

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

February 28, 2022
7:30 P.M.
UNAPPROVED MINUTES

Chair Martin requested that Vice Chair Ruffner chair the meeting. Chair Martin attended via Zoom and had connection concerns.

CALL TO ORDER

Vice Chair Ruffner called the meeting to order at 7:30 p.m.

Oath of Office

Ms. Shirnberg administered the oath of office for two new commissioner, Michael Horton representing District 4 and David Stutzer representing District 8.

ROLL CALL

Commissioners Present

Jeremy Brantley, District 5 – Sterling/Funny River
Diane Fikes, City of Kenai
Pamela Gillham, District 1 – Kalifornsky
Michael Horton, District 4 - Soldotna
Virginia Morgan, District 6 – East Peninsula
Blair Martin, District 2 – Kenai
Robert Ruffner, District 7 – Central
David Stutzer, District 8 - Homer
Franco Venuti, City of Homer

With 9 members of an 10-member seated commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Walker Steinhage, Deputy Borough Attorney
Julie Hindman, Platting Specialist
Samantha Lopez, KRC Manager
Nancy Carver, Resource Planning
Eric Ogren, Code Compliance
Ann Shirnberg, Planning Administrative Assistant
Avery Harrison, Land Management Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

***2 Planning Commission Resolutions**

- a. PC Resolution 2022-09

***3. Plats Granted Administrative Approval**

- a. Kasilof Alaska Subd. 2021 Addition; KPB File 2021-113

***4. Plats Granted Final Approval (20.10.040)**

- a. Slikok Creek Alaska Subdivision 2022 Replat Endicott Drive ROW; KPB File 2021-151V

***6. Commissioner Excused Absences**

- a. Syverine Bentz, District 9 – South Peninsula
- b. City of Soldotna, Vacant
- c. City of Seward, Vacant
- d. City of Seldovia, Vacant
- e. District 3 – Nikiski, Vacant
- f. District 4 – Soldotna, Vacant

***7. Minutes**

- a. January 25, 2022 Planning Commission Special Meeting Minutes
- b. February 14, 2022 Planning Commission Meeting Minutes

Vice Chair Ruffner asked if anyone wished to speak to any of the items on the consent agenda. Hearing no one wishing to comment he asked that Ms. Shirnberg read into the record the consent agenda items. Ms. Shirnberg read the items into the record. Vice Chair Ruffner then brought it back to the commission for a motion.

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes to approve the consent and regular agendas

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	Absent	1	Vacant	4
Yes	Brantley, Fikes, Gillham, Horton, Martin, Morgan, Ruffner, Stutzer, Venuti				
Absent	Bentz				

Vice Chair Ruffner asked Ms. Shirnberg to read the procedures for public testimony.

AGENDA ITEM D. OLD BUSINESS - None**AGENDA ITEM E. NEW BUSINESS**

Vice Chair Ruffner asked Ms. Shirnberg to read into the record the rules for public hearings.

ITEM 1 - RIGHT OF WAY VACATION**VACATE 20' PUBLIC STREET EASEMENTS ADJOINING THE SOUTH BOUNDARY AND NORTHWEST BOUNDARY OF LOT 1 TOYON SUBDIVISION AS GRANTED BY PLAT K-1592.**

KPB File No.	2022-011V
Planning Commission Meeting:	February 28, 2022
Applicant / Owner:	Kenaitze Indian Tribe IRA of Kenai, Alaska
Surveyor:	Jason Young, Mark Aimonetti / Edgy Survey and Design LLC
General Location:	Mission Avenue, City of Kenai
Legal Description:	20' public street easements adjoining the south boundary and northwest boundary of Lot 1 Toyon Subdivision as granted by plat K-1592.

Staff report presented by Julie Hindman

Vice Chair Ruffner opened the meeting for public comment.

Jason Young, Edge Survey & Design, LLC; P.O Box 208, Kasilof, AK 99610: Mr. Young was the surveyor on this project and made himself available for questions.

