

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Marcus Mueller, Interim Planning Director *MCM*

DATE: August 27, 2020

SUBJECT: Application for a new Retail Marijuana Store License. **Applicant:** Fat Tops, LLC; **Landowner:** Russell Turgeon; **Parcel #:** 05754018, 05754017; **Property Description:** T 5N R 10W SEC 29 SEWARD MERIDIAN KN 0000980 LANDE SUB LOT 1; **Location:** 35975 Kenai Spur Highway, Soldotna, AK 99669, Ridgeway Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled August 24, 2020 meeting.

A motion to recommend approval of the Fat Tops, LLC, a Retail Marijuana Store application passed by majority 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).
4. The marijuana establishment shall not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m.

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

***Approved with the adoption of the consent agenda.**

AGENDA ITEM C. CONSENT AGENDA

- *7. Commissioner Excused Absences
 - a. Vacant, Northwest Borough

***Approved with the adoption of the consent agenda.**

- *8. Minutes
 - a. August 10, 2020 Planning Commission Meeting

***Approved with the adoption of the consent agenda.**

Chair Martin asked if anyone present want to speak or had concerns about any of the items on the consent or regular agendas. Seeing and hearing no one wishing to comment, Chair Martin returned the discussion to the Commission.

MOTION: Commissioner XX moved, seconded by Commissioner XX, to approve the consent agenda and the regular agenda.

MOTION PASSED: Seeing and hearing not discussion or objection, the motion passed by unanimous consent.

Yes	10	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Ecklund, Fikes, Gillham, Morgan, Martin, Ruffner, Venuti				
No	None				
Absent	None				

AGENDA ITEM F. PUBLIC HEARINGS

- 1. State application for a retail marijuana store license; Ridgeway Area

STAFF REPORT

PC Meeting August 24, 2020

Staff report given by Julie Hindman.

Applicant: Fat Tops, LLC

Landowner: Russell Turgeon

Parcel ID#: 057-540-18 and 057-540-17

Legal Description: Lot 1 and Lot 2, Lande Subdivision, according to Plat 980, Kenai Recording District

Location: 35975 Kenai Spur Highway, Soldotna, AK 99669

BACKGROUND INFORMATION: On July 15, 2020, the applicant notified the borough that he/she had submitted an application to the state for a Retail Marijuana Store license. A signed acknowledgment form and site plan were not supplied at the time the staff report was prepared. If received prior to the meeting, information pertinent to the standards will be supplied in the desk packet as well as a staff report addendum if required.

Staff would like to point out that due to the proximity to several facilities, the applicant's advertising as outlined in the Alaska Marijuana Control Board application's section 4.6 may be limited or restricted.

The Alcohol and Marijuana Control Office notified the borough that the application was complete on July 15, 2020. Staff has reviewed the completed license that has been submitted to the state 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 not be located greater than 1,000 feet from any school.

Per the auto generated land use map, Ridgeway Preschool is within the 1,000 foot radius. The Preschool is located at 44875 Sprue Avenue E. This is on the corner of Spruce Avenue E and Irons Avenue and is on parcels 057-530-31 and 057-530-32. Per KPB 7.30.020(B)(1) the distance specified must be measured by the shortest pedestrian route to the outer parcel boundaries of the school. Staff, using KPB GIS data, measure from the approximate door location, as depicted on the application, to the Preschool property and determined the distance to be approximately 989 feet. (A map is included to show how this distance was measured.) Per their Facebook page, "Ridgeway Preschool is a Montessori based preschool program that offers a prepared environment and self-directed learning."

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.

Per the auto generated land use map, Soldotna Kids Early Learning Center is outside the 500 foot radius but within the 1,000. As this is a daycare as opposed to a preschool this was reviewed pursuant to KPB 7.30.020(B)(2). Using the same methods as above, this was measured and determined to be approximately 985 feet from the proposed location, door to door. The daycare is located at 35911 Kenai Spur Highway on parcel 057-540-95. This parcel contains multiple commercial buildings that provides leases to various types of businesses. The daycare is situated the southern portion of the most southern building.

