

The regular meeting of the Matanuska-Susitna Borough Planning Commission was held on July 6, 2020, at the Matanuska-Susitna Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 6:00 pm by 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, Vice-Chair
- Mr. Jason Ortiz, Assembly District #2
- Ms. Patricia Chesbro, Assembly District #3
- Ms. Colleen Vague, Assembly District #4, Chair
- Mr. Chris Elder, Assembly District #5
- Mr. Stafford Glashan, Assembly District #6 – remotely
- Mr. Sassan Mossanen, Assembly District #7

Planning Commission members absent and excused were:

Staff in attendance:

- Ms. Eileen Probasco, Planning Department Manager
- Ms. Kim Sollien, Planning Services Manager
- Ms. Shannon Bodolay, Assistant Borough Attorney
- Mr. Mark Whisenhunt, Planner II
- Mr. Joseph Metzger, Planner II
- Mr. Emerson Krueger, Land Management Specialist
- Ms. Karol Riese, 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. Need public hearing dates on introduction cases.

**III. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by Mr. Shapiro.

**IV. CONSENT AGENDA**

- A. Minutes
  - 1. June 8, 2020, regular meeting minutes
  - 2. June 15, 2020, regular meeting minutes
- B. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS  
*(There were no introductions for quasi-judicial matters.)*
- C. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS

1. **Resolution PC 20-23**, a Resolution recommending Assembly approval of an ordinance amending MSB 15.24.030(C), The Matanuska-Susitna Borough Lake Management Plan, adopting MSB 17.59.063 Adoption and Amendment of Regulations on Lakes; and MSB 17.59.065 Regulations on Lakes; and repealing MSB 15.24.031 Initiating and Amending Lake Management Plans, MSB 17.58 Motorized Uses on Lakes and Waterways, and MSB 17.59.060 Limitation of Uses in their entirety Public Hearing: July 20, 2020 *(Staff: Eileen Probasco)*.
2. **Resolution PC 20-24**, a Resolution recommending Assembly approval of an ordinance amending MSB 43.05.015(B)(3) to adopt the 2020 Subdivision Construction Manual. Public Hearing: July 20, 2020 *(Staff: Fred Wagner, Jamie Taylor, and Eileen Probasco)*.
3. **Resolution PC 20-25**, a Resolution recommending Assembly approval of an ordinance adopting MSB 11.12 Driveway Standards in order to ensure driveways within borough right-of-ways minimize negative impact to drainage, maintenance, and safety of the traveling public. Public Hearing: July 20, 2020 *(Staff: Alex Strawn and Jamie Taylor)*.

Chair Vague read the consent agenda into the record.

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

1. Move Introduction for Public Hearing: Legislative Matters C (1) Resolution 20-23.
2. June 15, 2020 Minutes Commissioner Ortiz was present.

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 persons spoke regarding Lake Management Plan:

Patty Fischer, Esther Huddleston, Rick Taylor, Dan Hull, Travis Welton, Robert Yundt, Joel Fuller, Jason Solsvig, James Mulhaney, Michelle LaRose, and Tabith Nardini.

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

#### **IX. PUBLIC HEARING: QUASI-JUDICIAL MATTERS *(Public Hearings not to begin before 6:15 pm)***

*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. **Resolution PC 20-18**, a request under MSB 17.65 Variances, for a variance from the 75-foot shoreline setback requirement under MSB 17.55, located at 5782 S. Big Lake Road (Tax ID# 6142000L006); within 17 North, Range 3 West, Section 29, Seward Meridian (*Applicant: Dennelle Seetomona on behalf of Janice Ellsworth, Staff: Joe Metzger*).

Chair Vague read the resolution titles into the record.

Chair Vague:

- read the memorandum regarding potential quasi-judicial or ex-parte actions into the record.

Mr. Metzger provided a staff report:

- staff recommended approval of the resolution with conditions.

Commissioners questioned staff regarding:

- Was there a mandatory Land Use Permit applied for?
- What plans were reviewed
- Requirements in 1991 – same setback requirements
- Lot to left owned by applicant; existing exemption for that structure
- When did the applicant become aware they needed a variance; structure was completed at that point
- Does the applicant have experience with construction
- Code requirements when obtained property

Chair Vague invited the applicant or their representative to provide an overview of their application.