Hearing no one else wishing to comment, public comment was closed and discussion was open among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff

recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	Absent	1	Vacant	4
Yes	Brantley, Fikes, Gillham, Horton, Martin, Morgan, Ruffner, Stutzer, Venuti				
Absent	Bentz				

**ITEM e2 – MARIJUANA CULTIVATION FACILITY LICENSE
L & H ENTERPRISES, LLC**

Applicant	L & H Enterprises, LLC
Landowner	Stephen T. Lovelace
Planning Commission Meeting:	February 28, 2022
Parcel ID#	065-500-04
Location	29945 Aspen Avenue, Sterling, AK 99672
General Location:	Mission Avenue, City of Kenai
Legal Description:	T05N, R08W, SEC 23, S.M., KN 0720031, Green Acres Sub, Tract 2

Staff report presented by Nancy Carver.

Vice Chair Ruffner opened the meeting for public comment.

Chantelle Hacker, Applicant; P.O. Box 908, Sterling, AK 99672: Ms. Hacker spoke in support of approving the license. She noted that this would be a family owned and operated business, that there will be little increase in traffic in the area and parking will not be an issue for the facility. She also noted that they have gone above what is required by AMCO for filtration of odors.

Commissioner Gillham noted that obnoxious smells from facilities like this is the #1 complaint from the public. She asked how they would ensure that this does not become an issue with this facility. Ms. Hacker again stated that the measure that they were taking in this area exceed AMCO standards and that obnoxious odors should not be an issue. Commissioner Gillham then asked if they had put into place a process to receive complaints from the public. Ms. Hacker replied that they most definitely would like the public to approach them with their complaints before going to AMCO.

Commissioner Fikes asked if the security lighting required by AMCO regulations would negatively affect neighbors. Ms. Hacker replied that the location of security lighting was such that it would not affect neighbors.

Commissioner Horton asked the applicant if they had a way of controlling humidity in their facility. He noted that the effectiveness of the charcoal filters is compromised if the humidity gets too high. Ms. Hacker replied that the facility does have a dehumidifier system to address those types of issues.

Linda Anderson; 36660 Feuding Lane, Sterling, AK 99672: Ms. Anderson spoke in opposition to the application. She note that this type of crop has high water demands and expressed concerns that this facility could negatively affect the neighborhood aquifer. She also noted that this facility is close in proximity to a school bus stop.

Malan Paquette; Anchor Point, AK 99556: Ms. Paquette spoke in opposition to the application. She expressed concerns regarding the location of the facility, the increase of traffic in the area and what she felt was the inundation of these types of facilities in the area. She support the development of local farming on the peninsula but feels that there are better crops than this controlled substance.

Sarah Williams; P.O. Box 546, Sterling, AK 99672: Ms. Williams spoke in opposition to the application. She noted that she lives in the neighborhood and has young children. She also has concerns about possible fire issues as she know that these types of business use grow lights and pull a lot of power from

the grid. She also expressed concerns that there may be water runoff from the watering of the plants that could possibly have a negative effect to the neighborhood. She also had concerns regarding the possible increase in crime to the area that cash only businesses like this could bring. She also is concerned how this type of business might negatively affect the surrounding property values.

Matthew Roster; 29645 Bunny Court, Sterling, AK 99672: Mr. Roster spoke in opposition to the application. He expressed concerns that the facility was in close proximity to a school bus stop and that school children should not have to deal with this situation. He expressed concerns related to odors from the facility, the potential negative effect on surrounding property values. He does not believe that facilities like this should be allowed in residential areas. He had concerns about how wastewater runoff could negatively affect neighboring wells and asked if there had been any environmental impact studies done on long-term impacts and damage done to the water table. He also had concerns about noise pollution because of the noise of the large fans used in these types of facilities.

Ron Swank; 36750 Feuding Lane, Sterling, AK 99672: Mr. Swank spoke in opposition to the application. He noted that he had many of the same concerns that have been expressed by others such as the school bus stop, noise pollution and potential increase of crime. He does not believe that these types of facilities should be allowed in residential areas.

Maryanne Rodgers; 36297 Cottontree Lane, Sterling, AK 99672: Ms. Rodgers spoke in opposition to the application. She expressed concerns about the close proximity of this facility to the school bus stop and odors from the facility. She asked what options the neighborhood has if the facility complies with AMCO rules and there are still odors coming from the facility. She also share the same concerns regarding the impacts to neighboring wells and the water table.

