

**CITY OF VALDEZ, ALASKA  
CITY COUNCIL AGENDA STATEMENT**

MEETING DATE: 6/1/2015

**ITEM TITLE:**

**SUBMITTED BY:** Lisa Von Barga  
CEDD

**Resolution #15-21**

**CITY MANAGER:** 

**FISCAL  
NOTES:**

**Expenditure  
Required:  
\$0**

**Unencumbered  
Balance:  
\$0**

**Funding Source:  
N/A**

**EXHIBITS ATTACHED:**

**Resolution  Ordinance  Other:**

- Purchase Request MAPS 1-4
- Kimberlin Application
- Kimberlin Business Plan
- Plats (#1997-39M and #2003-1)
- Planning and Zoning Meeting Minutes 04/08/2015
- Ports and Harbor Meeting Minutes 04/28/2015

**RECOMMENDATION:**

Approve Resolution #15-21 Authorizing the Negotiated Land Sale Lot 2, ASLS 0098 to Brad & Maureen Kimberlin, if the Council finds it is not in the best interest of the City to offer the property at public sale, contingent upon:

- Approval of a Conditional Use Permit (CUP) for a boat repair facility by the Planning & Zoning Commission
- Completion of a Wetlands Determination and Approval of a 404 Wetlands Development Permit
- Approval of a Final Development Plan by the Planning & Zoning Commission and Council

**SUMMARY STATEMENT:**

On Wednesday April 8<sup>th</sup>, 2015 the Planning and Zoning Commission approved the recommendation to Council to sell Lot 2, ASLS 0098 to Brad & Maureen Kimberlin contingent upon a) approval of a conditional use permit for a boat repair facility; and b) any wetlands mitigation and construction standards that may be determined necessary, if the Commissions and Council find it is not in the best interest of the City to offer the property at public sale.

On April 28<sup>th</sup>, 2015 the Ports and Harbor Commission approved the recommendation to Council to sell Lot 2, ASLS 0098 to Brad & Maureen Kimberlin with the additional language that the sale be contingent upon a feasible business plan from the Kimberlins to be reviewed by City Council

AND that the sale be contingent upon the development for its intended purpose to be within a set limit of time. This is recommended to ensure that the property be used for the purpose upon which the sale was based on and not developed for some other purpose.

This purchase request was voted on by the Ports & Harbor Commission because Lot 2 is located on a main transportation route to the Valdez Container Terminal. Staff also had concerns as to whether or not this lot should be retained in case road expansion along the intersection of the Richardson Highway/Loop Road may be necessary in the future to facilitate large traffic load and size requirements to and from the VCT. The Ports & Harbor Commission reviewed the application and had no concerns with the proposed plan.

At the Planning & Zoning meeting there was considerable discussion about the proposal. Mr. Kimberlin was present to address several concerns from the Commissioners, these included transportation logistics specific to power lines, viewshed concerns, yard storage capacities/limitations, and project feasibility. There was also considerable discussion about whether or not this parcel should be sold by negotiation or go out for public sale. **Meeting minutes are included in the Agenda Packet for the Ports & Harbor and Planning & Zoning meetings in addition to the Purchase Request Overview outlined below. Staff invites the City Council to listen to the recorded meeting discussion to gain a better understanding and background of the proposal.**

The recorded meeting minutes are available online at <http://www.ci.valdez.ak.us/>.

#### **PURCHASE REQUEST OVERVIEW:**

Brad and Maureen Kimberlin submitted an Application For Purchase of City Owned Land (Sale by Negotiation) to the Community & Economic Development office on March 23<sup>rd</sup>, 2015. They are requesting the purchase of Lot 2, ASLS 0098 which is directly next to Lot 19 that they already own (Plat #2003-1).

MAP 1 - Parcel Selection



Purchase Request: 15-02  
Name: Brad Kimberlin  
Lot: LT 2 ASLS 0098  
Request Date: 03/11/2015

NOTES: Brad owns Lot 19 and would like to negotiate the purchase of Lot 2.

#### Tax Parcel Selection

- Purchase Request
- Other

The Kimberlin's have submitted an initial development plan to address a need they have identified in the community for a building to perform major vessel repairs and maintenance on large vessels in the winter months. They would like to purchase Lot 2, ASLS 0098 with the intent of constructing a maintenance/repair shop approximately 35' wide 64' long 30' high.

Staff has taken the following factors into consideration and is providing background for your review.

- 1) **Zoning:** Lot 19 (owned by the Kimberlin's) and Lot 2 (owned by the City) are zoned Commercial Residential (See attached MAP 1 – Parcel Selection). The intent of this zoning district is “to allow commercial and light industrial uses of land which do not detract from the residential use of the land by introducing excess noise, increased safety hazards, air pollution or water pollution.” Staff has reviewed the submitted development plan for Lot 2 as well as current uses of Lot 19 and finds that all current and proposed uses can be permitted by Municipal Code in Chapter 17.26 C-R Commercial Residential District. Boat repair facilities are specifically addressed under conditional uses.