Ms. Dennelle Seetomona provided a statement regarding the allowable building area,

Commissioners questioned the applicant regarding:

- Experience with building
- Building on property to west

Chair Vague opened the public hearing.

*(none)*

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

**MOTION:** Commissioner Elder moved to approve Resolution PC 20-18. The motion was seconded.

Commissioner Elder:

Small lot, existing cabin, built after they knew they were in violation of setback and decided to go forward with it anyway. Therefore, I think that special condition that requires a variance are not caused by the person seeking the variance is what I am going to hang my hat on and I'm not going for this.

Commissioner Mossanen:

- You need to meet all the conditions.

Commissioner Anderson:

- I agree with Commissioner Elder. They purchased the property in 1991, there was a cabin on it and they used it until it became unusable; regardless, even the builder should have known that there was a 75 foot setback and should have advised them of that; just going ahead a building something and asking forgiveness doesn't guarantee it because one of the things it says is that it is illegal to get a variance if there are conditions that were caused by the person seeking the variance and the whole act of this building the house kindof made the purpose of needing to have the variance. I'm just not comfortable moving forward with this.

Commissioner Glashan:

- I agree with my fellow commissioners. I agree that the lot is small; but those easements were there when they purchased the lot – there are lots that are unbuildable. It would have been helpful to hear from the applicant and that the applicant didn't own the adjacent property that has similar conditions. I totally agree with the other commissioners and their comments.

Commissioner Vague:

- There is a buildable spot on that lot – it wouldn't be a very big one. I have a hard time, these are really hard decisions to make, they had the ability to build a house. I get the neighbors comments – there's a junk cabin, and it is lowering your house value but what the neighbors have built, the sizes of houses, none of that is relevant to the Borough restrictions and the setbacks that are there for a reason. You build what you can build on a lot that you have purchased. I am in agreement as well. I would have a really hard time moving forward with this variance for those reasons.

VOTE: The main motion failed by a vote of 0-7.

- B. **Resolution PC 20-19**, a Conditional Use Permit in accordance with MSB 17.60 – Conditional Uses, for the operation of a marijuana cultivation facility, located at 2439 S. Ridgecrest Road (Tax ID# 17N02W20B005); within Township 17 North, Range 2 East, Section 20, Seward Meridian (*Applicant: Heather Allen, on behalf of Bristol Bay Bud Company, Staff: Joe Metzger*).

Chair Vague read the resolution title into the record.

Chair Vague:

- read the memorandum regarding potential quasi-judicial or ex-parte actions into the record.

Mr. Metzger provided a staff report:

- staff recommended approval of the resolution.

Commissioners questioned staff regarding:

- Could you refresh my memory for the setbacks on the side lot lines.
- You mentioned this is a residential use property.

Chair Vague invited the applicant or their representative to provide an overview of their application.

Mr. Richard Allen, applicant, stated that he had nothing further to add and would answer questions.

Commissioners questioned the applicant regarding:

- How much commercial traffic do you expect to and from the facility?
- Page 346 of the packet, there is something called an as-built that is not stamped by a surveyor, who actually did this?
- Can you give a further explanation with the driveway; it looks as though you have permission from the neighbor to use their driveway.
- Could you elaborate more on what you meant as far as zero traffic?

Chair Vague opened the public hearing.

The following persons spoke in opposition of Resolution PC 20-19:

- Sam Hanson regarding odor and lack of support from AMCO.
- Travis Welton regarding odor, traffic, notices to be posted on property, and SOA policies.
- William Schulz regarding building of home around the facility, odor, and commercial business in a residential area.
- Sherry Schulz regarding residential area and subdivision, cap on marijuana growth, odor, and traffic.
- Dave Glenn regarding commercial operation in a residential area doesn't fit.
- James White regarding traffic and odor.
- Walter Jackson regarding 600 feet notification limit – everyone should be notified, and property values.

The following person spoke regarding concerns with the public process and marijuana facilities:  
Mr. Eugene Carl Haberman.

Chair Vague invited staff to respond to questions and statements from the audience.

Mr. Metzger responded to questions and statements from members of the audience.

Mr. Metzger stated that they had nothing further to add.

