

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

February 14, 2022

7:30 P.M.

UNAPPROVED MINUTES

Chair Martin requested that Vice Chair Ruffner chair the meeting. Chair Martin attended via Zoom and had connection concerns.

CALL TO ORDER

Vice Chair Ruffner called the meeting to order at 7:30 p.m.

ROLL CALL

Commissioners Present

Syverine Bentz, District 9 – South Peninsula
Jeremy Brantley, District 5 – Sterling/Funny River
Diane Fikes, City of Kenai
Pamela Gillham, District 1 – Kalifornsky
Virginia Morgan, District 6 – East Peninsula
Blair Martin, District 2 – Kenai
Robert Ruffner, District 7 - Central
Franco Venuti, City of Homer

With 8 members of an 8-member seated commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Marcus Mueller, Land Management Manager
Samantha Lopez, KRC Manager
Nancy Carver, Resource Planning
Eric Ogren, Code Compliance
Ann Shirnberg, Planning Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

***3. Plats Granted Administrative Approval**

- a. ASLS No. 2019-34 Tract A ASLS 96-42; KPB File 2021-019
- b. Fireweed Meadows 2021 Replat; KPB File 2021-095
- c. Fourth of July Creek Subdivision Seward Marine Industrial Center Coastal Lots Replat; KPB File 221-039
- d. James Waddell Homestead 2021 Replat; KPB File 2021-136

***4. Plats Granted Final Approval (20.10.040)**

- a. Black Gold Estates 2021 Replat Wildwood Dr. ROW Vacation; KPB File 2021-111V

***6. Commissioner Excused Absences**

- a. City of Soldotna, Vacant
- b. City of Seward, Vacant
- c. City of Seldovia, Vacant
- d. District 3 – Nikiski, Vacant
- e. District 4 – Soldotna, Vacant
- f. District 8 – Homer

***7. Minutes**

a. January 24, 2022 Planning Commission Meeting Minutes

Vice Chair Ruffner asked if anyone wished to speak to any of the items on the consent agenda. Hearing no one wishing to comment he asked that Ms. Shirnberg read into the record the consent agenda items. Ms. Shirnberg read the items into the record. Vice Chair Ruffner then brought it back to the commission for a motion.

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes to approve the consent and regular agendas

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	Absent	0	Vacant	6
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent					

Vice Chair Ruffner asked Ms. Shirnberg to read the procedures for public testimony.

AGENDA ITEM D. OLD BUSINESS

Vice Chair Ruffner gave a brief review of the commission’s decision to go into adjudicative session when discussing both of the matters that were remanded back to the planning commission. He noted that adjudicative sessions are only attended by planning commission members and those invited into the session by the commission. Adjudicative sessions allows the commission to discuss matters less formally. No decisions are not made in an adjudicative session. For a decision to be made, the commission is required to go back on record to vote on the matter. That is what they are doing tonight. He also wanted to let the public know that there was a mistake made and that the adjudicative session was unintentionally livestreamed. The commission was not aware of this at the time. He noted there was at least one member of the public that viewed the session. He wanted the public to know while this should not have happened; looking back, he felt the discussion by the commission was not one he would have felt uncomfortable having in front of the public. He then noted that the borough attorney had provided the commission with templates to assist in formulating a decision, but it was up to the commission to determine which template to use and the findings to go along with it. He then invited other commissioners to make comment if they wished.

1. CLUP Modification; PC Resolution 2022-08
 Applicant: Cook Inlet Region, Inc.
 Parcel ID # 065-081-18
 Sterling Area

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes to adopt PC Resolution 2022-08 granting approval of a conditional land use permit for a material site allowing for additional excavation to Cook Inlet Regional Inc.

Commissioner Brantley stated he believed that part of the public's confusion in this matter was the location of material site. A prior approved material site was located along the river. This permit modification was for a site further inland that was next to the Sterling Hwy. This site would have far less in the way of visual impacts for many of the area landowners, which is why he was comfortable in supporting the approval of this modification.

