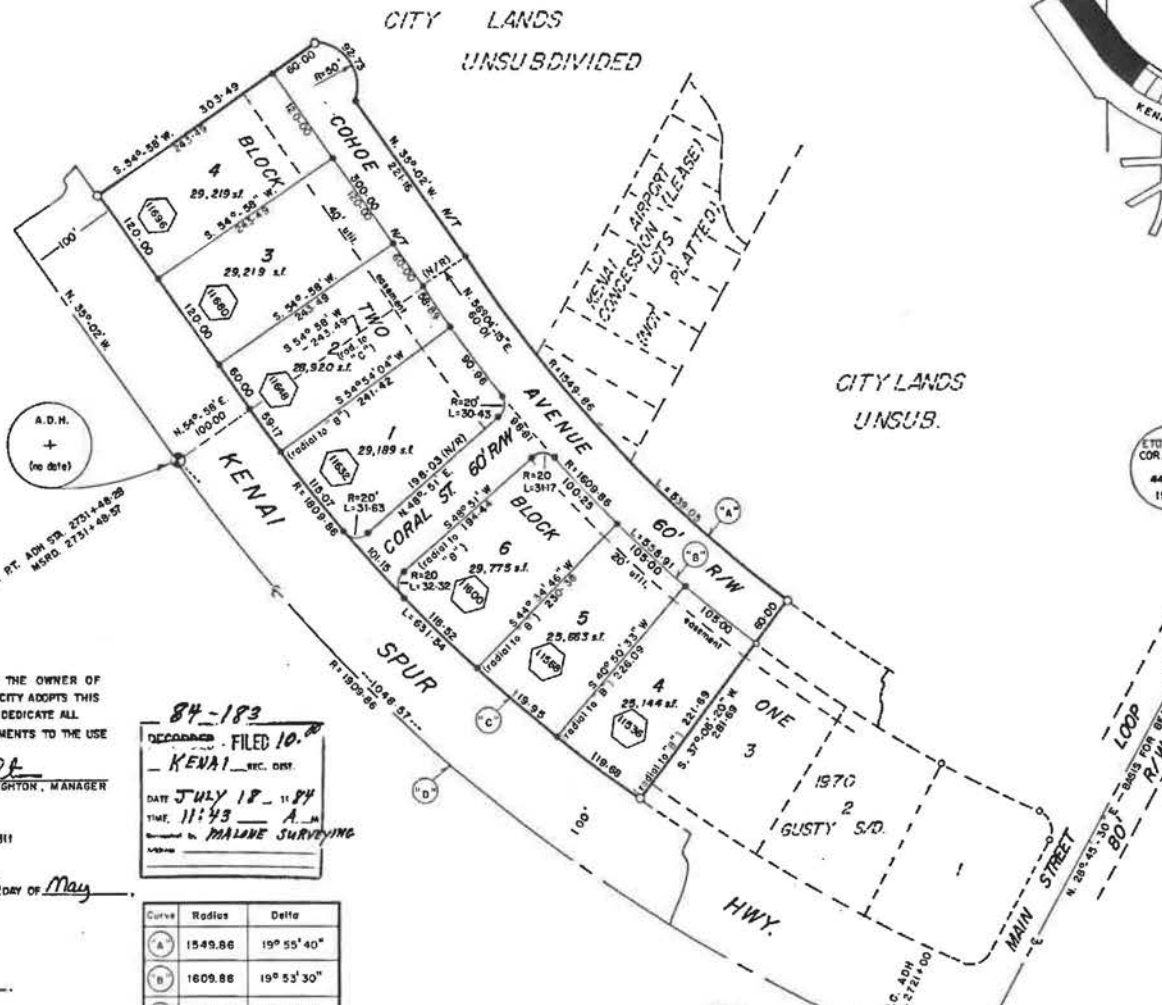
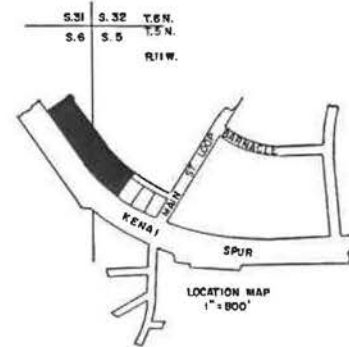
The second added alternative allows for a sale of the land at fair market value with required minimum new investment in the construction of new improvements such as storefront improvements, building remodels, or parking lot improvements equal to 25% of the fair market value of the land within three years of sale. For example, land appraised at \$100,000 would require new investment equal to \$25,000.

Resolution No. 2018-12 also makes minor changes to the policy to clarify appraisal instructions and conditions that must be met in order for a sale to occur so that the policy is consistent with the City Code and land practices. In particular, City land appraisals are performed with the assumption that the land is vacant and unencumbered by the lease, lands deeded to the City by the FAA must be released for sale, and land must be determined as not needed for a public purpose.

Like the prior Resolution in 2016, this Resolution does not authorize the sale of any property, but instead establishes a methodology for sale should the lessee desire to purchase the property and Council determine that it is in the City's best interest to sell the property,



Attachment A



83-126
 RECORDED - FILED 10.00
 Kenai sec. 07
 DATE 6.29 1983
 TIME 8:30 A.M.
 Surveyed by Malone Surveying
 Address Kenai

A.D.H.
 +
 (no date)
 P.O. BOX 578 2701-448-28
 MEMO 2731-448-57

CERTIFICATE OF OWNERSHIP & DEDICATION
 I HEREBY CERTIFY THAT THE CITY OF KENAI IS THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, AND THE CITY ADOPTS THIS PLAN. I FURTHER CERTIFY THAT THE CITY DOES HEREBY DEDICATE ALL RIGHTS OF WAY TO PUBLIC USE, AND GRANTS ALL EASEMENTS TO THE USE SHOWN.

W. J. Brighton
 WILLIAM J. BRIGHTON, MANAGER
 CITY OF KENAI
 BOX 580
 KENAI, AK. 99611

NOTARY'S ACKNOWLEDGMENT FOR WILLIAM J. BRIGHTON
 SWORN AND SUBSCRIBED TO BEFORE ME THIS 10th DAY of May 1983

1983
 Dana Th. Munkelbauer
 NOTARY PUBLIC FOR ALASKA

MY COMMISSION EXPIRES 9-24-85

PLAT APPROVAL
 THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JUNE 9, 1981

KENAI PENINSULA BOROUGH
 BY: Steve Thompson
 AUTHORIZED OFFICIAL

84-183
 RECORDED - FILED 10.00
 - KENAI - sec. 07
 DATE JULY 18 11:43 A.M.
 Surveyed by MALONE SURVEYING

Curve	Radius	Delta
(A)	1549.86	19° 55' 40"
(B)	1609.86	19° 53' 30"
(C)	1809.86	19° 59' 35"
(D)	1909.86	31° 27' 25"

I HEREBY CERTIFY THAT THE FOLLOWING CHANGES HAVE BEEN MADE & THAT NO OTHER CHANGES WERE MADE:
 1. CURVES LABELED - "A", "B", "C" & "D"
 2. CURVE TABLE ADDED
 3. BEARING OF LOT LINE BETWEEN L-4 & L-5, BLK. 1; AMENDED FROM S 40° 50' 30" W TO S 40° 50' 33" W.
 4. BEARING OF LOT LINE BETWEEN L-5 & L-6, BLK. 1; AMENDED FROM S 44° 54' 30" W TO S 44° 54' 04" W.
 5. DISTANCE OF LOT LINE BETWEEN L-4 & L-5, BLK. 1; ADDED 226.03.
 6. BEARING OF LOT LINE BETWEEN L-1 & L-2, BLK. 2; AMENDED FROM S 54° 54' W TO S 54° 54' 04" W.
 7. LINE OF L-4 & L-5, BLK. 1, LABELED AS RADIAL TO CURVE "B".
 8. LINE OF L-5 & L-6, BLK. 1, LABELED AS RADIAL TO CURVE "B".
 9. S.E. R.O.W. LINE OF CORAL STREET; LABELED AS RADIAL TO CURVE "B".
 10. RADIAL LINE (DASHED) SHOWN WITHIN LOT 2, BLK. 2.

11. LINE FROM RT. OF CURVE "A" TO RT. OF CURVE "B" LABELED AS NOT RADIAL (N/R).
 12. S.E. BOUNDARY LINE BETWEEN LOTS 3 & 4, BLK. 1, LABELED AS RADIAL TO CURVE "B".
 F. MALONE, 631-5
 DATE 7/18/84



AMENDED
GUSTY SUBDIVISION ADDITION No. 1
 LOCATED WITHIN THE NW 1/4 SEC. 5, and THE NE 1/4 SEC. 6, T.5N., R.11W., S.M., City of Kenai, Alaska, containing 6.054 ac., m/1.



CITY OF KENAI
 BOX 580,
 KENAI, ALASKA 99611

MALONE SURVEYING
 BOX 566
 KENAI, ALASKA 99811

DATE 5/10/83

- = 1 1/2" diam. coated rebar set
 - = 3/8" x 24" rebar set
 - ⊙ = 5/8" rebar found
 - ⊕ = Brass cap monument found
 - N/T = Line not tangent to curve
- NOTE: ACCESS TO THESE LOTS FROM THE KENAI SPUR HWY. IS PROHIBITED. ACCESS PERMITTED FROM COHOE AVE. ONLY.
- ⊙1600 = STREET ADDRESS

1" = 100'

DEED OF RELEASE

This Instrument, a Deed of Release, made by the United States of America, acting by and through the Manager, Airports Division, Alaskan Region, Federal Aviation Administration, pursuant to the authority contained in Public Law 81-311 (63 Stat. 700), as amended, to the City of Kenai, a body politic under the laws of the State of Alaska, Witnesseth:

WHEREAS, the United States of America, pursuant to the provisions of the Federal Property and Administration Act of 1949 (83 Stat. 377) and the Surplus Property Act of 1944 (58 Stat. 765), as amended, by instrument entitled, "Quitclaim Deed", dated December 1, 1963, did remise, release, and forever quitclaim to the City of Kenai in and to certain real property located near Kenai, Alaska, under and subject to the reservation, exceptions, restrictions, and conditions contained in the Deed, and

WHEREAS, the City of Kenai has requested the Administrator of the Federal Aviation Administration to release an area of land hereinafter described, from all conditions, reservations, and restrictions contained in said "Quitclaim Deed" to permit the long-term lease for nonairport purposes of said property exclusively for development, improvement, operation, and/or maintenance of the Kenai Municipal Airport, and

Whereas, the Administrator of the Federal Aviation Administration, under and pursuant to the powers and authority contained in Public Law 81-311 (3 Stat. 700) is authorized to grant a release from any of the terms, conditions, reservations, and restrictions contained in, and to convey, quitclaim, or release any right or interest reserved to the United States by any instrument of disposal under which surplus airport property was conveyed to a non-Federal public agency pursuant to Section 13 of the Surplus Property Act of 1944 (58 Stat. 765); and

WHEREAS, the Administrator of the Federal Aviation Administration has determined that said land no longer serves the purpose of which it was transferred, and that such property can be used or leased by the City of Kenai for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Kenai Airport; and

WHEREAS, the City of Kenai, by City Ordinances No. 612-80, as amended, and No. 711-81, as amended, have established an acceptable procedure for disposing, through lease, of said property;

NOW, THEREFORE, in consideration of the benefits to accrue to the United States and to the civil aviation, the United States of America, acting by and through the Administrator of the Federal Aviation Administration, and pursuant to the authority contained in Public Law 81-311 (63 Stat. 700) and applicable rules, regulations, and orders, hereby consents to the release and subsequent lease of the hereinafter described property by the City of Kenai in accordance with the procedures established by City Ordinances No. 612-80, as amended, and No. 711-81, as amended.

Legal Description

All that portion of the Kenai Airport Lands known as Gusty Subdivision Addition No. 1 (Tract G-3), within the NW 1/4 of Section 5 and the NE 1/4 of Section 6, T5N, R11W, S.M. Alaska. This Tract contains 6.054 acres, more or less and is depicted in red on the plat recorded 6-29-83 (83-126), attached to and made a part hereof.

This release is granted subject to the following conditions:

1. The instrument used to lease or sale the hereinabove described property shall expressly include the following reservations and covenants:

- A. There is hereby reserved to the City of Kenai, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used or navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on the Kenai Airport.
- B. The Lessee by accepting this conveyance expressly agrees for itself, its heirs, representatives, successors, and assigns that it will not erect nor permit the growth of any tree on the land conveyed hereunder which would be an airport obstruction within the standards established by the Federal Aviation Administration. In the event the aforesaid covenant is breached, the City of Kenai reserves the right to enter on the land conveyed hereunder and to remove the offending structure or object and to cut the offending tree, all of which shall be at the expense of the Lessee, or its heirs, successors, or assigns.
- C. The Lessee, by accepting this conveyance expressly agrees for itself, its heirs, representatives, successors, and assigns that it will not make use of said property in any manner which might interfere with the landing and taking off of aircraft from said Kenai Airport, or otherwise constitute and airport hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter on the land conveyed hereunder and cause the abatement of such interference at the expense of the Lessee.

2. All covenants herein contained shall run with the land and shall insure to the benefit of, and be binding upon, the heirs, representatives, successors, and assigns to the parties hereto.

3. In the event that any of the terms, conditions, reservations, and restrictions upon or subject to which the property is disposed of are not met, observed, or complied with, all of the property so disposed of or any portion thereof shall, at the option of the United States, revert to the United States and its then existing condition.

4. In the event, the subject property is needed or required in the future for airport operations, construction or management, the FAA will not participate in the acquisition of the lease hold interest of this property.

5. The United State resumes the right to review the proposed lease agreement prior to execution of said lease agreement.

IN WITNESS WHEREOF, the United States of America has caused this instrument to be executed as of the 29th day of December 1983.

UNITED STATES OF AMERICA

The Administrator of the Federal Aviation Administration

by: Rabie B. Strickland
Manager, Airports Division, Alaskan Region

Accepted this 12th day of December 1983 by the City Manager of the City of Kenai.

84-000464

11.00

by: W. J. Bright
Title City Manager

RECORDED-FILED
KENAI REC.
DISTRICT

Jan 16 11 02 AM '84
REQUESTED BY City of Kenai

MACSWAIN ASSOCIATES LLC

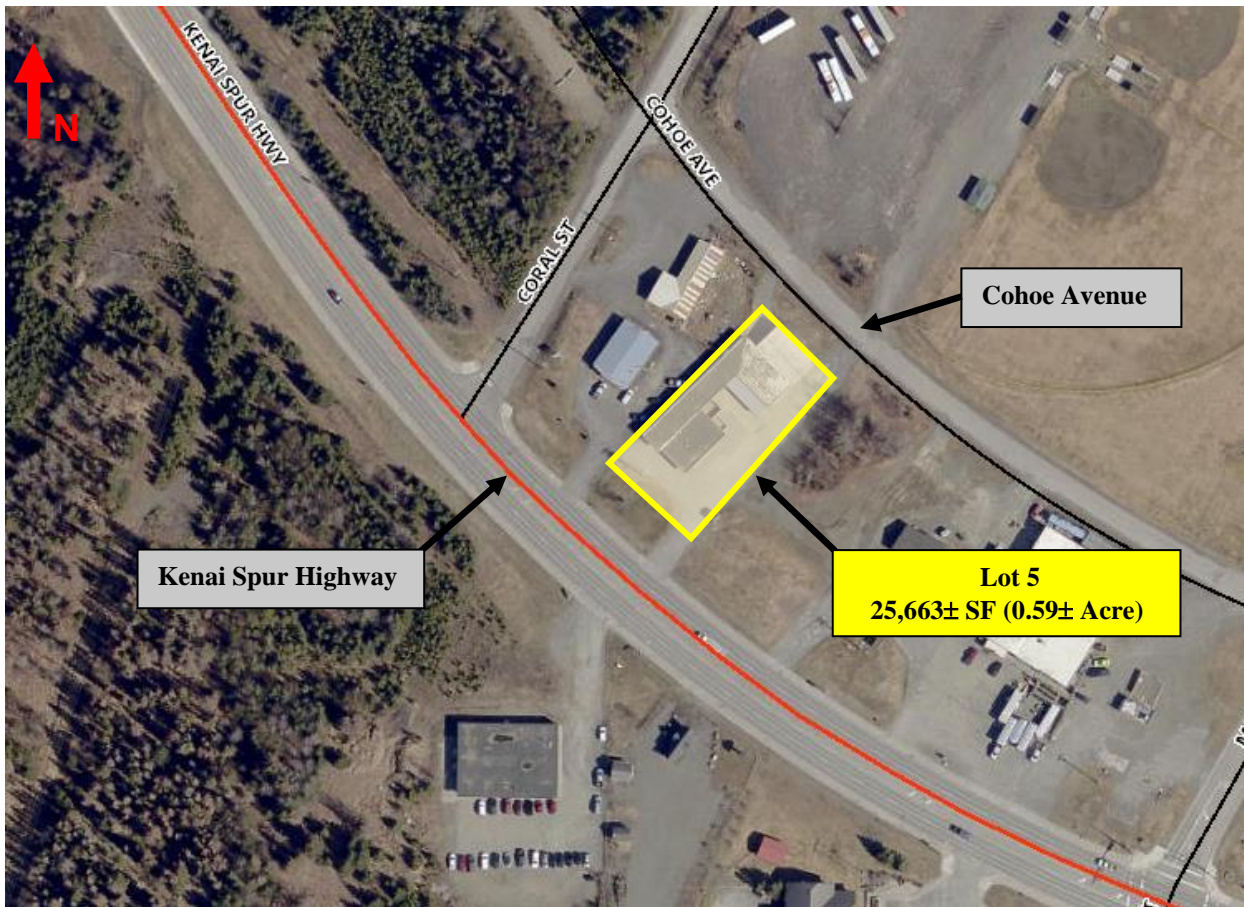
4401 Business Park Boulevard, Suite 22, Anchorage, Alaska 99503

APPRAISAL REPORT

Kenai Lot: 25,663± SF (0.59± Acre)

Lot 5, Block 1, Gusty Subdivision

Kenai, Alaska



Date of Value: May 16, 2022

File No. 22-3698

Submitted To:

Ryan Foster, Planning Director
City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611

MacSwain Associates LLC

4401 Business Park Blvd., Suite 22
 Anchorage, Alaska 99503
 Phone: 907-561-1965
 Fax: 907-561-1955
 s.macswain@macswain.com

June 15, 2022

Ryan Foster, Planning Director
 City of Kenai
 210 Fidalgo Avenue
 Kenai, AK 99611

Re: Kenai Lot: 25,663± SF (0.59± Acre)
 Lot 5, Block 1, Gusty Subdivision
 Kenai, Alaska

Dear Mr. Foster:

We have prepared an *Appraisal Report* of the above-referenced lot located in Kenai, Alaska. The appraised parcel contains 25,663± square feet or 0.59± acre. At the request of the client, we disregard the improvements and land lease and appraise only the subject land. The type of value estimated is *market value*. The property rights appraised is the *fee simple* estate. The report is prepared in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP).

Based on the data, reasoning, and analysis that follows, the market value of the appraised property, as of May 16, 2022, is estimated as follows.

ONE HUNDRED THIRTY FIVE THOUSAND DOLLARS

\$135,000

Your attention is directed to the Assumptions Limiting Conditions of this report located in the addendum. We also direct your attention to the Statement of COVID-19 in the addendum. We hope the appraisal report assists your evaluation of the properties. If you have any questions regarding this report, please contact this office.

Respectfully submitted,



Steve MacSwain, MAI
 State of Alaska Certificate No. 42

Appraiser Certification

The undersigned certifies that to the best of their knowledge and belief:

- ➔ The statements of fact contained in this report are true and correct.
- ➔ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- ➔ We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- ➔ We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- ➔ MacSwain Associates, LLC previously performed services as an appraiser on the subject property in September 2021.
- ➔ Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- ➔ Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- ➔ The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- ➔ The reported analyses, opinion, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- ➔ The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- ➔ Dwayne Roberts with MacSwain Associates, LLC inspected the appraised property on May 16, 2022. Steve MacSwain, MAI has previously inspected the property.
- ➔ Dwayne Roberts provided significant real property appraisal assistance to the person signing this certification.
- ➔ As of the date of this report, Steve MacSwain, MAI, is a certified General Real Estate Appraiser in the State of Alaska and has completed the education requirements through June 2023.

- ➔ As of the date of this report, Steve MacSwain, MAI has completed the Standards and Ethics Education requirements for Designated Members of the Appraisal Institute.
- ➔ As of the date of this report, Steve MacSwain, MAI has completed the continuing education requirements for Designated Members of the Appraisal Institute.
- ➔ As of the date of this report, Steve MacSwain, MAI is a certified General Real Estate Appraiser in the State of Alaska and has completed the education requirements through June 2023.



Steve MacSwain, MAI
State of Alaska Certificate No. 42

6/15/22
Date

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Transmittal Letter
Appraiser Certification
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Chapter 6: Land Valuation - Sales Comparison Approach **22**

Addendum

- Assumptions and Limiting Conditions
- Statement on COVID-19
- Short Form Agreement
- Appraiser Qualifications

Appraisal Summary

Value Type:	Market value
Property Type:	Commercial
Property Rights Appraised:	Fee simple estate
Location:	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road, Kenai, Alaska
Legal Description:	Lot 5, Block 1, Gusty Subdivision
Tax Parcel No:	043-270-15
Physical Address:	11568 Kenai Spur Highway
Property Owner:	City of Kenai (per KPB)
Zoning:	Central Mixed-Use District (CMU)
Site Description:	Nearly-rectangular shaped lot containing 25,663± square feet or 0.59± acre
Topography:	Level and near grade with surrounding streets and properties
Frontage/Exposure:	120± feet of Kenai Spur Highway frontage and 105± feet of Cohoe Avenue frontage
Access:	Access via paved ingress/egress from Kenai Spur Highway on southern boundary and Cohoe Avenue, a gravel road on northern boundary
Utility Service:	All public utilities available
Soil and Subsurface Conditions:	Based on observations of surrounding development, soils appear to be suitable for development.
Hazardous Substances:	None observed or known, parcel is appraised as if “environmentally clean”
Wetland Designation:	None
Flood Hazard Restrictions:	Zone D, an area of undetermined, but possible flood hazard
Easements and Restrictions:	20-foot utility easement along north boundary

Sale/Lease History:	The leasehold interest was assigned from Mary Jane Doyle and Carolyn Lucille Doyle to Don Moffis and Joann Doyle in 2019. No details of this transaction were provided.
Highest and Best Use:	Commercial
Extraordinary Assumption:	None
Hypothetical Condition:	None
Date of Property Inspection:	May 16, 2022
Effective Appraisal Date:	May 16, 2022
Date of Report:	June 15, 2022

Market Value Estimate:	\$70,000 (\$2.78/SF)
-------------------------------	-----------------------------

Subject Property Photographs

Date: May 16, 2022

Taken By: Dwayne Roberts



Northeast view of property from Kenai Spur Highway



North view of property from Kenai Spur Highway

Subject Property Photographs

Date: May 16, 2022

Taken By: Dwayne Roberts



Southwest view of property from Cohoe Avenue



South view of property from Cohoe Avenue

Chapter 1: Definition of the Appraisal Problem

Overview	We prepare an <i>Appraisal Report</i> that analyzes a 25,663± square foot (0.59± acre) lot in Kenai, Alaska. At the request of the client, we disregard the improvements and appraise only the subject land. The type of value estimated is <i>market value</i> . The report is intended to comply with the <i>Uniform Standards of Professional Appraisal Practice</i> (USPAP).
Value Type	Market value
Client	City of Kenai
Intended Use of Appraisal Report	Assist with a potential sale of the property
Intended User of Appraisal Report	City of Kenai
Property Inspection Date	May 16, 2022
Effective Appraisal Date	May 16, 2022
Date of Report	June 15, 2022
Identification of Real Estate Appraised	The appraised property is an improved lot owned by the City of Kenai. At the request of the client, we disregard the improvements and appraise only the land. The subject property is located on the north side of Kenai Spur Highway between Coral Street and Main Street Loop Road in Kenai, Alaska. The subject's physical address is 11568 Kenai Spur Highway and identified as Parcel ID 043-270-15 by the City of Kenai.

Definition of Market Value

The type of value estimated is market value. Market value is defined as follows.

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. buyer and seller are typically motivated;*
- b. both parties are well informed or well advised, and acting in what they consider their own best interests;*
- c. a reasonable time is allowed for exposure in the open market;*
- d. payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and*
- e. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.¹*

Property Rights Appraised

We estimate the market value of the fee simple estate, which is defined as follows.

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.²

Legal Description

Per DNR records, the legal description is as follows:

Lot 5, Block 1, Gusty Subdivision, Kenai Recording District, Third Judicial District, State of Alaska.

¹ *Appraisal of Real Estate*, Fifteenth Edition (2020), by the Appraisal Institute, p. 49.

² *Appraisal of Real Estate*, Fifteenth Edition (2020), by the Appraisal Institute, p. 60.

Property Owner Public Records indicate the owner of the appraised property is as follows.

City of Kenai
210 Fidalgo Avenue, Suite 200
Kenai, AK 99611

Assessed Value The table below summarizes the historical KPB property assessment for the appraised property.

KPB Historical Assessed Value (043-270-15)

Year	Land	Improvements	Total
2022	\$105,300 (\$4.10/SF)	N/A	\$105,300
2021	\$126,400 (\$4.93/SF)	N/A	\$126,400
2020	\$120,400 (\$4.69/SF)	N/A	\$120,400

Three Year Sale History The leasehold interest was assigned from Mary Jane Doyle and Carolyn Lucille Doyle to Don Moffis and Joann Doyle in 2019. No details of this transaction were provided.

Report Type and Methodology This *Appraisal Report* develops the sales comparison approach to estimate market value. Neither the cost nor the income capitalization approach reflects market behavior for vacant land. Qualitative techniques are used to measure differences between the comparable sales and the subject. The appraisal report is a summary of the appraisers’ data, analyses, and conclusions with supporting documentation retained on file.

Scope of Appraisal Dwayne Roberts of MacSwain Associates, LLC performed the inspection of the appraised property and assisted Steve MacSwain, MAI with data collection and analysis. Steve MacSwain, MAI administered the appraisal process, reviewed draft appraisals, and concurred with an opinion of value. Preparation of this report encompassed the following scope of work that concluded with an opinion of market value.

- ➔ Inspected the appraised property on May 16, 2022;
- ➔ Discussed the property with Ryan Foster, Planning Director with the City of Kenai;

- Reviewed KPB assessor map 043-270-15;
- Reviewed plat 83-126;
- Reviewed City of Kenai’s Official Zoning Map and zoning codes;
- Gathered data from the KPB Assessor’s office and State of Alaska Recorder’s office regarding ownership, assessments, and general property information;
- Interviewed Kenai real estate Brokers, agents, and property owners regarding land sales;
- Interviewed Kenai market participants regarding current commercial and light industrial land market conditions, trends, and expectations;
- Gathered and confirmed information on comparable land sales;
- Inspected the primary comparable sales we relied upon in our comparative analysis; and
- Applied the sales comparison approach to arrive at a market value indication.

Exposure Time

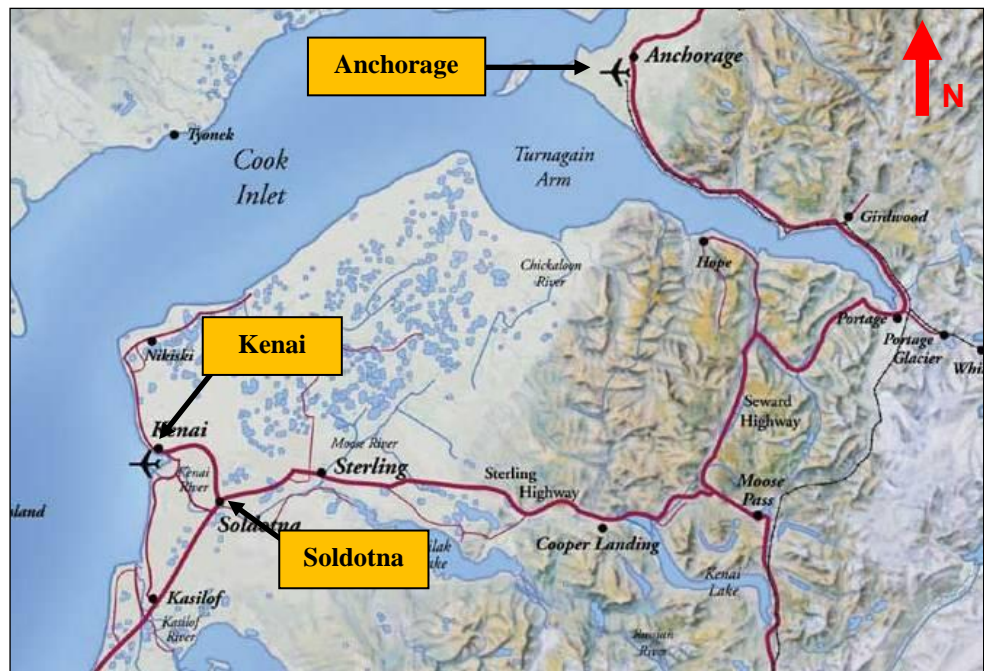
We have collected and analyzed market and economic data that projects real estate trends and activity for similar vacant parcels. Discussions with Brokers and analysis of similar property sales indicate that a period of approximately 6-9 months prior to our effective date of value is a reasonable exposure period.

Chapter 2: Kenai Area Analysis and Industry Outlook

Overview

The appraised property is located in Kenai, Alaska. A demographic and economic summary of the Kenai Peninsula Borough (KPB) and City of Kenai follows. The reader is referred to the map below and on following pages that illustrate the location and assist in the description and analysis. We note that due to lack of funding, the KPB ceased economic and financial publications.

Kenai Location Map



Kenai Peninsula Borough Summary

The Kenai Peninsula Borough is comprised of the Kenai Peninsula and Cook Inlet including areas northeast of the Alaska Peninsula. The borough also includes portions of Chugach National Forest, Kenai Wildlife Refuge, Kenai Fjords National Park, Lake Clark National Park, and Katmai National Park. Encompassing 24,800 square miles, there are 16,000± square miles (65%) of land and 8,700± square miles (35%) of water. Three distinct communities and population centers are established within the Borough. Seward is located at the terminus of the Seward Highway on the Gulf of Alaska coast, Kenai/Soldotna are located on Cook Inlet and surrounding the mouth of the Kenai River, and Homer is located at the terminus of the Sterling Highway on Cook Inlet and Kachemak Bay. A large portion of the Borough

population is scattered along the road systems rather than in identifiable cities or communities.

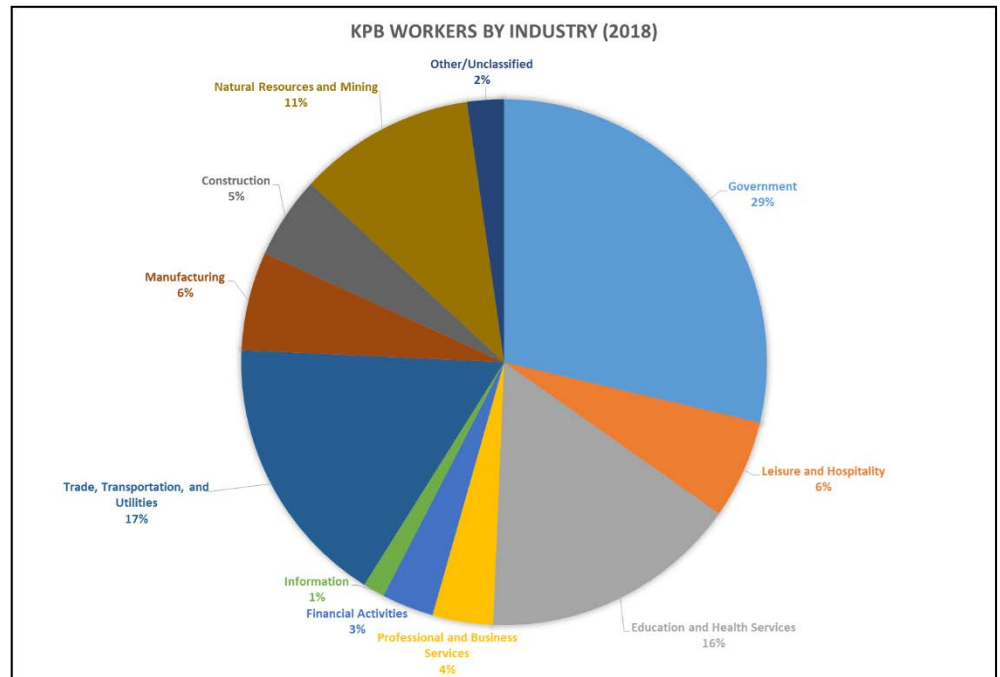
Population

Together, Kenai, Soldotna, Nikiski, Salamatof, and Kasilof have the largest population base in the Borough with an estimated 17,000± residents in 2019. Population within the Kenai census area is 7,056 residents and has remained flat over the past two decades. Similarly, surrounding communities have experienced population stability.

Employment

Borough employment is characterized as relatively diverse with no single dominant industry, with the exception of government. The five industry categories that have the highest economic influence, based on total wages, within the borough are Federal, State, and local government (29%) trade, transportation, and utilities (17%), education and health services (16%), natural resources and mining (11%), leisure and hospitality (6%), and manufacturing (6%). Supporting employment sectors include construction (5%), professional and business services (4%), and financial activities (4%). The table below indicates 2018 Borough wages by industry.