Chair Vague invited the applicant to respond to questions and statements from the audience.

Mr. Allen stated that they had nothing further to add.

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

**MOTION:** Commissioner Chesbro moved to approve Resolution PC 20-19. The motion was seconded.

Discussion ensued regarding:

Commissioner Chesbro:

- Appears the application is complete and meets all requirements of MSB Code.

Commissioner Mossanen:

- As Planning Commissioners we find ourselves in a difficult situation when there are regulations and laws in place. These are not for us to interpret and as long as the application meets the legal requirements that exist in law. We have to follow MSB Code

Commissioner Ortiz:

- I echo the same thing. I would encourage the public if there is a problem with the process, I would contact your representative and follow that process to do it. I do empathize over all those things, but you have to look at it from an appellate point of view; if something were to happen on the legal side, the Commission has its hands tied on certain things.
- Remember, in the borough; there is no zoning – there is no such thing as residential designated or commercial designated zoned lands. We regulate land use by conditional use permit, and as long as the applicant has met all of those, we are bound to approve it. We do not have zoning – we are stuck with what we have until we come up with something better.

**VOTE:** The main motion passed without objection.

- C. **Resolution PC 20-20**, a Conditional Use Permit in accordance with MSB 17.60 – Conditional Uses, for the operation of a marijuana cultivation facility, located at 47265 S. Brookestar’s Circle; (Tax ID# 22N04W01A004); within Township 22 North, Range 4 West, Section 01, Seward Meridian (*Applicant: Kenneth Champ, of Arctic Hydroponics, LLC, Staff: Mark Whisenhunt*).

Chair Vague read the resolution title into the record.

Chair Vague:

- read the memorandum regarding potential quasi-judicial or ex-parte actions into the record.

Mr. Whisenhunt provided a staff report:

- staff recommended approval of the resolution.

Commissioners questioned staff regarding:  
(none)

Chair Vague invited the applicant or their representative to provide an overview of their application.

Mr. Kenneth Champ, applicant, stated that he had nothing further to add and would answer questions.

Commissioners questioned the applicant regarding:

- generator and air irrigation system in greenhouses

Chair Vague opened the public hearing.

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

The following person spoke regarding concerns of the borough reputation, and applications will keep coming: Terry Welton

Chair Vague invited staff to respond to questions and statements from the audience.

Mr. Whisenhunt stated that the wrong date for emailing to Susitna Community Council in the staff report; it should be May 26, 2020.

Chair Vague invited the applicant to respond to questions and statements from the audience.

Mr. Champ stated that they had nothing further to add.

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

**MOTION:** Commissioner Mossanen moved to approve Resolution PC 20-20. The motion was seconded.

Discussion ensued regarding:

Commissioner Mossanen:

- As a representative for District 7, where this license is being applied for, the people in District 7 voted on three separate occasions on cannabis. The last time this was voted on, it passed by a 64% majority. The people in District 7 spoke pretty clearly on what privileges they want themselves and their neighbors to have.

**VOTE:** The main motion passed without objection.

Recess – reconvene at 8:40 pm

- D. **Resolution PC 20-21**, a Conditional Use Permit in accordance with MSB 17.30— Conditional Use Permit (CUP) for Earth Materials Extraction Activities, for the extraction of approximately 407,300 cubic yards of earth material from a 19-acre site within two

parcels totaling 160 acres, located within Township 17 North, Range 1 East, Sections 1&2, Tax Parcels D21 & D5 (Tax ID# 17N01E02D021 & 17N01E01D005); Seward Meridian (*Applicant: MSB Land Management Division, Staff: Mark Whisenhunt*).

Chair Vague read the resolution titles into the record.

Chair Vague:

- read the memorandum regarding potential quasi-judicial or ex-parte actions into the record.

Mr. Whisenhunt provided a staff report:

- staff recommended approval of the resolution.

Commissioners questioned staff regarding:

*(none)*

Chair Vague invited the applicant or their representative to provide an overview of their application.

Mr. Butch Shapiro, MSB Central Landfill Manager, applicant, provided an overview of their application and would answer questions.

