

**APPEAL OF THE KENAI PENINSULA BOROUGH
DIRECTOR'S DECISION
APPROVING A NONCONFORMING USE IN THE
C&H ESTATES LOCAL OPTION ZONING DISTRICT**

KPB Tax Parcel ID#: 174-410-45

**Legal Description: Lot 35A, C&H Estates, Plat 80-23,
Homer Recording District**

**Landowners
Aaron Land & Robin Lohse**

PC RESOLUTION 2021-28

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2021-28**

**A RESOLUTION ESTABLISHING THE APPEAL PROCEDURE FOR APPEALS OF
THE PLANNING DIRECTOR'S DECISION APPROVING IN PART AND DENYING IN
PART A NONCONFORMING USE APPLICATION FOR FIVE USES OF LOT 35A,
WITHIN THE C & H ESTATES LOZD**

WHEREAS, on July 6, 2021 the KPB Planning Director issued a decision approving in part and denying in part, a nonconforming use application for five (5) nonconforming uses of Lot 35A, C & H Estates, according to Plat 80-23, Homer Recording District (KPB Parcel ID #174-410-45).

WHEREAS, the applicant and a property owner within the C & H Estates Local Option Zoning District (LOZD) have appealed the planning director's decision;

WHEREAS, borough code does not provide an appeal procedure for an appeal of a planning director's nonconforming use decision to the planning commission; and

WHEREAS, this resolution will establish the procedure that the planning commission shall follow for the appeal hearing in this consolidated appeal matter;

**NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE
KENAI PENINSULA BOROUGH:**

SECTION 1. That the below procedure will govern the planning commission hearing for all three appeals filed in this matter concerning the July 6, 2021, decision on reconsideration issued by the KPB Planning Director. The two appeals will be consolidated and heard as a single appeal hearing.

SECTION 2. That the below procedure shall apply at the appeal hearing:

1. Chair will introduce the item on the agenda.
2. KPB Planning Director, Staff or Legal Counsel – presentation of issues and director's decision (10 minutes)
3. Appellant/Applicant Lang Opening Presentation (10 minutes)
4. Appellant Cutler Opening Presentation (10 minutes)
5. Lang Rebuttal & Closing (5 minutes)
6. Cutler Rebuttal & Closing (5 minutes)
7. KPB Rebuttal & Closing Statement (5 minutes)

Following the completion of closing statements, the planning commission may move into adjudicative session for deliberations. Following deliberations, the planning commission will, on record, either issue a decision at that time or provide notice to the parties that a written decision

will be issued at a later time. The planning commission may remand, affirm, reverse, or modify, in whole or in part, the appealed decision.

SECTION 3. The planning commission chair shall act as presiding officer. The parties are allowed to have witnesses and may be represented by counsel. Witness testimony shall be counted against the time of the party calling the witness. The parties will not be allowed to cross-examine other witnesses during the hearing. The presiding officer is authorized to grant or deny a request for a continuance or postponement of the appeal hearing to a later date. A party may not request more than one continuance in this matter and the presiding officer shall deny any request for a continuance made within 10 days of the date of the scheduled appeal hearing, unless the party requesting the continuance provides satisfactory evidence of a family or medical emergency necessitating a continuance on short notice. If the hearing date is continued, the planning department shall send, by first class U.S. Mail and e-mail if known, notice to the appellants, the applicant, and any other parties who have entered an appearance in the matter.

SECTION 4. With the potential exception of a request for a continuance, there will be no pre-hearing motion practice. All issues or objections must be raised during the hearing.

SECTION 5. Interested parties may submit any information the party deems relevant to the planning commission's deliberations in this matter. Written statements and other documents or information may be submitted to the planning commission on or before October 8, 2021 by: (i) emailing the items to planning@kpb.us; or (ii) delivering, via either in-person or U.S. Mail delivery, physical copies of the information to the planning department administrative assistant located on the third floor of the borough building at 144 N. Binkley St. Soldotna, Alaska 99669.

SECTION 6. That the consolidated appeal hearing is scheduled for October 18, 2021, at 7:30 PM, unless continued by order of the presiding officer.

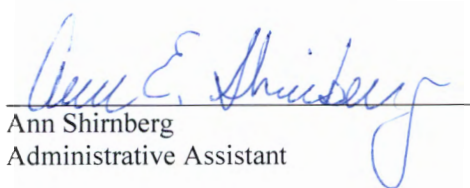
SECTION 7. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH THIS 23rd DAY OF AUGUST, 2021.