**17.26.040 Conditional uses.**

In a C-R zone, subject to the conditional use provisions of this title, the following uses and structures may be permitted:

The authority for granting permission or denying conditional uses rests with the Planning and Zoning Commission as established by AS 29.33.080 (d) and specified in Chapter 17.06.

A boat repair facility is defined in Section 17.04.090 as a facility (which could include a boat repair garage, boat storage yard) where boats are repaired and stored until repairs are completed. A conditional use permit must be obtained in order for this use to be allowed.

- 2) **Comprehensive Plan:** Several goals and objectives of the Comprehensive Plan relate to the proposed use and purchase of this property:
  - **Goal - Economic Development:** Encourage the development of a broad-based economy in Valdez.
    - **Objective** - Strive to create an atmosphere in the community that is conducive to commercial and industrial development.
  - **Goal - Land Use:** Provide a community land use pattern that is compatible with existing land use patterns in the community, which is physically safe, environmentally sensitive, and consistent with the provisions and requirements of the Valdez Coastal Management Program.
    - **Objective** - Provide development standards for lands that require special physical or environmental attention before they can be safely used or developed.
    - **Objective** - Encourage the development of lands within the city through regulation and through the disposal of city lands.
  - **Goal - Commercial-Business Land Use:** Provide safe, convenient, and attractive business areas that do not unduly create traffic, lighting, noise, or other unnecessary impacts on adjacent residential neighborhoods.
  - **Goal - Industrial Land Use:** Provide for industrial land uses so that they limit

impacts on adjacent land uses and the environment, and yet have safe and convenient access to the major transportation facilities they require.

- Section 2.4.2.2 **Developable Lands/Subject to Restriction** include land areas which are identified as:
    - floodplain fringes where flood proofing can be undertaken;
    - important but not critical habitat;
    - wetlands and tidelands subject to '404' permits.
  - Section 2.5.1.2 **Commercial Land Use**: "Heavier commercial businesses that require large amounts of space for on-site storage and storage yards are suggested to front on major arterial and roads located outside of the city center..."
  - Section 2.6.1 **Major Arterials**: "Mineral Creek Loop Road – this existing arterial currently provides access to the container terminal and abutting properties south/west of the Richardson Highway.
- 3) *Floodway*: Lot 2 ASLS 0098 is located outside the Special Flood Hazard Areas identified by the National Flood Insurance Program on the FIRM (Flood Insurance Rate Map) Panel Number 020094 0027 C dated December 1, 1983. The City's regulatory authority for delineated Special Flood Hazard Areas are the Floodway Boundary and Floodway Maps from 1983; therefore, this development **does not** require a Floodway Development Permit. However, staff has informed the potential buyer that FEMA and the State of Alaska have conducted a coastal Risk MAP Study in the City of Valdez that places a portion of Lot 2 in an AE Zone which are areas subject to inundation by the 1-percent-annual-chance flood event determined by detailed methods (See attached MAP 2- FEMA Non-Regulatory). The coastal Risk MAP and updated floodplain delineations are slated to be officially adopted and become effective for Municipal Regulation at earliest in the Winter of 2016. Once adopted, any development on Lot 2 within the AE Zone will require a Floodplain Development and properties with federally-backed mortgages, if located within or partially within the AE Zone on Lot 2, may require the purchase of flood insurance.
- 4) *Tsunami Inundation*: The State of Alaska, Department of Natural Resource Division of Geological & Geophysical Surveys has published Tsunami Inundation Maps of Port Valdez, Alaska. As stated in the report abstract, "the results of these tsunami scenarios are intended to provide guidance to local emergency management agencies in tsunami hazard assessment, evacuation planning, and public education for reducing future casualties and damage from tsunamis." Furthermore, the report states that "these results are not intended for land-use regulation or building-code development." Staff, with the intent of public education, has made the potential buyer aware that Lot 2 ASLS 0098 is located within the Maximum Estimated Tsunami Inundation area delineated on the map that was published as part of the State's detailed study (See attached MAP 3).
- 5) *Wetlands*: Section 404 of the Clean Water Act requires that anyone interested in depositing dredged or fill material into "waters of the United States, including wetlands," must receive authorization for such activities. The final determination of whether an area is a wetland and whether the activity requires a permit must be made by the appropriate Corps District Office. **Staff recommends that the sale of this parcel be made with a requirement of wetland determination and, if necessary, a 404 Wetlands Development Permit.** Any special construction standards or mitigation requirements outlined in the permit will be the sole responsibility of the applicant.

