

**KENAI PLANNING & ZONING COMMISSION  
REGULAR MEETING  
SEPTEMBER 8, 2021 – 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, J. Halstead, A. Douthit, G. Woodard, G. Greenberg, R. Springer, A. Douthit

Commissioners absent: D. Fikes

Staff/Council Liaison present: Planning Director R. Foster, Planning Assistant W. Anderson, Deputy City Clerk M. Thibodeau, Council Liaison T. Winger

A quorum was present.

**3. Agenda Approval**

**MOTION:**

Commissioner Halstead **MOVED** to approve the agenda as written and Commissioner Douthit **SECONDED** the motion. There were no objections; **SO ORDERED**.

**4. Consent Agenda**

**MOTION:**

Commissioner Halstead **MOVED** to approve the consent agenda and Commissioner Douthit **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 August 25, 2021

The minutes were 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 No. PZ2021-34** – Recommending the Kenai City Council Amend Kenai Municipal Code 14.20.150-Conditional Use Permits, to Clarify Roles and Responsibilities of Applicants, the Planning Director, and the Planning Commission in the Conditional Use Process and Make Housekeeping Changes.

**MOTION:**

Commissioner Springer **MOVED** to approve Resolution No. PZ2021-34 and Commissioner Woodard **SECONDED** the motion.

Planning Director Foster explained that Ordinance No. 3243-2021 had been introduced by Council on September 1, 2021 and has a public hearing set for the September 15, 2021 Council meeting, and had been referred to the Planning & Zoning Commission for a public hearing and recommendation through Resolution No. PZ2021-34. He provided a staff report which reviewed the changes to the Conditional Use Permit (CUP) process being proposed, which are outlined in the memo.

Chair Twait opened for public hearing.

Vice Mayor Bob Molloy noted that as the Council sponsor of the ordinance, he wanted to listen to the Commission's discussion and hear any amendments they might make to it.

Rick Baldwin thanked the Commission, Vice Mayor Molloy and Planning Director Foster, and expressed support. He made an observation from previous meetings that CUP applicants may represent their business in one way and then pull a bait-and-switch by pushing the conditions to the limit. He recommended that the permit should reflect in writing all special restrictions or conditions under which the applicant proposes to operate, and also that the Planning Director should be responsible for smoking out people who may not abide by these limits at the beginning of the CUP process.

Rusty Huf expressed support for the ordinance, and noted that his problem with the CUP process is that the conditions of the permit aren't written in stone, and the applicant will surpass the conditions and there is little recourse for neighbors. He stated that he would like to see more teeth in the ordinance, which would specify that if an applicant is not following the conditions they

can be shut down. He noted that the CUP process is 35-40 years old and is glad that it is being updated.

Frances and Mark Eurick stated their support for the ordinance and recommendations shared by others during public comment, noting that the amendments will make the process more transparent and equitable.

Mary Jean Loveland expressed support for the ordinance and noted that they would like to see more checks and balances, such as an annual review to ensure the CUP owner is not surpassing the CUP conditions and requirements that they re-apply if they want to go beyond them.

Jim Richardson stated that he has been a property owner on Angler Drive for over 30 years, and that it has seen a significant increase in the number of CUPs issued. He noted that the Commission's actions have a big effect over time, and he supports these changes because previous conversations with City administration have not gone far enough to solve the problems he is concerned with.

Kristine Schmidt expressed support for the ordinance, noting that she had observed gaps in the CUP process that she is glad to see being addressed. She reiterated previous comments regarding a need for more defined parameters and that expanding their business activities should require re-application. She noted she would like to see more detail in the criteria such as defining what is consistent with the Comprehensive Plan, and also addressing the issue of subdivision covenants.

Greg Davis expressed support for the ordinance but stated that it needs teeth. He shared his experience living in the area and seeing an increase in the number of boats, and also noted that economic value will be difficult to determine because of seasonal changes.

Rick Baldwin noted that he would like to see some of the procedures clarified for Board of Adjustment hearings, and suggested a procedure manual that would explain how long people can talk.

Rusty Huf discussed the concept of a property's value. He stated that he resents the idea of the Planning Department deciding whether or not a CUP would impact economic value, as it is not for them to determine the value of his neighborhood. He also said he would like to see greater enforcement of CUP conditions, and that he does not approve of businesses starting in residential neighborhoods.

Barbara Baldwin addressed previous comments regarding Board of Adjustment procedures, noting that she would also like to see a representative from the Planning & Zoning Commission explain their decision during the hearing.

Jim Richardson encouraged the commission to leave economic impact in the resolution. He shared his personal experience living in an area with neighboring CUP properties and how this has affected his living situation.

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

Clarification was provided that if a notice of violation had been sent the CUP owner, they would have an opportunity to rectify the issue and the Commission would be notified that compliance

had been met. Discussion involved how the Commission could be notified when the original notice of violation was issued, and what could be done to clarify penalties for violations. It was noted that informing the Commission when violations are issued could prepare them in instances where the public responds to the notice at a public meeting or via phone calls to commissioners.