Blair J. Martin, Chairperson
Planning Commission

ATTEST:



Ann Shirnberg
Administrative Assistant

APPEAL APPLICATIONS



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

APPEAL OF PLANNING DIRECTOR'S DECISION

The Planning Director's decision regarding a prior existing use or a nonconforming use may be appealed to the Kenai Peninsula Borough (KPB) Planning Commission within 15 days of distribution of the decision. This appeal form may be filed in person or by mail but must be received by the KPB Planning Department by 5:00 p.m. on the day the notice of appeal is due.

Appellant Name (Please Print): Aaron Lang

Mailing Address: 40208 Alpenlow Circle, Homer, AK 99603

Email Address: aaron@wildernessbirding.com Daytime Telephone #: 907-299-3937

KPB Parcel Number (as shown on the notice of decision): 174-410-45

I hereby give notice that I am appealing the decision of the Planning Director regarding a prior existing use or a nonconforming use as set forth below:

1. Summary of decision being appealed: Denial of the right to rent out our guesthouse

2. State specific errors you believe were made in the Planning Director's decision regarding the prior existing use or a nonconforming use, citing applicable provisions of the borough code. (Attach additional sheets if necessary.)

- see attached

3. State the relief you are requesting from the KPB Planning Commission, including whether you want the Planning Director's decision reversed, modified, or remanded for further proceedings. (Attach additional sheets if necessary.)

We request a reversal of the director's decision.

I understand that I will receive written notice from the KPB Planning Department informing me of the KPB Planning Commission hearing date, deadlines for filing written statements and evidence.

Date: 23 July 2021 Appellant's Signature: [Signature]

**Appeal of Planning Director's Decision
KPB Parcel # 174-410-45**

Attached page, question 2:

In March 2013, we began converting an old shed on our property into a 12' x 14' guesthouse. Records on the borough's parcel viewer site show it's construction in 2013. Since construction of the guesthouse, the guesthouse has been a place for visiting friends, family, and neighbors to use. We have also housed our employees here when they were in town between trips—a "commercial use," though not one from which we collected revenue. Additionally, our *intent* has always been to use the guesthouse as a rental if we ever found ourselves in need of additional income. In March 2020, just weeks after R-1 was adopted for C&H estates, the COVID-19 pandemic decimated our tourism business, reduced revenues to zero, and we found ourselves in just such need. Beginning in May 2020, we began renting the guesthouse house on a monthly basis and have had a tenant in the cabin since. We began paying borough sales tax on these rentals in May 2020.



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

APPEAL OF PLANNING DIRECTOR'S DECISION

The Planning Director's decision regarding a prior existing use or a nonconforming use may be appealed to the Kenai Peninsula Borough (KPB) Planning Commission within 15 days of distribution of the decision. This appeal form may be filed in person or by mail but must be received by the KPB Planning Department by 5:00 p.m. on the day the notice of appeal is due.

Appellant Name (Please Print): Craig and Joanne Cutler

Mailing Address: 40130 Portlock Drive, Homer Alaska 99603

Email Address: 2998856@gmail.com and CutlerJoanne@gmail.com Daytime Telephone #: (907) 299-8856

KPB Parcel Number (as shown on the notice of decision): 174-410-45 LOT 35A LANG

I hereby give notice that I am appealing the decision of the Planning Director regarding a prior existing use or a nonconforming use as set forth below:

1. Summary of decision being appealed: _____
The Determination Record is incomplete, per the opening statement "...The following is an excerpt from the decision:", therefore insufficient evidence was provided to parcel owners to verify and/or challenge purported facts.

2. State specific errors you believe were made in the Planning Director's decision regarding the prior existing use or a nonconforming use, citing applicable provisions of the borough code. (Attach additional sheets if necessary.)

Because the burden of proof that nonconforming use existed before the adoption of the LOZD is on the applicant per KPB 21.44.110(A), all such proof should be verified for truth and accuracy, and validated with appropriate legal documentation, including dated photographs as well as other documents of claim.

3. State the relief you are requesting from the KPB Planning Commission, including whether you want the Planning Director's decision reversed, modified, or remanded for further proceedings. (Attach additional sheets if necessary.)

Due to insufficient evidence provided to parcel owners of "legally established uses prior to January 7, 2020", I request relief by way of remanding the case until such time as that full disclosure of evidence in the Decision is provided to parcel owners who have not witnessed claims made by the applicant and opportunity to respond thereto.

I understand that I will receive written notice from the KPB Planning Department informing me of the KPB Planning Commission hearing date, deadlines for filing written statements and evidence.