KPB Total Wages by Industry (2018)

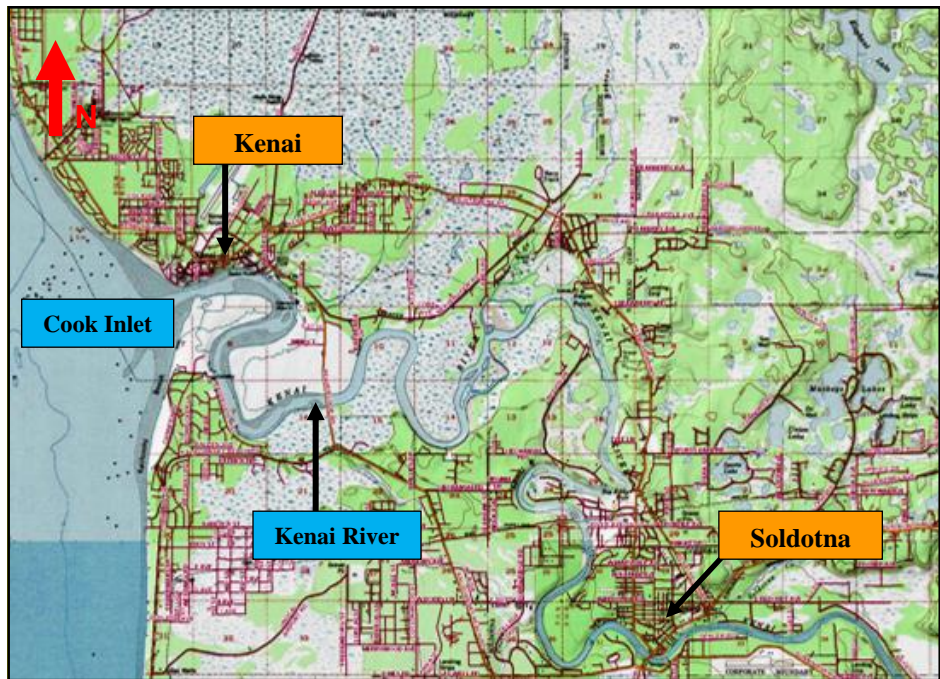


Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section, January – December 2018

Similar to most rural Alaska economies, government is one of the key employment factors. Leisure and hospitality (tourism) remains as a driving economic force of the Kenai Peninsula Borough’s economy. Both residents and non-residents utilize the Peninsula for its vast fishing, camping, sightseeing, and other recreational opportunities. The visitor industry is cyclical with most activity occurring during summer months. However, sales in the visitor industry are an important source of municipal revenues as both city and borough government use collected sales taxes to support government operations. The oil and gas industry is scattered throughout the Peninsula. Natural gas endeavors marked increases in new exploration projects in Kenai, on the Westside of Cook Inlet as well as lower Kenai Peninsula between Clam Gulch and Ninilchik. However, negative aspects of the industry exist that include closing oil platforms due to poor production levels. Overall, the outlook for Kenai Peninsula Borough’s oil and gas industry is continued steady natural gas exploration and production with stagnant oil efforts. Capital investment in storage development, reserves replacement, and pipeline infrastructure are necessary and pressure exploration cost and development upward.

Location Map

**City of Kenai
Summary**



Kenai is located on the western coast of the Peninsula, and is often associated with Soldotna, which is located 11± miles to the southeast. These two cities have become known as the “twin cities”, sharing an

integrated economy, while maintaining their independence. Kenai is a home rule city with a population of 7,056. In the summer months, the area benefits from with tourists fishing the Kenai River. Kenai is also the center for the oil and gas industry on the Peninsula, providing services and supplies for Cook Inlet's oil and natural gas drilling and exploration. Nikiski, which lies north of Kenai, has two refineries established to process oil from the Cook Inlet oil platforms and the Swanson River oil fields. There are numerous oil field support businesses located in the area as well as the refineries. Kenai has the largest airport on the peninsula, the Kenai Municipal Airport, which has regular scheduled flights to/from Anchorage and other communities in the region.

The Nikiski industrial district located north of Kenai extends along the shore of Cook Inlet for 1.5± miles and one-mile inland. Despite the relatively small area, the value of industrial development exceeds \$1 billion. The Agrium, Inc. nitrogen plant, Tesoro Alaska refinery and former ConocoPhillips LNG export plant are the principal industrial development. The LNG plant ceased operations in 2011, and reopened for intermittent natural gas shipments until 2015. The plant was sold to Andeavor in 2018 for \$10M±, a significantly below market price. Agrium merged with PotashCorp in 2018, forming a new company called Nutrien, who currently owns the former Agrium plant.

In 2014, Homer Electric Association began generating its own power at the Nikiski Combined Plant, producing 80 megawatts of power. In addition, HEA purchased the Bernice Lake Power Plant from Chugach Electric Association for \$12M±. These facilities are primary employers in Nikiski and account for nearly 10% of KPB total employment. As Nikiski remains a hub for power generation in the Kenai Peninsula, we do not anticipate major change to the Nikiski industrial district in the near term. The potential Alaska LNG Project is on the horizon, with optimism remaining on the Kenai Peninsula for eventual construction. The project entails a gas processing plant on the North Slope, an 800-mile gas pipeline and a liquefaction facility in the Nikiski area. Tentatively, the total project cost is estimated at \$45B±. To date, 570± acres have been acquired in Nikiski to develop the project. The City of Kenai passed a resolution in December 2018, giving unanimous support to the LNG project; however, this joint venture between the State of Alaska and private oil and gas industry appears to have stalled, with no definite timetable for development.

In 2012, ENSTAR Natural Gas Company began injecting natural gas into their new storage facility in Kenai. The Cook Inlet Natural Gas Storage Alaska facility (CINGSA) is Alaska's first independent gas

storage facility with 11 billion cubic feet of capacity. The project cost is estimated at \$160M±.

Although most oil and gas fields in the Cook Inlet Basin are well past their peak, annual production has not declined significantly in the past decade. Moreover, smaller independent oil companies are prospecting in the Cook Inlet basin with the intent of using new technology to enhance production profitability. However, the maturing life-cycle of oil and gas production has caused attrition in smaller businesses that support this industry. More importantly, this economic trend has created a market imbalance for industrial and commercial real estate. For example, we observed several smaller industrial or commercial properties that are vacant or abandoned because of contraction in the oil and gas industry. Recent capital investments made by larger energy companies have helped revitalize Kenai Peninsula’s oil and gas sector. Natural gas prices gradually recovered into summer 2014 from their lows in early 2012. Late 2014 to early 2015 saw another downturn in natural gas prices before a mid-2016/17 recovery. After briefly spiking in 4th quarter 2018, natural gas prices trended downward into 2020, where they reached record low prices in March, and again in July due to lack of demand driven by the COVID-19 pandemic. Prices made a slight recovery in the second half of 2020, but continue to remain much lower than the 20-year average. If demand for natural gas from Asia and the Lower 48 recovers, additional capital investment in the Kenai Peninsula will become more viable. Expressed in the table below is the U.S. Average Natural Gas Price over the past ten-year period, which has experienced significant volatility.

Historical Natural Gas Price (\$/MMBTU)



Source: macrotrends

Conclusion

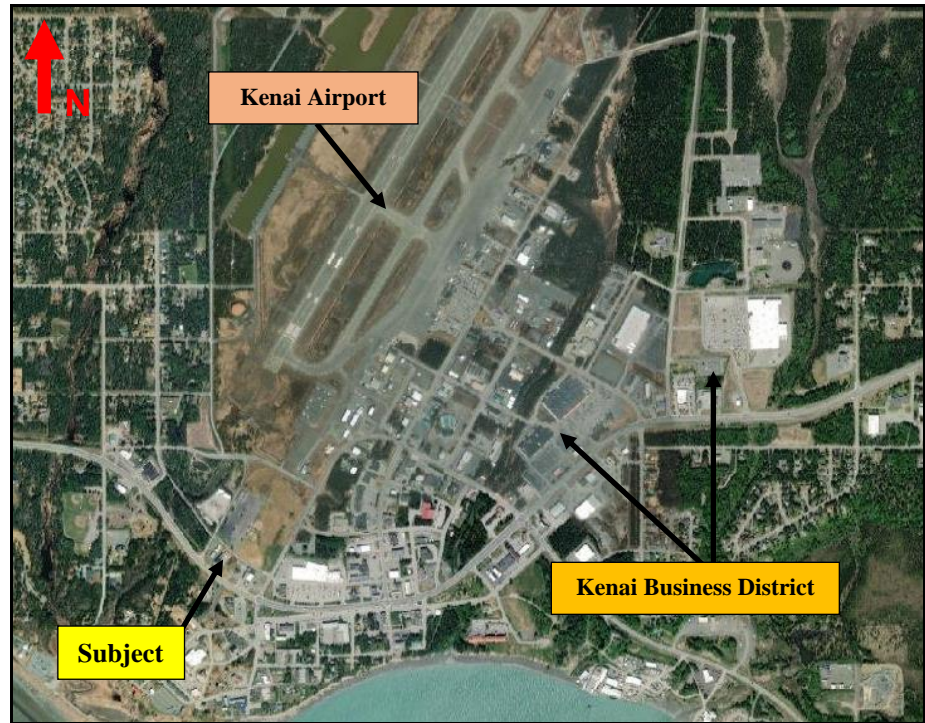
Optimism has been created by renewed investment in the Kenai Peninsula. Sale activity remains relatively scarce with assemblage, expansion, or special-purpose use representing the principal components of demand. Short-term uncertainty will likely continue to dampen the Kenai economy, which benefits from anglers and sightseeing tourism. Travel restrictions, and decreasing demand linked to the COVID-19 virus are slowly recovering from 2021 with cautious optimism for continued recovery in 2022. After analysis, we determined that industrial and commercial property values have been relatively stable over the past decade, but have declined from the 1980s peak.

Chapter 3: Neighborhood Description and Analysis

Overview

The appraised land is located just south of the Kenai Municipal Airport and southwest of the Kenai Business District. This chapter will focus on the supply and demand factors of these neighborhoods, which affect the valuation process.

Kenai Neighborhood Map



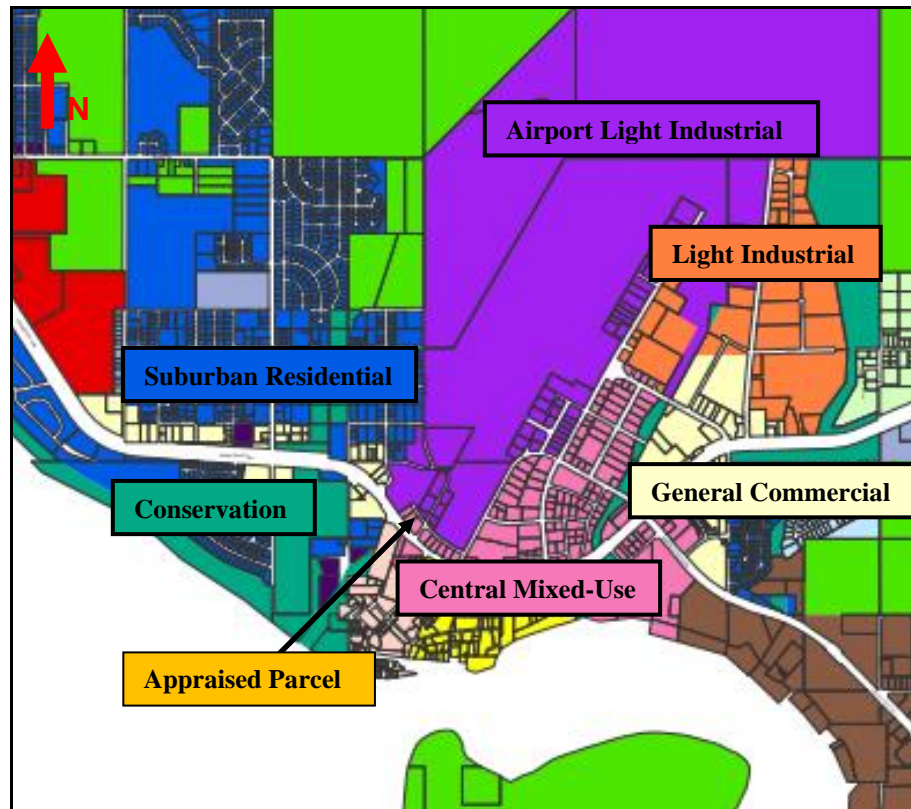
Neighborhood Description

The subject neighborhood is bound by the Kenai Airport to the north, the Kenai Spur Highway to the south and east, and the Kenai Business District to the northeast. The Kenai Business District is the commercial core of Kenai. Development includes many types of commercial and industrial uses including big box retailers, strip and enclosed malls, restaurants, convenience stores, small businesses, and airport-related businesses. The Kenai Airport was recently remodeled modernizing the terminal building. Lowes, which was constructed in 2008, closed in 2011. After eight years of vacancy, the property sold to U-Haul in 2019. This City-owned, public-use airport contains a 7,855-foot asphalt paved runway, as well as an additional gravel runway and seaplane basin. Currently, scheduled flight service to Anchorage is available on both Ravn Alaska and Grant Aviation. Development in

the immediate neighborhood consists of both aviation and non-aviation related uses.

The zoning map below assists in visualizing neighborhood zoning districts. The immediate neighborhood is zoned Central Mixed-Use established to provide a centrally located area in the City for general retail shopping, personal and professional services, entertainment, restaurants, and related businesses. This district is also intended to accommodate a mixture of residential and commercial uses. The CMU Zone shall be designed to encourage pedestrian movement throughout the area. Building and other structures within the district should be compatible with one another and the surrounding area

Zoning Map



Summary

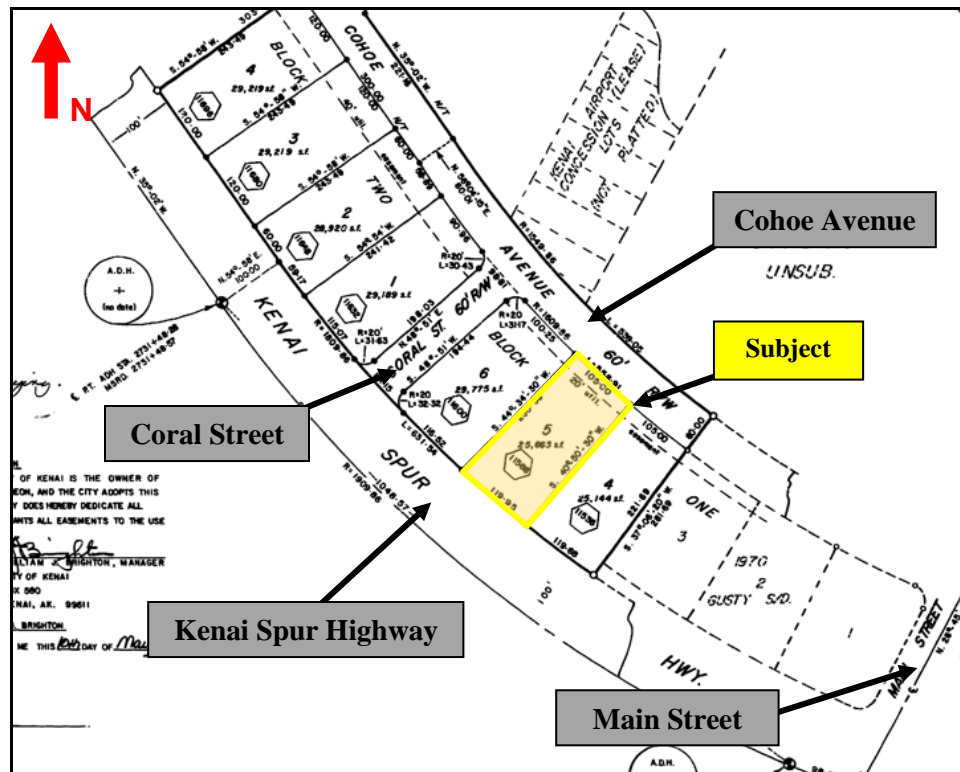
To summarize, the Kenai Business District is the commercial core of Kenai. The neighborhood is well-located and benefits from its proximity to the Kenai Spur Highway, as well as the airport and other commercial districts in the area. The outlook for the neighborhood is favorable as it continues to be a good commercial district for Kenai

Chapter 4: Site Description and Analysis

Overview

Analysis of land describes the characteristics that enhance or detract from its utility or marketability. The site description and analysis is based on our property inspection and review of plat 83-126, aerial, Borough and other mapping. The plat map below and aerial mapping on the following pages assist in the description and analysis of the parcel that follows.

Plat 83-126

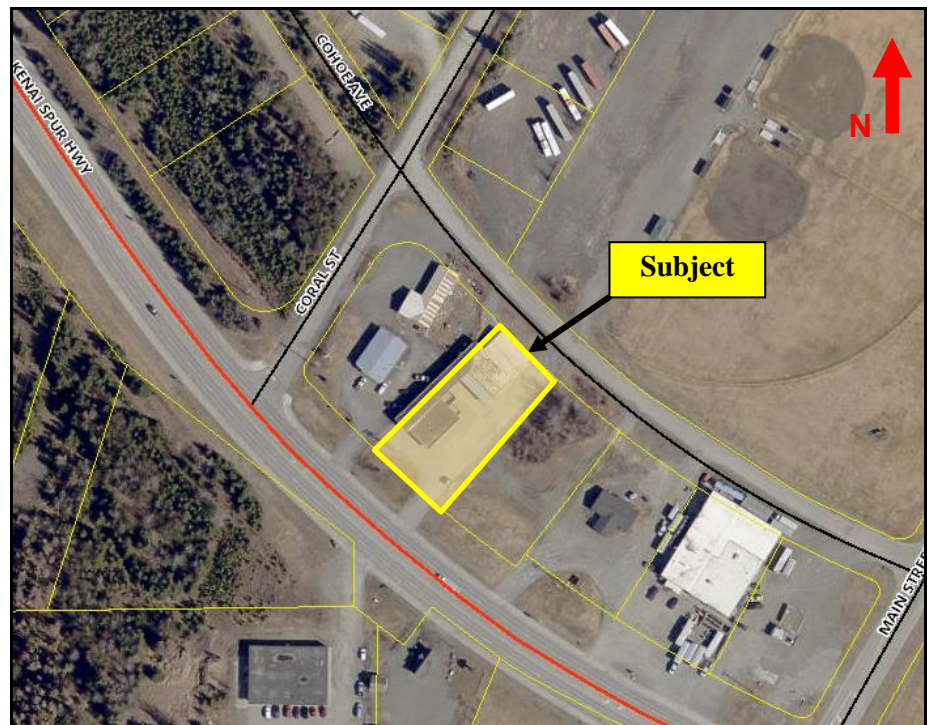


Site Description

Location:	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road, Kenai, Alaska
Physical address:	11568 Kenai Spur Highway, Kenai, Alaska
Shape and Land Area:	Nearly-rectangular shaped lot containing 25,663± square feet or 0.59± acre
Access:	Access via paved ingress/egress from Kenai Spur Highway on southern boundary and Cohoe

Zoning:	Avenue, a gravel road on northern boundary Central Mixed-Use District (CMU)
Frontage and Exposure:	120± feet of Kenai Spur Highway frontage and 105± feet of Cohoe Avenue frontage
Easements and Restrictions:	20-foot utility easement along north boundary
Public Utilities:	All public utilities available
Topography:	Level and near grade with surrounding streets and properties

GIS Aerial Map (Kenai Peninsula Borough)



Soil Conditions:	Soils mapped as urban lands, and appear suitable for construction based on surrounding development
Wetland Designation:	None
Flood Hazard:	Zone D, an area of undetermined, but possible flood hazard per FEMA

**Environmental
Conditions:**

The existence of any hazardous material or other type of environmental contamination, which may or may not be present on the property, was not observed by the appraisers nor do the appraisers have any knowledge of the existence of such substances. Our value conclusion assumes that the property is free of environmental and hazardous contaminants.

Site Utility:

The subject site's positive attributes include good location, size, and access near the Kenai Airport and Downtown Kenai. Overall, physical character makes the site well suited for commercial development.

Chapter 5: Highest and Best Use Analysis

Overview

Highest and best use is a market-driven concept rather than a subjective conclusion based on the experience of the appraiser or a property owner's wishes. Economic incentive is the motivation that has a market-effect on the productivity or profitability of the land. The *Dictionary of Real Estate Appraisal* (Seventh Edition) defines *highest and best use* as follows.

The reasonably probably use of a property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

A property's highest and best use as vacant may differ from that as improved. It is the appraiser's responsibility to analyze each scenario; then identify, explain, and justify the conclusion of each type of use. Per client instructions, the subject property is analyzed as though vacant.

Determination of a property's most profitable use requires analyzing all feasible alternatives. The criteria for testing potential uses as though vacant are legally permissible, physically possible, financially feasible, and maximally productive. The following highest and best use analysis is the foundation of the appraisal process for the subject properties.

Highest and Best Use Analysis As If Vacant

Physical Possibility: The appraised parcel contains 25,663 square feet or 0.59± acre fronting the Kenai Spur Highway. Frontage measures 120± feet, which enhances access, exposure, and development potential. Demand along the Kenai Spur Highway commercial corridor is high when compared to alternative interior commercial locations. Highway frontage and linkage to alternative commercial locations in Kenai are positive characteristics.

Legal Permissibility: Although the appraised property is within the City of Kenai, zoning regulations do not generally apply to current ownership because the property remains in restricted status. The subject parcel is zoned Central Mixed Use (CMU) which encourages commercial-type development in a centrally located area in the City of Kenai, primarily for shopping, personal and professional services, entertainment services, entertainment establishments and restaurants and related businesses. The CMU district is also intended to accommodate a mixture of residential and commercial uses, and designed in a manner that encourages pedestrian movement throughout

the area. Although certain industrial use are allowed., most within the CMU zone require a conditional use permit to ensure compatibility with surrounding land uses. We are not aware of any recorded plat restrictions that may affect development potential of the subject property.

Financial Feasibility: Physically possible uses permitted are all financially viable. Financially feasible commercial uses include restaurants (both dining and fast food), hotel/motel, retail, and office use. Other commercial uses are possible, which may offer greater risk and lack economic feasibility. In conclusion, the Commercial neighborhood’s location, existing land use trends, and physical characteristics all support commercial development, which we consider to be the highest and best use.

**Highest and Best Use
As Though Vacant**

The subject’s physical characteristics, surrounding land use, CMU zoning, location, access, etc., encourage commercial development. Based on these factors, the highest and best use, as vacant, is for commercial development.

Highest and Best Use: Commercial

Chapter 6: Land Valuation - Sales Comparison Approach

Overview The sales comparison approach is a systematic procedure of estimating the subject’s market value by comparing it directly to property sales afforded similar physical and economic character. The approach is founded on the principle of substitution, theorizing value is a function of a knowledgeable investor’s (buyer) intent to pay no more for a specific property than the cost of acquiring an alternative property offering similar utility (economic satisfaction). The sales comparison approach is the best approach for valuing vacant land.

Comparative Market Analysis Our sales search focused on vacant land with similar physical and economic character to the subject, located in the immediate neighborhood. In order to facilitate a comparative analysis, we expanded our search to include commercial and light industrial properties in other Kenai neighborhoods. These criteria produced five sales that transpired in from 2016 to 2022. The primary land sales we relied upon are listed in the table below. Additional details of the comparables are retained on file.

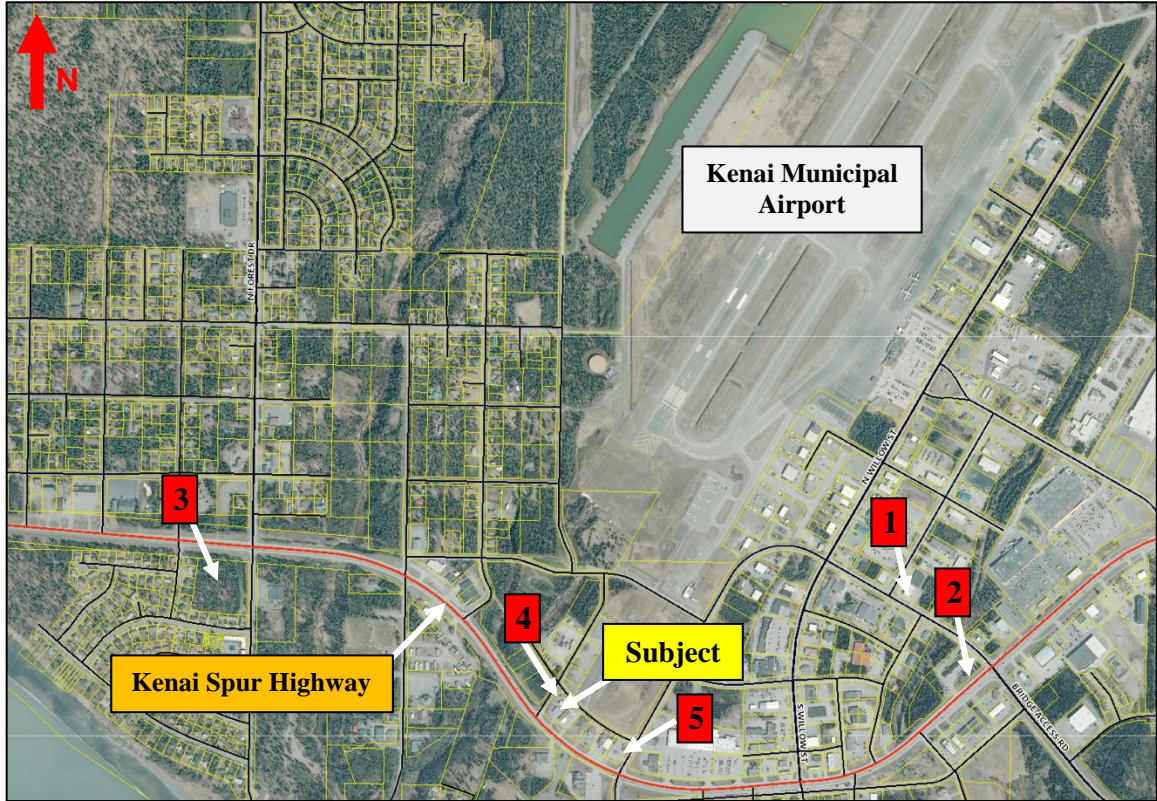
Summary of Primary Land Sales

No.	Location	Zone	Sale Date	Sale Price	Size (SF)	\$/SF
1	Northeast corner of Trading Bay Road and Main Street Loop	CMU	5/22	\$300,000	114,497	\$2.62
2	Northwest corner of Kenai Spur Highway and Main Street Loop Road (east)	CMU	1/20	\$605,000	121,091	\$5.00
3	Southwest corner of Kenai Spur Highway and S. Forest Drive	CG	2/19	\$455,000	219,107	\$2.08
4	Northeast corner of Kenai Spur Highway and Coral Street	CMU	8/18	\$180,000	35,851	\$5.02
5	Northwest corner of Kenai Spur Highway and Main Street Loop Road (west)	CMU	8/16	\$170,400	28,520	\$5.97
	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road (Subject)	CMU		-- --	25,663	-- --

Elements of Comparison

The elements of comparison that have the greatest influence on market behavior and the price paid for similar land in Kenai is location and physical character, including clearing/grading, frontage/access, and size. Importantly, the subject lot has highway frontage with very good exposure and access. We use a qualitative comparison technique that rates elements of comparison as superior, inferior, or similar.

Comparable Land Sales Map



Land Sale 1

Land Sale 1 is the May 2022 sale located on the northeast corner of Trading Bay Road and Main Street Loop Road. Northeast of the subject, the irregular-shaped parcel consists of 114,497± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the parcel is partially cleared and developed with a retail strip mall. Zoning is CMU, Central Mixed-Use. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$300,000 indicates a unit value of \$2.62 per square foot. By comparison, this sale lacks highway frontage, and no improvements were included in the sale. Conversely, its good corner location with



frontage near the Kenai Airport and within the Kenai Commercial Core. Overall, Land Sale 1 is rated inferior, indicating a unit value greater than \$2.62 per square foot for the appraised land.

Land Sale 2



Land Sale 2 is the January 2020 sale located on the northwest corner of Kenai Spur Highway and Main Street Loop Road (east), proximate to the Commercial Core of Kenai. Located 1.3± road miles south of the subject, the nearly rectangular-shaped parcel consists of two totaling 121,091± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the parcel is cleared and developed with a motel. Zoning is CMU, Central Mixed-Use. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$605,000 indicates a unit value of \$5.00 per square foot. By comparison, this sale is inferior for size, and similar to the subject for location with highway frontage near the Kenai Commercial Core. Overall, Land Sale 2 is rated similar, indicating a unit value approximating \$5.00 per square foot for the appraised land.

Land Sale 3



Land Sale 3 is the February 2019 sale located on the southwest corner of Kenai Spur Highway and S. Forest Drive, west of the Kenai Commercial Core. This location is 2.2± road miles southwest of the subject. The nearly rectangular-shaped lot contains 219,107± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the property was cleared and leveled at the time of sale. The property is zoned CG, General Commercial. Originally listed for \$499,000, the property sold after 132 days of market exposure. The sellers previously purchased the property in 2007 for \$175,000, and subsequently cleared the site. The price appreciation is attributed to passage of time, as well as value added due to clearing and leveling. The 2019 sale price of \$455,000 indicates a unit value of \$2.08 per square foot. By comparison, this sale is rated inferior for size differential and location. Land Sale 3 is rated inferior, indicating a unit value greater than \$2.08 per square foot for the appraised land.

Land Sale 4



Land Sale 4 is the August 2018 sale located at the northeast corner of Kenai Spur Highway and Coral Street, just outside of the Airport Reserve. This location is adjacent to the subject. The irregular-shaped site contains 35,851± square feet. The site is cleared and improved with a commercial building. All public utilities are available in the immediate neighborhood. Zoning is CMU, Central Mixed-Use. Per the plat, no direct Kenai Spur Highway access is permitted, although curb cuts allow for direct physical access. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$180,000 indicates a unit value of \$5.02 per square foot. By comparison, this sale has good corner location with highway frontage proximate to the Commercial Core. Land Sale 4 is slightly inferior for size, superior for corner location, and similar in terms of physical character and access. Thus, Land Sale 4 is rated similar, indicating a unit value approximating \$5.02 per square foot for the appraised land.

Land Sale 5



Land Sale 5 is the August 2016 sale located on the northwest corner of Kenai Spur Highway and Main Street Loop Road (west) just south of the Airport Reserve and the Commercial Core. The property is located near the subject with similar access and frontage. The nearly rectangular-shaped lot contains 28,520± square feet. All public utilities are available in the immediate neighborhood. The property is cleared and zoned CMU, Central Mixed Use. The property was purchased from the City of Kenai by the land lessee, who owned two small commercial structures on the property. The sale price of \$170,400 was based on a 2015 appraisal, with a 20% premium paid. Land Sale 5 is similar in size and superior for location and access indicating a unit value less than \$5.97 per square foot for the appraised land.

Reconciliation of Comparative Market Analysis

Presented below is a rating grid and analysis of the land sales used in comparative analysis.

Land Sale	\$/SF	Rank	Net Adjustment
5	\$5.97	Superior	↓
Subject	-- --	-- --	-- --
4	\$5.02	Similar	-- --
2	\$5.00	Similar	-- --
1	\$2.62	Inferior	↑
3	\$2.08	Inferior	↑

The comparable land sales indicate a value range from \$2.08 to \$5.97 per square foot. Land Sale 5 is rated superior indicating a unit value less than \$5.97 per square foot. Conversely, Land Sales 1 and 3 are rated inferior indicating a unit value greater than \$2.62 per square foot. Land Sales 2 and 4 are rated similar indicating a unit value approximating \$5.00 per square foot. After comparative analysis and making the necessary adjustments, we conclude with a market value between \$5.00 and \$5.50 per square foot, which develops the following indicators.

25,663 SF × \$5.00/SF =	\$128,315
25,663 SF × \$5.50/SF =	\$141,147

Based on the preceding analysis, the market value of the appraised land, as of May 16, 2022, is estimated as follows.

Market Value Estimate	\$135,000 (R)
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Marketing and Exposure Time

Estimated 6 to 12 months

Assumptions and Limiting Conditions

This appraisal is subject to the following **assumptions and limiting conditions**.

- ➔ No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be marketable unless otherwise stated.
- ➔ The property is appraised free and clear of all liens or encumbrances unless otherwise stated.
- ➔ The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
- ➔ All maps, plot plans, and other illustrative material are believed to be accurate, but are included only to help the reader visualize the property.
- ➔ It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
- ➔ It is assumed the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
- ➔ It is assumed the property conforms to all applicable zoning, land use regulations, and platting restrictions unless the nonconformity is identified, described, and considered in the appraisal report.
- ➔ Possession of this report, or a copy thereof, does not carry with it the right of publication.
- ➔ The appraisers, by reason of this appraisal, is not required to give consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.
- ➔ Neither all nor any part of the contents of this report shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisers.
- ➔ The existence of any hazardous material or other type of environmental contamination, which may or may not be present on the property, was not observed by the appraisers nor do the appraisers have any knowledge of the existence of such substances. However, the presence of these substances may affect the value of the property. Therefore, the client is urged to retain an environmental assessment for discovery and evaluation.

Statement of COVID-19

This appraisal was performed following public awareness that COVID-19 was affecting residents in the United States. At the time of the appraisal, COVID-19 is having widespread health and economic impacts. The effects of COVID-19 on the real estate market in the subject neighborhood are not yet measurable based on reliable data. The analysis and value opinion in this appraisal are based on the data available to the appraisers at the time of the assignment and apply only as of the effective date indicated. No analysis or opinions contained in this appraisal should be construed as predictions of future market conditions or value.

MacSwain Associates LLC

4401 Business Park Boulevard, Suite 22, Anchorage, Alaska 99503

Appraiser: Steve MacSwain, MAI

Member of Appraisal Institute - No. 5700

State of Alaska, Certified General Real Estate Appraiser - No. 42

Professional Experience: 1986 to Present - MacSwain Associates LLC

1976 to 1986 - Appraisal Company of Alaska - President

1970 to 1975 - Real Estate Services Corporation – Appraiser

1969 to 1970 - State of Alaska Department of Highways - Right of Way Agent

Real estate appraiser and consultant of all property types throughout Alaska including commercial, industrial, subdivisions and special-purpose properties. Appraisals have been performed for financing, leasing, insurance, condemnation, taxation, property damages, investment analysis, and buy-sell decisions. Appraisals include valuation of both real property and business enterprises. Professional experience totals 49 years. Life-long Alaskan resident of Alaskan Native descent.