A new addition to the community is the All American Training Center. This did not appear in our original buffer but the owners of the property were notified. This facility is a 24 hour fitness center with memberships available to the public. This facility is also home to the Soldotna Whalers Wrestling Club. They use this facility for training from February through April during their normal competitive season. May through January, they provide wrestling camps and training for ages 5+. The facility is located at 35930 Kenai Spur Highway on parcel 057-540-96. Due to the size and design of the lot it is within the 300, 500, and 1,000 radii. Since the parcel boundary was within the 300 foot radius, a notification was mailed to the property owner. The actual structure is located further away than 300 feet. Due to the structure being new, staff had to measure to an estimated location of the structure's main door and that distance was found to be approximately 900 feet.

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 diagrams contained in the application show access but do not clearly depict the ingress and egress to the lots. It would need to be determined if one or both access points are intended to be used as one is along a State DOT right of way and the other along a KPB right of way. A site plan usually is submitted with the acknowledgement form. This was not received prior to the staff report being prepared. Staff used the diagrams submitted that are part of the state application.

- Lot 1, the lot that contains the structure, appears to have an access point off of Spruce Avenue E. and a portion of the access off of the Kenai Spur Highway.
- Lot 2 will mostly be utilized for parking but also contains a portion of the access off of the Kenai Spur Highway.
- Tract 1 from the Irons 1967 Subdivision is parcel number 057-540-02. A panhandle portion appears to exist that is between the proposed location and access to Spruce Avenue E. The plat for this parcel was done in 1967 and was not recorded but does depict the flag portion.
- It would need to be determined if they have direct access to Spruce Avenue E, which is a KPB right of way. If they have obtained the necessary permits or have an access easement,

- the access will not be in question.
- Access would still be permitted from the Kenai Spur Highway as long as AK DOT does not object.
 - Adequate on-site parking is available and would preclude vehicles from backing out into the roadway or parking in the borough right of way.
 - The diagrams do not note a clear route for delivery vehicles.
 - Ingress and egress from Kenai Spur Highway need to be reviewed and approved by the State of Alaska Department of Transportation.
6. The signed acknowledgement form was not submitted prior to the staff report being prepared. The acknowledgement form must be submitted to indicate that business will not be conducted, or allow any consumer access, between the hours of 2:00 a.m. and 8:00 a.m.

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 August 6, 2020 to 20 landowners of the parcels within 300 feet of the subject parcels. Public notice of the application was published in the August 13, 2020 and August 20, 2020 issues of the Peninsula Clarion.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies.

STAFF RECOMMENDATION

Staff recommends that the planning commission review this application and forward to the assembly any finding and recommendations that they find pertinent, in addition they should recommend 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).

STAFF REPORT ADDENDUM

PC MEETING: August 24, 2020

Since the staff report was prepared more information has been provided.

KPB 7.30.020(B)(1), Marijuana establishments shall not be located within 1,000 feet of any school. The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer parcel boundaries of the school.

The distances from the public entrance of the building to the outer parcel boundary of Ridgeway Preschool

was originally measured using KPB GIS Imagery and was determined to be 989 feet. Platting staff went to the location and measured the walking distance with a measuring wheel. The distance was determined to be 1,015 feet.

KPB 7.30.020(B)(2) Marijuana establishments shall not be located within 500 feet of a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility. The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundaries of the recreation or youth center, or the main public entrance of the building in which religious services are regularly conducted, or the correctional facility.

The distances from the public entrance of the building to the portion of the building where Soldotna Kids Early Learning Center is located was originally measured using KPB GIS Imagery and was determined to be 985 feet. Platting staff went to the location and measured the walking distance with a measuring wheel. The distance was determined to be 969' feet.

In the desk packet is an additional plat map for the retail store's parcel. Per KPB 7.30.020(C)(1), there needs to be proper ingress and egress. The retail store will be located on a parcel that appears on a plat from 1961. This plat shows this property abutting a 50 foot roadway. The property to the west can be seen on a survey done in 1967. When that survey was done they dedicated 30 feet of right of way and left a 20 foot flag on the lot. This flag is between the Spruce Avenue E and the lot the retail store is proposed. The parcel does not front Spruce Avenue East and the legal access is only on the Kenai Spur Highway. Applicant may need to provide documentation that a public access easement or a private driveway easement exists, or documentation of their driveway permit.

