

**KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING
APRIL 13, 2022 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVENUE, KENAI, ALASKA
CHAIR JEFF TWAIT, PRESIDING**

MINUTES

A. CALL TO ORDER

Chair Twait called the meeting to order at 7:00 p.m.

1. Pledge of Allegiance

Chair Twait led those assembled in the Pledge of the Allegiance.

2. Roll Call

Commissioners present: J. Twait, A. Douthit, G. Woodard, J. Halstead, V. Askin, D. Fikes, G. Greenberg

Commissioners absent:

Staff/Council Liaison present: Planning Director R. Foster, Administrative Assistant K. Rector, Deputy Clerk M. Thibodeau, Council Liaison T. Winger

A quorum was present.

3. Agenda Approval

MOTION:

Commissioner Halstead **MOVED** to approve the agenda. Commissioner Askin **SECONDED** the motion. There were no objections; **SO ORDERED**.

4. Consent Agenda

MOTION:

Commissioner Halstead **MOVED** to approve the consent agenda. Commissioner Askin **SECONDED** the motion. There were no objections; **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders.

5. *Excused absences – None

B. APPROVAL OF MINUTES

1. *Regular Meeting of March 23, 2022

Approved by the consent agenda.

C. SCHEDULED PUBLIC COMMENT – None.

D. UNSCHEDULED PUBLIC COMMENT – None.

E. CONSIDERATION OF PLATS – None.

F. PUBLIC HEARINGS

1. **Resolution PZ2022-08** - Application for a Conditional Use Permit for Cabin Rentals for the property described as Lot 3, Angler Acres Subdivision Part 4, located at 1025 Angler Drive, Kenai, Alaska 99611. The application was submitted by Thomas Hoelsing, 1865 Fredericksen St, Fremont NE 68025

MOTION:

Vice Chair Douthit **MOVED** to approve Resolution PZ2022-08. Commissioner Woodard **SECONDED** the motion.

Planning Director Foster presented his staff report with information provided in the packet explaining that the applicant wishes to obtain conditional use permits (CUP) for cabin rentals (PZ2022-08) and for a guide service (PZ2022-09). The criteria for conditional use permits was reviewed; it was noted the application met the criteria and City staff recommends approval of both CUPs, subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. Prior to starting any business operations, a landscape/site plan must be reviewed and approved by the Planning Director.
3. Prior to beginning any construction or renovations, a building permit must be issued by the Building Official for the City of Kenai.
4. A yearly Conditional Use Permit report must be submitted to the City of Kenai prior to the 31st day of December of each year.
5. The applicant will meet with City staff for on-site inspections when requested.
6. If there is a change of use for the above described property a new Conditional Use Permit must be obtained, pursuant to 14.20.150(l)(5).
7. Pursuant to KMC 14.20.150(l)(2), this permit shall expire automatically upon termination or interruption of the use for a period of at least one year.
8. Failure to provide documentation to the City for meeting these conditions shall be grounds for the suspension or revocation of the conditional use permit.
9. Quiet Hours are 10pm to 6am.

Applicant Tom Hoelsing explained that he believes his application meets the criteria in Kenai Municipal Code for CUPs, and that he understands the conditions of the CUP and does not expect a conflict with his business operations. He clarified that he intends to use Airbnb and VRBO for bookings of seasonal lodging.

Chair Twait opened for public hearing.

Jim Richardson stated his opposition to this CUP as written, noting that he had provided written testimony that included recommended stipulations the commission could add. He explained that in recent years he had experienced a number of problems from local CUP operators including increased traffic from trucks and golf carts, increased noise level, and lodgers trespassing on his property. He discussed suggested recommendations including specifying the number of cabins and guides, improving the communication between City staff and the Planning & Zoning Commission, and specifying the number of noise complaints that can be made against a property before permit revocation.

