Planning

MATANUSKA-SUSITNA BOROUGH

BOARD OF ADJUSTMENT AND APPEALS

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| IN RE: | ) | |
| | ) | |
| Appeal the denial of a conditional use | ) | |
| Permit for Shoreline Cannabis located | ) | |
| At 4200 East Snider Drive, Wasilla | ) | |
| | ) | |
| Justin Benson | ) | BOAA Case No. 24-01 |
| Appellant | ) | |
| | ) | |

**CERTIFICATE OF SERVICE**

1. I am the staff support for the Board of Adjustment and Appeals.

2. I certify that on February 19, 2026, I served true and accurate copies of the following documents:

**NOTICE OF RIGHT TO APPEAL AND**
**REVISED FINAL DECISION AS ORDER BY THE SUPERIOR COURT**

To: BOAA Members
Via Email
Jay Van Diest
Brian Swanson
Ron Johnson

Justin Benson, Appellant
C/O Jana Weltzin, Attorney
Via Email
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Nick Spiropoulos, Borough Attorney
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Hand delivery

**Interested Parties:**

1. Morgan Hall
   Via Email @ misssanthropy@gmail.com
2. Yvonna Williamson
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3. Josh Boots
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4. Matt Niessink
   Via Email @ matthewniessink@hotmail.com
5. Loren Means
   Via Email @ plko@yahoo.com

DATED at Palmer, Alaska, this 19 day of February, 2026.

MATANUSKA-SUSITNA BOROUGH
BOARD OF ADJUSTMENT AND APPEALS

BRENDA J. HENRY, MMC
Assistant Borough Clerk

MATANUSKA-SUSITNA BOROUGH

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| Justin Benson Appellant | ) | BOAA Case No. 24-01 |

**NOTICE OF RIGHT TO APPEAL AND**
**NOTICE OF COURT ORDERED REVISED FINAL DECISION**

NOTICE IS HEREBY GIVEN that the Matanuska-Susitna Borough Board of Adjustment and Appeals, on February 19, 2026, rendered the following court-ordered Revised Final Decision regarding the appeal filed in the above-captioned matter.

This Revised Final Decision may be appealed within 30 days of the date of this decision, pursuant to MSB 15.39.250 and the Alaska Rules of Appellate Procedure, Part 600.

This Revised Final Decision is issued pursuant to the Order of the Alaska Superior Court, Case No. 3PA-24-03060 CI, dated October 16, 2025, which reversed the Board's prior decision and remanded the matter for findings and conclusions consistent with that Order.

## COMBINED FINDINGS AND CONCLUSIONS

1. This original appeal was filed in a timely manner.
2. The appellant's conditional use permit (CUP) application was to open a retail Marijuana facility at 4200 East Snider Drive, in Wasilla. R. 1, 35
3. The appellant's retail facility license was approved by delegation by the Alaska State Alcohol and Marijuana Control Office, which means that as soon as the appellant secures the CUP from the Borough, that he can open the retail marijuana facility to the public. R. 37
4. On February 12, 2024, the appellant filed his application for a conditional use permit (CUP) from the Borough for a retail marijuana facility. The appellant submitted the application along with the nonrefundable $1,500 application fee. R. 3, 6
5. On June 5, 2024, staff provided their recommendation in support of the CUP for the subject parcel. R. 36
6. The area around the subject parcel was and is a mix of commercial, residential, and industrial properties. R. 37
7. There are commercial properties to the north, which include but are not limited to a telecommunication company, a restaurant, and lumber sales. R. 37 [Clerk's Note: The

former telecommunication company (MTA) is the location of the Knik Charter School.]

8. To the west is a commercial storage rental facility; to the south and the east, there are a mix of residential uses, an industrial equipment storage yard, a dog boarding facility, and a veterinarian's office. Most of the businesses within a mile of the subject parcel, heading in both directions on the Palmer/Wasilla Highway, are commercial land uses. R. 37

9. The area of the Palmer/Wasilla Highway in which the retail marijuana facility is situated is a state-maintained major arterial roadway. East Snider Drive is a borough-maintained residential roadway. R. 37

10. In the staff report, staff provided 27 findings that the retail marijuana facility would not detract from the value, character, and integrity of the surrounding area. R. 39-40

11. The record reflects that a public notice was sent to the Knik Tribal Council, who is the owner of Knik Charter School, but there is no evidence in the record that they responded to the request for comment. R. 65

12. The staff report had 22 findings, advising that granting the CUP would not be harmful to public health, safety, convenience, and welfare. R. 39-40.

