

Kenai Peninsula Borough
Planning Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor

FROM: Marcus Mueller, Land Management Officer 

DATE: September 7, 2021

RE: Ordinance 2021-28; Authorizing a lease to Robert Gibson, dba Alaska Land & Cattle Company of approximately 280 acres of Borough land in the Basargin Road area for agricultural use.

On August 3, 2021 the borough assembly held a public hearing and passed a motion to postpone the Ordinance 2021-28 in order that it could go back to the Kachemak Bay Planning Commission for review.

The Kachemak Bay Advisory Planning Commission met on August 19, 2021 and passed a motion to recommend approval of Ordinance 2021-28.

The Kenai Peninsula Borough Planning Commission reviewed the Kachemak Bay Advisory Planning Commission's August 19, 2021 meeting minutes and recommendation on Ordinance 2021-28 at their regularly scheduled meeting of August 23, 2021. The Planning Commission decided no action was required on their part.

Unapproved August 23, 2021 PC Meeting Minutes
Unapproved August 19, 2021 Kachemak Bay APC Meeting Minutes

AGENDA ITEM E3

Ordinance 2021-08 authorizing a lease to Robert Gibson, dba Alaska Land & Cattle Company, for approximately 280 acres of Borough land in the Basargin Road area for agricultural use.

Staff report by Marcus Mueller

The Planning Commission at its regularly scheduled meeting on July 12, 2021 recommended approval of Ordinance 2021-28 to the assembly by unanimous vote.

Ordinance 2021-28 authorizes an agricultural lease to Alaska Land & Cattle Company. The agricultural lease is structured to authorize use and development according to a Farm & Rangeland Development Plan.

During the initial review of Ordinance 2021-28, the Farm and Rangeland Development Plan was not available to the Kachemak Bay Advisory Planning Commission (K-Bay APC), and the plan was presented to the Planning Commission as a laydown just prior to the July 12, 2021 meeting. The KPB Assembly postponed action on Ordinance 2021-28 in order that the K-Bay APC could review the plan and to allow the Planning Commission to consider the K-Bay APC comments.

The KPB Assembly additionally asked for clarification on aspects of the original plan, which the applicant has attempted to address in a plan amendment.

The meeting schedule for Ordinance 2021-28 taking into consideration the amended Farm & Rangeland Development Plan is as follows:

- Kachemak Bay APC Special Meeting August 19, 2021
- KPB Planning Commission August 23, 2021
- KPB Assembly Hearing September 7, 2021

The K-Bay APC held a special meeting on August 19, 2021 to review the Farm and Rangeland Development Plan. Mr. Gibson attended the meeting to answer any questions. At this meeting, the K-Bay APC recommended approval of this agricultural lease.

END OF STAFF REPORT

Chair Martin noted public comment was closed on this item. He then invited Mr. Gibson to the podium to answer any questions from commission.

Commissioner Bentz asked Mr. Gibson about the proposed location for the water holes and wanted to know what those water sources would look like. For instance, will they be ponds? Mr. Gibson replied he plans to try water dousing to find the best locations for waterholes. He will also look for natural depressions in the ground where water can accumulate via rain and snow. The reason for multiple waterholes is when fencing is put up it restricts cattle movement you must make sure there is a source of water within the area. He also noted it is very labor intensive to drive cattle. He does not want to have to drive cattle from one location to another in order to water them. He is looking for three locations for waterholes. One is a natural spring west of Basargin Road; the other two will most likely be located in higher locations. The higher locations will allow for better drainage and reduce the muddy areas that come from livestock congregating around waterholes. The locations for these two holes has not been determined but will be within the general area east of the haul road that goes up to East End Services gravel pit. Another possible option would be to pump water from the spring to another location using a method called ram pumping. Ram pumping is an ingenious way of pumping water uphill, which does not require electricity. He stated that he is planning to run about 50-75 head of cattle.

Commissioner Bentz asked staff if there was a plan for the borough to submit a water rights application on this property. Mr. Mueller replied property owners have access to water on the land without having to apply for water rights. It has been the practice of the borough to seldom apply for water rights. The only cases where he is aware of the borough applying for water rights has been with school facilities. Commissioner Bentz replied in cases related to agricultural leases it might be wise for the borough to consider longer-term water uses and apply for water rights. Not only would this provide valuable information on water use and water availability for borough properties, but this information would be valuable for regional planning

purposes as well. She understands this is not a part of the application before them tonight; however, she would encourage Land Management to consider this with future applications.

Chair Martin asked the commission if any believed that there was a need to amend their earlier motion. Seeing or hearing no comment from the commission, he moved on to the next item on the agenda.

AGENDA ITEM E4

PC Resolution 2021-28: Establishing the Appeal Procedure for Appeals of the Planning Director's Decision on Reconsideration to Uphold a Prior Decision Approving a Nonconforming Use Application within C&H Estates LOZD.

Staff report given by Sean Kelley.

Two appeals have been filed appealing the KPB Planning Director's Decision to the decision issued July 6, 2021 by KPB Planning Director Melanie Aeschliman to approve in part and deny in part a nonconforming use application for five (5) nonconforming uses of Lot 35A, C & H Estates, according to Plat 80-23, Homer Recording District (KPB Parcel ID #174-410-45).

Borough code does not provide an appeal procedure for appeals of staff decisions. Mr. Kelley then noted there is a plan to amend KPB 21.20 to add a section for appeals of staff decisions but that has not happened yet so a resolution setting a procedure for this hearing is required.

