



## **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**

### **MEMORANDUM**

**TO:** Kelly Cooper, Assembly President  
Kenai Peninsula Borough Assembly Members

**FROM:** Max Best, Planning Director *mb*

**DATE:** April 27, 2017

**SUBJECT:** Retail Marijuana Store License Application. **Applicant:** FAT TOPS, LLC; **Landowner:** IBWT Investments LLC; **Parcel #:** 06310406; **Property Description:** Lot 2A, Block 1, Longmere Estates Zimco Replat, according to Plat 98-38, Kenai Recording District.; **Location:** 36380 Murray Lane, Soldotna, Sterling Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled April 24, 2017 meeting.

A motion to recommend approval of the FAT TOPS, LLC, a Retail Marijuana Store license application passed by majority 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 KP.B 7.30.020(A).
4. The marijuana establishment shall 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.

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

AGENDA ITEM F.

PUBLIC HEARING

8. State application for a marijuana establishment license; Sterling Area

Revised Staff Report given by Bruce Wall

PC MEETING: Monday, April 24, 2017

**Applicant:** FAT TOPS, LLC

**Landowner:** IBWT Investments LLC

**Parcel ID#:** 063-104-06

**Legal Description:** Lot 2A, Block 1, Longmere Estates Zimco Replat, according to Plat 98-38, Kenai Recording District.

**Location:** 36380 Murray Lane, Soldotna

BACKGROUND INFORMATION: On Thursday, October 6, 2016 the applicant notified the borough that he/she had submitted an application to the state for a Retail Marijuana Store license. On Monday, October 17, 2016 the applicant supplied the borough with a signed acknowledgement form and a site plan on Tuesday, March 21, 2017 of the proposed Retail Marijuana Store on the above described parcel. The Alcohol and Marijuana Control Office notified the borough that the application was complete on Friday, March 10, 2017.

The Planning Commission held a public hearing on April 10, 2017 in Homer. At that time action on this item was postponed to April 24, 2017 to allow for public comments to take place in Soldotna and to allow the applicant time to work with the Department of Transportation. Notice of the April 24, 2017 hearing was published as required in KPB Title 21.

Staff has received 19 opposition letters to this application.

Murray Lane is a State maintained road.

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 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 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 parcel has direct access to a state maintained road and will not be accessing a borough right-of-way.
  - The signed acknowledgement form indicates that there will not be any parking in borough rights-of-way.
  - The site plan indicates a clear route for delivery vehicles which allows vehicles to turn safely.

- On-site parking and loading areas are designated at a location that would preclude vehicles from backing out into the roadway.
6. The signed acknowledgement form indicates that the proposed facility will 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.

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 the conditions.

PUBLIC NOTICE: Public notice of the application was mailed on Tuesday, March 21, 2017 to the 13 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the Thursday, March 30, 2017 & Thursday, April 6, 2017 issues of the Peninsula Clarion.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on Tuesday, March 21, 2017.

#### ATTACHMENTS

- State marijuana establishment application with associated submitted documents
- Site Plan
- Acknowledgement form
- Aerial map
- Area land use map with 500' & 1,000' parcel radius

#### 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 pursuant to 3 AAC 306.060(b):

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).
4. The marijuana establishment shall 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.

#### END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Timothy Reed

Mr. Reed lives on Murray Lane and has lived there over 35 years. The staff report failed to say was that the State of Alaska does not agree with them using Murray Lane. The State said that they have denied the use of Murray Lane. There has to be 100 feet between the Sterling Hwy and their driveway. The applicants have maybe 70 feet so the State of Alaska has denied their request.

Mr. Reed also stated that was a safety corridor. When the people are turning off the Sterling Highway into that location, they will not be able to get into the driveway if there were more than one or two cars waiting to get onto the highway. He stated the Sterling Highway was being worked on to be made into a 4 lane divided highway.

Mr. Reed referred to his submitted comments it states his safety concerns. One of the higher incident rates of accidents, those between Robinson Loop, Tustumena and Murray Lane. There is also a school bus stop there where children get on and off the bus there. Six hundred feet later there is Penny Ln where children get on and off.

Mr. Reed stated that there is garbage sitting outside the facility right now. One of their requirements is that it was supposed to be kept clean, no eyesore. His request would be that a fence be installed along Murray Ln and along the back portion of it so that they don't have to see it. Right now, with the safety concerns and with a church being 650 feet away. The dictionary definition of a Sunday School is a school. It is less than 1,000 feet from the school so right there they are going against the borough ordinance.

Mr. Reed stated that these are his main concerns. The State stated that Penny Lane should be used for part of it but Penny Ln is unable to hold any traffic of that magnitude. He was available to answer questions.