Jerry Huf stated his opposition to this CUP, noting that he had provided written testimony that was included in the laydown. He explained that he wants to protect the neighborhood from people who don't live there year-round and operate businesses in a way that degrades property values. He shared his experiences living in a neighborhood with several CUP businesses, noting multiple issues including decreased property values, noise and traffic. He noted problems with another CUP business in the neighborhood, and said that Mr. Hoelsing's business is another branch of this same business. He expressed frustration that he felt his concerns had not been heard when they were previously brought to the City.

Greg Anderson stated his opposition partially based on the City's inability to enforce the conditions of a CUP. He stated that there are no consequences for a CUP owner when they violate their conditions, and he is concerned about businesses expanding their scope beyond what they are permitted. He noted that he had heard that a different CUP business will be running Mr. Hoelsing's property, and that the expansion of businesses in the neighborhood had changed the dynamic and worsened conditions for residents. He expressed frustration about the lack of response to violations from the City.

Mack Padgett noted that he has seen a deterioration in the quality of life in the Beaver Creek neighborhood with the increase of high volume operators. He encouraged the commission to consider Beaver Creek as a residential neighborhood, and stated that his neighborhood has to fight CUPs at inception because they are difficult to revoke.

Jason Foster encouraged the commission to research complaints against this business, noting that he is not the kind of operator described in previous testimony. He said that this is a nice business, that the City has been enforcing violations, and the complaints being voiced are one-sided.

Tom Hoelsing answered questions from the commission, explaining that prior to the purchase of this property he had been told by the former City Planner that his business would not require a CUP. He clarified that the first notice issued by Director Foster had been sent to his mailing address in Nebraska, and that he had been advertising on Airbnb for about a year and a half.

There being no one else wishing to be heard, the public hearing was closed.

Director Foster clarified the changes made to the Kenai Municipal Code on conditional use permits, which included informing the Planning & Zoning Commission of violations. He explained how enforcement in the Planning Department is driven by complaints, which are investigated and if verified with evidence a code violation letter will be issued to the CUP owner. He emphasized that code provides CUP owners an opportunity to come up with a remedy for their violation, and

if remediation does not occur the CUP may come back before the commission for revocation. He noted that the conditions provided in the staff report are recommendations that the commission has the power to make changes to, and that conditions help in the management and enforcement of CUPs.

The commission discussed how the changes to the CUP code are less than a year old and the results have yet to be seen in a summer season. Clarification was provided that police records for complaint calls on this property had not been requested.

Commissioner Halstead stated that he believed that the City does not currently have the resources to enforce the CUP requirements. He stated that Criteria #2 "*KMC 14.20.150(e)(2) The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired*" has not been met, as evidenced by the neighbors who provided testimony that the non-economic value of the area has been affected; Criteria #3 "*KMC 14.20.150(e)(3) The proposed use is in harmony with the Comprehensive Plan*" has not been met because this CUP will create an unacceptable neighborhood atmosphere that people will not want to be a part of; and that it also fails to meet Criteria #5 "*KMC 14.150(e)(5) The proposed use will not be harmful to the public safety, health or welfare.*" He stated that he opposes this resolution.

Commissioner Woodard stated her opposition, noting that she agreed with the comments of Commissioner Halstead.

Vice Chair Douthit discussed how adding more conditions could provide further means for enforcement. He stated he is in favor of the resolution but believes there is room to provide the ability for more enforcement.

The commission deliberated whether additional conditions they add could effectively be enforced with the City's resources.

Commissioner Fikes stated that based on the testimony heard tonight and at previous meetings about CUP use in this neighborhood, the applicant's history of operating his business without a CUP and his plans to not be present at the location, and the City's lack of an enforcement mechanism, her findings are that she does not believe that the harmony of the neighborhood will be kept up and that the value of the neighborhood will be diminished. She noted that there have been some changes in the CUP code but not enough for her to feel confident and to be in favor of this resolution, and for these reasons she would oppose it.

