

The regular meeting of the Matanuska-Susitna Borough Planning Commission was held on December 5, 2016, at the Matanuska-Susitna Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 6:00 p.m. by Acting Chair Colleen Vague.

I. CALL TO ORDER, ROLL CALL, AND DETERMINATION OF QUORUM

Planning Commission members present and establishing a quorum:

Ms. Mary Anderson, Assembly District #1
Mr. Thomas Healy, Assembly District #2
Ms. Colleen Vague, Assembly District #4, *Acting Chair*
Mr. Tomas Adams, Assembly District #6
Mr. Vern Rauchenstein, Assembly District #7

Planning Commission members absent and excused were:

Mr. John Klapperich, Assembly District #3, *Chair*
Mr. William Kendig, Assembly District #5

Staff in attendance:

Ms. Eileen Probasco, Planning & Land Use Director
Mr. Alex Strawn, Development Services Manager
Mr. John Aschenbrenner, Deputy Borough Attorney
Mr. Mark Whisenhunt, Planner II
Ms. Karol Riese, Planning Division Administrative Specialist
Ms. Mary Brodigan, Planning Commission Clerk

II. APPROVAL OF AGENDA

Chair Vague inquired if there were any changes to the agenda.

GENERAL CONSENT: The agenda was approved without objection.

III. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Representative-Elect, DeLena Johnson, a member of the audience.

IV. CONSENT AGENDA

A. Minutes

1. September 19, 2016, regular meeting minutes

(The September 19, 2016, regular meeting minutes were not available.)

A. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS

B. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS

1. **Resolution 16-42**, recommending the Assembly adopt the update to the Borough Recreational Trails Plan. Public Hearing: December 19, 2016. (*Staff: Emerson Krueger*)
2. **Resolution 16-43**, recommending the Assembly adopt amendments to MSB 17.60.020(A) Applicability and MSB 17.60.150 General Standards for Marijuana related facilities. Public Hearing: December 19, 2016. (*Staff: Alex Strawn*)

Chair Vague read the consent agenda into the record.

Chair Vague inquired if there were any changes to the consent agenda.

GENERAL CONSENT: The consent agenda was approved as amended without objection.

V. COMMITTEE REPORTS

(There were no committee reports.)

VI. AGENCY/STAFF REPORTS

(There were no agency/staff reports.)

VII. LAND USE CLASSIFICATIONS

(There were no land use classifications.)

VIII. AUDIENCE PARTICIPATION (Three minutes per person.)

The following person spoke regarding concerns with public process: Mr. Eugene Carl Haberman.

The meeting recessed at 6:09 p.m., and reconvened at 6:15 p.m.

IX. PUBLIC HEARING: QUASI-JUDICIAL MATTERS (*Public Hearing not to begin before 6:15 P.M.*)

Commission members may not receive or engage in ex-parte contact with the applicant, other parties interested in the application, or members of the public concerning the application or issues presented in the application.

- A. A remand to the Planning Commission for further consideration of the Central Monofill Services (CMS) application for a Conditional Use Permit under MSB Code 17.60, for the operation of a monofill for the disposal of inert construction and demolition debris, including regulated asbestos-containing material (RACM) and non-regulated asbestos-containing material (non-RACM), and an outdoor storage yard for the sale of salvageable/recyclable materials, located at 2840 S. Glenn Highway (Tax ID: 17N02E18C010) AND 2560 S. Glenn Highway (Tax ID: 17N02E19B006); within Township 17 North, Range 2 East, Sections 18 and 19, Seward Meridian. Public Hearing: December 5, 2016. (*Applicant: Central Monofill Services (CMS), Staff: Alex Strawn and Mark Whisenhunt*)

Chair Vague read the resolution title into the record.

Chair Vague:

- read the memorandum regarding quasi-judicial actions into the record;
- queried commissioners to determine if any of them have a financial interest in the proposed Conditional Use Permit (CUP);
- have had any ex parte contact with the applicant, members of the public, or interested parties in the proposed CUP; and
- if all commissioners are able to be impartial in a decision.

