

C. CONSENT AGENDA

- *7. April 11, 2022 Planning Commission Meeting Minute**

Kenai Peninsula Borough Planning Commission

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

April 11, 2022

7:30 P.M.

UNAPPROVED MINUTES

CALL TO ORDER

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

ROLL CALL

Commissioners Present

Syverine Abrahamson-Bentz, District 9 – South Peninsula
Jeremy Brantley, District 5 – Sterling/Funny River
Diane Fikes, City of Kenai
Pamela Gillham, District 1 – Kalifornsky
John Hooper, District 3 - Nikiski
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 10 members of an 11-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
Marcus Mueller, Land Management Officer
Ann Shirnberg, Planning Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

***3. Plats Granted Administrative Approval**

- a. Fourth of July Creek Subdivision Sewar Marine Industrial Center Fire Dept. Replat
KPB File 2021-080

***6. Commissioner Excused Absences**

- a. Michael Horton, District 4 - Soldotna
- b. City of Soldotna, Vacant
- c. City of Seward, Vacant
- d. City of Seldovia, Vacant

***7. Minutes**

- a. March 21, 2022 Planning Commission meeting minutes

Chair Martin 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.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Bentz to approve the consent agenda and the regular agenda as amended.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	11	Absent		Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Ruffner, Stutzer, Venuti				
Absent	Horton				

AGENDA ITEM D. OLD BUSINESS

ITEM D1 – CONDITIONAL LAND USE PERMIT - REMAND HEARING

Applicant:	Beachcomber, LLC
Planning Commission Meeting:	March 21, 2022
Tax Parcel ID	169-010-67
Legal Description	Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District, State of Alaska.
General Location:	Anchor Point Area

MOTION: Commissioner Ruffner moved, seconded by Commissioner Gillham to adopt PC Resolution 2022-17, denying a conditional land use permit to operate a sand, gravel, or materials site for a parcel described as Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat HM 80-104).

Chair Martin noted that Commissioner Brantley has recused himself from voting on this matter (he has no history of ever voting on this matter). Commissioner Hooper abstained from deliberating and voting on this matter at the 3/21/22 meeting. Commissioner Stutzer requested to abstain from this matter as he had not participated in the deliberations on 3/21/22 and 3/23/22 adjudicative sessions.

Commissioner Ruffner spoke in support of the resolution. He noted he has sat on the commission for a number of years and this particular permit application is one of the more complicated items that has come before the commission. This particular permit application has been in some type of process for at least four years. It has gone through the courts and has been remanded back to the commission on several occasions for consideration. He noted his support of the current resolution is a change in position for him. The code pertaining to material sites was adopted by the Assembly a number of years ago. During his time on the commission, they have heard that if the conditions set out in code are met then the standards are automatically met as well. He understood that was the intent of the Assembly when they adopted this section of code. That is the intent is that the commission has been following for years. Then this permit application came up and this intent was challenged in the courts. What has been weighing on his mind is did the commission want to change its precedent and go against what he believed was the intent of the Assembly on this section of code. He noted the courts are a part of the three branches of government and they have the authority to weigh in on these matters as well. He could disagree with the judge's ruling in this matter but he did not believe that was his place. The legislative branch would be the one's to take that up. He believes his roll is to follow the judges' instructions, which was to ignore the idea that if the conditions are met therefore that standards are met. So, with that in mind the visual standard does not seem to be met for a large percentage of the landowners on the south and east sides of this proposed material site. What the application proposes to do will not significantly mitigate visual impacts. The neighboring landowners will be looking directly down into the proposed pit. The evidence the neighbors presented to support this was compelling in his mind.

Commissioner Venuti spoke in support of the resolution. He noted he has sat on the commission for a number of years and has preside over numerous conditional land use permit applications. He does not ever recall any agency of the State ever weighing in on conditional land use permit and stating they that they would hold the Borough responsible if there is any damage to a state-maintained road. He is aware of the current condition of the road the applicant is proposing to use and he understands the State's concerns. He knows this area very well and has personally enjoyed the recreational uses associated with

area. The mouth of the Anchor River is a very popular recreational area year-round. It draws many people to the area which helps the local economy. It is as popular as the Russian River in Cooper Landing and the mouths of the Kasilof and Kenai Rivers. He believes there would be a negative reaction from the locals in these areas if a gravel pit was proposed to be adjacent to any of these areas. He understands the need for gravel and how important it is to development and construction. He also understands how important personal property rights are. He does not believe having a gravel pit in this location is in the best interest of the Anchor Point community.

