

MINUTES
BOARD OF ADJUSTMENT HEARING
JULY 20, 2021 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
<http://www.kenai.city>

Appeal of Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant, Dean Schlehofer, for a Guide Service at 345 Dolchok Lane, Lot 4, Block 4, Basin View Subdivision Part 3.

A. CALL TO ORDER

The City of Kenai Board of Adjustment convened on July 20, 2021, in City Hall Council Chambers, Kenai, AK. Board Chair Brian Gabriel called the meeting to order at 6:00 p.m.

B. ROLL CALL

There were present:

Brian Gabriel, Chair	Jim Glendening
Victoria Askin	Henry Knackstedt
Glenese Pettey	Teea Winger
Bob Molloy	

C. MINUTES

1. Minutes of October 7, 2019

MOTION:

Vice Board Member Molloy **MOVED** to approve the minutes of October 7, 2019 and requested **UNANIMOUS CONSENT**. Board Member Winger **SECONDED** the motion.

VOTE: There being no objections; **SO ORDERED**.

D. OPENING STATEMENT

Board Chair Gabriel provided an opening statement.

Appellants and Appellee introduced themselves.

Board Chair Gabriel passed the gavel to Vice Chair Molloy, and declared a potential conflict noting that a member of the neighborhood called him shortly after the Planning and Zoning Commission meeting. Vice Chair Molloy ruled that Chair Gabriel did not have a conflict.

Board Member Pettey declared that some of the appellants were clients of her business. Chair Gabriel ruled that Member Pettey did not have a conflict.

Board Member Knackstedt declared that he attended the Planning and Zoning Commission meeting of May 12, 2021. Chair Gabriel ruled that Board Member Knackstedt did not have a conflict.

Board Member Glendening declared that he attended the Planning and Zoning Commission meeting as liaison to the Commission. Chair Gabriel ruled that Glendening did not have a conflict.

Mr. Baldwin requested that late filed evidence be allowed to be submitted as visual aids noting the group of appellants missed the deadline noted in the letter sent to the primary appellant; also noted that there were no adopted regulations related to evidence submission.

Mr. Schlehofer had no objection to the inclusion of the visual aids.

The Board ruled that the late filed visual aid evidence could be included.

Ms. Dolchok requested that the late filed evidence, her letter of opposition, be allowed to be submitted noting that it substantially said the same thing as a letter provided in the certified record.

Mr. Schlehofer had no objection to the inclusion of the late filed letter.

The Board ruled that the late filed letter could be included.

E. SWEARING IN OF ALL PERSONS PROVIDING TESTIMONY

City Clerk Heinz administered the oath for all persons providing evidence and testimony.

F. PUBLIC COMMENT (5 minutes)

None.

G. STAFF REPORT (15 Minutes)

Planning Director Foster reviewed his staff report provided in the certified record noting that at the meeting of May 12, 2021, two resolutions for separate conditional use permits (CUP) for this property were considered at the same time, but the hearing tonight was only for Resolution No. PZ2021-16.

Clarification was provided that staff doesn't review covenants as they are legal agreements between property owners and the City is not a party to that contract. Clarification was also provided that the dock would need to be approved by the Kenai River Center and building permit would be needed; further clarified that after submitting the application, the applicant noted it would be highly unlikely that a dock would be built on the property.

Staff's analysis of the non-economic value to the neighborhood was explained, noting that it included buffers and amount of activity such as vehicle trips. It was clarified that non-economic value is subjective and per the application and use of property for the guide services, staff's analysis was that it is not different from any other property owner.

Clarification of Rural Residential zoning was provided, and it was noted that per the Land Use Table and code, many non-residential uses that can be permitted through the CUP process. Director Foster explained the process of annual reports submitted by CUP owners, violation

investigations, and permit revocation as provided in code. He noted that violations are brought to staff's attention who would work with the CUP owner on remedying the violations prior to the revocation process. Foster stated that he did not know an example of a case when a criteria could not be met for a CUP for guide services in a Rural Residential area.

An explanation was provided that any noise complaints would be connected to the permit because a condition of the permit is to meet local regulations, so if a non-zoning issue came up it could still trigger a review of the permit per code.

The Board questioned Director Foster about other CUPs in the area; Foster noted he was unaware of any others in the applicant's neighborhood. It was noted that public comments from the Planning and Zoning meeting drew comparisons between this applicant's neighborhood and Angler Drive as they are both zoned Rural Residential, and it was noted that guide service was allowed by code in both areas through CUPs.

