



## **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

**FROM:** Max Best, Planning Director 

**DATE:** June 15, 2016

**SUBJECT:** standard marijuana cultivation facility License Application. **Applicant:** Alaska Bud Brothers Aerogardens LLC, a; **Landowner:** James R. Gossman; **Parcel #:** 13351106; **Property Description:** T 3N R 11W SEC 33 Seward Meridian KN 0830229 FORT MORGAN SUB ADDN 1 TRACTS B & C AMENDED TRACT B; **Location:** 22720 Yukon Rd, Kasilof, AK, Kasilof Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled June 13, 2016 meeting.

A motion to recommend approval of the Alaska Bud Brothers Aerogardens LLC, a standard marijuana cultivation facility license application passed by unanimous consent subject to the following conditions:

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

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

### **Overview**

The State has received approximately 30 applications for marijuana facilities within the Borough. The first nine is what is before the Commission at this meeting. These are the applications that the Marijuana Control Board staff has determined are complete applications. The Marijuana Control Board met last week and approved many of these applications. The approval is pending waiting for the Borough's non-objection of the applications. They realize that the Commission and Assembly have the ability to place conditions on these applications. In the future some of these applications will take place before the Marijuana Control Board acts on them because they only meet five times per year. Some of these applications will come before the Commission before the Marijuana Control Board acts on it. It depends on how the Borough's calendar matches with their calendar. Once the Marijuana Control Board staff determines an application is complete the Borough has 60 days to comment on it which generally means there is a pretty tight schedule which is why things won't quite line up the same from one application to another.

### **AGENDA ITEM F. PUBLIC HEARING**

6a. State application for a marijuana establishment license; Kasilof Area

Staff Report given by Bruce Wall

PC MEETING: June 13, 2016

**Applicant:** Alaska Bud Brothers Aerogardens LLC

**Landowner:** James Gossman

**Parcel Number:** 133-511-06

**Legal Description:** Tract B, Fort Morgan Subdivision Addn. 1, according to Plat 83-23, Kenai Recording District.

**Location:** 22720 Yukon Road

**BACKGROUND INFORMATION:** On March 18, 2016 the applicant notified the borough that he had submitted an application to the state for a marijuana cultivation license. On March 25, 2016 the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed cultivation facility on the parcel described above. The applicant supplied an updated site plan on April 29, 2016. The state Marijuana Control Board notified the borough that the application was complete on May 23, 2016. Staff has reviewed the completed license that has been submitted to the state and the site plan submitted to the borough and has found the following concerning the standards contained in KPB 7.30.020:

1. The Borough finance department has been notified of the complete application and they report that the applicant is in compliance with the borough tax regulations.
2. Borough planning department staff has evaluated the application and has determined that the proposed cultivation facility will be located greater than 1,000 feet from any school.
3. Borough planning department staff has evaluated the application and has determined that the proposed cultivation facility will be located greater than 500 feet from all recreation or youth centers, and all buildings in which religious services are regularly conducted, and all correctional facilities.
4. The proposed facility is not located within a local option zoning district.
5. The proposed facility is located where there is sufficient ingress and egress for traffic to the parcel.
  - The site plan indicates that the total width of the driveway is greater than 28 feet where it joins Yukon Road.
  - No parking is proposed in borough rights-of-way.
  - The site plan shows a clear route for vehicles.

- The site plan shows that on-site parking and loading areas are sufficient to preclude vehicles from backing out into the roadway.

6. Because this application is for cultivation the hours of operation for a retail store is not applicable.

KPB 7.30.020(E) allows the recommendation of additional conditions on a license to meet the following standards:

- protection against damage to adjacent properties,
- protection against offsite odors,
- protection against noise,
- protection against visual impacts,
- protection against road damage,
- protection against criminal activity, and
- protection of public safety.

The Alaska Marijuana Control Board will impose a condition a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable (3 ACC 306.060b). If the Planning Commission recommends additional conditions, additional findings must be adopted to support that it is not arbitrary, capricious, or unreasonable.

PUBLIC NOTICE: Public notice of the application was mailed on May 24, 2016 to the 7 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the June 2, 2016 & June 9, 2016 issues of the Peninsula Clarion News.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on May 24, 2016.

#### ATTACHMENTS

- Site plan
- Aerial map
- Area land use map with 500' & 1,000' parcel radius
- Agency comments
- Public comments
- State marijuana establishment application with associated submitted documents
- Ordinance 2016-05
- Ordinance 2016-07(substitute)
- Public Notice

The Marijuana Control Board approved this application pending the State Fire Marshall and Borough's approval

#### STAFF RECOMMENDATION

Staff recommends that the planning commission forward this application to the assembly with the findings contained in this staff report and with the recommendation that the following conditions be placed on the state license:

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

#### END OF STAFF REPORT



Chairman Martin opened the meeting for public comment.

