



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director 

DATE: October 11, 2016

SUBJECT: Limited Marijuana Cultivation Facility License Application. **Applicant:** Terra House LLC; **Landowner:** Michael J. Lowry; **Parcel #:** 05564115; **Property Description:** Lot 3B Gaede Eighty Subdivision Addition No. Five, according to Plat 2002-47, Kenai Recording District; **Location:** 48714 Jones Road, Suite 1, Soldotna, AK, Kalifornsky Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled October 10, 2016 meeting.

A motion to recommend approval of the Terra House LLC, a Limited Marijuana Cultivation Facility license 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 KPB 7.30.020(A).

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

AGENDA ITEM F.

PUBLIC HEARING

2. State application for a limited marijuana cultivation establishment license; Kalifornsky Area

Staff Report given by Bruce Wall

PC MEETING: Monday, October 10, 2016

Applicant: Terra House LLC

Landowner: Michael J. Lowry

Parcel ID#: 055-641-15

Legal Description: Lot 3B Gaede Eighty Subdivision Addition No. Five, according to Plat 2002-47, Kenai Recording District

Location: 48714 Jones Road, Suite 1, Soldotna, AK

A limited marijuana cultivation facility license allows a maximum of 500 square feet of cultivation area. No retail sales will be allowed at the facility.

BACKGROUND INFORMATION: On April 7, 2016 the applicant notified the borough that he/she had submitted an application to the state for a Limited Marijuana Cultivation Facility license. September 15, 2016 the applicant supplied the borough with a signed acknowledgement form and a site plan on September 15, 2016 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 September 14, 2016. 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 cultivation 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 cultivation 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.
 - During a site visit it was determined 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 consider this application at their October 27-28, 2016 meeting. They 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 September 19, 2016 to the 17 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the September 19, 2016 & October 6, 2016 issues of the Peninsula Clarion.

Two letters of opposition were received and included in the Desk Packet.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on September 22, 2016.

ATTACHMENTS

- State marijuana establishment application with associated submitted documents
- Aerial map
- Area land use map with 500' & 1,000' parcel radius
- Public Notice

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. Travis McCullough, 48746 Jones Road
Mr. McCullough stated that his property is right in front of Mr. Lowry's property. He has had no problems with his neighbors; they have been great neighbors.

Mr. McCullough commented that they have had problems with drugs in this neighborhood. There are times when they can't come home because the police are trying to deal with drugs in the neighborhood or whenever there are State Troopers parked in his own driveway because they are doing a bust several hundred yards down the road from where they live. Drugs have been an inherent problem in their neighborhood. He has been at this residence for 11 years and has seen this since he has been there. To have more issues come in with marijuana was something that he would not want to have since he has three children of his own. Mr. McCullough understood the people that want to do this. His neighbors have young children of their own that will be in this facility where they are growing marijuana.

Mr. McCullough stated he has been in this house before and knows the house fairly well because the neighbor that lived behind him before the current owners was his student when he taught college. He used to look after the house when he was gone. Mr. McCullough expressed concern that the area the children will be sleeping in will be above the garage where the cultivation facility will be located.

Mr. McCullough also expressed concern of potential fire which could occur and create smoke that could affect his property. He also was concerned about the resale of his property. His house was set up so that a family would be able to purchase it in the future. He felt it would be hard to resale his house if it was known that there was going to be a marijuana cultivation facility literally surrounding his property. Not only that, they are looking at putting a marijuana cultivation facility within a residential neighborhood and not in a commercial entity. There are many aspects of this that he finds frustrating. Mr. McCullough understood the desire to have something like this. All he asks is that it not be done in the neighborhood though they are not in a neighborhood that has restrictions and covenants. There are a lot of people in this neighborhood. His wish is that this facility not be at this location. There are properties that this could be done at, just not at one where there are places that will impact not only his house but also the neighborhood that already has a problem with other types of drugs.

