



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2200 • **FAX:** (907) 714-2378


Toll-free within the Borough: 1-800-478-4441, Ext. 2215

www.kpb.us

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:** Budding Alaska LLC; **Landowner:** Frostbite Lease Services LLC; **Parcel #:** 14507001 ; **Property Description:** T 1N R 1W SEC 35 Seward Meridian SW THE WEST 198 FT OF GOVT LOT 6 LYING SOUTH O F NASH ROAD; **Location:** 32273 Old Nash Road, Seward, AK, Seward 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 Budding Alaska 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.

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 described above. 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 facility will access directly to Old Nash Road, which is a state maintained 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 1, 2016 & June 8, 2016 issues of the Seward Journal.

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

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).

The State Marijuana Control Board tabled this application. They have another meeting on July 9, 2016 and will likely make a decision on this at that time.

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Bruce Martin
Mr. Martin is the owner of Budding Alaska, LLC and was available to answer questions.

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

Commissioner Ruffner asked why the State tabled approval of his application. Mr. Martin replied that there was a scheduling problem with his work and he was unable to attend the meeting with the State. It was his understanding that the application has been deemed complete but was not at the meeting to answer questions. He was rescheduled to meet with the State on July 7, 2016 in Fairbanks and will definitely be at that meeting.

Commissioner Ruffner asked if he would have a problem postponing this until he receives approval with the State. Mr. Martin thought it wouldn't make any difference but thought it could have some bearing with the

Board. Mr. Wall stated that the clock was ticking on this application so the Borough only has 60 days to comment. He stated it would significantly be a problem if the Planning Commission tabled it.

Commissioner Foster asked if his neighbors expressed concern with this proposed business. He noticed a commercial lot across from him but also noticed there were quite a few residential lots near him. Mr. Martin replied that there were a total of 49 residents or business property owners within a mile of his location. He spoke to well over half of them and has only had one person say they were not in favor of his operation.

Commissioner Foster asked if he was in the floodplain. Mr. Martin replied yes. Commissioner Foster asked about the construction of the building in the floodplain. Mr. Martin replied that they have elevated the property four feet above Flood Zone A line which puts them in high Flood Zone B. It is unlikely that they will flood. They have owned the property since 2005, have experienced three significant flood events but have never had water on their property.

Commissioner Holsten asked if he was required to attend the State meetings or was it tabled because he wanted to be there. Mr. Martin replied that he didn't get the impression from the letter that he was required to be there but they tabled it because he wasn't there. He understood that the application was deemed complete and suggested it was approved pending Borough and Fire Marshall approval. Mr. Martin was unable to make the June 9 State meeting when this was discussed and thought he didn't need to be in attendance. He stated he has a pretty solid business plan and operating plan.

Commissioner Glendening asked if it was possible to approve this tying it back to approval by the State. Mr. Wall replied that the Commission may be hearing many applications before it shows up on the State agenda. He stated he wasn't sure what value that would be added by postponing this decision or making it conditional on the Board's decision. The Borough's decision needs to be based strictly on the Borough's ordinance. Mr. Wall stated that the applicant's application was complete. He stated they will be looking at the same application that the Commission looks at. They may just have some additional regulatory questions that they want clarified. Commissioner Glendening asked if the Commission would be approving the form and function of his application. Mr. Wall replied yes, that was correct. They are mostly looking at the location, road access and tax obligations. The Commission looks at the application to make sure it meets all the standards.

Commissioner Collins asked if the smoke would have any effect on his neighbors since he plans to incinerate his waste. Mr. Martin replied that he doesn't really have any significant neighbors. The building in question is in a light industrial area with the nearest resident being at least 500-600 feet. There is a trucking company and a mechanics shop across the street. The prevailing winds blow out to the bay about 90-95% of the time. His operating plan calls for either composting or incineration of the waste.

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 Lockwood moved, seconded by Commissioner Isham to recommend approval of Budding Alaska, LLC, a marijuana cultivation facility located at 32273 Old Nash Rd, Seward 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 KPB 7.30.020(A).

Commissioner Venuti asked if the Borough would be enforcing the conditions of these applications. Mr. Wall replied that the way the State Statute was written is that the Borough will enforce any conditions that it requested to be placed on these applications. The enforcement of any of those conditions would be the Borough's responsibility. He imagined they would work closely with the State but for the most part, the

Borough will have hands off approach to that as long as they are complying with all of the conditions. They hope to work closely with the State enforcement people and the license holder to get any issues resolved. The Borough has little enforcement power because it was not a Borough permit so the most they could do would be to go to the State and ask them to take action.

Commissioner Foster asked if the Borough looked at the building that was in the floodplain to ensure that it would not affect neighboring properties. Mr. Wall replied that it was something that the River Center would be involved in. In this case, it was an existing building but was not something they specifically looked at as part of the application because it was an existing facility.

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

6c. State application for a marijuana establishment license; east of Soldotna

Staff Report given by Bruce Wall

PC MEETING: June 13, 2016

Applicant: Croy's Enterprises LLC

Landowner: James Michael Harris

Parcel ID#: 058-290-15

Legal Description: Lot 2A1, Robinette Commercial Subdivision #3, according to Plat 2011-39, Kenai Recording District, State of Alaska.

Location: 36130 Pine Street

BACKGROUND INFORMATION: On February 29, 2016 the applicant notified the borough that he had submitted an application to the state for a standard marijuana cultivation facility license. On March 4, 2016 the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed cultivation facility on the above parcel. On March 18, 2016 the applicant supplied a letter that clarified the parking. The state Marijuana Control Board notified the borough that the application was complete on May 4, 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.