
Kenai Peninsula Borough

Flood Plain Task Force

Meeting Summary

April 1, 2009 - 6:00 p.m.

Regular Meeting

Seward City Hall, 401 Adams Street, Seward

CALL TO ORDER

A regular meeting of the Flood Plain Task Force was held on April 1, 2009, in the Council Chambers of Seward City Hall, Seward, Alaska. Chair Long called the meeting to order at 6:00 p.m.

There were present:

Ron Long, Chair
Charlie Pierce, Vice Chair
Colette Thompson
Bill Williamson
Randy Stauffer
Ron Wille
Todd Petersen
Sue McClure

Kevin Lyon
Dan Mahalak
Mary Toll
Jane Gabler
Jim McCracken
Matt Gray
Christy Terry

Absent:

Scott Walden (Excused)
Bob Hicks (Excused)

Also in attendance was:

Shellie Morgan, Deputy Clerk

WELCOME AND INTRODUCTIONS

Chair Long thanked everyone for coming. He amended the agenda by adding two additional items, one being the introduction of two Resolutions and a Take Away Item, requesting all members come to the April 15, 2009 meeting with one item they would like to see completed by the Task Force.

PUBLIC COMMENT - None.

(06:03:56)

RESOLUTION INTRODUCTION

Mr. Wille said Flood Plain Task Force Resolution 2009-01 was a request for the State to remove its March 20, 2006 navigability determination of Salmon Creek, Forth of July Creek and Sawmill Creek. He stated Flood Plain Task Force Resolution 2009-02, requested the State remove the current extraction fee being charged on gravel removal. He said if approved by the Task Force, the resolutions would be introduced at the next Road Board Meeting, from there it would be forwarded to the City of Seward and Planning Commission. He said this would allow for more local support to be gathered prior to introduction to the Kenai Peninsula Borough Assembly.

Flood Plain Task Force Resolution 2009-01

Chair Long stated there was currently a Bill in Congress that would strike the word navigability from water within the United States, and proposed amendments to the Clean Water Act would allow the US Congress to be the regulatory body on all running waters within the United States. He stated this was the proper time to address the navigability issue.

[Clerks Note: Flood Plain Task Force Resolution 2009-01 was amended as follows: The third whereas to read, "The State of Alaska Department of Natural Resources (DNR) charges a [LEVY] royalty fee on all gravel materials removed from these areas; and"; The fourth whereas to read, "This [LEVY] royalty fee makes flood control projects more expensive and cost prohibitive; and"; Section 1 to read, "That Salmon Creek, Fourth of July Creek and Sawmill Creek are not navigable, as defined by and in to the Daniel Ball test, [AND] best survey practices, and are not subject to the Submerged Land Act, which, according to State of Alaska policy on Navigability, on the website http://dnr.alaska.gov/mlw/nav/nav_policy.htm, is the accepted and correct standard for determining navigability." A new Section 3 to read, "The Kenai Peninsula Borough Task Force requests that other concerned local boards and commissions pass similar declarations in support of this resolution."]

Mr. Gray asked if the Task Force Members felt it was appropriate to address the royalty fee from the two different angles.

Mr. Wille stated approaching the State from both angles was the correct way to move forward.

Mr. McCracken stated the Task Force should concentrate on Resolution 2009-01, if the Task Force had the determination on navigability changed, it would then resolve the issues addressed in Resolution 2009-02.

Ms. Thompson said she believed it was the correct approach to focus on the administrative aspect, by addressing the mistake made when Salmon Creek, Forth of July Creek and Sawmill Creek were determined navigable, when just two years prior the creeks had been determined non-navigable. She said regarding the royalty fees, the State was attempting not to give away property that was subject to the constitutional prohibition against private use of public assets.

Mr. Stauffer stated that he agreed the Task Force should initially go after the definition of navigability; however, eventually the royalty fee charged by DNR had to be addressed. He said language needed to be added stating the royalty fee would not be charged when mitigating against natural disasters.

Chair Long stated he was seeing a definite pattern to take when approaching the problem, and listed the pattern in order.

1. Navigability
2. Classification of Debris
3. Legislative Fix

Ms. Terry asked why Resurrection River had been removed from the non-navigable list? Mr. Mahalak said the Federal determination on navigability stated various things; such as, if you could float trees down the river, hunt, fish, or any commercial activities were taking place, the river was then considered navigable.

