



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

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

THRU: Mike Navarre, Borough Mayor *MN*

FROM: Max Best, Planning Director *MB*

DATE: February 29, 2016

SUBJECT: Ordinance 2016-07 Substitute, an Ordinance Amending KPB Chapter 7.20 and Enacting KPB Chapter 7.30 Regarding Local Protests of State Marijuana Licenses.

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled February 22, 2016 meeting.

A motion passed by unanimous consent to recommend approval of Kenai Peninsula Borough Ordinance 2015-07, Substitute, an ordinance amending KPB Chapter 7.20 and Enacting KPB Chapter 7.30 regarding local protests of State Marijuana Licenses.

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

WHEREAS, at its meeting of February 22, 2016, the planning commission recommended approval by unanimous consent.

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

AGENDA ITEM F. PUBLIC HEARINGS

3. Ordinance 2016-07; An Ordinance Amending KPB Chapter 7.20 and Enacting KPB Chapter 7.30 Regarding Local Protests of State Marijuana Licenses, Amending KPB 21.25 and Enacting KPB Chapter 21.30 Regarding Permit Requirements for Marijuana Establishments, and Amending KPB 21.50 Regarding Violations and Enforcement

Staff Report and Substitute Memorandum given by Paul Ostrander

PC Meeting: 2/22/16

Mr. Ostrander was on the Marijuana Task Force and was involved in crafting both the original ordinance and the substitute ordinance.

Ordinance 2016-07 which establishes a borough land use permit issued by the planning director has an awkward relationship with ordinance 2016-05 which establishes the planning commission as the borough commenting agency to the State of Alaska on marijuana license applications.

The application for the marijuana establishment go to the State and five days later, they are required to give a copy of that application to the Borough at which point the Planning Director would take a look at that and determine that the following conditions that are in code are met. Marijuana establishments shall:

1. Be located where there is sufficient ingress and egress for traffic to the parcel; and
2. Not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m. each day; and
3. Not be located within 1,000 feet of any school. (The State regulations state that an establishment not be within 500 feet from any school however the task force felt it was important to extend that to 1,000 feet.)

The Planning Director shall also make the determination that Marijuana establishments shall:

1. Be current in all Kenai Peninsula Borough obligations consistent with KPB 7.30.020(A); and
2. Maintain a state license issued pursuant to AS 17.38 and 3 AAC 306.

The borough addresses alcohol establishments in the same manner; rather than having a separate permit process the borough comments to the state on the alcohol license application filed with the state. 3 AAC 306.060 "protest by local government" authorizes the borough to propose conditions on the state marijuana license. This process will avoid the borough enforcing violations of the marijuana standards. Rather, the borough would monitor compliance with the conditions proposed by the borough and report violations to the state. The borough would also be able to propose conditions and comment on the annual renewal, transfer, or relocation of a marijuana license. Under the substitute the planning commission may recommend conditions on the state license as long as they are consistent with meeting the standards set forth in the ordinance and are not arbitrary or capricious and are capable of being adequately monitored by the borough.

The planning director issuing a counter permit while the planning commission is holding a public hearing for the license of the same establishment is a confusing and unnecessary duplicative process. The planning commission essentially functions as a tribunal holding a public hearing with little ability to address any concerns raised under the proposed ordinance 2016-07 unless changes to a counter permit previously issued by the planning director are proposed. The proposed substitute eliminates the counter permit process and moves the relevant standards and conditions to KPB 7.30 which is the chapter authorizing the planning commission to comment to the state on the license application. Rather than having a separate set of conditions which are the same as those already established by the counter permit there would be one set of standards and conditions set forth in KPB 7.30.

The procedures being proposed now that the counter permit process was being eliminated would be that the Planning Director receives the application and writes a staff report showing that those three conditions are being met. It would then be brought forward to the Planning Commission. At that point, the Planning

Commission would hold a public hearing. At the end of the public hearing, the Planning Commission will make a decision based on the public testimony and the packet of information. There are three options at this point.

1. File a letter of non-objection with the State;
2. Protest because they don't meet one of those conditions; or
3. Recommend conditional approval.