The acknowledgement form has been received by the borough. It is signed by the applicant that they agree to no parking within borough rights-of-way and that business will not be conducted between the hours of 2:00 a.m. and 8:00 a.m. The site plan does not clearly mark the ingress and egress for traffic nor are the delivery vehicle routes clearly marked.

In the desk packet is a comment received expressing concern and objection to this license due to its close proximity to the various facilities for children. There is concern in regards to the signs and advertising that will be located on the site near the three facilities.

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

Patricia Patterson, 1009 Crow Ct., Kenai AK 99611: Ms. Patterson expressed a concern related to state statutes on signage and advertising. Ms. Patterson owns High Bush Buds. She stated that she has been involved with the borough and the marijuana task force all the way from the beginning. The borough has made certain conditions based on state regulations that have changed. When marijuana business first opened up there were many questions regarding advertising. Were t-shirts with business logos advertising, is a business card advertising, it was very unclear and she felt that the advertising regulations were poorly written. In 2018, AMCO began meeting on the topic of advertising and in 2019, they put out revised regulations. One of the changes they made was regarding signage. Marijuana business are now allowed to have three signs. This change was made to treat marijuana business like all other business. They are allowed to have signage such as open/close signs, hours of operation, business names and types of products along with the warnings. It was determined that there was no way to identify all the ways that businesses might advertise their products in the future, so AMCO was given the power to interpret advertising regulations as they see fit on a case by case basis. The one regulation that they did not take out from the original advertising regulations was that business could not advertise within 1000 feet of schools, daycares, youth facilities, parks, libraries, anywhere children might be present. This creates concerns for Fat Tops because of their location to three of these types of facilities. In order to respect the borough's decision to support marijuana business, she wants it to be noted that she has no idea how AMCO is going to enforce advertising regulations that are in conflict themselves. She felt it would be good for the Planning Commission to review with AMCO enforcement the types of advertising Fat Tops will be using. So if there are going to be objections from neighboring business the commission would know what the public is going to be see. Ms. Patterson stated her business has supported by the borough and she believes

it is due to her transparency and willingness to work with her neighbors and community.

David Isaac, 47189 Jefferson Ave., Soldotna, AK 99669: Mr. Isaac's wife and her sister own the property next to the property where this store will be located. He objects to the store's location and does not believe that it would be a healthy addition to the community. He believes that the facility will be too close to schools or facilities used by children. If the store will be too close to these facilities, he does not understand why the license is even being considered.

Sharon Isaac, 47189 Jefferson Ave., Soldotna, AK 99669: Ms. Isaac owns the property next to this proposed store. Her folks purchased this property back in the early 1950s and she lived there as a young child. She is concerned about the facilities with children and their exposure to this business. She is also concerned about how this business will affect her property value. She does not believe that this is an appropriate location for this business.

Karen Tollackson, Spokane WA: She is the sister of Sharon Isaac. They own the little strip of land next to the proposed store and she will not allow it to be use as an access to the store. Like her sister, she does not support this business coming into the area.

James W. Browning, PO Box 3978, Soldotna, AK 99669: Mr. Browning's objection to the proposed location of the dispensary is the location in relation to already established businesses where children are present. Fat Tops' current advertisements obviously promote the fact that they sell marijuana. This application will be for a second location. Located nearby is a daycare, a child-learning center and a wrestling center that children frequent. The wrestling center has their kids running in the neighborhood and they will be running right past this store. Children and their parents would pass by the dispensary to reach these facilities. Any signage or visible advertisement will be obvious and noticeable by a large number of children.

Seeing and hearing no one else wishing to comment Chair Martin public comment closed and discussion was opened among the commission.