Flood Plain Task Force Resolution 2009-02

Mr. Wille said he felt introducing both Resolution 2009-01 and Resolution 2009-02 would not cause any harm in the process of either Resolution.

Chair Long stated he was concerned that if both Resolutions were introduced, there would be the possibility of both the Legislature and the Administration waiting to see how the other department would act on the resolutions.

Ms. Terry stated she felt moving forward on Resolution 2009-02 would have a positive effect, allowing extraction of gravel from other creeks in the area that were navigable.

[Clerk's Note: Flood Plain Task Force Resolution 2009-02 was amended as follows: Title to read, "A Resolution Recommending that the State of Alaska [RESCINDS ITS GRAVEL EXTRACTION FEE AS IT APPLIES TO SALMON CREEK, FOURTH OF JULY CREEK AND SAWMILL CREEK, ALL LOCATED IN THE VICINITY OF SEWARD, ALASKA] Exempt Flood Mitigation Projects in the Seward Area from the Gravel Royalty Fee as it Applies to all Flowing Waters into Resurrection Bay in the Vicinity of Seward, Alaska"; the second whereas to read, "The state of Alaska Department of Natural Resources charges a mineral resources extraction royalty fee of \$3.25 per cubic yard for gravel; and"; the third whereas to read, "This extraction royalty fee makes flood control projects more expensive and cost prohibitive; and", Insert a new fourth whereas to read, "charging a royalty fee for gravel extraction for flood mitigation projects is contrary to protecting public health and safety; and"; Section 1 to read, "That Salmon Creek, Fourth of July Creek, and Sawmill Creek are continually filling with sediment and debris that must be removed to lessen flood events [IN THE SEWARD AREA] as it applies to all flowing waters into Resurrection Bay in the vicinity of Seward, Alaska." Insert a new Section 3 to read, "That the Kenai Peninsula Borough Flood Plain Task Force requests that the State exempt from its gravel extraction royalty fee, flood mitigation projects in the Seward area." Insert a new Section 4 to read, "The Kenai Peninsula Borough Task Force request that other concerned local boards and commissions pass similar declarations in support of this resolution."]

Mr. McCracken spoke in opposition to Flood Plain Task Force Resolution 2009-02.

Chair Long stated the Flood Plain Task Force Resolution 2009-02 as amended was asking other boards to pass similar resolutions, and stated it would be a subject for the second half of the Legislative Session.

The Task Force agreed to postpone Flood Plain Task Force Resolution 2009-02 until April 15, 2009.

(06:49:12)

AMENDMENTS TO ROAD CODES - Ingress & Egress

Mr. Wille stated he had spoken to the Roads Director, Staff and the Inspector for the Seward area regarding building roads in the community as a whole. He said the Borough had a template for building roads, and if a builder were to go outside of the normal road building template, an engineer would then be required to explain how the road was to be built, the engineer would be required to sign off on the plan, it could then be approved by the Roads Board. He said the Roads Board may want to consider all roads within the Seward area be designed by an engineer, due to the numerous road failures in the area, including roads that were not in flood zones.

Mr. Best asked what Mr. Wille felt would be gained by hiring an engineer, would the engineer be given direction to build channels, dikes, would there be a general direction for the engineer to take? He felt that an engineer may have an issue with signing off on a road that was fine today; however, future flood events could deteriorate the road integrity. Mr. Wille agreed that was a concern; however, there needed to be some forethought and planning into certain roads, and that was not addressed in the current Borough Code.

Mr. Petersen stated the problem with the engineering idea was, once the road was complete and the engineer had signed off on it, what was going to prevent property owners from building up their personal property, and causing flooding to the road.

Mr. McCracken asked if the Borough had the ability or funds to bring all of the roads up to a new higher standard? Mr. Wille stated the Borough was bringing the roads up to higher standards, one road at a time.

Ms. Terry asked if this discussion would include right-of-way construction permits. Mr. Wille said yes.

Ms. Terry read a section of Borough Code that stated, "A permit may be subject to additional conditions to protect and manage Borough rights-of-way by preventing damage to the right-of-way on adjacent public and private property or water bodies."

Mr. Wille agreed the language was already there, and someone could come forward and do a typical section of a road, then bring it to the road board, where a problem was discovered, and an additional requirement would be added to the development of the road.

Chair Long stated one item previously discussed was a drainage plan, the Borough had a drainage plan that addressed typical service water run off, culverts, and driveway permits. He said the Task Force may want to consider additional drainage plan depth, that could be introduced by a developer and approved by the Roads Board or Borough Staff, not necessarily an engineer.

