

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

October 18, 2021

6:30 P.M.

UNAPPROVED MINUTES

CALL TO ORDER

Chair Martin called the meeting to order at 6:30 p.m.

ROLL CALL

Commissioners Present

Syverine Bentz, Anchor Point/ Ninilchik
Jeremy Brantley, Sterling
Pamela Gillham, Ridgeway
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

With 7 members of an 8-member commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Sean Kelly, Legal Representative
Samantha Lopes, River Center Manager
Ann Shirnberg, Planning Administrative Assistant
Avery Harrison, Land Management Administrative Assistant

AGENDA ITEM B. ROLL CALL

Absent: Diane Fikes, City of Kenai
Vacant: City of Soldotna
Vacant: City of Seward
Vacant: Northwest Borough

AGNEDA ITEM C. APPROVAL OF AGENDA

Chair Martin asked if any of the commissioners present wanted to speak to any of the items on the agenda. Hearing no one else wishing to comment, Chair Martin returned the discussion to the Commission.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Brantley to approve the agenda.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						
No							
Absent	Fikes						

AGENDA ITEM D. OLD BUSINESS

1. Remand Hearing
Conditional Land Use Permit Modification Application
Applicant: River Resources, LLC
PC Resolution 2021-10

Sean Kelley gave a brief review of the matter before the commission.

On August 25, 2021, Z. Kent Sullivan, Administrative Law Judge / Hearing Officer in the matter of the appeal filed by River Resources LLC, issued an *Order Denying Motion to Stay and Granting Motion to Remand to the Kenai Peninsula Borough Planning Commission*.

The remand order provides, in part, that the matter is remanded to the Planning Commission to:

- “1. Make factual findings supporting its decision based on substantial evidence in the record regarding the:
 - a. bonding requirements;
 - b. well monitoring timeline;
 - c. qualifications and independence of McLane Consulting, Inc.; and
 - d. specific criterion contained in KPB Code §§ 21.29.040 and 21.29.050.
2. To the extent that factual information does not presently exist in the record the Commission shall augment the record by conducting an additional hearing.

At the September 27, 2021, the Planning Commission decided to conduct the remand hearing on October 18, 2021 and elected not to reopen public testimony.

END OF STAFF REVIEW

MOTION: Commissioner Ruffner moved, seconded by Commission Brantley to move into an adjudicative session and to invite legal counsel Sean Kelley and Administrative Assistant Ann Shirnberg to join them.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						
No							
Absent	Fikes						

The Planning Commission went into adjudicative session at 6:35 PM

The Planning Commission came back in open session at 7:40 PM.

(*Note: due to technical difficulties, parts of the meeting were not captured on the recording.)

MOTION: Commissioner Gillham moved, seconded by Commission Ruffner to approve the following decision:

1. A remand hearing was held on October 18, 2021. Public testimony and evidence was not reopened for the October 18, 2021 remand hearing. Pursuant to the certified record and in accordance with the orders entered by the Hearing Officer, the Planning Commission determined during deliberations that it needed more information from the parties involved and therefore will reopen public testimony and evidence in this matter.
2. The public hearing on remand shall be set for December 7, 2021 and shall only be continued in the event the Applicant provides a good cause basis for not being able to timely comply with the below requested information.
3. By December 3, 2021, the Applicant, River Resources LLC, and the Applicant's engineer, Gina DeBardelaben/McLane Consulting, Inc., should provide responses pertaining to the following questions raised by the Hearing Officer's orders:

- a. A best effort to identify known wells within 300', 500' and 1000' of the proposed dewatering;
 - b. Anticipated impacts, if any, to nearby wells;
 - c. Potential impacts to nearby wells in a worst-case scenario and the possible remedial costs of those impacts on a per-well basis;
 - d. The dates of measurements for the monitor wells done pursuant to KPB 21.29.050(A)(5);
 - e. The amount of the bond proposed by River Resources, LLC; and
 - f. Any other information or documentation that River Resources, LLC would like to provide for consideration in support of its applications and requests.
4. By December 3, 2021, interested parties/nearby landowners may provide information regarding:
 - a. Well tests performed to-date;
 - b. Professional opinions, if any, regarding potential impacts that may occur as a result of the Applicant's (i) request to allow for excavation in the water table; and (ii) localized dewatering exemption request during excavation below groundwater elevation; and
 - c. Any other expert opinions or information that nearby landowners or interested parties would like to provide for consideration in this matter.
 5. By December 3, 2021, the Planning Department should provide an updated staff report that, to the best of staff's ability, answers the questions under paragraph 3 and 4 above, with recommendations that includes a proposed resolution, findings of fact, conclusions of law, and conditions, if applicable.
 6. The Applicant, including its agents, counsel, and/or engineer, shall have 15 minutes to provide public testimony at the public hearing scheduled for December 13, 2021.