Mr. McCullough reiterated his concerns that the facility was below the bedrooms that the children will be sleeping in. The area to go into the house is an open area, not a sealed area. When the door is opened it allows the odor or fumes to go through the house. This would be a cultivation facility that was being made out of a house. It was not intended to be a cultivation facility. His concerns were expressed and he was available to answer questions.

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

2. Richard Page, 34235 Page St

Mr. Page lives directly adjacent to the subject property and agreed with Mr. McCullough's testimony. He has lived at this location since 1976 and helped to build that house. Now, he has grandchildren next door. Mr. Page has also seen over the years that this area has become a real drug area; a lot of crime has started to develop there. There have been things stolen out of his yard by people who needed money for drugs. This is an area that they don't need to add more drug related problems to. He felt that the facility itself could be susceptible to crime with people looking for drugs. That would increase the amount of problems that they have in the area.

Mr. Page stated they would not like to be known as an area where the troopers have to come regularly. They have had their roads blocked off during standoffs there because of drug related problems. He stated they would prefer not to have it promoted in that area anymore and was available to answer questions.

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

3. Scott Page, 34235 Page St

Mr. Page lives right next door to his dad and expressed complete agreement with the testimony that has been given. They don't want to see extra drug activity out in the area. There has been stuff stolen off the property which was directly tracked to drug activity. He expressed opposition to the facility and would not like to see it in their area.

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

Commissioner Ruffner asked where Page St was located. Mr. Page replied that it was off of Gaede Lane. Commissioner Ruffner asked if it was directly adjacent to the subject site. Mr. Page replied that they are very close to the proposed facility.

There being no further comments or questions, 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 Isham to recommend approval of Terra House LLC, a limited Marijuana Cultivation Facility License according to staff recommendations and findings with a recommendation that the following 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 Foster asked if the applicant already obtained approval from the Fire Marshall. Mr. Wall replied yes.

Commissioner Carluccio asked for clarification regarding a house being on top of the facility. Mr. Wall replied that the house is a two story house with a garage on the ground level. Part of the house was constructed over the garage. He referred to pages 84-85 of the packet which shows the diagram of the house and facility.

Michael Lowry, 48714 Jones Road

Mr. Lowry stated that about 1/3 of house was constructed over the garage. The main living areas were not constructed over the garage.

Commissioner Carluccio asked which 1/3 of the house was over the garage. Mr. Lowry replied that it was the bedrooms.

Commissioner Venuti asked if the State Statute permits cultivation facilities in dwellings. Also, he understood that anyone involved in a facility has to be trained. He wondered if they would be in compliance with the Statute if there were children in the facility. Mr. Wall replied that no one under the age of 21 was allowed to be involved in the business. Anyone that handles the marijuana was required to have a Marijuana Handlers License. He stated that the application indicates that the entrance from the converted garage into the house will have a double entry door with two lock on it which will be double keyed. Someone could not travel from the converted garage into the house or vice versa without a key. The Marijuana Control Board allows cultivation within residences under certain parameters as long as they have met the Control Board's concerns about being able to travel from one portion of the house to the cultivation area.

Commissioner Glendening asked if the area would be locked and anyone under the age of 21 would be barred from the growing area. He asked if the area was co-joined with the house. Mr. Wall replied yes, but was separated by two locked doors. Commissioner Glendening asked if it was hermetically sealed and asked if the air could move from one area of the house to the other. Mr. Wall replied that the application did not indicate that and wasn't sure that was a requirement that the State had. Commissioner Glendening asked if that understanding could be confirmed prior to approving this application especially when children were present. Mr. Wall replied that it was not addressed in the State regulations so it would be at the discretion of the Marijuana Control Board when the license was issued.

There being no further comments or questions, Chairman Martin called for a roll call vote.

VOTE: The motion passed by majority consent.

CARLUCCIO NO	COLLINS NO	ECKLUND ABSENT	ERNST YES	FOSTER YES	GLENDENING NO	ISHAM YES
LOCKWOOD YES	MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI NO	WHITNEY NO	7 YES 5 NO 1 ABSENT