Mr. Wille read a section of the Borough Road Construction Standards, "Roads shall be constructed to prevent ponding of runoff waters in roadside ditches. Drainage ditches shall be constructed such that runoff waters will be conveyed to natural drainage courses, ditches or waterways, or other man-made drainage courses. Outfalls shall be constructed to prevent excessive siltation of riparian habitats, channel erosion or other drainage to public or private property. The Road Service Area (RSA) Board may require engineering analysis and design for locations susceptible to flooding, excessive siltation, or other natural conditions potentially damaging to the right-of-way, adjacent property, or water courses and water bodies." He stated the developers needed to be aware that additional requirements could be added.

Mr. Long asked Mr. Wille if the RSA Board could approve a road without an engineer analysis. Mr. Wille said yes, the main point he was trying to make was there were problems all over the area and the developers should be aware of the possible engineering requirement before construction begins.

Mr. Best said during the platting process the developer was required to prove that a road could be built to a standard. He said the Planning Commission looked at the condition of the area; was it flat or how steep it was; however, they did not look at the flood prone issue. He said it would be difficult for the Planning Commission to require additional road width, extra fill, or culverts ends that go beyond the road prism, without a pre-conference with the Roads Department, Engineer, and platting, prior to Planning Commission approval.

Mr. Gray stated he felt an on onsite inspection should be done since natural conditions could not be rendered on paper.

Mr. Wille stated the problem was going to continue, unless the Borough required roads to be built before final plat approval.

Mr. Peterson stated if the Borough required roads be built prior to final plat approval, the result would be development coming to a stop.

Mr. Gray suggested requiring a pre-road construction report from property owners, that would summerize land issues that could identify possible problems.

Chair Long asked if there were gradient requirements on plat design?

Mr. Best stated plat design did have grade requirements, and requirements within intersections, 6 to 10 percent, and 4 percent within 100-feet of an intersection.

Vice Chair Pierce said he felt the ability to add requirements for specific problems, was a more appropriate approach, rather than having a hard line saying every road had to be engineered.

Chair Long stated one item that the Borough would not be able to regulate was developers who built a road below standards and then present it to potential buyers as a road that met standards and was eligible for Borough maintenance.

Mr. McCracken asked if it were possible in the preliminary plat process to include something that would warn future developers of geographical challenges.

Mr. Best said there was a current provision in a mapped flood plain area that provided information; however, outside of the mapped flood plain there was no provision in place.

Mr. Petersen said he felt all roads would not need to be engineered; however, some areas of each road may require an engineer.

(07:19:16)

PERMITTING PROCESS

Chair Long stated the Task Force had previously discussed foundation inspections, the idea being, that was the only level of staff the Borough had, or should be required to have. He said it could be done simply.

Mr. Petersen asked who would be doing the foundation inspections? Mr. Lyon said due to staff size his department would not be able to perform the inspections.

Mr. Williamson said if the developer was using lender financing, a building inspection would be required, if it were private financing no inspection was required.

Vice Chair Pierce stated if the Borough Code required a building inspection, it would then become the Borough's responsibility to make sure the inspection was completed.

Mr. McCracken read a statement made by Mr. Walden at the March 18, 2009 Task Force meeting, "The Borough did not have the ability or the authority to enforce building codes as a second class Borough. Regarding enforcement all the Borough could do was judge if the structures had been built to elevation levels that the Borough had deemed appropriate, once the permit was issued the Borough's involvement was over." He then asked if Mr. Walden's statement was correct.

Chair Long said he felt that was not an exclusive statement. He said the Borough had always required more than just elevation standards in flood mapped zones, and the Borough certainly had the authority to enforce the requirements.

Chair Long said that FEMA recognized the owner had a responsibility to build up to the standards.

Ms. Thompson said the Borough did have the ability to adopt code related to the flood insurance rates within the mapped area, the Borough was required to in order to participate in the NFIP program. She said Mr. Walden was probably referring to the lack of enforcement personnel. She said the builder was ultimately responsible for meeting the requirements. She then referred to statements made by Mr. Hicks regarding the requirement that the local authority not only enact the code sections, but also take efforts to enforce the code sections.

Mr. Lyon said he felt that Mr. Walden was referring to building code enforcement which was done by the Fire Marshall, and the Borough did not have that ability. He said the Borough could inspect to the level of the permit.