There is some ability through this process. There are standards that the Planning Commission can base additional conditions upon which were recommended by the Marijuana Task Force. Those standards are:

1. Protection Against Damage to Adjacent Properties;
2. Offsite Odors;
3. Noise;
4. Visual Impacts;
5. Road Damage;
6. Criminal Activity; and
7. Protection of Public Safety.

Based on those standards, the Planning Commission can ask that additional conditions be applied if they feel the application in some way doesn't meet those standards. These would not be conditions that the Borough would be putting on the property. They would be requesting that the State put those conditions on it. The conditions cannot be arbitrary or capricious. The State has to agree to those conditions and if the State agrees to those conditions then those conditions will be put in place. At that point, the Borough can actually monitor those conditions. When the application renewal comes up which is annually and a condition has not been met then at that point the Borough Planning Commission would look at it and determine if those conditions were met. If they weren't then they would file a letter of protest with the State which could result in that license not being renewed.

The process that was laid out in the Substitute Ordinance was a cleaner process than the original process but still fulfills the essential request that the task force came forward with.

END OF STAFF REPORT & MEMORANDUM

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

Commissioner Holsten asked what role will staff play when the annual review comes back to the Planning Commission. Mr. Ostrander replied that staff will provide a staff report to make sure it was meeting the conditions. Commissioner Holsten felt that borough staff was stretched pretty thin and asked if there would be the need for additional staff to help monitor this. Mr. Ostrander anticipated that in most instances there would be very few additional conditions requested by this body. The three conditions will be pretty simple to monitor. In his opinion, he didn't think they would see the need for additional man hours required to make sure this was monitored.

Commissioner Whitney asked if notification will be given to the neighbors for those facilities that will be placed in the different neighborhoods. Mr. Ostrander replied that the State regulations require notice and posting of the property. He deferred to the Planning Director. Mr. Best replied that the Planning Commission will hold a public hearing prior to making a recommendation and notification of that public hearing will be sent out to all affected property owners in a specific area where the facilities will be located. Commissioner Whitney asked if it would be similar to a gravel pit notice. Mr. Best replied that KPB 21.11 is the notification process when a public hearing will take place. KPB Chapter 21.11 – Public Hearings is following:

21.11.010 – Purpose.

This chapter governs all public hearings held by the borough planning commission or any advisory planning commission under the authority of Title 21 of the Borough Code of Ordinances.

21.11.020 – Public Hearing Notice.

- A. *Notice of the public hearing shall be published at least twice in a paper of general circulation within the city. The notice shall be published during each of the 2 calendar weeks prior to the public hearing date.*
- B. *The notice shall contain at least the following information:*
 - 1. *A brief description of the proposal on which the public body is to act;*
 - 2. *A legal and common description of the property involved;*
 - 3. *Date, time and place of the public hearing;*
 - 4. *Person and place to contact for more detailed information.*

21.11.030 – Notification of neighboring property owners.

A copy of the aforementioned newspaper notification shall be mailed to real property owners on record on the borough assessor's records within a 300-foot periphery of the parcel affected by the proposed action. This provision does not apply when a public hearing is to be held about a proposed zoning ordinance amendment involving a change in the text or major district boundary changes. Instead, notice in such cases is governed by KPB 21.04.020.

Commissioner Foster asked how often these licenses come up for renewal. Mr. Ostrander replied annually. Commissioner Foster asked if a marijuana establishment would have to move if a LOZ was developed where one was located. Mr. Ostrander replied that there are specific provisions within the LOZ ordinance that any existing activities would be grandfathered so they would be allowed to continue. If would be for future applicants who would be impacted by the LOZ. Commissioner Ernst asked if a LOZ could be formed specifically for the purpose of having a marijuana growing community. Mr. Ostrander replied no, there is not a designation for that specifically, they are all residential areas. Chairman Martin stated it would be zoning out and not zoning in.

Commissioner Holsten felt that criminal activity wasn't going to be any worse with marijuana establishments than it is with liquor establishments. The catch 22 that she sees with the Planning Commission is that there could be a bunch of neighbors saying that there was criminal activity at a marijuana establishment but there haven't been any arrests or issues. Her concern was that there wasn't any law enforcement available because it was in a small rural community.