It was clarified that the purpose of the pre-application meeting was to ensure completion of the CUP application packet and help familiarize the applicant with the CUP process, and it was suggested that the Planning Director also provide guidance about the Comprehensive Plan.

Support was expressed for the clarification in the second criteria that value is both economic and non-economic, as it will allow the Commission more leeway in how they review it. Clarification was provided that the business activities of CUPs are limited by the conditions which are set by the Commission, but that if their uses exceed their CUP the City can take action.

The possibility of retroactively imposing additional conditions on a previously-approved CUP was considered, and it was noted that the City does not have a formal process in place for amending the permits. However, the City can work out agreements with CUP holders in response to complaints, and the Commission can start an investigation if they become aware of violations.

Discussion included the possibility of an applicant not showing up for their required presentation to the Commission, and it was noted that if a CUP application is denied they cannot reapply for nine months. It was suggested that if the applicant provides prior notice that they will not make the hearing, their application could be dismissed rather than denied which would allow them to reapply at any time.

#### **MOTION TO AMEND:**

Commissioner Douthit **MOVED** to amend Resolution No. PZ2021-34 by adding that the Planning & Zoning Commission will receive notification of any CUP violation letters sent out, and that applications will be dismissed if the applicant fails to show up for their hearing or provide notice of their absence. Commissioner Woodard **SECONDED** the motion. **UNANIMOUS CONSENT** was requested.

**VOTE ON AMENDMENT:**                      There were no objections; **SO ORDERED.**

Discussion on the pre-application meeting continued, and it was noted that this step in the process could be helpful in ensuring the applications that move forward to Commission meet code and can be recommended for approval.

Earlier public comments about having Planning & Zoning Commission representation at Board of Adjustment hearings were addressed, and clarification was provided that when the Commission makes a decision they are acting in an adjudicatory capacity and therefore their decision stands on its own based on their findings. It was further clarified that Kenai's Board of Adjustment gives no deference to the Commission's decision and the hearings are de novo.

The possibility of notifying neighboring property owners about public hearings past the 300 foot requirement was considered. It was clarified that 300 feet is standard throughout the country, and while those within those boundaries are mailed postcards, those outside the boundary can still be informed through posted signage and newspaper advertisements and are able to participate in the public hearing.

Discussion returned to the Commission's ability to amend approved CUPs to impose new conditions, and it was noted that this can be done when a CUP is transferred to a new owner or if they re-apply for their CUP after it has lapsed from disuse. It was reiterated that CUPs can only be revoked for violations of the conditions in the permit or other Planning & Zoning code violations.

**VOTE ON MAIN MOTION AS AMENDED:**

YEA: Halstead, Woodard, Greenberg, Douthit, Springer, Twait  
NAY:

**MOTION PASSED UNANIMOUSLY.**

**G. UNFINISHED BUSINESS** – None.

**H. NEW BUSINESS** – None.

**I. PENDING ITEMS** – None.

**J. REPORTS**

1. **City Council** – Council Member Winger reported on the actions from the September 1, 2021 City Council meeting.
2. **Borough Planning** – No report.
3. **City Administration** – Planning Director Foster reported on the following:
  - There are no items for the Commission meeting scheduled for September 22, 2021;
  - This is Planning Assistant Willie Anderson's last meeting, and he noted that it has been great working with her.

**K. ADDITIONAL PUBLIC COMMENT**

Kristine Schmidt followed up on the Commission's earlier discussion regarding mailed notification to neighbors, and stated that the switch from certified mail to postcards has led to confusion, but the applicant should pay the mailing cost instead of the City. She also noted that the Borough has a half-mile radius requirement for CUP notification, and Kenai should consider increasing that boundary. She also stated that the posted signs are too small and are not visible enough.

Vice Mayor Bob Molloy thanked Willie Anderson for her service to the City, the members of public who came to speak at the meeting, and the Commission for the good discussion. He stated that the Council will consider the changes that the Commission suggested.

**L. INFORMATIONAL ITEMS**

1. Board of Adjustment Decision - Barnard (BA-21-01)
2. Board of Adjustment Decision - Schlehofer (BA-21-02)



3. Board of Adjustment Decision - Jones (BA-21-03)

**M. NEXT MEETING ATTENDANCE NOTIFICATION**

1. September 22, 2021

**N. COMMISSION COMMENTS & QUESTIONS**

Commissioner Greenberg thanked Vice Mayor Molloy for his work on the ordinance.

Commissioner Woodard congratulated Willie and said she hopes she enjoys retirement.

Commissioner Halstead noted that Willie will be missed and thanked her for her work on the Commission. He also thanked Director Foster and stated that he has seen big improvements since he joined the City.

Council Liaison Winger encouraged everyone to look through the Board of Adjustment decisions included in the packet, especially the included comments about imposing parameters on CUPs.


Commissioner Springer thanked Willie for the work she has done for the City.

Chair Twait thanked Vice Mayor Molloy and Willie, noted that they both leave big shoes to fill.

**O. ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 9:20 p.m.

Minutes prepared and submitted by:

  
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Meghan Thibodeau  
Deputy City Clerk