Commissioners questioned the applicant regarding:

- Commissioner Anderson: The contractor you had dropped out, and you are trying to find a new contractor?
- Commissioner Glashan: I like end dates on these types of permits; would five (5) years be okay, or would ten (10) years be better?
- Mr. Whisenhunt asked the Commission to make a correction on page 572 of the packet; the hours of operation should start at 8:00 am (the 11<sup>th</sup> condition of Resolution 20-21).

Chair Vague opened the public hearing.

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

Chair Vague invited staff to respond to questions and statements from the audience.

Mr. Whisenhunt stated that they had nothing further to add.

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

**MOTION:** Commissioner Anderson moved to approve Resolution PC 20-21. The motion was seconded.

Discussion ensued regarding:

Commissioner Anderson:

- This is an ongoing process that we have discussed a couple of different times at the Planning Commission, and people have come in and testified numerous times about the gravel extraction. I am pretty comfortable with them moving forward; it is just part of a bigger plan moving cells or opening and closing other cells, and we can't do that with gravel in the way. I feel this is helping us to continue the process that we have already discussed before.
- Time:

Commissioner Mossanen:

- I echo Commissioner Anderson's statements, and if we can't keep it out of there, then we have to deal with it seems like the way to do it.

**MOTION:** Commissioner Anderson moved a primary amendment that all extraction activity associated with the permit shall be completed no later than December 31, 2030, and correct hours of operation to begin at 8:00 am. The motion was seconded.

Commissioner Anderson:

- I believe giving an end out, lets the public know this is not going on forever; just makes it clearer.

Commissioner Chesbro:

- I echo Commissioner Anderson's comment.

**VOTE:** The primary amendment passed without objection.

**VOTE:** The main motion passed as amended without objection.

## **X. PUBLIC HEARING LEGISLATIVE MATTERS**

*(There were no legislative public hearings.)*

## **XI. CORRESPONDENCE AND INFORMATION**

*(There was no correspondence and information.)*

## **XII. UNFINISHED BUSINESS**

- A. Resolution PC 20-15**, recommending Assembly approval of an ordinance amending the Definition of Encroachment in MSB 11.10.010(A)(1) and amending MSB 17.23.150 Port Development Permit Required (*Staff: Alex Strawn and Emerson Krueger*).

Chair Vague read the resolution titles into the record.

Mr. Krueger provided an update of what happened with the Port Commission:

Commissioners questioned staff regarding:  
*(none)*

Chair Vague opened the public hearing.

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

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

**MOTION:** Commissioner Chesbro moved to approve Resolution PC 20-15. The motion was seconded.

Discussion ensued:

Commissioner Chesbro:

- I appreciate that we heard from the Port Commission.

Commissioner Mossanen:

- We had a specific request that was addressed.

**VOTE:** The main motion passed as amended without objection.

### **XIII. NEW BUSINESS**

*(There was no new business.)*

### **XIV. COMMISSION BUSINESS**

#### **A. Adjudicatory**

- a. **Resolution PC 20-23**, a Resolution recommending Assembly approval of an ordinance amending MSB 15.24.030(C), The Matanuska-Susitna Borough Lake Management Plan, adopting MSB 17.59.063 Adoption and Amendment of Regulations on Lakes; and MSB 17.59.065 Regulations on Lakes; and repealing MSB 15.24.031 Initiating and Amending Lake Management Plans, MSB 17.58 Motorized Uses on Lakes and Waterways, and MSB 17.59.060 Limitation of Uses in their entirety *(Staff: Eileen Probasco)*.

Commissioner Chesbro:

- I think that the public has the opportunity to balance the demands with the lake ecosystem. I think that it is important to have a process that works well; I don't think that is the only thing the borough should think about. As I listened to testimony tonight, I don't think the document states not clearly describe what I thought was the intent to the changes to the lake management system. I believe we should not deal with it at the next meeting, but we should maybe reconceptualize the way this is written, so it makes more sense. Even as I was reading it, and I have the background of listening to some of the things we have talked about in the past, I was confused, and so I think that again as I heard the testimony this evening, it needs another look to make clearer about what the intent of this is.

Commissioner Glashan:

- It is not a prescriptive ordinance; based on the size of the lake, there can still be various requirements based on the people that live around the lake, it just makes the overall process more streamline. I think it is more people not understanding it then opposed to it.