- 6) *Ports & Harbor*: The Ports & Harbor Commission serves as an advisory board to the City Council on issues and activities related to the city's ports, harbor, and transportation issues, including but not limited to harbor, airport, seaports, and land terminals. Lot 2 ASLS 0098 is located on a main transportation route to the Valdez Container Terminal, This purchase request was brought to the Ports & Harbor Commission for review on April 28<sup>th</sup>, 2015. The Commission voted in favor of the sale.
- 7) *Sale by Negotiation*: Section 4.04.070(A) of the Valdez Municipal Code provides for the sale by negotiation of city owned real property. The threshold for allowing a sale by negotiation is very subjective. The code states, "Should the city council decide that the disposal of real property or any interest therein at public sales is not in the public interest, the city council may authorize the city manager to negotiate a sale of such real property..." When making a recommendation to a Commission or Council about a negotiated sale staff has a particular method for determining if something is in the public interest. If the property may only be used by an adjacent property owner because of its size, topography or other reason, staff determines it is not in the public interest to go to a public sale, and a negotiated sale is warranted. If the property is large enough it can sustain its own independent development, then staff determines it is in the best interest of the property to be offered by public sale, and a negotiated sale is not warranted. In this instance, the parcel is 2.045 acres, and is large enough to accommodate independent development. Therefore, it can be argued the best interest of the public is served by putting this parcel out for public sale (either sealed bid or outcry auction) so that: a) all members of the public have an equal opportunity to purchase this property; b) the city is able to command the maximum price for the property – which is often higher when offered at competitive sale; and c) if the city would like to see the property developed in a specific way, bidders can be asked to submit a development plan which can be taken into consideration by the city when determining the most responsive bidder.

The city currently has interest from five parties to purchase land by negotiation, and a least a half dozen people with names on "a list" who want to purchase land as soon as the city opens up commercial or light industrial land for sale. Inquiries to purchase land are coming in on a regular basis. The point of reporting this is to inform the Council of the significant interest in land; and to say that if the public at large is offered an opportunity to purchase this property, there would likely be significant interest beyond the Kimberlins.

When a land sale is contemplated, the Commissions and the Council need to answer three questions when making the decision to approve or deny a request. First, is it a good use of the public's land to dispose of this property? Second, is the development plan submitted by the applicant a good use of this property? Is it in conformance with good land use practices, zoning, environmental requirements, and the Comprehensive Plan? Third (the more difficult and philosophical question), is it in the public's best interest to sell this property by negotiation, or to offer it by public sale? There are reasons to support either decision.

If the property is offered at public sale:

- The public at large is offered an equal opportunity to purchase and develop this property.
- The city may sell the property for a greater sum than the appraised value as bidders will spend what they feel the property is worth in a competitive sale.
- A different purchaser may have a development concept that is more beneficial to the community as a service, and/or the City in terms of tax revenue.

- The city can determine the property should be used for a specific purpose and request development plans from bidders, the results of which may be considered in choosing the most responsive and winner bidder by determining which development plan fits most closely with the City's desired use for the parcel.

If the property is sold by negotiation:

- The proactive individual with a development plan is rewarded by being able to acquire land more expeditiously, thus speeding up the development timeline, increasing tax revenue to the city and perhaps adding jobs to the community.
- The purchaser bears all survey and appraisal costs, alleviating the City of this financial burden.
- The City receives fair market, appraised value for the property.

In preparation for submitting a formal purchase request to the City, Brad Kimberlin has submitted a building plan for Lot 2 outlining his intentions in more detail. In addition, Brad has outlined the following four reasons as to why he believes it is in the best interest of the City to approve the proposal:

- 1) Promotes private enterprise creating another revenue stream for the community.
- 2) The additional land/building development will increase the City's tax base.
- 3) The proposed plan provides a need for the community's development by providing a covered work area for larger vessels.
- 4) Creates jobs for the local vessel repair service company employees by extending their season with a place to work.

The Kimberlins understand the piece of property will have to be appraised and they acknowledge they will be required to pay fair market value. They also understand that should both the Planning & Zoning Commission and the Ports & Harbor Commission recommend purchasing the land and the Council approve the purchase, they will also have to pay for the appraisal, a wetlands delineation, and be responsible for any permitting required under Section 404 wetland specific development standards or mitigation.

Given the review of all related factors, Staff believes this is an appropriate use of this land in conformance with sound land use and zoning practices, provided appropriate measures are taken to address any wetlands determined to be on the property. If the land sale should be recommended by the Commissions and approved by the Council, the sale should be contingent upon the applicant's ability to obtain a conditional use permit for the development presented – boat repair facility. Normally, the resolution authorizing the sale of city land is posted for 30 days, after which the land sale becomes final. It is likely that action on the conditional use permit will exceed the 30 day timeframe so a provision for this is clearly outlined in the Council resolution.

