



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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CHARLIE PIERCE
BOROUGH MAYOR

MEMORANDUM

TO: Wayne Ogle, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director 

DATE: January 11, 2018

SUBJECT: Application for a new Limited Marijuana Cultivation Facility License. **Applicant:** Henley's Happy Harvest; **Landowner:** Harold J. Henley; **Parcel #:** 05530013; **Property Description:** Lot L-4-C, Kingswood Estates Subdivision Resubdivision of Tract - 4, according to Plat 77-27, Kenai Recording District; **Location:** 35633 Baranof St, Kenai, Kalifornsky Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled January 8, 2018 meeting.

A motion to recommend approval of the Henley's Happy Harvest, a Limited Marijuana Cultivation Facility application passed by unanimous consent subject to the following conditions:

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KP.B 7.30.020(A).

Attached are the unapproved minutes of the subject portion of the meeting.

5. State application for a marijuana establishment license; Kalifornsky Area

Staff Report given by Max Best

PC MEETING: January 8, 2018

Applicant: Henley's Happy Harvest
Landowner: Harold J. Henley
Parcel ID#: 055-300-13
Legal Description: Lot L-4-C, Kingswood Estates Subdivision, Resubdivision of Tract - 4, according to Plat 77-27, Kenai Recording District.
Location: 35633 Baranof St, Kenai

BACKGROUND INFORMATION: On April 10, 2017 the applicant notified the borough that he/she had submitted an application to the state for a Limited Marijuana Cultivation Facility license. On May 9, 2017 the applicant supplied the borough with a signed acknowledgement form and a site plan on December 14, 2017 of the proposed Limited Marijuana Cultivation Facility on the above described parcel. The Alcohol and Marijuana Control Office notified the borough that the application was complete on December 5, 2017.

Staff has reviewed the completed license that has been submitted to the state and the site plan submitted to the borough and has found the following concerning the standards contained in KPB 7.30.020:

1. The Borough finance department has been notified of the complete application and they report that the applicant is in compliance with the borough tax regulations.
2. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 1,000 feet from any school.
3. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 500 feet from all recreation or youth centers, and all buildings in which religious services are regularly conducted, and all correctional facilities.
4. The proposed facility is not located within a local option zoning district.
5. The proposed facility is located where there is sufficient ingress and egress for traffic to the parcel.
 - The site plan indicates that the approach is or will be constructed to a minimum width of 28 feet where it accesses the right-of-way.
 - The signed acknowledgement form indicates that there will not be any parking in borough rights-of-way.
 - The site plan indicates a clear route for delivery vehicles which allows vehicles to turn safely.
 - On-site parking and loading areas are designated at a location that would preclude vehicles from backing out into the roadway.
6. Because this application is for cultivation the hours of operation for a retail store is not applicable.

KPB 7.30.020(E) allows the recommendation of additional conditions on a license to meet the following standards:

- protection against damage to adjacent properties,
- protection against offsite odors,
- protection against noise,
- protection against visual impacts,
- protection against road damage,

- protection against criminal activity, and
- protection of public safety.

The Alaska Marijuana Control Board will impose a condition a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable (3 ACC 306.060b). If the Planning Commission recommends additional conditions, additional findings must be adopted to support the conditions.

PUBLIC NOTICE: Public notice of the application was mailed on Monday, December 18, 2017 to the 13 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the Thursday, December 28, 2017 & Thursday, January 4, 2018 issues of the Peninsula Clarion.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on Monday, December 26, 2017.

It was noted that Page 18 of 19 of the State Application which was right side of Page 162 of the Planning Commission packet was not signed or notarized. Upon further investigation it appears that the signed page 18 of 19 was the next page which was the left side of page 163 of the Planning Commission packet.

ATTACHMENTS

- State marijuana establishment application with associated submitted documents
- Site Plan
- Acknowledgement form
- Aerial map
- Area land use map with 500' & 1,000' parcel radius

STAFF RECOMMENDATION

Staff recommends that the planning commission forward this application to the assembly with the findings contained in this staff report and with the recommendation that the following conditions be placed on the state license pursuant to 3 AAC 306.060(b):

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Nancy Cranston, 36995 Kalifornsky Beach Rd
Ms. Cranston read her following written comments into the record.

"Good evening. My name is Nancy Cranston. I live at 36995 Kalifornsky Beach Rd which 2 lots north and across K-Beach from Mr. Henley. My son owns the adjacent lot directly north of Mr. Henley's lot. I understand that Mr. Henley's application for a limited marijuana cultivation facility license is apparently legal. My concern is that if Mr. Henley decides to expand his facility, will it devalue my son's property? What does this license do to the value of the properties of the neighborhood? I wish to express my opposition to this application. My neighbors, Rob, Joe and Gypsy Jolly, who are not able to attend this hearing, have asked me to state they also oppose the application for a license based on the possible undesirable activity in the neighborhood.

I would like to state my opinion-and it is ONLY an opinion. It has nothing to do with the law. I feel that there are enough vices being offered to and used by residents of this Borough, including tobacco, alcohol, and some illegal drugs. Do we really need more?