Commissioner Bentz noted the remand decision from the judge wanted to make sure that the commission understood that they did have the discretion to approve, deny or modify material site permits. Language in the resolution reflects that understanding and recognizes that compliance with mandatory conditions does not necessarily mean the permit meets the standards.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Absent	0
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				

2. CLUP; PC Resolution 2022-07
Applicant: Beachcomber, LLC
Parcel ID # 169-010-67
Anchor Point Area

Vice Chair Ruffner stated that this matter took the commission longer to resolve. The meeting on January 25th ended around 11:00 PM. The commission left the adjudicative session open to discuss one final finding, which was conducted via emails between the commission members. The commission was invited to weigh in on the one open finding and one commissioner elected to do so. This is all reflected in the record but he wants the public to know that any commissioner could have elected to weigh in on this finding.

Commissioner Brantley requested to be recused from this matter as he had a conflict of interest. Vice Chair Ruffner approved Commissioner Brantley's request.

MOTION: Commissioner Fikes moved, seconded by Commissioner Bentz to adopt PC Resolution 2022-07 denying a conditional land use permit to operate a sand, gravel or material site to Beachcomber, LLC.

Commissioner Martin stated that he would not be supporting the motion as believes that it is fundamentally a taking of private property rights. He understands that this is a contentious issue in this neighborhood. He also understands the material site ordinance as it stands is lacking. He is aware that this ordinance is currently being reworked and he hopes that the rewrite will address some of the issues revolving around material sites. In his opinion, he believed the applicant has done what he can practically do to mitigate the noise, dust and visual impacts. He also wanted it noted that he appreciated the process, legal advice, consideration of code and public comment that went into the making of this decision.

Commissioner Venuti stated that he has seen a lot of growth in the Anchor Point area since the 1970s. He understands that gravel is an important industry and commodity and that it supports many industries. He sees and understands the real value of this resource. He also sees value in the fact that this community has come together and have spoken out about what they want their community to be. He believes that it may be time for the Anchor Point area to think about incorporating and becoming their own city so that they can make their own decisions on matters like this. He stated he has mixed feeling on this matter, but believes that this may be the wrong location to put a material site.

Commissioner Gillham stated that she had spent quite of bit of time reviewing this record. The commission in their deliberations spent time discussing two areas that the permit potentially may not have met. The two areas are addressed in KPB 21.29.040(A)(5) which address noise mitigation and visual impacts. She agreed with Commissioner Martin in that this is about personal property rights. She believes they need to protect the rights of the landowners on both sides of this issue. Before taking away anyone's property rights, she believes that they need to have a legal right to do so. Code requires that the applicant minimize noise and visual impacts and she believes that they have done so. She also believes that the neighbors also have a responsibility to participate in the mitigation as well. She then stated that she would not be voting in favor of this resolution.

Commissioner Morgan noted that this resolution states that the planning commission recognizes that compliance with the mandatory conditions in KPB 21.29.050 does not necessarily mean that the application meets the standards contained in KPB 21.29.040. The recent ruling from the court has made it clear that the conditions and standards both need to be applied to make decisions on applications. The commission had a long a difficult discussion on this application at the last hearing. She was impressed with the great thought, research and review that the planning commissioners had put into this matter and the work that has gone into the creation of the findings in the decision. The planning commission is made up of volunteers and the work it takes to create findings is not easy. The commission did a great deal of work in reviewing the conditions and standards to come to a decision. Again, she noted that this was not an easy decision and she appreciates all the work that the members of the commission put into this decision. She then stated that she would be voting in favor of the resolution.