MOTION: Commissioner Ruffner motioned, seconded by Commissioner Bentz to forward to the Assembly the application for a retail marijuana store license for Fat Tops, LLC with staff findings and 3 conditions be placed on the state license.

Commissioner Ruffner had a question for staff. He wanted to know if all three of the facilities discussed are sufficient distance from the proposed retail store. Ms. Hindman replied yes. When desktop GIS measurements showed that it was close, Mr. Huff went into the field and measured the distances between the three facilities and the proposed store. Ridgeway preschool was outside the 1000-foot code requirement for schools. The code requirement for the distance between the daycare and training facility, which is outside 500 feet by walking distance, were met. Commissioner Ruffner then asked staff for clarification regarding the conflicts regarding advertising. Ms. Hindman replied that borough code does not address advertising requirements; advertisements requirements are addressed by state statute. Ms. Hindman did note when she reviewed the application she was aware there might be conflicts with state statutes regarding the advertising as it related to the distances from the daycare and the wrestling facility. Commissioner Ruffner then wanted to know what the best mechanism would be to pass the advertising concerns on to the Assembly so that it could be addressed by the State. Ms. Hindman stated that information regarding these concerns would be passed on to the Assembly. She also noted that the commission could make a motion to add to their recommendation to the Assembly, asking that this concern be noted and passed on to the State.

Commissioner Fikes echoed Commission Ruffner's and the public's concerns regarding the distances between these facilities and the proposed store location, and potential advertising issues. She stated that she has seen Fat Tops' advertising at their other location and it is very visible and makes clear exactly what it is that they sell. She felt that these were very real concerns. She wanted to make sure that the concerns are passed on to the State so that they will be included in their review of this license.

Commissioner Bentz noted that the application addresses the applicant's plan for signage, which is found on page 61 of the meeting packet. It appears that the description of the signs follows new state requirements. She noted that on page 29.1 of the desk packet the signage, as described, does meet the requirements and in this case would not be considered advertising or promotions. She believed the signage

would not be considered advertising, and therefore would not be subject to the 1000-foot requirement from any child center facility. For clarification for the commission and the public, Commissioner Bentz read from the application, "Signage will be attached either to the building or within the windows; no marijuana may be visible to the public. Each sign will not exceed 4800 square inches. The sign would depict the name of the retail facility, address, phone number and any logo. The signage will not be enticing towards children. No more than three signs will be permitted."

Commissioner Ecklund asked staff for clarification on the definition of a school. She believed that a facility called the Soldotna Kids Early Learning Center should fit the definition of a school. The other facilities could be considered recreation or youth centers. KPB Code 7.30.020(B)(1 & 2) talks about schools, if you have an early learning center, why does that not fit the definition of a school. Mr. Kelly replied that KPB code does not have a definition for a school. The name of the facility contains the words, early learning center, but it is his understanding the facility is a daycare. Whether or not the facility should be considered a school is a question for the commission to consider. KPB code does not define schools except to state that a marijuana establishment shall not be located within 1,000 feet of any school. As far as signage, Mr. Kelly said Commissioner Bentz summed it up well. 3 AAC 306.770 states not more than three signs visible from the right-of-way; two of the three signs must be placed on the building or in a window; and the signs must not exceed 4800 square inches. Mr. Kelly also noted that 3 AAC 306.060 states that a local government may recommend conditions and that the board will impose those conditions unless the board finds the recommended conditions are arbitrary, capricious, and unreasonable. If the Planning Commission wants to recommend additional conditions, in addition to the ones in the staff report, they may do so as long as they meet state statute and code. Mr. Huff then noted that code defines a recreation or youth center as a building, structure, athletic playing field, or playground run or created by a local government or the state to provide athletic, recreational or leisure activities for minors; or operated by a public or private organization licensed to provide shelter, training, or guidance for persons under 21 years of age. Commissioner Ecklund then replied that she felt that the early learning center would fit the definition of a school.

