

Kenai Peninsula Borough
Planning Department

MEMORANDUM

TO: Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor

FROM: Marcus A. Mueller, Acting Planning Director 

DATE: October 14, 2020

RE: Ordinance 2020-43: Amending KPB 21.44.110 - Nonconforming Uses, to clarify expansion related to agricultural purposes, that a nonconforming use runs with the land and to extend the nonconforming use application deadline for C & H Estates.

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled October 12, 2020 meeting.

A motion passed by unanimous vote (8 Yes, 0 No, 2 Absent) to recommend the adoption of Ordinance 2020-43.

In the ordinance, please amend the last WHEREAS statement:

WHEREAS, at its meeting of October 12, 2020, the Planning Commission reviewed this ordinance and recommended approval by unanimous vote.

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

- 6. Ordinance 2020-43, Amending KPB 21.44.110, Nonconforming Uses, to clarify expansion related to agricultural purposes, that a nonconforming use runs with the land, and to extend the nonconforming use application deadline for C&H Estates.

Staff report given by Marcus Mueller.

The amendments will clarify a source of conflict and confusion in current KPB 21.11.110. Following the formation for the C&H Estates Local Option Zoning District (LOZD), an issue that has been expressed by property owners in the LOZD is that current KPB 21.44.110 does not explicitly state that a nonconforming use runs with the land and is therefore transferable upon the sale or lease of a property. The proposed amendments address those concerns.

The clear focus of KPB 21.44.110 is on the use not the owner. The code amendments will simply reflect current practice and interpretation.

The amendment also address a concern related to agricultural use property and this issue of whether a growth in farming activity or, say, a crop rotation to another area of a parcel is considered a prohibited expansion of the use. The amendments will clarify that a nonconforming use determination for agricultural purposes is for the entire parcel and that adjustments to the farmable area is not considered an expanded use for purposes for KPB 21.344.110

Finally, the on-year deadline under KPB 21.44.110 for C&H Estates LOZD property owners to apply for a nonconforming use expires January 7, 2021. This ordinance extends that deadline to April 7, 2021 to account for these amendments.

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Hearing no one wishing to comment Vice Chair Ruffner closed public comment and discussion was opened amount the commission.

MOTION: Commissioner Venuti motioned, seconded by Commissioner Gillham to forward to the Assembly a recommendation to adopt Ordinance 2020-43.

Vice Chair Ruffner had a question for staff. He understands that a non-conforming use grandfathered in will go away if that use is discontinued for a year. If a property is subdivided, will the non-conforming use go way then? What are the triggers that will cause a non-conforming use to go away? Mr. Kelly answered he was correct that discontinuing a use would cause the non-conforming use to drop off, General so would expansion or subdividing. He would need to think how expansion/subdividing would affect an agricultural non-conforming use. For instance, if an agriculture non-conforming use parcel were to subdivide into two agriculture use parcels. However, discontinuing a use, subdividing or expansion are the general reasons for a non-conforming uses to drop off. Vice Chair Ruffner replied that was his understanding as well, however he does not see the subdividing issue addressed clearly in the ordinance rewrite and it may cause issues in the future. Mr. Kelly agreed and stated it is understood by all stakeholders involved, the LOZ ordinance requires a substantial rewrite. He is hoping that will occur when the new Planner comes onboard. Mr. Kelly stated this particular rewrite is surgical in nature to address a specific need and is not intended to substantially change the ordinance.

MOTION PASSED: Seeing and hearing no further discussion or objection, the motion passed by unanimous vote.

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Fikes, Gillham, Morgan, Ruffner, Venuti				
No	None				
Absent	Ecklund, Martin				