Date: July 23, 2021 Appellant's Signature: Craig Cutler

DECISION & STAFF REPORT



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce
Borough Mayor

July 6, 2021

Aaron Lang and Robin Lohse
40208 Alpenglow Circle
Homer, AK 99603

On April 2, 2021, you submitted an application for nonconforming use determinations for five (5) uses of KPB Parcel 174-410-45; Lot 35A, C&H Estates, according to Plat 80-23, Homer Recording District. After reviewing the application and the evidence submitted with the application, I have determined that there was sufficient evidence that four (4) of the uses were legally established and in use prior to January 7, 2020, and that there was not sufficient evidence that one (1) of the uses were legally established and in use prior to that date. The status of the uses and, for legally established uses, any conditions I am placing on their continuance are outlined below.

Uses I have determined were legally established uses prior to January 7, 2020 are the following:

- KPB 21.44.130(C)(11) – having more than one nonresident employee working on the property as part of the home occupation associated with the property.
 - Conditions placed on use: *The presence of more than one nonresident employee working on the property must continue to be sporadic, infrequent, and limited.*
- KPB 21.44.160(C)(7)(b) – Keeping more than four household pets more than six months of age on the property.
- KPB 21.44.160(C)(7)(c) – Keeping of more than 10 poultry, fowl, or small animals over the age of 6 months on the property.
- KPB 21.44.160(C)(7)(d) – Keeping of hooved animals on the property.
 - Conditions placed on use: *The number of hooved animals kept on the property shall not exceed two.*

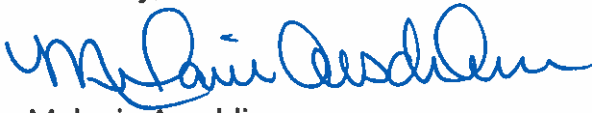
The uses I determined was not legally established uses prior to January 7, 2020 is the following:

- KPB 21.44.160(C)(6) – Commercial use of an accessory guesthouse on the property.

Enclosed you will find a copy of the staff report relied upon in making this decision. A Notice of Decision will be sent to all property owners within your local option zoning district. As the applicant, you may appeal this decision to the KPB Planning Commission within fifteen days of the date of the Notice of Decision.

If you have any questions, please feel free to contact the KPB Planning Department at (907) 714-2200.

Sincerely,



Melanie Aeschliman
Planning Director

APPLICATION FOR RECOGNITION AS AN EXISTING NONCONFORMING USE

Applicant: Aaron Lang and Robin Lohse
Property Owners: Aaron Lang and Robin Lohse
Location: 40208 Alpenglow Circle
Parcel Number: 174-410-45
Legal Description: T 6S R 12W SEC 6 SEWARD MERIDIAN HM 2005086 C & H ESTATES SUB FOUR LOT 35A
Nonconforming Uses: Home occupation with more than one nonresident employee working on site; accessory structure used as a commercial guesthouse; keeping more than four household pets on property; keeping more than 10 poultry, fowl, or small animals on the property; keeping uncontained fowl on the property; keeping of hooved animals on property.

Staff Findings:

1. On January 7, 2020, the Kenai Peninsula Borough Assembly approved the formation of C & H Estates Local Option Zoning District (LOZD) with a zoning designation of Single-Family Residential (R-1).
2. KPB 21.44.160 contains the allowed uses and development standards for the R-1 District.
3. Single-Family Dwelling units are the allowed principal use in the R-1 LOZD.
4. KPB 21.44.130 contains the provisions for home occupations within Local Option Zoning Districts.
5. KPB 21.44.110 provides a process for the continued operation for nonconforming uses in effect on the date of initial adoption of the local option zoning district.
6. On 11/10/2020, the KPB Assembly enacted ordinance 2020-43, which extended the deadline for nonconforming use applications for C&H Estates until April 7, 2021.
7. On 4/2/2021, Aaron Land and Robin Lohse submitted an application for nonconforming use determination that included several nonconforming uses.
8. In order to qualify as an allowed nonconforming use, the use must have been legally established under prior law (KPB 21.44.110(F)(1)).
9. In order to qualify as an allowed nonconforming use, the use must be operational in accordance with the type of use on the date the assembly approves formation of the district (KPB 21.44.110(F)(2)).
10. **The applicants stated in the application that a few times each year they currently have more than one nonresident employee working on the property for a business run from the residence.**
11. KPB 21.44.130 contains provisions for home occupations within Local Option Zoning Districts. KPB 21.44.130(C)(11) provides a standard that no more than one nonresident employee may be permitted to work on site.