H. APPELLANTS (30 minutes each)

1. Rick Baldwin

Appellant Amber Every introduced a video newly introduced as evidence. She explained that she made the video to show the character of the neighborhood.

Appellant Pete Coots described his reasons for moving into the neighborhood from Nikiski, including the residential zoning and covenants that limited use to single-family residential. He described the character of the neighborhood, and stated that he welcomes the appellee as a neighbor but is against business owners who knowingly buy property with the intent to violate covenants.

Appellant Charlotte Coots showed aerial images of their neighborhood, explaining that there are currently only residential homes and no businesses operating. She drew comparisons with the Angler Drive neighborhood, explaining that they are also zoned residential but has many businesses operating with CUPs and the neighborhood character has changed as a result. She stated that considering the problems that Angler Drive residents have voiced, she did not believe the current process for CUP revocation is working. She asked the Board to listen to the voices of the community.

Rick Baldwin noted that allowing the requested CUP would be poor long-term planning decision. Referring to Planning code for CUPs, he noted that the overriding principle was to assure that the proposed use would be compatible with the surroundings. He stated that the application failed demonstrate this compatibility and explained how the hours of operation, early morning activity, noise, and presence of unknown travelers would put strain on the neighborhood; noted that this could set a precedent for more guiding operations in the subdivision and that the Board has the discretion to deny the permit request in the best interest of long-term planning for the neighborhood. He argued against the findings of the Planning and Zoning Commission, explaining how the use was not consistent with the purpose of the chapter nor and the purpose and intent of the zoning district as it would destabilize the neighborhood, violate the residential character, and impact surrounding property values. He also referred to the goals of the Comprehensive Plan, noting that this CUP would not promote quality of life, protect the livability of existing neighborhoods, and would not be a land use strategy that implements a forward-looking approach to community growth and development. He noted that the Planning Commissioners made no additional specific findings about the guide service and he discussed

the findings they made justifying the decision to deny the lodging permit. He drew comparison between Angler Driver and his neighborhood, and asked the Board to commit to the goals of the Comprehensive Plan and protect the livability of their subdivision.

I. APPELLEE (30 minutes)

1. Dean Schlehofer

Mr. Schlehofer explained that he had set up a 24-hour video camera outside his home and had recorded no noise and timed how long it took to leave the neighborhood from his property; noted that there has only been one boat there the whole time, and other neighbors have boats so it was not out of character for the neighborhood. He explained that no clients would come to his home so there would be no traffic from strangers and shared the directions he gave to clients on meeting him outside his property. Mr. Schlehofer expressed doubt about complaints of noise and traffic, and explained that his guides keep their boats on their own private properties. He reiterated that clients would not come to his home and questioned whether all guides in Kenai, who do the same, have CUPs from their home. He explained that he does often work early and on different schedules based on tides but the timing and noise should not be a problem; expressed skepticism over neighbors' comparisons between his business and those on Angler Drive explaining he does not know much about Angler business but his own background is spotless and he welcomed neighbors to get to know him. He noted that he felt that he was under scrutiny and being watched by neighbors and explained that other neighbors have jobs where they need to get up and leave early in the morning. He shared that he had had an interaction with a neighbor who was insensitive to his inability to hear, which was a form of discrimination.

Mr. Schlehofer addressed concerns about the inclusion of a private dock in his application noting he was no longer looking to build a dock on his property as it is not feasible. He noted that he intended to increase the value of his home and would not let it become a property which would bring down the value of other homes in the vicinity. He expressed frustration over what he felt was constant scrutiny on his property from neighbors. He spoke to his reputation as a guide and community member and explained how there was no difference between his property and others for anyone to be suspicious of. He discussed how the original real estate listing stated the property was a great business opportunity and was assured by the previous owners that his business would be a good fit for the neighborhood. He expressed shock and disappointment over being misled and having assumptions made about him by neighbors; noted he wanted to hear the concerns of neighbors, but expressed frustration over why construction of a fence was acceptable to neighbors but him starting his car in the morning was not.

J. APPELLANT REBUTTAL (10 minutes each)

1. Dennis Barnard

Mr. Barnard noted he had met Mr. Schlehofer's father prior to the property purchase and discussed the lodging and guide business, and had advised him that it would not be allowed based on the covenants and encouraged him to look at other areas. He expressed concern over the potential for additional CUPs to be permitted in the neighborhood. He noted that there was more than one boat on the property, and that he can hear tires in the morning. He noted that the fence construction was intended to block other neighbors' lights. Mr. Barnard also noted that the entire community had signed a petition against this business in their neighborhood and that he was upset that it was approved by the Planning and Zoning Commission. He noted that he had nothing against Mr. Schlehofer personally and he may have a difficult time finding a similar

property in the City, but he did not appreciate that after he had advised his father they went to get a CUP instead. He noted this is an invasion of a residential area.