Discussion ensued regarding more clarification of what would happen if denied, the pleasure of the Commission, and public comment. Need time to repackage this and to educate the public about the proposed changes; open houses; there are different scenarios when the shoreline is privately owned.

**MOTION:** Commissioner Chesbro moved to postpone PC Resolution 20-23 a Resolution recommending Assembly approval of an ordinance amending MSB 15.24.030(C), The Matanuska-Susitna Borough Lake Management Plan, adopting MSB 17.59.063 Adoption and Amendment of Regulations on Lakes; and MSB 17.59.065 Regulations on Lakes; and repealing MSB 15.24.031 Initiating and Amending Lake Management Plans, MSB 17.58 Motorized Uses on Lakes and Waterways, and MSB 17.59.060 Limitation of Uses in their entirety to January 2021. The motion was seconded.

Discussion ensued regarding:

Commissioner Chesbro:

- I believe we need time to get information out and have meetings.

Commissioner Anderson:

- That makes the most sense. Each lake and neighborhood is different.

Commissioner Vague:

- Stay in contact with your planning members.

**VOTE:** The main motion passed without objection.

- b. **Resolution PC 20-29, (Denial of PC 20-18)**, adopting findings of fact and conclusions of law supporting the denial of PC Resolution 20-18 concerning a request for a variance from MSB 17.55 to allow an existing single family residence to encroach into the required 75 foot waterbody setback at 5782 S. Big Lake Road (Tax ID# 6142000L006); within township 17 North, Range 3 West, Section 29, Seward Meridian.

Chair Vague read the resolution title into the record.

Mr. Strawn provided the Commission with an overview of the process.

Discussion ensued regarding the pleasure of the Commission – if they wanted to complete tonight or compile and email findings of fact and conclusions of law to Clerk for a clean Resolution.

If the Commission makes a decision contrary to what is presented to them, it is the job of the Commission to come up with the findings to support their action.

- A definitive moment with the findings of fact that they did not meet all the requirements of an acceptable variance and specifically the situation arose from their own making.
- Section 17.65.030 Cases where the variance is illegal contains three instances in which a variance may NOT be granted which are:
  - (1) special conditions that require the variance are caused by the person seeking the variance;
  - (2) the variance will permit a land use in a district in which that use is prohibited;
  - (3) the variance is sought solely to relieve pecuniary hardship or inconvenience.
- Provide all communications to the Clerk.
- Commission agreed to postpone findings until the July 20, 2020 meeting.

**B. Upcoming Planning Commission Agenda Items**

Mr. Strawn provided a brief update on projects that will be coming before the Planning Commission.

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

**XV. DIRECTOR AND COMMISSIONER COMMENTS**

- Ms. Bodolay: Reminder that the public testimony platform is largely developed to allow people to testify. Caution to opening the door regarding dialogue about questions when we have a packed room.
- Ms. Probasco: I have one planning commission meeting left, maybe an assembly meeting or two. I was hoping to get this Lake MP through, but that is okay. I am hoping you folks are receptive to the construction manual that will be coming through your next meeting.
- Ms. Sollien: First meeting at the dais. I will be in Eileen's seat at the next meeting. I will work hard to support you.
- Commissioner Elder: Welcome, Kim. Looking forward to the next couple of months.
- Commissioner Anderson: Thanked the public for coming out and for their testimony and comments. Talked about the conditional use process; change comes at the Assembly level; and encouraged everybody to continue to be active.
- Commissioner Vague: Tonight was interesting. Talked about community members getting involved before it is in their back yard; Commission being held to what the codes are and that the quasi-judicial matters could end up in court; and change is made at the Assembly level. Thank you to staff.

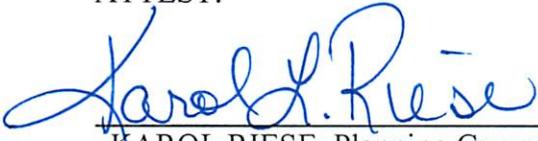
XVI. ADJOURNMENT

The regular meeting adjourned at 9:55 pm.



COLLEEN VAGUE, Planning Commission  
Chair

ATTEST:



KAROL RIESE, Planning Commission Clerk

Minutes approved: 8/3/2020