Mr. Bill Ingaldson, Attorney Representing CMS:

- stated that he would like to address the commission to request that this item be continued since there are two commissioners absent at this meeting.

Mr. John Aschenbrenner, Deputy Borough Attorney:

- acknowledged that Mr. Ingaldson would like to make a request to continue the public hearing before the meeting gets started; and
- stated that staff has no objection to Mr. Ingaldson addressing the commission, but they do oppose continuing the public hearing.

Commissioner Adams:

- noted that the public hearing hasn't been opened and Mr. Strawn has not yet provided his staff report;
- acknowledged that Mr. Ingaldson is requesting a continuance of the public hearing; and
- suggested that this be addressed after the public hearing has been opened.

Mr. Strawn, Development Services Manager:

- provided a chronological overview of the borough's relationship with CMS; and
- recommended approval of the draft resolution provided in the packet supporting denial of Resolution 14-33.

Mr. Mark Whisenhunt, Planner II

- stated that he was the Code Compliance Officer that was responsible for addressing complaints that the Borough received regarding CMS; and
- provided an overview of his experience with CMS as a borough enforcement officer.

Mr. Strawn acknowledged that staff has taken more time for the staff report than usual and suggested that the commission afford CMS the same amount of time.

Chair Vague asked the commission if there was any objection to suspending the rules to increase the applicant's time limit from 15 minutes to 30 minutes to allow them enough time to address the commission and to respond to questions and comments from the audience.

There was no objection noted.

Chair Vague invited the applicant and his representative to address the commission.

Mr. Bill Ingaldson, Attorney representing CMS:

- stated their objection for the record of going forward with the public hearing at this time;
- noted that there are two commissioners missing and it takes four affirmative votes to get any type of CUP approved;
- opined that any commissioner that is missing is an automatic negative vote;
- acknowledged that Mr. Kendig recused himself;
- stated for the record that they object to his recusal;
- opined that the basis for his recusal was not supported;
- commissioners cannot recuse themselves without a good reason;
- suggested that his client should not have to pay the price for Chairman Klapperich's absence due to a family emergency, and are requesting that the hearing be continued;
- noted that Mr. Strawn stated that staff has not had enough time to review the proposed liner and suggested that the hearing be continued for that reason as well;
- briefly addressed code enforcement complaints that were in a report that was included in the packet;
- stated that they hurriedly filed a written response and questioned whether the commission had a chance to read it;
- staff has taken a completely opposite stance than what they took originally and opined that they have responded to political pressure; and
- requested that the hearing be postponed so that it can be heard in front of a full panel, and to give CMS a chance to respond to accusations made by staff.

Mr. Aschenbrenner:

- stated that the borough objects to the applicants' request to postpone in order to have more Planning Commissioners at the hearing;
- there are five commissions present which is more than a quorum;
- stated that the Planning Commission is clearly authorized to proceed;
- opined that Commissioner Adams' suggestion to hold additional public hearings makes sense and would afford CMS an opportunity to respond in a meaningful way to those additional arguments;
- the Borough will not object to additional public hearings; and
- opined that some of the information that CMS claims is new such as water contamination, was previously addressed by this body in the decisions denying both of the original applications.

Commissioner Healy:

- questioned when will the record will close if the public hearing is continued;
- suggested that another meeting can come along where someone isn't prepared to address the information;
- opined that there are a lot of people interested in a resolution to this issue;
- stated that he is confident that sooner or later there will be a resolution, but concerned that this could be dragged on and on;
- questioned if the record will be closed tonight, or will additional information be provided, and if so by how much; and
- wondered at what point the whistle will blow and everyone can move on.