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

2. Sherry Mettler

Ms. Mettler lives on Murray Lane and has been in the neighborhood for over 40 years. She has a lot of the same concerns that everyone else does such as the safety of the road. Ms. Mettler submitted a couple of videos that gives the commissioners a real birds eye view coming from Murray Ln up to the Sterling Hwy as well as coming on the Sterling Hwy up to the turnoff. There is an eight foot hill that blocks that entrance onto Murray Ln.

Ms. Mettler stated that children are there waiting for school buses and there are a cluster of about 12-15 mailboxes on the right hand side. This was a real safety hazard in a residential area. She realized they were not zoned residential but believes that residential should stay that way. Ms. Mettler wouldn't want any retail business of any kind in this location mainly because of the traffic. She was available to answer questions.

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

3. Tracey Ratliff, 36387 Penny Ln

Ms. Ratliff lives on the adjoining property to where this license has been requested. She has the same safety concerns as everyone. Ms. Ratliff has lived in this area for 30 years. She was sure that the State has sufficient information on the traffic in that area and that it is a safety corridor. Having lived there that many years, she has seen many near misses and has seen many accidents in that area. The way the road was coming from Sterling, it has a drop there right at Murray Ln and she has almost been reared ended there numerous times because people come over the hill and they don't see you until they are over the hill.

Ms. Ratliff saw there was a possibility of a proposal of making the entrance off of Penny Ln. She was kind of between the two neighborhoods. There are the same issues as stated with school bus stops

in both places. There are children that ride their bikes. On Penny Lane, there is a handicapped young man that was in a wheelchair, a lady that uses a walker as well as children who use the road to walk.

Ms. Ratliff hoped that anyone that was coming to this establishment would be responsible but she thought it would be naïve to think that they would all be responsible. It was probably the same as people going to the liquor store to buy alcohol. She felt in a residential area with children and people and things going on, that it poses a public safety problem.

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

4. Jim Bergevin, 36273 Murray Lane

Mr. Bergevin expressed opposition to a retail license being granted to this establishment at this particular location. The safety aspect is a big thing. The traffic coming on the Sterling Hwy is bad enough during the spring, fall and winter but it is really bad when tourist traffic was brought in going north and south with big motorhomes, 18 wheelers, and people making left hand turns coming from the north and the other ones coming from the south. This was asking for disaster. There have been numerous accidents at that intersection and have been a lot of people that have run into the ditch to avoid accidents.

Mr. Bergevin also expressed concern regarding the business dealing with a lot of cash on hand. He expressed concern for the safety with the potential of any violence taken place in this area. The safety factor for the community at large is at stake with any criminal element knowing that there is a big cash account at this business.

Mr. Bergevin expressed another concern with the vehicular traffic coming onto Murray Lane which is a dead end street. As testified, there are cluster boxes there and school bus stops. There are a lot of children with mothers walking up and down the road. He thought it was a bad thing to have an establishment of this type there and was in agreement with the previous testifiers' testimony.

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

5. Connie Younker, 36186 Murray Lane

Ms. Younker moved to this area less than two years ago because it was a quiet neighborhood. It might be kind of selfish but she likes to walk on the side of the road since there are no sidewalks there.

Ms. Younker stated that she has seen cars sit at this intersection for 15 minutes trying to get off of Murray Ln onto the Sterling Hwy. It was worse when heading west to go towards Soldotna. It is now a challenge to get onto the highway with a lot of people owning motorhomes, trailers and boats. She definitely opposed the proposal.

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

6. Pete Nichols, 36016 Murray Ln

Mr. Nichols stated that he has personally been stopped on that highway and have someone come over that hill and couldn't stop. They ended up in the ditch on the other side of the road trying to get stopped. He stated it was quite a hazard turning in there anytime. A car can be stuck out on the highway since there can only be one car there that could block the road.

Mr. Nichols stated that there are mailboxes there. There is no place to go if the road was blocked at this location, let alone if someone was waiting trying to get out on the highway. He stated a lot of times he turns right there to go left.

Mr. Nichols also expressed concern about having a lot of cash being there. Longmere Liquor was there and before they went out of business across the road, they were held up. He felt this would make a bad situation for the area.

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

Commissioner Whitney asked where the school bus stop was located and if it was on Murray Ln or the highway. Mr. Nichols replied that the school bus stop was right on the highway with the kids crossing the highway right there. The cars are parked there to pick up their kids when the weather was bad

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 Isham moved, seconded by Commissioner Ruffner to recommend approval of Fat Tops, LLC Retail Marijuana Store License according to staff recommendations, findings and to recommend that the following four 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 KP.B 7.30.020(A).
4. The marijuana establishment shall 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.