12. Uses established in the C & H Estates Zoning District as of January 7, 2020 are considered lawful prior existing uses subject to the requirements of KPB 21.44.110.
13. In follow-up correspondence regarding the application, the applicants stated that they have occasionally had more than one employee at a time on the property since 2013. The applicants described the presence of employees on the property as "sporadic, infrequent, and limited."
14. The burden of proof that the nonconforming use existed before adoption of an LOZD is on the applicant (KPB 21.44.110(A)).
15. Prior to January 7, 2020, the borough did not place any specific restriction on the uses allowed on the subject property; therefore, the operation of a business with more than one nonresident employee on the property was legally established.
16. **The applicants stated in the application that a guesthouse on the property is currently used as a rental unit and, prior to being used as a rental, was used to house employees beginning in 2013.**
17. KPB 21.44.160(C)(6) contains provisions for accessory structures within the single-family residential district and provides that only a single, noncommercial guesthouse is allowed on each parcel as an accessory to the main dwelling.
18. Uses established in the C & H Estates Zoning District as of January 7, 2020 are considered lawful prior existing uses subject to the requirements of KPB 21.44.110.
19. The application does not state that the guesthouse was used as a rental prior to January 7, 2020. In follow-up correspondence regarding whether the guesthouse had been used as a rental prior to this date, the applicants did not clarify whether it had been used as a rental before the date and referred to KPB sales tax records as evidence.
20. KPB 5.18.100 requires a consumer's sales tax of 3% be levied on all rents.
21. On August 26, 2020, Aaron Lang registered to collect Kenai Peninsula Borough sales tax in his name for monthly rental charges at 40208 Alpenglow Circle.
22. KPB records do not indicate that sales tax was collected on rental charges at 40208 Alpenglow Circle prior to August 26, 2020.
23. The applicants did not provide evidence that the guesthouse was operational as a commercial guesthouse prior to January 7, 2020, the date the assembly approved the formation of the C&H Estates LOZD.
24. **The applicants stated in the application that more than four household pets are currently kept on the property.**
25. KPB 21.44.160(C)(7) contains provisions for livestock and pets within the single-family residential district and provides that no more than four household pets of more than six months of age may be kept on the property.
26. Prior to January 7, 2020, the borough did not place any specific restriction on the uses allowed on the subject property; therefore, the keeping of more than four household pets was legally established.
27. In follow-up correspondence regarding the application, the applicants stated that they have kept four parrots/parakeets and at least one dog in the house for the past several years.

28. The burden of proof that the nonconforming use existed before adoption of an LOZD is on the applicant (KPB 21.44.110(A)).
29. The applicant provided photos of one dog, one parrot and a parakeet from 2018 and 2019.
30. Prior to January 7, 2020, the borough did not place any specific restriction on the uses along on the subject property; therefore, the keeping of more than four household pets was legally established.
31. **The applicants stated in the application that more than 10 poultry, fowl, or small animals are currently kept on the property and the poultry are uncontained during the day.**
32. KPB 21.44.160(C)(7) contains provisions for livestock and pets within the single-family residential district and provides that no more than 10 of poultry, fowl, or small animals may be kept on the property and that they must be properly contained.
33. The applicants stated they currently have 20 chickens, 2 turkeys, a rabbit, and a goose. The fowl free-range during the day. In follow-up correspondence regarding the application, the applicants provided photographs from 2018 showing more than 10 poultry, fowl, or small animals being kept on the property. Photos showing other fowl and chickens from 2017 were also provided.
34. Prior to January 7, 2020, the borough did not place any specific restriction on the uses allowed on the subject property; therefore, the keeping of more than 10 poultry, fowl, or small animals was legally established.
35. **The applicants stated in the application that hoofed animals have been kept on the property and that they currently own a non-miniature horse.**
36. KPB 21.44.160(C)(7) contains provisions for livestock and pets within the single-family residential district and provides that hoofed animals are prohibited except as a single miniature horse used as a service animal.
37. In follow-up correspondence regarding the application, the applicants did not provide evidence that their non-miniature horse was kept on the property prior to January 7, 2020; however, they did provide photographs showing two sheep kept on the property in 2015.
38. Prior to January 7, 2020, the borough did not place any specific restriction on the uses allowed on the subject property; therefore, the keeping of a hoofed animal on the property was legally established.
39. On April 15, 2021, notice of the application for nonconforming use was mailed to the property owners within the LOZD.
40. Three comment letters were received from property owners within the LOZD during the comment period. The commenters expressed concern with allowing the nonconforming uses to continue and that they would be expanded. The commenters confirmed that the applicants currently own a horse but they did not believe it was kept on the property prior to the establishment of the LOZD on January 7, 2020.
41. Uses established in the C & H Estates Zoning District as of January 7, 2020 are considered lawful prior existing uses subject to the requirements of KPB 21.44.110.
42. The burden of proof that the nonconforming use existed before adoption of an LOZD is on the applicant (KPB 21.44.110(A)).