Director Foster clarified that he had included his recommendation for Condition #9 "Quiet Hours are 10pm to 6am" based on recent commission decisions on cabin rentals and dormitories.

The commission considered conditions that had been recommended from written public testimony, including making quiet hours consistent with other CUP businesses in the area, requiring a local contact that is responsible for ensuring conditions are met, and limiting the number of guests or beds on the property. It was noted that trespassing issues should be handled by law enforcement.

Clarification was provided on the revocation process for CUPs as provided in the City code. Director Foster noted that once a complaint is received, it must be investigated and verified prior to citing a code violation; he reiterated that once the CUP owner receives a code violation letter, the burden is put on the permit holder to determine and notify staff of how they propose to resolve

the violation within a reasonable timeframe. He explained that if no remedy has been made within a reasonable time, Director Foster could recommend that the permit come before the Planning & Zoning Commission for a hearing to consider revocation.

The commission considered the timeframe required to observe the effects of enforcement efforts, which can potentially span an entire season of a business's operations; it was suggested that this process be expedited to avoid this issue. Concern was expressed about placing limits on the number of guests, and it was noted that there is not an effective mechanism for enforcing this.

Chair Twait noted that the application is similar to previous ones approved by the commission, but since then CUP code had been changed to include that a neighborhood's noneconomic value not be significantly impaired under Criteria #2, a point which is relevant to this application; he noted that the upcoming summer season will show whether the new code changes have the desired effect for this neighborhood. He stated he opposed the resolution with the idea that the effect of the changes be observed for the upcoming summer season, and explained that the public testimony shows that the quality of life in this neighborhood has diminished which speaks to its noneconomic value. He encouraged the applicant to re-apply for the CUP after this summer season.

It was noted that not issuing a permit in anticipation of a violation that hasn't occurred yet because of the presumption that the City can't enforce it sets a dangerous precedent which could discourage future business owners from applying for permits.

It was noted that Jason Foster had been cited last year for violations and his remedy has not yet been demonstrated during his normal summer business season, and he may be helping to manage Tom Hoelsing's property.

Tom Hoelsing clarified that Cyndi Hannah will be providing cleaning and check-in services for this property in Mr. Hoelsing's absence. He noted that he has properties in multiple states and has had no problems from neighbors; he questioned where the burden of proof was for the neighbor's accusation, and asked the commission to consider his application for what happens on his own property.

Commission discussed whether additional information such as police reports would be helpful, or if testimony is sufficient; they considered whether additional time to develop more conditions could be beneficial.

MOTION TO AMEND:

Vice Chair Douthit **MOVED** to amend Condition #9 to read "Quiet Hours are 10pm to 5am."
Commissioner Halstead **SECONDED** the motion.

VOTE ON AMENDMENT:

YEA: Halstead, Douthit, Greenberg, Twait
NAY: Askin, Fikes, Woodard

MOTION PASSED.

MOTION TO AMEND:

Vice Chair Douthit **MOVED** to add a condition requiring a local manager who will be responsible for the property while in operation. Commissioner Halstead **SECONDED** the motion.

VOTE ON AMENDMENT:

YEA: Halstead, Woodard, Douthit, Greenberg, Twait
NAY: Fikes, Askin

MOTION PASSED.

The commission discussed adding a condition to limit the number of visitors at the property, and how that might be determined. Director Foster clarified that a Fire Marshal inspection is part of the CUP process.

MOTION TO AMEND:

Vice Chair Douthit **MOVED** to add a condition that the number of registered overnight occupants be limited to the City's fire code regulations for the number of people allowed for the size of dwelling. Commissioner Woodard **SECONDED** the motion.

VOTE ON AMENDMENT:

YEA: Halstead, Woodard, Douthit, Greenberg, Twait, Askin
NAY: Fikes

MOTION PASSED.

Clarification was provided that there is no set number of complaints that will result in CUP revocation; an explanation of the notice of violation and permit revocation procedures was provided.

