


# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

FROM: Marcus Mueller, Interim Planning Director 

DATE: June 10, 2020

SUBJECT: Application for a new Retail Marijuana Store License. **Applicant:** Alaskan Grown Cannabis; **Landowner:** Resource Development Corporation LLC; **Parcel #:** 15720013; **Property Description:** Lot 1, Block 3, Banta Subdivision Addition No. 1 and Resubdivision of Lot 4 Block 1, according to Plat 78-21, Homer Recording District.; **Location:** 14477 Sterling Highway, Ninilchik, AK 99639, Ninilchik Area.

The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled June 8, 2020 meeting.

A motion to recommend approval of the Alaskan Grown Cannabis, a Retail Marijuana Store 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 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.



- 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 May 19, 2020 to 9 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the May 28, 2020 & June 4, 2020 issues of the Homer News.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies.

#### 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 asked if anyone from the public wished to comment on this item.

Brad & Kate Remund, 14485 Barbara, Ninilchik: Mr. Remund stated they own the property behind the building that will be the store. They recently bought this property to build their retirement home. They love the area and their property has gorgeous views. He has several concerns. One being the increase of traffic on Barbara Dr. Another concern is the location of the parking lot. He is concerned that as people pull into the parking lot their headlight will shine into their home, particularly if they stay open until 2 a.m. Not being a year round resident he has concerns that when they are not there, patrons of the store will trespass on their land because they will see the view and want to hang out there. They are very concerned about the potential of vandalism and theft.

Sherri Ruberg Barbara Dr., Ninilchik: Ms. Ruberg stated that she believes the Mr. Remund brought up a very good point regarding concerns about vandalism and theft. They have had problems with theft in the past. She has lived in the community for almost 30 years and they have a home with a lovely view. They have lots of family that visit with young children. She is concerned that this store might bring in "bad company". In addition, Barbara Dr. is not a borough maintained road is she is concerned about the increase of traffic having negative effect on the road. She is opposed to this proposed shop being so close to a residential area. They are not opposed to marijuana but they want to see this store in a different location. There are vacant buildings in the downtown area of Ninilchik that would better suited for a business like this.

Diane Sullivan, Barbara Dr., Ninilchik: Ms. Sullivan stated that she had concerns with a retail marijuana

establishment being located in a residential neighborhood. She is concerned that it will bring down home values. She is also concerned that this establishment will be 300 feet away from Elmer & Betty Banta's home. Mr. Banta is 98, Mrs. Banta is 97, and they do not support having a marijuana shop in their backyard. The landowner for the property is listed as Resource Development Corporation LLC, which operates under the umbrella of the Ninilchik Native Association. Resource Development Corporation dissolved in October of 2008 and the title of this property has not been changed to reflect that. In July of 2019, the Ninilchik Native Association signed a lease with One Denali LLC. Jason Evans signed the contract for One Denali. When you pull up the corporate license for One Denali it shows Jason Evans and Kalla Peacock as owners. The license shows Mr. Evans' address as being in Anchorage and Mr. Peacock's address in Willow. She does not know why they are coming way down here to lease a building for a marijuana shop. The One Denali LLC formed 3 weeks before they entered into the lease with the Ninilchik Native Association. Then One Denali turned around and subleased the building to Alaska Grown Cannabis LLC, which is actually Alaska Grown Products, doing business as Alaska Grown Cannabis. Per the lease agreement signed between One Denali and the Ninilchik Native Association, written permission is required for One Denali to sublease the property. There is no evidence of that in the supporting documentation associated with this application. There is also the question of whether the Ninilchik Native Association can legally rent this building to a marijuana retailer due the fact the Association receives federal funds. Federally, cannabis is considered illegal and organizations receiving federal funds cannot be associated with illegal activities. Form MJ-07 (Public Notice Posting Affidavit) of the application states that they posted public notice of their application at the Ninilchik Post Office. She believes that posting the public notice at the post office was illegal because as a federal facility, they cannot be associated with illegal activities, and again marijuana is considered illegal federally. She also checked with postmaster Bob Welsh and he concurred that this would have been illegal. Another concern is the proposed delivery access for the building. The diagram on page 197 of the meeting packet shows the proposed delivery route. According to the diagram, delivery vehicles would enter using the driveway on the north side of the building, go thru the parking lot and around to the south side of the building. What the photo does not show is the flagpole that sits in the middle of the area that they are proposing to drive through. The parking spaces they show on the north side of the building sit right on top of the septic tank and leech field. The steel 1500-gallon septic tank was installed in 1998 and more than likely has rusted out and could create issues for the parking area if it fails. In addition, there is a HEA ground transformer located in the proposed parking area, which should probably be moved. Right next to the proposed entrance to the build is a 300-gallon fuel tank on a stand. She believes that the issues with this building would be considered safety concerns for customers of any type retail facility. The neighbors of this subdivision strongly believe that this is not a suitable location for this type of facility and strongly encourage the commission to deny this application. She believes there are too many unanswered question with the building lease, location, legality of the public notice and suitability of the build.