This resolution would establish a procedure for the parties and planning commission to follow for these two consolidated appeals (this "appeal").

Mr. Kelley noted that he will be advising the Planning Commission in this matter, and Acting Borough Attorney Patty Burley will be representing the Planning Department. A copy of this resolution was emailed to: (1) the KPB Planning Director; (2) Appellant Cutlers; and (3) Appellant/Applicant Lang.

This resolution provides a possible procedure for this appeal. The appellants, respectively, may submit their own proposed procedure and/or propose alternatives to the procedure proposed by this resolution. Mr. Kelly then noted that comments had been received from appellant Cutler and appellant Lang and neither had objections the procedure as laid out in the resolution. Appellant Lang did request the hearing be schedule for some time in October as he will be unavailable for the month of September.

There is also a place in the resolution for the commission to set an evidence deadline and hearing date.

END OF STAFF REPORT

Mr. Kelley made himself available for any questions the commission may have.

Commissioner Fikes asked what would happen if the commission takes no action on this resolution. Mr. Kelley replied since an appeal has already been filed, the option to take no action is not possible. Code states that a decision of the planning director may be appealed to the Planning Commission. Code does not address the procedure for hearing appeals of administrative decisions, which is why the resolution is needed. Commissioner Fikes asked if this resolution is just affirming the process from the last resolution. Mr. Kelley replied this is the second appeal from C&H LOZD; the earlier resolution was specific to the first case. This second resolution is similar to the first resolution but also includes some recommend changes from the commission from the previous hearing discussion. For instance instead of having a separate rebuttal and closing statements he has combined them into one rebuttal/closing statement as was recommended on the floor by the commission. He felt best practice in this situation was to set a specific procedure for this new appeal.

Chair Martin opened the meeting for public comment.

Craig Cutler, 40130 Portlock Drive, Homer AK, 99603: Mr. Cutler wanted to know if the resolution was going to be the agreed upon hearing procedure. He stated that he had no issues with the procedure laid

From: [Taylor, Bryan](#)
To: [Shimberg, Ann](#)
Cc: [Fletcher, Sandra](#); [Mueller, Marcus](#)
Subject: FW: <EXTERNAL-SENDER>KB APC minutes
Date: Monday, August 23, 2021 8:29:01 AM
Attachments: [KACHEMAK BAY APC Unapproved Minutes 081921.docx](#)
[KACHEMAK BAY APC Approved Minutes 070821.docx](#)
[image001.png](#)

Ann,

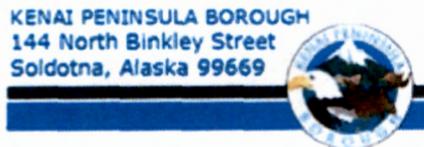
Please pass on the recommendation below from the K-Bay APC to the Planning Commission. This recommendation is for the Gibson agricultural lease. The unapproved minutes from their August 19, 2021, meeting, at which the recommendation was made, are attached.

K-Bay APC recommendation:

- We approved a motion to support the Ordinance 2021-21 agricultural lease.

Thank you,

Bryan Taylor, AICP
Planner
(907) 714-2206
btaylor@kpb.us



From: Eric Knudtson <epknudtson@gmail.com>
Sent: Friday, August 20, 2021 9:25 AM
To: Fletcher, Sandra <sfletcher@kpb.us>; davelouiseandgalen@gmail.com; Taylor, Bryan <BTaylor@kpb.us>
Subject: <EXTERNAL-SENDER>KB APC minutes

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

I've attached the approved minutes from June and the unapproved minutes from yesterday's meeting.

**KACHEMAK BAY ADVISORY PLANNING COMMISSION
SPECIAL (VIDEO CONFERENCE) MEETING
LOCATION: ZOOM
Thursday, August 19, 2021
7:00 P.M.**

UNAPPROVED MINUTES

- A. CALL TO ORDER: 7:00 pm
- B. ROLL CALL
 - Present: Eric Knudtson, Louise Seguela, Tim Whip, and Bruce Robinson
 - Two vacancies
 - Quorum has been met to move forward with the meeting.
 - Owen Meyer, Courtney Brod, and Robert Gibson also participated.
- C. APPROVAL OF MINUTES
 - 1. Approved June 8th, 2021 minutes.
- D. PUBLIC COMMENT/PRESENTATION WITHOUT PREVIOUS NOTICE
 - 1. None
- E. CORRESPONDENCE
 - 1. None
- F. REPORT FROM BOROUGH
 - 1. None
- G. OLD BUSINESS
 - 1. We postponed Jim Kogstad's presentation until our next meeting.
 - 2. Mr. Gibson answered our questions about his farm plan. We approved a motion to support the Ordinance 2021-21 agricultural lease.
 - 3. We agreed to discuss and review our KB APC plan at our next meeting when a KPB planner will be in attendance.
 - 4. We agreed to discuss again our role in reviewing plates with a KPB planner at our next meeting.
- H. NEW BUSINESS
 - 1. No comment on Falls Creek Estates Unit 5 KPB 2021110.
 - 2. We accepted the resignation letter of Andrea Kostos from the commission.
- 3. ITEMS FROM COMMISSION
 - a. None
- I. ANNOUNCEMENTS

1. None

J. COMMISSIONERS' COMMENTS

K. ADJOURNMENT – 8:33 pm.