Commissioner Isham asked about the 300 foot buffer in a LOZ and if that would be an additional buffer to what was already required. Mr. Ostrander replied that the LOZ amendment reduces that buffer from 500 feet to 300 feet. That buffer restricts activities that are approved by KPB 21.25, gravel pits, halfway houses, etc. At one point, marijuana establishments were proposed to be allowed under KPB 21.25 however it was no longer the case in the marijuana ordinance. He stated that marijuana businesses would not be allowed within 300 feet of an established LOZ.

Commissioner Venuti asked if the assembly adopted the LOZ amendments. Mr. Ostrander no that is up for public hearing at the assembly meeting on Tuesday. Commissioner Venuti asked if it would come before the Planning Commission. Mr. Ostrander believed the planning commission has a work session with the assembly on Tuesday at 1:00 p.m. to discuss the LOZ as well as the amendments. He doesn't believe this body will ever take a vote on the LOZ regulations.

Commissioner Venuti expressed concern regarding the 300 foot zone around a LOZ. He wondered if it was encroaching on people's property rights and if it's legally defensible. Mr. Ostrander replied that legally defensible would be left up to the attorney. The one distinction he would make is that it was limiting only a very, very few activities in that area. The premise behind zoning in general, in cities is that when an area was established for a certain use. He stated that if an area was established as residential in a LOZ then an industrial area would not be directly placed adjacent to it. This is an attempt to allow there to be a buffer between the borough and the residents to determine what an appropriate use of the area is. It is an attempt to keep uses that are not compatible with that at a certain distance away. The only thing that is restrictive under 21.25 is gravel pits in that area. It would limit the ability for someone to have a gravel pit adjacent to a local option zone. Commissioner Venuti expressed concern that they are pitting neighbor against neighbor.

Commissioner Glendening asked if the state would have access to criminal records and if that information would be reported to the planning director. Mr. Ostrander stated that the criminal activity is a standard on which an additional condition could be placed on the license. He wasn't sure what it would look like whether or not they were meeting that standard but that would have to be something that was established through the local law enforcement. An additional condition could be required by the planning commission to reduce the criminal activity. He wasn't sure what that would look like at this point but it would be up to the local law enforcement to let the staff and Planning Commission know as far as whether or not they met the standard.

Commissioner Carluccio stated she was happy that they are discontinuing the counter permit. Originally when that came up several meetings ago it seemed to be a duplication of effort.

Commissioner Foster stated that Homer was deciding if they would have relatively unlimited requirements to an actual ban. There still was some discussion a few weeks ago that if they choose a local option to opt out that there would be some sort of buffer around the City of Homer. He asked for clarification regarding that buffer since there was some discussion that would go all the way to Fritz Creek and almost to Anchor Point. Mr. Ostrander actually worked with the City of Homer last week on this. There is a provision within the regulations that states that if the city bans marijuana establishments within their boundaries then there is a 10 mile radius that impacts unincorporated areas that surround the city however there are no unincorporated areas that surround Homer. It is all the Kenai Peninsula Borough which is incorporated therefore there is no radius. Commissioner Foster understood then that it would also not infringe upon Kachemak City. Mr. Ostrander replied that was correct.

Commissioner Ruffner stated the three options they have when a permit comes to the Planning Commission are 1) protest, 2) offer some suggestions to the State and 3) non-object. He asked what the reasons were for businesses having sufficient ingress / egress and enough parking spaces. Mr. Ostrander replied that it was a specific recommendation from the marijuana task force that was inclusion of the ordinance. They felt it was important especially along a Borough right-of-way because if there isn't sufficient ingress / egress then there is on-street parking which has an impact on Borough maintenance. This may be something that they need to define further as this moves forward to make sure that when this body does here testimony specific to this that the planning commission has something to base their decision upon. Commissioner Ruffner stated they want the real tangible things. If someone wants to stop something then they will latch onto anything. He stated that if that was the trigger point then there are 70 people saying the same thing and that was not really their concern at all. The rest of the things that would really trigger the protests were really cut and dry unless he was missing something.