Ms. Shirnberg informed the commission that she was having technical difficulties with Zoom meeting. She was unable to start the camera and sound for the assembly chambers so those attending online could not hear or see what was happening in chambers. Chair Martin then stopped the meeting until the technical difficulties were resolved.

The meeting resumed at approximately 8:30 PM.

Commissioner Ruffner noted for the commissioners attending via Zoom that Commissioner Gillham had made a motion to approve the decision that was sent to them via email, and that she had read the decision into the record. He then asked Legal if it was acceptable in order to save time would it be okay if they did not have Commissioner Gillham reread the decision. Mr. Kelley replied that he believed it would be acceptable and noted that he would ensure that written decision is sent out to all the parties. Commissioner Ruffner then asked the commissioners attending online if they were okay with not having Commissioner Gillham reread the decision.

Commissioner Ruffner then noted that the decision as read into the record by Commissioner Gillham had the incorrect hearing date the correct hearing date is December 13, 2021. He then restated for the record point #2 of the decision, with the correct meeting date of December 13, 2021.

AMENDMENT MOTION: Commissioner Ruffner moved, seconded by Commission Brantley to correct the remand hearing date to December 13, 2021

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						
No							
Absent	Fikes						

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						
No							
Absent	Fikes						

AGNEDA ITEM E. NEW BUSINESS

1. Appeal of the Director's Decision
Approving a Nonconforming Use in C& H Estates LOZD
Location: Lot 35A, C&H Estates, Plat 80-23, Homer Recording District

KPB Planning Director Aeschliman: Ms. Aeschliman gave a summary of the two appeals before the commission. The first appeal application received was from the applicant requesting approval of several non-conforming uses. Based on staff findings and code she approved 4 of the 5 non-conforming uses requested by Aaron Lang. Mr. Lang is appealing her denial of the right to rent out the guesthouse on his property. The second appeal is from neighboring landowners Craig & Joanne Cutler where they cite several perceived inadequacies of the director's decision. Ms. Aeschliman then presented the following PowerPoint presentation:

DIRECTOR'S PRESENTATION OF ISSUES & DIRECTOR'S DECISION

Melanie Aeschliman
Planning Director

1

SUMMARY & OUTLINE

- Summary
- Application Review – what is evidence?
- Application Process
- Director's Decision
- Lang's Appeal
- Cutler's Appeal

2

EVIDENCE

KPB 21.44.110(B) Decision. The planning director shall issue a decision regarding the nonconforming status based on the written application, written comments, or evidence regarding the existence of the use prior to the adoption of an LOZD.

3

APPLICATION & DIRECTOR'S DECISION

Director's determinations in yellow

- Requested non-conforming uses:
 1. Two or more non-resident employees (established w/ conditions)
 2. Household pets (established)
 3. Poultry, fowl, small animals (established)
 4. Hoofed animals (established w/ conditions)
 5. Accessory structure as rental (not established)

4

LANG'S APPEAL

KPB 21.44.110(F):Standards: In order to qualify as an allowed nonconforming use, the use must meet the following standards on the date the assembly approves formation of the district:

1. A use must have been legally established under prior law.
2. A use must be operational in accordance with the type of use.

KPB 21.44.110(C) Discontinuance: Any nonconforming use of land or building which has ceased by discontinuance for an uninterrupted period of 365 days shall thereafter conform to the provisions of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a nonconforming use of a temporary structure is discontinued, it shall not be recommenced.