Chair Martin wished to make a comment so he passed the gavel to Vice-Chair Ruffner. Commissioner Martin spoke in opposition to the resolution. He noted code talks about minimizing the conditions of noise, dust or visual impacts. The dictionary gives a sentence example of minimize. For example, the cost of production will be minimized. It means the endeavor will still be completed, but that the cost will be minimized to a degree. Minimize does not mean to do away with. He noted that mitigate is a lot like minimize. He believes the applicant has made the attempt to minimize or mitigate the sound and visual impacts of the pit. Commissioner Martin then took the gavel back from Commissioner Ruffner.

Commissioner Gillham spoke in opposition to the resolution. She noted this was a very difficult decision for the commission. She believed the applicant has minimize the noise and visual impacts and has tried to be a good neighbor. Minimize or mitigate does not mean eliminate. The applicant has done his best to work within the requirements of code. She believes this gravel pit is not different than the other gravel pits that have been permitted. Gravel is an important commodity and is needed to build our roads and homes. If you are a neighbor to one of these facilities it is just something you have to live with, code allows for gravel pits.

Commissioner Fikes spoke in support of the resolution. She stated that she did not believe the conditions met the sound and visualization standards. The buffers proposed will not minimize the noise or visual impacts. She also shares the same concerns expressed by Commissioner Venuti regarding the DOT concerns about the impact to the roads.

Commissioner Morgan spoke in support of the resolution. She noted this has been a very difficult issue for the commission. What was made clear to her was the separation of powers between the executive branch and the judicial branches of government. The superior court judge made a ruling on how borough code should be interpreted and she believe it is commission job to interpret it that way. She agreed with those commissioners that minimizing does not mean eliminating. However, it was clear that the mandatory conditions and voluntary conditions proposed, it was still not possible to minimize the visual and sound impacts of this proposed pit.

Commissioner Bentz spoke in support of the resolution. She noted the commission spent time discussing the judges' remand orders, findings of fact and conclusions of law in the development of this resolution. Her decision is based on the direction from the courts and the powers as appointed officials on the Planning Commission. She will be voting to approve the resolution based on the evidence in the resolution and the supporting information. It is clear that there will be visual and noise impacts to neighboring properties and so the standards in those areas cannot be met. She believes the minimization means to reduce to the smallest impact possible and not just a minor reduction.

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

MOTION PASSED BY MAJORITY VOTE:

Yes	5	Bentz, Fikes, Morgan, Ruffner, Venuti
No	2	Gillham, Martin
Recused	1	Brantley
Abstained	2	Hooper, Stutzer
Absent	1	Horton

AGENDA ITEM E. NEW BUSINESS

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

E1 – Right-of-way Vacation**Vacate a Portion of Symphony Lane associated with C.L. Hatton Subdivision Eagle's Crest Addition**

KPB File No.	2022-027V
Planning Commission Meeting:	April 11, 2022
Applicant / Owner:	Mathew Byler of Ninilchik, Alaska No More FYI LLC of Kenai, Alaska Kenneth Noonan of Willington, Connecticut
Surveyor:	Jason Schollenberg / Peninsula Surveying, Inc
General Location:	Symphony Lane near mile 132.5 of Sterling Highway, Ninilchik
Legal Description:	Tracts B-5, B-6, and B-7 of C.L Hatton Subdivision Eagle's Crest Addition, Section 23, Township 1 South, Range 14 West, Seward Meridian.

Staff report given by Julie Hindman.

Chair Martin opened the meeting for public comment.