Education: Bachelor of Business Administration, Finance (1969), University of Alaska Fairbanks

Appraisal Education: The following is a list of completed appraisal courses and seminars.

2021 – *Cool Tools: New Technology for Real Estate Appraisers* by the Appraisal Institute

2021 – *Desktop Appraisals (Bifurcated, Hybrid) and Evaluations* by the Appraisal Institute

2021 – *Hot Topics & Myths in Appraiser Liability* by LIA Administrators & Insurance Services

2020 – *Uniform Standards of Professional Appraisal Practice – Update* by the Appraisal Institute

2019 – *How Tenants Create or Destroy Value: Leasehold Valuation and its Impact on Value* –by the Appraisal Institute

2017 – *Appraising Environmentally Contaminated Properties* by the Appraisal Institute

2017 – *Residential & Commercial Valuation of Solar* by the Appraisal Institute

2017 – *Right of Way Acquisition for Pipeline Projects* by the International Right of Way Association

2015 – *Litigation Appraising: Specialized Topics and Applications* by the Appraisal Institute

2015 – *Business Practices and Ethics* by the Appraisal Institute

2013 – *Complex Litigation Appraisal Case Studies* by the Appraisal Institute

2013 – *Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book)* by the Appraisal Institute

2012 – *Appraisal Curriculum Overview* by the Appraisal Institute

2010 – *Reviewing Appraisals in Eminent Domain* by the International Right of Way Association

2010 – *Commercial Appraisal Engagement and Review Seminar for Bankers and Appraisers* by the Appraisal Institute

2009 – *The Appraiser as an Expert Witness: Preparation and Testimony* by the Appraisal Institute

2009 – *Attacking and Defending an Appraisal in Litigation* by Whitmer Education

2008 – *Uniform Standards of Professional Appraisal Practice* by the Appraisal Institute

2007 – *Business Practices and Ethics* by the Appraisal Institute

2007 – *Eminent Domain Law for Right of Way Professionals* by the International Right of Way Association

2007 – *Appraisal Review for Federal Aid Programs* by the International Right of Way Association

2007 – *Analyzing Operating Expenses* by the Appraisal Institute

1969-2006: Numerous appraisal classes pertaining to principles, income capitalization, cost analysis, sale comparison approach, and highest and best use analysis by the Appraisal Institute, Society of Real Estate Appraisers, International Right-of-Way Association, International Association of Assessing Officers, and Marshall Valuation Service

Membership and Organizations: Member of Appraisal Institute – No. 5700, International Right of Way Association (IRWA), and Building Owners and Managers Association (BOMA)

Public Service: Past Chairman of the State Board of Certified Appraisers

Past Member of Board of Equalization, Municipality of Anchorage, National Experience Review Committee of the Appraisal Institute, and Regional Ethics and Counseling Panel of the Appraisal Institute

Past President of Alaska Chapter 57 of the Appraisal Institute

Significant Assignments:

- ➔ Appraised Pacific Spaceport Complex-Alaska (PSCA) land and facilities for Alaska Aerospace Corporation on Kodiak Island.
- ➔ Appraised proposed LNG Pipeline, a FERC-regulated 860-mile pipeline transporting liquefied natural gas.
- ➔ Appraised the Trans-Alaska Pipeline System, a FERC-regulated 800- pipeline that transports crude oil from Prudhoe Bay to Valdez, for TAPS ownership.
- ➔ Appraised remote lands (65,000± acres) owned by three Native corporations damaged by the *Selendang Ayu* grounding and subsequent oil spill.
- ➔ Appraised Calais Company, Inc., a real estate holding company consisting of 39 commercial parcels in Anchorage.
- ➔ Principal real estate consultant and expert witness for all lands affected by the *Exxon Valdez* oil spill. Project involved over 2,000,000 acres of remote land and nearly 2,000 private property owners.
- ➔ Appointed as a representative of a three-member panel that analyzed and valued over 1,000,000 acres and 8,000 parcels for the Mental Health Lands Settlement.
- ➔ Contract assessor for the North Slope Borough, Kodiak Island Borough, City of Nome, and the City of Valdez.
- ➔ Represented Seibu Alaska, Inc. (Alyeska Resort and Alyeska Prince Hotel) in preparing of their property tax appeal with the Municipality of Anchorage that resulted in a \$65 million reduction in assessed value.
- ➔ Appraised submerged tideland parcels and wetlands parcels located in Womens Bay on Kodiak Island for the purpose of an exchange between Koniag, Inc. and U.S. Fish and Wildlife Service.
- ➔ Appraised Common Carrier Pipeline right-of-ways leased and operated by BP Transportation Alaska and ConocoPhillips Alaska.
- ➔ Appraised 3,600 acres consisting of the former Adak Naval Air Station and Submarine Base conveyed to the City of Adak and the State of Alaska.

Expert Witness Experience: Steve MacSwain, MAI is qualified as an expert witness in both the United States Federal Court and the State of Alaska Superior Court. Steve has testified as an expert witness in State and Federal courts. In addition, Steve has testified as expert witness in numerous Alaskan municipal tax courts, public hearings, and depositions on matters related to real property.

Arbitrator Experience: Appointed a Master by the Superior Court of Alaska and Municipality of Anchorage to serve as an arbitrator in determining just compensation.

License #: APRG42 Effective: 6/8/2021 Expires: 06/30/2023	State of Alaska Department of Commerce, Community, and Economic Development Division of Corporations, Business, and Professional Licensing
Board of Certified Real Estate Appraisers	
Licensee: STEVEN JAMES MACSWAIN	
License Type: Certified General Real Estate Appraiser	
Status: Active	
Commissioner: Julie Anderson	
Relationships	Designations
No relationships found.	No designations found.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3312-2022**

AN ORDINANCE DETERMINING LOT 4, BLOCK 1, GUSTY SUBDIVISION ADDITION NO. 1 AMENDED IS NOT NEEDED FOR A PUBLIC PURPOSE AND APPROVING THE EXECUTION OF A LEASE WITH AN OPTION TO PURCHASE BETWEEN THE CITY OF KENAI AND AARON SWANSON DBA FOREVER BUSINESS PLAZA LLC. FOR THE PROPERTY.

WHEREAS, Kenai Municipal Code 22.05.095(b)(2)(iv) provides for a land lease in which the lease is subject to competition through the lease application review process and which contains an option to purchase once the minimum development requirements have been met for the fair market value of the land excluding permanent improvements made by the lessee; and,

WHEREAS, on June 28, 2022, Aaron Swanson submitted an application for a lease of City owned properties with the option to purchase, described as Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended; and,

WHEREAS, the Applicant’s application states the intention is to construct a Pita Pit restaurant, with initial construction being site preparation and a temporary building; and,

WHEREAS, the proposed development would be mutually beneficial and would conform with the Kenai Municipal Code for zoning and Kenai’s Comprehensive Plan; and,

WHEREAS, the City of Kenai did not receive a competing lease application within thirty (30) days of publishing a public notice of the lease application from Aaron Swanson; and,

WHEREAS, the property has been released by the Federal Aviation from its Deed Restriction and is available for sale or lease; and,

WHEREAS, the property is no longer needed for a public purpose for airport uses and is suitable for private development; and,

WHEREAS, at their regular meeting on September 14, 2022, the Planning and Zoning Commission reviewed the lease application and recommended _____ by the City Council; and,

WHEREAS, at their regular meeting on September 8, 2022, the Airport Commission reviewed the lease application and recommended _____ by the City Council; and,

WHEREAS, funds from the lease and sale will benefit the Airport Fund.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. Form: This is a non-code ordinance.

Section 2. That a Lease with an option to purchase City owned lands described as Lot 4, Block 1 Gusty Subdivision Addition No. 1 Amended is approved as attached hereto and the City Manager is authorized to execute a lease with an option to purchase between the City of Kenai, Lessor, and Aaron Swanson DBA Forever Business Plaza, Lessee, as follows:

The lease or sale shall be subject to the reservations and covenants as contained in Federal Aviation Administration Deed of Release, Book 227, Page 416, Kenai Recording District;

Section 3. That the Council determines that the property is no longer needed for a public purpose by the airport and is available for lease or sale.

Section 4. Any sale will be made at fair market value of the land only, as determined by a professional appraiser from an appraisal made not more than one year prior to the date of sale. Any sale will be conveyed through a quitclaim deed. Further Council authorization is not required for a sale; however, completion of all required improvements is required prior to sale. All proceeds from the sale will be deposited in the Airport Land Sale Permanent Fund.

Section 5. The following improvements are required to be completed within two years of execution of the lease, and the option to purchase cannot be made until the improvements are completed:

Section 6. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 7. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Introduced: September 7, 2022
Enacted: September 21, 2022
Effective: October 21, 2022



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and City Council Members

FROM: Max Best, Interim Planning Director

DATE: July 17, 2022

SUBJECT: **Ordinance No. 3312-2022 – Approving the Lease with a Sale option of 11536 Kenai Spur Highway to Aaron Swanson**

On June 28, 2022, staff received a competitive Lease with Sale Purchase Option application pursuant to KMC 22.05.095(i) for 11536 Kenai Spur Highway, Lot 4, Block 1, Gusty Subdivision Addition No. 1 Amended, from Aaron Swanson. The proposed use of the parcel, which is currently vacant, is to construct a Pita Pit restaurant.

11536 Kenai Spur Highway is a 24,829 square foot (.57 ac.) cleared lot south of the baseball fields with 120' of Kenai Spur Highway frontage. The Lot has additional access from Coho Avenue. City water and sewer is available. This parcel is located outside the Airport Reserve.

The parcel is within the Central Mixed-Use District (CMU). Per KMC 14.20.125, the purpose of the CMU Zone is intended to provide for a centrally located area in the City for general retail shopping, personal and professional services, entertainment establishments, restaurants and related businesses.

Pursuant to Kenai Municipal Code 22.05.040 application review, notice of the application was posted in the Peninsula Clarion and stated competing applications may be submitted for the parcel within 30 -days to the City. The 30-day window from publication ended on August 29, 2022, and no competing applications were submitted to the City.

The recently adopted City of Kenai Land Management Inventory and Recommendations lists the property as not needed for a public purpose and recommends disposal for lease or sale. Funds from the sale will benefit the Airport fund. The property is deed restricted with covenants and conditions that protect the ongoing operation of the airport.

The current fair market value of the property as determined by MacSwain Associates, LLC on May 18, 2021 is \$110,000. The lease rate will be 8% of the fair market value.

The applicant will be responsible for completing development of the property within two years of the execution of the lease and the option to purchase cannot be made until the improvements are completed. The Ordinance will be updated to provide the required improvements for the public

hearing on September 21, 2022. Pursuant to Kenai Municipal Code 22.05.070, site preparation work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, crushed aggregate base course, and utility extensions may be applied toward rent for a maximum of five years.

Your consideration is appreciated.



**CITY OF KENAI LEASE OF CITY OWNED LANDS
WITH OPTION TO PURCHASE**

THIS LEASE AGREEMENT entered into this _____ day of _____, 20____, by and between the CITY OF KENAI, 210 Fidalgo Avenue, Kenai, Alaska 99611-7794, and _____, whose address is _____ (“Lessee”).

DEFINITIONS

For the purposes of this Lease the following terms are defined in KMC 22.05.005 (effective as of the date of execution of the lease) as follows:

1. “Amendment” means a formal change to a lease of lands other than a lease extension or renewal.
2. “Annual rent” means an amount paid to the City annually according to the terms of the lease and Kenai Municipal Code.
3. “Assignment” means the transfer of all interest in a lease from one person or entity to another.
4. “City” means the City of Kenai, its elected officials, officers, employees or agents.
5. “Consumer Price Index (CPI)” means the annual CPI for all urban consumers (CPI-U) for Anchorage, Alaska.
6. “Existing lease” means a lease with at least one (1) year of term remaining.
7. “Expiring lease” means a lease with less than one (1) year of term remaining.
8. “Fair market value” means the most probable price which a property should bring in a competitive and open market as determined by a qualified independent appraiser, or the value as determined by the latest appraisal adjusted by the change in Consumer Price Index from the date of the latest appraisal.
9. “Lease extension” means extending the term of an existing lease.
10. “Lease rate percent” means a percentage that when applied to the fair market value of land establishes a rate of rent commensurate with rental rates prevalent in the local area as determined by a qualified real estate appraiser.
11. “Lease renewal” means a new lease of property currently under an existing or expiring lease to an existing lessee or a purchaser.
12. “Market analysis” means an analysis of data collected from other land leases to determine whether a market adjustment in either fair market value or lease rate percentage reflects the market.
13. “Permanent improvement” means a fixed addition or change to land that is not temporary or portable, including a building, building addition, retaining wall, storage tank, earthwork, fill material, gravel, and pavement, and remediation of contamination for which the applicant is not responsible and excluding items of ordinary maintenance, such as glass replacement, painting, roof repairs, door repairs, plumbing repairs, floor covering replacement, or pavement patching.

- 14. “Professional estimate of the remaining useful life of the principal improvement” means an estimate of the number of remaining years that the principal improvement will be able to function in accordance with its intended purpose prepared by a qualified real estate appraiser, engineer, or architect licensed in Alaska.
- 15. “Qualified independent appraiser” means a general real estate appraiser certified by the State of Alaska under AS 08.87.
- 16. “Site development materials” means materials used for preparing a lease site for building construction or to provide a firm surface on which to operate a vehicle or aircraft, including geotextile, fill, gravel, paving, utilities and pavement reinforcement materials.
- 17. “Site preparation work” means work on the leased premises to include clearing and grubbing, unclassified excavation, classified fill and back fill, a crushed aggregate base course and utility extensions.

**ARTICLE I
PREMISES LEASED**

A. PREMISES: In consideration of Lessee’s payment of the rents and performance of all the covenants of this Lease, the City leases to the Lessee, and the Lessee leases from the City, the following described property (“Premises”) in the Kenai Recording District, Third Judicial District, State of Alaska ; to wit:

Description of Lease Property

B. NO WARRANTY: Except as may be provided in this Lease, the City makes no specific warranties, expressed or implied, concerning the condition of the Premises including, survey, soils, wetlands, access, and suitability or profitability for any use including those authorized by this Lease, its environmental condition, or the presence or absence of Hazardous Substances in, on, and under the surface. The Lessee takes the Premises on an “as is” basis and without warranty, subject to any and all of the covenants, terms, and conditions affecting the City's title to the Premises.

**ARTICLE II
RIGHTS AND USES**

A. AUTHORIZED USES:

- 1. USE OF PREMISES: The City authorizes the Lessee to use the Premises for the following purposes only:

List authorized uses and limitations

- 2.

B. RIGHTS RESERVED TO THE CITY:

- 2. EASEMENTS: The City reserves the right to make grants to third parties or reserve to the City easements or rights of way through, on, or above the Premises. The City will not grant or reserve any easement or right of way that unreasonably interferes with the Lessee's authorized uses of the Premises.
 - 3. INGRESS, EGRESS AND INSPECTION: The City reserves the right of ingress to and egress from the Premises and the right to enter any part of the Premises, including buildings, for the purpose of inspection or environmental testing at any time. Except in the case of an emergency, all inspections and environmental testing will be coordinated with the Lessee to minimize interference with the Lessee's authorized uses of the Premises.
 - 4. RIGHT OF FLIGHT [Include for FAA Restricted Land only]: There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight will include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. The lease or sale shall be subject to the reservations and covenants as contained in Federal Aviation Administration Deed of Release, Book 227, Page 416, Kenai Recording District;
- C. PROHIBITED USES: Unless specifically authorized by this Lease or an amendment to this Lease, the following are prohibited:
- 1. Any use of the Premises other than those authorized in this Lease.
 - 2. Any use of the Premises that is in violation of a City Ordinance.
 - 3. The outside storage on the Premises of junk, non-operational support equipment, unused or damaged equipment or material, or solid waste or debris unless allowed pursuant to a conditional use permit under KMC 14.20.
 - 4. The disposal on the Premises of waste, including any Hazardous Substance, slash, overburden, and construction waste.
 - 5. The stripping, wasting, or removing any material from the Premises without the prior written approval of the City.
 - 6. [Include for FAA Restricted Land only]Erecting structures or allowing growth of natural objects that would constitute an obstruction to air navigation, or allowing any activity on the Premises that would interfere with or be a hazard to the flight of aircraft, or interfere with air navigation or communication facilities, serving

the Airport.

- 7. Any use or activity that is prohibited by applicable law or regulation.

**ARTICLE III
TERM & HOLDOVER**

A. TERM: The initial term of this Lease is for _____ years, from the 1st day of _____, 20__, to the 30th day of _____, 20__.

B. HOLDOVER: If the Lessee holds over and remains in possession of the Premises after the expiration, cancellation or termination of this Lease, the holding over will not operate as an extension of the term of this Lease, but only creates a month-to-month tenancy, regardless of any rent payments accepted by the City. The Lessee's obligations for performance under this Lease will continue during the month-to-month tenancy. The City or Lessee may terminate the Lessee's holdover with ten days' advance written notice.

**ARTICLE IV
RENTS AND FEES**

A. RENT: The initial rent for the Premises is \$_____.00 per year, as established by the City pursuant KMC 22.05.060 and as subject to annual adjustment on July 1 of each year under Article V of this Lease, plus applicable sales tax. The rent shall be payable annually in advance of the first day of each year of the term of this Lease. All payments required by this Lease must be made in U.S. dollars. If the annual rent exceeds \$2,400, the Lessee may, upon written notice to the City, choose to pay the rent in equal monthly installments, payable in advance on or before the anniversary date of the term of this Lease and thereafter at monthly intervals. No conversion of the payment schedule from annual to monthly shall result in the City receiving less rent than it would have received had the conversion not taken place.

- 1. Rent Credit: A rent credit may be applied for a maximum of five years of lease payments as provided in KMC 22.05.070 (as effective at the time this lease is executed). Once the work is completed and value determined, a credit will be applied to the lease payments, prorated as necessary for the successive five years.

B. RENT PRORATED: Rental for any period less than one year shall be prorated on the basis of the rent payable under this Lease in last full year previous to the prorating.

C. ADDITIONAL RENT: In addition to the rent specified in (a) of this Article, Lessee agrees to pay to the appropriate parties all levies, assessments, and charges as follows:

- 1. Taxes pertaining to the leasehold interest of the Lessee.

2. Sales tax now enforced or levied in the future, computed upon rent payable in monthly installments whether the Lessee pays rent under this Lease on a monthly or annual basis.
3. All taxes and assessments levied in the future by the City, as if Lessee was the legal owner of record of the Premises.

D. **PAYMENTS:** The Lessee shall make checks, bank drafts, or postal money orders payable to the City of Kenai and deliver payments to City of Kenai, Finance Department, 210 Fidalgo Avenue, Suite 200, Kenai, Alaska 99611-7794 or any other address the City may designate in writing to the Lessee.

E. **INTEREST:** Beginning the day after payment is due, all unpaid rents, charges, and fees required under this Lease will accrue interest at the rate of eight percent (8.0%) per annum. Interest on disputed amounts will not be charged to the Lessee if the dispute is resolved in the Lessee's favor.

F. **LATE PAYMENT PENALTY:** In addition to any interest payable under Provision (E) of this Article, each time the Lessee fails to pay any rent or fee by the date required in this Lease, the City will charge, and the Lessee shall pay, an administrative penalty of ten percent (10.0%) of the amount due and unpaid.

G. **COURTESY BILLINGS:** Lessee acknowledges that any billing statement issued by the City is provided only as a courtesy. The Lessee is obligated to pay all rents and fees when due, regardless of whether or not the Lessee receives a billing statement from the City.

H. **LIEN AGAINST LESSEE:** Any rent, charge, fee, or other consideration which is due and unpaid at the expiration, termination, or cancellation of this Lease will be a lien against the Lessee's property, real or personal.

I. **PAYMENT OF CITY'S COSTS:** The Lessee will pay all reasonable actual expenses, costs, and attorney fees City may incur, with or without formal action, to enforce, defend, or protect this Lease or City's rights under this Lease, including any expense incurred with respect to environmental compliance, bankruptcy or any proceeding that involves the Lessee, the Lease, the Premises, or improvements or personal property on the Premises. The Lessee will make payment within 30 days of the date of each notice from City of any amounts payable under this provision.

J. **PAYMENT FOR SPECIAL SERVICES:** Lessee agrees to pay the City a reasonable fee for any special services or facilities the City agrees to perform, which the City is not otherwise obligated by this Lease to provide and which the Lessee requests from the City in writing.

ARTICLE V ADJUSTMENT OF RENT AND FEES

A. **RENT OR FEE ADJUSTMENT:** The City shall adjust rent or fees payable by the Lessee under Article IV or other provisions of this lease on July 1 of each year of the lease as proved in KMC 22.05.060 (as effective at the time this lease is executed) and shall make any other adjustments to rent as allowed for in KMC 22.05.060.

No rent or fee change shall be effective until 30 days after the date of the City's written notice to the Lessee. If the Lessee believes that any changed rent exceeds the fair market rent for the Premises, the Lessee may appeal a rent change to the City as provided in KMC 22.05.060.

ARTICLE VI ASSIGNMENT & SUBLETTING

A. **INVALID WITHOUT CITY'S CONSENT:** The Lessee may not assign, sublet, or grant a security interest in, by grant or implication, the whole or any part of this Lease, the Premises, or any improvement on the Premises without the written consent of the City. Any proposed assignment, sublease, or security interest must be written and must be submitted to the City bearing the original, notarized signature of all parties. The Lessee may submit unsigned draft documents for the City's conceptual review. However, the City's conceptual approval of a draft document may not be construed as the City's consent to any assignment, sublease, or security interest. All provisions in this Lease extend to and bind the assignees and sub-lessees of the Lessee.

B. **NO WAIVER OF CONSENT:** The City's consent to one assignment, sublease, or security interest will not waive the requirement for the Lessee to obtain the City's consent to any other assignment, sublease, or security interest.

C. **ASSIGNEE / LESSEE OBLIGATIONS:** An assignment must include a provision stating that the assignee accepts responsibility for all of the assignor's (Lessee's) obligations under this Lease, including environmental liability and responsibility. However, unless the City specifically releases the Lessee in writing, the City may hold the Lessee responsible for performing any obligation under this lease which an assignee fails to perform.

D. **OCCUPANCY BEFORE CITY CONSENT:** An assignee or sub-lessee may not occupy the Premises before the City consents to the assignment or sublease in writing.

E. **CONFLICT OF PROVISIONS:** In the event of a conflict between this Lease and an assignment or a sublease, the terms of this Lease control.

F. **LESSEE NOT RELIEVED OF OBLIGATIONS:** The City's consent to any sublease does not relieve or otherwise alter the Lessee's obligations under this Lease.

G. **SECURITY ASSIGNMENTS AND FINANCING:**

1. Subject to the requirements of (A) of this Article VI, the Lessee may assign a security interest in this Lease. The security interest may be in the form of a mortgage, deed of trust, assignment or other appropriate instrument, provided

- a. the security interest pertains only to the Lessee's leasehold interest;
 - b. the security interest does not pertain to or create any interest in City's title to the Premises; and
 - c. the documents providing for the security interest are approved and acceptable to the City.
2. If the assignment of a security interest to which the City has consented shall be held by an established lending or financial institution, including a bank, an established insurance company and qualified pension or profit sharing trust, and the lending institution acquires the Lessee's interest in this Lease as a result of a foreclosure action or other remedy of the secured party, or through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, the lending institution may transfer its interest in this Lease to a nominee or a wholly owned subsidiary corporation with the prior written consent of the City, provided, the transferee assumes all of the covenants and conditions required to be performed by the Lessee (including payment of any monies owed by Lessee to the City under the lease). In the event of such a transfer, the lending institution shall be relieved of any further liability under this Lessee.
3. A holder of a security interest in this Lease consented to by the City shall have, and be subrogated to, any and all rights of the Lessee with respect to the curing of any default of this Lease by Lessee.
4. A holder of a security interest consented to by the City that takes possession of this Lease shall not be released from the obligations and liabilities of this Lease unless the holder assigns its leasehold estate to an assignee who is financially capable and otherwise qualified to undertake to perform and observe the conditions of this Lease and the City consents to the assignment. The City's consent will not be unreasonably withheld.

**ARTICLE VII
MAINTENANCE, SNOW REMOVAL & UTILITIES**

A. MAINTENANCE:

- 1. At no cost to the City, the Lessee will keep the Premises and all improvements on the Premises clean, neat and presentable, as reasonably determined by the City.
- 2. At no cost to the City, the Lessee will provide for all maintenance and services at the Premises as may be necessary to facilitate the Lessee's compliance with this Lease and the Lessee's use of the Premises.

3. The Lessee shall comply with all regulations or ordinances of the City that are promulgated for the promotion of sanitation. At no cost to the City, the Lessee shall keep the Premises in a clean and sanitary condition, and control activities on the Premises to prevent the pollution of water.

- 4.

B. SNOW REMOVAL:

1. At no cost to the City, the Lessee is responsible for snow removal on the Premises. The Lessee shall dispose of snow in an off-Premises location approved or provide suitable snow storage within the boundaries of the Premises in accordance with all applicable federal and state laws.
2. Lessee shall not deposit snow in right-of-ways, easements, roads or on City property without written approval of the City..
3. Lessee agrees to not allow an accumulation of snow on the Premises that would cause interference with adjoining leaseholders or the public.

C. UTILITIES: Unless specifically provided otherwise in this Lease, the Lessee shall, at no cost to the City, provide for all utilities at the Premises necessary to facilitate the Lessee's use of the Premises.

ARTICLE VIII OPERATIONS

A. OPERATIONS: The Lessee will ensure that the Lessee, its employees, guests, contractors, sub-lessees, and vendors that perform any activity or function authorized under this Lease shall do so in a manner that ensures the safety of people, the protection of public health and the environment, and the safety and integrity of the Premises.

B. LESSEE'S CONTROL AND RESPONSIBILITY:

1. The Lessee will assume full control and sole responsibility as between Lessee and City for the activities of the Lessee, the Lessee's personnel and employees, and anyone else acting by, on behalf of, or under the authority of the Lessee.
2. The Lessee will immediately notify the City of any condition, problem, malfunction or other occurrence that threatens the safety the public or City employees, harm to public health or the environment, or the safety or integrity of the Premises.

C. **RADIO INTERFERENCE:** The Lessee will discontinue the use of any machine or device that interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

D. **PARKING:** The Lessee will provide adequate vehicle and equipment, parking space on the Premises for Lessee's business or activities.

ARTICLE IX ENVIRONMENTAL PROVISIONS

A. **HAZARDOUS SUBSTANCE:**

1. The lessee will conduct its business and/or operation on the Premises in compliance with all environmental laws and permits. If hazardous substances are handled on the Premises, the Lessee agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling Hazardous Substances in accordance with all applicable federal, state and local laws.
2. Lessee will promptly give the City notice of proceeding to abate or settle matters relating to the presence of a Hazardous Substance on the Premises or from Lessee's operations on the Premises. The Lessee will allow the City to participate in any such proceedings.

B. **ENVIRONMENTAL INDEMNIFICATION:** If Contamination of the Premises or other property by a Hazardous Substance occurs from the Lessee's operations on the Premises the Lessee will indemnify, defend, and hold the City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, including, but not limited to, sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees, which arise during or after the term of this Lease as a result of such Contamination. This indemnification of the City by Lessee includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, monitoring, or restorative work required by any federal, state, or local governmental agency because of a Hazardous Substance being present in the soil or groundwater or under the Premises or other properties affected by the Contamination.

C. **REMEDIATION:**

1. In the event of a Hazardous Substance spill on the Premises, the Lessee will immediately notify the City and the Alaska Department of Environmental Conservation and act, promptly, at its sole expense, to contain the spill, repair, any damage, absorb and clean up the spill area, and restore the Premises to a condition satisfactory to the City and otherwise comply with the applicable portions of any environmental law.

- 2. In addition to any notices required by this Lease, the Lessee will immediately notify and copy the City in writing of any of the following:
 - a. Any permit, enforcement, clean up, lien, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to an Environmental Law.
 - b. Any claim made or threatened by any person against the Lessee or arising from the Lessee's operations authorized by this Lease, relating to damage, contribution, compensation, loss or injury resulting, from, or claimed to result from any Hazardous Substances in, on, or under the Premises; or
 - c. Any report made by, or on behalf of, the Lessee to any environmental agency arising out of or in connection with any Hazardous Substances in, on, or removed from the Premises, including any complaints, notices, warnings, or asserted violations.
- 3. Remediation and restoration of the contaminated area must meet all applicable state and federal regulations and must meet the requirements of all governing regulatory authorities.

D. ENVIRONMENTAL AUDIT: The Lessee will provide the City with all investigative data, test results, reports, and any other information gathered or analyzed as part of or in relation to any Environmental Assessment, characterization or audit on the Premises that Lessee performs or causes to be performed after the starting date of this Lease. The Lessee will submit the data, result, report or information to the City within 60 days following the date on which it becomes available to the Lessee.

E. RELEASE OF LESSEE: The City releases the Lessee from liability to the City for Contamination and the presence of Hazardous Substances that existed prior to the commencement date of this lease unless caused or materially contributed to by the Lessee.

F. SURVIVAL OF OBLIGATIONS: The obligations and duties of the City and Lessee under Article IX of this lease shall survive the cancellation, termination or expiration of this lease.

**ARTICLE X
INDEMNIFICATION & INSURANCE**

- A. INDEMNIFICATION:
 - 1. The Lessee will indemnify, save harmless, and defend the City, its officers, agents, and employees from and against any and all liabilities, losses, suits, administrative actions, claims, awards, judgments, fines, demands, damages,

injunctive relief or penalties of any nature or kind to the full extent of the loss or obligation for property damage, personal injury, death, violation of any regulation or grant agreement, or any other injury or harm resulting from or arising out of any acts or commission of or omission by the Lessee, Lessee's agents, employees, customers, invitees or arising out of the Lessee's occupation or use of the premises demised or privileges granted, and to pay all costs connected therewith. This indemnification of the City by the Lessee shall include sums paid in settlement of claims, attorney fees, consultant fees, expert fees, or other costs and expenses, directly or indirectly arising from, connected to or on account of this Lease as it relates to the Lessee, the Lessee's activities at or relating to the Premises, or any act or omission by the Lessee, or by any of Lessee's officers, employees, agents, contractors or sub-lessees. These indemnity obligations are in addition to, and not limited by, the Lessee's obligation to provide insurance, and shall survive the expiration or earlier termination of this Lease.

2. The Lessee shall give the City prompt notice of any suit, claim, action or other matter affecting the City to which Paragraph 1, above, may apply, together with a copy of any letter by an attorney on behalf of a complainant, any complaint filed in court, and any notice or complaint by any regulatory agency. The City shall have the right, at its option, to participate cooperatively in the defense of, and settlement negotiations regarding, any such matter, without relieving the Lessee of any of its obligations under this provision.
3. As to any amount paid to others for personal injury or property damage with respect to which an act or omission of the City is a legal cause, notwithstanding Paragraph 1 of this section, the Lessee and the City shall reimburse each other according to the principles of comparative fault. If liability to a third party is subject to apportionment according to comparative fault under this provision, the Lessee and the City shall seek in good faith to achieve non-judicial agreement as to apportionment of fault as between themselves. This apportionment of liability between the City and the Lessee shall not be construed to affect the rights of any person who is not a party to this Lease.

B. **INSURANCE:** At no expense to the City, the Lessee will obtain and keep in force during the term of this Lease, insurance of the type and limits required by this provision. Where specific limits are set, they will be the minimum acceptable limits. If the Lessee's policy contains higher limits, the City will be entitled to coverage to the extent of the higher limits. At the time insurance is obtained by the Lessee, all insurance shall be by a company/corporation rated "A-" or better by A.M. Best. The following policies of insurance are required with the following minimum amounts:

1. Commercial General Liability, including Premises, all operations, property damage, products and completed operations, and personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 combined single limit. If this lease authorizes the Lessee to engage in the sale

or the commercial dispensing or storage of aviation fuel, the policy must not exclude of Lessee's fuel handling activities. This policy must name the City as an additional insured.

2. Commercial Automobile Coverage with not less than \$1,000,000 combined single limit per occurrence. This insurance must cover all owned, hired, and non-owned motor vehicles used by the Lessee.
3. Workers Compensation Insurance. The Lessee will provide and maintain, for all employees, coverage as required under AS 23.30.045, and, where applicable, any other statutory obligations. The policy must waive subrogation against the City.
4. The Lessee will provide the City with proof of insurance coverage in the form of an insurance policy or a certificate of insurance, together with proof that the premiums have been paid, showing the types and monetary limits of coverage secured. All insurance required by this provision must provide that the City be notified at least 30 days prior to any termination, cancellation, or material change in the insurance coverage.
5. If the Lessee's insurance coverage lapses or is canceled, Lessee will immediately, upon written notice by the City, halt all operations on the the Premises. The Lessee will not resume operations until the City receives evidence that the Lessee has obtained current insurance coverage meeting the requirements of this Lease.
6. The City may, at intervals of not less than five years from the beginning date of the term of this Lease and upon written notice to Lessee, revise the insurance requirements required under this Lease. City's determination to revise the insurance requirements will be based on the risks relative to the Lessee's operations, any insurance guidelines adopted by the City, and any applicable law.
7. If the Lessee subleases all or any portion of the Premises under the provisions of this Lease, the Lessee will require the sub-lessee to provide to the insurance coverage required of the Lessee under this Article X.

ARTICLE XI LAWS & TAXES

A. **COMPLIANCE WITH LAW:** Lessee shall comply with all applicable laws, ordinances, and regulations of public authorities now or hereafter in any manner affecting the Premises or the sidewalks, alleys, streets, and ways adjacent to the Premises, or any buildings, structures, fixtures and improvements or the use thereof, whether or not any such laws, ordinances, and regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Lessee agrees to hold City financially harmless:

1. From the consequences of any violation of such laws, ordinances, and/or regulations; and
2. From all claims for damages on account of injuries, death, or property damage resulting from such violation.