5

CUTLER'S APPEAL

- “Insufficient evidence provided to parcel owners to verify and/or challenge purported facts”
 - **KPB 21.44.110(A) requires that KPB sends notice to LOZD property owners when a non-conforming use application is requested.**
 - **There is nothing in code requiring that evidence also be sent to property owners**
- “The Determination Record is incomplete, per the opening statement ‘...The following is an excerpt from the decision:’ ”
 - **There is nothing in code that requires a Notice of Decision to be in any particular format, an excerpt of the director’s decision is sufficient.**
- Burden of proof/insufficient evidence
 - **KPB 21.44.110(B) Decision. The planning director shall issue a decision regarding the nonconforming status based on the written application, written comments, or evidence regarding the existence of the use prior to the adoption of an LOZD.**

6

Appellant Lang Opening Statement: Mr. Lang noted the nonconforming use he is seeking approval for is the ability to rent out the guesthouse on his property. In 2013, he began the process of converting an old shed on the property into a 12' x 14' guesthouse. They converted the mouse-ridden shed into a structure with oil heat, running water, electricity and a composting toilet. This greatly improved the value of his property. Borough records verified the construction of the guesthouse occurring in 2013 with a corresponding increase in the assessed value of the property. Since the completion of the guesthouse, visiting family and friends have routinely used it. They have offered its' use to neighbors when they have had visiting family. A couple of times each year this guesthouse has been used as lodging for staff associated with their business. On two occasions, they have allowed friends who have fallen on hard times to live in the guesthouse for extended periods. The guesthouse has been frequently occupied since its' construction, the difference is now they are charging rent. They built the guesthouse to add flexibility to their property and as an investment for future needs by using it as a rental. While they may not have always charged rent in the past, it has always been their intent, that should they need extra income, they could rent the guesthouse. That has been their plan for the guesthouse since day one. In March of 2020, just weeks after the adoption of R1 zoning, the pandemic decimated their tourism business. They lost an entire year of income and found themselves needing to rent out the guesthouse to makes ends meet. In May of 2020, they began renting the guesthouse on a monthly basis and have had tenants in there since that time. They began paying borough sales tax on the rental starting May of 2020, even though borough records show the first sales tax payment occurring in August of 2020. He has not ever claimed to have had a renter in the cabin before the creation of the R1 Zoning District, however he is claiming that it has always been his intent to use this property as a rental should they ever need to. He does not have records showing this intent to rent this property prior to the creation of the R1 zoning, at that time there was no need to keep records. He is sure the commission can appreciate that even with the most carefully crafted code not everything can be separated into black and white and there will always be grey areas. If this were not true, there would be no need for an appeal process. In September 2019, he spoke in this very room to this very commission and expressed his concerns about the adoption of R1 zoning in his neighborhood. He expressed concerns regarding future and unforeseen uses of his property that could possibly be in violation of R1 zoning. He noted he could not predict his family's future needs or opportunities. He expressed to the commission that his intent was always to rent out his guesthouse for income, should his family ever need it. Intent is not written verbatim in code as an allowable proof of a prior use – it is a grey area where the Planning Director and Commission can use discretion. He then noted he is not the only one in the neighborhood who is renting out a guest cabin or room, he is just the one who did the right thing and applied for the non-

conforming use. What they are asking for commonly occurs in rural neighborhoods all around the Peninsula. He is not asking for anything that anyone has raised a prior objection to, he is just asking for a reasonable interpretation of the code.