Commissioner Bentz wanted to add on to what Commissioner Morgan said. She noted that the commission had spent a great deal of time discussing and developing the language for this decision. She felt the commission had worked hard to close the loop and to reference things in the record correctly. She noted that this application had originally been denied by the commission but had been remanded back to the commission by the hearing officer with instructions to conduct additional fact-finding and to draft more

detailed findings in support of their decision. Upon remand, the commission then reversed their original decision and approved the application. The decision was again appealed to the hearing officer where the decision to approve the application was upheld. The decision was then taken up by the court where it was again remanded back to the commission with the instruction to consider the standards as well as conditions in their deliberations. She believes the commission has considered both the standards and conditions in constructing the findings in this decision.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION FAILED BY MAJORITY VOTE:

Yes	3	No	4	Recused	1
Yes	Bentz, Morgan, Venuti				
No	Fikes, Gillham, Martin, Ruffner				
Recused	Brantley				

The commission decided to consider this item again and placed it on the March 21, 2022 regular planning commission meeting. The commission elected for the record to remain closed, not to reopen public comment and that the commission may again go into an adjudicative session to deliberate on this matter.

Vice Chair Ruffner asked the members of the commission if any of them had any communications with members of the public on this matter in the time between the last hearing and tonight. Chair Martin stated that Ed Martin had contacted him and he had made it clear that he would not discuss this matter with him.

Commissioner Morgan asked to be excused for the remainder of the meeting due to a prior engagement. Vice Chair Ruffner thanked Commissioner Morgan for attending the first part of meeting and then excused her.

AGENDA ITEM E. NEW BUSINESS

Vice Chair Ruffner asked Ms. Shirnberg to read into the record the rules for public hearings.

E1 – Conditional Use Permit – Anadromous Waters Habitat Protection District

KPB File No.	2022-05
Planning Commission Meeting:	February 14, 2022
Applicant	Alaska Department of Transportation
Mailing Address	PO Box 196900
	Anchorage, AK 99519-9600
Legal Description	N/A
Physical Address	MP 4 Kenai Spur Highway
KPB Parcel Number	N/A

Project Description

A Conditional Use Permit is sought pursuant to KPB 21.18 for the construction of a fish passage culvert at MP 4 of the Kenai Spur Highway, within the 50-foot Habitat Protection District of Unnamed Stream 3 (AWC 244-30-10010-2031), as established in KPB 21.18.040.

Staff report given by Samantha Lopez.

Vice Chair Ruffner opened the meeting for public comment.

Aaron Hunting, DOT Engineer; P.O. Box 196900, Anchorage, AK 99519: Mr. Hunting made himself available for questions.

Hearing no one else wishing to comment, public comment was closed and discussion was open among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes to adopt PC Resolution 2022-05 granting approval of a conditional use permit to install a fish passage culvert at MP 4 of the Kenai Spur Highway to the State of Alaska Department of Transportation and Public Facilities.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Ruffner, Venuti				
Absent	Morgan				

**E2 – Retail Marijuana Establishment License
Worner Brothers Outpost, LLC**

Applicant	Worner Brothers Outpost, LLC
Landowner	Jeffery Lee Worner
Tax Parcel ID	065-030-02
Legal Description	T05N, R08W, SEC 7, SEWARD MERIDIAN, KN, BEGINNING AT THE SW CORNER OF GOVT LOT 6 TH S 330 FT TO THE POB TH S TO THE CNETER OF THE STERLING WHY THEN W ALONG THE HWY 700 FT TO MOOSE RIVER THEN N ALONG THE RIVER 378.9 FT THEN EA 548 FT TO THE ROB EXCEPT THAT PORTION PER W/D/380 @ 700
Location	33590 Sterling Highway
Area	Sterling

Staff report given by Nancy Carver.

Vice Chair Ruffner opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was open among the commission.

MOTION: Commissioner Martin moved, seconded by Commissioner Bentz to forward to the assembly a recommendation to approve a retail marijuana store license for Worner Brothers

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Ruffner, Venuti				
Absent	Morgan				

**E3 – Conditional Land Use Permit for Material Extraction
AM&T Vantage Point, LLC**

Applicant	AM&T Vantage Point, LLC
Landowner	AM&T Vantage Point, LLC
Tax Parcel ID	063-047-01
Legal Description	T05N, R09W, SEC 3, Seward Meridian KN SE1/4
Location	36280 Robinson Loop Road – Sterling Area

Staff report given by Eric Ogren.