Commissioner Holsten stated that she would like a little flexibility so that if they have 70 people at the meetings then they can consider it and not be totally arbitrary. She asked if the State would really consider their comments if a letter or memo of protest were sent to the State. Mr. Ostrander replied that the State has specifically asked the local regulatory body to make a comment and protest or file letter of non-objection. They are asking for that input from the local government. He couldn't speak specifically to how they would react to marijuana applications and a protest on those however historically if the local governing protests an alcohol license then the State typically follows that and denies the license. |

Commissioner Glendening suggested that Mr. Able be a Cannabis Chamber of Commerce and help them address some of these issues. He seems to be well versed on these things and was willing to engage in public discourse. Mr. Ostrander agreed that Mr. Able was a great resource and did a phenomenal job as task force chairman. He encouraged him to get more involved in local government and hope he does. As issues arise, there were others on the Task Force that could be a valuable resource from the advocacy side of the Cannabis industry.

Commissioner Whitney stated that people will probably call the troopers when there are complaints about a particular facility. He asked how that feedback would come back to the Borough. Mr. Ostrander replied that the Troopers would handle specific criminal complaints that require their involvement. The only items that the borough would address would be if they've violated conditions that were specifically requested by this body and then adopted by the state. It would come to the Planning Commission during the annual review. Commissioner Whitney asked how the Planning Commission or Borough would know during the annual

review if there were complaints. Mr. Ostrander replied that if there is a condition that has been violated then staff would go out and inspect the property. If there are establishments that have additional conditions that have been requested the planning department will go out and inspect to make sure they are making those conditions annually. That information will be supplied to the Planning Commission.

Chairman Martin asked if there would be a chance for public comment on the annual review. Mr. Ostrander replied that there will be a public hearing same as there was in the initial application.

Commissioner Ernst spoke to the ingress and egress issue and the technicality that could be used to possibly thwart any marijuana business that a particular group of people could object to. He assumed that staff would be tightening up that requirement. There have been many people who have protested a gravel pit that are being put in their neighborhoods and because the gravel pit operators have followed the requirements there is nothing that the Planning Commission can do about those complaints. Mr. Ernst assumed there would be a similar procedure that if a business meets the letter of the law as a marijuana establishment than the protests would be unfounded because it was legal. He asked how this would be determined. Mr. Ostrander replied that people could complain about ingress / egress but unless there is substantial evidence that there are real issues there then this body can't just take action. He stated that substantial findings need to be cited that will base any sort of decision to make sure it was not arbitrary.

Chairman Martin opened the meeting for public comment.

1. Marc Theiler, 1250 Chinook Dr, Kenai

Mr. Theiler stated that cultivation facilities are what will mostly be in the Borough; he doesn't know of any retail facilities that will be out there. It will be hard enough to meet the traffic in the slight demands and the unknowns that will basically take place in a much more populous area. He felt there would be very few retail establishments in the area and that there will be mostly cultivation facilities.

Mr. Theiler gave a brief description of what the cultivation facilities will have to do in harnessing and utilizing regarding security and tracking which will be extensive. He stated they will be using a metric system and inventory tracking system that uses what is called RFID which uses radio frequency as well as a serial item tracking system. The system basically creates an end to end tracking system which means from either clones or starts to harvest. It is constantly tracked by the State via the cloud in real time at all phases. In addition to that, it creates a closed loop system that law enforcement can utilize for any criminal investigations. It makes it impossible for any sort of criminal activity to take place. It would basically leave the criminal activity of someone breaking into a facility and trying to steal something. The security systems at the facilities are going to be on par with banks. He stated that the security systems that they would be using are as sophisticated as ones used by Wells Fargo Bank. Everything from a single door, entryway and parking lot will be under 1080 HD quality video surveillance that will be continuous. They have to use what is called a networked video recorder that has about 18-20 terabytes of data on it. The law enforcement will have access to that as well as being able to monitor every single position of those plants in real time. Each of the plants will start with a radio frequency tag and every phase will be documented from the State.

Mr. Theiler couldn't imagine the possibility of criminal activity on top of the fact of not knowing that there has been a criminal activity out there. There is absolutely no chance whatsoever that criminal activity will go unnoticed. It will put everyone on notice pretty quickly including those who will be monitoring the system if someone breaks in. The organizations that are at the table right now are few and far between so they will not see very many establishments here especially in the beginning. He felt that the people who are at the table have done extensive work. This is a different and emerging type of business industry.