Naomi Heneage; 181 Cascade Dr., Spring Creek, NV 89815: Ms. Heneage is the owner for Tract B of My View Subdivision 2021 Replat. She wanted to make sure that the vacation of any of the utility easements would not negatively affect her property. Ms. Hindman replied 150' portion of Symphony Land is being vacated and being moved to the west and a new 60' right-of-way will be dedicated. She also noted the utility easements being vacated are the ones along the current right-of-way where the house encroaches. New utility easements will be dedicated on the western side of the new right-of-way and the surveyor will be working with the utility companies regarding easements along the eastern side. All existing and new utility easements will be noted on the new plat.

Commissioner Ruffner asked staff to clarify that no existing utility services will be abandoned by this platting action. Ms. Hindman replied that no utility services will be abandoned and that they have reached out to all the area utilities for comment and those comments will be taken into consideration.

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

MOTION: Commissioner Ruffner moved, seconded by Commissioner Gillham 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 to borough code.

Commissioner Ruffner stated that right-of-way vacations are something the commission struggles with from time to time. He noted the last right-of-way vacation the commission approved, which was similar to this request in that a house was encroaching into the right-of-way, was overturned by the Assembly. Code does not have a great way to resolve these types of encroachment issues. He then noted the request before the commission right now is different than the other one in that the applicants are not gaining any land as they are basically moving the right-of-way over. This platting action will result in access and utility easements being maintained. As he sees it, this right-of-way vacation has no adverse effects to the public. He stated that he will be supporting this request.

Commissioner Stutzer asked how can the applicant dedicate a full 60' right-of-way in the proposed location. He does not own enough land to do so. Ms. Hindman replied that the applicant has worked with his neighbor to resolve the issue and they have come to an agreement. She then noted that the plat cannot be finalized without the neighboring landowner's signature on the plat.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	Bentz, Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Ruffner, Stutzer, Venuti
No	0	
Absent	1	Horton

**E2- Conditional Use Permit; PC Resolution 2022-14
Anadromous Waters Habitat Protection District
Harvest Alaska, LLC**

KPB File No.	2022-14
Planning Commission Meeting:	April 11, 2022
Applicant	Harvest Alaska LLC
Mailing Address	3800 Centerpoint Dr Suite 1400, Anchorage AK 99503
Legal Description	T 12N R 11W SEC 25 SEWARD MERIDIAN AN 0001865 US SURVEY 1865 THAT PORTION OF SEC 25 LYING WITHIN USS 1865 MOQUAWKIE INDIAN RESERVATION T 12N R 11W SEC 25 SEWARD MERIDIAN AN 0001865 US SURVEY 1865 THAT PORTION OF SEC 25 LYING WITHIN USS 1865 MOQUAWKIE INDIAN RESERVATION
Physical Address	None
KPB Parcel Number	211-070-02

Staff report given by Samantha Lopez.

Chair Martin opened the meeting for public comment.

Kijun Hong, Harvest Alaska, LLC; 3800 Centerpoint Dr., #1400, Anchorage AK 99503: Mr. Hong is the engineer 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 Venuti moved, seconded by Commissioner Bentz to adopt PC Resolution 2022-14 granting a conditional use permit for the construction of a root wad diversion structure within the 50-foot Habitat Protection District of the Chuitna River.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	Bentz, Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Ruffner, Stutzer, Venuti
No	0	
Absent	1	Horton

E3 – Resolution 2022-__

A resolution providing a 30-day application period prior to inactivating the Kalifornsky Advisory Planning Commission.

Staff report given by Samantha Lopez.

Chair Martin 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 Gillham moved, seconded by Commissioner Bentz, to forward to the Assembly a recommendation to adopt Resolution 2022-__, providing a 30-day application period prior to inactivating the Kalifornsky Advisory Planning Commission.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	Bentz, Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Ruffner, Stutzer, Venuti
No	0	
Absent	1	Horton

E4 – Ordinance 2022-06

An ordinance authorizing the negotiated sale of 180.261 acres in Cooper Landing as part of the Sterling Highway Mile Post 45-60 Realignment Project to the State of Alaska Department of Transportation and Public Facilities for a negotiated amount over appraised value.

Staff report given by Marcus Mueller.

Mr. Mueller noted that the Cooper Landing Advisory commission at their meeting on April 6, 2022 voted unanimously to recommend approval of this ordinance.