Vice Chair Ruffner opened the meeting for public comment.

Gina DeBardelaben, McLane Consulting; P.O. Box 468, Soldotna, AK: Ms. DeBardelaben was the engineer for this project. She is a licensed civil engineer by the State of Alaska. McLane Consulting was responsible for preparing the field survey, site plan and the site exhibits. She noted the applicants have done their due diligence by creating a site development plan that meets borough code prior to submitting their application. She then made herself available for any questions.

Nathan Verba; 38527 Montgomery Ave., Sterling, AK 99672: Mr. Verba is the applicant and made himself available questions.

Mike Rosso; P.O. Box 1209, Sterling, AK 99672: Mr. Rosso is a neighboring landowner to this proposed material site and he does not support the approval of this application. He expressed concerns regarding dust, noise, traffic & safety issues as well as decrease of property values. He does not believe the proposed buffer plan is sufficient. He also expressed concerns related to what he believed was insufficient noticing requirements.

Ron Martinelle; P.O. Box 391, Sterling, AK 99672: Mr. Martinelle is a neighboring landowner to this proposed material site and he does not support the approval of this application. He expressed concerns regarding noise, hours of operations (he believed that the no-work times of 10PM to 6AM was inadequate) as well as how this material site would affect property values in the area.

Eric Sandberg, 39290 Valley View Rd., Sterling, AK 99672: Mr. Sandberg is a neighboring landowner to this proposed material and he does not support the approval of this application. He expressed that he would like to see the no-work time period increased. He also has concerns regarding the impact on his well if the applicants are able to excavate within 4 feet of the water table.

Kay McNally 39290 Valley View Rd., Sterling, AK 99672: Ms. McNally is a neighboring landowner to this proposed material site and she does not support the approval of this application. She expressed concerns regarding potential impact to area wildlife. She stated that she would like to see the no-work time period increased. She also noted that there are already several gravel pits in the area and does not believe that the area needs another one. She is aware that the borough is currently working on a revising the material site code and would like to see this application put off until the code revision is completed.

Mary Ann Mills; P.O. Box 143, Sterling AK 99672: Ms. Mills is a neighboring landowner to this proposed material site and does not support the approval of this application. She expressed concerns regarding the noise levels related to rock crushing, increases to area traffic, impacts to property values and environmental impacts. She also believed that the no-work time period should be increased and that the proposed 50-foot buffer is not sufficient. She noted there were already five material sites in the area and she does not believe there needs to be another one.

Wayne Tendall; 39588 Weaver Lane, Sterling, AK 99672: Mr. Tendall is a neighboring landowner to this proposed material site and does not support the approval of this application. He expressed concerns regarding noise, increases to area traffic and decreased property values. He is also very concerned about the potential of water contamination. He also believes the proposed 50-buffer is insufficient

Hearing no one else wishing to comment, public comment was closed and discussion was open among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes to adopt PC Resolution 2022-09 granting approval of a conditional land use permit to operate a sand, gravel, or material site to AM&T Vantage Point, LLC.

Commissioner Martin asked if the applicant had looked at the Lidar information for this area. Ms. DeBardelaben replied that they had reviewed the Lidar information for the area and had noted there is a large peninsula with a higher grade on the parcel where the phase one/phase two boundaries meet, the surrounding area slightly lower. Commissioner Martin replied that he felt this should relieve some of the concerns of the neighboring landowners. Where the material site is going in appears to be the highest ground and there is the potential of having some great natural berms along the southern and eastern boundaries. This has the potential of supplying some natural site and noise barriers.

Commissioner Bentz noted that the applicant has selected the 50-foot barrier of natural vegetation.