1. Jim Gossman  
Mr. Gossman was available to answer questions.

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

Commissioner Holsten asked about how secure the cabinet was for transport and if it would be in a building that secure. Mr. Gossman replied that it would be a locked storage cabinet on midlevel inside the building.

Commissioner Venuti asked if he located a lab to test his product. Mr. Gossman replied that there are two labs that have been approved for testing in Anchorage. Commissioner Venuti asked how the product would be transported to Anchorage for testing. Mr. Gossman replied that will be transported in their car in a locked case taken directly to the lab.

There being no further comments or questions, 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 Venuti moved, seconded by Commissioner Holsten to recommend approval of Alaska Bud Brothers Aerogardens, LLC, marijuana cultivation facility in the Kasilof area subject to the following conditions.

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KP.B 7.30.020(A).

Commissioner Foster asked what the notification distance for notifying the neighbors of the proposed marijuana facility. Mr. Wall replied that it is a 300 foot radius which is according to Borough Code. Commissioner Foster asked if there was anyway the public can find out about these facilities other than rooting through the packets. Mr. Wall replied that staff advertises the notice twice; once as a full display ad in a public hearing notice and once as part of the agenda. Also the applicant is required to post notice in the newspaper, in a public place like a post office and have their property posted. He stated the attempt is to give plenty of notice concerning the application.

Commissioner Holsten asked what would happen if they place conditions on the applicant but it makes the approval contestable for the applicant. Mr. Wall replied that his simple answer was he wasn't sure because they haven't gone through this process before. The State has given approval and has delegated authority to their staff to give final approval pending the Borough's non-objection and the State Fire Marshall's approval. The applicant could appeal to the board if the applicant objects to the conditions placed on it.

Commissioner Ruffner asked what the roll of the Planning Commission and Assembly was comparing it to gravel pits. Mr. Wall replied that there are two public hearings; one with the Planning Commission and one at the Assembly. The Planning Commission recommends to the Assembly. The Planning Commission is just a recommending body to a recommending body. The ordinance passed gives the Planning Commission authority to place additional conditions on it. He referred to "KP.B 7.30.020(E) allows the recommendation of additional conditions on a license to meet the following standards: protection against damage to adjacent properties, protection against offsite odors, protection against noise, protection against visual impacts, protection against road damage, protection against criminal activity, and protection of public safety." "The Alaska Marijuana Control Board will impose a condition a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable (3 ACC 306.060b). If the Planning Commission recommends additional conditions, additional findings must be adopted to support that it is not arbitrary, capricious, or unreasonable."

Commissioner Ruffner understood that they could make recommendations to the Assembly for additional conditions based on those things that were listed. The Assembly would then make recommendations to the State. Mr. Wall replied that was correct. The Marijuana Control Board would then place the conditions that the Assembly recommends unless they determine that it is arbitrary, capricious and unreasonable.

Commissioner Foster asked the applicant if he has discussed his business with his neighbors. Mr. Gossman replied that he doesn't have a lot of neighbors but has spoken with all of them but two. He stated he hasn't received any opposition to it.

Commissioner Glendening asked how many of the conditions listed (*protection against damage to adjacent properties, protection against offsite odors, protection against noise, protection against visual impacts, protection against road damage, protection against criminal activity, and protection of public safety*) are addressed through the State permitting process. Mr. Gossman stated that all of those items have been addressed by the State. He stated he was fortunate having 20 acres surrounded by trees.

Commissioner Carluccio asked if he had any problems with the following conditions.

*Conditions*

1. *The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.*
2. *There shall be no parking in borough rights-of-way generated by the marijuana establishment.*
3. *The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).*

Mr. Gossman replied absolutely not.

There being no further comments or questions, the commission proceeded to vote.

**VOTE:** The motion passed by unanimous consent.

CARLUCCIO YES	COLLINS YES	ECKLUND ABSENT	ERNST YES	FOSTER YES	GLENDENING YES	HOLSTEN YES
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	12 YES 1 ABSENT

AGENDA ITEM F.

PUBLIC HEARING

6b. State application for a marijuana establishment license; Seward Area

Staff Report given by Bruce Wall

PC MEETING: June 13, 2016

**Applicant:** Budding Alaska LLC

**Landowner:** Frostbite Lease Services LLC

**Parcel Number:** 145-070-01

**Legal Description:** That portion of the west 198 feet of Government Lot 6 lying south of Old Nash Road within Section 35, Township 1 North, Range 1 West, Seward Meridian.

**Location:** 32273 Old Nash Road

**BACKGROUND INFORMATION:** On March 21, 2016 the applicant notified the borough that he had submitted an application to the state for a marijuana cultivation license. On March 22, 2016 the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed cultivation facility on the parcel