Mr. Aschenbrenner:

- acknowledged that Commissioner Healy brought up a good point;
- opined that there is a lot of vagueness in the recent additions to the application with regard to perhaps having a liner for a portion of the monofill;
- part of the dilemma that the Planning Commission is facing is that the additions to the application are vague in a number of ways as noted by Mr. Strawn;
- usually when an applicant proposes providing a liner, there is a lot of additional engineering information needed for a review;
- Mr. Strawn suggested that if the commission is moving towards granting this permit, a great deal of questions should be asked;
- suggested that one way to proceed would be to schedule an additional public hearing and put the proverbial monkey on the applicants back to provide enough details to determine if a liner can be built in a manner that would be protective of the environment;
- stated that the applicant has not provided those details;
- the commission can set a date prior to the next hearing for the applicant to submit written information in support of their application; and
- they would have an opportunity to speak to the information that they submit.

Mr. Ingaldson:

- referred to the "Continuing a Public Hearing" section of the MSB Planning Commission Manual;
- a public hearing may be continued due to:
 - new and potentially substantive information that was submitted late and was not review by staff, the applicant, and/or the public
 - the absence of a commissioner that wished to participate
 - commission, staff, and/or applicants desire to have more commissioners present to take action
- stated that he doesn't know why Commissioner Klapperich is absent or whether he would like to participate;
- there are some very important substantive issues that are being presented that they have not had an opportunity to respond to; and
- he is once again requesting that the public hearing be continued.

Ms. Eileen Probasco, Planning and Land Use Director:

- noted that the commission is in a position where they are a couple of commissioners short;
- postponing to the second meeting in December will not give staff enough time to formulate a specific written request for information nor would it give the applicant enough time to respond appropriately;
- January or February is more realistic;
- stated that Mr. Klapperich has indicated that he will not be at the second meeting in December and his term expires at the end of this month so he will not be sitting for the additional hearing;
- Mr. Adams' term is up to at the end of December and he is not eligible to reapply;
- Mr. Kendig's term is also up at the end of December and he is eligible to reapply; and

- requested the commission take this into consideration should they consider continuing the public hearing.

Commissioner Adams:

- stated that he tends to agree with the applicant that they should have the opportunity to present their case before a full board;
- Mr. Klapperich will not be attending the last meeting in December and his term ends on December 31st;
- Mr. Kendig has not yet been reappointed for his next term;
- noted that after the first of the year almost half of the commission might be made up of new people;
- stated that he came here tonight wondering if they were going to examine the case as it stood when they first considered it or consider the new information;
- it sounds like the borough is recommending that the commission consider the new information as part of the CUP;
- there hasn't been appropriate time for the applicant to review the information presented by staff;
- suggested that if the commission decides to postpone the public hearing, they should postpone it until at least February to give the Assembly a chance to seat new commissioners; and
- opined that the applicant does have the right to have the public hearing postponed.

Commissioner Anderson:

- stated that she agrees with Commissioner Adams because there was new information presented on Friday;
- neither side has had enough time to review the information;
- noted that the court order remanded the case back to the commission at the time of 2014;
- opined that it should probably be a new application if the new information is considered; and
- suggested the commission will need to ignore the new information if they are going to do what the court has ordered which is to act on it as if it has not been acted upon.

Mr. Aschenbrenner:

- stated that the court didn't address all of the possible changes that could happen on remand;
- opined that it would not be prudent for the commission to consider the application without the amendments;
- suggested that the commission would in essence be considering an application that the applicant isn't putting forth for consideration;
- the decision will be presumably appealed to the BOAA and back to the court;
- suggested that the court didn't anticipate that things in the application would change;
- opined that it would be an error to make a decision without considering the amendments put forth by the applicant;
- reminded the commission that they have a quorum and enough members to take action;
- CMS's pleadings to the idea that they have a right to a full board is not supported by law;
- the purpose of a quorum is to ensure there are enough members to act;

- acknowledged that the commission has members that will be supplanted, but future members can review the record just as Commissioners Anderson and Vague have done with regard to the previous materials;
- even without Commissioner Adams, there will be a quorum and enough commissioners to act;
- CMS is requesting additional hearings and an opportunity to provide additional information;
- that request can be satisfied by the commission going forward this evening and then having an additional hearing so that CMS can adequately respond to information presented last week by the expert Mr. Munter, as well as additional information provided by staff; and
- there is a full audience present that would like to be heard and the commission has enough members present to do so.