Steven Lovelace, Applicant; 29945 Aspen Avenue, Sterling, AK 99672: Mr. Lovelace is one of the applicants. He noted that they have invested quite a bit of money into the air filtration system for the facility and it exceeds AMCO requirements. He does not foresee odors being a problem, and should it become one he would improve the filtration system. He noted that his well is at 180' and is within the confining layer. He believes there is an aquifer at 70-80 feet which most of the neighborhood residents get their water from, so he does not believe the area wells will be affected.

Commissioner Fikes noted that there were several comments related to security issues with this being a cash only business. She asked the applicant if he had a plan in place to address this issue. Mr. Lovelace replied that AMCO requires and has standards for security plans. He has a security plan in place that meets AMCO standards.

Commissioner Gillham noted that several members of the public expressed concerns regarding how close the facility was to a school bus stop. She asked if there are regulations addressing the distance that the facility had to be from a school bus stop. Mr. Lovelace replied that he was aware of distance regulation related to schools and daycares, which he meets, but he is not aware of any regulations related to bus stops. Commissioner Gillham then noted that even with required filtration system there are still complaints regarding odor issues and asked again, what he has done to insure that his neighbors will not experience odor issues. Mr. Lovelace replied that the building has been completely renovated and his filtration system has gone above what AMCO requires and there should be no odor issues.

Dan Spencer (no address given): Mr. Spencer asked the applicant how does the filtration system on his facility compare with other facilities like his. Would the applicant say that his system is the same or better than most? Mr. Lovelace stated that he has no idea what other facilities are doing but his system exceeds AMCO standards.

Brendan Hopkins; 36707 Feuding Lane, Sterling, AK 99672: Mr. Hopkins spoke in opposition to the application. He noted that he agreed with many of the comments from the other neighbors. He is concerned that this facility is right next to a school bus stop. He wanted to know how the efficacy of the filtration system will be monitored and who would be overseeing the monitoring. He believes there should be a quantitative way to measure the efficacy of the filtration system. He also expressed concerns that the odors could have a negative health effect on children. He also believes that the public noticing for this application was inadequate and should have gone out to more people in the neighborhood. He would like to see the commission require signage on the property similar to the requirement of construction projects posting storm water protection plans for the public to review.

Chantelle Hacker, Applicant; P.O. Box 908, Sterling, AK 99672: Ms. Hacker noted that the school bus stop is over 530' from the building and the building cannot be seen from the bus stop. She stated that the filtration system will keep any odors from escaping from the building. There should not be any impacts to neighboring power systems as they have a separate 400-amp power system.

Steven Lovelace, Applicant; 299945 Aspen Avenue, Sterling, AK 99672: Mr. Lovelace noted that the filters in his filtration system are good for a year and he will replace them on a yearly basis.

Commissioner Fikes noted that the facility will not be open to the public and they would not need any signage for the facility. Mr. Lovelace replied that she was correct and that it was against AMCO policy to have signage. Commissioner Fikes then asked if AMCO required the facility to have a sprinkler system. Ms. Hacker replied that AMCO does require a fire suppression system, which they have, but not sprinklers specifically.

Commissioner Stutzer noted that the applicants will be working in an environment with strong and pungent odors. He then asked the applicants if they are aware of health risks associated with these odors. Mr. Lovelace replied that there are not any health risk associated these odors.

Hearing no one else wishing to comment, public comment was closed and discussion was open among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Gillham to forward to the Assembly a recommendation to approve a marijuana cultivation facility license for L & H Enterprises, LLC.

Vice Chair Ruffner asked staff what was the process for lodging complaints associated with these types of facilities. Code Compliance Officer Eric Ogren replied that all complaints are to go to AMCO. If a resident should call the borough with a complaint he would forward it on to AMCO. He also noted that there is nothing in borough code that would support the borough conducting an investigation into these facilities. Vice Chair Ruffner then asked how many complaints has the borough received associated with these facilities. Mr. Ogren replied that in the last two years he has received less than six complaints.

Commissioner Venuti noted that the commission has forwarded many licenses like this to the Assembly recommending approval. The commission has also received many comments from neighboring landowners in opposition to these licenses. He understands that many folks do not want these types of facilities to be allowed their neighborhoods. But that is what can happen in communities that do not have zoning. He then noted the borough does have local option zoning, which would allow the residents of neighborhoods to come together to implement residential zoning. This would be one way to limit these types of facilities from popping up in mainly residential area.