B. **UNLAWFUL ACTIVITY:** The Lessee shall not permit any unlawful use, occupation, business, or trade to be conducted on the Premises contrary to any law, ordinance, or regulation, including zoning ordinances, rules and regulations.

C. **LICENSES AND PERMITS:** The Lessee will obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Premises, and pay other fees and charges assessed under applicable law. Nothing in this Lease prevents the Lessee from challenging any taxes or special assessments to the appropriate authority.

D. **LITIGATION:** The Kenai Municipal Code, including regulations promulgated thereunder, and the laws of the State of Alaska will govern in any dispute between the Lessee and City. If a dispute continues after exhaustion of administration remedies, any lawsuit must be brought in the courts of the State of Alaska, in Kenai, Alaska.

E. **LESSEE TO PAY TAXES:** Lessee shall pay all lawful taxes and assessments which, during the term of this Lease may become a lien upon or which may be levied by the State, Borough, City, or any other tax levying body, upon any taxable possessory right which Lessee may have in or to the Premises or improvements on the Premises by reason of its use or occupancy or the terms of this Lease provided, however, that nothing in this provision shall prevent Lessee from contesting any increase in a tax or assessment under any applicable law, ordinance, or regulation.

F. **PARTIAL INVALIDITY:** If any term, provision, condition, or part of this Lease is declared by a court of competent jurisdiction to be invalid or unconstitutional, the remaining terms, provisions, conditions, or parts shall continue in full force and effect as though the declaration had not been made.

ARTICLE XII LEASE TERMINATION

A. **CANCELLATION:** The City may, after 30 days' written notice to the Lessee, cancel this Lease and recover possession of the Premises if any of the following violations occur, unless the violation is cured within the 30 days:

1. The Lessee fails to pay when due the rents, additional rents, charges, or other sums specified in this Lease, including any increases made under this Lease.

2. The Lessee's check for payment of any sum due under this Lease is returned for insufficient funds.
3. The Lessee uses or authorizes the use of the Premises for any purpose not authorized by this Lease.
4. The Lessee fails to fully perform and comply with any provision in this Lease.
5. The Lessee violates a provision of Kenai Municipal Code applicable to this Lessee.
6. The court enters a judgment of insolvency against the Lessee.
7. A trustee or receiver is appointed for the Lessee's assets in a proceeding brought by or against the Lessee, or the Lessee files a voluntary petition in bankruptcy.
8. Failure by the Lessee to comply with any land development or permanent improvement construction required by this Lease.

B. ENTRY AND RE-ENTRY: In the event that the Lease should be terminated in accordance with this Article XII, or by summary proceedings or otherwise, or upon the Lessee's abandonment of the Premises or a portion of the Premises, the City or its agents, servants, or representatives may, immediately or any time thereafter, re-enter, and resume possession of the Premises or portion thereof, and remove all persons and property therefrom, without being liable for any damages therefore. No re-entry by the City shall be deemed an acceptance of a surrender of the Lease.

C. CONTINUING OBLIGATIONS UNTIL PREMISES VACATED: The Lessee will continue to pay City rent after the expiration, termination, or cancellation of this lease and to abide by the lease obligations, including providing proof of insurance coverage, through the date Lessee relinquishes possession of and completely vacates the Premises. City will consider the Premises completely vacated if the Lessee has

1. Remediated any environmental contamination for which the Lessee is responsible;
2. Restored the Premises to a neat and clean physical condition acceptable to the City.

D. REASONABLE CURE:

1. In the case of a violation that cannot be reasonably cured within 30 days, a notice of cancellation issued by the City to the Lessee under this Article is

stayed if, within the 30-day notice period, the Lessee begins and continues expeditious action to cure the violation. The City will determine if a violation cannot be reasonably cured within 30 days and what constitutes expeditious action.

2. In the case where, in City's sole determination, Lessee's violation is considered an imminent threat to public health or safety, or the environment, City will direct the Lessee to stop the activity immediately and may reduce the period to cure the violation, or the City may correct the violation pursuant to (E) of this Article.

E. RIGHT OF CITY TO PERFORM:

1. If, after 30 days following notice the Lessee fails or refuses to perform any action required by this Lease, the City will have the right, but not the obligation, to perform any or all such actions required by this Lease at the sole expense of the Lessee. The City will not take action if the Lessee begins and continues expeditious action to perform any action required by this Lease that cannot be reasonably completed within 30 days. The City will, at its sole discretion, determine what constitutes expeditious action and if an action cannot be reasonably performed in 30 days. The City will submit to the Lessee an invoice for the expenses incurred by the City in the performance by the City of any required action. The Lessee will pay the amount of each invoice within 30 days from issuance.
2. If Lessee fails or refuses to perform any action that has been deemed an imminent threat the City will have the right, but not the obligation, to perform any or all such actions required to expeditiously correct the imminent threat. Lessee shall reimburse the City for any cost, including legal fees and administrative costs reasonably incurred by the City in acting to correct the imminent threat violation.

F. WAIVER: A waiver by the City of any default by the Lessee of any provision of this Lease will not operate as a waiver of any subsequent default. If the City waives a default, the City is not required to provide notice to the Lessee to restore or revive any term or condition under this Lease. The waiver by the City of any provision in this Lease cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of the City. The City's failure to insist upon the strict performance by the Lessee of any provision in this Lease is not a waiver or relinquishment for the future, and the provision will continue in full force.

G. NATIONAL EMERGENCY: If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Lease as a result of the national emergency.

H. SURRENDER ON TERMINATION: Except as provided otherwise in this Article XII, Lessee shall, on the last day of the term of this Lease (including any extension or renewal thereof) or upon any earlier termination of this Lease, surrender and deliver up the premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by and for loans to City.

I. OWNERSHIP AND DISPOSITION OF IMPROVEMENTS:

1. Ownership of Permanent Improvements: Permanent improvements on the Premises, excluding Site Development Materials, constructed, placed, or purchased by the Lessee remain the Lessee's property as long as this Lease remains in effect, including any period of extension or holdover with the consent of the Lessor.

2. Disposition of Site Development Materials: The Lessee acknowledges that, once placed by the Lessee, the removal from the Premises of Site Development Materials can damage the Premises, adversely affect surface water drainage patterns, and destabilize adjacent structures. When placed on the Premises by the Lessee, Site Development Materials, including building pads, parking areas, driveways, and similar structures:
 - a. become a part of the realty and the property of the City of Kenai;
 - b. unless otherwise directed by the Lessor, must be maintained by the Lessee throughout the term of this Lease, including any extensions and periods of holdover; and
 - c. may not be removed by the Lessee without the prior written approval of the Lessor.

3. Disposition of Personal Property and Permanent Improvements Other Than Site Development Materials:
 - a. Unless the Lessor otherwise directs as provided below, when this Lease expires, terminates, or is cancelled and is neither extended nor followed by a successive lease, the departing Lessee may do one or more of the following:

- i. remove Lessee-owned Permanent Improvements from the Premises, remediate any Contamination for which the Lessee is responsible, and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the expiration, cancellation, or termination date of this Lease;
 - ii. with written approval from the Lessor, sell Lessee-owned Permanent Improvements to the succeeding lessee, remove all personal property, remediate, any Contamination for which the Lessee is responsible and leave the Premises in a clean and neat physical condition acceptable to the Lessor within 60 days after notice from the Lessor that the Lessor has approved an application for a lease of the Premises by another person or such longer period specified in the notice, but in no event more than 180 days after the expiration, termination, or cancellation date of this Lease;
 - iii. elect to have the Lessor sell Lessee-owned Permanent Improvements at public auction as provided below, remediate any Contamination for which the Lessee is responsible, and restore the premises to a clean and neat physical condition acceptable to the Lessor. If the Lessor sells Permanent Improvements under this Paragraph for removal from the Premises, the departing Lessee's obligation under this Paragraph continues until the Premises are remediated and restored to a clean and neat physical condition acceptable to the Lessor after the improvements have been removed.
- b. If the departing Lessee elects to have the Lessor sell Lessee-owned Permanent Improvements at public auction per this Section, the Lessee shall, within 30 days after the expiration, cancellation, or termination of this Lease:
- i. submit to the Lessor a written request and authorization to sell the Permanent Improvements by public auction;
 - ii. provide to the Lessor an executed conveyance document transferring clear title to the Permanent Improvements to the successful bidder at the public auction, along with authorization to the Lessor, as agent for the Lessee for purposes of the sale only, to endorse the name of the successful bidder on the conveyance document upon receipt of payment of the successful bid price; and

- iii. before the date of the public auction, remove all personal property, remediate any Contamination for which the Lessee is responsible and leave the Premises in a neat and clean physical condition acceptable to the Lessor.
- c. When selling Lessee-owned Permanent Improvements at public auction for the departing Lessee, the Lessor will establish the terms and conditions of the sale. The Lessor shall pay the Lessee any proceeds of the sale of the Permanent Improvements, less the administrative costs of the public auction and any financial obligation the Lessee owes to the Lessor under this Lease. Payment will be made within a reasonable time after the Lessor completes the sale transaction and receives the proceeds, but not to exceed 60 days. If all or a portion of the Permanent Improvements do not sell at public auction, the Lessee will remove those Permanent Improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises to a clean and neat physical condition acceptable to the Lessor within 60 days after the auction.
- d. If the Lessee shows good cause to the Lessor and if it is not inconsistent with the best interest of the City of Kenai, the Lessor will grant an extension of time that is sufficient to allow the Lessee to remove or sell Lessee-owned Permanent Improvements, remediate any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor.
- e. The Lessor will, by written notice, direct the departing Lessee to remove Lessee-owned Permanent Improvements from the Premises, to remediate, consistent with applicable law, any Contamination for which the Lessee is responsible and to restore the Premises to a clean and neat physical condition acceptable to the Lessor if the Lessor determines in writing:
 - i. that the continued presence of the Permanent Improvements on the Premises are not consistent with any written City program or plan required for compliance with applicable federal, state, or local law;
 - ii. that the continued presence of the Permanent Improvements on the Premises is not in the best interest of the City of Kenai; or
 - iii. that the Permanent Improvements present a hazard to public health or safety.

- f. The departing Lessee to whom the Lessor has issued direction under Paragraph e of this Section shall comply with the Lessor's direction within 60 days after issuance of the direction and at no cost to the Lessor. If the departing Lessee shows good cause to the Lessor, continues to work diligently to comply with Lessor's direction, and if it is not inconsistent with the best interest of the City of Kenai, the Lessor will allow in writing a longer period that is sufficient to allow the Lessee to comply with the Lessor's direction. A departing Lessee who fails to comply with a direction issued by the Lessor under Paragraph e of this Section, shall, within 30 days of being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal fees and administrative costs, to enforce the Lessor's direction or to remove and dispose of unremoved Lessee-owned improvements, remediate any Contamination for which the Lessee is responsible and restore the Premises.
- g. If the departing Lessee does not timely remove or sell the Lessee-owned Permanent Improvements on the Premises in accordance with the requirements of this Section, any remaining Permanent Improvements and any remaining personal property of the departing Lessee will be considered permanently abandoned. The Lessor may sell, lease, demolish, dispose of, remove, or retain the abandoned property for use as the Lessor determines is in the best interest of the City of Kenai. The departing Lessee shall, within 30 days after being billed by the Lessor, reimburse the Lessor for any costs reasonably incurred by the Lessor, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate and restore the Premises.
- h. After the expiration, termination, or cancellation of the Lease, including any holdover, the departing Lessee loses all right to occupy or use the premises without the express or implied consent of the Lessor. Except as the Lessor notifies the departing Lessee otherwise in writing, the Lessor consents to the departing Lessee's continued use and occupancy of the Premises to diligently accomplish the requirements of this Section. Until the departing Lessee relinquishes possession of and completely vacates the Premises and notifies the Lessor in writing that it has relinquished and vacated the Premises, the departing Lessee shall perform the following as if the lease were still in effect,
- i. pay rent to the Lessor;
 - ii. maintain the premises;
 - iii. provide the Lessor with evidence of each insurance coverage, if any, required under the Lease; and

- iv. cease using the premises other than to diligently accomplish the requirements of this Section, and to comply with the other requirements of the Lease.
- i. A departing Lessee will not be considered to have relinquished possession and completely vacated the Premises until
 - i. the departing Lessee has:
 - (a) remediated, consistent with applicable law, any Contamination for which the Lessee is responsible; and
 - (b) restored the Premises to a clean and neat physical condition acceptable to the Lessor; and
 - ii. either
 - (a) removed all of the Lessee's Permanent Improvements and personal property from the premises or sold the Permanent Improvements and personal property to a succeeding Lessee under the provisions of this Lease; or
 - (b) transferred title to the Lessee's Permanent Improvements and personal property that remain on the premises to the Lessor.

ARTICLE XIII GENERAL COVENANTS

A. **COSTS AND EXPENSES:** Costs and expenses incident to this lease, including but not limited to recording costs, shall be paid by Lessee.

B. **CARE OF THE PREMISES:** The Lessee shall keep the Premises clean and in good order at the Lessee's own expense, allowing no damage, waste, nor destruction thereof, nor removing any material therefrom, without written permission of the City. At the expiration of the term fixed, or any earlier termination of the Lease, the Lessee will peaceably and quietly quit and surrender the premises to the City.

E. **CONSTRUCTION APPROVAL AND STANDARDS:** Any building construction on the Premises by the Lessee must be compatible with its surroundings and consistent with the uses authorized under this Lease, as determined by the City. The Lessee must obtain the City's written approval before placing fill material, beginning any land development, or constructing

or demolishing any improvements on the Premises, and before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation, together with specifications or any other information the City reasonably requires. [Include for FAA Restricted Land only]Further, the Lessee will submit to City evidence of the Lessee's compliance with Federal Aviation Administration regulation 14 CFR Part 77.

E. LEASE SUBORDINATE TO CITYFINANCING REQUIREMENTS: Lessee agrees that City may modify this Lease to meet revised requirements for Federal or State grants, or to conform to the requirements of any revenue bond covenant. However, the modification shall not act to reduce the rights or privileges granted the Lessee by this Lease, nor act to cause the Lessee financial loss.

F. RIGHT TO ENJOYMENT AND PEACEABLE POSSESSION: City hereby agrees and covenants that the Lessee, upon paying rent and performing other covenants, terms, and conditions of this Lease, shall have the right to quietly and peacefully hold, use, occupy, and enjoy the Premises, except that the following shall not construed as a denial of the right of quiet or peaceable possession:

1. Any inconvenience caused by public works projects in or about the Premises; and
2. Any other entries by the City on the Premises reserved or authorized under other provisions of this Lease.

G. NO PARTNERSHIP OR JOINT VENTURE CREATED: It is expressly understood that the City shall not be construed or held to be a partner or joint venture of Lessee in the conduct of the Lessee's activities or business on the Premises. The relationship between the City and the Lessee is, and shall at all times remain, strictly that of landlord and tenant, respectively.

H. DISCRIMINATION: The Lessee will not discriminate on the grounds of race, color, religion, national origin, ancestry, age, or sex against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The Lessee recognizes the right of the City to take any action necessary to enforce this provision, including actions required pursuant to any federal or state law.

I. [Include for FAA Restricted Land only]AFFIRMATIVE ACTION: If required by 14 CFR Part 152, subpart E, the Lessee will undertake an affirmative action program to insure that no person will be excluded from participating in any employment activities offered by the Lessee on the grounds of race, creed, color, national origin, or sex. No person may be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by subpart E. The Lessee further agrees that it will require its sub-organization(s) provide assurance to the City to the same effect that they will also undertake affirmative action programs and require assurances from their sub-organization(s) as required by 14 CFR, Part 152, subpart E.

Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to title 49, code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulation may be amended.

J. INTEGRATION, MERGER, AND MODIFICATION: This Lease sets out all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Premises whether oral or written. No modification or amendment of this Lease is effective unless in writing and signed on behalf of the City and the Lessee.

K. RIGHT TO ADOPT RULES: City reserves the right to adopt, amend, and enforce reasonable rules and regulations governing the City, including the Premises. The City shall not be liable to Lessee for any diminution or deprivation of possession, or of Lessee's rights under this Lease, on account of the exercise of the City's authority reserved under this provision. Furthermore, the Lessee shall not be entitled to terminate the whole or any portion of the leasehold estate created under this Lease, by reason of the exercise of the City's authority reserved under this provision, unless the exercise thereof so interferes with Lessee's use and occupancy of the Premises as to constitute a termination, in whole or in part, of this Lease by operation of law under the laws of the State of Alaska and of the United States made applicable to the states.

L. LESSEE'S OBLIGATION TO PREVENT AND REMOVE LIENS: Lessee will not permit any liens including, but not limited to, mechanics', laborers', or materialmen's liens obtainable or available under the then existing laws, to stand against the Premises or improvements on the Premises for any labor or material furnished to Lessee or claimed to have been furnished to Lessee or to the Lessee's agents, contractors, or sub-lessees, in connection with work of any character performed or claimed to have been performed on the Premises or improvements by or at the direction or sufferance of Lessee. Provided, however, the Lessee shall have the right to provide a bond as contemplated by Alaska law and contest the validity or amount of any such lien or claimed lien. Upon a final determination of the lien or claim for lien, the Lessee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Lessee's own expense.

M. CONDEMNATION: In the event the Premises or any part thereof shall be condemned and taken for a public or a quasi-public use, then upon payment of any award or compensation

arising from the condemnation or taking, the City and the Lessee shall make a good faith effort to agree upon

1. the division of the proceeds;
2. the abatement in rent payable during the term or any extension of the term of this Lease; and
3. other adjustments as the parties may agree upon as being just and equitable under all the circumstances.

If, within thirty days after the award has been paid into Court, the City and Lessee are unable to agree upon what division, abatement in rent, and other adjustments as are just and equitable, the dispute shall be determined by arbitration.

N. SUCCESSORS IN INTEREST: This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, subject to such specific limitations on assignment as are provided for in this Lease.

O. NOTICES:

1. Any notices required by this Lease must be in writing and must be delivered personally or mailed by certified or registered mail in a prepaid envelope. A mailed notice
 - a. must be addressed to the respective party at the address written on the first page of this Lease or to the latest address designated in accordance with (2) of this Provision (O); and
 - b. shall be deemed delivered on the date it is deposited in a U.S. general or branch post office.
2. The City or the Lessee may, from time to time, designate a new address at which they will receive notices by providing the other party with written notice at least 15 days prior to the effective date of the change. An address change notice must be delivered according to the procedure set out in (1) of this Provision (O).

P. RETENTION OF RENTAL: In the event the City terminates this Lease because of any breach by the Lessee, the City shall retain any unused balance of the rental payment last made by the Lessee City as partial or total liquidated damages for the breach.

Q. FIRE PROTECTION: The Lessee will take all reasonable precautions to prevent, and take all necessary action to suppress destructive or uncontrolled fires and comply with all laws, regulations, and rules promulgated and enforced by the City for fire protection.

R. PERSONAL USE OF MATERIALS: No interest in coal, oil, gas or any other mineral, or in any deposit of stone or gravel valuable for extraction or utilization is included in the Premises or in the rights granted by this lease. The Lessee shall not sell or remove from the Premises for use elsewhere any timber, stone, gravel, peat moss, topsoil or any other material valuable for building or commercial purposes.

S. APPROVAL OF OTHER AUTHORITIES: The granting of this lease by the City does not relieve the Lessee of the responsibility to obtain any license or permit as may be required by federal, state, or local law.

T. EXECUTION BY THE PARTIES: This Lease is of no effect unless signed by the Lessee, or a duly authorized representative of Lessee, and an authorized representative of the City.

U. CAPTIONS: The captions of the provisions of this Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of any provision.

V. RIGHTS OF CONSTRUCTION: This Lease is intended to make public property available for private use, while at all times protecting the public interest to the greatest extent possible. Following the rule that transfers of interest in public property are to be strictly construed in favor of the public property landlord, all rights granted to the Lessee under this Lease will be strictly construed, and all rights of the City and the protections of the public interest will be liberally construed.

W. LESSEE ACKNOWLEDGEMENT: The Lessee acknowledges that the Lessee has read this Lease and fully understands its terms, that the Lessee has been fully advised or has had the opportunity of advice by separate legal counsel, and voluntarily executes this Lease. Lessee also acknowledges and agrees that the rule of interpretation under which a document is construed against the drafter will not apply to this Lease.

X. APPROVAL BY LESSOR: Any approval required of the Lessor by this Lease will not be unreasonably withheld. The Lessor's approval does not waive the Lessee's legal responsibility or liability to comply with all applicable federal and state laws and regulations.

**ARTICLE XIV
SURVEY, IMPROVEMENTS AND PERFORMANCE BOND**

A. SURVEY: The Lessee is solely responsible, at its sole expense, to confirm or establish the physical location of the boundaries of the Premises prior to beginning any construction thereon, including clearing grubbing, back-filling and environmental sampling. Any survey of the Premises shall be performed by a Land Surveyor registered in the State of Alaska. The Lessee shall furnish the City with a copy of the plat of any survey performed on the Premises by, or on behalf of, the Lessee.

B. IMPROVEMENTS:

1. **REQUIRED IMPROVEMENTS:** At no cost to the City, Lessee agrees to complete land development and construction of Permanent Improvements including _____, by no later than _____, with an aggregate cost of at least \$ _____, excluding financing costs. In addition to the as-built drawings required by this Lease, the Lessee must submit to the City written evidence that the Lessee has completed the land development and constructed improvements on the Premises with an aggregate cost or investment of not less than \$ _____.

The evidence of cost must be submitted to the City within sixty days of the completion of the development and improvements, but by no later than _____.

a. Costs considered toward the aggregate cost of permanent improvements include building construction, design, labor, materials, materials shipping, permits, equipment, soil testing, environmental baseline report, and environmental assessment directly related to the construction; premises and as-built surveys; site preparation, including excavation, geotextile fabric, filling, grading, fill material, gravel, and pavement, remediation of environmental contamination (unless Lessee caused or Materially Contributed To the Contamination); and utility connection costs.

b. The cost of Permanent Improvements excludes:

1. work performed by the City and not reimbursed by the Lessee; and
2. work performed by the Lessee and reimbursed by the City.

2. **FAILURE TO COMPLETE IMPROVEMENTS:** If the Lessee fails to complete the required construction within the time allowed under (b)(1) of this Article, including any extensions granted, the City will execute against and the Lessee will forfeit, any bond or other guarantee given by the Lessee and, as applicable, City will:

- a. initiate cancellation of the lease; or
- b. reduce the term of the lease to a period that is consistent with the portion of the required construction timely completed.

3. **APPEARANCE:** When completed, all improvements on the Premises must be neat, presentable, and compatible with the authorized use of the Premises under this Lease, as determined by the City.

4. CITY APPROVAL REQUIRED: The Lessee must first obtain the City's written approval before beginning any land development, construction or demolition of any improvements on the Premises, or before beginning any alterations, modifications, or renovation of existing structures on the Premises. The Lessee must submit to the City detailed drawings of the proposed development, alteration, modification, or renovation. [Include for FAA Restricted Land only]Further, the Lessee will submit to City evidence of the Lessee's compliance with the FAA regulation 14 CFR Part 77.
5. CITY APPROVAL WITHHELD: The City's approval of any construction, alteration, modification, or renovation will not be withheld unless
 - a. the Lessee fails to demonstrate adequate financial resources to complete the project;
 - b. the project plans, specifications, and agency approvals are incomplete;
 - c. the proposed project would result in a violation of an applicable ordinance, regulation, or law;
 - d. the proposed project would interfere with or is incompatible with the safety, security, maintenance, or operations of the City;
 - e. [Include for FAA Restricted Land only]the proposed project is inconsistent with the Airport Master Plan;
 - f. the proposed project is inconsistent with the terms of the lease, zoning ordinances, or the City's Comprehensive Plan;
 - g. the project plans do not make sufficient provision for drainage, vehicle, and equipment parking, or for snow storage; or
 - h. the proposed project does not conform to generally recognized engineering principles or applicable fire or building codes.
6. DEMOLITION: Prior to any demolition of any structure(s) on the Premises, Lessee will deliver to City a written scope of work that, at a minimum, lists the structure(s) that are to be demolished and the timeframe for demolition and removal of the debris from the Premises. City will review Lessee's scope for demolition and issue Lessee written approval for the work to be done.
7. BUILDING SETBACK: No building or other permanent structure may be constructed or placed in violation of the City's setback requirements.

- 8. AS-BUILT DRAWINGS: Within sixty days after completion of construction or placement of improvements upon the Premises, the Lessee will deliver to the City a copy of an as-built drawing, acceptable to the City, showing the location and dimensions of the improvements, giving distances to all Premises' boundaries. If the Lessee constructs underground improvements, the Lessee will appropriately mark the surface of the land with adequate surface markers. The type, quantity, and distance between such markers will be subject to approval of the City.

- 9. DAMAGE TO IMPROVEMENTS: If Lessee's improvements on the Premises are damaged or destroyed, Lessee will cause the improvements to be repaired or rebuilt, and restored to normal function within two years following the damage or destruction. If the Lessee fails to timely rebuild or restore the improvements, the City may, at its sole discretion, either reduce the term of this Lease commensurate with the estimated value of the Lessee's remaining, fully functional improvements on the Premises, or cancel this Lease.

- 10. DAMAGE NEAR EXPIRATION: If Lessee's improvements are damaged to the extent that more than 50% of the space is unusable and the damage occurs within five years of the expiration of the term of this Lease, Lessee may remove the damaged improvements, restore the Premises and terminate this Lease.

C. PERFORMANCE BOND (Optional): Prior to beginning the construction of permanent improvements required under (1) of this Article, the Lessee shall submit to the City a performance bond, deposit, or other security in the amount of \$_____. The form of the bond or other security shall be subject to the City's approval.

D. SURRENDER ON TERMINATION: Lessee shall, on the last day of the term of this Lease or upon any earlier termination of this Lease, surrender and deliver upon the premises into the possession and use of City without fraud or delay in good order, condition, and repair, except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal, free and clear of all lettings and occupancies unless expressly permitted by the City in writing, and free and clear of all liens and encumbrances other than those created by and for loans to City. Upon the end of the term of this Lease, including any extension or renewal, or any earlier termination thereof, title to the buildings, improvements and building equipment shall automatically vest in City without requirement of any deed, conveyance, or bill of sale thereon. However, if City should require any such document in confirmation hereof, Lessee shall execute, acknowledge, and deliver the same and shall pay any charge, tax, and fee asserted or imposed by any and all governmental unites in connection herewith.

E. NOTICE OF CONSTRUCTION: The Lessee agrees to notify the City in writing three days prior to commencing any construction project valued in excess of \$1,000.00 on the Premises. The Lessee agrees to assist in the posting of a notice of non-responsibility and maintenance of the notice on the Premises during construction. Lessee agrees that in the event the Lessee fails to notify the City as required by this Provision (f), the Lessee shall

said corporation.

Notary Public for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 20__, Paul Ostrander, City Manager of the City of Kenai, Alaska, being personally known to me or having produced satisfactory evidence of identification, appeared before me and acknowledged the voluntary and authorized execution of the foregoing instrument on behalf of said City.

Notary Public for Alaska
My Commission Expires: _____

ATTEST:

Shellie Saner, City Clerk

SEAL:

Approved as to Lease Form:

Scott Bloom, City Attorney

AFTER RECORDING RETURN TO:

City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611



Basic Tools



Tool Labels X

☆ 04327014

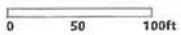
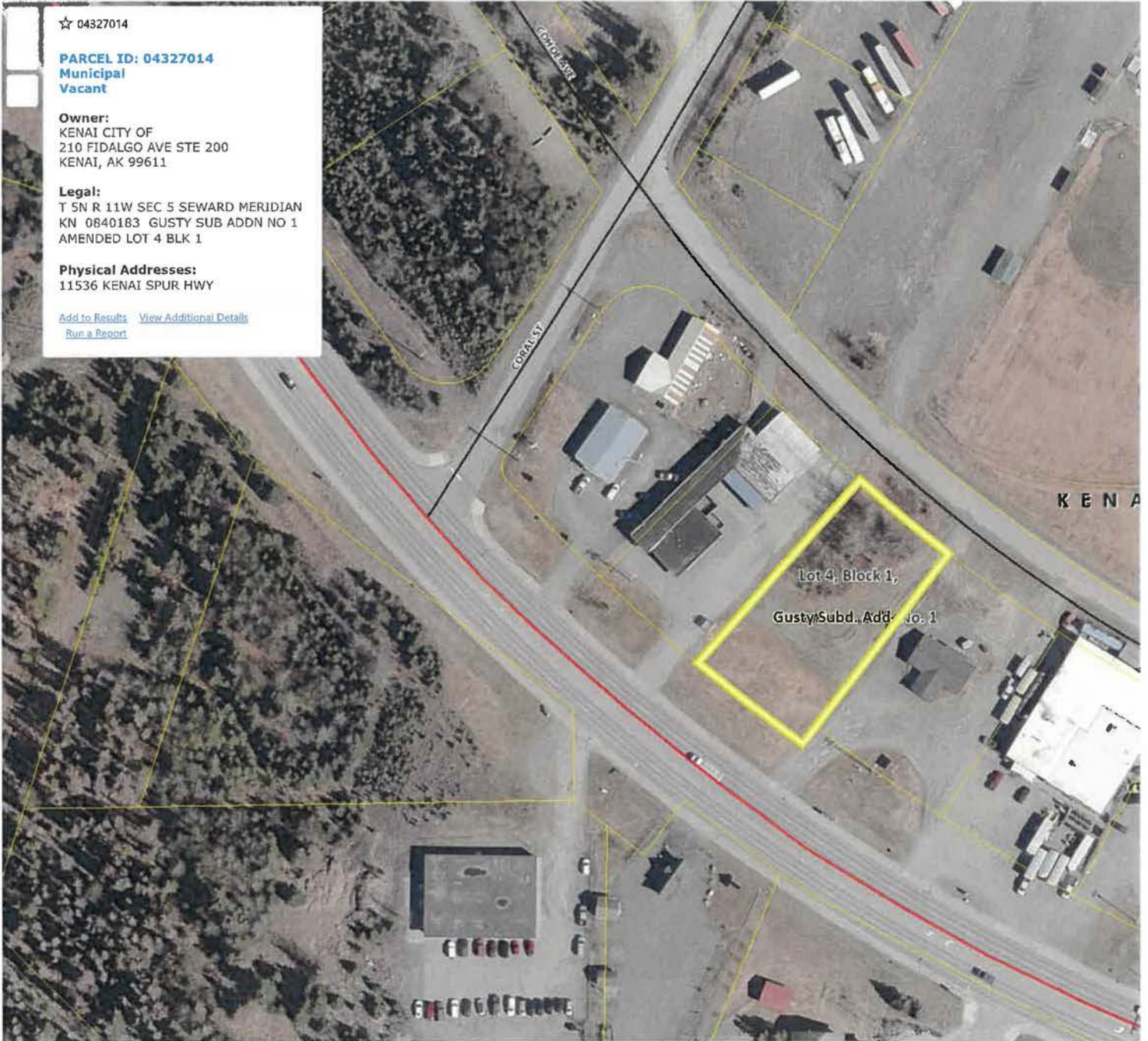
PARCEL ID: 04327014
Municipal
Vacant

Owner:
KENAI CITY OF
210 FIDALGO AVE STE 200
KENAI, AK 99611

Legal:
T 5N R 11W SEC 5 SEWARD MERIDIAN
KN 0840183 GUSTY SUB ADDN NO 1
AMENDED LOT 4 BLK 1

Physical Addresses:
11536 KENAI SPUR HWY

[Add to Results](#) [View Additional Details](#)
[Run a Report](#)



RECEIVED

CITY OF KENAI
6/28/22 DATE
PLANNING DEPARTMENT

City of Kenai
Competitive Land
Purchase Application



2022-17

Application Date: 6/28/2022

Applicant Information

Name of Applicant:	Aaron Swanson						
Mailing Address:	37190 Aspenwood Ct	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	Home Phone: 907-252-3069		Work/ Message Phone:				
E-mail: (Optional)	aaronswanson907@gmail.com						
Name to Appear on Deed:	Forever Business Plaza						
Mailing Address:	37190 Aspenwood Ct	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	Home Phone: 907-252-3069		Work/ Message Phone:				
E-mail: (Optional)							
Type of Applicant:	<input checked="" type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Government <input checked="" type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other _____						

Property Information

Legal description of property (or, if subdivision is required, a brief description of property):
Lot 4 Blk 1 Gustly Sub.

Does the property require subdivision? (if Yes, answer next question) YES NO

Subdivision costs are the responsibility of the applicant unless the City Council determines a subdivision serves other City purposes

1. Do you believe the proposed subdivision would serve other City purposes? YES NO

2. If determined it does not, applicant is responsible for all subdivision costs. Initials _____

If an appraisal is required to determine the minimum price on the land, applicant is responsible for the deposit to cover costs associated with appraisal. If a sale is approved, the cost of the appraisal will be either refunded or credited toward the purchaser. Initials *AS*

It is the responsibility of the applicant to cover costs associated with title insurance. Initials *AS*

It is the responsibility of the applicant to cover recording costs associated with the purchase. Initials *AS*

The purchaser must pay not less than 50% of the costs of sale associated with a sale at not less than fair market value as determined by an appraisal or 100% of the costs of sale if the sale is at less than fair market value. Initials *AS*

Requested closing date: *September 2022*

Proposed Use and Improvements

Proposed Use (check one): Aeronautical Non-Aeronautical

Type of Land Use: Commercial Residential Industrial Public/Institutional Tidelands Other

Do you plan to construct new or additional improvements? (if Yes, answer next 3 questions) YES NO

1. What is the estimated value of the improvement? \$ 300,000

2. What is the type of improvement? Building Land Other:

3. What are the dates construction is estimated to commence and be completed? (Generally within two years)

Estimated Start Date: this fall

Estimated Completion Date: Summer 2023

If you do not plan to construct new improvements, how does the proposed use benefit the community?

