

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

THRU: Charlie Pierce, Borough Mayor *cp*

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

DATE: November 20, 2019

RE: Ordinance 2019-30; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled November 12, 2019 meeting.

A motion passed by unanimous consent to recommend approval of Ordinance 2019-30.

In addition the Kenai Peninsula Borough Planning Commission passed several amendment motions.

- A motion passed by unanimous consent to recommend amending 21.29.050(A)(16) Appeal to "No clearing of vegetation shall occur within the 100 foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for filing an appeal, pursuant to KPB 21.20 has expired."
- A motion passed by unanimous consent to recommend amending 21.29.055 – Decision to "The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.
- A motion passed by majority vote (7 Yes, 3 No, 2 Absent) to recommend amending the fourth whereas statement located on page two to read as "WHEREAS, the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and" and to amend the ninth whereas statement located

Page -2-

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Conditions, and Procedures

on page two to read as "WHEREAS, certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and".

In the Ordinance, please make the following amendment to the last WHEREAS statement:

WHEREAS, at its regularly scheduled meeting of November 12, 2019, the Planning Commissioner recommended approval by unanimous consent.

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

AGENDA ITEM E. UNFINISHED BUSINESS

2. Ordinance 2019-30; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

Staff Report given by Bruce Wall

PC MEETING: November 12, 2019

Several months ago, the Material Site Work Group concluded their business and submitted a report to the Planning Commission, Assembly, and the Administration. That report was in the form of a draft ordinance. The Planning Commission has taken that report and proposed significant changes to it. There is currently a motion on the floor to approve the Ordinance with a number of amendments. Administration has taken most of the amendments, incorporated them into the ordinance, and introduced it to the Assembly on November 5, 2019. The recommendation is to withdraw the motion that is on the floor and move to forward to the Assembly a recommendation to approve Ordinance 2019-30 - Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions and Procedures. The amendments that the Planning Commission made to the draft ordinance have been incorporated with the exception of the proposal concerning 21.29.050(A)(2), which is the condition regarding buffers. That amendment was not in the ordinance that was introduced to the Assembly. The Planning Commission can make an additional amendment motion. Additional, at the work session that was held for the Planning Commission and Assembly on November 5, 2019 there was some suggested changes proposed by Commissioner Ecklund. The proposed changes are in a memorandum found in the laydown packet. Commissioner Ecklund is not present but if someone wanted to move to include those amendments, she would appreciate it. Staff does support the proposed changes as they help clarify the intent.

Mr. Best said that they would like the motion to be handled as the last item on the agenda was done. It is recommended that an amendment motion be made to consider the revised ordinance. Legal is advising it be handled in that manner.

END OF STAFF REPORT

Commissioner Ruffner asked if they had a copy of the Ordinance that was before the Assembly. Mr. Wall said that it could be found on page 96 of the packet.

AMENDMENT A MOTION: Commissioner Ruffner moved, seconded by Commissioner Whitney, to amend the motion on the floor by substituting the Material Site Ordinance 2019-30 found in the packet.

Commissioner Ruffner stated that the Working Group went through a long process to get to a point where they agreed to the changes to the code. The Planning Commission reviewed and made a number of changes to the ordinance. The Administration accepted all of the changes except for the one regarding an unlimited buffer. That is what he understands as to have happened and what can be found in the Ordinance.

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

Commissioner Morgan wanted to make an amendment motion to include Commissioner Ecklund's recommended changes as found on page 89.1 of the laydown packet. The motion was made after some revisions for clarity. Commissioner Morgan had some additional motions to make on behalf of Commissioner Ecklund but Commissioner Ruffner asked to address those presented to them in the desk packet first.

AMENDMENT B MOTION: Commissioner Morgan moved, seconded by Commissioner Whitney, to amend 21.29.050(A)(16) – Appeal, add “No clearing of vegetation shall occur nor shall the”, strike “The”, “permit” shall remain, strike “shall not”, continue on “be issued”, strike “n”, to change the word to “or” and the remainder stays the same “operable until the deadline for filing an appeal, pursuant to KPB 21.20 has expired.” also, to 21.29.050 – Decision, “The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that

do not meet the mandatory conditions. The decision shall include written findings”, strike “explaining how the application meets the mandatory permit conditions”, add “supporting the decision”, and leave the rest to stay the same.

Commissioner Ruffner said that this is saying to not start working on a site until the appeal process is over, including clearing. Chairman Martin asked if that was implying clearing in the setback area only. Commissioner Ruffner said it sounds like no clearing until the permit has gone through the appeal process. He interpreted it to mean that someone could have a counter permit to work on the 2.5-acre portion while waiting for the appeal process to go forward. Chairman Martin felt that the intent was to keep them from fowling the buffer. He felt that it seemed onerous to prohibit clearing in the middle of the parcel. He asked if staff knew the intent. Mr. Wall said that if the Planning Commission wants to be less restrictive the language could be changed to say no clearing of vegetation shall occur within 100 feet of the boundaries.