Mr. Theiler stated that there was more of a social responsible partition to this and due to extreme scrutiny there was a heighten level of monitoring every single little item. They are not battling critical facts, objectivity and people's ability to weigh objective evidence. It hasn't been that way from the beginning and they are still battling good old fashion ideology. Mr. Theiler commented that they have

to monitor every single thing that they do. He felt the idea of criminal activity will be pretty slim to completely nonexistent.

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

Commissioner Holsten asked if every plant will have a coded number. Mr. Theiler replied yes, it is called a RFID code. It was really important to make sure people don't continue to get the wrong idea especially from his standpoint as a father, community member and someone that has been active in ending the prohibition on marijuana. Some people think that it is a bunch of kids wanting to get high. There is a great deal of people that believe in ending the war on drugs. They believe that this is a much better, responsible and critical angle to ending the real war on some drugs which means having heightened education on the real dangers in the community. Most people in the community know the abuse of drugs which are opiate based pills; heroin, methamphetamine and coke. In Mr. Theiler's opinion, alcohol is one of the biggest poisons in the community. His generation is not drinking as much and not indulging in the binge type of drinking. He felt that there are more and more people gravitating toward cannabis as a more responsible alternative for release.

Mr. Theiler stated that in addition to the coded number, they will be collecting an immense amount of data. They will know the trends and the habits of purchasing and who is buying and where it is going from point A to point Z. He thought they would be able to collect mass amounts of data and create conceptual maps of what this is really doing in the community.

Mr. Theiler felt that there is the same amount of marijuana consumption and productivity now. He guaranteed that it was everywhere and that it was in everyone's neighborhood. There are people that are growing marijuana within less than a mile of neighborhoods. Unfortunately, it puts kids and others in close proximity of other drugs, with that kind of black market element. Prescription drugs are the most accessible kind of thing. He would do whatever it takes as a father and community member to extend that proximity and get that out. When that is done, cannabis has moved to the side and then people are less likely to be in proximity to that. It can really hit home with the dangers of opiates, prescription drugs and the other kind of emergent recreational drugs like spice, etc. that they have no track record with. Mr. Theiler has taken this responsibility seriously and felt that a lot of people who are going to be in this industry are absolutely about doing the right things.

Commissioner Whitney asked if the tracking system will be on the retail level also. Mr. Theiler replied, yes.

Commissioner Ernst felt there would be plenty of illegal activity with black market weed. He sees more and more layers of complexity laid on the marijuana regulations. The whole point of legalizing marijuana was to get rid of the black market and the availability of it to underage consumers. Commissioner Ernst felt it was ridiculous to have all the RFID chips and genetic code tracking. He felt this would have the opposite effect and was designed to fail. Mr. Theiler stated that it was the people who aren't experienced with it that conjure these illusions. They arrive with the assumption that it was not based on due diligence because they have no experience with it. He thought that in the beginning they have to start somewhere to collect data. The reason he wants to collect data is so that they can fight it better. Mr. Theiler was confident that the data and stats will come out in their favor and they will be able to use it to finally put the nail in the coffin of the ideology logs. People still cling to the Nancy Reagan's slogan, "Just Say No" which was the biggest failure in the country as far as social policy. There was a battle on social media over the merits of the tracking system. He was heated about it as well, with the move to the RFID because there are a lot of unknowns. It would put another component on these limited growers and standard cultivators as well as pricing them out which would become so difficult. Mr. Theiler spoke with the Director at Metric who was the company who will be handling the tracking system. He felt it was a wonderful company and was actually positive about it which turned out to actually be cheaper than some of the systems that he was working with and wanted to integrate. It basically went from \$600 a month to \$80 a month and only 45 cents apiece for the purchase of the re-useable RFID tags. It really wasn't a game breaker and if they have to collect data in the beginning to be able to help everyone to create a better conceptual map of what this was really doing and what were the actual pros and cons of the industry.

Mr. Theiler stated that his organization was creating a google dashboard regarding the ability to receive complaints. They will be handing out packets to the neighbors giving them information regarding where to go if they have a complaint. As an entrepreneur that wants to see cannabis in its rightful place, he wants to cover

each single base that creates objectivity and creates data that they can later use. In his opinion, the right thing looks a certain way and unfortunately they have had to battle a lot of critical people that have not done their due diligence.