(07:30:23)

RECORDING DOCUMENTS & ENFORCEMENT OPTIONS

Ms. Thompson explained that a letter of non-compliance was a notice to the property owner stating that they were not in compliance with the existing rules.

Ms. Gabler further explained if a structure was found to be non-compliant of the permit, a letter was sent stating what section was not in compliance and asked the property owner to contact the Kenai River Center within a specific amount of time. She said the responses were prompt, and the Kenai River Center worked with the property owner toward bringing the development into compliance.

Chair Long asked what percentage of the property owners/developers worked with the Kenai River Center to bring the development into compliance.

Mr. Best stated the program was 85 to 95 percent effective, he said the high success rate in compliance was due to the Kenai River Center Staff.

Ms. Gabler said if there were no response to the first letter of non-compliance a code compliance officer would make a site visit.

Vice Chair Pierce asked if fines for non-compliance had ever been assessed, and if there was a fine structure. Ms. Gabler said they had not assessed any fines. Ms. Thompson said there was a fine structure in Borough Code.

Chair Long said he believed the best direction would be guiding developers toward compliance, rather than imposing fines.

Mr. Williamson said he believed that most cases of non-compliance were developers who did not know the correct process, and normally when a developer received a letter of non-compliance the developer would work something out.

Chair Long stated the Borough currently mailed out flood data to property owners within a flood mapped area, he then asked Ms. Gabler how the information was being delivered to people who live outside of the mapped area? Ms. Gabler said the notification would be handled the same for cases outside of the mapped area.

Mr. Gray asked for clarification on the notification process. Ms. Gabler said when Ordinance 2009-09 Substitute passed, the Kenai River Center started notifying property owners who were located within the 100 year flood area outside of the FEMA mapped flood zone.

Mr. Stauffer asked if the notification to property owners outside of the FEMA mapped flood zones would end on the sunset date of Ordinance 2009-09 Substitute. Mr. Best said he would request that the Planning Commission add a notation on plats affected by those flood hazard areas, to include a standard type note which reads, "this area was known to flood, please check with the Kenai River Center."

Mr. Mahalak asked if it would be possible to add information on the plat that included the year the flooding took place? Mr. Best said he felt the warning should not be too specific.

Chair Long stated there were possible actions being taken that all the members of the Task Force were not aware of. He then asked if everyone on the Task Force could bring to the next meeting a list of actions they were taking, that way the Task Force would not be trying to recreate something that was already taking place.

Ms. Terry stated she agreed with Mr. Best's idea of putting a generic flood type warning on plats, and suggested including a requirement within Borough Code of what type of information had to be included on a plat.

Mr. Wille asked if the historic mapped flood areas were going to be included on the Geographic Information Systems website? Ms. Gabler said the information was already available on an FTP site.

Ms. Gabler explained the document she had provided to the Task Force showed FEMA Section 1316 of the NFIP policy, she said it basically read that if a property owner was not in compliance and refused to work toward compliance, FEMA would provide a letter of denial for flood insurance coverage, and also any further assistance should the property flood.

LAND SWAP

Chair Long reviewed the map provided, showing the lands that were owned by the Borough, managed by the Borough, and State land that was selected. He stated there were selected lands in the Bear Lake area. He asked Mr. Best what stage of the survey process those lands were in? Mr. Best said they were not up for survey any time soon.

Chair Long asked Ms. Thompson to explain the State Lands Selection Process.

Ms. Thompson stated at Statehood the Federal Government granted land to the State, the State then enacted the Municipal Land Grant Entitlement Act, and specified that a certain number of acres would go to the listed Municipalities, the Kenai Peninsula Borough was entitled to 10 percent of State land within the municipalities boundaries. Ms. Thompson said the first step was the State needed to obtain patent from the Federal Government, in order to do that the land had to be surveyed, and that process was still ongoing. She said the next step was the Borough identified and applied for property that it would preferred to select, then a preliminary approval was issued from a higher level of government, if the property was preliminarily approved the property was then surveyed, and finally a paten was issued.

Chair Long asked, if the Borough surveyed the land, could the process then be moved forward? Mr. Best said for the managed land, yes, managed means the Borough would have an approved selection on it, and survey instructions could be requested for conveyance. He said the selected land meant the Borough had selected the lands; however, the State had not given a final decision, and until that decision was received the Borough would not want to spend any money or time on it.

Mr. Mahalak referred to pages 16 and 17 of the packet that showed the rock surface, height and slope and further explained the geographic restrictions of the Borough owned lands.