43. The applicants did not provide sufficient evidence that the following nonconforming uses were in effect on the date of initial adoption of the LOZD.
- a. KPB 21.44.160(C)(6) – Commercial use of an accessory guesthouse on the property.
44. The applicants provided sufficient evidence that the following nonconforming uses were in effect on the date of initial adoption of the LOZD.
- a. KPB 21.44.130(C)(11) – having more than one nonresident employee working on the property as part of the home occupation associated with the property.
 - b. KPB 21.44.160(C)(7)(c) – Keeping of more than 10 poultry, fowl, or small animals over the age of 6 months on the property.
 - c. KPB 21.44.160(C)(7)(d) – Keeping of hoofed animals on the property.
 - d. KPB 21.44.160(C)(7)(b) – Keeping more than four household pets more than six months of age on the property.

NOTICE OF DECISION

July 9, 2021

«OWNER»
«ATTENTION»
«ADDRESS»
«CITYSTATEZIP»

NOTICE OF DECISION

On July 6, 2021, the Planning Director issued a decision on the request for recognition of five (5) nonconforming uses of KPB Parcel 174-410-45; Lot 35A, C & H Estates, according to Plat 80-23, Homer Recording District. The following is an excerpt from the decision:

After reviewing the application and the evidence submitted with the application, I have determined that there was sufficient evidence that four (4) of the uses were legally established and in use prior to January 7, 2020, and that there was not sufficient evidence that one (1) of the uses were legally established and in use prior to that date. The status of the uses and, for legally established uses, any conditions I am placing on their continuance are outlined below.

Uses I have determined were legally established uses prior to January 7, 2020 are the following:

- KPB 21.44.130(C)(11) – having more than one nonresident employee working on the property as part of the home occupation associated with the property.
 - Conditions placed on use: *The presence of more than one nonresident employee working on the property must continue to be sporadic, infrequent, and limited.*
- KPB 21.44.160(C)(7)(b) – Keeping more than four household pets more than six months of age on the property.
- KPB 21.44.160(C)(7)(c) – Keeping of more than 10 poultry, fowl, or small animals over the age of 6 months on the property.
- KPB 21.44.160(C)(7)(d) – Keeping of hoofed animals on the property.
 - Conditions placed on use: *The number of hoofed animals kept on the property shall not exceed two.*

The uses I determined was not legally established uses prior to January 7, 2020 is the following:

- KPB 21.44.160(C)(6) – Commercial use of an accessory guesthouse on the property.

This decision was based upon the findings contained in the attached staff report. The decision may be appealed to the Planning Commission within fifteen days of the date of this Notice of Decision. For more information please contact the Planning Department at (907) 714-2200 or by email at planning@kpb.us.