Appellant Cutler Opening Statement: Mr. Cutler noted his appeal of this decision had to do with incomplete and insufficient evidence. He now understands from the testimony given that the evidence is not mailed out with the decision. He is now satisfied that has seen the whole record. He will base his statement on evidence contained in the meeting packet and the LOZD ordinance. For the most part, he concurred with the Director's decision contained in the July 9, 2021 notice with the exception of KPB 21.44.160, which addressed the number of hooved animals, kept on the property. He noted this section of code explicitly states that hooved animals are prohibited except for a single miniature horse used as a service animal. He would submit that the burden of proof of this prior existing use has not been met and does not meet the requirement of code. On the nonconforming use application submitted to Borough Planner Bryan Taylor, he requested for each of the nonconforming use on the application, that the applicant indicate where the nonconforming use was concurrent with the date of the LOZD adoption, and supply the supporting evidence. According to the staff findings in the staff report the applicant did not provide evidence that their non-miniature horse was kept on the property prior to Jan 7, 2020, they did however provide photographs showing two sheep were kept on the property in 2015. The applicant has stated that his horse is small and measures at 13.2 hands. Mr. Lang has stated himself that it would be a stretch to call his horse a miniature horse. Mr. Cutler then stated that Mr. Lang could not come up with any practical uses for the horse that might grant the animal legal status in the neighborhood. He then referred to point 36 of the staff report where it explicitly states that KPB 21.44.160(C)(7) contains provision for livestock and pets within the single-family residential district and provides that hooved animals are prohibited except as a single miniature horse used as a service animal. He then noted that before the approval of the LOZD, there was a site inspection done by then Planner Bruce Wall and he found no evidence of hooved animals in the neighborhood. The applicant has submitted no vet record or sales receipts showing they had the horse prior to the adoption of the LOZD. KPB 21.44.110(F)(2) requires that nonconforming uses must have been operational on the date that the assembly approved the formation of the LOZD. The applicant has provided no evidence to prove they had a miniature horse as a service animal on the parcel the day the LOZD was enacted. This lack of evidence should have been sufficient for the director to deny this nonconforming use. While sheep may be hooved animals, they are not horses. The sheep in the photos are not service animals because they are taking liquid from a baby bottle. It is like saying apples and oranges are the same because they are fruit, or that travel trailers and passenger cars are the same because they are vehicles. He believes the director misinterpreted or overlooked KPB 21.44.160 and made an erroneous determination based on insufficient evidence. This is justification for the commission to reverse the director's decision and deny this nonconforming use.

Appellant Lang Closing Statement: Mr. Lang stated he was very surprised that any of the nonconforming uses that he has requested would be considered controversial, as they are typical uses in rural area. He noted that his wife recently had spoken to Mr. Cutler and asked him specifically what his issues were with their nonconforming use requests. Mr. Cutler did not provide a clear answer nor did he admit to being opposed to any specific use when asked directly. He stated we should read his appeal; we did numerous times and were still not sure what specific nonconforming use he was appealing. Mr. Cutler in his appeal, stated, "because the burden of proof that the nonconforming use existed before the adoption of the LOZD is on the applicant, 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." We did submit evidence included dated photographs, to the extent that such evidence exists, and Planning Department staff has deemed it sufficient. We are not seeking permission to run a gravel pit or cock-fighting ring; we are asking about pet parakeets and a 10-year-old's 4-H pursuits. Mr. Cutler states due to insufficient evidences provided to the other parcel owners of legally established uses prior to January 7, 2020, he requests relief by way of remanding the case until full disclosure of the evidence in the decision is provided to parcel owners who have not witnessed claims made by the applicant. Mr. Lang stated that itemized evidence has been provided by the way of the written notice of decision sent out to all parcel owners on July 9, 2020. Had any property owner wanted more details they could have followed the request for information procedure that is clearly described on the borough's website. He believes that would have been the proper procedure to use to see the evidence submitted. Not by abusing the appeals process, which he believes to be a retaliation to outspoken voices who are not in favor of local option zoning. He noted other applications for nonconforming uses have been approved. Mr. Cutler has chosen to appeal only two applications; both were applications from individuals who were outspoken in their opposition to

local option zoning. Mr. Cutler did not ask for any evidence for additional onsite employees at Bay Safety, another small business operating in the neighborhood, when the only evidence that was supplied was a written statement from the owner. Mr. Cutler states that he has not witnessed claims made by the applicant. Mr. Lang would state that his right to privacy supersedes Mr. Cutler's right to know his business. To his knowledge Mr. Cutler has not stepped foot on his property and a large portion of his property is not viewable from main road. If Mr. Cutler has not noticed his prior existing uses then that alone is evidence that these activities were not a problem in the neighborhood. Neighborhood knowledge of a prior existing use is not a prerequisite for approval. Mr. Lang states they have had animals on their property since 2010 when they got their first chickens. The 10-year old who is involved with the horse is the 4-year old in the exhibit photos with the sheep, which are hooved animals. He said they have a long history of their family raising a variety of animals. His daughter started riding lessons in 2019, long before any talk of local option zoning in the neighborhood. She was hooked on riding from the start and immediately they starting the preparations for securing a horse for her. They spoke to their neighbors who had raised horses on their property in C&H Estates for years and he is aware of one other owner in the neighborhood who has done so as well. Later in 2019, R1 discussions began and it was clear to him and his wife that this zoning stood squarely at odds with their plans for their property and their family. In the fall of 2019 he shared his concerns with Planner Bruce Wall and Mr. Wall suggest that anyone considering anything that was not allowable under R1 should begin doing it and have it in place before January 2020 so that it could be grandfathered in. Their plans to get a horse were already in motion and he would have loved to have one by January 7, 2020 but they were not able to find a suitable one by then.

