



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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MIKE NAVARRE
BOROUGH MAYOR

M E M O R A N D U M

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

THRU: Mike Navarre, Borough Mayor

FROM: Max Best, Planning Director 

DATE: March 31, 2016

SUBJECT: Ordinance 2016-03 Substitute, An Ordinance Amending KPB Chapters 21.44 and 21.46 Regarding Local Option Zoning, and Repealing KPB 21.50.050 Relating to Fines and Reenacting as KPB 21.50.055

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled March 28, 2016 meeting.

A motion passed by majority consent to recommend approval of Ordinance 2016-03, Substitute, an Ordinance amending KPB Chapters 21.44 and 21.46 Regarding Local Option Zoning, and Repealing KPB 21.50.050 Relating to Fines and Reenacting as KPB 21.50.055 as amended. (Carluccio, Absent; Collins, Yes; Ecklund, Yes; Ernst, Yes; Foster, Absent; Glendering, Yes; Holsten, Absent; Isham, Yes; Lockwood, Yes; Martin, Yes; Ruffner, Yes; Venuti, Yes; Whitney, Yes)

In the Ordinance, please make the following amendment to the last WHEREAS statement:

WHEREAS, the Planning Commission at its regularly scheduled meeting of March 28, 2016, recommended approval by majority consent.

The Planning Commission also addressed two amendments that were from Stan Welles & Gary Knopp.

An amended motion passed by unanimous consent to recommend approval of Gary Knopp's proposed amendment regarding the neutrality of borough owned parcels remaining neutral on the development of a LOZ Districts.

No action was taken on the Welles amendment regarding the development of a prohibited marijuana establishment district.

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

AGENDA ITEM F. PUBLIC HEARINGS

3. Ordinance 2016-03 Substitute, An Ordinance Amending KPB Chapters 21.44 and 21.46 Regarding Local Option Zoning, and Repealing KPB 21.50.050 Relating to Fines and Reenacting as KPB 21.50.055

Staff Report given by Max Best

PC Meeting: 3/14/16

This was a postponed item from the last meeting. Staff recommends that the Planning Commission open the public hearing and take testimony of those wishing to speak.

In the lay down packet there are two proposed amendments to the substitute ordinance for the Local Option Zoning regulations. Since this was an appending substitute ordinance it was ok to bring these before the commission.

WELLES PROPOSED AMENDMENT TO ORDINANCE 2016-03, SUBSTITUTE

The first amendment to Ordinance 201603 was from Stan Welles, Assembly member. The following amendment would establish a district that just prohibits marijuana but no other standards.

A number of people do not want marijuana establishments in their neighborhoods but they also do not want zoning. Therefore, I am proposing an amendment to ordinance 2016-03 which only prohibits commercial marijuana establishments in an LOZD known as the Prohibited Marijuana Establishment District. The other attributes of zoning such as restrictions on commercial uses and setbacks are not applicable in this zone, its sole purpose is to provide a mechanism for property owners to protect their area from marijuana businesses. A five acre maximum lot size is proposed as this is consistent with the single family residential and mixed use district LOZDs. The maximum lot acreage will also assist the planning department in configuring the zone. The owner of a larger lot may still opt into the zone as allowed by proposed ordinance 2016-03.

- Amend Section 1 of the ordinance to add a new section to chapter 21.44 numbered 21.44.215 entitled Prohibited Marijuana Establishment District which reads as follows:

21.44.215 Prohibited Marijuana Establishment District (P-MED)

- A. Marijuana establishments as defined by KPB 7.30.900 are prohibited in this district.
- B. There is no minimum lot size. The maximum lot size is 5 acres.

- Amend Section 1 to add a reference to the new Prohibited Marijuana Establishment District local option zoning district in KPB 21.44.040(B)(2) as shown in **bold** below:

21.44.040(B)(2)

- B. An LOZD may be initiated by the record owners of at least six lots within the proposed LOZD filing an application to form an LOZD. The applicants shall be owners of parcels proposed for regulation. The formation of the LOZD may include portions of subdivisions. The [PETITION] application shall:

- 2. **set forth whether the district will form a R-1, R-2, R-R, R-W, [OR] R-M or P-MED, C-3, I, OR R-C] zone [INCLUDING A COPY OF THE STANDARDS FOR THE APPLICABLE ZONE], and**

- Add a new section to include the Prohibited Marijuana Establishment District to KPB chapter 21.46:

21.46.125. Prohibited Marijuana Establishment (P-MED) District.

- A. The following Prohibited Marijuana Establishment Districts and official maps are hereby

adopted:

1.