Commissioner Whitney asked for clarification regarding the emails that were received from the State Department of Transportation. Mr. Wall clarified that they received the first email from the State Planner which stated that they needed to get a new permit and that it would not be issued off of Murray Lane. A few days later he received an email response from the DOT Right-of-Way Specialist that clarified that because they appeared to have established access there in the past then the driveway permit would be issued at that location. Also, he clarified that the second email states that there appeared to be adequate separation distance between the driveway and the intersection.

Commissioner Whitney asked if the driveway that was there now was legal in the sense that it could be permitted. Mr. Wall replied yes, it would most likely be permitted at that location.

Commissioner Glendening asked if the second email overrode the first email. Mr. Wall thought that the most recent correspondence would be the most significant.

Commissioner Morgan read in the email that 100 foot was required but wondered what there actually was. Mr. Wall recalled measuring it out and believed that it was only about 75 feet from the platted right-of-way. The state requirement was to the constructed intersection which is a greater distance. Mr. Best believed that it was 119 feet from the north side of driveway to the edge of the pavement. He wasn't sure where DOT measures to and from. Mr. Wall stated that it was 120 feet.

Commissioner Carluccio stated that a testifier mentioned that a church and school was closer in the setbacks than allotted by the borough. Mr. Wall replied that the regulations referred to public school or the equivalent and wouldn't apply to a Sunday School. The State's requirement was 500 feet with the borough's requirement being 1,000 feet from the schools. Commissioner Carluccio asked what the setback was from churches. Mr. Wall replied that it was 500 feet from churches.

Commissioner Glendening stated that the federal rules of the Cole Memo have a safe school act that was cited. They talk about 1,000 feet. He asked if that was taken into consideration in his study. Mr.

Wall replied that the Cole Memo does not specifically talk about the 1,000 foot distance. It does talk about making sure that the marijuana was not easily accessible to children. The safe school zone was the reason the Borough went with the 1,000 foot

Commissioner Ecklund referred to a testifier's comments that there were trash problems at this location and asked whose responsibility it was to report that. She wasn't sure if it was the borough's responsibility to review that and asked who they call to report things like that. Mr. Wall replied that he has been out to the site several times and did not notice any debris or anything unsightly. The code specifies seven different things that the borough can request that the State place additional conditions on the permit based on those seven standards. One of those is visual impacts. He stated that they don't have any other regulations concerning debris or anything else like that which would fit into this situation.

Commissioner Ecklund asked again who an adjacent property owner or a member of the area would report to if they see some problems. Mr. Wall replied that those standards are the standards that the Borough evaluates when reviewing these applications. Those don't become conditions on the permit. It gives the Planning Commission and Assembly the ability to recommend to the State additional conditions to be placed on the license if they fit into the parameters of those standards. He stated that the Borough keeps a good working relationship with these marijuana facilities and anybody was free to contact him and he would gladly work with the business owner to help get the situation resolved.

Commissioner Glendening asked if this highway was going to be widened and improved. Mr. Wall replied that it was in the State Transportation Plan to improve this highway within the next five years. It is intended to widen that to four lanes with a possible turn lane. Commissioner Glendening stated that if that was so then the design minimums for an arterial road require a 100 foot corner clearance. What was measured and stated was that the distance would be diminished and would not meet the standard. Mr. Wall replied that dimension would greatly reduce. It would be tough to speculate because of the right-of-way there. If the improvements were centered on the existing alignment but there was no way of saying whether it would be closer or further away from the road. He stated that it wouldn't get any further away from the driveway but would only get closer. Commissioner Glendening felt that the concerns expressed are valid after hearing the comments about the distance of the 100 foot and 75 foot.

Commissioner Glendening thought concerns were valid regarding the plans for improvement of the highway, access and all the testimony that they have heard regarding how the cars stack up now. He wasn't sure this situation would be much improved just by adding shoulders

Commissioner Glendening stated there were still conflicts and confusion regarding Penny Ln access so he would not be supporting this proposal.

There being no further comments or questions, Chairman Martin called for a roll call vote.

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

CARLUCCIO NO	ECKLUD YES	ERNST YES	FOSTER ABSENT	GLENDENING NO	ISHAM YES	LOCKWOOD NO
MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY NO		7 YES 4 NO 1 ABSENT

Chairman Martin called a five minutes recess at 9:19 p.m. Chairman Martin reconvened the meeting at 9:27 p.m.

AGENDA ITEM F. PUBLIC HEARING

9. Local Option Zoning District; Soldotna / Sterling Area