Appellant Cutler Closing Statement: Mr. Cutler thanked Mr. Lang for the additional information. He noted that he had not seen any of the evidence that Mr. Lang and the director had testified to tonight. If there exists evidence, as required in code, of the existence of a miniature horse before the formation of the LOZD, he would be satisfied. That would allow the commission the opportunity to review the evidence and deliberate code. He just wants to see the code satisfied. He then noted that in the minutes from one of the public meetings held regarding the formation of the LOZD Mr. Lang had testified that most of the questions raised by his neighbors had to do with current uses that would be in violation of R1 zoning. Mr. Lang stated then that he understood there was a mechanism that would allow these uses to be grandfathered in. Mr. Cutler then noted that Mr. Lang had the better part of a year after that meeting to get together the evidence of his preexisting nonconforming uses. If there were evidence to support the prior existence of the horse then he would rest his case. If there is no evidence then he believes that approving this nonconforming use would be a gross omission of the public health and safety standards of the R1 that deals with groundwater contamination related to manure issues per KPB 21.44.170(c). This section of code prohibits hooved animals. The director might have overlooked this section of code when approving the nonconforming use of allowing hooved animals in her decision. If the commission has evidence of this prior use that he is not aware of, he would honor their appropriate decision. He believes that Mr. Lang knowingly violated code by bringing in the horse after the enactment of the LOZD ordinance. He believes that disciplinary action for violating the code should not be overlooked by the commission, but he would exercise compassion. He understands Mr. Lang's intention but he also understands the intentions of the rest of the parcel owners in the subdivision, which is to, be under R1 zoning.

KPB Planning Director Closing Statement: Mr. Cutler appealed this decision under the following points:

1. That the determination record is incomplete and insufficient by his standards. Mr. Cutler has stated that he is withdrawing this complaint.
2. That all proof should be verified for truth, accuracy and validated with appropriate legal documentation, including dated photos as well as other documents of claim. She believes that this is where the hooved animals and the horse come into play. She and her staff accepted photos and written verbal statements that Mr. Lang had the horse prior to the date in question. KPB 21.44.110(b) states that the final decision can be based on written application, written comments or evidence. That leaves the discretion to the staff to determine the basis used for their decision.

Regarding the Lang's appeal code requires the denial of the nonconforming use request regarding the rental of accessory structure on the parcel. KPB 21.44.110(f) states that a use must have been legally established under prior law. Mr. Lang submitted no evidence that this use was established prior to January 2020 timeframe. Codes states that the use must be operational prior to the LOZD ordinance and again no evidence was submitted supporting the claim that it was. She understand that prior to the January 2020 date it was Mr. Lang's intention to use his cabin as a rental, however KPB 21.44.110(c) states that intent to continue the nonconforming use does not qualify as a means to keep the use. The use must be active

at the time. With the Planning Department being the governing force for LOZDs, there is an established process in code that staff and the commission must adhere to. This ensure that each property owner in each LOZD is treated in an equitable and transparent manner every time. She would respectfully ask the commission to uphold staff findings and decision as we have clearly followed code.

MOTION: Commissioner Ruffner moved, seconded by Commission Morgan to move into an adjudicative session with all the commissioners, legal counsel and administrative staff.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						
No							
Absent	Fikes						

The Planning Commission went into adjudicative session at 9:06 PM.

The Planning Commission came back into open session at 9:54 PM.