N/A

Describe the proposed business or activity intended:

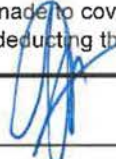
Pita Pit Restaurant

How does the proposed purchase benefit the City of Kenai and support a thriving business, residential, recreational, or cultural community?

Creates an opportunity for fabulous food locally while providing additional employment opportunities within town.

Submitting an application to purchase does not give the applicant a right to purchase or use the land requested in the application. If the land is sold in a competitive public sale set in response to this Competitive Land Purchase Application to anyone other than the applicant, the application fee and any deposit made to cover the cost of appraisal or subdivision will be refunded in total to the applicant. If the land is sold to the applicant, any deposit, after deducting the City's expenses, will be credited to the purchaser at closing.

Signature:



Date:

6/28/2022

Print Name:

Aaron Swanson

Title:

owner

For City Use Only:

Account: General Fund Airport Fund

Method of Sale (check one):

Public Auction Over-the-Counter

Leased Land with Option to Purchase

Date Application Fee Received:

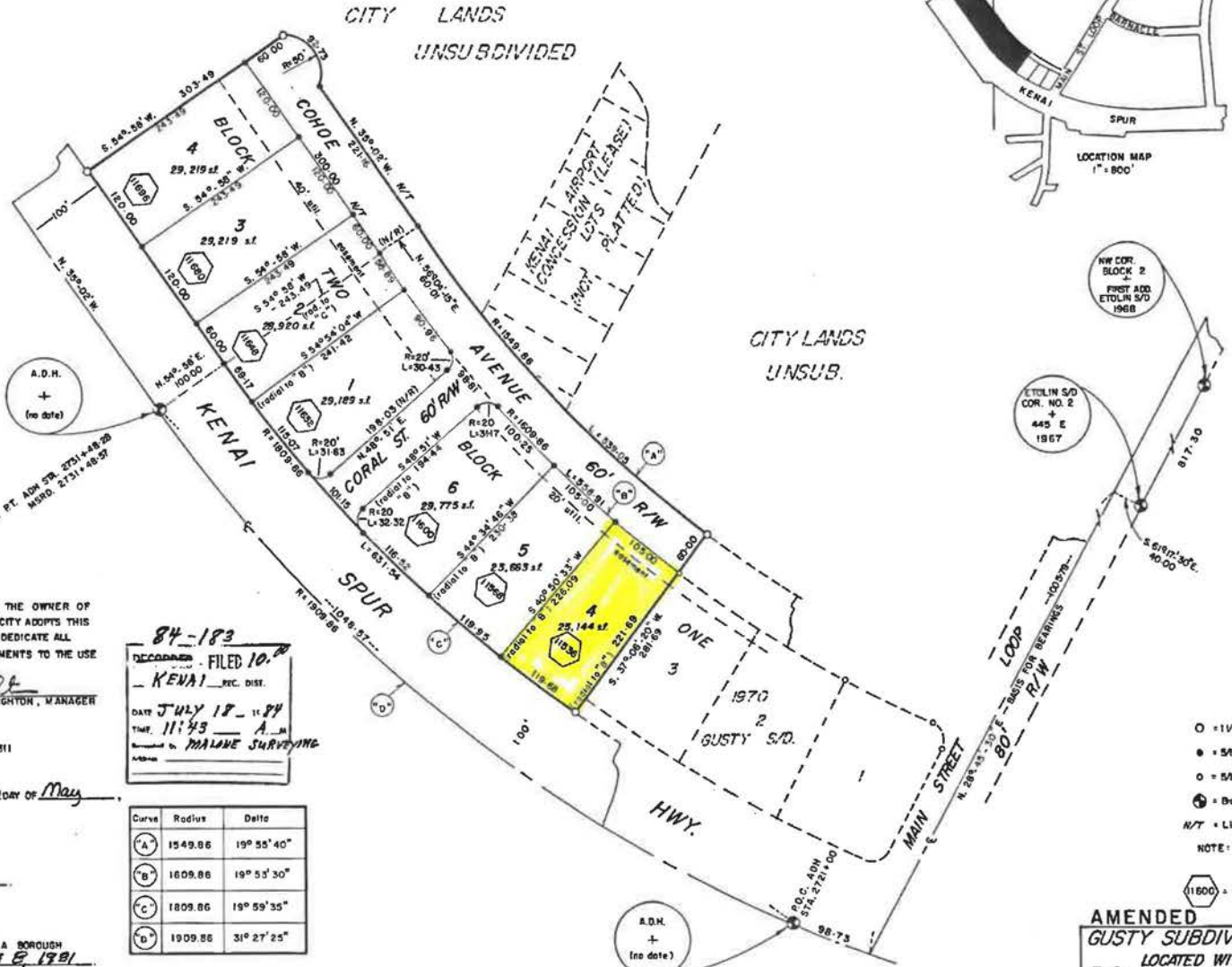
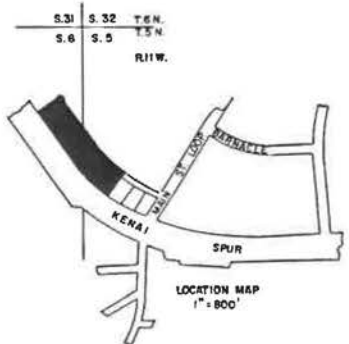
6/28/22

Date Application Determined Complete:

30-Day Notice Publication Date:

City Council Ordinance:

Account Number:



83-126
 RECORDED - FILED 10/20
 Kenai sec. dist.
 DATE 6-29 1983
 TIME 8:30 A.M.
 Surveyed by Malone Surveying
 Kenai

A.D.K.
 +
 (no date)

6 FT. ADJ. STR. 273+48-25
 273+48-27

NW COR. BLOCK 2
 FIRST ADD. ETOLIN S/D
 1968

ETOLIN S/D
 COR. NO. 2
 +
 445 E
 1967



CERTIFICATE OF OWNERSHIP & DEDICATION
 I HEREBY CERTIFY THAT THE CITY OF KENAI IS THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, AND THE CITY ADOPTS THIS PLAN. I FURTHER CERTIFY THAT THE CITY DOES HEREBY DEDICATE ALL RIGHTS OF WAY TO PUBLIC USE, AND GRANTS ALL EASEMENTS TO THE USE SHOWN.

WILLIAM J. BRIGHTON, MANAGER
 CITY OF KENAI
 BOX 560
 KENAI, AK. 99811

84-183
 RECORDED - FILED 10/20
 KENAI sec. dist.
 DATE JULY 18 11 84
 TIME 11:43 A.M.
 Surveyed by MALONE SURVEYING

NOTARY'S ACKNOWLEDGMENT FOR WILLIAM J. BRIGHTON
 I SWORN AND SUBSCRIBED TO BEFORE ME THIS 18th day of July, 1983.
 Dana M. Goodlander
 NOTARY PUBLIC FOR ALASKA
 MY COMMISSION EXPIRES 9-24-85

Curve	Radius	Delta
(A)	1549.86	19° 55' 40"
(B)	1609.86	19° 53' 30"
(C)	1809.86	19° 59' 35"
(D)	1909.86	31° 27' 25"

PLAT APPROVAL
 THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JUNE 8, 1981.
 KENAI PENINSULA BOROUGH
 BY: Alan Thomson
 AUTHORIZED OFFICIAL

I HEREBY CERTIFY THAT THE FOLLOWING CHANGES HAVE BEEN MADE & THAT NO OTHER CHANGES WERE MADE:
 1) CURVES LABELED - "A", "B", "C" & "D"
 2) CURVE TABLE ADDED
 3) BEARING OF LOT LINE BETWEEN L-4 & L-5, BLK. 1; AMENDED FROM S 40° 50' 30" W TO S 40° 50' 33" W.
 4) BEARING OF LOT LINE BETWEEN L-5 & L-6, BLK. 1; AMENDED FROM S 44° 34' 30" W TO S 44° 34' 46" W.
 5) DISTANCE OF LOT LINE BETWEEN L-4 & L-5, BLK. 1; ADDED 228.09.
 6) BEARING OF LOT LINE BETWEEN L-1 & L-2, BLK. 2; AMENDED FROM S 54° 54' W TO S 54° 54' 04" W.
 7) LINE OF L-4 & L-5, BLK. 1, LABELED AS RADIAL TO CURVE "B".
 8) LINE OF L-5 & L-6, BLK. 1, LABELED AS RADIAL TO CURVE "B".
 9) S.E. R.O.W. LINE OF CORAL STREET, LABELED AS RADIAL TO CURVE "B".
 10) RADIAL LINE (DASHED) SHOWN WITHIN LOT 2, BLK. 2.

11) LINE FROM PT. OF CURVE "A" TO PT. OF CURVE "B" LABELED AS NOT RADIAL (N/R).
 12) S.E. BOUNDARY LINE BETWEEN LOTS 3 & 4, BLK. 1, LABELED AS RADIAL TO CURVE "B".
 F. & MALONE, 631-S
 DATE 7/18/84



AMENDED
GUSTY SUBDIVISION ADDITION No. 1
 LOCATED WITHIN THE NW 1/4 SEC. 5, and THE NE 1/4 SEC. 6, T.5N, R.11W, S.M., City of Kenai, Alaska, containing 6.054 ac., m/l.

CITY OF KENAI
 BOX 580,
 KENAI, ALASKA 99811

MALONE SURVEYING
 BOX 566
 KENAI, ALASKA 99811

DATE 5/10/83

DEED OF RELEASE

This Instrument, a Deed of Release, made by the United States of America, acting by and through the Manager, Airports Division, Alaskan Region, Federal Aviation Administration, pursuant to the authority contained in Public Law 81-311 (63 Stat. 700), as amended, to the City of Kenai, a body politic under the laws of the State of Alaska, Witnesseth:

WHEREAS, the United States of America, pursuant to the provisions of the Federal Property and Administration Act of 1949 (83 Stat. 377) and the Surplus Property Act of 1944 (58 Stat. 765), as amended, by instrument entitled, "Quitclaim Deed", dated December 1, 1963, did remise, release, and forever quitclaim to the City of Kenai in and to certain real property located near Kenai, Alaska, under and subject to the reservation, exceptions, restrictions, and conditions contained in the Deed, and

WHEREAS, the City of Kenai has requested the Administrator of the Federal Aviation Administration to release an area of land hereinafter described, from all conditions, reservations, and restrictions contained in said "Quitclaim Deed" to permit the long-term lease for nonairport purposes of said property exclusively for development, improvement, operation, and/or maintenance of the Kenai Municipal Airport, and

Whereas, the Administrator of the Federal Aviation Administration, under and pursuant to the powers and authority contained in Public Law 81-311 (3 Stat. 700) is authorized to grant a release from any of the terms, conditions, reservations, and restrictions contained in, and to convey, quitclaim, or release any right or interest reserved to the United States by any instrument of disposal under which surplus airport property was conveyed to a non-Federal public agency pursuant to Section 13 of the Surplus Property Act of 1944 (58 Stat. 765); and

WHEREAS, the Administrator of the Federal Aviation Administration has determined that said land no longer serves the purpose of which it was transferred, and that such property can be used or leased by the City of Kenai for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Kenai Airport; and

WHEREAS, the City of Kenai, by City Ordinances No. 612-80, as amended, and No. 711-81, as amended, have established an acceptable procedure for disposing, through lease, of said property;

NOW, THEREFORE, in consideration of the benefits to accrue to the United States and to the civil aviation, the United States of America, acting by and through the Administrator of the Federal Aviation Administration, and pursuant to the authority contained in Public Law 81-311 (63 Stat. 700) and applicable rules, regulations, and orders, hereby consents to the release and subsequent lease of the hereinafter described property by the City of Kenai in accordance with the procedures established by City Ordinances No. 612-80, as amended, and No. 711-81, as amended.

Legal Description

All that portion of the Kenai Airport Lands known as Gusty Subdivision Addition No. 1 (Tract G-3), within the NW 1/4 of Section 5 and the NE 1/4 of Section 6, T5N, R11W, S.M. Alaska. This Tract contains 6.054 acres, more or less and is depicted in red on the plat recorded 6-29-83 (83-126), attached to and made a part hereof.

This release is granted subject to the following conditions:

1. The instrument used to lease or sale the hereinabove described property shall expressly include the following reservations and covenants:

- A. There is hereby reserved to the City of Kenai, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used or navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on the Kenai Airport.
- B. The Lessee by accepting this conveyance expressly agrees for itself, its heirs, representatives, successors, and assigns that it will not erect nor permit the growth of any tree on the land conveyed hereunder which would be an airport obstruction within the standards established by the Federal Aviation Administration. In the event the aforesaid covenant is breached, the City of Kenai reserves the right to enter on the land conveyed hereunder and to remove the offending structure or object and to cut the offending tree, all of which shall be at the expense of the Lessee, or its heirs, successors, or assigns.
- C. The Lessee, by accepting this conveyance expressly agrees for itself, its heirs, representatives, successors, and assigns that it will not make use of said property in any manner which might interfere with the landing and taking off of aircraft from said Kenai Airport, or otherwise constitute and airport hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter on the land conveyed hereunder and cause the abatement of such interference at the expense of the Lessee.

2. All covenants herein contained shall run with the land and shall insure to the benefit of, and be binding upon, the heirs, representatives, successors, and assigns to the parties hereto.

3. In the event that any of the terms, conditions, reservations, and restrictions upon or subject to which the property is disposed of are not met, observed, or complied with, all of the property so disposed of or any portion thereof shall, at the option of the United States, revert to the United States and its then existing condition.

4. In the event, the subject property is needed or required in the future for airport operations, construction or management, the FAA will not participate in the acquisition of the lease hold interest of this property.

5. The United State resumes the right to review the proposed lease agreement prior to execution of said lease agreement.

IN WITNESS WHEREOF, the United States of America has caused this instrument to be executed as of the 29th day of December 1983.

UNITED STATES OF AMERICA

The Administrator of the Federal Aviation Administration

by: Rabie B. Strickland
 Manager, Airports Division, Alaskan Region

Accepted this 12th day of December 1983 by the City Manager of the City of Kenai.

84-000464

11.00

RECORDED-FILED
 KENAI REC.
 DISTRICT

Jan 16 11 02 AM '84
 REQUESTED BY City of Kenai

by: W. J. Bright
 Title City Manager

MACSWAIN ASSOCIATES LLC

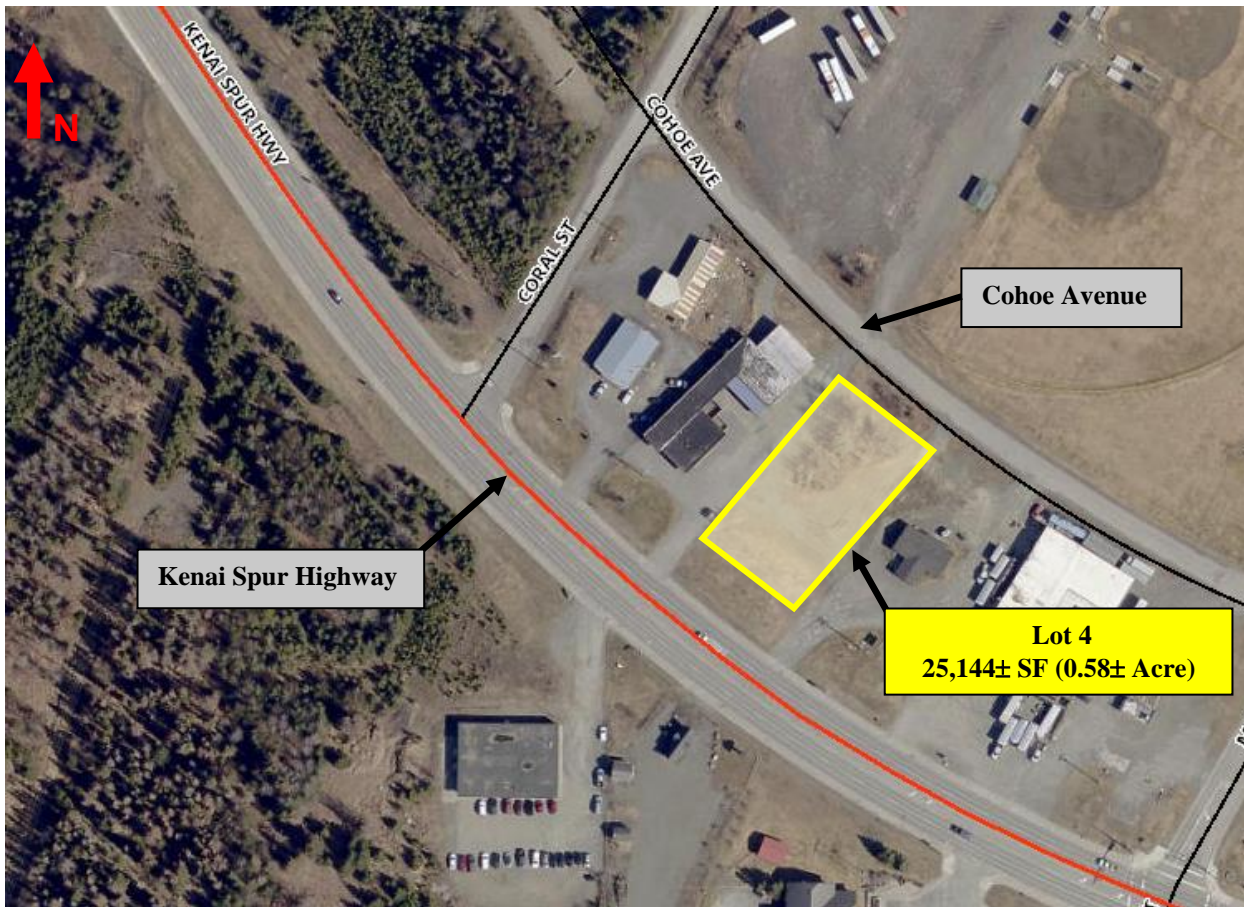
4401 Business Park Boulevard, Suite 22, Anchorage, Alaska 99503

APPRAISAL REPORT

Kenai Lot: 25,144± SF (0.58± Acre)

Lot 4, Block 1, Gusty Subdivision

Kenai, Alaska



Date of Value: May 16, 2022

File No. 22-3697

Submitted To:

Ryan Foster, Planning Director
City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611

Appraiser Certification

The undersigned certifies that to the best of their knowledge and belief:

- ➔ The statements of fact contained in this report are true and correct.
- ➔ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- ➔ We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- ➔ We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- ➔ MacSwain Associates, LLC previously performed services as an appraiser on the subject property in September 2021.
- ➔ Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- ➔ Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- ➔ The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- ➔ The reported analyses, opinion, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- ➔ The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- ➔ Dwayne Roberts with MacSwain Associates, LLC inspected the appraised property on May 16, 2022. Steve MacSwain, MAI has previously inspected the property.
- ➔ Dwayne Roberts provided significant real property appraisal assistance to the person signing this certification.
- ➔ As of the date of this report, Steve MacSwain, MAI, is a certified General Real Estate Appraiser in the State of Alaska and has completed the education requirements through June 2023.

- ➔ As of the date of this report, Steve MacSwain, MAI has completed the Standards and Ethics Education requirements for Designated Members of the Appraisal Institute.
- ➔ As of the date of this report, Steve MacSwain, MAI has completed the continuing education requirements for Designated Members of the Appraisal Institute.
- ➔ As of the date of this report, Steve MacSwain, MAI is a certified General Real Estate Appraiser in the State of Alaska and has completed the education requirements through June 2023.



Steve MacSwain, MAI
State of Alaska Certificate No. 42

6/15/22
Date

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Addendum

- Assumptions and Limiting Conditions
- Statement on COVID-19
- Short Form Agreement
- Appraiser Qualifications

Appraisal Summary

Value Type:	Market value
Property Type:	Commercial
Property Rights Appraised:	Fee simple estate
Location:	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road, Kenai, Alaska
Legal Description:	Lot 4, Block 1, Gusty Subdivision
Tax Parcel No:	043-270-14
Physical Address:	11536 Kenai Spur Highway
Property Owner:	City of Kenai (per KPB)
Zoning:	Central Mixed-Use District (CMU)
Site Description:	Nearly-rectangular shaped lot containing 25,144± square feet or 0.58± acre
Topography:	Partially cleared with some spruce and birch trees, lot is nearly level and at grade with surrounding streets and properties
Frontage/Exposure:	120± feet of Kenai Spur Highway frontage and 105± feet of Cohoe Avenue frontage
Access:	Access via Cohoe Avenue, a gravel road on northern boundary. No improved access from Kenai Spur Highway
Utility Service:	All public utilities available
Soil and Subsurface Conditions:	Based on observations of surrounding development, soils appear to be suitable for development.
Hazardous Substances:	None observed or known, parcel is appraised as if “environmentally clean”
Wetland Designation:	None
Flood Hazard Restrictions:	Zone D, an area of undetermined, but possible flood hazard
Easements and Restrictions:	20-foot utility easement along north boundary
Sale/Lease History:	No known sales or leases in the previous three years

Highest and Best Use:	Commercial
Extraordinary Assumption:	None
Hypothetical Condition:	None
Date of Property Inspection:	May 16, 2022
Effective Appraisal Date:	May 16, 2022
Date of Report:	June 15, 2022

Market Value Estimate:	\$110,000 (\$4.37/SF)
-------------------------------	------------------------------

Subject Property Photographs

Date: May 16, 2022

Taken By: Dwayne Roberts



Northeast view of property from Kenai Spur Highway



South view of property

Subject Property Photographs

Date: May 16, 2022

Taken By: Dwayne Roberts



Southeast view of Cohoe Avenue frontage (property on the right)



Southeast view of Kenai Spur Highway frontage (property on the left)

Chapter 1: Definition of the Appraisal Problem

Overview	We prepare an <i>Appraisal Report</i> that analyzes a 25,144± square foot (0.59± acre) vacant lot in Kenai, Alaska. The type of value estimated is <i>market value</i> . The report is intended to comply with the <i>Uniform Standards of Professional Appraisal Practice</i> (USPAP).
Value Type	Market value
Client	City of Kenai
Intended Use of Appraisal Report	Assist with a potential sale of the property
Intended User of Appraisal Report	City of Kenai
Property Inspection Date	May 16, 2022
Effective Appraisal Date	May 16, 2022
Date of Report	June 15, 2022
Identification of Real Estate Appraised	The appraised property is a vacant lot owned by the City of Kenai. The subject property is located on the north side of Kenai Spur Highway between Coral Street and Main Street Loop Road in Kenai, Alaska. The subject’s physical address is 11536 Kenai Spur Highway and identified as Parcel ID 043-270-14 by the City of Kenai.

Definition of Market Value

The type of value estimated is *market value*. Market value is defined as follows.

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. buyer and seller are typically motivated;*
- b. both parties are well informed or well advised, and acting in what they consider their own best interests;*
- c. a reasonable time is allowed for exposure in the open market;*
- d. payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and*
- e. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.¹*

Property Rights Appraised

We estimate the market value of the *fee simple estate*, which is defined as follows.

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.²

Legal Description

Per DNR records, the legal description is as follows:

Lot 5, Block 1, Gusty Subdivision, Kenai Recording District, Third Judicial District, State of Alaska.

¹ *Appraisal of Real Estate*, Fifteenth Edition (2020), by the Appraisal Institute, p. 49.

² *Appraisal of Real Estate*, Fifteenth Edition (2020), by the Appraisal Institute, p. 60.

Property Owner Public Records indicate the owner of the appraised property is as follows.

City of Kenai
210 Fidalgo Avenue, Suite 200
Kenai, AK 99611

Assessed Value The table below summarizes the historical KPB property assessment for the appraised property.

KPB Historical Assessed Value (043-270-15)

Year	Land	Improvements	Total
2022	\$105,300 (\$4.10/SF)	N/A	\$105,300
2021	\$126,400 (\$4.93/SF)	N/A	\$126,400
2020	\$120,400 (\$4.69/SF)	N/A	\$120,400

Three Year Sale and Lease History No known sales or leases in the previous three years.

Report Type and Methodology This *Appraisal Report* develops the sales comparison approach to estimate market value. Neither the cost nor the income capitalization approach reflects market behavior for vacant land. Qualitative techniques are used to measure differences between the comparable sales and the subject. The appraisal report is a summary of the appraisers’ data, analyses, and conclusions with supporting documentation retained on file.

Scope of Appraisal Dwayne Roberts of MacSwain Associates, LLC performed the inspection of the appraised property and assisted Steve MacSwain, MAI with data collection and analysis. Steve MacSwain, MAI administered the appraisal process, reviewed draft appraisals, and concurred with an opinion of value. Preparation of this report encompassed the following scope of work that concluded with an opinion of market value.

- ➔ Inspected the appraised property on May 16, 2022;
- ➔ Discussed the property with Ryan Foster, Planning Director with the City of Kenai;
- ➔ Reviewed KPB assessor map 043-270-14;
- ➔ Reviewed plat 83-126;

- ➔ Reviewed City of Kenai’s Official Zoning Map and zoning codes;
- ➔ Gathered data from the KPB Assessor’s office and State of Alaska Recorder’s office regarding ownership, assessments, and general property information;
- ➔ Interviewed Kenai real estate Brokers, agents, and property owners regarding land sales;
- ➔ Interviewed Kenai market participants regarding current commercial and light industrial land market conditions, trends, and expectations;
- ➔ Gathered and confirmed information on comparable land sales;
- ➔ Inspected the primary comparable sales we relied upon in our comparative analysis; and
- ➔ Applied the sales comparison approach to arrive at a market value indication.

Exposure Time

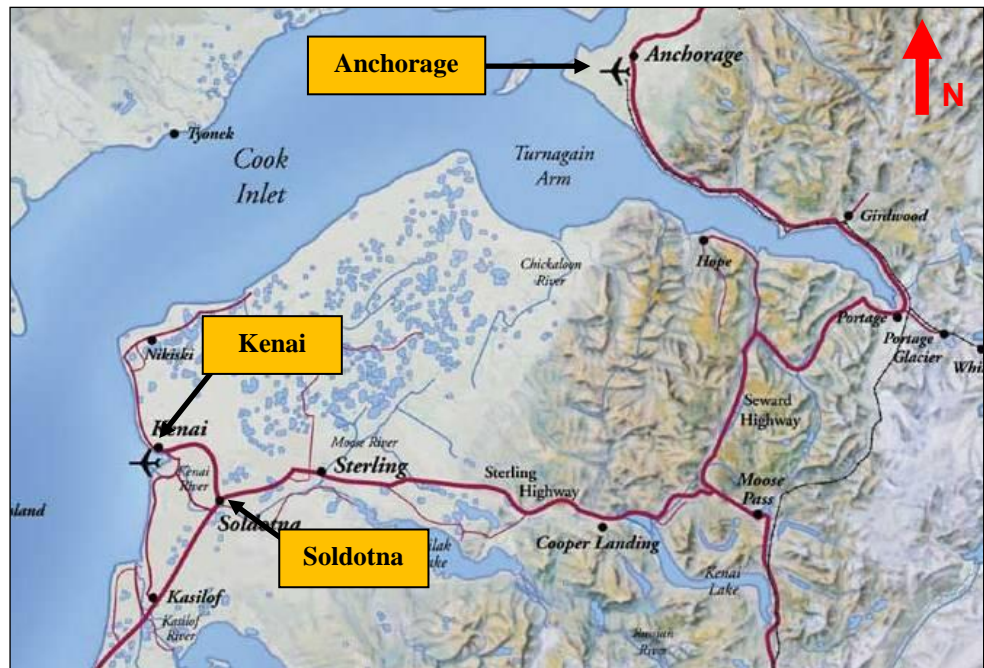
We have collected and analyzed market and economic data that projects real estate trends and activity for similar vacant parcels. Discussions with Brokers and analysis of similar property sales indicate that a period of approximately 6-9 months prior to our effective date of value is a reasonable exposure period.

Chapter 2: Kenai Area Analysis and Industry Outlook

Overview

The appraised property is located in Kenai, Alaska. A demographic and economic summary of the Kenai Peninsula Borough (KPB) and City of Kenai follows. The reader is referred to the map below and on following pages that illustrate the location and assist in the description and analysis. We note that due to lack of funding, the KPB ceased economic and financial publications.

Kenai Location Map



Kenai Peninsula Borough Summary

The Kenai Peninsula Borough is comprised of the Kenai Peninsula and Cook Inlet including areas northeast of the Alaska Peninsula. The borough also includes portions of Chugach National Forest, Kenai Wildlife Refuge, Kenai Fjords National Park, Lake Clark National Park, and Katmai National Park. Encompassing 24,800 square miles, there are 16,000± square miles (65%) of land and 8,700± square miles (35%) of water. Three distinct communities and population centers are established within the Borough. Seward is located at the terminus of the Seward Highway on the Gulf of Alaska coast, Kenai/Soldotna are located on Cook Inlet and surrounding the mouth of the Kenai River, and Homer is located at the terminus of the Sterling Highway on Cook Inlet and Kachemak Bay. A large portion of the Borough population is scattered along the road systems rather than in identifiable cities or communities.

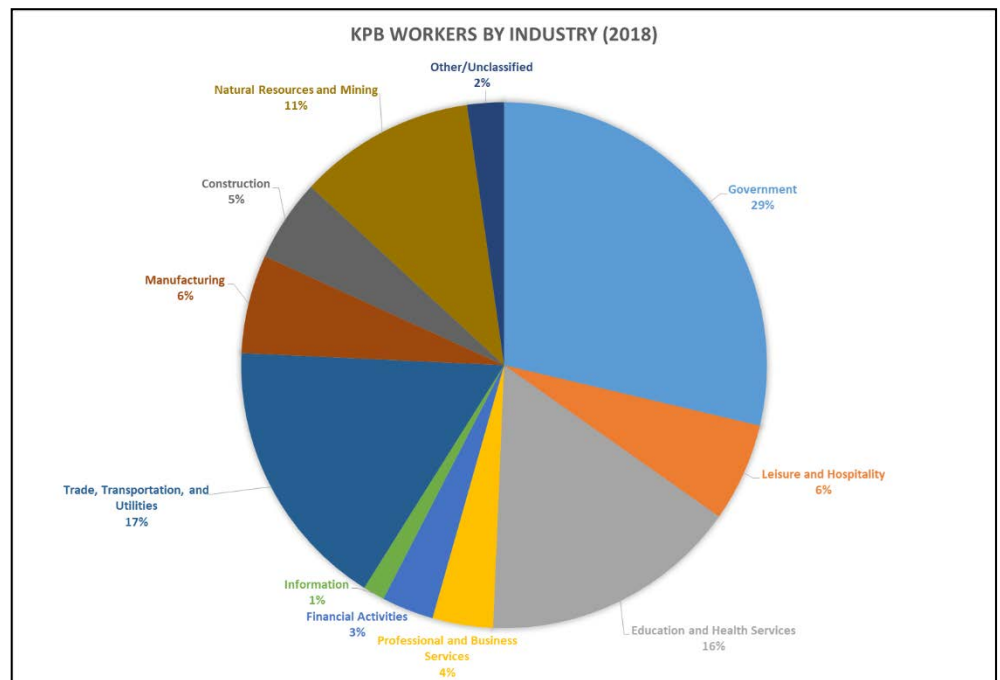
Population

Together, Kenai, Soldotna, Nikiski, Salamatof, and Kasilof have the largest population base in the Borough with an estimated 17,000± residents in 2019. Population within the Kenai census area is 7,056 residents and has remained flat over the past two decades. Similarly, surrounding communities have experienced population stability.

Employment

Borough employment is characterized as relatively diverse with no single dominant industry, with the exception of government. The five industry categories that have the highest economic influence, based on total wages, within the borough are Federal, State, and local government (29%) trade, transportation, and utilities (17%), education and health services (16%), natural resources and mining (11%), leisure and hospitality (6%), and manufacturing (6%). Supporting employment sectors include construction (5%), professional and business services (4%), and financial activities (4%). The table below indicates 2018 Borough wages by industry.

KPB Total Wages by Industry (2018)



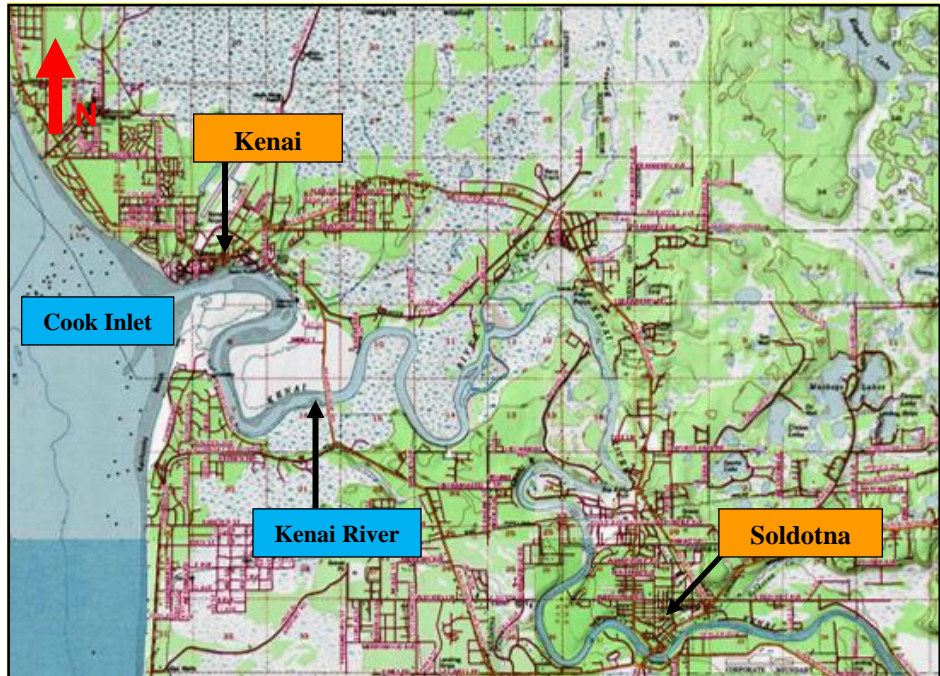
Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section, January – December 2018

Similar to most rural Alaska economies, government is one of the key employment factors. Leisure and hospitality (tourism) remains as a driving economic force of the Kenai Peninsula Borough’s economy.