Testimony from area residents' state that there is a great deal of spruce bark beetle infected trees in these natural vegetation barriers. In the future, if the natural vegetation barriers were to be significantly impacted by the beetle, would the applicant be willing to put in some 6-foot earthen berms? Ms. DeBardelaben replied that the applicant would like to maintain the vegetative buffer, as they do not see the site as a fast moving industrial site. If conditions change there is always the potential to modify the permit.

Commissioner Brantley asked should the excavation come within 100 feet of the property boundary, would they be willing to construct a 6-foot berm within the 50-foot buffer zone as an additional safe guard for neighboring properties from damage and as an aid to minimize dust and noise.

Vice Chair Ruffner then gave the applicant time to discuss the voluntary condition request with his engineer to ensure that he understood the voluntary condition. Mr. Verba conversed with Ms. DeBardelaben. Ms. DeBardelaben clarified with the commission that the applicant is willing to have either the 50-foot natural buffer or a 6-foot berm. The applicant agrees that if excavation reaches within 100 feet of the property line, he would build a 6-foot berm most likely on the property line and would then no longer be required to maintain the 50-foot vegetative buffer.

With the approval of the commission, Vice Chair Ruffner suspended the rules and allowed for additional comments from the public.

Ron Martinelle; P.O. Box 391, Sterling, AK 99672: Mr. Martinelle asked what if the voluntary condition does not adequately work as a noise or visual buffer. He believed that whatever the condition is agreed upon, it should be concrete and ensure that the neighboring properties are protected.

Kay McNally 39290 Valley View Rd., Sterling, AK 99672: Ms. McNally noted that 50 feet is not very far, 50 yards would be better. She does not believe that the 50-foot natural buffer and the 6-foot berm will be adequate.

AMENDMENT MOTION: Commissioner Brantley moved, seconded by Commission Fikes to amend the resolution to add that a 6-foot berm be installed at the 24-foot mark from the property line, when excavation reaches within 100 feet of the property line.

Hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Ruffner, Venuti				
Absent	Morgan				

Vice Chair Ruffner passed the gavel to Commissioner Brantley to allow him to make a comment.

Vice Chair Ruffner noted that most common concerns raised in association with material site applications are noise, dust, increases in traffic, water contamination and negative impact to property values. These are concerns that the commission hears repeatedly in public hearing on these matters. He noted that the assembly is working on a code re-write on material sites, which is a very difficult task. He would encourage the area residents to participate in the process as it moves forward. Property owners on both sides of this issue have rights. Most of the lands in the borough are zoned unrestricted which can create land use conflicts. The assembly has given the commission a set of rules to follow which allows us to do certain things. The assembly has put limits on what the commission can ask for. While the commission does have to authority to deny applications, we must have good findings or justifications for doing so. He then noted that on the peninsula he is not aware of a material site being the cause of water quality issues for surrounding wells. The assembly has also set the limits for no-work/quiet times, so the commission does not have the authority to extend the time. He appreciates that the applicant is volunteering to work with commission to come up with a solutions that might be a little better for the vegetation buffer.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED AS AMENDED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Ruffner, Venuti				
Absent	Morgan				

AGENDA ITEM F. **PLAT COMMITTEE REPORT** – Plat Committee reviewed and approved 8 plats.

AGENDA ITEM G. **OTHER**

1. Plat Committee for February 28, 2022 meeting:

- Commissioner Ruffner
- Commissioner Gillham
- Commissioner Brantley
- Commissioner Venuti

2. Planning Department Budget Presentation:

- Samantha Lopez presented for the River Center & Area Planning Commissions
- Marcus Mueller presented for Land Management & the GIS Divisions

AGENDA ITEM I. **DIRECTOR'S COMMENTS** - None

AGENDA ITEM J. **COMMISSIONER COMMENTS**

Commissioner Bentz requested an excused absence for the February 28, 2022 meeting, as she will be out of state at that time.

AGENDA ITEM M. **ADJOURNMENT** – Commissioner Brantley moved to adjourn the meeting 10:08 p.m.

Ann E. Shirnberg
Administrative Assistant