OWNER	ATTENTION	ADDRESS	CITYSTATEZIP	
ARSENAULT ALAN G & KIMBER L		PO BOX 1085	PAONIA, CO 81428	
ROBINSON LANDER FAMILY TRUST	MARK A ROBINSON & NANCY C LANDER, CO-TT	PO BOX 3216	HOMER, AK 99603	
BRUDIE PHILIP L		PO BOX 111	HOMER, AK 99603	
BRUDIE PHILIP L		PO BOX 111	HOMER, AK 99603	
BISHOP SUZANNE M		PO BOX 15237	FRITZ CREEK, AK 99603	
LIGUORI EDWARD B & KATHLEEN L		2957 IRONGATE PL	THOUSAND OAKS, CA 91362	
KING JENNIFER ANN		57989 GLACIER VIEW RD S	HOMER, AK 99603	
CHASTAIN NANCY M		639 NE KATHLEEN CT	HILLSBORO, OR 97124	
ANDERSON PENELOPE SURRATT LIVING TRUST		16815 129TH LN SW	VASHON, WA 98070	
REED LYNDA W		PO BOX 1969	HOMER, AK 99603	
AULT AVERY		PO BOX 872	HOMER, AK 99603	
AULT KATHRYN		PO BOX 872	HOMER, AK 99603	
SPENCE-CHORMAN DALE & DIANNE		39960 HIGHVIEW CT	HOMER, AK 99603	
BOYLE LAWRENCE R		3805 RICHARD EVELYN BYRD ST # B	ANCHORAGE, AK 99517	
BROWN SUI LEN A		3805B RICHARD EVELYN BYRD ST	ANCHORAGE, AK 99517	
SCHROER DAVID K & MARY E		57670 TAKU AVE W	HOMER, AK 99603	
LAFOND PAUL P REVOCABLE TRUST #2		871 FORGET ME NOT LN	HOMER, AK 99603	
SANDERS DAVID Jr		PO BOX 838	HOMER, AK 99603	
SANDERS SHIRLEY		PO BOX 838	HOMER, AK 99603	
FINKENBINDER KARL DAVID		PO BOX 2514	HOMER, AK 99603	
FINKENBINDER KRISTINA L		PO BOX 2514	HOMER, AK 99603	
REARDEN MICHAEL B & NITA Y		1284 LAKESHORE DR	HOMER, AK 99603	
BECHTEL BARBARA A & GEORGE H Jr		PO BOX 339	HOMER, AK 99603	
MENKE JOHN B		4602 SW 25TH CT	CAPE CORAL, FL 33914	
JRP INVESTMENT TRUST		PO BOX 1183	HOMER, AK 99603	
BATES WEATHERLY PHILLIPS		PO BOX 1401	HOMER, AK 99603	
CUTLER CRAIG & JOANNE L		40130 PORTLOCK DR	HOMER, AK 99603	
CUTLER CRAIG LEE & JOANNE L		40130 PORTLOCK DR	HOMER, AK 99603	
WILLAHAN JOHN J		5803 STERLING WAY	ANCHORAGE, AK 99504	
TLR ADVENTURES LLC		PO BOX 2052	MANKATO, MN 56002	
PITCHER DONALD C & SHEMET KAREN A		40168 ALPENGLOW CIR	HOMER, AK 99603	
MARTIN LINDSAY A		PO BOX 896	HOMER, AK 99603	
VRASPIR EDWIN J		PO BOX 896	HOMER, AK 99603	
REARDEN KATHRYN A		PO BOX 2330	BETHEL, AK 99559	
REARDEN SPENCER N		PO BOX 2330	BETHEL, AK 99559	
GULLICKSON DANIEL W		57925 TAKU AVE W	HOMER, AK 99603	
ARNDT RANDOL K		PO BOX 1477	HOMER, AK 99603	
ARNDT SANDRA E		PO BOX 1477	HOMER, AK 99603	
ARNDT RANDOL K & SANDRA E		PO BOX 1477	HOMER, AK 99603	
MEYER KATHRYN M		40210 ALPENGLOW CIR	HOMER, AK 99603	
MEYER SCOTT C		40210 ALPENGLOW CIR	HOMER, AK 99603	
MEYER SCOTT C & KATHRYN M		40210 ALPENGLOW CIR	HOMER, AK 99603	
LANG AARON		40208 ALPENGLOW CIR	HOMER, AK 99603	
LOHSE ROBIN C		40208 ALPENGLOW CIR	HOMER, AK 99603	
HEPPEARD EILEEN A		135 SECOR LN	PELHAM, NY 10803	
KRAUKLIS KEVIN J		4239 E HOMESTEAD RIM DR	BOISE, ID 83716	
HAAS GREGORY M		PO BOX 3315	SEWARD, AK 99664	
HAAS JANICE E		PO BOX 3315	SEWARD, AK 99664	
KLEINE JON G		40205 PORTLOCK DR	HOMER, AK 99603	
KLEINE MARY GRACE B		40205 PORTLOCK DR	HOMER, AK 99603	
VANDERBRINK PAUL D		40180 PORTLOCK DR	HOMER, AK 99603	
CUTLER CRAIG & JOANNE		40130 PORTLOCK DR	HOMER, AK 99603	
NOOMAH WILLIAM M & WENDY W		PO BOX 15242	FRITZ CREEK, AK 99603	
BARROWCLIFF WAYNE & TONI		PO BOX 3774	HOMER, AK 99603	
HAGGE JAMES M & TARA A		57595 WINDSOR CT	HOMER, AK 99603	
GRAUPE CHRISTIAN M		PO BOX 2399	HOMER, AK 99603	
RHYAN TORIE L		PO BOX 2399	HOMER, AK 99603	

KPB PLANNING EXHIBIT LIST

September 30, 2021

Planning Commission:

*In Re: Lang/Cutler Appeal
Parcel 174-410-45
Lot 35A
C&H Estates*

The applicants filed for 5 nonconforming uses pursuant to the Code. The information relied upon by the planning director is enclosed.