- Amend section 9 to add the Prohibited Marijuana Establishment District to the table in KPB 21.50.050:

KPB 21.44.215(A)(B)	Prohibited Marijuana Establishment	\$300.00
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KNOPP PROPOSED AMENDMENT TO ORDINANCE 2016-03, SUBSTITUTE

The second amendment was submitted by Gary Knopp, Assembly member. The following amendment has to do with the Borough remaining neutral on the development of LOZD that contain parcels owned by the borough. The borough owned parcels would be excluded from the calculation of the 60 percent of parcels needed for support.

Local option zoning districts (LOZD's) are primarily a way for private property owners to choose to have the borough enforce zoning ordinances in their proposed district. Sometimes the Kenai Peninsula Borough has been the owner of parcels in proposed local option zoning districts. LOZDs are frequently a contentious issue and in my opinion it is inappropriate for the borough to be the deciding vote in these issues. I think the purposes of local option zoning districts would be furthered by not allowing the borough to express support or opposition to the formation of an LOZD unless it is the sole owner of all parcels proposed for an LOZD. The first part of this amendment would prohibit the borough from signing an application to form an LOZD unless it owns all of the parcels in the proposed LOZD.

Also, if the borough-owned parcels are included when calculating the 60 percent threshold needed to bring this before the assembly, then just prohibiting the borough from signing the summary to show support is the same as a "no" vote. In an effort to make the borough's role neutral, this amendment would also require the borough's parcels to be excluded from the calculation of the 60 percent of parcels needed for support. This would mean that 60 percent of the owners of the remaining parcels must support forming the LOZD for it to go forward.

I propose the following amendments to ordinance 2016-03.

- Amend KPB 21.44.040(B) as shown in **bold and underline** below:

21.44.040. [AREA AND PETITION] Formation requirements.

B. An LOZD formed under KPB 21.44.030(A) requires an application signed by the record owners of at least six lots within the proposed LOZD. The applicants shall be owners of parcels proposed for regulation, except that the Kenai Peninsula Borough may not be a signatory on such an application unless it is the sole owner of all lots within the LOZD. The formation of the LOZD may include portions of subdivisions. The [PETITION] application shall:

1. show opposite each signature of an applicant lot owner, a[N] street address if available and adequate legal description of the property owned,
2. set forth whether the district will form a R-1, R-2, R-R, R-W, R-M or C-3], I, OR R-C] zone [INCLUDING A COPY OF THE STANDARDS FOR THE APPLICABLE ZONE], and
3. include a map of the proposed [LOCAL OPTION ZONING DISTRICT] LOZD area.

- Amend KPB 21.44.060(C) by adding the following new statements shown in **bold and underline** below:

C. Prior to introduction to the assembly the planning department will provide the owners of each parcel within the proposed LOZD a summary statement of the LOZD's regulations and boundaries as required by KPB 21.44.050. In order for the

LOZD to be submitted to the assembly for introduction the owners of 60 percent of the parcels within the LOZD must be in favor of formation of the LOZD as represented by a parcel owner's signature on the LOZD summary distributed by the planning department. If the borough owns less than 100 percent of the parcels in the proposed LOZD, it may not sign the summary. Additionally, in that case the 60 percent requirement shall be calculated by first subtracting from the total number of parcels in the LOZD the number of parcels owned by the borough. The owners of 60 percent of the remaining parcels must sign the LOZD summary for the LOZD to be submitted to the assembly.

Your favorable consideration of these amendments would be appreciated.