Commissioner Foster asked if he had a problem with the proposed 300 foot buffer around a local option zone. He also asked if he would like to have a local option zone in his neighborhood and around his grow operation. Mr. Theiler replied that before he sold his previous home, there was someone who put in a car lot near residential homes and there were people behind him that had dogs. He felt that people move to Alaska and to a Borough so they don't have to be told what they can or can't do on their property. Mr. Theiler stated he was fine with not having an option to exercise his personal disgust over something that he didn't like. It goes to free exercise and especially goes for the Borough. He stated that the 300 foot buffer was inconsequential and doesn't really matter. It was more of an exercise in doing something and going through the motions.

Chairman Martin asked what happened in Homer on the February 17. Mr. Theiler felt that they were battling ideology and not battling fair play and due diligence with the weighing of evidence because it would look a different way. This would have been done in the first, second innings that would have been done months ago, if there was a body that really cared about not just for themselves but for family members and business members that are pouring out their life savings into this and it is their passion and life's work. This is the specific strategy on their part to throw this in the mix at nine innings, two outs this late in the game. It's specific and he sees this with a lot of politics with an additional bite at the apple. The target always moves and it was always another opportunity to bite that apple. He felt this was exactly what Homer is doing and finds that absolutely disgusting and finds it to be a prime example of the microcosm of politics in general. It is not based on any critical objective due diligence. It is just based on the same old blind ideology.

Commissioner Glendening asked if marijuana was a cash business. Mr. Theiler replied yes. Commissioner Glendening asked if he has considered aspects of personal security and also getting his rewards from point A to point B without being accosted by highwaymen. Mr. Theiler replied absolutely. Commissioner Glendening asked if he was working on these issues and if he has a means that he can do it safely without involving the community around him. Mr. Theiler replied that was the most important element for him. As a cultivator, someone does not have to worry about that as much because of the transfer of the nature of the business. It will pretty much be insignificant but as a retailer though, it is the biggest of element that makes him concerned. It was going to change his entire habits. He hoped there was going to be a fundamental change. The retail businesses are probably not going to open until September at the very earliest with the cultivation starting around June 9. Realistically, they probably won't be doing anything until September or October. Mr. Theiler hoped that was going to be changed but probably wasn't going to. He stated they are building a Fort Knox steel reinforced concrete walk-in safe in addition to having random armored drop offs and pickups. All of his lifestyle habits need to change. This is an element that is of concern to him that hasn't been addressed anywhere but thought it should have been solved by now especially with what has gone on in Colorado, Washington and the medical community in California. There are no workable solutions thus far.

Commissioner Glendening stated that it is a rough world out there and told him to be safe. He heard from his comments that his business would be built to such a standard that an individual with a chainsaw and crowbar couldn't gain access to the valuable product. He hoped his industry was constructed to those standards. Mr. Theiler replied absolutely. It is such a passion and a huge part the people's life that are doing this. Everything is so scrutinized and so overlooked that it is going to be difficult for people to get one up on somebody. Every single facet of his building, parking lot and everywhere will be completely monitored from every angle. He stated that all of that has to be taken into consideration. Every person and business that he knows who is going to be here has thought of everything and have given a great amount of investment into the security systems. They are looking at getting the best available systems they can and no one was taking it lightly or was going to cut margins.

Commissioner Whitney asked if he thought there would be more cultivation than retail. Mr. Theiler replied absolutely, by a huge margin. An arbitrary number would be about 10:20:1. He knows of two retail businesses that have talked about it but are still unsure.

