
Kenai Peninsula Borough

Flood Plain Task Force

Meeting Summary

April 15, 2009 - 6:00 p.m.

Cooper Landing Community Hall, 18511 Bean Creek Rd., Cooper Landing

CALL TO ORDER

A regular meeting of the Flood Plain Task Force was held on April 15, 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
Dan Mahalak
Holly Montague
Bill Williamson
Randy Stauffer
Ron Wille
Todd Petersen

Scott Walden
Sue McClure
Mary Toll
Jane Gabler
Jim McCracken
Matt Gray
Christy Terry

Absent:

Charlie Pierce, Vice Chair
Kevin Lyon
Bob Hicks

Also in attendance was:

Shellie Morgan, Deputy Clerk

WELCOME

Chair Long welcomed everyone to the Flood Plain Task Force Meeting.

PUBLIC COMMENT - None.

(06:02:00)

GENERAL DISCUSSION

Mr. McCracken referenced the April 7, 2009 letter from Borough Mayor David Carey addressed to the Department of Natural Resources (DNR) regarding the State of Alaska Navigability Determination of March 20, 2006, he asked if there had been any response from DNR.

Mr. Mahalak stated Mr. Scott Ogan, Natural Resource Manager II, for DNR had been in the area. He said Mr. Ogan met with him and discussed issues with Salmon Creek; currently in the Alaska Coastal Management Program (ACMP) review process. He stated the review was for an extensive dredging permit for 450,000 cubic yards requested by the Borough; however, that figure had been reduced to 105,000 cubic yards.

Mr. Mahalak noted during the meeting, Mr. Ogan had indicated the 2006 Navigability Determination was not an official determination, it was only issued as a memo.

Mr. Mahalak noted he had provided Mr. Ogan with data maps, showing the current issues within the Seward area.

Chair Long asked if Mr. Ogan had indicated how he felt about the navigability. Mr. Mahalak said it appeared Mr. Ogan felt the creek was navigable.

Mr. Long requested that any further dealings with Mr. Ogan include Deputy Borough Attorney Holly Montague, to address possible legal ramifications, and asked Ms. Montague to work on a back up plan in case DNR comes back with a navigable determination.

Mr. Wille stated Flood Plain Task Force Resolution 2009-01 was presented to the Road Service Area Board (RSA).

Mr. Best stated if a creek was determined non-navigable the survey instruction would change, the land under the water then became private property, when the creek was determined navigable it became State property.

Chair Long stated that more than likely the first determination from the State would be navigable, in order to protect the States interests, the Borough would have had to prove otherwise.

Mr. McCracken stated if the land was patented prior to Statehood, the State then had no claim on the navigability.

(06:13:46)

RESOLUTION 2009-02

Mr. Mahalak stated he had spoken with Frankie Barker, Environmental Planner and John Harris, Director of Public Works from the Matanuska Susitna Borough regarding becoming a co-sponsor of Flood Plain Task Force Resolution 2009-02, he said both Mr. Barker and Mr. Harris referred him to Matanuska Susitna Borough Manager John Duffy whom he had not been able to contact.

Mr. Mahalak said the Matanuska Susitna Borough did not include permits for the Borough dredging, instead they put that responsibility on the contractors; which had resulted in contractors not taking the jobs. He said the Matanuska Susitna Borough did a Channel Migration Zone (CMZ) analysis through U.S. Geological Survey (USGS) for \$900,000 plus, it took three years and was almost complete, the May 13, 2009, Matanuska Susitna Planning Meeting would address options for obtaining community support, and comprehensive plan development.

Mr. Stauffer said during a previous meeting, DNR representative Susan Brown had implied that prior attempts to remove the royalty fee within the court system had failed.

Mr. Walden stated that Ms. Brown had also referred to the fact, 100 percent of the fee had never been removed; however, it had been substantially reduced. He said in one case it had been reduced from \$1.00 per cubic yard to \$.50 per cubic yard, with the fee waived on the first 5,000 cubic yards. He believed this showed the fee and policy were flexible and should be negotiated.

Mr. Peterson said he believed the State was charging the royalty fee, to avoid any violations of State or Constitutional Statutes; however, the fee amount was discretionary.

[Clerk's Note: Amendments were made to Resolution 2009-02 as follows: Section 1 to read, "That [SALMON CREEK, FOURTH OF JULY CREEK, AND SAWMILL CREEK ARE CONTINUALLY] all flowing waters into Resurrection Bay in the vicinity of Seward, Alaska are continually filling with sediment and debris that must be removed to lessen the flood events in the Seward area [, AS IT APPLIES TO ALL FLOWING WATERS INTO RESURRECTION BAY IN THE VICINITY OF SEWARD, ALASKA]." Section 3 to read, " That the Kenai Peninsula Borough Flood Plain Task Force [REQUESTS] requires that the State exempt [FROM ITS GRAVEL EXTRACTION ROYALTY FEE,] flood mitigation projects in the Seward area from its gravel extraction royalty fee."]

Flood Plain Task Force Resolution 2009-02 was adopted as amended.