KPB 21.44.110 Nonconforming Uses: **Burden of Proof is on the Applicant**

1. KPB 21.44.130(C)(11). Home occupation by more than 1 nonresident employee.
See Exhibit A – uncontested statement by applicant
2. KPB 21.44.160(C)(7)(b). More than 4 household pets over 6 months of age.
See Exhibits B, C & D (uncontested statement by applicant)
3. KPB 21.44.160(c)(7)(c). More than 10 poultry, fowl, or small animals.
See Exhibits E, F & G
4. KPB 21.44.160(c)(7)(d). Hoofed animals
See Exhibits H & I
5. KPB 21.44.160(c)(6). Commercial use of accessory guesthouse on property.
No exhibits, no evidence provided

Taylor, Bryan

EXHIBIT A

From: Aaron Lang <aaron@wildernessbirding.com>
Sent: Tuesday, May 25, 2021 1:06 PM
To: Taylor, Bryan
Cc: Robin
Subject: <EXTERNAL-SENDER>Re: Request of Additional Information for Nonconforming Use Application
Attachments: Lohse_Lang_R1.zip

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Brian,

No problem. As you know, it was previously never a requirement to document the private affairs, both business and personal, that have taken place on our property over the years, so documented proof of some of what you ask for does not exist. Regardless, we're happy to provide what we can and hope you will find it acceptable.

Attached please find a zip folder containing photos of a variety of poultry, fowl, and other animals, including hooved, on the property. The photos are all dated. As you can see from the photos, these animals have been an integral part of our family life and the early lives of my kids. As most proud parents do, I have hundreds more such photos and videos depicting my kids and dozens of animals since we got our first chickens in 2009 and will be happy to provide more upon request.

Since we bought our business in 2013 we have occasionally had more than one employee at a time on the property preparing gear and supplies for an upcoming trip. These operations are sporadic, infrequent, and limited as our tour schedule demands. The majority of this work occurs during the month of May in most years. I have no record, photographic, written, or otherwise of it. Prior to my mentioning it on our list of nonconformities, I doubt that anyone has ever noticed this, nor any other aspect of our business, on our property.

Also attached in the zip folder is a photo of our Guest House/Rental Cabin. This was a single-story shed when we moved in. This photo was taken shortly after we completed the shed's transformation to a guest house. When we have had employees in town we have housed them here since at least 2015. Again, we have no documentation of this as none was ever required of us. We currently rent the cabin out to a long-term renter and collect applicable KPB sales tax quarterly, so of course, there is a record of that.

EXHIBIT A

Again, we have not meticulously documented our pet records through the years, but we have always had pets, at times in excess of four. For the last several years we've had four parakeets and at least one dog in the house.

I hope this is information is what you're looking for. If you need anything else, please let me know. After today, however, my response time will be delayed as for much of the next five weeks we will be in the field leading birding tours.

All the best,
Aaron Lang

Wilderness Birding Adventures

aaron@wildernessbirding.com

www.wildernessbirding.com

(907) 299-3937

On 5/25/2021 10:07 AM, Taylor, Bryan wrote:

Hello Mr. Lang and Ms. Lohse,

The comment period for your nonconforming use application recently closed and staff is currently reviewing the information.

KPB 21.44.110(F)(2) requires that the nonconforming uses for which you are applying must have been operational on the date the assembly approved the formation of the local option zoning district. On your application, you did not provide information about whether the uses were operational at the time of the LOZD adoption. The C&H Estates LOZD was adopted by the assembly on January 7, 2020.

For each of the nonconforming uses on your application, will you please indicate whether or not the use was concurrent with the date of LOZD adoption and, if so, provide supporting evidence?

Your application included the following nonconforming uses:

1. Multiple nonresident employees for your Wilderness Birding Adventures business.
2. Having an accessory guesthouse used commercially as a rental unit.
3. Keeping more than four household pets kept on the property.
4. Keeping more than 10 poultry, fowl, or small animals uncontained on the property.
5. Keeping hooved animals on the property.