Chairman Martin asked where the end user was if there was only cultivation happening in the borough. He asked where the product was going for retail. Mr. Theiler replied that the demand on the Kenai Peninsula was

not significant by any stretch of the imagination. In his opinion, the entire borough as far as meeting demand and not being metabolized by the black market which is still going to be there but will have diminishing returns as the years go by. There are about 35,000 people in the Borough within the age bracket of 21-69. Out of that there is about a 10% consumption rate which equals to about 3,500-3,800 people. It doesn't lead to the kind of sales that would warrant a tremendous amount of cultivation. The people that do really well will rise to the top and they are going to outsource their product so they will brand their product and will go to other markets outside the Kenai Peninsula Borough. Most of it will probably go to Anchorage where there is foot traffic. He stated that the numbers are not that great with only about 10-20 cultivators that will be here operating. A lot of them depending on the quality are not going to find a place to sell their product so they will get the real world of marketplace transaction. It is not going to be a pretty sight. Mr. Theiler stated that it was just one of the things where the cream will rise to the top. As a retailer they are only looking to work with top quality individuals; people that they can trust, reliable and following the books. He thought the market demand was not going to be terribly substantial.

Commissioner Venuti asked where the seed was going to come from and if it was coming from the black market. Mr. Theiler replied that was a very good question.

Commissioner Venuti asked if he was a cultivator or retailer. Mr. Theiler replied that he was going to do both by having a dual license.

Commissioner Venuti asked who was going to test his product. Mr. Theiler replied that was another good question and is another unknown at this time. They have been assured that there will be a testing facility. There are a couple of other entities that he felt was pretty confident that they would be here. He stated that has not been worked out yet as to where it was going to be and who it will be but he was confident it will be worked out.

To answer Commissioner Venuti's first question regarding seed he stated that a start works in two different ways. This was where it gets a little goofy and gray in his opinion. They have to do everything in on the up and up and systematically done in such a time oriented process. Nobody knows where the starts come from so what happens is that there are two ways of doing that; ordering seeds from Amsterdam or United Kingdom and they are shipping. In Alaska, there is a tremendous amount of already super quality strains that are already grown. It is impossible to get any sort of very clear workable way just because of the way the Federal government perspective is.

Commissioner Venuti stated that testing was an important part of this process. He mentioned that it would be an important part of his business plan to know where or the lab will be. Mr. Theiler agreed that it was huge and was a super great element in all of this because it was something that he has pushed for excessively. He would do it anyway even if it wasn't mandated. The cannabis product is susceptible to mycotoxins, molds, bacteria and all sorts of nasty things in pollutants and contaminants. A lot of issues that people can't put their finger on come from molds, mycotoxins, bacteria and things from unstored food products. In addition to that, it was super important that the consumer has every metric in their product. He felt it was important for people to know exactly what they are getting.

Commissioner Venuti asked if his product was going to be organic or was he going to use pesticides. Mr. Theiler felt that most operations will be organic.

Commissioner Foster asked where he planned on operating his business. Mr. Theiler replied that he was in the City of Kenai, off of the Spur Highway. He stated this was a passionate issue from a philosophical and liberty base standpoint for him.

There being no further comments or questions, the public hearing continued.

2. Brian Olson, 48660 West Poppy Lane, Soldotna

Mr. Olson spoke in support of the proposed ordinance which he didn't think he would be saying a few months ago. He has followed this process from the beginning as an observer and attended 90% of the Marijuana Task Force meetings.

Mr. Olson stated he got involved in this because he operates a winery and went through the Federal, State and Borough process to get a license and permit. When the State initiative passed and this started moving forward then he wanted to see what this industry was going to be like. He was already in the business of creating a sedative drug called alcohol which is legal and everybody has the right to use it, who chose to use it. Mr. Olson looked at cannabis in kind of the same way. He was ignorant about a lot of the facts about cannabis being brought up and raised about the evils of it. Mr. Olson looked at becoming a cultivator after he started attending the meetings and listening by opening his mind and being exposed to data that was truthful and factual.

Mr. Olson owns a farm on West Poppy Lane where he grows all the berries for all his fruit wines. He didn't see what the difference would be if he planted blueberry plants or if he planted cannabis plants if it was legal to do so. Also he was against a lot of government over reach when he applied for his State permit to become licensed as a winery. There were a lot of regulations and hoops to jump through. He thought that was difficult but as he watched this process take place with the State, he was blown away regarding the regulations. A good group of people were put together that spent a lot of time and many hours developing these regulations. Mr. Olson thought that it was sufficient to regulate cannabis like alcohol. There was still bootlegging happening after the alcohol prohibition so this could take 10-20 year before a whole different picture is seen since this has been a 40 year prohibition.