Commissioner Ecklund then stated that she has concerns regarding the 2016 requirement that advertisements not being permitted within 1000 feet of the perimeter of any child-centered facility. The way she reads statute is that the applicant would have to place their signs on the building in such a way that it is not within the thousand-foot perimeter of any of the mentioned facilities in the staff reports. She believes there would have to be an inspection later to make sure the signage was not within the thousand-foot perimeter of any of the facilities. She noted that the wrestling center was closer to the marijuana facility than a thousand feet. To answer some of her concerns Mr. Huff explained how the distances between the facilities were measured. He stated Ridgeway Preschool was 1015 feet away from the facility and the way that he measured that was from the entrance to the marijuana facility, as a pedestrian would walk, down the street to the boundary of the preschool. The distance between the Kid's Learning Center and the facility down the Kenai Spur Hwy. was over 990 feet and borough code requires only 500 feet. Commissioner Ecklund then stated those distances do not relate to the advertising just facility distances. Mr. Huff replied that she was correct but that the borough does not regulate advertising; advertising is regulated by the state. Mr. Kelly noted that borough code 7.30.020 addresses distances between facilities and that 3 AAC 306.770(f) states that an advertisement of a licensed marijuana establishment, for marijuana product may not be place within a 1000-foot perimeter of any child center facility, school or other facility providing services to children. Mr. Kelly then stated that he felt that Commissioner Ecklund was correct in believing that the advertising would need to be outside of the 1000-foot perimeter regardless of whether it was a daycare or school.

Commissioner Fikes stated that she thought that the concerns regarding distances and advertising by the public and the commission were well expressed and that they should be forwarded on to the assembly and then to the state for consideration.

Chair Martin hearing no further discussion on the motion brought it back to the commission for a vote.

MOTION PASSED BY MAJORITY VOTE:

Yes	9	No	1	Absent	
Yes	Bentz, Brantley, Ecklund, Fikes, Gillham, Morgan, Martin, Ruffner Venuti				
No	Carluccio				
Absent					

After the vote Commissioner Ecklund, wanted to know what vehicle, other than the meeting minutes, would be used to ensure that the assembly was aware of the commission's concerns about the code definition of a school being a little weak. She want the assembly to know that she would have considered the daycare facility a school, which made her voting yes on this very difficult. Chair Martin replied that he was relying on the minutes from this meeting and the preparation work of the Assembly prior to their meeting. He also hoped that the applicant would attend the assembly meeting would make himself available to answer any questions.

AGENDA ITEM G. UTILITY EASEMENT VACATIONS

1. Eventyr Subdivision Number 3 Utility Easement Vacation
KPB File 2020-079V

STAFF REPORT

PC Meeting: August 24, 2020

Purpose as stated in petition: Easement not used. Provides more useful area to lots.

Petitioners: Molly E. Hannigan and Christopher Johnson

Location: Off Lawton Drive and Linwood Lane, City of Kenai

Notification: Notice of vacation mailings were sent by regular mail to 20 owners of property within 300 feet. Notice of the proposed vacation was emailed to 7 agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

Comments Received:

HEA: No objection.

ENSTAR Natural Gas: No objection.

GCI: No objection.

ACS: No objection.

KPB Roads: n/a

SUPPORTING INFORMATION:

The petition is to vacate several utility easements within proposed subdivision Eventyr Subdivision Number 3, KPB File 2020-079. This petition includes:

- A 10 foot wide utility easement along the southern property line of Lot 4, Eventyr Subdivision, Plat KN 83-149.
- The northern 10 foot wide utility easement along the northern property lines of Lots 5 and 6, Eventyr Subdivision No. 2, Plat KN 86-75, excluding the western 10 feet abutting Linwood Lane.
- The eastern 10 foot wide utility easement along the eastern property line of Lot 6, Eventyr Subdivision No. 2, Plat KN 86-75, excluding the southern 10 feet abutting Lawton Drive.

The City of Kenai Planning and Zoning Commission reviewed the plat that depicted the utility easement vacation at their July 8, 2020 regularly scheduled meeting. They approved the plat, including the easement vacations, subject to "The Kenai City Council must declare the ten foot (10') utility easements not needed for a public purpose and approve the vacation of the utility easements as shown on the preliminary plat."