Despite Staff's support of this development idea, the land sale does not meet the threshold for a negotiated sale, in that any member of the public should technically have the opportunity to purchase this property. However, staff and the P&Z Commission took this stance in the recommendation to Council for the sale of land in Old Town North to William Lusk last year. As is the Council's purview, they determined it was not in the public's best interest to take the land to public sale and approved the negotiated sale. Staff's recommendation, therefore, is that this land should be sold to the Kimberlins contingent upon a) approval of a Conditional Use Permit for a boat repair facility by the Planning & Zoning Commission; b) completion of a Wetlands

Determination and Approval of a 404 Wetlands Development Permit; and c) approval of a Final Development Plan by the Planning & Zoning Commission and Council.

This is a negotiated land sale. A negotiated sale requires approval by a super majority of Council members. **This means approval requires an affirmative vote of not less than six members of Council.**

Supporting documentation includes:

- Purchase Request MAPS 1-4
- Kimberlin Application
- Kimberlin Business Plan
- Plats (#1997-39M and #2003-1)
- Planning and Zoning Meeting Minutes 04/08/2015
- Ports and Harbor Meeting Minutes 04/28/2015

CITY OF VALDEZ, ALASKA

RESOLUTION #15-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, AUTHORIZING THE NEGOTIATED LAND SALE OF LOT 2, ASLS 0098 TO BRAD AND MAUREEN KIMBERLIN

WHEREAS, The City of Valdez is the owner of the following described real property:

Lot 2, Alaska State Land Survey 0098; and

WHEREAS, Brad and Maureen Kimberlin are the owners of the adjacent real property:

Lot 19, Block 2, Zook Subdivision; and

WHEREAS, Brad Kimberlin has requested to purchase Lot 2, ASLS 0098 for the purpose of developing a boat repair facility; and

WHEREAS, Brad Kimberlins' request for land and proposed use is in conformance with the zoning for the area, the objectives of the Comprehensive Plan, and sound land use and environmental standards given certain conditions are met; and

WHEREAS, on April 8<sup>th</sup>, 2015 the Planning & Zoning Commission approved a recommendation to Council to sell this property to Brad Kimberlin for the proposed purpose of developing a boat repair facility; and

WHEREAS, on April 28<sup>th</sup>, 2015 the Ports & Harbor Commission approved a recommendation to Council to sell this property to Brad Kimberlin for the proposed purpose of developing a boat repair facility; and

WHEREAS, Chapter 4.04 of the Valdez Municipal Code provides for the sale of real property owned by the City, which is not dedicated to any public use; and

WHEREAS, Chapter 4.04 of the Valdez Municipal Code provides for the Council to sell property by negotiation when it is not in the City's best interest to offer the property at public sale; and

WHEREAS, The Planning & Zoning Commission, the Ports & Harbor Commission, and City Council have determined that it is not in the best interest of the City to offer the property at public sale.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that



Section 1: The City Council has found that it is not in the public interest to offer the Lot 2, ASLS 0098 at public sale.

Section 2: Lot 2, ASLS 0098 will be sold for fair market appraised value. The purchaser will be responsible for all costs associated with the sale.

Section 3: The City Manager, or his designee, is hereby authorized to negotiate with sale of said property.

Section 4: Lot 2, ASLS 0098 must be developed for a boat repair facility.

Section 5: The purchaser is required to obtain a Conditional Use Permit (CUP) for a boat repair facility, prior to the sale being effectuated. The purchaser shall have up to one year to obtain the CUP.

Section 5: The purchaser is required to complete a Wetlands Determination and if necessary an approved 404 Wetlands Development Permit. The cost of which, including all special construction development standards or mitigation shall be the sole responsibility of the applicant.

Section 6: The purchaser must submit a final development plan to the Planning & Zoning Commission and City Council for approval prior to development.

Section 7: In conformance with Section 4.04.070 of the Valdez Municipal Code the resolution shall be passed and approved by an affirmative vote of no less than six Council members, and the resolution shall be filed and published in the same manner as a resolution providing for public sale and no such negotiated sale shall be final until such resolution has been on file in the office of the city clerk for thirty days.

Section 8: In conformance with Section 4.04.080 of the Valdez Municipal Code if the sale of said property is not effectuated within one year of the date of approval the authorization to sell granted by this resolution expires.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this 1<sup>st</sup> day of June, 2015.

CITY OF VALDEZ, ALASKA

\_\_\_\_\_  
Larry Weaver, Mayor

ATTEST:

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Sheri L. Pierce, MMC, City Clerk