Mr. McCracken stated that he felt a land selection or identification of lands was important and the Task Force needed to be looking at solutions for the next 20 to 30 years.

Mr. Petersen asked if it were possible for the Borough to purchase land to be developed, and referenced an example: The Borough purchased a 30 acre parcel in Soldotna; which, 3 or 4 acres were needed and the remainder was placed in the land bank.

Chair Long stated he would be open to seeing what land was available in the Seward area for purchase.

Mr. McCracken stated the University of Alaska and the Mental Health Trust both owned large pieces of land in and around the Seward area, and a possible trade with one or both was an option to be pursued.

Chair Long stated one of the highest priorities of the Task Force seemed to be finding ways to offer alternative locations for development, attracting developers away from the high risk areas, and leaving more room for the streams and rivers to migrate.

LEVEE

Mr. Mahalak said on a broad scale he felt the NFIP program, other than providing points to the community, really did not do much good for Seward. His reasoning was that very few people in the area actually participate in the program and purchased the flood insurance, so regardless of what the program did, just about every levee in the area would benefit the community. He said on the map side according to the NFIP program the levees in the community were not going to do anything, based on the map and an invisible line in the sand that said, this was hazardous and this was not. He said he could foresee with the new maps everything being classed as some sort of A zone; which, if that was the way things turned out, the community could be expected to see insurance rates rising.

Mr. Williamson said if you were to review the entire levee situation throughout the United States, the Kenai Peninsula Borough and Seward were a very tiny speck on that map. He said if you were to look at the Mississippi River, New Orleans and places like that, FEMA had to provide some type of coverage for the levee certification situation, if not half of the United States needed to move. He said it would be up to the communities to design and build a levee to meet the requirements.

Ms. Terry said Forest Acres within the City of Seward were not a special flood hazard zone, inexpensive flood insurance was still available to that area; however, that would change with the new FEMA mapping. She said the maintenance schedule on levees would also be a concern, there was no guarantee that the council would designate funds each year to keep up the maintenance.

Mr. Stauffer said the Seward Bear Creek Flood Service Area Board had been recommending that people living within class C flood zones go out and get insurance now, so that they would be grandfathered in should the flood zone class change.

Chair Long said flood insurance would not be optional if the home were financed by a bank, it would be required. He said if the bank placed the insurance it would be ridiculously expensive; however, by shopping around it was available at more affordable rates.

Mr. Gray asked if most typical flood insurance policies covered items damaged within a crawl spaces? Chair Long stated typically they do not.

Ms. Gabler stated that FEMA would consider a crawl space as the first floor of your inclosure.

Chair Long referred to page 8 of packet and the comments he had made regarding the insurance premiums, "If you did not build to the higher standards the premium could be as much as \$25 for every \$100 of coverage," he said that might not be the rate; however, it was a very motivational tool.

GENERAL DISCUSSION AND QUESTIONS

Mr. Wille stated he had discussed drainage issues with the Road Board Members, one question that had come up was drainage easements. He asked if it was allowable to put something on paper and just record a written easement as opposed to platting a drainage easement. He said it costs a lot of money to re-plat. Mr. Best said that was certainly a possibility.

Chair Long asked if the Task Force was aware of any participation in the National Resources Conservation Service (NRCS) easement reversions that was offered. Mr. Mahalak said he had contacted NRCS and asked for a participant list for the Seward area, and had not received anything so far; however, he had knowledge of at least a dozen participants.

Ms. Thompson stated that NCRS had indicated that the property owners in Old Mill Subdivision who may be involved in the recent buy out option, were also eligible to apply for the easement reversion program.

Ms. Terry stated along with residential properties being eligible for the NRCS easement reversion program, there was a section for governments to participate, and the deadline for that was April 15, 2009.

Chair Long stated Robin Ward of CIRI was at the last Task Force meeting and also attended the Assembly Meeting and spoke in support of Ordinance 2009-09 Substitute.

(08:27:55)

TAKE AWAY LIST

Chair Long asked all members of the Task Force to bring with them to the next meeting expectations for the Task Force was.

(08:31:00)

TASK FORCE MEETING AND ANNOUNCEMENTS

The next meeting of the Flood Plain Task Force was scheduled for April 15, 2009 at 6:00 p.m. in the Cooper Landing Community Hall.

ADJOURNMENT

The committee adjourned at 8:33 p.m.