

Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Wayne Ogle, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director 

DATE: May 15, 2018

SUBJECT: Application for a new Limited Marijuana Cultivation Facility License. **Applicant:** Volcano Flower LLC; **Landowner:** Timothy Hamilton; **Parcel #:** 17331052; **Property Description:** Lot 4, Diamond View Estates, according to Plat 80-94, Homer Recording District; **Location:** 41253 Volcano View Ct. Homer, Homer Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled May 14, 2018 meeting.

A motion to recommend approval of the Volcano Flower LLC, a Limited Marijuana Cultivation Facility 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

2. State application for a marijuana establishment license; Diamond Ridge Area

Staff Report given by Bruce Wall

PC MEETING: May 14, 2018

Applicant: Volcano Flower LLC

Landowner: Timothy Hamilton

Parcel ID#: 173-310-52

Legal Description: Lot 4, Diamond View Estates, according to Plat 80-94, Homer Recording District

Location: 41253 Volcano View Ct., Homer

BACKGROUND INFORMATION: On June 28, 2017 the applicant notified the borough that he had submitted an application to the state for a Limited Marijuana Cultivation Facility license. On July 7, 2017 the applicant supplied the borough with a signed acknowledgement form and a site plan on July 14, 2017 of the proposed Limited Marijuana Cultivation Facility on the above described parcel. The Alcohol and Marijuana Control Office notified the borough that the application was complete on March 16, 2018. Staff has reviewed the completed license that has been submitted to the state and the site plan submitted to the borough and has found that the standards contained in KPB 7.30.020 has been met.

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 site plan indicates that the approach is or will be constructed to a minimum width of 28 feet where it accesses the 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. 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 the conditions.

The Assembly will consider this application at its May 15, 2018 meeting and the State Marijuana Control Board has considered this application at its April 4-6, 2018 meeting.

Eight comment letters in opposition were included in the Planning Commission Desk Packet.

PUBLIC NOTICE: Public notice of the application was mailed on April 24, 2018 to the 4 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the May 3, 2018 & May 10, 2018 issues of the Homer News.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on April 24, 2018.

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).

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Tim & Annie Hamilton, 41253 Volcano View Ct., Homer
Mr. Hamilton stated that they have been in this area for 30 years. He asked if anyone had any questions or concerns. They realized that there have been letters of opposition from people in the subdivision but they have reviewed the covenants and found that there was nothing that says they can't have a legal limited cultivation facility on their property.

Chairman Martin asked if there were questions for Mr. or Ms. Hamilton.

Commissioner Foster asked if they have heard of any security issues anywhere in the State with a limited growing operation. Mr. Hamilton replied no, he has not heard of any security issues. They have complied with all the rules and regulations. He stated they have a camera, alarm system, commercial locking door, and etc.

Ms. Hamilton stated that they are at the end of a very small cul-de-sac with very little traffic. They have three other neighbors who are aware of what they are doing and have no problems with any of them. The letters are from people far from their property. He stated they could probably round up as many letters from other people in their subdivision who are in favor of their application.

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

2. Mark Davis, 40870 Soltice Dr, Homer

Mr. Davis understood that the applicant has followed all of the guidelines with the exception of the Homeowners Association guidelines. He thought that wouldn't affect the Commission's decision what the Homeowners Association has in place

Chairman Martin replied that was correct.

Mr. Davis expressed concern that this was a lot in a residential area with many vacant lots around it. There could possibly be future development of homes with kids. He also expressed concern regarding odor throughout the neighborhood, crime, and security which is a big concern with everyone in the neighborhood.

Mr. Davis felt that they should have to go through the Homeowners Association for approval but understood that it doesn't go through the Borough's approval process.

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

Commissioner Foster stated that the Homeowners Association was a civil matter. The Homeowners Association would have to sue under the grounds of breaking the covenants. The Borough does not regulate subdivision covenants.

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 Ecklund to recommend approval of the Volcano Flower, LLC, a Limited Marijuana Cultivation Facility license according to staff recommendations, findings and to recommend that the following three 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).

Commissioner Foster asked staff if they have heard of any issues regarding security. Mr. Wall replied that he has not heard of any security issues on the Peninsula. He heard some rumors of security issues in Anchorage however the State regulations are quite stringent concerning security so he wouldn't consider these to be soft targets.

Commissioner Foster asked about the odor issue. Mr. Wall replied that they have had some complaints concerning odors. He stated they follow up on that and coordinate with the State to make sure that the State Alcohol and Marijuana Control Office investigators are aware of that. They have been pretty good about following up on complaints on odors. The State regulations regarding odors are very strict that there cannot be any detectible odors from outside the licensed premise so no one should be able to smell it at any time. If anyone does, then he welcomed that feedback.

Commissioner Foster asked for clarification regarding a limited operation moving into a bigger operation in the

future. Mr. Wall replied that they would be licensed from the State with a Limited Cultivation license which means they need to stay under 500 feet of cultivated area. If they want to expand beyond that then it would require a whole new application with the State. At that time the new application would come back before the Planning Commission.

Commissioner Foster asked if there was any indication that property values were going down anywhere in the State where there was a grow operation. Mr. Wall replied that he could not answer that.

Commissioner Foster asked about the use of herbicides and pesticides. Mr. Wall replied that the State regulates that and would not be something the Borough monitors.

VOTE: The motion passed by unanimous consent.

BENTZ YES	CARLUCCIO ABSENT	ECKLUND YES	ERNST YES	FIKES YES	FOSTER YES	ISHAM ABSENT
LOCKWOOD ABSENT	MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	10 YES 3 ABSENT

AGENDA ITEM F. PUBLIC HEARING

3. Modification of a Conditional Land Use Permit for a Material Site; Funny River Area

Staff Report given by Bruce Wall

PC MEETING: May 14, 2018

Applicant: Gary Knopp

Landowner: Gary Knopp

Parcel Number: 066-161-04

Legal Description: Lot 5, Riverwind I Subdivision, according to Plat 72-48, Kenai Recording District.

Location: The parcel is located on the south side of Funny River Road, ¼ mile west of the fire station.

BACKGROUND INFORMATION: The applicant wishes to change the 50-foot vegetated buffers to 6-foot high berms along the east, west, and south property boundaries.

The conditional land use permit for this property was approved on April 25, 2016 with Resolution 2016-12. Condition two on the original permit stated:

The permittee shall retain a 50-foot vegetated buffer along all parcel boundaries except along the north 300 feet of the west boundary where the permittee shall place a six-foot high berm. These buffers shall not overlap an easement.

The staff report for the original application stated:

The site plan indicates that processing of material will take place 300 feet from the north parcel boundary. Because the property is less than 300 feet wide the applicant has requested a waiver of the 300-foot processing distance requirement.

Although the applicant has requested that all of the required 50-foot vegetated buffers on the east, west, and south property boundaries be changed to a 6-foot high berm, staff is recommending the following buffers:

North: 50-foot vegetated buffer.

South: 6-foot high berm.