See and hearing no one else from the public wishing to comment, Chairman Martin closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Bentz, to forward to the Assembly the application of the retail Marijuana store license for Alaska Grown Cannabis with staff's findings and that the three conditions be placed on the state license.

Commissioner Carluccio wanted to thank Ms. Sullivan for the time and work she put into reviewing this application. Regarding the legality questions, she was unclear if these type of issues come under the purview of the Planning Commission. Ms. Sullivan did supply a lot of information creating questions about this application.

Commission Morgan asked staff if they could explain the process of public notice for this type of application, what would be allowed or not allowed. Mr. Huff replied that he was not sure what was allowed as public notice related to marijuana facilities. He does not know if posting this type of public notice at the post office would be considered an approved location. He noted that Ms. Sullivan appeared to have done some work on this topic and he would consider the information that she presented.

Commissioner Ecklund also had a question for staff related to public notice. She noted that public notice was printed in the Homer News but there a requirement that it be physically posted in a building within the community. Mr. Huff replied that he was not sure what the state required regarding public notice.

Commission Ecklund follow up with the question that Ms. Sullivan noted that there were neighbors that didn't receive notice about the application. She is not sure where the location of these neighbors were in relation to the 300 ft. requirement for notification but she would like additional information before she makes a decision. She asked staff if it would be possible to postpone this until they can come back with answers on some of the questions raised. She then asked was it the responsibility of the borough to look into these issues or was it the responsibility of the State. Mr. Huff replied that he believed that it was the responsibility of the state, that they are the ones who would be issuing the license. What the state is looking for from the borough is a recommendation.

Commissioner Carluccio asked if Mr. Huff if he knew what the State's requirements were regarding notification to area landowners. She finds it concerning that there are individuals coming forward saying that they did not receive any notification of this application. She was not familiar with how deeply the state looks into these applications. She asked does the State send someone down to do a site inspection. Mr. Huff responded that he did not know what the State's process was. The borough planner is the individual who oversees this type of application. The borough planner was not available so he was stepping in to assist tonight.

Ms. Hindman stated that as far as postponement, the review dates are set by the borough clerk in order to meet State deadlines. This application is set to go to be heard at the next June Assembly meeting. Postponement would not allow the Planning Commission to make a recommendation to the Assembly. She noted that these questions can be brought to the attention of the clerk. These concerns will also be noted in the minutes of the meeting which is passed on to the Assembly with a memo.

Commissioner Bentz state the she reviewed Borough code 21.11, which addresses public notice. It states that public notice shall appear twice in a paper of general circulation and that property owners within a 300-foot periphery of the parcel affected will be notified. She asked staff if this had been done. Mr. Huff replied that notice was placed in the newspaper twice and that it was standard practice of the planner to send out notices to land owner within 300-feet of affected parcel.

Commissioner Ruffner stated that he believed that the parking area concerns expressed did fall under borough code. Mr. Huff replied the staff report states that there is not to be parking in borough right-of-ways. Borough code only addresses parking issues within right-of- ways.

Commissioner Carluccio stated that there are safety concerns being brought up and didn't know if it was the Planning Commissioner responsible to address those issues. She asked staff if the planner does a site inspection for these type of applications. Mr. Huff stated that he only had the information in the application to go on and the application addresses where access will be and that there will not be parking on borough right-of-ways. He did not know if the planner had done a site visit.

Commissioner Ecklund asked about security camera placement. She did not hear anything about camera placement. Were security cameras a requirement for this facility or are they only required for grow facilities. Commissioner Martin stated that security camera were required for retail establishments as well. Commissioner Ecklund stated that made her feel better knowing that could be follow up on criminal activities capture on camera. Commissioner Martin stated that he believed they had to maintain video footage for 45 days before deleting or recording over it.

**MOTION PASSED BY MAJORITY VOTE:** Yes-8, No-1, 3-Absent

Yes: Brantley, Venuti, Ruffner, Whitney, Ecklund, Morgan, Bentz, Martin

No: Carluccio

Absent: Foster, Fikes, Ernst (Commissioners Fikes & Ernst lost connection to the meeting)