Mr. Ingaldson:

- opined that the PC Manual gives an applicant the right to a continuance with a full panel;
- commented on the statement that Commissioner Anderson made with regards to the court ordering the commission to only consider information from the previous record of 2014;
- stated that he didn't interpret the ruling in that way, but acknowledged that it wasn't clear;
- Judge Smith, in his order, didn't address the merits of the application;
- opined that Judge Smith stated that it was wrong for Mr. Kendig to be recused and that was why the case was remanded back to the commission;
- he didn't say that the commission could only rely on information from 2014;
- if that was the case, opined that none of the people in the audience would be able to testify again, and the commission would also have to strike from their memories everything that Mr. Strawn and Mr. Whisenhunt have said;
- it would have to be struck from the record as well;
- requested again that the public hearing be continued, but stated that they are prepared to go forward if it is not granted; and
- stated that we will all be back here again if that is the case.

Commissioner Healy:

- stated that he has no problem proceeding tonight and suggested that that is what the commission should do;
- opined that the commission has plenty of information before them and they haven't even heard testimony yet;
- does not agree with granting a continuance for an unknown date for when there is a full commission sitting;
- opined that they cannot close the consideration to two years ago as it will be impossible to extricate what has happened since 2014;
- suggested that they are obligated to keep the record open until the hearings are done and a decision has been made;
- does not agree with the applicants claim that they haven't had enough time to review information;
- the applicant has had the same amount of time as the public has had, so he is not concerned about that;

- the applicant and the audience will have time to address their concerns through the public hearing process;
- suggested that they need to proceed with the public hearing and can continue it if it's not completed tonight due to time constraints.
- noted for the applicants benefit that since the meeting two years ago, Mr. Kendig has in fact recused himself based on an opinion from the Board of Ethics; and
- if Mr. Kendig is seated on the commission again next year, it would be a full year before there could be a full board to hear this case.

Mr. Ingaldson:

- opined that if Mr. Kendig recused himself based on a Board of Ethic's opinion, he did so because he believed that it relates back to 2014, which they believe is wrong as a matter of law;
- if that is the reason that he gave for his recusal, we will be back here again; and
- if the commission does not vote for a continuance, stated that they will respect that decision and deal with it later.

Chair Vague asked the commission how they would like to proceed.

MOTION: Commissioner Adams moved to postpone the public hearing until February 20, 2017.

The motion died for lack of a second.

Chair Vague invited the applicant to continue with their presentation since the commission did not vote to continue the public hearing.

Mr. Ingaldson stated that anyone who spoke at the hearings in 2014 should not be able to speak tonight.

Chair Vague stated that the court ruled that there must be another public hearing and so the audience will be heard tonight.

Ms. Aschenbrenner:

- referred to the court order on page 441 of the packet;
- page 11 of the order stated that a new hearing would be held;
- Judge Smith clearly contemplated that a new hearing before this commission will be held;
- stated that a public hearing with testimony is appropriate;
- it is also appropriate because the applicants' proposal has changed and so there has to be a meaningful opportunity for interested parties to comment on it;
- the borough does not object to the applicants request to respond to things that they are characterizing as new information;
- urged the commission to allow the applicant an opportunity to respond to information that came out last week such as Mr. Munter's revised expert report where he tried to quickly review the proposed changes to their application; and
- again urged the commission to hear from the audience, but also schedule another public hearing with an opportunity for the applicant to respond to some of this information.

Mr. Ingaldson:

- stated his disappointment and objection to borough staff's change in position not to recommend approval based on unidentified comments from people;
- addressed statements made by Mr. Strawn during his staff report including statements made about citations that were issued to CMS; and
- turned the presentation over to Mr. Jacques.

