


# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

FROM: Max Best, Planning Director 

DATE: November 27, 2018

SUBJECT: Application for a new Retail Marijuana Store License. **Applicant:** State of Mind Cannabis Company; **Landowner:** Lynn & David Hettick; **Parcel #:** 12503263; **Property Description:** Lot 70, Woodrow Alaska Plat, according to Plat 8, Seward Recording District.; **Location:** 33508 Lincoln Street, Bear Creek Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled November 26, 2018 meeting.

A motion to recommend approval of the State of Mind Cannabis Company, a Retail Marijuana Store application passed by unanimous consent to forward a letter to the Alaska Marijuana Control Board informing them the proposed facility encroaches on state owned land and that the license be 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).
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

4. State application for a marijuana establishment license; Bear Creek Area

Staff Report given by Bruce Wall

PC Meeting: November 26, 2018

**Applicant:** State of Mind Cannabis Company  
**Landowner:** Lynn & David Hettick  
**Parcel ID#:** 125-032-63  
**Legal Description:** Lot 70, Woodrow Alaska Plat, according to Plat 8, Seward Recording District.  
**Location:** 33508 Lincoln Street

BACKGROUND INFORMATION: On March 16, 2018, the applicant notified the borough that he/she had submitted an application to the state for a Retail Marijuana Store license. On March 26, 2018, the applicant supplied the borough with a signed acknowledgement form and a site plan on March 26, 2018 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 November 09, 2018.

In reviewing the submitted site plan, staff has determined that a portion of the proposed facility encroaches onto the adjacent public property. Staff has brought this to the attention of the applicant and they are working with Alaska Department of Natural Resources to resolve the issue. 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 that 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 November 14, 2018 to the eight landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the November 21, 2018 & November 21, 2018 issues of the Seward Journal.

**KPB AGENCY REVIEW:** Application information was provided to pertinent KPB staff and other agencies on November 15, 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

The Assembly will consider the application on December 4, 2018. 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.

Staff also recommends that the Borough send a comment to the Alcohol and Marijuana Control Office concerning the encroachment of the facility on the adjacent public land.

#### END OF STAFF REPORT

Mr. Wall explained that while reviewing the site plan he discovered a portion of the facility will be located on state land. The building was constructed in 1960 and a portion of the facility building is outside the property boundary. His recommendation is that, in addition to the four conditions being placed on the state license, there be a comment sent to the Alcohol and Marijuana Control Office letting them know that a portion of the facility is located on the adjacent state land. Also, the site plans that were provided were poor quality. The best drawing of the premise is located on page 131 of the meeting packet. Page 132 also shows the site overall. Mr. Wall clarified that the top diagram on page 131 shows two entrances into the

retail store. The bottom entrance is an exterior entrance and will be the only entrance for the public. The other entrance will be a secured entrance for employee use only.

Vice Chairman Ruffner opened the meeting for public comment. Seeing and hearing no one wishing to comment, Vice Chairman Ruffner closed public hearing and opened discussion among the Commission.

**MOTION:** Commissioner Ecklund moved, seconded by Commissioner Bentz to forward the Retail Marijuana Store License application for State of Mind Cannabis onto the Assembly with the staff recommendations and an additional letter to the state board.

Commissioner Whitney wanted to know if the portion of the building located on state land was a portion of the facility. Mr. Wall said that a portion of the licensed facility will be outside the property boundary and on state land.

Commissioner Ecklund commented that the drawings have a very faint outline and wanted to know if staff inspected the site. Mr. Wall apologized for the quality of the sketches. This application was rushed due to time restraints. The Alcohol and Marijuana Control Office only provides 60 days to comment and the Assembly only meets once in December. While not as thorough as he had wanted, he was able to do an inspection of the site. Ample parking and turn around space were found on the property. The parking will be near the entrance. If the parking area was to be on the other side of the building it would be in the right-of-way because a portion of the building is in the right-of-way. They will be complying to requirements.

Commissioner Venuti asked staff if the state has discussed how they feel about having a marijuana facility on their land. Mr. Wall has not spoken to the Department of Natural Resources. The history on the property is that when the subdivision was platted in 1916 the property was dedicated as a public park. Department of Natural Resources acquired it through the plat dedication. Mr. Wall has spoken to the Alcohol and Marijuana Control Office but is not aware of how they will handle this situation. The applicant must show they have right of possession of the property as part of the application requirements. Mr. Wall has also been communicating with the Department of Transportation. In 2005 they did a right-of-way plat for this property and an as-built. They were doing some road improvements to Bear Lake Road and did a plat to ensure they had sufficient right-of-way for the project. When Department of Transportation did this plat they took a portion of the applicant's property from a different lot. The applicants thought that in exchange they would receive the portion where the encroachment sits. Complications arose due to it being designated as a public park. Department of Transportation cannot simply trade that property. There are some things that need to be worked out. The person that can give him more information has been out of town. Mr. Wall reviewed the Borough code and it only allows for that information to be passed on to the state. There is nothing in the code to allow an objection to the application for this issue.

Commissioner Ecklund wanted to clarify that it was being presented to the Assembly on December 4. Mr. Wall confirmed that date. Commissioner Ecklund asked if Mr. Wall will be able to get the questions answered and resolved within a week. Mr. Wall feels like he will have more information by the meeting but doubts any resolution to the issue can be made that quickly. Commissioner Ecklund wanted to know if this issue could delay the approval of the license if there was no resolution regarding the property. Mr. Wall said it could possibly hold it up with the Alcohol and Marijuana Control Office. The Borough code limits the scope of what can be objected but does allow comments to be made on any numbers of items.

Commissioner Whitney wanted to know that if the Commission approves and the Assembly approves if the state can stop the license if they want. Mr. Wall said yes they could.

Vice Chair Ruffner stated that the state is the only one with the authority to stop the license. The Commission and Assembly could object but the state could still approve. The Borough is only making recommendations. Mr. Wall confirmed that he was correct in how the process worked. The only requirement the state has in regards to the Borough is if conditions are requested. If the conditions are not arbitrary, capricious or unreasonable they must put the conditions on the permit. That is the extent of the Borough's authority and is also the extent of the Borough code.

**MOTION PASSED:** Seeing and hearing no discussion or objection the motion passed by unanimous consent.

UNAPPROVED