

EHRHARDT | ELSNER | COOLEY

Attorneys at Law

215 Fidalgo Ave., Suite #201
Kenai, Alaska 99611
Phone: (907) 283-2876
Fax: (907) 283-2896
907Legal.com

1/13/22

Kenai Peninsula Borough Planning Commission
c/o Kenai Peninsula Borough Planning Department
144 N. Binkley Street
Soldotna AK 99669
planning@kpb.us
ashirnberg@kpb.us
skelley@kpb.us

Sent via Email

RE: Conditional Land Use Permit Application
Applicant: Beachcomber, LLC
Parcel ID # 169-010-67
Anchor Point Area

OBJECTION TO DELIBERATION IN ADJUDICATIVE SESSION

Planning Commission Members,

On behalf of Hans Bilben, Jeanne Bilben, Lynn Whitmore, Rick Carlton, Marie Carlton, Linda Patrick, Mike Patrick, Gary Sheridan, Eileen Sheridan, Ann Cline, Richard Cline, Phil Brna, Todd Bareman, Xochitl Lopez-Ayala, Gary Cullip, Jay Sparkman, Rick Oliver, Vickey Hodnick, George Krier, Don Horton and Laurie Horton, please take notice of this objection to the Planning Commission Hearing Agenda for the Planning Commission Hearing scheduled for January 25, 2022 at 7:30 p.m. which indicates that “It is also possible that the Commission will elect to deliberate these matters in an adjudicative session.”

KPB Code 21.25.050 clearly requires that when Conditional Land Use Permits applications are being considered, public hearing is “*required*.” Indeed, such requirement is imposed in the very title of 21.25.050. Nowhere within 21.25.050 is private deliberation authorized or indeed contemplated, and such private deliberation would run contrary to the mandate and intent that all CLUP applications be subject to a public process. *See, e.g., Brookwood Area Homeowners Ass’n, Inc. v. Municipality of Anchorage*, 702 P.2d 1317, 1322 (Alaska 1985) (“Modern public meetings statutes reject the argument that only the moment of ultimate decision must be subject to public scrutiny, and require that preliminary deliberations be open as well....” ‘deliberation connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision....’ ‘An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. *There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors.*

Peter R. Ehrhardt
peter@907legal.com

Katie A. Elsner
katie@907legal.com

Joshua B. Cooley
josh@907legal.com

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Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices.”) (internal citations omitted) (emphasis in original).

While the Alaska Open Meetings Act may serve to exempt these types of adjudicatory sessions, the Kenai Peninsula Borough can, and has, adopted more stringent requirements relative to the public nature of these types of decisional meetings. While public comment has not been reopened in this matter, it remains an item of significant public concern. Regardless of the outcome, the public would still benefit from knowing not just the ultimate decision, but the thoughts and comments made by the Commissioners to understand how the decision is made. Not only will this understanding aid all sides in this particular instance, but it will also inform all participants in future hearings as to what the Commissioners find persuasive and meaningful as it relates to CLUP applications. This could reduce both the length of public comment as well as the number of future challenges. Accordingly, please be advised of this objection to any private deliberative discussions being conducted in adjudicatory session as it relates to the reconsideration of this CLUP application.

/s/ Katie Elsner
Katie A. Elsner, Esq.