Mr. Stuart Jacques, President of Central Monofill Services, Inc.:

- provided an overview of his corporation and the services that they provide;
- addressed some of the concerns of staff and the public; and
- urged the commission to approve the application.

Commissioners questioned the applicant regarding:

- clarification that they are proposing to put a recycling operation on the site of the monofill;
- how much of the property will be used as a monofill; and
- why was the proposed area of the monofill recently reduced significantly to just ten acres.

(The meeting recessed at 8:30 p.m., and reconvened at 8:37 p.m.)

Chair Vague opened the public hearing.

The following persons spoke in opposition to approving a conditional use permit for CMS: Mr. Nathan Wallace, City of Palmer Manager on behalf of Mayor DeVries; Ms. Bonnie Burgan-Kelly, Mr. Ken Vincent; Mr. Jeffrey Vincent, Jr.; Ms. Judy Crosby; Mr. Brandon Sirlor on behalf of Mat-Su Democrats; Ms. Linnea Crosby; Mr. Dennis Wetherell; Ms. Karen Keane; Mr. Bill Quantick, provided a sample of polluted water; Mr. Mark Drake; Ms. Robin Bumgardner; Mr. Richard Harbuck, provided a copy of a letter submitted by Mr. Stuart Jacques objecting to a gravel pit near his property in the Big Lake area; Mr. Chris Kepler; Mr. Brian Goodman; Ms. Helen Vincent; Mr. Jeffrey Vincent, Sr.; Mr. David Gilley; Mr. Sidney Fox; Mr. John Harris, Acting Secretary for Alaskans for Palmer Hay Flats; Mr. David Jenkins; Mr. Nick Damassiotis; Mr. Bill Longbrake; Mr. Kent Johnson, showed pictures of water levels at Kepler-Bradley Lake; Ms. Melodie Wright; Ms. Maccayla Manrique; and Mr. Emmett Leffel.

Commissioner Anderson exited the meeting at 10:00 p.m.

(The meeting recessed at 10:00 p.m., and reconvened at 10:07 p.m.)

The following persons spoke in opposition to approving a CUP for CMS: Mr. Ken Smith; Mr. Tony Sellen; Mr. Timothy Hale, Ms. Lisa Kallander; Ms. Stephanie Figon, referred to page 1,615 of the packet and a picture of tire bales and held up a match; Ms. Deborah Alexander; Mr. Scott Hansey; Mr. Samuel Raynovic; Ms. Geri McCann; Mr. Kevin McCann, read a letter from the Board of the Bed and Breakfast Association; Mr. Johnnie Davis; Ms. Kate Graber; Mr. John Stuart; Mr. Tom Sojka, presented a map of gravel pits in the area of the application; Mr. Barry Orzalli; Mr. Gerald Steffes; Ms. Stephanie Nowers; Mr. James Munter; and Mr. Terry Warta.

The following persons spoke in support of approving a CUP for CMS: Mr. Bill Ingaldson, as a private citizen of the Mat-Su Borough.

The following person spoke regarding groundwater and percolation; Mr. Ralph Hulbert of AlaskChem Engineering.

The following person spoke regarding concerns with public process: Mr. Eugene Carl Haberman.

Commissioner Healy:

- stated that he doesn't believe that the recusal of Mr. Kendig was addressed entirely; and
- opined that a motion is in order since it was one of the specific issues that the court asked the commission to consider.

MOTION: Commissioner Healy moved to ratify the recusal of Mr. Kendig from the decision on PC Resolution 13-30(AM) and PC Resolution 15-01 regarding CMS's Application for a Conditional Use Permit (CUP), and affirm the findings in the Board of Ethics Advisory Opinion 16-01 determining that Mr. Kendig does have a conflict on this issue and should be recused. The motion was seconded.

Discussion ensued regarding ratifying the recusal of Commissioner Kendig.

VOTE: The motion passed without objection.