Both residents and non-residents utilize the Peninsula for its vast fishing, camping, sightseeing, and other recreational opportunities. The visitor industry is cyclical with most activity occurring during summer months. However, sales in the visitor industry are an important source of municipal revenues as both city and borough government use collected sales taxes to support government operations. The oil and gas industry is scattered throughout the Peninsula. Natural gas endeavors marked increases in new exploration projects in Kenai, on the Westside of Cook Inlet as well as lower Kenai Peninsula between Clam Gulch and Ninilchik. However, negative aspects of the industry exist that include closing oil platforms due to poor production levels. Overall, the outlook for Kenai Peninsula Borough’s oil and gas industry is continued steady natural gas exploration and production with stagnant oil efforts. Capital investment in storage development, reserves replacement, and pipeline infrastructure are necessary and pressure exploration cost and development upward.

Location Map

**City of Kenai
Summary**



Kenai is located on the western coast of the Peninsula, and is often associated with Soldotna, which is located 11± miles to the southeast. These two cities have become known as the “twin cities”, sharing an integrated economy, while maintaining their independence. Kenai is a home rule city with a population of 7,056. In the summer months, the area benefits from with tourists fishing the Kenai River. Kenai is also the center for the oil and gas industry on the Peninsula, providing

services and supplies for Cook Inlet's oil and natural gas drilling and exploration. Nikiski, which lies north of Kenai, has two refineries established to process oil from the Cook Inlet oil platforms and the Swanson River oil fields. There are numerous oil field support businesses located in the area as well as the refineries. Kenai has the largest airport on the peninsula, the Kenai Municipal Airport, which has regular scheduled flights to/from Anchorage and other communities in the region.

The Nikiski industrial district located north of Kenai extends along the shore of Cook Inlet for 1.5± miles and one-mile inland. Despite the relatively small area, the value of industrial development exceeds \$1 billion. The Agrium, Inc. nitrogen plant, Tesoro Alaska refinery and former ConocoPhillips LNG export plant are the principal industrial development. The LNG plant ceased operations in 2011, and reopened for intermittent natural gas shipments until 2015. The plant was sold to Andeavor in 2018 for \$10M±, a significantly below market price. Agrium merged with PotashCorp in 2018, forming a new company called Nutrien, who currently owns the former Agrium plant.

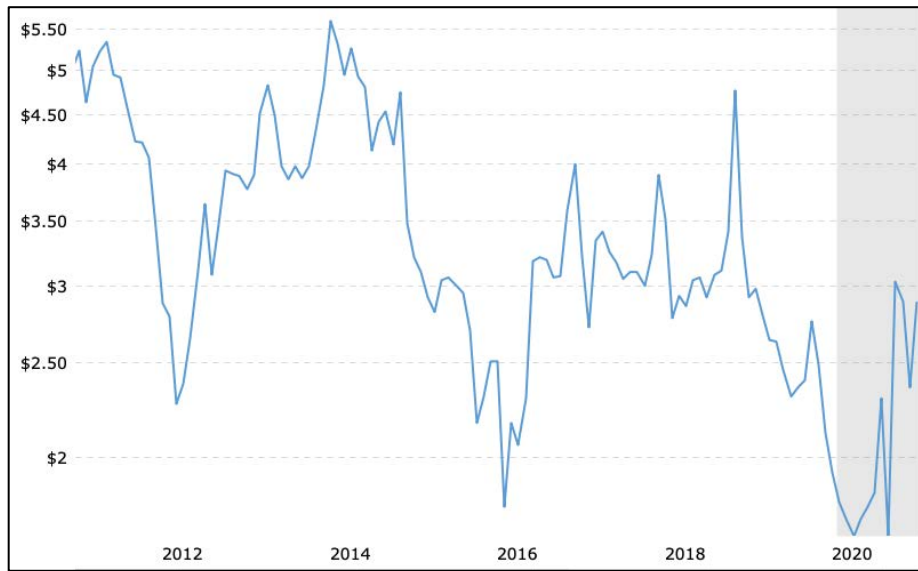
In 2014, Homer Electric Association began generating its own power at the Nikiski Combined Plant, producing 80 megawatts of power. In addition, HEA purchased the Bernice Lake Power Plant from Chugach Electric Association for \$12M±. These facilities are primary employers in Nikiski and account for nearly 10% of KPB total employment. As Nikiski remains a hub for power generation in the Kenai Peninsula, we do not anticipate major change to the Nikiski industrial district in the near term. The potential Alaska LNG Project is on the horizon, with optimism remaining on the Kenai Peninsula for eventual construction. The project entails a gas processing plant on the North Slope, an 800-mile gas pipeline and a liquefaction facility in the Nikiski area. Tentatively, the total project cost is estimated at \$45B±. To date, 570± acres have been acquired in Nikiski to develop the project. The City of Kenai passed a resolution in December 2018, giving unanimous support to the LNG project; however, this joint venture between the State of Alaska and private oil and gas industry appears to have stalled, with no definite timetable for development.

In 2012, ENSTAR Natural Gas Company began injecting natural gas into their new storage facility in Kenai. The Cook Inlet Natural Gas Storage Alaska facility (CINGSA) is Alaska's first independent gas storage facility with 11 billion cubic feet of capacity. The project cost is estimated at \$160M±.

Although most oil and gas fields in the Cook Inlet Basin are well past their peak, annual production has not declined significantly in the past

decade. Moreover, smaller independent oil companies are prospecting in the Cook Inlet basin with the intent of using new technology to enhance production profitability. However, the maturing life-cycle of oil and gas production has caused attrition in smaller businesses that support this industry. More importantly, this economic trend has created a market imbalance for industrial and commercial real estate. For example, we observed several smaller industrial or commercial properties that are vacant or abandoned because of contraction in the oil and gas industry. Recent capital investments made by larger energy companies have helped revitalize Kenai Peninsula’s oil and gas sector. Natural gas prices gradually recovered into summer 2014 from their lows in early 2012. Late 2014 to early 2015 saw another downturn in natural gas prices before a mid-2016/17 recovery. After briefly spiking in 4th quarter 2018, natural gas prices trended downward into 2020, where they reached record low prices in March, and again in July due to lack of demand driven by the COVID-19 pandemic. Prices made a slight recovery in the second half of 2020, but continue to remain much lower than the 20-year average. If demand for natural gas from Asia and the Lower 48 recovers, additional capital investment in the Kenai Peninsula will become more viable. Expressed in the table below is the U.S. Average Natural Gas Price over the past ten-year period, which has experienced significant volatility.

Historical Natural Gas Price (\$/MMBTU)



Source: macrotrends

Conclusion

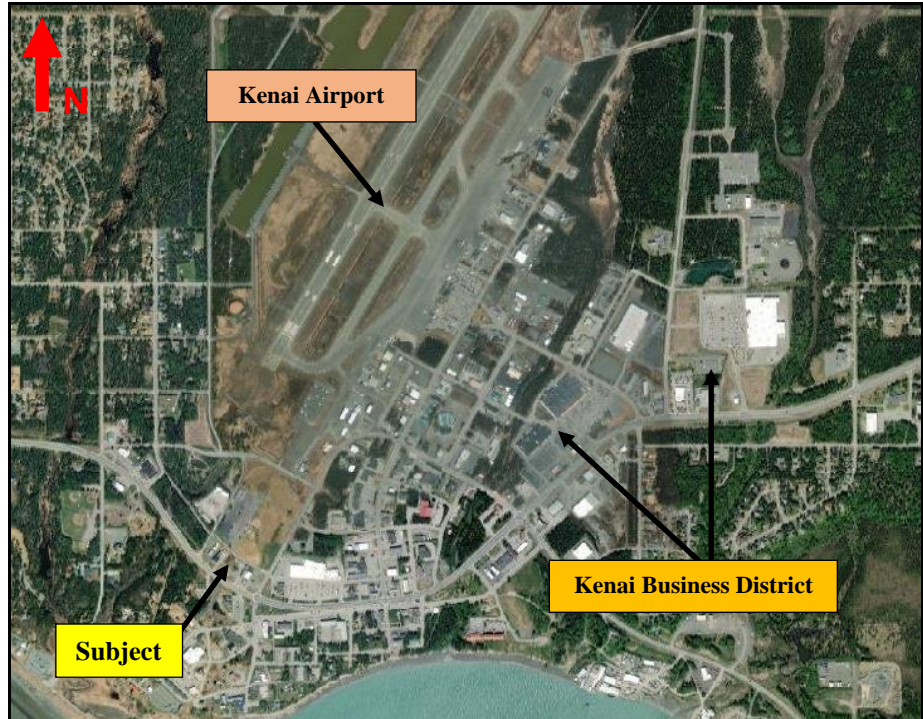
Optimism has been created by renewed investment in the Kenai Peninsula. Sale activity remains relatively scarce with assemblage, expansion, or special-purpose use representing the principal components of demand. Short-term uncertainty will likely continue to dampen the Kenai economy, which benefits from anglers and sightseeing tourism. Travel restrictions, and decreasing demand linked to the COVID-19 virus are slowly recovering from 2021 with cautious optimism for continued recovery in 2022. After analysis, we determined that industrial and commercial property values have been relatively stable over the past decade, but have declined from the 1980s peak.

Chapter 3: Neighborhood Description and Analysis

Overview

The appraised land is located just south of the Kenai Municipal Airport and southwest of the Kenai Business District. This chapter will focus on the supply and demand factors of these neighborhoods, which affect the valuation process.

Kenai Neighborhood Map

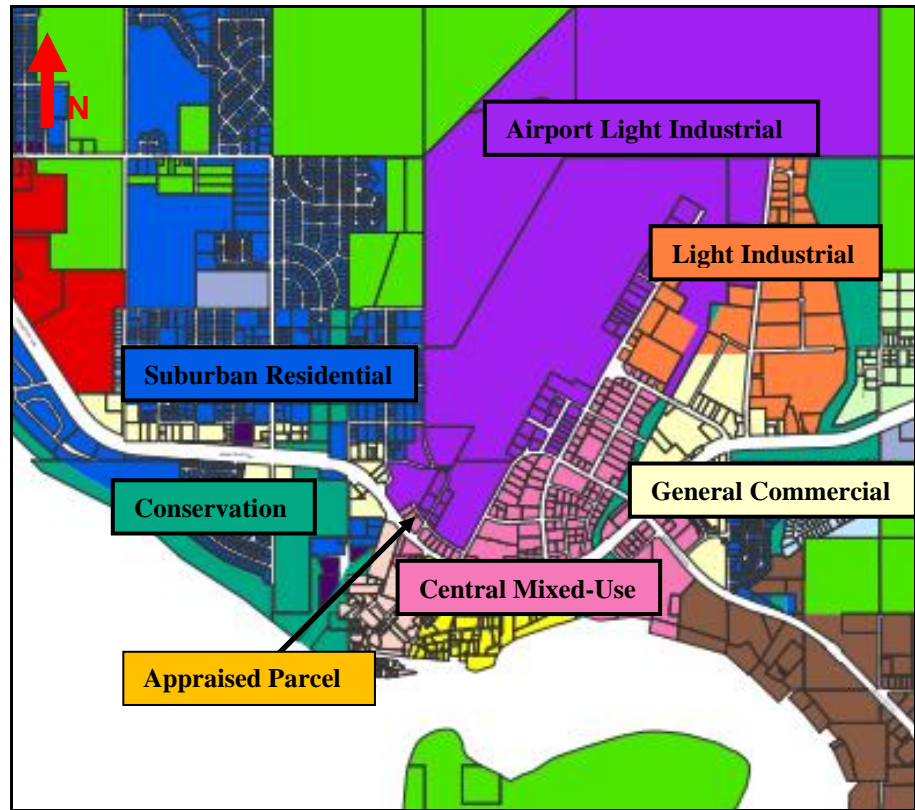


Neighborhood Description

The subject neighborhood is bound by the Kenai Airport to the north, the Kenai Spur Highway to the south and east, and the Kenai Business District to the northeast. The Kenai Business District is the commercial core of Kenai. Development includes many types of commercial and industrial uses including big box retailers, strip and enclosed malls, restaurants, convenience stores, small businesses, and airport-related businesses. The Kenai Airport was recently remodeled modernizing the terminal building. Lowes, which was constructed in 2008, closed in 2011. After eight years of vacancy, the property sold to U-Haul in 2019. This City-owned, public-use airport contains a 7,855-foot asphalt paved runway, as well as an additional gravel runway and seaplane basin. Currently, scheduled flight service to Anchorage is available on both Ravn Alaska and Grant Aviation. Development in the immediate neighborhood consists of both aviation and non-aviation related uses.

The zoning map below assists in visualizing neighborhood zoning districts. The immediate neighborhood is zoned Central Mixed-Use established to provide a centrally located area in the City for general retail shopping, personal and professional services, entertainment, restaurants, and related businesses. This district is also intended to accommodate a mixture of residential and commercial uses. The CMU Zone shall be designed to encourage pedestrian movement throughout the area. Building and other structures within the district should be compatible with one another and the surrounding area

Zoning Map



Summary

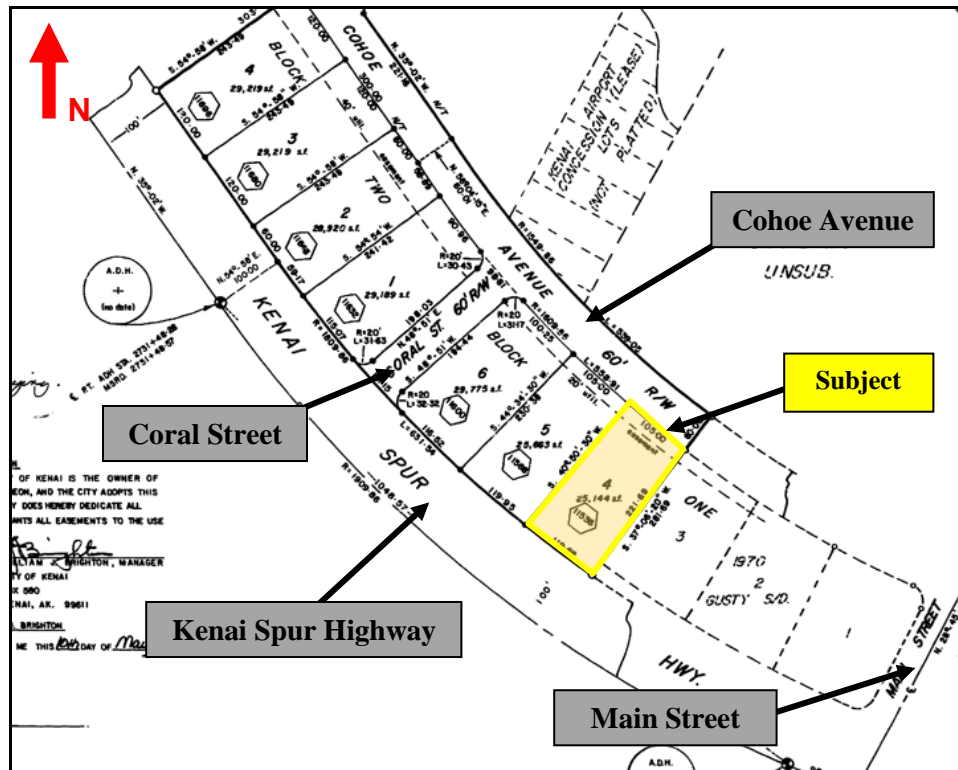
To summarize, the Kenai Business District is the commercial core of Kenai. The neighborhood is well-located and benefits from its proximity to the Kenai Spur Highway, as well as the airport and other commercial districts in the area. The outlook for the neighborhood is favorable as it continues to be a good commercial district for Kenai

Chapter 4: Site Description and Analysis

Overview

Analysis of land describes the characteristics that enhance or detract from its utility or marketability. The site description and analysis is based on our property inspection and review of plat 83-126, aerial, Borough and other mapping. The plat map below and aerial mapping on the following pages assist in the description and analysis of the parcel that follows.

Plat 83-126

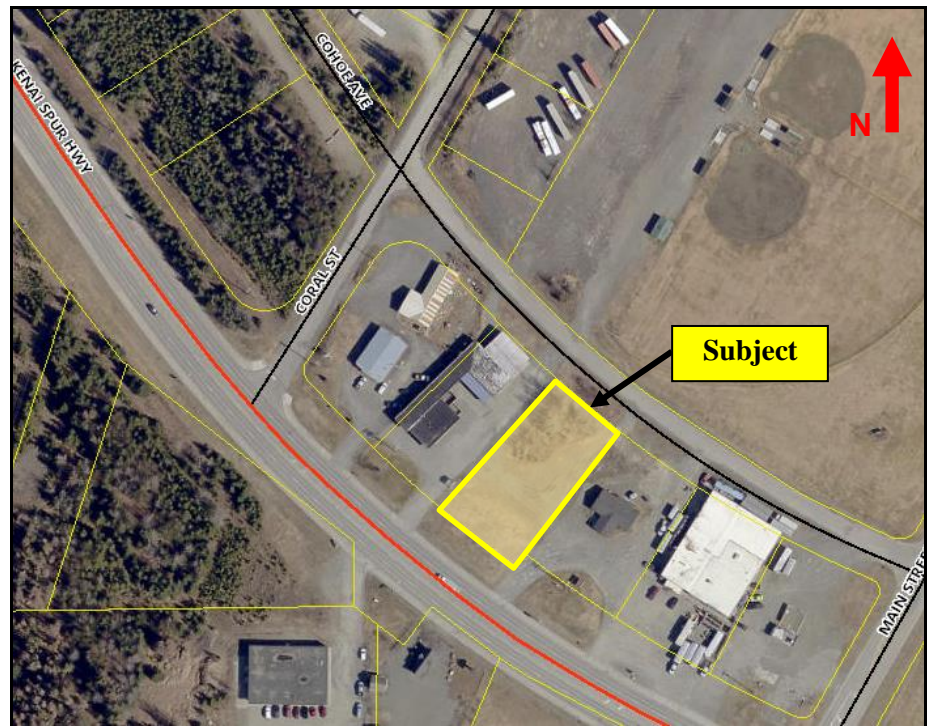


Site Description

Location:	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road, Kenai, Alaska
Physical address:	11536 Kenai Spur Highway, Kenai, Alaska
Shape and Land Area:	Nearly-rectangular shaped lot containing 25,144± square feet or 0.58± acre
Access:	Access via paved ingress/egress from Kenai Spur Highway on southern boundary and Cohoe Avenue, a gravel road on northern boundary

Zoning:	Central Mixed-Use District (CMU)
Frontage and Exposure:	120± feet of Kenai Spur Highway frontage and 105± feet of Coho Avenue frontage
Easements and Restrictions:	20-foot utility easement along north boundary
Public Utilities:	All public utilities available
Topography:	Partially cleared with some spruce and birch trees, lot is nearly level and at grade with surrounding streets and properties.

GIS Aerial Map (Kenai Peninsula Borough)



Soil Conditions:	Soils mapped as urban lands, and appear suitable for construction based on surrounding development
Wetland Designation:	None
Flood Hazard:	Zone D, an area of undetermined, but possible flood hazard per FEMA

**Environmental
Conditions:**

The existence of any hazardous material or other type of environmental contamination, which may or may not be present on the property, was not observed by the appraisers nor do the appraisers have any knowledge of the existence of such substances. Our value conclusion assumes that the property is free of environmental and hazardous contaminants.

Site Utility:

The subject site's positive attributes include good location, size, and access near the Kenai Airport and Downtown Kenai. Overall, physical character makes the site well suited for commercial development.

Chapter 5: Highest and Best Use Analysis

Overview

Highest and best use is a market-driven concept rather than a subjective conclusion based on the experience of the appraiser or a property owner's wishes. Economic incentive is the motivation that has a market-effect on the productivity or profitability of the land. The *Dictionary of Real Estate Appraisal* (Seventh Edition) defines *highest and best use* as follows.

The reasonably probably use of a property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

A property's highest and best use as vacant may differ from that as improved. It is the appraiser's responsibility to analyze each scenario; then identify, explain, and justify the conclusion of each type of use. Per client instructions, the subject property is analyzed as though vacant.

Determination of a property's most profitable use requires analyzing all feasible alternatives. The criteria for testing potential uses as though vacant are legally permissible, physically possible, financially feasible, and maximally productive. The following highest and best use analysis is the foundation of the appraisal process for the subject properties.

Highest and Best Use Analysis As If Vacant

Physical Possibility: The appraised parcel contains 25,144 square feet or 0.58± acre fronting the Kenai Spur Highway. Highway frontage measures 110± feet, which enhances access, exposure, and development potential. Demand along the Kenai Spur Highway commercial corridor is high when compared to alternative interior commercial locations. Highway frontage and linkage to alternative commercial locations in Kenai are positive characteristics.

Legal Permissibility: Although the appraised property is within the City of Kenai, zoning regulations do not generally apply to current ownership because the property remains in restricted status. The subject parcel is zoned Central Mixed Use (CMU) which encourages commercial-type development in a centrally located area in the City of Kenai, primarily for shopping, personal and professional services, entertainment services, entertainment establishments and restaurants and related businesses. The CMU district is also intended to accommodate a mixture of residential and commercial uses, and designed in a manner that encourages pedestrian movement throughout the area. Although certain industrial use are allowed., most within the CMU zone require a conditional use permit to ensure compatibility with

surrounding land uses. We are not aware of any recorded plat restrictions that may affect development potential of the subject property.

Financial Feasibility: Physically possible uses permitted are all financially viable. Financially feasible commercial uses include restaurants (both dining and fast food), hotel/motel, retail, and office use. Other commercial uses are possible, which may offer greater risk and lack economic feasibility. In conclusion, the Commercial neighborhood’s location, existing land use trends, and physical characteristics all support commercial development, which we consider to be the highest and best use.

**Highest and Best Use
As Though Vacant**

The subject’s physical characteristics, surrounding land use, CMU zoning, location, access, etc., encourage commercial development. Based on these factors, the highest and best use, as vacant, is for commercial development.

Highest and Best Use: Commercial
--

Chapter 6: Land Valuation - Sales Comparison Approach

Overview The sales comparison approach is a systematic procedure of estimating the subject’s market value by comparing it directly to property sales afforded similar physical and economic character. The approach is founded on the principle of substitution, theorizing value is a function of a knowledgeable investor’s (buyer) intent to pay no more for a specific property than the cost of acquiring an alternative property offering similar utility (economic satisfaction). The sales comparison approach is the best approach for valuing vacant land.

Comparative Market Analysis Our sales search focused on vacant land with similar physical and economic character to the subject, located in the immediate neighborhood. In order to facilitate a comparative analysis, we expanded our search to include commercial and light industrial properties in other Kenai neighborhoods. These criteria produced five sales that transpired in from 2016 to 2022. The primary land sales we relied upon are listed in the table below. Additional details of the comparables are retained on file.

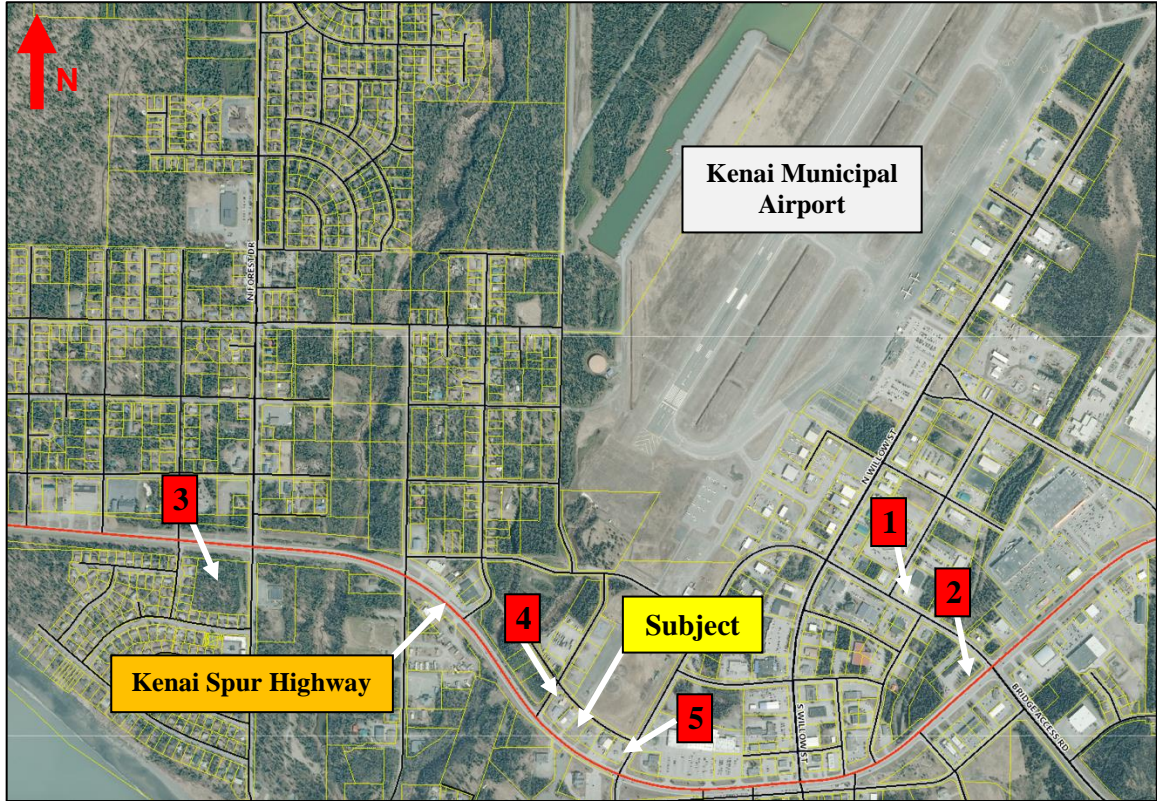
Summary of Primary Land Sales

No.	Location	Zone	Sale Date	Sale Price	Size (SF)	\$/SF
1	Northeast corner of Trading Bay Road and Main Street Loop	CMU	5/22	\$300,000	114,497	\$2.62
2	Northwest corner of Kenai Spur Highway and Main Street Loop Road (east)	CMU	1/20	\$605,000	121,091	\$5.00
3	Southwest corner of Kenai Spur Highway and S. Forest Drive	CG	2/19	\$455,000	219,107	\$2.08
4	Northeast corner of Kenai Spur Highway and Coral Street	CMU	8/18	\$180,000	35,851	\$5.02
5	Northwest corner of Kenai Spur Highway and Main Street Loop Road (west)	CMU	8/16	\$170,400	28,520	\$5.97
	North side of Kenai Spur Highway between Coral Street and Main Street Loop Road (Subject)	CMU		-- --	25,144	-- --

Elements of Comparison

The elements of comparison that have the greatest influence on market behavior and the price paid for similar land in Kenai is location and physical character, including clearing/grading, frontage/access, and size. Importantly, the subject lot has highway frontage with very good exposure and access. We use a qualitative comparison technique that rates elements of comparison as superior, inferior, or similar.

Comparable Land Sales Map



Land Sale 1

Land Sale 1 is the May 2022 sale located on the northeast corner of Trading Bay Road and Main Street Loop Road. Northeast of the subject, the irregular-shaped parcel consists of 114,497± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the parcel is partially cleared and developed with a retail strip mall. Zoning is CMU, Central Mixed-Use. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$300,000 indicates a unit value of \$2.62 per square foot. By comparison, this sale lacks highway frontage, and no improvements were included in the sale. Size differential and location are inferior to the subject. Overall, Land Sale



1 is rated inferior, indicating a unit value greater than \$2.62 per square foot for the appraised land.

Land Sale 2



Land Sale 2 is the January 2020 sale located on the northwest corner of Kenai Spur Highway and Main Street Loop Road (east), proximate to the Commercial Core of Kenai. Located 1.3± road miles south of the subject, the nearly rectangular-shaped parcel consists of two totaling 121,091± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the parcel is cleared and developed with a motel. Zoning is CMU, Central Mixed-Use. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$605,000 indicates a unit value of \$5.00 per square foot. By comparison, this sale is superior for access, inferior for size, and similar to the subject for location with highway frontage near the Kenai Commercial Core. Overall, Land Sale 2 is rated superior, indicating a unit value less than \$5.00 per square foot for the appraised land.

Land Sale 3



Land Sale 3 is the February 2019 sale located on the southwest corner of Kenai Spur Highway and S. Forest Drive, west of the Kenai Commercial Core. This location is 2.2± road miles southwest of the subject. The nearly rectangular-shaped lot contains 219,107± square feet. All public utilities are available in the immediate neighborhood. Topography is generally level, and the property was cleared and leveled at the time of sale. The property is zoned CG, General Commercial. Originally listed for \$499,000, the property sold after 132 days of market exposure. The sellers previously purchased the property in 2007 for \$175,000, and subsequently cleared the site. The price appreciation is attributed to passage of time, as well as value added due to clearing and leveling. The 2019 sale price of \$455,000 indicates a unit value of \$2.08 per square foot. By comparison, this sale is rated inferior for size differential and location. Land Sale 3 is rated inferior, indicating a unit value greater than \$2.08 per square foot for the appraised land.

Land Sale 4



Land Sale 4 is the August 2018 sale located at the northeast corner of Kenai Spur Highway and Coral Street, just outside of the Airport Reserve. This location is adjacent to the subject. The irregular-shaped site contains 35,851± square feet. The site is cleared and improved with a commercial building. All public utilities are available in the immediate neighborhood. Zoning is CMU, Central Mixed-Use. Per the plat, no direct Kenai Spur Highway access is permitted, although curb cuts allow for direct physical access. The sale was between the City of Kenai and former land lessee who purchased the land underlying the improvements. The sale price of \$180,000 indicates a unit value of \$5.02 per square foot. By comparison, this sale has good corner location with highway frontage proximate to the Commercial Core. Land Sale 4 is slightly inferior for size, superior for corner location, physical character and access. Thus, Land Sale 4 is rated superior, indicating a unit value less than \$5.02 per square foot for the appraised land.

Land Sale 5



Land Sale 5 is the August 2016 sale located on the northwest corner of Kenai Spur Highway and Main Street Loop Road (west) just south of the Airport Reserve and the Commercial Core. The property is located near the subject with superior access and frontage. The nearly rectangular-shaped lot contains 28,520± square feet. All public utilities are available in the immediate neighborhood. The property is cleared and zoned CMU, Central Mixed Use. The property was purchased from the City of Kenai by the land lessee, who owned two small commercial structures on the property. The sale price of \$170,400 was based on a 2015 appraisal, with a 20% premium paid. Land Sale 5 is similar in size and superior for location and access indicating a unit value less than \$5.97 per square foot for the appraised land.

Reconciliation of Comparative Market Analysis

Presented below is a rating grid and analysis of the land sales used in comparative analysis.

Land Sale	\$/SF	Rank	Net Adjustment
5	\$5.97	Superior	↓
4	\$5.02	Superior	↓
2	\$5.00	Superior	↓
Subject	-- --	-- --	-- --
1	\$2.62	Inferior	↑
3	\$2.08	Inferior	↑

The comparable land sales indicate a value range from \$2.08 to \$5.97 per square foot. Land Sales 2, 4, and 5 are rated superior indicating a unit value less than \$5.00 per square foot. Conversely, Land Sales 1 and 3 are rated inferior indicating a unit value greater than \$2.62 per square foot. After comparative analysis and making the necessary adjustments, we conclude with a market value between \$4.00 and \$4.50 per square foot, which develops the following indicators.

25,144 SF × \$4.00/SF =	\$100,576
25,144 SF × \$4.50/SF =	\$113,148

Based on the preceding analysis, the market value of the appraised land, as of May 16, 2022, is estimated as follows.

Market Value Estimate	\$110,000 (R)
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Marketing and Exposure Time

Estimated 6 to 12 months

Assumptions and Limiting Conditions

This appraisal is subject to the following **assumptions and limiting conditions**.

- ➔ No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be marketable unless otherwise stated.
- ➔ The property is appraised free and clear of all liens or encumbrances unless otherwise stated.
- ➔ The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
- ➔ All maps, plot plans, and other illustrative material are believed to be accurate, but are included only to help the reader visualize the property.
- ➔ It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
- ➔ It is assumed the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
- ➔ It is assumed the property conforms to all applicable zoning, land use regulations, and platting restrictions unless the nonconformity is identified, described, and considered in the appraisal report.
- ➔ Possession of this report, or a copy thereof, does not carry with it the right of publication.
- ➔ The appraisers, by reason of this appraisal, is not required to give consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.
- ➔ Neither all nor any part of the contents of this report shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisers.
- ➔ The existence of any hazardous material or other type of environmental contamination, which may or may not be present on the property, was not observed by the appraisers nor do the appraisers have any knowledge of the existence of such substances. However, the presence of these substances may affect the value of the property. Therefore, the client is urged to retain an environmental assessment for discovery and evaluation.

Statement of COVID-19

This appraisal was performed following public awareness that COVID-19 was affecting residents in the United States. At the time of the appraisal, COVID-19 is having widespread health and economic impacts. The effects of COVID-19 on the real estate market in the subject neighborhood are not yet measurable based on reliable data. The analysis and value opinion in this appraisal are based on the data available to the appraisers at the time of the assignment and apply only as of the effective date indicated. No analysis or opinions contained in this appraisal should be construed as predictions of future market conditions or value.

MacSwain Associates LLC

4401 Business Park Boulevard, Suite 22, Anchorage, Alaska 99503

Appraiser: Steve MacSwain, MAI

Member of Appraisal Institute - No. 5700

State of Alaska, Certified General Real Estate Appraiser - No. 42

Professional Experience: 1986 to Present - MacSwain Associates LLC

1976 to 1986 - Appraisal Company of Alaska - President

1970 to 1975 - Real Estate Services Corporation – Appraiser

1969 to 1970 - State of Alaska Department of Highways - Right of Way Agent

Real estate appraiser and consultant of all property types throughout Alaska including commercial, industrial, subdivisions and special-purpose properties. Appraisals have been performed for financing, leasing, insurance, condemnation, taxation, property damages, investment analysis, and buy-sell decisions. Appraisals include valuation of both real property and business enterprises. Professional experience totals 49 years. Life-long Alaskan resident of Alaskan Native descent.