Commissioner Brantley said this did not make sense to him since a permit can be denied and a landowner can still clear their lot including the buffers. The lot belongs to the owner and it can be cleared whether a permit is received or not. An owner is not to clear into the buffers anyway. Mr. Wall thought that Commissioner Ecklund was concerned that the Planning Commission may approve certain buffers but on appeal those buffers could be increased beyond what the Planning Commission had approved. She wanted to make sure that option was still available throughout the appeal process. Commissioner Brantley agreed and said that the wording could be changed to say no clearing within 100 feet of the boundary.

Commissioner Ruffner suggested that Commissioner Morgan withdraw her amendment and handle each amendment separately.

AMENDMENT B MOTION WITHDRAWN: Commissioner Morgan withdrew her amendment and Commissioner Whitney agreed.

Commissioner Morgan made an amendment motion but Commissioner Foster noted that the motion did not contain the wording regarding the 100 feet. Commissioner Morgan revised her motion.

AMENDMENT C MOTION: Commissioner Morgan moved, seconded by Commissioner Whitney, to amend 21.29.050(A)(16) Appeal, add “No clearing of vegetation shall occur within the 100 foot buffer nor shall the”, strike “The”, leave “permit”, strike “shall not”, leave “be issued”, strike the “n” to continue on “or operable until” with the rest staying the same and add a comma after “appeal”.

Commissioner Ruffner felt that was clearer that they should stay out of the 100-foot potential maximum buffer. Mr. Wall referred to Mr. Kelley. Mr. Kelley thought it would be clearer from parcel boundaries instead of buffer. Commissioner Bentz stated that parcel boundaries is not necessarily the same as permit areas and the permit area is what the buffers are linked to not the parcel boundaries. She wanted to have staff clarify that the 100-foot maximum buffer is linked to the permit area. Mr. Wall said that he though Commissioner Bentz had the correct wording, permit area or proposed permit area would be a more accurate description. That is defined in the code to include the extraction area plus all of the proposed buffers.

Chairman Martin asked the maker of the motion and the second could concur to the change. They both concurred to change the motion as stated by Commissioner Bentz after requesting her to restate the proposed motion.

AMENDMENT C MOTION: Commissioner Morgan moved, seconded by Commissioner Whitney, to amend 21.29.050(A)(16) Appeal to read as “No clearing of vegetation shall occur within the 100 foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for filing an appeal, pursuant to KPB 21.20 has expired.”

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

AMENDMENT D MOTION: Commissioner Morgan moved, seconded by Commissioner Whitney, to amend 21.29.055. – Decision “The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings”, strike “explaining how the application meets the mandatory permit conditions”, add “supporting the decision”, and leave the rest to stay the same.

Commissioner Ruffner said he did not understand the change and asked if anyone was present when Commissioner Ecklund discussed this change to explain it to him. Commissioner Morgan thought it just cleaned up the language. Mr. Wall added that the language that is in the ordinance assumes that the application meets the permit conditions and it is being approved. Since the language was added that it could be denied if the conditions are not met, it takes into consideration both scenarios.

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

Commissioner Morgan said that there were a couple of other things Commissioner Ecklund pointed out that she would like to have added. Commissioner Morgan said she did not see them changing the ordinance a lot. They are changes to the whereas statements.

AMENDMENT E MOTION: Commissioner Morgan moved, seconded by Commissioner Fikes, to add to page 2, the fourth whereas statement “the planning commissioner and planning department received comments expressing concerns about dust, noise,” add “safety,” then continue “and aesthetics.”, also add safety to the page 2, ninth whereas that reads “...dust, noise,” add “safety,” and continue “and unsightliness of material sites; and”.

Commissioner Ruffner said this would just add safety to two of the whereas statements. He knew that during a discussion with legal that the language of safety within the material site ordinance had been discussed. He did not recall it being anywhere in the ordinance. Mr. Kelley said it is not in the standards. He was not part of those original conversations but does know that it is not one of the standards. Mr. Wall said the closest thing in the standards is the mention of traffic impacts. He could not think of any place within the ordinance where safety is discussed. It would not be in the ordinance if it were not tied to one of the standards. Since the standards do not discuss safety, it is not in the ordinance. There were many comments on safety but they were not incorporated into the ordinance.

Commissioner Morgan pointed out that the first whereas statement does include safety. The first addition is saying that complaints about safety had been received and heard. Safety has been addressed in the ordinance.

Commissioner Ruffner said these would just be suggestions to the Assembly through a memo. Mr. Wall said yes.

AMENDMENT E MOTION PASSED BY MAJORITY VOTE: 7 Yes, 3 No, 2 Absent

Yes: Bentz, Ernst, Fikes, Foster, Morgan, Venuti, Whitney

No: Brantley, Martin, Ruffner

Absent: Carluccio, Ecklund

Commissioner Foster noted that when looking at the new definitions that “aquifer” and “groundwater” were added but within the conditional land use permit requirement of 21.29.020(B) water table is used. He wanted to know if it would cause a problem by not having a definition for that or if there was one somewhere else. Mr. Wall said there is not a definition anywhere else except in the common usage. The common usage matches similar language to how ground water is defined. He sees no problem to add a definition for the water table if the Commission wants one but he did not feel it was needed.

Chairman Martin asked if there were any additional proposed amendments. Seeing none they moved onto the main motion as amended.