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Travis Penrod, 36860 Virginia Dr, Kenai

Mr. Penrod believed the 500 foot buffer requirement from a LOZ was removed from the regulations. Some of the argument that was given against having that buffer was that if a parcel was not in a LOZ then they shouldn't be restricted by that zone. He felt it was standard operating procedures for civilization throughout this State and other States for certain types of activities to have a buffer. There are buffer requirements for alcohol establishments, sexually oriented businesses and marijuana establishments to make sure they aren't near schools. The buffer restriction limits landowners but it is common practice through civilization in this country to require that. Mr. Penrod gave an example that airplanes used to have smoking sections but that was stupid because in airplanes it is all a smoking section. It makes sense to have a buffer requirement when a lot within a LOZ was next to a marijuana establishment or a gravel pit. He felt there should be some sort of buffer requirement of at least 200, 300 or 500 feet. To place activities of a commercial nature right next to a LOZ that was designed for a residential doesn't make sense. Mr. Penrod felt it made sense to give people some sort of buffer between their property and a commercial activity. He recommended putting a buffer requirement back in the regulations and was available to answer questions.

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

Commissioner Ruffner stated that one of his concerns was making sure that people understood that different zones have slightly different regulations. He asked Mr. Penrod what his thoughts were on that. Mr. Penrod replied that there is now R1, R2, RR, RW and Multifamily zones. He didn't remember seeing some of those other ones but stated that his LOZ was R1. There are a few changes in R1. Once the new LOZ regulations are adopted then they would fall under the new regulations. Commissioner Ruffner stated that the Borough has real strong tendencies to have the prior existing uses or grandfather rights. The changes in R1 were subtle changes. Mr. Penrod replied that some of the changes were specifically to address people that were in his addition that got limited. One person put in that they could have a barn but there was an assembly member that thought that should not have been allowed. Everyone in his subdivision did not have a problem for someone to have a barn. He stated he didn't see anything that made too much of a difference for his LOZ.

Mr. Penrod thought the buffer would make a huge difference in his LOZ. Commissioner Ruffner stated that there was several work sessions held where they talked about the buffers. The consensus of everyone was that it not be included in the LOZ regulations. He heard that there was a promise particularly for material sites that the Assembly would revisit that in some form in the future. One of the things he hoped that they would advocate for was that there be some additional buffers on material sites that about a LOZ. Mr. Penrod stated that Assembly could put the buffer requirements back in the LOZ regulations. He felt having some sort of buffer makes sense. Marijuana establishments were not even a discussion a year ago.

Seeing and hearing no one else wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

Motion on the Floor:

MAIN MOTION: Commissioner Lockwood moved, seconded by Commissioner Foster to recommend approval of Ordinance 2016-03 Substitute, an Ordinance Amending KPB Chapters 21.44 and 21.46 Regarding Local Option Zoning, and Repealing KPB 21.50.050 Relating to Fines and Reenacting as KPB 21.50.055.

Commissioner Ecklund stated there is a C3 district that restricts marijuana establishments, alcohol beverage premises and sexual oriented businesses. She asked if there could be more than one zone like having a C3 zone on top of a R1 zone. Mr. Best replied no. Commissioner Ecklund referred to the amendment that was making a zone that totally restricts marijuana and doesn't apply to anything else. She asked if that could be added on top of another zone. Mr. Best replied no, the discussion was that there be a zone only to restrict marijuana and not be restricted to any other regulations.

Commissioner Venuti expressed concern with the suggestion of allowing more than 5 unregistered vehicles in a residential zoned area. He stated that he has noticed all the junk yards as he drives around the beautiful area of Alaska. In many instances, the collection of vehicles has occurred in the past and they are remaining there from another era. Commissioner Venuti wondered if there was some way that they could grandfather existing vehicles in residential areas but that they make it a conditional use to allow more than 2 unregistered vehicles. He stated it goes against his view of fairness to have someone have a junk yard next his property. There is an instance in Homer where an elderly couple moved into a subdivision and the fellow started collecting cars. It has been going on for a while now and is a situation that these individuals no longer have the resources or ability to do anything about these vehicles. Everyone in the neighborhood is stuck with these vehicles. He wondered if they could be a little more responsible when it comes to junk vehicles. Commissioner Ruffner stated that there is a limit of 2 vehicles in all of the zones except the Rural Residential zone. The Rural Residential Zone is limited to 5 vehicles and has looser regulations. He stated that was the least restrictive of all the zones so if an area wanted to have a tighter zone with more concerns then they could choose a different zone. Commissioner Venuti wondered if it could be changed to make the rules so that everyone has to agree this was ok in the zone rather than imposing this on people who don't want it.