13. The staff report had five findings that the proposed use has sufficient setbacks, lot area, buffers, or other safeguards being provided to meet conditions required by code. R. 40

14. The staff report had one finding that the proposed use for the CUP fulfills all other requirements of Borough code. R. 41

15. The staff report had nine findings to support the fact that the retail marijuana facility will not negatively affect other properties due to factors such as noise and odor. R. 41-42

16. The staff report had 19 findings that the retail marijuana facility is compatible with the character of the surrounding area. R. 42-43

17. The staff report also found that the appellant provided written documentation showing progress toward required state and local licenses and that the proposed parcel is appropriate for commercial use. R. 44-46

18. The staff report had a finding that the nearest school is Cottonwood Creek Elementary, which is approximately 2,910 feet from the subject parcel. R. 43-44

19. At the Planning Commission public hearing held June 17, 2024, staff recommended approval of the CUP. R. 497

20. The existence of the Knik Charter School, located approximately 530 feet from the subject parcel, was not known at the time the staff findings in support of the CUP were written.

21. On June 17, 2024, after recommending approval in the staff report and in presentation of recommendations to the Planning Commission, a Planning Commissioner queried, "Was the Knik Charter School considered when you looked at schools?" Staff stated, "It was not." The same member queried, "Is it within 1,000 feet?" Staff responded, "That I'd have to - I can't verify the exact distance for the - from the Knik School." R. 497-498.

22. The matter was continued to the date certain of July 15, 2024.

23. At the July 15, 2024, Planning Commission meeting, Jason Ortiz, Development Services Manager, stated that, "Well, the other thing I wanted to add is just a little bit more context is - and we have corrected or asked our GIS to correct, but some of our maps that we load internally didn't recognize this as a school. The other thing is on

the mailing list it didn't – it went out to the Knik Tribe. I'm not familiar of other charter schools that are owned by someone else, but like, for instance, when you look up Academy Charter, it shows the Borough owning the parcel, so this parcel they did actually get a mailer and went to Knik Tribe. I did visit the location just to see, because I wanted to see how to see how this error – because I didn't even know the school existed there, and I did not see anything with my eye. Even when I went onto Shoreline *(the road)* and then down from that, you still cannot – were not able to see that it was a school, until I drove into the property and then saw something. So, it was obscured from view, so I did want to just make that known." R. 511

24. The BOAA finds that the appellant took reasonable measures to identify nearby sensitive uses; however, those efforts do not alter the requirements of MSB 17.60.150(B)(1).

25. Consistent with the Alaska Superior Court's Order dated October 16, 2025, the Board interprets "establishment" to mean the date the marijuana facility had all required permits and opened for business, not the date of the entity's formation or economic activity.

26. Under that interpretation, and based on the record, the BOAA finds that Knik Charter School was operating as a

school prior to the establishment of the Shoreline Cannabis retail facility. Therefore, the proposed retail use does not meet the 1,000-foot separation requirement of MSB 17.60.150(B)(1) and cannot be approved under Borough code. This finding and conclusion is made to follow the Superior Court's remand directive and reflect the court's interpretation of "establishment."

**REVISED FINAL DECISION - POST COURT ORDERED REMAND**

Based upon the foregoing combined Findings and Conclusions, and consistent with the Alaska Superior Court's Order dated October 16, 2025, in Case No. 3PA-24-03060 CI, the Board of Adjustment and Appeals hereby REVERSES their original decision and AFFIRMS the Planning Commission's denial of Conditional Use Permit as adopted in Planning Commission Resolution No. PC 24-08.

## RECOMMENDATION

The Board of Adjustment and Appeals, bound by the Superior Court's October 16, 2025, Order in this matter, respectfully recommends the following policy changes for consideration:

1. Pre-Application Site Review: The BOAA recommends that the Borough adopt a policy that requires staff to conduct a pre-application site visit process for marijuana Conditional Use Permit (CUP) applications before making recommendations for approval. Prior to accepting an application for processing and the payment of filing fees, staff could conduct an in-person review of the subject parcel to identify existing businesses, schools, and properties currently for sale, and, when available, recent property transfers and ownership information within a 1,000-foot radius. Implementing this step may help identify potential conflicts with sensitive land uses earlier in the review process. This review should be documented in the file for the CUP.
2. Add Language to the Public Notice Mailers. The BOAA recommends that public notices for marijuana CUP's include language asking that, if a school is present or planned in the area, that the Borough be notified.

3. Code Clarification: The BOAA recommends that code provisions governing marijuana CUPs be amended to include a clear definition of "established," in order to promote consistency, transparency, and predictability for applicants and Borough staff.

The Borough continues to experience significant growth, and these forward-looking measures could help reduce the likelihood of similar conflicts arising in future applications.

The BOAA acknowledges that the mapping discrepancy occurred, in part, because Knik Charter School is situated on Knik Tribe privately owned property rather than property owned by the Borough. This circumstance contributed to the misunderstanding as to the school's proximity to the subject parcel and its absence from the Borough's mapping system.

The BOAA respectfully requests the Borough to consider these suggestions for notification and verification procedures as a means of supporting clearer expectations and improved outcomes in future applications.

Dated this 19 day of February, 2026.

MATANUSKA-SUSITNA BOROUGH
BOARD OF ADJUSTMENT AND APPEALS

JAY VAN DIEST, Chairperson

Attest:

BRENDA J. HENRY, MMC
Assistant Borough Clerk