Commissioner Gillham noted that KPB 7.30.020(E) does give the assembly the right to recommend additional conditions on licenses to meet the standard regarding the protection against offsite odors. This particular facility is within a heavily residential area and wondered if there were any additional conditions related to this license that the commission might recommend to Assembly regarding odor control. She then asked staff if the Assembly had ever imposed additional conditions on these types of licenses. Mr. Ogren replied that if the AMCO conditions are met it should mitigate odor issues. He then noted that it is within the Assembly's authority to recommend additional conditions on a license to AMCO but he is not aware of this having been done in the past.

Commissioner Fikes stated that she agreed with Commissioner Venuti's comments regarding zoning. She lives in the City of Kenai and noted that the city has a number of marijuana facilities within its' limits. The city does have zoning in place so that these facilities are not in heavily residential areas. There is no zoning that affects this facility and she believes that the landowner has a right to use their property as they see fit. She believes that the applicant has met or gone above the standards set by AMCO. She noted that AMCO does require that certain types of data be reported to them on an annual basis. That data can be used to add additional conditions to a license if needed. She is not comfortable recommending additional requirements to this license as it is a new business and there is not any data available to support the request. She does not believe that would be fair to the applicant.

Commissioner Stutzer noted that there are many types of businesses that create odors that can permeate

the surrounding areas, such a paper mills and wineries. While the odors are not necessarily pleasant, they do not pose any negative health effects. He believes that the applicant has met or exceeded AMCO standards in this area. The applicant has also said that he should there be odor issues he will work to resolve them. He stated that he supports forwarding the application to the Assembly for approval.

Commissioner Gillham stated that she agrees with Commissioners Fikes and Stutzer in protecting the rights of all landowners. She stated that there is a process in place to address complaints and that the applicant has met AMCO conditions and standards. She will be supporting the approval of the application.

Vice Chair Ruffner noted one way to regulate the location of these types of facilities is zoning, and this area does not have any zoning in place. The applicant is on notice that their neighbors have concerns and the neighbors now know where they can go to report complaints or problems. He will be voting in support of approving this application.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	Absent	1	Vacant	4
Yes	Brantley, Fikes, Gillham, Horton, Martin, Morgan, Ruffner, Stutzer, Venuti				

ITEM E3 – ORDINANCE 2022-02

Ordinance 2022-02: An ordinance enacting KPB 2.40.110 and KPB 2.40.120 authorizing the planning commission to adopt bylaws and defining quorum.

Staff report was given by Melanie Aeschliman.

Vice Chair Ruffner opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was open among the commission.

MOTION: Commissioner Morgan moved, seconded by Commissioner Fikes to forward to the assembly a recommendation to adopt Ordinance 2022-02 enacting KPB 2.40.110 and KPB 2.40.120 authorizing the planning commission to adopt bylaws and defining quorum.

Commissioner Brantley asked if the planning commission bylaws would have to go to the Assembly for approval. Deputy Borough Attorney replied that they would not.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	Absent	1	Vacant	4
Yes	Brantley, Fikes, Gillham, Horton, Martin, Morgan, Ruffner, Stutzer, Venuti				

AGENDA ITEM F. PLAT COMMITTEE REPORT – Plat Committee reviewed and approved 8 plats.

AGENDA ITEM G. OTHER

1. Plat Committee for March 21, 2022 meeting:

- Commissioner Ruffner
- Commissioner Gillham
- Commissioner Brantley
- Commissioner Venuti

2. Public Comment:

Brendan Hopkins; 36707 Feuding Lane, Sterling, AK 99672: Mr. Hopkins stated he was dissatisfied with the Planning Commission's decision to support the marijuana cultivation facility license. He feels that public's concerns were not adequately addressed and the process for approval of these types of licenses is just "rubber stamped".

AGENDA ITEM I. **DIRECTOR'S COMMENTS** - None

AGENDA ITEM J. **COMMISSIONER COMMENTS** - None

AGENDA ITEM M. **ADJOURNMENT** – Commissioner Brantley moved to adjourn the meeting 9:03 p.m.

Ann E. Shirnberg
Administrative Assistant