Rick Baldwin clarified that Mr. Schlehofer was not on trial, and the case was about a Planning decision creating a precedent for more future CUPs that could be a detriment to the neighborhood. He explained that there were no assurances for the neighbors in the terms of the permit that he would continue to operate as he currently was; expressed doubt given that he had ignored the contractual obligations of the covenants. Mr. Baldwin noted that policy decisions should not be based on individuals at the time, but about what it could do over time. Expressed concern that a precedent would be set and more businesses come in.

K. APPELLEE REBUTTAL (10 minutes)

1. Dean Schlehofer

Mr. Schlehofer responded to comments made by Mr. Barnard, noting that his father has never been here and it was just his friend. He noted that he does not get up at 5:00 AM every day; his schedule varies with the tides and seasons. Mr. Schlehofer addressed his neighbors' concerns about decreasing property values, noting that waterfront property was very desirable; reiterated that there would be no dock there and only one boat in the front of the property so people wouldn't even know there was a guide business there because the drift boat and equipment storage was kept in the back. He stated that he was not aware of the covenants, did not believe he signed them, and had been assured by the realtor that his business would not be in conflict with the neighborhood.

L. APPELLANT CLOSING ARGUMENT (5 minutes)

1. Dennis Barnard

In closing, Mr. Baldwin reiterated that this issue was not about Mr. Schlehofer or how he runs his guiding service, but was about the issue of long-term planning. He expressed doubt about how Mr. Schlehofer would run his business in the future if he was granted the CUP and speculated that he may use the property more extensively than he had been. Mr. Baldwin stated that their main concern was that it may set a precedent for future Councils and Commissions to grant CUPs. He referenced CUP code, noting that permits can only be granted if it is true that the use is consistent with zoning and that it would not violate the residential character of the environment; he argued that this was not true, that it was not in accordance with the Comprehensive Plan which conveys that citizens and quality of life comes before business profits. Mr. Baldwin noted that Kenai was a great place to live and he wants to keep it that way, specifically his neighborhood; emphasized that strategies should be forward-looking, and the Board's decision should be in the best long-term interest of the citizens.

M. APPELLEE CLOSING ARGUMENT (5 minutes)

1. Dean Schlehofer

In closing, Mr. Schlehofer noted that people want to stay right on the Kenai River so they wouldn't be coming to his place or into the neighborhood. He noted that May was a very light month for his business and June through August were his busier months before slowing down again in the fall. He confirmed that the clients will be meeting him outside his property and explained that there will not be added traffic.

N. DELIBERATIONS *(Deliberations may be held in public or adjudicative sessions)*

In response to questions from the Board, Dennis Barnard explained previous bear sightings he had in the neighborhood.

Rick Baldwin clarified that the homeowners association of the neighborhood had previously been dormant but had gathered in response to this issue; and that the organization was an unincorporated association operating pursuant to the contractual relationship established by the covenants.

The appellants were asked how many residents of the neighborhood relied on the covenants when making the decision to buy their home, and seventeen were counted who were present at the meeting.

In response to questions from the Board, Mr. Schlehofer clarified his decision to purchase property noting that the public dock nearby would work better for his business than having a dock on his property. He explained that he did not intend to grow his business, clarified that he had independent contractors working for him as guides, and did not have any employees. He explained that he cleaned his boat in another area and fish were cleaned on the shore and not at his home. He clarified that he was currently working as a guide, he parked his boat at home, and met his clients offsite but there were no other business activities happening on the property other than some computer work. Mr. Schlehofer stated that there would only be one boat on his property apart from a drift boat in the back, and guides would never park their boat on his property. He clarified that his property on Dolchok is his primary residence year-round, he has a home office but all of the bookings go through a booking agent located in Anchorage.

MOTION:

Vice Board Member Molloy **MOVED** to adjourn into adjudicatory session. Board Member Askin **SECONDED** the motion.

It was clarified that the City Attorney could attend the deliberative session.

VOTE:

YEA: Gabriel, Pettey, Knackstedt, Glendening, Molloy, Winger, Askin

NAY:

MOTION PASSED UNANIMOUSLY.

Board Chair Gabriel advised that the Board had 30 days to provide a decision.

With no further business before the Board, it adjourned into adjudicatory session for deliberation.