*(*Note: The recording was started late and the first 10 minutes of the session was not recorded)*

Lang Appeal:

MOTION: Commissioner Gillham moved, seconded by Commission Brantley to approve the following decision:

- I. The Planning Commission hereby reverses the Planning Director's denial that the commercial guesthouse use was not operational prior to January 7, 2020 and hereby grants the use as applied for by the Applicant based on the following findings of fact:
 1. KPB 21.44.160(C)(6) contains provisions for accessory structures within the single-family residential district (R-1) and provides that only a single, nonconforming guesthouse is allowed on each parcel as an accessory to the main dwelling.
 2. Uses establish in the C & H Estates R-1 Local Option Zoning District (LOZD) are considered lawful prior uses subject to the requirements of KPB 21.44.110.
 3. The Applicant/Appellant Lang provided a statement, on page 6 of 28 of the appeal packet, stating that a 12' x 14' guesthouse was constructed in 2013 and used as a place for friends, family, neighbors and used in a commercial sense to house employees at the 40208 Alpenglowl Circle (PIN #174-410-45) property (the "property") since 2013.
 4. Construction of the guesthouse for the use of housing, including as a rental and/or employee housing purposes, was established prior to January 7, 2020, the date of formation of the LOZD. The Applicant established the use of the guesthouse for commercial purposes through the use of the guesthouse for employee housing was established prior to January 7, 2020 which meets the standard found in KPB 21.44.110(F)(2).

Commissioner Ruffner stated he would not be voting in favor of this motion and supports upholding the Planning Director's decision. He believes the appellant is being truthful regarding construction of this guesthouse starting in 2013. He also believes that is was the intent of Mr. Lang to rent out the guesthouse. However, code does not support the "intent of use" as a grandfathered non-conforming use. Sales tax receipt were shown to start in May of 2020, which was after the formation of the LOZD. He supports the intent of the LOZD to keep the residential nature of their neighborhood.

Commissioner Gillham stated that she would be voting in favor of this motion. She believes Mr. Lang's testimony stating that he has used this property, as housing for employees for his business prior to the formation of the LOZD should qualify this as preexisting commercial use. Housing of his employees would be considered a cost of doing business and would be factored into the rates he charged his customers, which will be reflected in the amount of sales tax he collected and paid.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY MAJORITY VOTE:

Yes	5	No	2	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan						
No	Ruffner, Venuti						
Absent	Fikes						

Cutler Appeal

MOTION: Commissioner Ruffner moved, seconded by Commissioner Morgan to approve the following decision:

- II. The Planning Commission hereby upholds the Planning Director's Decision to uphold the four uses granted by the Planning Director's Decision dated July 9, 2021 based on the following findings of fact:
1. The Planning Director's Decision approving four uses found to be legally established prior to January 7, 2020 was supported by findings 1-15 and findings 25-44 of the staff report dated July 6, 2021 and attached to and incorporated into the Planning Director's Decision.
 2. Appellant Cutler did not submit any evidence to rebut the staff findings made by planning staff as adopted by the Planning Director.
 3. At the hearing, Appellant Cutler failed to rebut the staff findings made by planning staff as adopted by the Planning Director.

Commissioner Morgan noted that Commissioner Ruffner motion did not include the fourth finding of fact.

AMENDMENT MOTION: Commissioner Morgan moved, seconded by Commissioner Ruffner to amend the motion by adding finding number four:

4. Substantial evidence in this matter supports findings 1-15 and 25-44 of the staff report dated July 6, 2021, incorporated herein by reference.

Commissioner Ruffner stated that he would be supporting this motion. He believed there was good evidence to support that hooved animals had been on this property prior to the date of the LOZD formation. Having photographic evidence showing two hooved animals on the property lead him to believe those types of uses should be allowed.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						
No							
Absent	Fikes						

Commissioner Ruffner stated that he would be supporting this motion. He noted that there was good evidence to support that hooved animals had been on this property prior to the date of the LOZD formation. Having photographic evidence showing two hooved animals on the property lead him to believe that those types of uses should be allowed.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	7	No	0	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						
No							
Absent	Fikes						

AGENDA ITEM F. ADJOURNMENT

Chair Martin adjourned the meeting at 10:12 PM.

Ann E. Shirnberg
Administrative Assistant