Education: Bachelor of Business Administration, Finance (1969), University of Alaska Fairbanks

Appraisal Education: The following is a list of completed appraisal courses and seminars.

2021 – *Cool Tools: New Technology for Real Estate Appraisers* by the Appraisal Institute

2021 – *Desktop Appraisals (Bifurcated, Hybrid) and Evaluations* by the Appraisal Institute

2021 – *Hot Topics & Myths in Appraiser Liability* by LIA Administrators & Insurance Services

2020 – *Uniform Standards of Professional Appraisal Practice – Update* by the Appraisal Institute

2019 – *How Tenants Create or Destroy Value: Leasehold Valuation and its Impact on Value* –by the Appraisal Institute

2017 – *Appraising Environmentally Contaminated Properties* by the Appraisal Institute

2017 – *Residential & Commercial Valuation of Solar* by the Appraisal Institute

2017 – *Right of Way Acquisition for Pipeline Projects* by the International Right of Way Association

2015 – *Litigation Appraising: Specialized Topics and Applications* by the Appraisal Institute

2015 – *Business Practices and Ethics* by the Appraisal Institute

2013 – *Complex Litigation Appraisal Case Studies* by the Appraisal Institute

2013 – *Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book)* by the Appraisal Institute

2012 – *Appraisal Curriculum Overview* by the Appraisal Institute

2010 – *Reviewing Appraisals in Eminent Domain* by the International Right of Way Association

2010 – *Commercial Appraisal Engagement and Review Seminar for Bankers and Appraisers* by the Appraisal Institute

2009 – *The Appraiser as an Expert Witness: Preparation and Testimony* by the Appraisal Institute

2009 – *Attacking and Defending an Appraisal in Litigation* by Whitmer Education

2008 – *Uniform Standards of Professional Appraisal Practice* by the Appraisal Institute

2007 – *Business Practices and Ethics* by the Appraisal Institute

2007 – *Eminent Domain Law for Right of Way Professionals* by the International Right of Way Association

2007 – *Appraisal Review for Federal Aid Programs* by the International Right of Way Association

2007 – *Analyzing Operating Expenses* by the Appraisal Institute

1969-2006: Numerous appraisal classes pertaining to principles, income capitalization, cost analysis, sale comparison approach, and highest and best use analysis by the Appraisal Institute, Society of Real Estate Appraisers, International Right-of-Way Association, International Association of Assessing Officers, and Marshall Valuation Service

Membership and Organizations: Member of Appraisal Institute – No. 5700, International Right of Way Association (IRWA), and Building Owners and Managers Association (BOMA)

Public Service: Past Chairman of the State Board of Certified Appraisers

Past Member of Board of Equalization, Municipality of Anchorage, National Experience Review Committee of the Appraisal Institute, and Regional Ethics and Counseling Panel of the Appraisal Institute

Past President of Alaska Chapter 57 of the Appraisal Institute

Significant Assignments:

- ➔ Appraised Pacific Spaceport Complex-Alaska (PSCA) land and facilities for Alaska Aerospace Corporation on Kodiak Island.
- ➔ Appraised proposed LNG Pipeline, a FERC-regulated 860-mile pipeline transporting liquefied natural gas.
- ➔ Appraised the Trans-Alaska Pipeline System, a FERC-regulated 800- pipeline that transports crude oil from Prudhoe Bay to Valdez, for TAPS ownership.
- ➔ Appraised remote lands (65,000± acres) owned by three Native corporations damaged by the *Selendang Ayu* grounding and subsequent oil spill.
- ➔ Appraised Calais Company, Inc., a real estate holding company consisting of 39 commercial parcels in Anchorage.
- ➔ Principal real estate consultant and expert witness for all lands affected by the *Exxon Valdez* oil spill. Project involved over 2,000,000 acres of remote land and nearly 2,000 private property owners.
- ➔ Appointed as a representative of a three-member panel that analyzed and valued over 1,000,000 acres and 8,000 parcels for the Mental Health Lands Settlement.
- ➔ Contract assessor for the North Slope Borough, Kodiak Island Borough, City of Nome, and the City of Valdez.
- ➔ Represented Seibu Alaska, Inc. (Alyeska Resort and Alyeska Prince Hotel) in preparing of their property tax appeal with the Municipality of Anchorage that resulted in a \$65 million reduction in assessed value.
- ➔ Appraised submerged tideland parcels and wetlands parcels located in Womens Bay on Kodiak Island for the purpose of an exchange between Koniag, Inc. and U.S. Fish and Wildlife Service.
- ➔ Appraised Common Carrier Pipeline right-of-ways leased and operated by BP Transportation Alaska and ConocoPhillips Alaska.
- ➔ Appraised 3,600 acres consisting of the former Adak Naval Air Station and Submarine Base conveyed to the City of Adak and the State of Alaska.

Expert Witness Experience: Steve MacSwain, MAI is qualified as an expert witness in both the United States Federal Court and the State of Alaska Superior Court. Steve has testified as an expert witness in State and Federal courts. In addition, Steve has testified as expert witness in numerous Alaskan municipal tax courts, public hearings, and depositions on matters related to real property.

Arbitrator Experience: Appointed a Master by the Superior Court of Alaska and Municipality of Anchorage to serve as an arbitrator in determining just compensation.

License #: APRG42 Effective: 6/8/2021 Expires: 06/30/2023	State of Alaska Department of Commerce, Community, and Economic Development Division of Corporations, Business, and Professional Licensing
Board of Certified Real Estate Appraisers	
Licensee: STEVEN JAMES MACSWAIN	
License Type: Certified General Real Estate Appraiser	
Status: Active	
Commissioner: Julie Anderson	
Relationships	Designations
No relationships found.	No designations found.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3313-2022**

AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDS FROM THE STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF FORESTRY AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE TO SUPPORT THE CITY'S SPRUCE BEETLE MITIGATION AND HAZARD FUEL REDUCTION PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT FOR THIS FUNDING.

WHEREAS, the City adopted a Borough-wide Community Wildfire Protection Plan (CWPP) through Resolution 2022-34 on May 18, 2022; and,

WHEREAS, the City has been notified by the State of Alaska, Division of Forestry of approval of a grant in the amount of \$385,000 for a three-year project to support the City of Kenai's mitigation efforts identified in our Community Wildfire Protection Plan; and,

WHEREAS, the City has also been notified by the US Department of Agriculture (USDA), Forest Service of a grant in the amount of \$385,000 to support the City of Kenai's mitigation efforts identified in our Community Wildfire Protection Plan with a 50% match requirement; and,

WHEREAS, the State of Alaska, Division of Forestry grant may be used to meet the matching requirements of the USDA grant; and,

WHEREAS, it is in the best interest of the City to accept these grants and execute agreements with State of Alaska, Division of Forestry, and the US Department of Agriculture, US Forest Service to provide funding for the City's Spruce Beetle Mitigation and Hazard Fuel Reduction Program.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the City Manager is authorized to accept a grant in the amount of \$385,000 from State of Alaska Department of Natural Resources, Division of Forestry, execute any necessary documents to accept and administer the grant, and expend the funds in accordance to the grant's provisions and this ordinance.

Section 2. That the City Manager is authorized to accept a grant from the United States Department of Agriculture, Forest Service in the amount of \$385,000, execute any necessary documents to accept and administer the grant, and expend the funds in accordance to the grant's provisions and this ordinance.

Section 3. That the estimated revenues and appropriations be increased as follows:

Public Safety Capital Project Fund:

Increase Estimated Revenues –

Federal Revenue

\$385,000

State Revenue

385,000

\$770,000

Increase Appropriations –
Professional Services

\$770,000

Section 4. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Tony Prior, Fire Chief

DATE: August 29, 2022

SUBJECT: **Ordinance 3313-2022 Department of Natural Resources DOF Funding and Federal Match.**

We applied to the State of Alaska, Division of Forestry (DOF) to request funding to mitigate dead and dying spruce trees in the Shqui Tsatnu Creek from the beach to the Northern end bordering Woodland Subdivision and Airport lands. This project is part of our mitigation needs, identified in our Community Wildfire Protection Plan (CWPP), and continues with the efforts we have already started with the community’s slash disposal site. The area described in the maps attached is approximately 105 acres that will require different approaches to mitigation dependent upon the terrain in each City owned lot. Some areas will be accessible with mechanical equipment and some areas will need hand falling of trees.

We were notified today of approval for this 105-acre project from DOF which will require a Memorandum of Agreement to spend up to \$385,000.00 over a 3-year period. This is a significant project that has one of the highest urban interfaces within the City. We will work with DOF to write RFP’s based on past projects DOF has completed with similar goals and objectives that meet the requirements of this grant. We are anticipating on beginning this project as early as late fall.

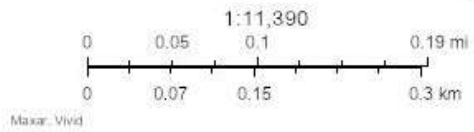
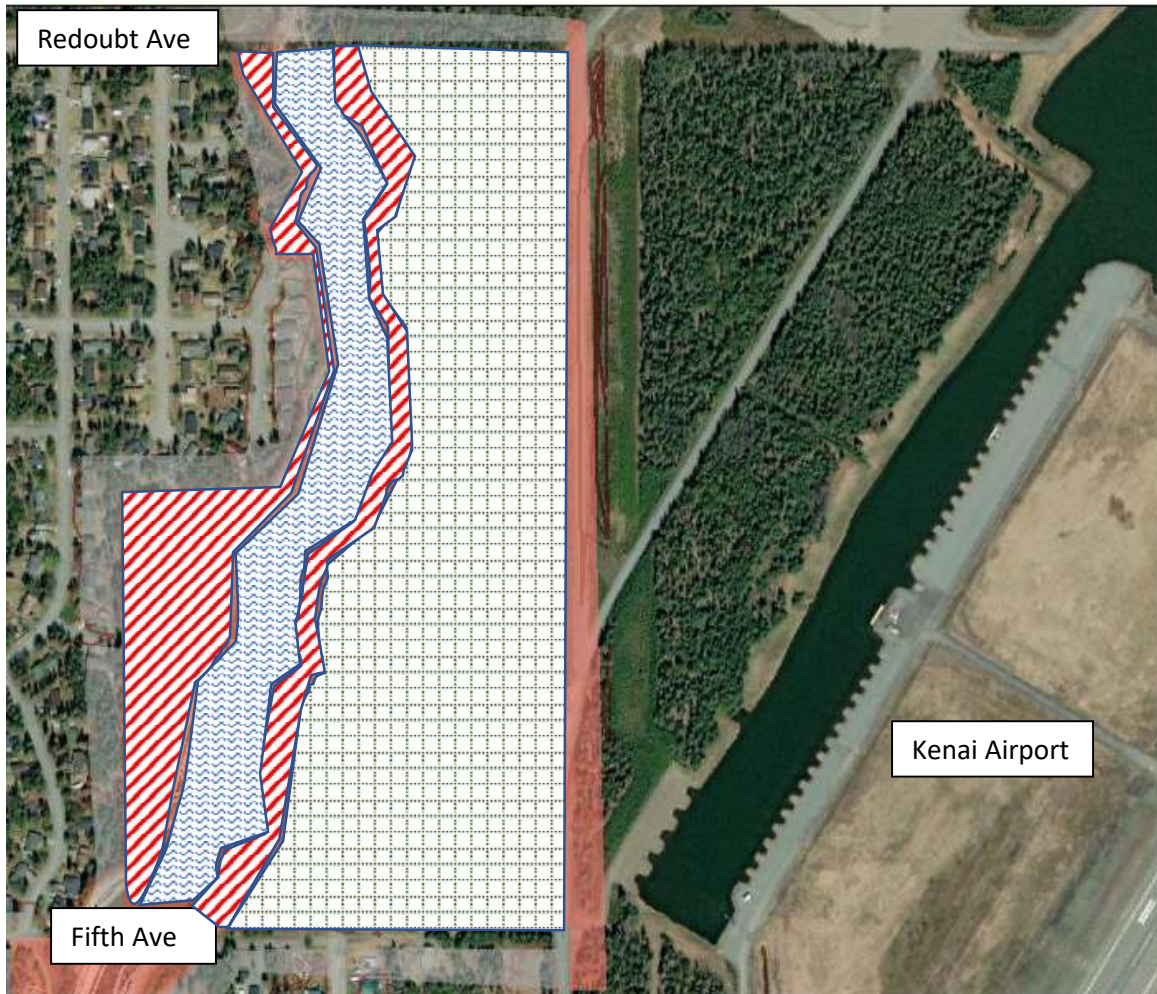
Additionally, we have been awarded a grant from the United State Division of Agriculture (USDA), Forest Service for the amount of \$385,000.00 to assist the City of Kenai in our Community Wildfire Protection efforts. This grant requires a 50% match of funds in the amount of \$385,000.00. The funding from the State of Alaska, DOF qualifies for the matching funds of the USDA grant, allowing us to accept both grants and proceed with projects identified in our CWPP. Total amount from both grants will give us \$770,000.00 to begin mitigation work identified in our CWPP.

This is an amazing opportunity to begin our efforts of actually removing beetle kill trees from areas of high risk and to start improving the safety of homeowners and businesses from wildfire. This is a project that has taken 2 years to make happen and I urge you to pass this Ordinance as it is in the best interest of the City. It will improve the safety of homeowners, businesses, recreational users, while improving the aesthetics throughout our beautiful City.




See attached maps of Kenai CWPP Gully

North end of gully, Redoubt Ave to Fifth Ave

Kenai gully CWPP-north

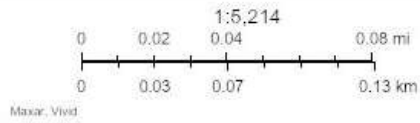
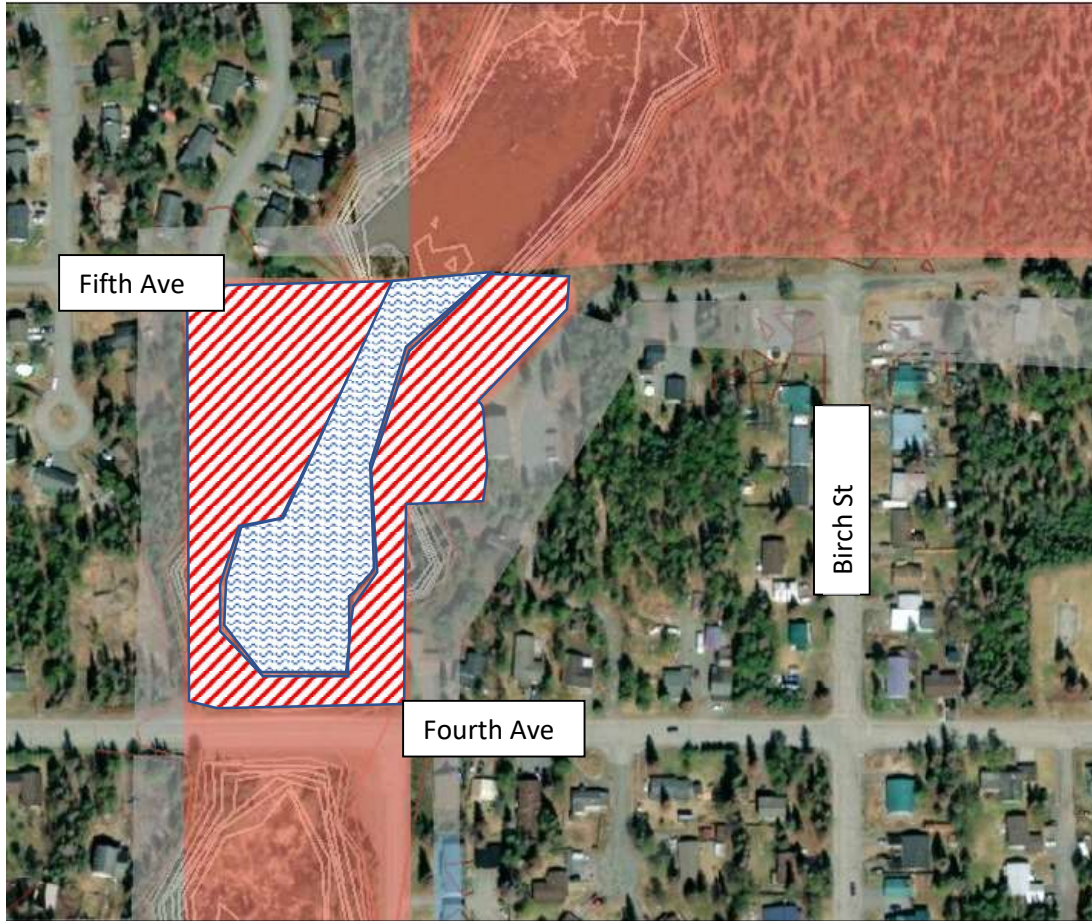


LEGEND




	= flat area; suitable for either mechanical or hand-falling; cut & limb, deck logs where accessible
	= steep area; hand-falling only; lop & scatter
	= watery/marshy; no tree removal here

Mid-gully, Fifth Ave to Fourth Ave

Kenai gully CWPP-4-5

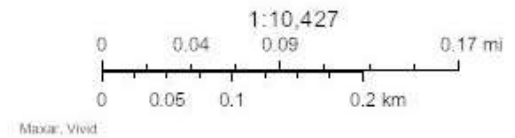
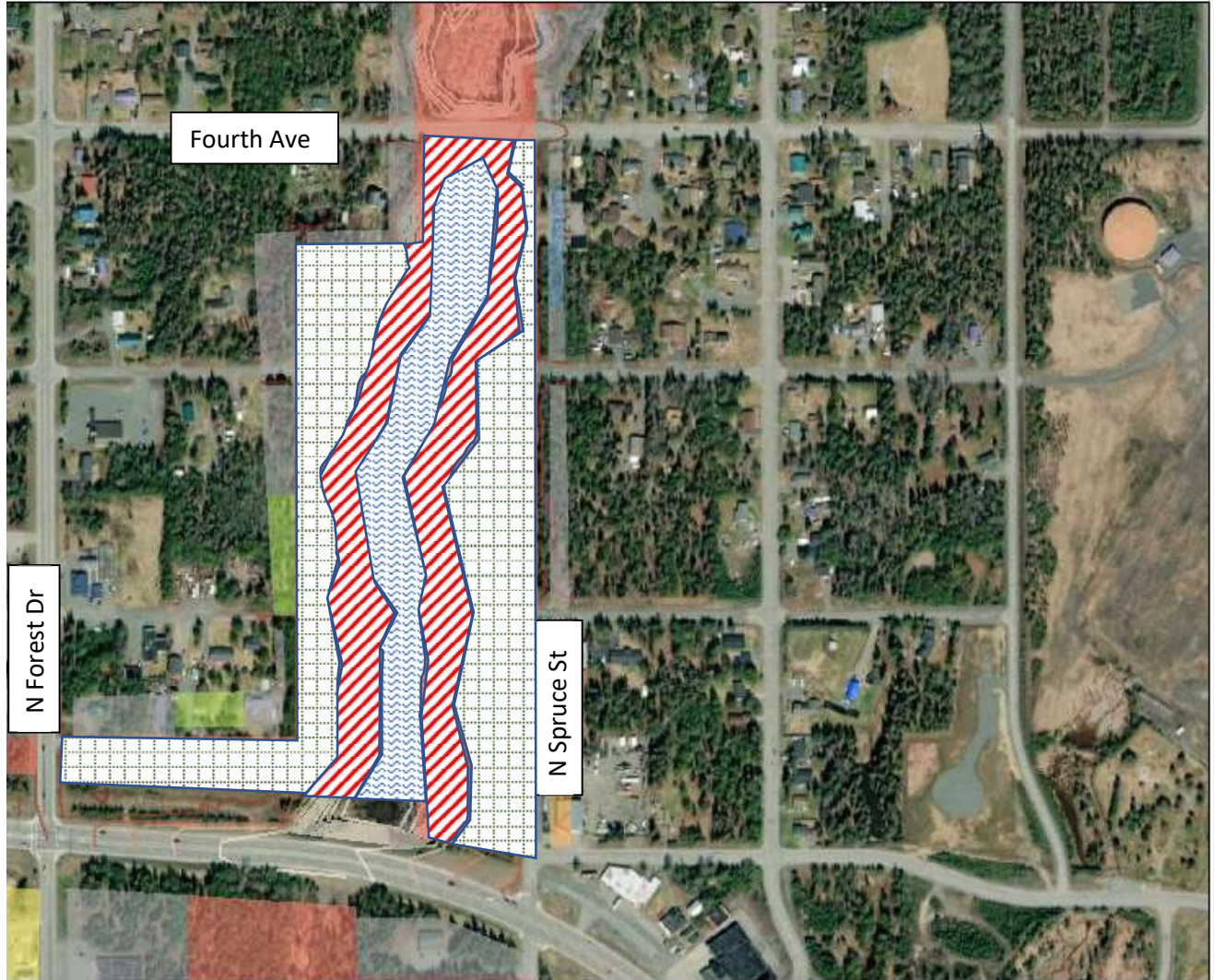


LEGEND




-  = flat area; suitable for either mechanical or hand-falling; cut & limb, deck logs where accessible
-  = steep area; hand-falling only; lop & scatter
-  = watery/marshy; no tree removal here

Mid-gully, Fourth Ave to Kenai Spur Hwy

Kenai gully CWPP-mid

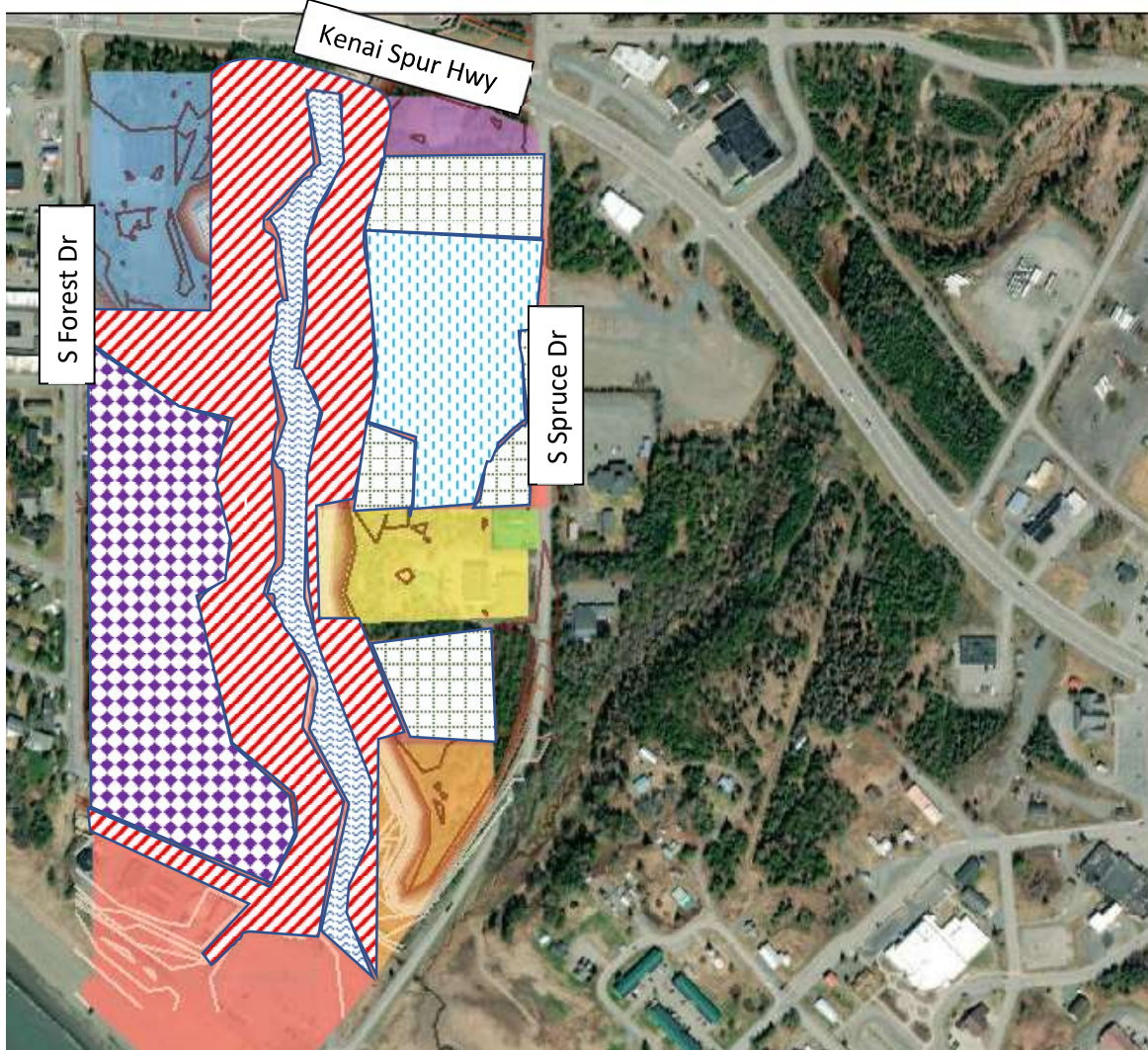


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




-  = flat area; suitable for either mechanical or hand-falling; cut & limb, deck logs where accessible
-  = steep area; hand-falling only; lop & scatter
-  = watery/marshy; no tree removal here

South of Kenai Spur Hwy

Kenai gully CWPP-south



LEGEND

-  = flat area; suitable for either mechanical or hand-falling; cut & limb, deck logs where accessible
-  = steep area; hand-falling only; lop & scatter
-  = watery/marshy; no tree removal here
-  = municipal park; likely hand-falling only; full haul-off
-  = recreational area; no removal needed



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3314-2022**

AN ORDINANCE EXTENDING THE TIME PERIOD FOR COMPLETION OF THE ACTION ITEMS NECESSARY FOR THE CONDITIONAL DONATION OF AN APPROXIMATE 2 ACRE PARCEL TO BE SUBDIVIDED FROM A PORTION OF THE 6.8 ACRE MORE OR LESS PORTION OF THE EAST OF TRACT 4A, BARON PARK 2020 REPLAT (KPB PARCEL NO. 04501035) TO TRIUMVIRATE THEATRE FOR THE DEVELOPMENT OF A THEATRE FACILITY.

WHEREAS, Council enacted Ordinance 3219-2021 at their meeting of August 6, 2021 conditionally donating an approximate 2-acre parcel of land to the Triumvirate Theatre for the sole purpose of developing a theatre facility; and,

WHEREAS, Ordinance 3219-2021 required that development of the property be completed by July 16, 2023; and,

WHEREAS, while the Triumvirate Theatre has raised significant funds for construction of the theatre and has identified several other opportunities to significantly increase the amount of capital funds they have available, it will not be possible for them to complete construction by July 16, 2023; and,

WHEREAS, Triumvirate Theatre has requested that the deadline for completion of their facility be extended two years to July 16, 2025; and,

WHEREAS, administration is not aware of any other entities interested in developing this land; and,

WHEREAS, at its meeting on September 14, 2022, the Planning and Zoning Commission recommended _____ of this Ordinance; and,

WHEREAS, giving the Triumvirate Theatre time to complete their capital campaign will give them the greatest possibility of building a facility that meets all of the needs of the theatre community and is in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the Kenai City Council extends the time period granted in Ordinance 3219-2021 for completion of the action items necessary for the conditional donation of an approximate 2-acre parcel to be subdivided from a portion of the 6.8 acre more or less portion of the east of Tract 4A, Baron Park 2020 Replat (KPB Parcel No. 04501035) to Triumvirate Theatre for the development of a theatre facility from July 16, 2023 to July 16, 2025.

Section 2. That all other provisions of Ordinance 3219-2021 remain unchanged.

Section 3. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares

that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	October 21, 2022



MEMORANDUM

TO: Mayor Gabriel and City Council Members

FROM: Paul Ostrander, City Manager

DATE: August 30, 2022

SUBJECT: **Ordinance 3314-2022 – Extending the Time Period for Completion of Improvements for Triumvirate Theatre**

Ordinance 3219-2021 authorized the City Manager to execute, upon completion of a subdivision and necessary proof of financing for the development, the transfer of title an approximate 2-acre parcel near Daubenspeck Family Park to Triumvirate Theatre, for less than fair market value (\$1.00) and for the sole purpose of developing a theatre facility. It further required that Triumvirate Theatre must complete at its own expense all actions necessary for the subdivision and development of the properties by July 16, 2023; and to provide proof of financing sufficient for the projects as prior conditions of the transfer of title; and to pay all closing costs and fees for said property and said consideration to the City for the property.

Triumvirate Theatre has had a very successful capital campaign to date, but has asked the City to extend the time that they have to complete their development to July 16, 2025 to allow them time to complete their fundraising.

Joe Rizzo, the Executive Director of Triumvirate Theatre has kept the Administration and Council apprised of their progress over the past year and will be providing another update on their capital campaign and current plans for development to Council at the September 21 meeting where this ordinance is scheduled for a public hearing.



Sponsored by: Administration

CITY OF KENAI

ORDINANCE NO. 3219-2021

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, CONDITIONALLY DONATING CERTAIN CITY OWNED PROPERTY DESCRIBED AS ONE APPROXIMATE 2 ACRE PARCEL TO BE SUBDIVIDED FROM A PORTION OF THE 6.8 ACRE MORE OR LESS PORTION OF THE EAST OF TRACT 4A, BARON PARK 2020 REPLAT (KPB PARCEL NO. 045 01 035) TO TRIUMVIRATE THEATRE FOR THE DEVELOPMENT OF A THEATRE FACILITY.

WHEREAS, Kenai Municipal Code 22.05.110, Determination as to need for public purpose, allows the Council, by Ordinance, to donate real property that is no longer needed by the City for a public purpose, to a non-profit corporation for consideration; agreed upon between the City and grantee without a public sale if the devotion is advantageous to the City; and,

WHEREAS, Triumvirate Theatre is a 501(c)3 non-profit corporation with a mission to provide performing arts opportunities with an emphasis on theatre with and for children; and,

WHEREAS, there is a need for a community theatre in the City of Kenai; and,

WHEREAS, the City desires to support performing arts in the community; and,

WHEREAS, donating the subject parcel to Triumvirate Theatre at less than fair market value is in the best interest of the City, and;

WHEREAS, the Planning and Zoning Commission recommended approval of the conditional land donation at their meeting on June 23, 2021; and

WHEREAS, conditions must be placed on the transfer or condition the transfer to ensure a theatre facility is developed or the property is returned to the City including in the event of a land sale, to a for profit entity, the value of the property shall be reimbursed to the City, if the sale occurs within twenty years after transfer to Triumvirate Theatre.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 1. Form: That this is a non-code ordinance.

Section 2. That the Kenai City Council hereby authorizes the City Manager to execute, upon completion of a subdivision and necessary proof of financing for the development, the transfer of title for the property: one approximate 2 acre parcel to be subdivided from a portion of the 6.8 acre more or less portion of the east of Tract 4A, Baron Park 2020 Replat (KPB PARCEL No. 045 01 035), to Triumvirate Theatre, on a form approved by the City Attorney, for less than fair market value (\$1.00) and for the sole purpose of developing a theatre facility.

Section 3. That Triumvirate Theatre must complete at its own expense all actions necessary for the subdivision and development of the properties; and to provide proof of financing sufficient for the projects as prior conditions of the transfer of title; and to pay all closing costs and fees for said property and said consideration to the City for the property.

Section 4. That the Kenai City Council further finds the disposal of the parcel to be in the best interests of the citizens of the City of Kenai and that the public interest shall be served by disposing of the property interest for less than the fair market value, in accordance with the recitals above which are incorporated herein.

Section 5. That the Kenai City Council further finds that if the action items described herein are not completed by July 16, 2023, the authorization to transfer the land lapses unless further authorized by the City Council.

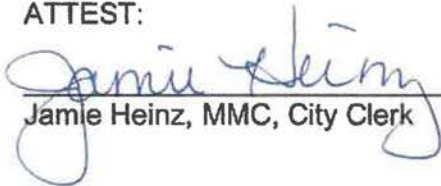
Section 6. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 7. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 7th day of July, 2021.


BRIAN GABRIEL SR., MAYOR

ATTEST:


Jamie Heinz, MMC, City Clerk



Introduced: June 2, 2021
Enacted: July 7, 2021
Effective: August 6, 2021



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Ryan Foster, Planning Director

DATE: May 24, 2021

SUBJECT: **Ordinance No. 3219-2021 - Conditionally Donating a Portion of Tract 4, Baron Park Subdivision 2012 Addition for the Development of a Theatre Facility.**

The purpose of this correspondence is to respond to the City Manager request to bring an ordinance to consider conditionally donating the properties referenced in the above described ordinance to the Triumvirate Theatre.

On May 20, 2021, Joseph Rizzo, on behalf of the Triumvirate Theatre, requested consideration of a donation of approximately 2 acres to the north of Daubensbeck Park to construct a theatre facility. The Triumvirate Theatre has been looking for a new home since a February 20, 2021 fire which resulted in a complete loss of their 5,000 square foot theatre facility. A donation of approximately 2 acres would require a subdivision of the approximately 6.8 acres of Tract 4, Baron Park Subdivision 2012 Addition. The parcel is zoned Light Industrial, which allows a theater with a conditional use permit, requiring submission of an application and approval by the Planning and Zoning Commission.

Thank you for your consideration.

Attachment A: Letter from Triumvirate Theatre proposing a land donation for construction of a theatre facility.

Attachment B: Aerial Map illustrating the proposed parcel to be subdivided for a theatre facility.

May 20, 2021

Joseph Rizzo
ACIPA
PO Box 322
Kenai, Alaska 99611

Dear Mr. Ostrander:

Thank you for all your assistance and guidance in helping us put together this proposal that the City of Kenai donate a piece of property on which to build the new Triumvirate Theatre facility. The following information will be helpful for the City Council in determining if this proposal is viable.