I have taken the opportunity to "Google" the effects of marijuana on the brain of the unborn child. I found many websites of research, nearly all of which concluded that cannabis CAN affect the brain of the fetus. Several of the studies were done by neuroscientists and by Drs. of the American College of Obstetrics. Among the affects we re smaller brain development and head size as well as decreased birth weight. Later on it can cause cognitive defects such as learning and memory problems, behavioral problems, higher risk of developing leukemia, lack of physical activity and he/she may exhibit drug-seeking behavior later on. Also marijuana use by nursing mothers can affect their breastmilk, thereby affecting the baby. These studies are but a fraction of the information regarding marijuana use that can be found on the internet.

My point is: Is the almighty \$ from the sale of marijuana and it's byproducts worth more than the health of the brain of the unborn child?

Thank you for your attention."

Chairman Martin asked if there were questions for Ms. Cranston. Hearing none the public hearing continued.

2. Ken Coleman

Mr. Coleman was the immediate neighbor near the applicant. He owns Lots 1 & 2, then there was a vacant lot and the fourth lot was where the proposed facility will be located.

Mr. Coleman expressed concerns of ingress / egress on roads. Baranof St was an unimproved road. The north 2/3rds of it was packed sand and was not up to borough standards. He improved the south end of the road. His concern was with what the traffic would do. In rain events, it becomes quite muddy and people use the public access on his end to access their property which does do some degradation on that road.

Mr. Coleman also expressed concern that he has had no neighborly contact with the applicants so he doesn't know if this was a project that will move to a larger project in the future.

Mr. Coleman stated he was at an age where he was considering downsizing. They have quite a large home and outbuildings there so he expressed concern about the proximity of such a business and what it may do to the marketability of his property and to property values.

Mr. Coleman was a 45 year small business man so he has some infinity for budding entrepreneurship, pun intended but he has had no interaction with the applicants. He wasn't sure what this was going to lead to and doesn't know if there was going to be any nefarious activities.

Mr. Coleman hoped that the commission would impose some conditions about property lines, fences, etc. that would keep this facility within those bounds and thus not impact their marketability and property values.

Chairman Martin asked if there were questions for Mr. Coleman.

Mr. Best asked if he could elaborate on Baranof St and if it was a borough maintained road. Mr. Coleman replied that it was not a borough maintained road. It was a non-improved road. The north 2/3rds was packed sand and the south 1/3 has a gravel overlay which he applied.

There being no further questions or comments, the public hearing continued.

3. Julie Henley, 35633 Baranof St.

Ms. Henley spoke with a neighbor named Kelly a few weeks ago who shared the neighbors' issues and concerns with her. She has a signed statement from the borough who stated that Baranof St was a borough maintained road and that they were paying the right taxes for them to maintain it.

Ms. Henley referred to the concerns of the property values. This proposal is such a small operation which is about half the size of her garage. It is about 300 sq. feet. There is no indication outside that they could tell it was even there. There won't be any kind of expansion or any outbuildings built; it was not going to change and it was not going to grow. It will just be a small mom and pop operation.

Ms. Henley stated that unfortunately, opinions have shown that marijuana has certain health effects. She respects that and follows up on those sciences and fortunately it was legalized for a reason. Growing was just what they are good at so they are just trying to work for themselves and have their own business and take care of what they need to take care of.

Ms. Henley was told that they had to widen their driveway 28 feet which they are in the process of doing. They have to wait for the ground to thaw to pull the stumps but they have already started to cut the trees and clear the land. There will be plenty of room for emergency access or whatever the borough needs it to be. She stated there won't be any nefarious traffic. They are limited cultivation and will only sell to other licenses so there will be no retail involved and no people will be coming by for deliveries. What is grown there will stay there until it was moved to where it will be sold to retailers or manufacturers.

Ms. Henley stated that other concerns that were expressed are as follows:

- *Odor.* This will not be an issue. They have carbon filters that clean the air both when it comes in and when it goes out. There is very little air exhaust so there should not be any smell at all.
- *Water table.* There will be very little water waste. They use about 50 gallons of water a week. Waste water is collected through evaporation so there was nothing being poured into the ground.
- *Compost.* Compost will be put in one compost bin until it was properly ready to be disposed of.
- *Light Pollution.* There will be no light pollution since it was a completely light proof facility. There are no windows. The only doors that someone could get to it through are behind two other locked doors so it was very secure.

Ms. Henley stated that she was very open to any of the neighbors coming over to talk to her. She could give them a tour once they are licensed. They will just have to have their license and sign a visitor's sheet. They are more than welcome to come take a look and see that this is a very small operation.

Ms. Henley also stated that she was open to any suggestions from anyone about what she could do to make this ok with everybody.

Chairman Martin asked if there were questions for Ms. Henley.

Commissioner Fikes asked if she could elaborate about this being a small facility. She asked what a reasonable growing season was and what was considered a reasonable size as far as the amount of plants. Ms. Henley replied that she would have a maximum of 20 plants in the flowering room. There may be about 40 plants in the vegetation room but never more than 20 budding at a time. She stated this facility will be about 300 sq. feet.