VOTE ON MAIN MOTION AS AMENDED:

YEA: Douthit, Greenberg
NAY: Woodard, Twait, Askin, Fikes, Halstead

MOTION FAILED.

Chair Twait noted the fifteen-day appeal period.

- 2. Resolution PZ2022-09** - Application for a Conditional Use Permit for a Guide Service for the property described as Lot 3, Angler Acres Subdivision Part 4, located at 1025 Angler Drive, Kenai, Alaska 99611. The application was submitted by Thomas Hoelsing, 1865 Fredericksen St, Fremont NE 68025

MOTION:

Commissioner Halstead **MOVED** to approve Resolution PZ2022-09. Commissioner Woodard **SECONDED** the motion.

It was noted that the staff report for PZ2022-09 was shared with PZ2022-08 and had been provided earlier in the meeting.

Applicant Tom Hoelsing stated that he would like his application to stand on its own, and that it is not fair to vote based on assumptions about someone's future performance. He expressed uncertainty about what good a guide service CUP would do for him without lodging.

Chair Twait opened for public hearing.

Jerry Huf, noting that the applicant will not have lodging nor a dock and is not a registered guide, expressed doubt about his business plan. He referred to the Comprehensive Plan's goal to maintain quality of life, and stated that he had seen this diminish in his neighborhood because of CUP business operations. He noted that residents are highly inconvenienced by this sort of activity, and once granted CUPs the operations will expand to become high volume businesses. He asked the commission to focus on the area as a residential neighborhood with year-round residents.

Greg Anderson questioned how the applicant could run a guide service with no dock, and noted that the Parks service may need to approve the property which he has not seen happen.

Mack Padgett stated that the carrying capacity of Beaver Creek is beyond its limit, and encouraged the commission to look at what is happening to it and how it impacts the health of the Kenai River.

Jim Richardson stated that he had once served as the president of Kenai River Special Management area, and clarified what the dock requirements were when they were first developed. He stated that he had previously pointed out violations but could not get enforcement, discussed the limitations of law and code enforcement, and emphasized the need for better communication. Stated that he opposed the guide service based on past problems at this location.

MJ Loveland stated that Beaver Creek is part of the Kenai River, and she believes it is at its capacity for number of boats and opposes allowing any more boating activities there.

There being no one else wishing to be heard, the public hearing was closed.

The commission discussed postponement based on possible appeal of PZ2022-08, noting that the applicant may no longer want this CUP based on the denial of his cabin rental CUP.

Chair Twait stated that the applicant could run a guide business from the property and launch his boats from another location, but he would vote no based on the applicant's testimony.

Vice Chair Douthit stated he would vote no based on the testimony of the applicant, who said that without the cabins he didn't see the need for having a guide service. He noted that he feasibly could run a guide service on the property without a dock, but he agreed with the applicant and doesn't feel it necessary.

Commissioner Greenberg stated that he would vote yes because the applicant could feasibly run a guide service from the property.

Commissioner Askin stated that she would vote no based on the applicant's statements and out of concern for the condition of Beaver Creek.

Commissioner Fikes stated that she would vote no, noting that additional testimony from the applicant about his plans for the guide service would have been helpful; based on his testimony from PZ2022-08 she did not see how the neighborhood would benefit from this business.

Commissioner Halstead stated that he votes no based on the applicant's testimony and his

absence from the rest of the commission's discussion on the guide service. He stated that a guide could potentially run a guide service without a dock if the boat was moved to another dock.

Commissioner Woodard stated that she voted no because the applicant said the guide service CUP wouldn't be useful to have without the cabin rental CUP. She noted that she couldn't see how he could bring boats into the area without damaging the environment.

VOTE:

YEA: Greenberg

NAY: Twait, Douthit, Askin, Fikes, Halstead, Woodard

MOTION FAILED.

Chair Twait noted the fifteen-day appeal period.