History of Alaska Children's Institute for the Performing Arts (Triumvirate Theatre)

Our organization was formed as a 501(c)3 nonprofit in November 1998. For over 20 years, we have provided performing arts opportunities for members of our community with a special emphasis on theatre with and for children. We serve people in the communities of Kenai, Soldotna, Sterling, Nikiski and Kasilof.

In 2005, we began renting a 3,000-square-foot space in the Peninsula Center Mall in Soldotna, where we operated a 100-seat theatre and a bookstore for almost 10 years. In 2006, four members of the board formed an LLC, North Road Properties, and bought a mechanic shop just a few miles north of the Kenai city limits with the intention of remodeling it to have a permanent home for the theatre's operations, renting it to us for well below market value. Through many grants and thousands of volunteer hours, the remodel was completed in 2013. The last two years of the remodel, the bulk of the interior work was completed by the Nikiski High shop class. White Christmas, the first of dozens of productions and events that would be held at the new facility, opened that December.

Plays, concerts, fundraisers for cancer victims, corporate events, Eagle Scout award ceremonies, wedding receptions and movies are just some of the activities that have taken place in our facility over the last eight years. It was truly a community space for the whole central Kenai.

The Fire

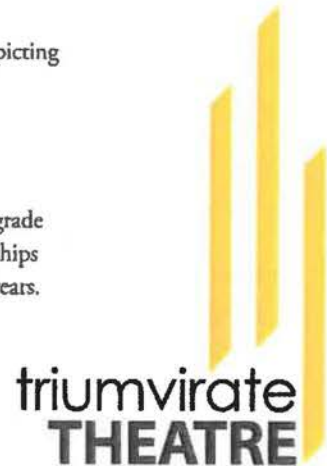
In the early morning hours of Feb. 20, 2021, a fire broke out in the backstage area of the theatre and engulfed the building in flames. In spite of valiant efforts by the Nikiski and Kenai Fire Departments, it was a complete loss of the 5,000-square-foot facility. Both the insurance forensic expert and the state fire marshal's office could not determine the cause of the blaze.

Currently, fundraising efforts are underway to rebuild the theatre. Meanwhile, the Kenai Peninsula Borough School District is providing our organization use of the Little Theatre at Kenai High to continue our operations throughout the next school year.

Some highlights of services provided by Triumvirate Theatre in the community and the state:

- We have produced well over a hundred plays, musicals and events over the last 23 years.
- Working with James Adcox, kids and adults in the community created a 240-square-foot mural depicting the history of the Kenai Peninsula.
- Large stained glass artwork was created by children under the direction of Sandy Stevens, a stained glass artist in our community.
- The Class Act Drama Troupe was established in 2005. This troupe is made up of seventh- to 12th-grade youth. Half of funds raised from their shows are distributed back to the kids in the form of scholarships when they graduate high school. Thousands of dollars have been awarded in scholarships over the years. To our knowledge, this is the only program of its kind in the U.S.

HOME OF THE ALASKA CHILDREN'S INSTITUTE FOR THE PERFORMING ARTS



Highlights cont.

- Working with the Alaska Humanities Forum, we have made two television programs teaching children about Alaska history. *Baranov's Castle* won a Best Indie Film Award at the Kids First Film Festival, the largest such festival in the world. It was also translated into Russian for Russian Television. *Davenport Flagstop and the Case of the Golden Spike* is a 45-minute film created in cooperation with the Alaska Railroad and has enjoyed extensive play on KTUU-TV.
- *Eight Stars of Comedy Gold* was a 90-minute history of the State of Alaska funded through a \$30,000 grant from the Rasmuson Foundation, commemorating the 50th anniversary of statehood.
- Mental Health Mondays is one of our current programs done in cooperation with KSRM Radio. Youth actors produce radio dramas about mental health issues facing teens. The dramas are followed by a round table discussion between the actors and Dr. Paul Turner, a Kenai psychologist.

Description of Beneficiaries

We know that the performing arts are critical to children's development and we provide opportunities for them to discover how much the stage can teach them about themselves and the world around them. By getting kids on stage to perform, parents and families that come to see them perform are also important beneficiaries of our programs. Lastly, we are heavily involved in fundraisers for local causes from kids who have cancer to people who lose their homes to house fires. We often provide entertainment for fundraising events and, before our facility burned down, provided a place for the community to hold such events.

Current Status of the Project (Rebuilding efforts), timeline, and funds raised to date.

We are currently in the fundraising and planning stages of rebuilding the theatre. Our hope is to have the new theatre open by April or May 2023.

Fundraising Efforts

Shortly after the fire occurred, the Rasmuson Foundation helped us set up a disaster relief fund with the Alaska Community Foundation, generously seeding that fund with \$10,000. Through an outpouring of community support, we have raised over \$100,000 in cash donations from over 500 individual donors over the last 10 weeks. This includes a \$10,000 donation from Marathon Oil. We have also received several significant in-kind donations including: \$10,000 in free radio advertising from KSRM Radio Group, a grand piano from the Kenai Peninsula College and excavating services for clean-up.

With the help of a \$25,000 Tier 1 grant from the Rasmuson Foundation, we are working with John Conway, a Foraker consultant hired to help us plan our rebuild efforts. This grant is also paying for architectural services from K&A Design Studios, a local Kenai firm, to develop conceptual drawings and determine an estimated cost of the rebuilding of the facility.

Fundraising efforts will continue over the summer with a goal of raising another \$100,000 in cash donations. We have some great help from local businesses, including Kenai Catering, which is planning on holding a fundraising dinner for us.

In addition to cash that the theatre has raised so far, our former landlord, North Road Properties, is committed to donating over \$200,000 from the insurance settlement so the theatre can build its own facility. We estimate that cost of rebuilding the theatre with the enormous rise in the cost of building materials will exceed \$1,000,000. We are hoping to raise additional funds from foundations and trusts.

Our goal is to submit a Tier 2 grant letter of inquiry to the Rasmuson Foundation by July 31. We will have no less than \$400,000 in funds to bring to this project. A land donation from the City of Kenai for the new theatre will be critical to our request to pursue a Tier 2 grant. The Rasmuson Foundation generally funds capital projects at 50% of the total cost. They have told me that the land donation would be considered matching funds.



triumvirate
THEATRE

The Property

At your suggestion and working with Ryan Foster, we have considered four possible donated sites for the new facility in the City of Kenai. After careful consideration and in consultation with you, John Conway and our architect, we believe KPB Parcel No. 04501035 would best suit the purposes of the new theatre. This facility would require approximately 2 acres to accomodate adequate parking and the footprint of the building. Triumvirate would pay to have Parcel No. 04501035 subdivided so that we would occupy the east part of the parcel.

The following information comes from Ryan Foster:

Legal Description: Tract 4, Baron Park Subdivision 2012 Addition Physical Address: 450 Marathon Road

Size: 6.85 acres (298,386 square feet)

City Zoning: Light Industrial

Land Value: \$417,500 (from KPB)

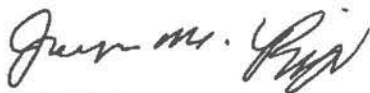
This parcel would likely require a subdivision of the 6.85 acres for a theater project/donation. The new Kenai Dog Park is being constructed on this parcel and the City is amending the plat to remove the dog park from Tract 4 and add it to Tract 5. Water and sewer is adjacent to the property from Marathon Road and Daubensbeck Road. Theaters are allowed in the Light Industrial zoning district with a conditional use permit.

Advantages for the City of Kenai

Theatres are economic engines for communities. Not only would Triumvirate Theatre patronize hardware stores and grocery stores in the course of our operations but our patrons will eat at local restaurants before or after shows. In addition to paying property tax, Triumvirate would also hire locals in teaching drama camps, running operations and conducting maintenance on the building.

The other advantage, of course, is having the arts in the community and the educational opportunities for local kids. We have no doubt that being in town will increase the number of children we serve with our programs.

Thank you for considering this proposal. If you need further information, please contact me on my cell at: (907) 394-1159 or by email.

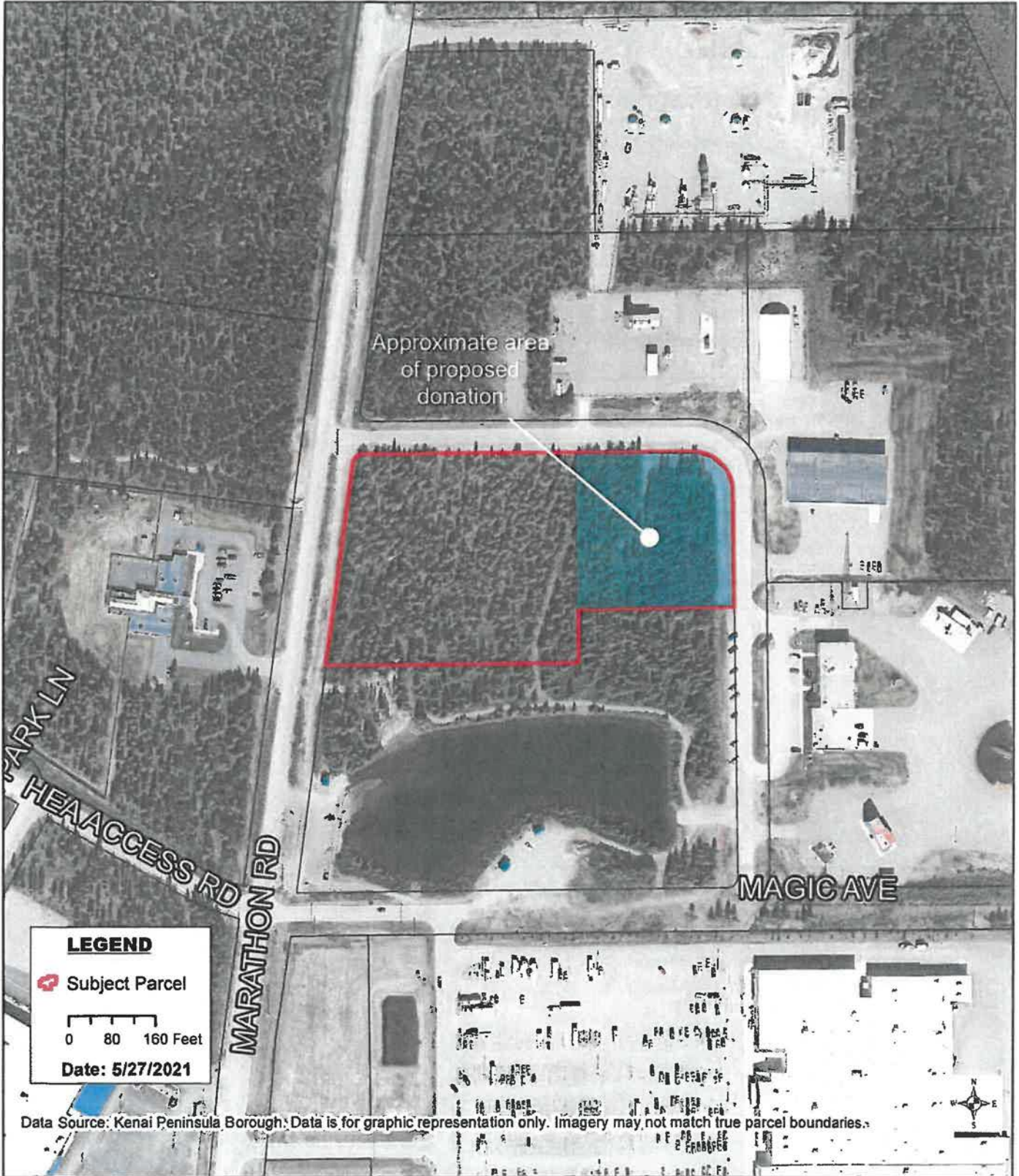


Joe Rizzo
Executive Director
ACIPA





**RESOLUTION 3219-2021
PROPOSED DONATION TO TRIUMVIRATE THEATRE
KPB #045 01 035
APPROXIMATELY 2 ACRE PORTION OF
TRACT 4, BARON PARK SUBDIVISION 2012 ADDITION**





MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

THROUGH: Paul Ostrander, City Manager

FROM: Ryan Foster, Planning Director

DATE: June 8, 2021

SUBJECT: Requested Postponement and Hold for a Second Public Hearing to July 7, 2021 for Ordinance No. 3219-2021 - Conditionally Donating a Portion of Tract 4, Baron Park Subdivision 2012 Addition to Triumvirate Theatre for the Development of a Theatre Facility.

On June 2, 2021 City Council approved via consent agenda the introduction of Ordinance 3219-2021 for a public hearing on June 16, 2021. This memorandum requests a postponement and a hold for a second public hearing to July 7, 2021. This postponement would allow for the Planning and Zoning Commission to review Ordinance 3219-2021 at their meeting on June 23, 2021 and provide a recommendation to City Council.

Thank you for your consideration.



Sponsored by: Administration

**CITY OF KENAI
ORDINANCE NO. 3315-2022**

AN ORDINANCE INCREASING ESTIMATED REVENUES AND APPROPRIATIONS IN THE GENERAL FUND AND PUBLIC SAFETY CAPITAL PROJECT FUND FOR COSTS IN EXCESS OF BUDGETED AMOUNTS FOR THE FIRE DEPARTMENT APPARATUS BAY FLOOR REFINISHING PROJECT.

WHEREAS, the FY23 budget was approved with a \$45,000 Capital project for refinishing the apparatus bay floor at the Kenai Fire Department; and,

WHEREAS, Public Works staff is updating estimates and has determined an additional \$15,000 is required to allow the project to move forward; and,

WHEREAS, the additional funding will account for inflationary pressures, contract administrative services for department staff as well as some contingency; and,

WHEREAS, this remains a priority project for the Department and provides appropriate maintenance in the continued protection of a city asset.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. That the estimated revenues and appropriations be increased as follows:

General Fund:

Increase Estimated Revenues –
Appropriation of Fund Balance \$15,000

Increase Appropriations –
Transfer to Public Safety Capital Project Fund \$15,000

Public Safety Capital Project Fund:

Increase Estimated Revenues –
Transfer from General Fund \$15,000

Increase Appropriations –
Fire Department Apparatus Bay Floor Refinishing - Construction \$15,000

Section 2. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 3. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect immediately upon enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Approved by Finance: SB, Acting

Introduced:	September 7, 2022
Enacted:	September 21, 2022
Effective:	September 21, 2022



MEMORANDUM

TO: Mayor Gabriel and Council Members

THROUGH: Paul Ostrander, City Manager

FROM: Scott Curtin, Director of Public Works

DATE: August 27, 2022

SUBJECT: Ordinance for Kenai Fire Department Apparatus Bay Floor Refinishing

The purpose of this Ordinance is to provide supplemental funding in support of the Kenai Fire Department's (KFD) Apparatus Bay Floor Refinishing Project, approved and as detailed on page 297 of the FY23 budget. The preliminary estimate used for the project is about nine months old now and as staff is preparing for the release of the bid documents for the project it was determined project funds are likely light in the current bidding environment. The City's current purchasing policy does not allow the department to release projects for bid without an understanding we will likely have sufficient funds to award. This Ordinance is being brought at this time to comply with that requirement.

The additional \$15,000 requested is intended to cover likely inflationary costs associated with labor and materials, allow billable hours for the department's staff for contract admin services associated with the project as well as providing a small contingency to cover minor unforeseen conditions that may be encountered during the work.

Completion of this work is effectively maintaining an existing City asset. Allowing the space to be easier to clean while protecting the concrete surfaces to extend service life. The Fire Department, Public Works Department, and Administration are in support of the project. Council's approval is respectfully requested.



Sponsored by: Vice Mayor Glendening

**CITY OF KENAI
ORDINANCE NO. 3316-2022**

AN ORDINANCE AMENDING KENAI MUNICIPAL CODE 14.20.150-CONDITIONAL USE PERMITS, TO FURTHER CLARIFY ROLES AND RESPONSIBILITIES OF APPLICANTS, THE PLANNING DIRECTOR, AND THE PLANNING COMMISSION IN THE CONDITIONAL USE PROCESS.

WHEREAS, Council recently, through Ordinance No. 3243-2021, amended KMC 14.20.150- Conditional Use Permits, to improve the conditional use process for applicants and the public; and,

WHEREAS, recent public hearings at the Planning and Zoning Commission's meetings and board of adjustment hearings demonstrate further changes are needed to define the roles and responsibilities within the process and improve decisions made by the Commission; and,

WHEREAS, the amendments within this Ordinance are primarily intended to ensure decisions are made based on applicable standards within city code based on substantial evidence; and,

WHEREAS, other changes include reporting requirements to Council and that public hearings are held prior to any permit revocations; and,

WHEREAS, at its meeting on September 14, 2022, the Planning and Zoning Commission recommended _____ of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, AS FOLLOWS:

Section 1. Amendment of Section 14.20.150 of Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.15 Conditional Use Permits, is hereby amended as follows:

14.20.150 Conditional use permits.

(a) *Intent.* It is recognized that there are some uses that may be compatible with designated principal uses in specific zoning districts provided certain conditions are met. The conditional use permit procedure is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property and the application of controls and safeguards to assure that the proposed use will be compatible with the surroundings. The Commission may permit this type of use if the conditions and requirements listed in this chapter are met. The conditional uses are listed in the Land Use Table. Before a conditional use permit may be granted, the procedures specified in this chapter must be followed. The grant, denial, modification, or revocation of a conditional use permit is discretionary but must be based on findings supported by substantial evidence and City ordinances.

(b) *Pre-Application Meeting.* Every conditional use permit applicant must contact the Planning Director for a pre-application meeting with the Planning Director or designee before the application is submitted to the Commission in order to ensure applications are complete and the applicant is familiar with the conditional use permit public hearing process. If an application is determined to be

incomplete by the Planning Director, the application may be resubmitted to the Planning Director with changes or new information as many times as necessary, or the applicant may request a review with the City Manager whose determination shall be final and reported to the City Council. The review by the Planning Director is to determine that sufficient information is presented to allow the Commission a meaningful review [AND HAS NO BEARING ON WHETHER AN APPLICATION SHOULD BE GRANTED OR DENIED BY THE COMMISSION].

(c) *Applications.* Applications for a conditional use permit shall be filed in writing with the Planning Department. The application shall include, but is not limited to, the following:

- (1) Name and address of the applicant and name and address of the property owner if not the applicant;
- (2) Verification by the owner of the property concerned if other than the applicant;
- (3) The street address and a legal description of the property involved;
- (4) A description of the proposed use and how the use satisfies the review criteria including any applicable evidentiary support;
- (5) Dimensioned plot plans showing the location of all existing and proposed buildings or alteration, conceptual drawing and such data as may be required; and
- (6) The appropriate fee as set forth in the City’s schedule of fees adopted by the City Council.

The application and its plans shall be posted to the City’s website at time of publication of Commission packet.

(d) *Public Hearing.* If the application is in order, a public hearing shall be scheduled in accordance with the requirements of KMC [14.20.280](#). An applicant or representative of the applicant must be present in person or by remote device for the application to be considered at the public hearing. If the applicant or representative is not present at the scheduled public hearing and has not provided reasonable timely notice of unavailability to the Planning Department or Commission, the application will be dismissed by the Commission without a public hearing and the applicant may reapply at any time after paying a new application fee.

(e) *Review Criteria.* Prior to granting a conditional use permit, it shall be established by substantial evidence that the use satisfies all the following criteria:

- (1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;
- (2) The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired;

- (3) The proposed use is in harmony with the Comprehensive Plan;
- (4) Public services and facilities are adequate to serve the proposed use;
- (5) The proposed use will not be harmful to the public safety, health or welfare; and
- (6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use as provided for in City ordinance, including the Land Use Table.

The Commission may approve, approve with conditions, dismiss, or deny the application. The Commission must make specific findings in its decision addressing all six (6) of the required criteria stated above. Any relevant evidence may be considered by the Commission in its decision.

(f) *Burden of Proof.* The applicant for a conditional use permit has the burden to show by substantial evidence that the six (6) criteria above are satisfied. Substantial evidence is such relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(g) *Staff Report.* The Planning Director or designee will provide a staff report on the application to the Commission at the public hearing. The staff report may contain any information deemed pertinent by the Planning Director or designee, and may include a recommendation and proposed findings on whether the requirements of this chapter have been met and whether any additional specific conditions are recommended. The Commission may consider the recommendations of the Planning Director or designee, but shall accord it no deference. Evidentiary findings by the Planning Director or designee shall be considered. The staff report does not relieve the applicant's burden of proof.

(h) *Issuance of the Permit.* Following approval by the Commission, the administrative official shall not issue the permit until the expiration of the fifteen (15) day appeal period contained in KMC [14.20.290](#). After approval by the Commission and before the issuance of the permit, the administrative official must determine that the applicant is current on all obligations (e.g., sales tax, property tax, lease payments, utility payments) to the City or has entered into an approved payment plan with the City on any obligations owed and the applicant is in compliance with the payment plan and (if the permit is for a use required to collect sales tax) must show a valid borough sales tax account. If a timely appeal is filed pursuant to KMC [14.20.290](#), the permit shall not be issued unless authorized by the Board of Adjustment.

(i) *Yearly Reports.* The permit holder shall submit a yearly report between October 1st and December 31st to the administrative official. Such report shall include a summary of the on-site activity.

(j) *Revocation for Noncompliance/Compliance Notices.* If the Commission determines after a public hearing, based on the yearly review or any other investigation undertaken by the official, that the conduct of the operation(s) is not in compliance with: (1) the terms and conditions of the permit; (2)

the provisions of the Kenai Zoning Code; (3) or that the permit holder is not current on any obligations (e.g., sales tax, property tax, utility payments, lease payments) to the City unless the applicant has entered into an approved payment with the City on any obligations owed and the applicant is in compliance with the payment plan, the Commission may revoke the permit. The Commission shall not revoke the permit until the permit holder has been notified and given reasonable opportunity to correct the deficiency(s) or to provide information relating to or rebutting the alleged deficiency(s). Appeals from decisions under this section shall be made in accordance with the provisions of KMC [14.20.290](#). If the administrative official determines the permit holder is in compliance with the conditions in this subsection, or notifies the permit holder of a potential violation in writing, the administrative official shall send any notice of compliance or notice of violation to the Commission and the permit holder in a timely manner.

(k) *Modification of Final Approval.*

(1) An approved conditional use permit may, upon application by the permittee, be modified by the Planning and Zoning Commission:

- (i) When changed conditions cause the conditional use to no longer conform to the standards for its approval;
- (ii) To implement a different development plan conforming to the standards for its approval;

(2) The modification application shall be subject to a public hearing and the appropriate fee as set forth in the City's schedule of fees adopted by the City Council in order to help cover the costs of the public hearing notice.

(l) *Expiration—Extensions—Transferability.*

(1) An approved conditional use permit lapses twelve (12) months after approval if no building permit is procured or if the allowed use is not initiated.

(2) A conditional use permit shall automatically expire if for any reason the conditioned use ceases for a period of one (1) year or longer.

(3) The Commission may grant time extensions to stay the lapse or the expiration of a permit for periods not to exceed one (1) year each upon a finding that circumstances have not changed sufficiently to warrant reconsideration of the approval of the conditional use permit or that good cause exists to grant the time extension. A permittee must request a time extension in writing, and submit any supporting materials, within ninety (90) days of the date of the administrative official's written notice to the permittee that either the permit has lapsed under subsection [\(l\)\(1\)](#) of this section or that the permit has expired under subsection [\(l\)\(2\)](#) of this section by a date certain. If the administrative official does not issue a written notice concerning lapse or expiration, the permittee may request a time extension at any time within two (2) years of the date the permit was issued or the use ceased, whichever is later. A permittee may be granted time extensions

not to exceed a total of two (2) years from the date of the Commission’s grant of the first time extension. The Commission may, but is not required to, hold a public hearing prior to issuing a decision under this subsection.

(4) A permittee who disputes the administrative official’s determination that the conditioned use has not been timely initiated or has ceased for a period of one (1) year or longer may appeal the official’s determination to the Board of Adjustment in accordance with KMC [14.20.290](#). If the permittee has requested a stay under subsection [\(1\)\(3\)](#) of this section, the time for appeal of the administrative official’s determination of lapse or expiration shall not run until such time as the Commission has made a final decision on the request for a stay.

(5) A conditional use permit is not transferable from one (1) parcel of land to another. Conditional use permits may be transferred from one (1) owner to another for the same use, but if there is a change in use on the property, a new permit must be obtained.

(6) Appeals from decisions of the Commission under this section shall be made in accordance with the provisions of KMC [14.20.290](#).

(m) A proposed conditional use permit shall not be considered if a substantially similar conditional use permit has been considered and denied within the nine (9) months immediately preceding.

Section 2. Severability: That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 3. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 21ST DAY OF SEPTEMBER, 2022.

Brian Gabriel Sr., Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Introduced: September 7, 2022
Enacted: September 21, 2022
Effective: October 21, 2022



MEMORANDUM

TO: Mayor Gabriel and Council Members

FROM: Jim Glendening, Vice Mayor

DATE: August 25, 2022

SUBJECT: **Ordinance No. 3316-2022 Amending the Conditional Use Permits Process**

Council recently enacted Ordinance No. 3243-2021 amending KMC 14.20.150- Conditional Use Permits, to improve the conditional use process for applicants and the public. Recent public hearings at the Planning and Zoning Commission’s meetings and board of adjustment hearings demonstrate further changes are needed to define the roles and responsibilities within the process and improve decisions made by the Commission. The following outlines the proposed changes:

1. Amend 14.20.150(a) to clarify that while the Commission has the discretion to grant, deny, modify or revoke a conditional use permit, such discretion must be based on substantial evidence and City Code supported by findings.
2. Amend 14.20.150(b) to require the City Manager report the results of any CUP application appeals made to him or her to the City Council.
3. Amend 14.20.150(b) by removing the language in the last sentence that states “and has no bearing on whether an application should be granted or denied by the commission” as it is unnecessary. It is already clearly stated that the Planners job in his review is to ensure that sufficient information is provided in the application to allow the Commission to have a meaningful review of the application.
4. Amend 14.20.150(c)(4) by adding that applicable evidentiary support for the granting of a conditional use permit should be included within the application process.
5. Amend 14.20.150(e) by emphasizing that the Commission must find that all required criteria in code are met **and** supported by substantial evidence prior to granting a conditional use permit.
6. Amend 14.20.150(e)(6) by adding language that clarifies that conditions placed on conditional use permits by the Commission must be based on applicable City Code.
7. Amend 14.20.150(g) by adding language to clarify that while the Commission does not have to give weight or deference to recommendations of the Planning Director with regard to whether a conditional use permit should be a granted or not, evidence presented to the Commission must be considered. This means that if the Planner provides evidence and

the Commission chooses to rely on other evidence or disagrees with the Planner regarding the evidence presented, the Commission must explain its decision in this regard.

8. Amend 14.20.150(j) to require that a public hearing is held prior to the revocation of any conditional use permit.

I request this Ordinance be removed from the Consent Agenda for introduction, so that it can be referred to the Planning and Zoning Commission to make a recommendation at its September 14, 2022 meeting, prior to Council's public hearing at its September 21, 2022 meeting.

Your consideration is appreciated.



**KENAI PLANNING & ZONING COMMISSION –
REGULAR MEETING
AUGUST 24, 2022 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
CHAIR JEFF TWAIT, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai Planning & Zoning Commission was held on August 24, 2022, in City Hall Council Chambers, Kenai, AK. Chair Twait called the meeting to order at approximately 7:00 p.m.

1. Pledge of Allegiance

Chair Twait led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Commissioners present: J. Twait, A. Douthit, G. Woodard, D. Fikes, V. Askin, J. Halstead

Commissioners absent: G. Greenberg

Staff/Council Liaison present: Interim Planning Director M. Best, Vice Mayor J. Glendening, Deputy Clerk M. Thibodeau

A quorum was present.

3. Agenda Approval

MOTION:

Commissioner Halstead **MOVED** to approve the agenda as written. Vice Chair Douthit **SECONDED** the motion. There being no objection; **SO ORDERED.**

4. Consent Agenda

MOTION:

Vice Chair Douthit **MOVED** to approve the consent agenda. Commissioner Halstead **SECONDED** the motion. There being no objection; **SO ORDERED.**

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a commission member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

5. *Excused Absences – None.

B. APPROVAL OF MINUTES

1. *Regular Meeting of August 10, 2022

Approved by the consent agenda.

C. SCHEDULED PUBLIC COMMENTS – None.

D. **UNSCHEDULED PUBLIC COMMENTS** – None.

E. **CONSIDERATION OF PLATS** – None.

F. **PUBLIC HEARINGS** – None.

G. **UNFINISHED BUSINESS** – None.

H. **NEW BUSINESS**

1. **Resolution PZ2022-22**– Application for a Home Occupation Permit for music instruction submitted by Deborah Sounart, 112 Linwood Lane, Kenai, Alaska 99611, for property described as Lot 1A, Eventyr Subdivision Sounart Replat.

MOTION:

Commissioner Askin **MOVED** to approve Resolution PZ2022-22. Vice Chair Douthit **SECONDED** the motion.

Director Best explained that the application was for a Home Occupation Permit for music instruction; the application met all standards for home occupation, and staff recommended approval with the following conditions:

1. Applicant must comply with all federal, State of Alaska, and local regulations.
2. Pursuant to KMC 14.20.230(f), a home occupation permit is not transferable to another person or location.
3. If the applicant decides to put up a sign for her business, she will first obtain a sign permit from the City.

Applicant Deborah Sounart noted that she is a retired schoolteacher and a private music teacher. She explained that through her work on the City Council she learned that a home occupation permit was required for the private lessons she had been conducting, and submitted an application to become compliant. She noted that she does not teach lessons full time; she has 20 students total and explained how transportation to her home would not add significant traffic. She also noted that she owns adjoining property on either side of her home that serves as a buffer for sound.

Director Best discussed home occupation permits within the City, and asked for suggestions on how the City can improve public awareness and compliance with the home occupation permitting process. Sounart noted that it would be helpful to learn about City permits during the State licensing process or when registering with the Kenai Peninsula Borough for sales tax.

Clarification was provided that there had been no noise complaints from neighbors, and that operating hours are between 9:00 A.M. and 5:00 P.M.

The Commission discussed whether it would be beneficial to add quiet hours as a condition of the permit. Arguments in favor of adding the condition included keeping consistent standards with conditional use permits that have been issued, setting a standard precedent for future home occupation permits, and that it would place no burden on the applicant as she is already operating within the suggested quiet hours. Arguments against adding the condition included that it was unnecessary, that the applicant had come forward voluntarily with an application that had met all the standards, and that setting rules and regulations preemptively may dissuade people from applying for permits in the future. Clarification was provided on differences between conditional use permits and home occupation permits.

VOTE:

YEA: Woodard, Douthit, Fikes, Halstead, Twait, Askin

NAY: None.

MOTION PASSED UNANIMOUSLY.

I. **PENDING ITEMS** – None.

J. **REPORTS**

1. City Council – Vice Mayor Glendening reported on the actions of the August 17, 2022 City Council Meeting. He noted that a Joint Work Session has been tentatively scheduled for September 21, 2022 to discuss the Kenai Waterfront Revitalization project, the upcoming Silver Salmon Derby and dipnet wrap-up meeting.
2. Kenai Peninsula Borough Planning – Commissioner Fikes reported on the actions of the August 22, 2022 Kenai Peninsula Borough Planning Meeting.
3. City Administration – Planning Director Best reported on the following:
 - The new Planning Director has been hired; her first Planning & Zoning Commission Meeting will be on September 28, 2022.
 - Expressed appreciation for the discussion on home occupation permits, and will discuss possible improvements to permitting process with Administration.
 - Met with FEMA representatives regarding the flood plain ordinance to discuss next steps.
 - Department of Transportation will be upgrading areas south and west of the Warren Ames Bridge, including improving the gravel surface of bridge and installing boardwalk and steps.
 - Issued drilling permit to Hilcorp.
 - Three Bears has applied for a gas station facility, will be meeting with them next week.

K. **ADDITIONAL PUBLIC COMMENTS** – None.

L. **INFORMATION ITEMS** – None.

M. **NEXT MEETING ATTENDANCE NOTIFICATION**

1. September 14, 2022

N. **COMMISSION COMMENTS & QUESTIONS**

Commissioner Askin noted that it had been good discussion.

O. **ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 7:42 p.m.

Minutes prepared and submitted by:

Meghan Thibodeau
Deputy City Clerk

**PURCHASE ORDERS BETWEEN \$2,500.00 AND \$15,000.00 FOR COUNCIL REVIEW
COUNCIL MEETING OF: SEPTEMBER 7, 2022**

VENDOR	DESCRIPTION	DEPT.	ACCOUNT	AMOUNT
TAURIAINEN ENGINEERING/TESTING	FY23 DEC REQUIRED TESTING	WATER	PROFESSIONAL SERVICES	6,500.00
BRENNTAG PACIFIC	EMERGENCY SODIUM HYPOCHLORITE	WATER	OPERATING SUPPLIES	8,162.50
DOORS & WINDOWS	INSTALL WINDOW IN PASSAGEWAY	CONGREGATE HOUSING	REPAIR & MAINTENANCE	3,060.00
HACH COMPANY	FY23 LAB SUPPLIES	WATER/WWTP	OPERATING SUPPLIES	6,000.00
MACSWAIN ASSOCIATES	APPRAISAL - FLIGHT SERVICE STATION	LAND	PROFESSIONAL SERVICES	4,900.00
NORTHWESTERN UNIVERSITY	POLICE STAFF/COMMAND SCHOOL	POLICE	TRANSPORTATION	4,200.00
KONICA MINOLTA	FY23 COPIER MAINTENANCE	NON-DEPARTMENTAL	PRINTING & BINDING	5,000.00
NORTHERN SECURITY SUPPLY	FOUR BALLISTIC VESTS	POLICE	SMALL TOOLS	5,116.00
SIEMENS INDUSTRY	SERVICE AGREEMENT	BUILDINGS	PROFESSIONAL SERVICES	5,496.00