Mr. Strawn:

- stated that the motion referred to the wrong resolution number; and
- noted that the correct resolution number is 14-33 and not 13-30(AM)

MOTION: Commissioner Adams moved to reconsider the previous motion. The Motion was seconded.

VOTE; The motion to reconsider passed without opposition.

MOTION: Commissioner Healy moved to ratify the recusal of Mr. Kendig from the decision on PC Resolution 14-33 and PC Resolution 15-01 regarding CMS's Application for a Conditional Use Permit (CUP), and affirm the findings in the Board of Ethics Advisory Opinion 16-01 determining that Mr. Kendig does have a conflict on this issue and should be recused. The motion was seconded.

VOTE: The motion passed without objection.

Chair Vague asked Mr. Strawn if staff has prepared a resolution.

Mr. Strawn:

- stated that staff did draft a resolution and submitted it to the Clerk;
- the resolution is on page 305 of the packet;
- noted that Mr. Whisenhunt has identified an error in the resolution and requested that the commission make a change;

- directed commissioners to the third WHEREAS statement on page 7 of 12 of the resolution; and
- stated that the hydrologic report was submitted to the borough in 2010 and not 2014, and it was actually a 1.5-foot water table rise and not 2 feet.

(The meeting recessed at 11:26 p.m., and reconvened at 11:32 p.m.)

Chair Vague invited staff to respond to comments and questions from CMS and members of the audience.

Mr. Strawn responded to questions and statements made by the applicant.

Mr. Aschenbrenner:

- urged the commission again to consider CMS's request for an additional public hearing;
- would like an appeal to be focused on the merits of the case and not on procedural errors in the record; and
- stated his appreciation for the motion ratifying the recusal.

Chair Vague invited CMS to respond to comments and questions from borough staff and members of the audience.

Mr. Ingaldson:

- again requested that the public hearing be continued for a couple of weeks
- noted that Commissioner Anderson left the meeting; and
- stated that they are renewing their objection to not having a full panel.

Mr. Jacques:

- objected to the recusal of Mr. Kendig;
- opined that Mr. Kendig's recusal was incorrect as it has been more than two years since he did business with CMS;
- responded to comments and statements made by borough staff and members of the audience; and
- presented a map showing the location of the borough landfill.

There being no one else to be heard, Chair Vague closed the public hearing and discussion moved to the Planning Commission.

Discussion ensued regarding postponing a decision due to the late hour and the pending mandatory adjournment time.

MOTION: Commissioner Healy moved to postpone a decision until December 19, 2016, due to the mandatory adjournment time of midnight. The motion was seconded.

VOTE: The motion to postpone a decision until December 19, 2016, passed without objection.

Commissioner Healy:

- requested that staff not recreate the same 18 pounds of information regarding CMS;
- suggested that the commission keep the information from the current packet to refer to; and
- noted that any additional information received will supplement the information that they already have.

There was no objection noted.

Discussion ensued regarding a deadline for CMS to submit their response to the new information that was provided by staff.

The commission set the deadline for CMS to submit a response for 5:00 p.m. on Wednesday, December 14, 2016.

X. PUBLIC HEARING LEGISLATIVE MATTERS

(There were no legislative public hearings.)

XI. CORRESPONDENCE AND INFORMATION

(There was no correspondence and information.)

XII. UNFINISHED BUSINESS

(There was no unfinished business.)

XIII. NEW BUSINESS

(There was no new business.)

XIV. COMMISSION BUSINESS

A. Upcoming Planning Commission Agenda Items

(Commission Business was presented and no comments were noted.)

XV. DIRECTOR AND COMMISSIONER COMMENTS

(There were no commissioner comments.)

XVI. ADJOURNMENT

The regular meeting adjourned at 12:00 midnight.



COLLEEN VAGUE, Acting Planning
Commission Chair

ATTEST:



MARY BRODIGAN, Planning Commission
Clerk

Minutes approved: December 19, 2016