(6:37:32)

AMENDMENTS TO BOROUGH CODES

Mr. Wille referred to a section of Borough Code 14.06.170, which read, "The RSA board may require, upon staff recommendation, an engineering analysis and design for locations susceptible to flooding, situation, or other natural conditions potentially damaging to the right-of-way, adjacent property, or water courses and water bodies." He said the acceptance of the Seward mapped flood area, stated everything within the mapped area was susceptible to flood.

Chair Long stated the section of 14.06.170 which read, "The RSA board may require, upon staff recommendation" placed the board in second position, and considered what would happen when there was no staff recommendation.

Mr. Wille said the RSA board had been considering requesting the Borough Assembly change the section of 14.06.170 to read, "The RSA board [MAY] shall require[, UPON STAFF RECOMMENDATION,] an engineering analysis."

Mr. Wille stated due to the challenges in the Seward area the RSA board was looking at applying stronger requirements, he said almost all roads in Seward had failed at some time, no matter where they were located.

Chair Long stated that he believed the section of 14.06.170 would better read, "The RSA board may require[, UPON STAFF RECOMMENDATION,] an engineering analysis."

Mr. Wille stated the current Borough practice was staff reviewed the applications and issued permits, only when an issue was presented did the application come before the RSA board.

Mr. Best suggested requirements for all road development in the Seward area to require an engineering analysis due to the challenges; however, there was also a need for an exemption process.

Ms. Terry asked if there was a variance procedure available in the code. Ms. Montague stated there was in Borough Code 14.06.230.

Chair Long said all requirements and possible requirements should be provided to the developers prior to construction beginning.

Mr. Stauffer stated that he believed amending Borough Codes to single out a specific community would be opening the Borough up to discrimination liabilities.

Ms. Montague said when the Borough designated the Seward Map Flood Data Area (SMFDA), the Borough recognized the area was a flood area, she felt there was no concern for discrimination liabilities if the development was within the SMFDA, she said language could be used leaving the additional requirements optional in other areas of the Borough.

Ms. McClure asked if the current Borough Codes were being enforced, and if so how was it that all roads in Seward had failed. Mr. Wille stated the roads were built prior to current requirements being in place.

Ms. McClure asked if language was included in Borough Code to require inspections, would there be enough staff to check each road. Mr. Wille said he believed it would be possible, since there were not many roads being built in Seward.

Mr. McCracken stated he believed engineering requirements would be costly to the developers; therefore, prohibitive to development.

Mr. Williamson suggested phase inspection on developments, making it possible for problems to be located prior to completion of a development.

Ms. Montague believed that even with the cost prohibitive argument, the requirements should still be mandatory within the SMFDA, with an exception process available.

Ms. Terry stated language on the permit stating, "because of the RSA board there may be other requirements needed," would be very helpful in notifying developers.

Mr. Williamson stated as a developer he video taped his construction projects, that way if an inspector was not available, and questions came up at a later date, he could provide visual proof of what had taken place.

Robin Ward, PO box 91443, Anchorage, stated it appeared the Borough currently had the authority to require engineering within the SMFDA, she asked why the Task Force was looking at changing Borough code rather than just making a policy change.

Chair Long stated the only time the Borough would impose anything other than the typical standard in Seward was upon staff recommendation; however, there was nothing in Borough Code that said the staff would make that recommendation, the Task Force was opting for placing the RSA board ahead of the Borough staff in the review process.

Mr. Walden noted that the State disclaimer requirement was not required on all transactions, there were exceptions such as; new developments; undeveloped lands; and if both parties agreed to non-disclosure.

Ms. Montague stated that recording warnings on plats would only apply to new plats, and referred to the language suggested by the legal department, "Some or all of the property shown on this plat had been designated by FEMA or the Kenai Peninsula Borough as a flood hazard area. Interested persons were strongly encouraged to contact the Kenai Peninsula Borough in Soldotna, Alaska for more current information."

Ms. Toll suggested stronger language and gave an example, "Prior to development the KPB should be contacted for current information and regulations."

Ms. Gabler said she believed the section stating, "contact the KPB" was not specific enough.

Chair Long suggested including the KPB Planning Department as the contact.

Mr. Best suggested referencing sections of code on the plat warning rather than a statement to contact the KPB Planning Department.

Ms. Montague stated concerns with referencing specific Borough Codes, since codes change and the plat was permanent.

Chair Long asked if it would be possible to send the surveyors working within the Seward area a notice of additional requirements.

Mr. Best said he would be glad to send a notice to all surveyors within the local chapter.

Chair Long asked that Mr. Best bring a draft of the letter to be sent to surveyors in the local chapter to the next Task Force meeting.

Mr. Williamson suggested a packet of all pertinent Borough Code be supplied with the application, this would notify the developers in advance of all requirements.

(07:42:52)

PERMITS, LETTERS & NOTICES

Ms. Gabler referenced the notice on page 33 that was mailed out after the enactment of Ordinance 2009-09, she said calls had been received as a result.

Chair Long requested Ms. Montague provide an overview of the Legal Department memo, "Legal Enforcement Steps of Floodplain Ordinance."