Commissioner Fikes asked if this was a year around, 12 month operation. Ms. Henley replied yes, they have a four month cycle so they harvest about every four months.

There being no further questions or comments, the public hearing continued.

4. Nicole Nilson, 36915 K-Beach Rd & Glenn Presser, 36915 K-Beach Rd
Ms. Nilson believed that she had a straight visual of the subject property from her driveway.

Mr. Presser stated that there were a number of good reasons that have been stated that this proposal was not a good idea. He stated the following reasons:

- *Property Values.* The first and foremost was the fact that the property values will drop when they have to disclose to the next buyers that there was a marijuana farm in the neighborhood. That will be a negative and many people will shy away from that.
- *Water.* Each plant requires six gallons of water each day according to the multiple sources on the internet. 6 x 60 x 30 x 12 is quite a few gallons of water that will be used. They can't collect enough rain water to water those plants, it would be coming from the ground.
- *Security.* Currently, the price of marijuana is 10 to 20 times the spot price for an ounce of silver which makes it a very tempting target to come out. Someone can get rid of marijuana much easier than someone can get rid of silver. It could be sold to a kid on the corner and it would be gone in 15 minutes. Mr. Presser asked how they would defend their property if someone breaks in.

Ms. Nilson understood that there will not be foot traffic of people coming to buy a bag of marijuana but her concern was that somebody who might not be of the highest standard was going to eventually know that there is a grow business here. Those are the people that she was worried about breaking in and stealing, etc. She also understood that there wasn't going to be light but in her opinion if she had this commodity in her garage, she would want the well-lit property to deter activity.

Mr. Presser stated that Jeff Session was not going to start not turning a blind eye to the States and their legal marijuana because on a federal level it is still illegal. He would not like to wake up at 3:00 in the morning to a helicopter or a dozen DEA agents kicking in doors.

Ms. Nilson stated that she was not a prude in that she has had several people in her family who had cancer who used the cannabis oils. It greatly helped them but just wished that it wasn't located right across the street from her.

Mr. Presser & Ms. Nilson felt that it needs to be in a more appropriate location.

Chairman Martin asked if there were questions for Ms. Nilson or Mr. Presser. Hearing none, the public hearing continued.

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

MOTION: Commissioner Ruffner moved, seconded by Commissioner Bentz to recommend approval of Henley's Happy Harvest, a Limited Marijuana Cultivation Facility license according to staff recommendations, findings and to recommend that the following three conditions be placed on the state license.

Conditions

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KP.B 7.30.020(A).

Commissioner Ruffner stated that the comments and concerns that were expressed by the testifiers were not uncommon. There have been concerns expressed about either a growing facility or a retail store. He did not hear anything unique to what he has heard regarding other locations. What he has to resolve is that they did as a State approved the legalization of marijuana. Commissioner Ruffner felt that they have done a pretty good job at the State level of providing the types of controls and safety of the concerns that were brought up. The security requirements that the facilities have to have are pretty onerous, it's not easy for them to get that

all set up. He stated they make sure that it meets borough code criteria which is what he judges this on. For these reasons, he supported forwarding this application onto the Assembly for approval.

VOTE: The motion passed by unanimous consent.

BENTZ YES	CARLUCCIO YES	ECKLUND YES	ERNST YES	FIKES YES	FOSTER ABSENT	ISHAM ABSENT
LOCKWOOD ABSENT	MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	10 YES 3 ABSENT

AGENDA ITEM F. PUBLIC HEARING

6. State application for a marijuana establishment license; Ridgeway Area

Staff Report given by Max Best

PC MEETING: JANUARY 8, 2018

Applicant: Pinnacle Projects

Landowner: Dan N. Van Zee & Catherine Y. DeLacee

Parcel ID#: 057-660-01

Legal Description: Lot 1, Pinnacle Hill Subdivision Part One, according to Plat 1588, Kenai Recording District.

Location: 37035 Nicholas View Lane, Soldotna

BACKGROUND INFORMATION: On May 4, 2017 the applicant notified the borough that he/she had submitted an application to the state for a Limited Marijuana Cultivation Facility license. On May 22, 2017 the applicant supplied the borough with a signed acknowledgement form and a site plan on December 26, 2017 of the proposed Limited Marijuana Cultivation Facility on the above described parcel. The Alcohol and Marijuana Control Office notified the borough that the application was complete on December 5, 2017.

Staff has reviewed the completed license that has been submitted to the state and the site plan submitted to the borough and has found the following concerning the standards contained in KPB 7.30.020:

1. The Borough finance department has been notified of the complete application and they report that the applicant is in compliance with the borough tax regulations.
2. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 1,000 feet from any school.
3. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 500 feet from all recreation or youth centers, and all buildings in which religious services are regularly conducted, and all correctional facilities.
4. The proposed facility is not located within a local option zoning district.
5. The proposed facility is located where there is sufficient ingress and egress for traffic to the parcel.
 - The site plan indicates that the approach is or will be constructed to a minimum width of 28 feet where it accesses the right-of-way.
 - The signed acknowledgement form indicates that there will not be any parking in borough rights-of-way.