G. UNFINISHED BUSINESS – None.

H. NEW BUSINESS

- 1. Action/Approval** - Special Use Permit to Weaver Brothers, Inc. for Truck Trailer Storage.

MOTION:

Commissioner Askin **MOVED** to recommend approval of the Special Use Permit to Weaver Brothers, Inc. for Truck Trailer Storage. Commissioner Halstead **SECONDED** the motion.

Director Foster provided a staff report noting that the same Special Use Permit (SUP) came before the commission last summer, and this year's request is for the same five parcels. He noted that the parcels are adjacent to existing leases Weaver Brothers has, the reason for the SUP is expansion beyond their lease, and the SUP would be for one year.

Clarification was provided that this SUP is for the same lots as the previous year and Weaver Brothers currently has trailers on them, and that SUPs are issued for a maximum of twelve months. Director Foster stated he does not believe the utilization of these parcels would impact other properties in the area.

VOTE:

YEA: Greenberg, Twait, Askin, Fikes, Halstead, Woodard, Douthit,

NAY: None

MOTION PASSED UNANIMOUSLY.

- 2. Action/Approval** - Resolution No. 2022-XX – Approving the Execution of a Lease to Joel Caldwell.

MOTION:

Commissioner Askin **MOVED** to recommend approval of the Execution of a Lease to Joel Caldwell. Commissioner Woodard **SECONDED** the motion.

Director Foster provided a staff report noting that Joel Caldwell had proposed an estimated

\$100,000 in improvements to the property which include additional storage, restroom facility and paving, to be completed within two years of signing the lease. The activities noted on the application is aircraft storage and maintenance, and the requested lease term is seventeen years. He noted that to date no competing lease applications have been submitted.

VOTE:

YEA: Woodard, Douthit, Greenberg, Twait, Askin, Fikes, Halstead

NAY: None

MOTION PASSED UNANIMOUSLY.

I. PENDING ITEMS – None.

J. REPORTS

1. **City Council** – Council Member Winger reported on the actions of the April 6, 2022 City Council Meeting.
2. **Borough Planning** – Commissioner Fikes reported on the actions of the March 21, 2022 Kenai Peninsula Borough Planning meeting.
3. **City Administration** – Planning Director Foster reported on the following:
 - Next Commission meeting on April 27, 2022 will include a CUP application.
 - Upcoming meetings on the Kenai Waterfront Revitalization project will be held on May 2nd and 3rd.

K. ADDITIONAL PUBLIC COMMENT – None.

L. INFORMATIONAL ITEMS

1. Kenai Dog Park Program

Council Member Winger noted that there will be a resolution at the next City Council meeting to consider a land donation for the Kenai Dog Park.

M. NEXT MEETING ATTENDANCE NOTIFICATION

1. April 27, 2022

N. COMMISSION COMMENTS & QUESTIONS

Council Member Askin noted that it had been a good meeting.

Commissioner Halstead noted that he would like to have a template to guide the commission when adding criteria to a guide service CUP, and suggested scheduling a work session.

Commissioner Greenberg stated that an underlying problem is that people have lost confidence in the process, and asked the commission to consider how to build back that confidence so that a permit can be evaluated on its own merit.

Commissioner Fikes agreed that a work session or discussion would be beneficial, because placing conditions will provide a tool for enforcement. She expressed concern about whether changing conditions for CUP applicants will be fair to past or future applicants.

Vice Chair Douthit agreed that a work session will help to clarify understanding of enforcement issues, and in adding enforceable conditions to a CUP the community's trust in the process can be built back.

Council Liaison Winger noted she will bring the commission's concerns to Council, and encourages scheduling a work session with the City Attorney.

Chair Twait recognized the passing of Mayor Gabriel's mother.

O. ADJOURNMENT

There being no further business before the Commission, the meeting was adjourned at 10:03 p.m.

Minutes prepared and submitted by:



Meghan Thibodeau
Deputy City Clerk