Ms. Montague stated she believed that most violations were handled administratively, the Legal Department had not seen many violations; however, there were several options for enforcement, one being issuing administrative fines, which would include a hearing process, with the option of appealing the fine. She said another option would be for the Code Compliance Officer to file an infraction in court, she said this was seen as a less viable option by the Legal Department. She said another option was the Legal Department filing a Statutory Injunction, which involved going before a judge, proving a violation had occurred, and the judge making a final ruling.

Mr. McCracken stated making additional educational information available to the developers would more than likely resolve a majority of the non-compliance issues.

(07:54:44)

CHANNEL MIGRATION ZONES (CMZ)

Chair Long noted the time necessary to completely cover the subject of Channel Migration Zones (CMZ) and rescheduled the subject for the next Task Force Meeting.

(07:56:14)

LAND SWAP

Chair Long reviewed the laydown memo from Marcus Mueller on the process used to provide Borough lands for redevelopment outside of flood hazard areas. He noted during the April 1, 2009 Task Force Meeting it was discussed to look at options other than Borough owned lands.

Mr. McCracken said he would bring a presentation of private sector properties to the next Task Force Meeting.

Mr. Mahalak stated the area north of Bear Lake was on the Area of Interest (AOI) for the next LiDar flight; however, Seward Bear Creek Flood Service Area funds could not be used to cover the costs, because it was outside of the funding source.

Chair Long requested Ms. Montague draft an Ordinance requesting funding for the area north of Bear Lake to be included in the LiDar flight.

(08:06:13)

TAKE AWAY ITEM REVIEW

Chair Long read the recommendation of the Legal Department. Ms. Montague clarified that her position as an Attorney on the Task Force, was to make sure that the policy decisions made were legal.

Mr. Best said he would like to see change, he did not want the Task Force to go through all the work involved and end up with the wrong type of rules that do not work for the Seward area. He said what the Task Force currently had was a mapped flood area and the existing Borough rules did not work. He said the Task Force needed to set standards that would keep people safe.

Ms. McClure stated her main priority would be to make sure buyers were notified of the possible risks.

Ms. Terry said she would like to see the findings, statement of purpose and the objectives that were outlined in the current Borough Flood Plain Management Code, for both the FEMA, and historical flooding areas. She said the second thing she would like to see done was at some level the Task Force needed to implement the CMZ standard of regulations; however, that was a long and expensive process.

Mr. Williamson stated he wanted to produce a long range plan with the Task Force, since Seward was an ever-changing area, and continued mapping for each new flood event

Mr. Stauffer said he would like to see the efforts of the KPB coordinated with the City of Seward efforts, so there were similar regulations and codes from each. He said he would like to see the long range watershed master plan that was being developed by the Seward / Bear Creek Flood Service Area (SBCFSA) implemented throughout Seward.

Mr. Peterson said it was of vital importance that standards and codes be developed to work for the Planning Commission, something that would allow the Planning Commission to give a more detailed inspection of what was before them. He also noted the Task Force needed to be cautious, and not get overzealous, by curbing development and burdening home owners.

Mr. McCracken stated he would like to see additional lands available to entice people to move out of the hazard areas.

Chair Long said he would like to see no net loss of critical flood way carrying capacity, and he believed that went along with what everyone else was saying.

Mr. Wille said the SBCFSA had a plan, and he would like to see the Task Force support the plan, and some items in the plan implemented. He would like to see secondary access added to the more populated subdivisions within the Seward area.

Mr. Mahalak stated he would like to see an adaptive management program in place for Seward.

Mr. Gray stated he would like to see a long term plan which included the CMZ, maintaining the flood ways, and also looking at areas that were impeding the flow, and working toward more land swaps. He stated some type of building requirements should be in place within the flood hazard areas.

Mr. Walden said he would like to see Borough Code amendments, and CMZ long range planning.

Ms. Gabler said she would like the Borough Codes to be amended to recognize other sections of Borough Code, that should be tied together.

Robin Ward, said she applauded the efforts being made by the Task Force and was glad to be able to participate.

(08:22:28)

GENERAL DISCUSSION AND QUESTIONS

Mr. Mahalak asked if staff could produce a map showing land that was patented prior to Statehood.

Mr. Best stated that information was not readily available and would be a project that would require large amounts of research.

Mr. Mahalak stated that Flood Plain Task Force Resolution 2009-02 had been approved by the Task Force and he would like to know when that would be released to the State.

Ms. Montague stated the Task Force was advisory to the Assembly, and the Resolution would be presented to the Assembly, if it were to be forwarded further it would need to be approved by the Assembly.

Mr. Peterson asked if the new FEMA maps would supercede the Borough Maps. Chair Long stated if FEMA comes out with new maps those maps would become the default minimum regulatory standard.

TASK FORCE MEETING AND ANNOUNCEMENTS

The next meeting of the Flood Plain Task Force was scheduled for April 29, 2009 at 6:00 p.m. in the Council Chambers of Seward City Hall, 401 Adams Street, Seward.

ADJOURNMENT

The committee adjourned at 8:38 p.m.