



# KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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**MIKE NAVARRE**  
**BOROUGH MAYOR**

## MEMORANDUM

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

**FROM:** Max Best, Planning Director 

**DATE:** July 17, 2017

**SUBJECT:** Application for a new Limited Marijuana Cultivation Facility License. **Applicant:** High Tide Distributors; **Landowner:** Dennis R & Tena L Humphrey; **Parcel #:** 01336030 and 01336029; **Property Description:** Lot 8 and Lot 9, Block 2, Halbouty Heights Subdivision, according to Plat 78-184, Kenai Recording District.; **Location:** 49172 Heights Lane, Nikiski, Nikiski Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled July 17, 2017 meeting.

A motion to recommend approval of the High Tide Distributors, 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 KPB 7.30.020(A).

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

AGENDA ITEM F.

PUBLIC HEARING

5d. State application for a marijuana establishment license; Nikiski Area

Staff Report given by Bruce Wall

PC MEETING: July 17, 2017

**Applicant:** High Tide Distributors  
**Landowner:** Dennis R & Tena L Humphrey  
**Parcel ID#:** 013-360-30 and 013-360-29  
**Legal Description:** Lot 8 and Lot 9, Block 2, Halbouty Heights Subdivision, according to Plat 78-184, Kenai Recording District.  
**Location:** 49172 Heights Lane, Nikiski

BACKGROUND INFORMATION: On March 9, 2017 the applicant notified the borough that he/she had submitted an application to the state for a Limited Marijuana Cultivation Facility license. On March 16, 2017 the applicant supplied the borough with a signed acknowledgement form, and a site plan on March 16, 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 June 27, 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 June 28, 2017 to the 15 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the July 6, 2017 & July 13, 2017 issues of the Peninsula Clarion.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on July 3, 2017.

#### 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

Due to technical difficulties with mics, Chairman Martin called a recess at 8:00 p.m. Chairman Martin reconvened the meeting at 8:05 p.m.

Chairman Martin opened the meeting for public comment.

1. Brian Hack, 49106 Heights Ln  
Mr. Hack stated that their house is adjacent to this subject property and they have been trying to sell their house for a year. He expressed concern that they will not be able to sell their property with this facility in a residential area or that they would have to take a substantial cut.

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

Commissioner Carluccio asked how close he was to this facility. Mr. Hack replied that he was less than 300 feet to this facility.

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

2. Dr. Donald Staton, 49066 Heights Ln

Dr. Staton stated that this appeared to be in violation of their subdivision covenants. It stated that "No lots shall be used except for residential purpose." This is a small residential community. Additionally, listed as a "nuisance, no noxious or offensive activity shall be carried on upon the lot." He stated that he and his wife have smelled the foul odor of marijuana for the last two months.

Chairman Martin asked if there were questions for Mr. Staton. Hearing none, the public hearing continued.

3. Dennis Humphrey

Mr. Humphrey stated that he was the owner of the property and brought the property back in 2003. He stated that there is a lot in-between the property that this was on. They own both lots and the lot behind their house.

Mr. Humphrey disagreed that they could smell the odors and stated that they could not smell around their property. Also, the covenants that went along with the subdivision has not been enforced since he bought the property.

Chairman Martin asked if there were questions for Mr. Humphrey. 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 Venuti moved, seconded by Commissioner Fikes to recommend approval of High Tide Distributors, 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 KPB 7.30.020(A).

Commissioner Ecklund asked staff if the covenants were a civil action and that the landowners would have to take up their concerns through a civil court regarding the covenants. Mr. Wall replied that the covenants were a civil matter and that the Borough does not enforce covenants.

Commissioner Ecklund referred to *KPB 7.30.020(E)* allows the recommendation of additional conditions on a license to meet the following standards which are: 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. One of them was protection against off-site odors. She asked anyone to report to the borough's planning office if there was damage to adjacent properties, offsite odors, noise, visual impacts, road damage, criminal activity and public safety. They can address those when the license comes up for renewal.

**VOTE:** The motion passed by unanimous consent.

CARLUCCIO YES	ECKLUND YES	ERNST ABSENT	FIKES YES	FOSTER ABSENT	ISHAM YES	LOCKWOOD YES
MARTIN YES	MORGAN YES	RUFFNER ABSENT	VENUTI YES	WHITNEY ABSENT		8 YES 4 ABSENT

~~AGENDA ITEM F. PUBLIC HEARING~~

~~5e. State application for a marijuana establishment license; Nikiski Area~~

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~~PC MEETING: July 17, 2017~~