Mr. Olson changed his mind about supporting this ordinance because he saw that it was not just his opinion about what he thought about government overreach. There was a little bit of public comment beginning at the marijuana task force meetings. It was because of people's fears and concerns that they spoke in opposition of this ordinance. He strongly recommended that anyone who has fears and concerns should get a copy of the State regulations regarding marijuana.

Mr. Olson stated that he couldn't sell cannabis until it has been lab tested. It has to be certified that it has been lab tested by a State certified lab. He felt that clears up a lot of problems.

Mr. Olson also felt that the subject ordinance was doable. The ordinance brings a consensus between folks like him that are against more layers of government but yet allows their community to be able to have a vehicle to make good decisions. There are a lot of people who have put in a lot of time into this regulation. The marijuana task force submitted recommendations to the Borough and supported the ordinance by a unanimous vote.

Mr. Olson stated that tomorrow night is the eve before state license applications will be received. There are a lot of folks who will choose to go into this type of business which is a personal decision. He doesn't know of too many other businesses that he has been involved in where he has to pay \$1,000 application fee that is non-refundable. There is a lot of risk just with the thousand dollars but was just a drop in the bucket for this industry. The Borough will receive a portion of the application fee and license fee. In his case, it would be about \$5,000 annually just for the commercial grow operation.

Mr. Olson felt this was a win / win for the borough and will bring in additional taxes from the licenses. The Borough will have to oversee it and the public will be given an opportunity to testify on the license applications. He stated that the businesses will have to advertise in the newspaper for 10 days so there will be lots of chances for the public to come forward.

Mr. Olson commended the Planning Commission for the questions that were asked. He thought they asked more questions than a lot of folks have asked. There are still things that need to be worked out. Mr. Olson spoke in opposition of the 300 foot buffer but knew that was a separate issue. He requested that the Planning Commission support the subject ordinance because it was workable and doable. This was moving them forward especially on the eve before this was going to take place.

Chairman Martin asked if there were questions for Mr. Olson. Hearing none, the public hearing continued.

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

MOTION: Commissioner Ruffner moved, seconded by Commissioner Foster to recommend approval of Kenai Peninsula Borough Ordinance 2016-07, Substitute; an ordinance amending KPB Chapter 7.20 and Enacting KPB Chapter 7.30 regarding local protests of State Marijuana Licenses.

VOTE: The motion passed by unanimous consent.

CARLUCCIO YES	COLLINS ABSENT	ECKLUND ABSENT	ERNST YES	FOSTER YES	GLENDENING YES	HOLSTEN YES
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	11 YES 2 ABSENT

AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) – None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING – None

AGENDA ITEM I. SPECIAL CONSIDERATIONS

1. Building Setback Exception
 Lot 4 Block 6 Meridian Park
 KPB File 2016-017; Resolution No. 2016-02
 Location: off Orlander Avenue, south of Bear Lake

This agenda item was moved up on the agenda and reviewed after the special presentation by Mr. Able.

AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Ruffner reported that the Plat Committee reviewed and conditionally approved six preliminary plats and postponed one preliminary plat.

AGENDA ITEM K. OTHER/NEW BUSINESS

AGENDA ITEM L. ASSEMBLY COMMENTS – None

AGENDA ITEM M. LEGAL REPRESENTATIVE COMMENTS – None

AGENDA ITEM N. DIRECTOR'S COMMENTS

Mr. Best reminded the Commissioners of the Work Session with the Assembly regarding the Local Option Zone regulations tomorrow, February 23 at 1:00 p.m. in the Assembly Chambers. He wasn't sure this would be brought back to the Planning Commission.

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

Commissioner Foster expressed frustration with the IPAD regarding the ability to underline and highlight the packets on it. Mr. Best replied that they originally started when IAnnotate which gives the ability to highlight an underline. The thought was to try to start with something simple and once everyone was familiar with using the IPAD then move into something with more capabilities. He will look into this further.

Commissioner Ruffner expressed concern regarding the Local Option Zone rewrite regarding the definition changes of the zones of what is and what isn't allowed. He hoped the work session would have a sectional analysis that they could walk through with what has been changed. Chairman Martin agreed with Commissioner Ruffner and also expressed those concerns.