Mr. Best stated that the lots are grandfathered in for as many as they have at the time the zone becomes effective. Landowners couldn't add any more vehicles than what was either grandfathered or allowed once a zone becomes effective. Chairman Martin understood that someone is grandfathered in, if there is a minority, the dissenting neighbor that doesn't want to join then they would be grandfathered in with the number of cars. Mr. Best replied yes.

Commissioner Venuti stated that the proposed regulations would permit someone who have two vehicles to add three more vehicles. Mr. Best replied yes, in the Rural Residential zone. Commissioner Venuti wondered if there could be a more reasonable solution to this.

Commissioner Glendening asked if the organizer of the LOZD could stipulate that there would be two, one or four vehicles. He asked if that could be done through a deed restriction or covenant. Mr. Best replied no.

Chairman Martin thought the goal was to try to streamline and uniform everything and not have multi-tiered levels of LOZ's.

Commissioner Glendening asked if there could be codes, covenants and restrictions in an LOZ. Mr. Best replied yes, that was correct. Commissioner Glendening asked if an LOZ could reduce the number of allowed vehicles. Mr. Best replied yes and then police it themselves.

Commissioner Venuti felt it was more than an aesthetic concern. It was an environmental concern because junk cars leak battery acid, oil and put contaminants into the environment. He also felt it was not responsible to permit it.

Commissioner Ecklund asked how many vehicles a property owner was allowed to have on their property if they are not within a LOZ district. Mr. Best replied that a property owner would be allowed to have as many as they want if they are not within a LOZ District. Commissioner Ecklund thought this would at least restrict it to

five vehicles. Chairman Martin stated that the vehicles that are operable contaminate a lot more than the ones that are stopped.

Commissioner Ruffner asked what the best way would be to address the two amendments that were in the lay down packet. Mr. Best replied that the Commission could discuss the substitute and then each amendment separately. They are just for comments that will be forwarded to the Assembly.

AMENDMENT MOTION: Commissioner Ruffner moved, seconded by Commissioner Lockwood to amend the main motion and recommend approval of the proposed amendment made by Gary Knopp, Assembly Member, as noted in his memorandum.

Commissioner Ruffner understood that the intent of the Knopp memorandum was that it leaves Borough parcels that are either contained within or adjacent to a proposed LOZ by keeping them neutral. Currently, the Borough says the lots are neutral in that they wouldn't sign a petition but when they wouldn't sign a petition that was a default making it a negative. He stated that the way this calculation would work under Mr. Knopp's amendment, it would not be considered at all.

AMENDMENT VOTE: The motion passed by unanimous consent.

CARLUCCIO ABSENT	COLLINS YES	ECKLUND YES	ERNST YES	FOSTER ABSENT	GLENDENING YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	10 YES 3 ABSENT

Commissioner Ruffner addressed the proposed amendment by Stan Wells regarding the development of a LOZ district specifically prohibiting marijuana businesses. He felt it doesn't fit within the structure of the entire ordinance and doesn't make sense. Commissioner Ruffner also felt it was completely outside of the way these were developed. He didn't propose an amendment to support it and wanted to let it lie.

Chairman Martin stated that otherwise the LOZ would look like his DISH network bill by just picking certain items leaving many one of a kind districts.

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

MAIN MOTION VOTE: The motion passed by majority consent.

CARLUCCIO ABSENT	COLLINS YES	ECKLUND YES	ERNST YES	FOSTER ABSENT	GLENDENING YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI NO	WHITNEY YES	9 YES 1 NO 3 ABSENT

AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18)

1. A Conditional Use Permit pursuant to KPB 21.18 to rehabilitate the existing Crooked Creek Hatchery raceways and adult diversion weir to improve operation efficiency and address safety hazards within the 50-foot Habitat Protection District of Crooked Creek as established in KPB 21.18.081(B)(4) and KPB 21.18.091.

This project is located on the left and right banks of Crooked Creek, River Mile 3.35, T2N, R12W, SEC 1, SM, KN A 10 Acre Parcel within the NE1/4 lying east of Sterling Highway & south of Old Sterling Highway & north & west of Helens Haven Subdivision (KPB Parcel # 137-021-21).

KPB Planning Commission Resolution 2016-08.

Staff Report given by Tom Dearlove

PC MEETING: March 28, 2016