Thank you,

Bryan Taylor
Planner
(907) 714-2206
btaylor@kpb.us

EXHIBIT A

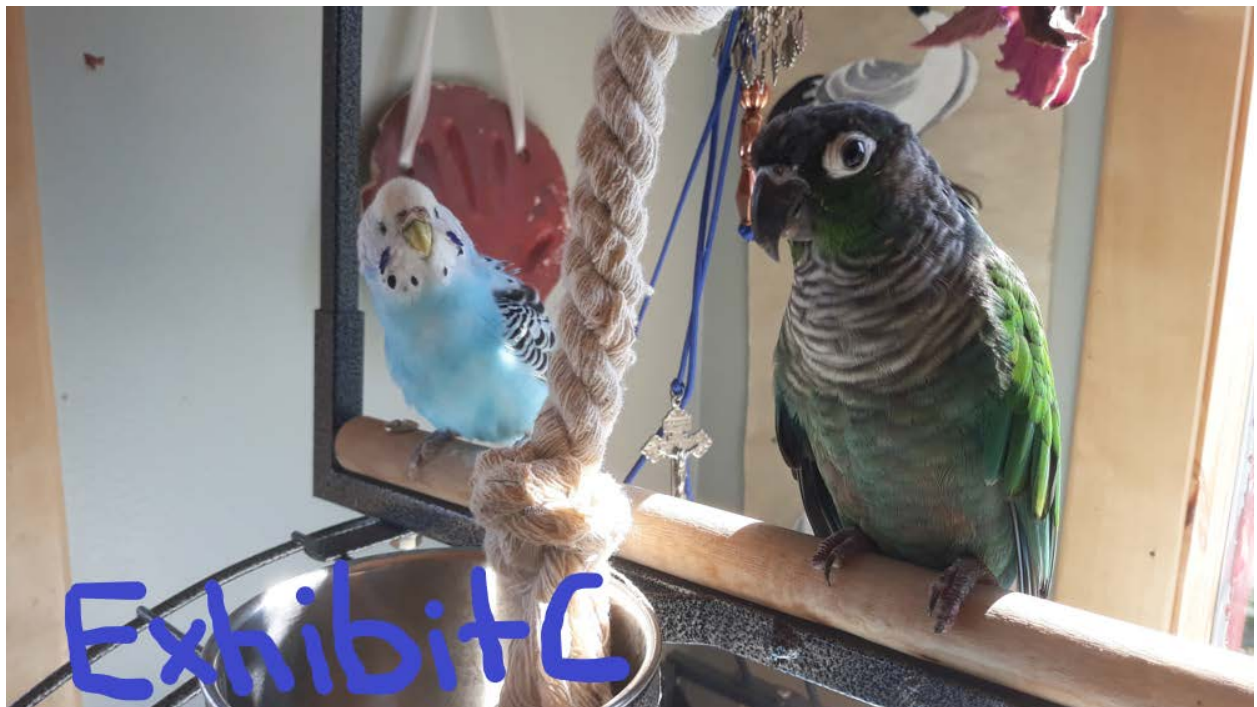


EXHIBIT D

Taylor, Bryan

From: Aaron Lang <aaron@wildernessbirding.com>
Sent: Tuesday, May 25, 2021 1:06 PM
To: Taylor, Bryan
Cc: Robin
Subject: <EXTERNAL-SENDER>Re: Request of Additional Information for Nonconforming Use Application
Attachments: Lohse_Lang_R1.zip

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Brian,

No problem. As you know, it was previously never a requirement to document the private affairs, both business and personal, that have taken place on our property over the years, so documented proof of some of what you ask for does not exist. Regardless, we're happy to provide what we can and hope you will find it acceptable.

Attached please find a zip folder containing photos of a variety of poultry, fowl, and other animals, including hooved, on the property. The photos are all dated. As you can see from the photos, these animals have been an integral part of our family life and the early lives of my kids. As most proud parents do, I have hundreds more such photos and videos depicting my kids and dozens of animals since we got our first chickens in 2009 and will be happy to provide more upon request.

Since we bought our business in 2013 we have occasionally had more than one employee at a time on the property preparing gear and supplies for an upcoming trip. These operations are sporadic, infrequent, and limited as our tour schedule demands. The majority of this work occurs during the month of May in most years. I have no record, photographic, written, or otherwise of it. Prior to my mentioning it on our list of nonconformities, I doubt that anyone has ever noticed this, nor any other aspect of our business, on our property.

Also attached in the zip folder is a photo of our Guest House/Rental Cabin. This was a single-story shed when we moved in. This photo was taken shortly after we completed the shed's transformation to a guest house. When we have had employees in town we have housed them here since at least 2015. Again, we have no documentation of this as none was ever required of us. We currently rent the cabin out to a long-term renter and collect applicable KPB sales tax quarterly, so of course, there is a record of that.

EXHIBIT D

EXHIBIT D

Again, we have not meticulously documented our pet records through the years, but we have always had pets, at times in excess of four. For the last several years we've had four parakeets and at least one dog in the house.

I hope this is information is what you're looking for. If you need anything else, please let me know. After today, however, my response time will be delayed as for much of the next five weeks we will be in the field leading birding tours.

All the best,
Aaron Lang

Wilderness Birding Adventures

aaron@wildernessbirding.com

www.wildernessbirding.com

(907) 299-3937







Exhibit H

