

**MINUTES**  
**BOARD OF ADJUSTMENT HEARING**  
**JULY 23, 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 Denying a Conditional Use Permit to Applicant, Dean Schlehofer, for Lodging 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 23, 2021, in City Hall Council Chambers, Kenai, AK. Board Chair Brian Gabriel called the meeting to order at 6:03 p.m.

**B. ROLL CALL**

There were present:

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

**C. OPENING STATEMENT**

Board Chair Gabriel provided an opening statement.

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 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.

**D. SWEARING IN OF ALL PERSONS PROVIDING TESTIMONY**

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

**E. PUBLIC COMMENT (5 minutes)**

Rick Baldwin noted that there were many members of the public in the audience who had organized in opposition to this case, and requested that these members of the public concede their public comment time to three specified members of the neighborhood. The following

audience members agreed: Jerry Huf, Greg Davis, Craig Cheek, Bobby Baldwin, Ruby Christopherson, Mary Loveland, Fred Wolsterman, Frances Eurick.

Diedre Cheek introduced a video of the neighborhood.

Charlotte Coots read a statement from her husband Pete Coots, which described their reasons for moving into the neighborhood from Nikiski, including the residential zoning and covenants that limited use to single-family residential. The character of the neighborhood was described, and stated that they welcome the applicant as a neighbor but is against business owners who knowingly buy property with the intent to violate covenants. It was noted that the issue has galvanized the neighborhood to organize in opposition.

Charlotte Coots showed aerial images of their neighborhood, explaining that there are currently only residential homes and no businesses operating. She referred to the applicant's statements that his business would not change the quality of life or character of the neighborhood, and explained how a lodging business would operate outside of normal business hours which could cause disturbances in the neighborhood. She drew comparisons with the Angler Drive neighborhood, explaining that they were also zoned residential but has many businesses operating with conditional use permits (CUP) and the neighborhood character changing as a result. She noted that granting the permit would go against the goals of the Comprehensive Plan, and 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 and this was recognized by the Planning & Zoning Commission. He stated that the application fails demonstrate this compatibility, and explained how the hours of operation, early morning activity, late-night noise, and presence of unknown travelers would be to the detriment of the neighborhood. He noted there was a large travel trailer in front of his property, and he didn't know who would be staying there. He noted that the Planning & Zoning Commission had the discretion to deny the permit in the best interest of the neighborhood and based on long-term planning considerations. He discussed the findings of the Commission, suggesting that the conditions were not satisfied; explaining how the use was not consistent with the purpose of the chapter nor 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, promote land uses that are in harmony with surrounding uses, nor would it be a land use strategy that implements a forward-looking approach to community growth and development. He noted that given these findings, it is the appellant's burden to provide proof. He praised the Planning & Zoning Commission for adhering to the code and the Comprehensive Plan, and for adopting a long-term planning view when making their decision. 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.

#### **F. 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. PZ2021-17.

Clarification was provided that there were no other CUPs in this neighborhood. He noted the code addresses specifications for short-term rental lodging, bed & breakfasts and dormitories but is silent on Airbnb.

**G. APPELLANTS (30 minutes each)**

1. Dean Schlehofer

Appellant Dean Schlehofer explained how the views expressed by the neighborhood differed greatly from the impression he was given from the previous owners, who had told him the neighbors would be fine with a guide service and lodging business. He discussed how lodging businesses do not necessarily lead to bad behavior from guests, and he had strict policies for them to adhere to. He explained the traffic route to his home, noting that guests could not go beyond 300 feet from his property. He noted that there are many lodging businesses and Airbnbs in Kenai and the reviews are overall very positive; also noted his own positive rating. Mr. Schlehofer clarified his guests were there to fish and not to party, that they would not be on property during the day, and would also only be there seasonally. He addressed concerns about the value of homes and explained his plans for future renovations and how this would have a positive impact on the value of neighboring homes.

Concerning the comparisons between this neighborhood and Angler Drive, he noted that he did not understand why this was the only neighborhood being consistently compared when it is not necessarily the same. He provided more explanation of the routine guests would have when they stayed with him. He explained that he had been led to believe this would a great business opportunity by the realtor and would probably not have moved forward with the purchase had he known there would be this opposition. Mr. Schlehofer noted that this neighborhood should not be compared directly with Angler Drive, because Angler is closer to the river and because of this there would not be the same domino effect of CUP issuance that neighbors have expressed concerns of. He stated that he had made a list of pros and cons, pros including little noise during May, guests arriving in only one vehicle, property located at the end of the neighborhood, and a quiet environment. Noted there was one neighbor who was very concerned and has added a wall to their property. He explained that he has been running a camera 24/7 to record any potential problems. Mr. Schlehofer discussed comments made during the previous meeting regarding the water level and shared that he saw people kayaking in it.

**H. APPELLEE (30 minutes)**

1. Ryan Foster

Director Foster clarified his relationship to the Planning & Zoning Commission, noting that as the staff liaison he provides support and guidance through staff analysis and recommendations, and the record is made of his contributions as well as those of the applicant and public. He noted that the Commission, is independent and has decision-making authority, and that his position is one of objectivity. He emphasized that it is not his place this evening to weigh in on the Planning & Zoning Commission's decision, as their findings and decision needs to speak for themselves.

**I. APPELLANT REBUTTAL (10 minutes each)**

1. Dean Schlehofer

Mr. Schlehofer noted that this neighborhood should meet prospective homebuyers first to understand their intentions and let them know what is approved in the neighborhood. He explained he had been clear about his intentions with the realtor and previous homeowner; knowing the community's restrictions would have saved him a lot of stress.

**J. APPELLEE REBUTTAL (10 minutes)**

1. Ryan Foster

Director Foster stated he had no further comments.

**K. APPELLANT CLOSING ARGUMENT (5 minutes)**

1. Dean Schlehofer

In closing, Mr. Schlehofer stated that he hoped the neighborhood would give him a chance and see that his business is not like those on Angler Drive. His business would provide a quality and safe experience that won't interfere with the neighborhood.

**L. APPELLEE CLOSING ARGUMENT (5 minutes)**

1. Ryan Foster

Director Foster stated he had no further comments.

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

In response to questions from the Board, Mr. Schlehofer clarified that he had chosen his realtor because he was very professional, had knowledge of waterfront businesses, and came highly recommended. He clarified that he does not have employees but utilizes independent contractors, and clients would be responsible for their own transportation to and from the lodging accommodations.

In response to public comments, Mr. Schlehofer clarified that there was a trailer on his property to be used by potential deck hands adding he has a waiver letter from the State which allows a deck hand to assist in communications with guests. He noted that guests would not be staying in the trailer.

Mr. Schlehofer provided clarification that his previous comments about guests not going beyond 300 feet from his property was based on his understanding of the City's notification of CUP application to neighbors living within 300 feet of his property.

He clarified that fish would be cleaned and filleted at the location where it was caught and vacuum-sealed in his garage; fish processing would not be done by clients.

In response to questions from the Board, Director Foster clarified that in this role as Planning & Zoning Commission staff liaison, he was not able to speak to the decisions of that independent body, and had spoken to the City Attorney in regards to the Board of Adjustment process.

Director Foster noted that he was not familiar with the part of the code dealing with quiet hours, as it is outside Title 14. He noted that in this CUP application there was a statement regarding the business's quiet hours.

**MOTION:**

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

**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.