Chair Martin 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 Gillham, to forward to the Assembly a recommendation to adopt Ordinance 2022-06 authorizing the negotiated sale of 180.281 acres in Cooper Landing as part of the Sterling Highway Mile Post 45-60 Realignment Project to the State of Alaska Department of Transportation and Public Facilities for a negotiated amount over appraised value.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	Bentz, Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Ruffner, Stutzer, Venuti
No	0	
Absent	1	Horton

E5 – Resolution 2022-__

A resolution classifying certain parcels of Borough owned land in the Diamond Ridge area

Staff report given by Marcus Mueller.

Chair Martin opened the meeting for public comment.

Douglas Malone, Member of Kachemak Ski Club; P.O. Box 44, Homer, AK 99603: Mr. Malone spoke in favor of recommending approval of this resolution.

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

MOTION: Commissioner Bentz moved, seconded by Commissioner Ruffner to forward to the Assembly a recommendation to adopt Resolution 2022-__, classifying certain parcels of Borough owned land in the Diamond Ridge area

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	Bentz, Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Ruffner, Stutzer, Venuti
No	0	
Absent	1	Horton

E6 – Ordinance 2022-09

An ordinance authorizing a negotiated lease at less than fair market value of certain real property containing 3.5 acres more or less to the Anchor Point Food Pantry for a food Pantry and other community uses

Staff report given by Marcus Mueller.

Mr. Mueller noted that the Anchor Point APC met on April 6, 2022 and by a majority vote recommended

the approval of this ordinance.

Chair Martin opened the meeting for public comment.

Missy Martin, Anchor Point Food Pantry; P.O. Box 266, Anchor Point, AK 99556: Ms. Martin is a member of the Anchor Point Food Pantry committee and gave a brief history of the project and spoke to the strong community support of the project.

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

MOTION: Commissioner Gillham moved, seconded by Commissioner Venuti to forward to the Assembly a recommendation to adopt Ordinance 2022-09, authorizing a negotiated lease at less than fair market value of certain real property containing 3.5 acres more or less to the Anchor Point Food Pantry for a food Pantry and other community uses

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	Bentz, Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Ruffner, Stutzer, Venuti
No	0	
Absent	1	Horton

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Brantley reported the plat committee reviewed nine plats and granted preliminary approval to eight and postponed action on one.

AGENDA ITEM G. OTHER

1. Plat Committee – April 25, 2022

- Commissioner Gillham
- Commission Venuti
- Commissioner Morgan
- Commissioner Brantley

2. Platting Memo Regarding Certificate to Plat Requirements

Ms. Hindman spoke brief regarding concerns expressed by some surveyors regarding what they believed were significant delays in getting certificate to plats and how that is delaying the submission of preliminary plats. The question was posed as to whether or not an exception request could be requested to KPB 20.25.080(E) requiring the certificate to plat for a complete submittal. Ms. Hindman states that she feels there should be some criteria for the exception to be supported. If this exception request was going to become a regular practice, then a rewrite of code should be done. No action was required of the commission.

AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS

1. Ordinance 2022-XX: An ordinance authorizing emergency harvest of spruce bark beetle impacted forestlands and amending KPB 17.08.020(J) to remove limitation of harvestable timber.

Comment: Lexmond; P.O. Box 873, Cooper Landing, AK: Mr. Lexmond shared concerns related to the ordinance authorizing emergency harvest of spruce bark beetle impacted forestlands.

Comment: Gary Nelson, Ability Surveys; 152 Dehel Avenue, Homer, AK 99603: Mr. Nelson spoke in support of allowing exceptions related to preliminary plat submittal for certificates of plat when there is a delay in getting them in a timely manner from the title companies.

AGENDA ITEM I. **DIRECTOR'S COMMENTS****AGENDA ITEM J.** **COMMISSIONER COMMENTS**

Commissioner Ruffner requested an excused absence for the April 25, 2022 Planning Commission meeting.

AGENDA ITEM K. **ADJOURNMENT** – Commissioner Venuti moved to adjourn the meeting 10:03 PM p.m.

Ann E. Shirnberg
Administrative Assistant