

In the matter of the Kenai Peninsula Borough
Planning Commission's decision to deny the
request for modification to a conditional land use
permit for a material site to allow for excavation
within the water table on properties described at
Tract C1, Patson Properties 2019 Replat,
according to Plat 2019-68, and the Northwest ¼,
Southeast ¼, Section 34, Township 5 North, Range
10 West, Seward Meridian, excluding Patson
Road right-of-way

River Resources LLC,

Appellant/Applicant,

Case No. OAH 20-0673-MUN
Agency No. 2020-01-PCA

MOTION TO REMAND TO PLANNING COMMISSION

Appellants, River Resources, LLC and the Kenai Peninsula Borough Planning Department by and through their counsel of record hereby file this joint motion requesting the court remand the matter to the Planning Commission pursuant to KPB 21.20.320 & KPB 21.20.330. This motion is supported by the attached Memorandum of Law.

Dated this 3rd day of August 2021.

River Resources, LLC

By: 

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Memorandum of Law in Support of Motion for Remand

On May 24, 2021, the Planning Commission for the Kenai Peninsula Borough rejected a resolution granting a modification to a conditional land use permit (CLUP) to allow excavation below groundwater requested for KPB parcels 135-243-13 and 135-243-29.

In its decision, the Planning Commission issued three (3) findings of fact none of which was supported by or supplemented by any portion of the Kenai Peninsula Borough Code of Ordinances or by the record presented to the Planning Commission.

Specifically, the Planning Commission held that:

1. The bond was not high enough based upon the number of surrounding wells;
2. KPB Code needs to define impartial and independent more clearly; and
3. The well monitoring timeline is in question as to whether or not it meets the Borough Code.

The findings are vague, do not clearly relate to the testimony and/or evidence which was presented, do not correlate to the KPB

Code and appear to be suggestions for KPB Code revision, rather than findings. As such, they are difficult to reconcile with the requirements of a CLUP Modification.

KPB 21.20.320(3) permits the hearing officer to remand the matter to the planning commission, as provided for in KPB 21.20.330(B) which states that appeals from planning commission decisions which lack findings of fact and conclusions by the planning commission or contain findings of fact and conclusions which are not supported by substantial evidence shall be remanded to the planning commission with an order to make adequate findings of fact and conclusions.

Remanding the matter now, prior to the parties expending significant time and financial resources in preparing Opening Statements, motions and other costly litigation, is the most practicable approach and ultimately benefits all parties.

By remanding the matter with instructions that the planning commission clearly review the application and make detailed findings which outlines how the planning commission reviewed and applied the requirements set out in KPB 21.29 against the facts presented as well as how the planning commission reached its conclusions, the parties will have a clearer record and any appeal issues which may remain will result in significantly less costs to all parties involved.

For these reasons River Resources, LLC and the Kenai Peninsula Borough Planning Department urge the court to remand the matter to the Planning Commission with instructions to supplement the record.

Dated this 30 day of August 2021.

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By:

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ORDER REMANDING TO PLANNING COMMISSION

The Court, having reviewed the motion for Remand to the Planning Commission filed by Appellant, River Resources, LLC as well as The Kenai Peninsula Borough Planning Department, and any opposition thereto, hereby finds good cause to grant the Motion. Pursuant to KPB 21.20.320 and KPB 21.20.330, the matter is remanded to the Kenai Peninsula Borough Planning Commission with instructions to make more detailed findings of fact and conclusions of law. The Planning Commission is not precluded from taking additional evidence or from reopening the matter so long as they do so in compliance with the requirements of the Kenai Peninsula Borough Code of Ordinances.

IT IS SO ORDERED this ____ day of _____, 2021.

Hon. Z. Kent Sullivan
Administrative Law Judge