**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**
**THIRD JUDICIAL DISTRICT AT PALMER**

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| MATANUSKA-SUSITNA BOROUGH, | ) | |
| Plaintiff, | ) | |
| v. | ) | |
| JUSTIN BENSON, | ) | |
| Defendant. | ) | Case No. 3PA-24-03060 CI |

**ORDER REVERSING PERMIT APPROVAL AND REMANDING TO THE BOAA**

## I. Introduction and Statement of the Case

### A. Introduction

This appeal concerns whether the Board of Adjustments and Appeals ("BOAA") properly reversed the Planning Commission's ("PC") denial of a conditional use permit ("CUP") to open a marijuana retail facility. The CUP was submitted by Shoreline Cannabis ("Shoreline"), through its agent Justin Benson ("Appellee"). The proposed facility was to be located at 2400 E. Snider Drive Wasilla, Alaska. The Matanuska Susitna ("Mat-Su") Borough's code ("Code") requires that at the time of establishment, a marijuana related facility must not be located within one thousand feet of a school. Shoreline's proposed retail facility is located 530 feet from Knik Charter School.

Based on Shoreline's proximity to the school, the PC passed a resolution denying Shoreline's CUP. Shoreline appealed the decision, and the BOAA reversed the PC and approved the permit. The Borough subsequently brought this appeal.

The central issue is whether the BOAA correctly reversed the PC based on a finding that Shoreline was established before Knik Charter School. The Court finds, as a matter of law, that the BOAA erred in reversing the PC. The BOAA's finding that Shoreline was established prior to Knik Charter School misconstrues the Code. Thus, this Court reverses the BOAA's approval of Shoreline's CUP and remands this case to the BOAA to make a new determination pursuant to this Order.[1]

**II. Factual Background and Timeline**

In June of 2020, Lake Landing Investments LLC filed its Articles of Organization with the Alaska Department of Commerce and executed an operating agreement for the purpose of conducting wholesale sales of marijuana.[2] Contained in Lake Landing's business plan was a retail location.[3] This retail location would come to be Shoreline Cannabis.[4] On April 12, 2022, Shoreline initiated the retail marijuana store application with the State of Alaska Alcohol and Marijuana Control Board ("AMCO").[5] On April 15,

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[1] "Even without express statutory authority, courts may remand a case to an administrative agency for additional investigation when equity requires." *City of Nome v. Cath. Bishop of N. Alaska*, 707 P.2d 870, 876 (Alaska 1985).
[2] R at 417.
[3] *Id.*
[4] R at 421.
[5] BOAA Transcript at 14.

2022, Shoreline paid a deposit and began leasing 4200 E. Snider Drive.[6] Around the same time, Appellee took steps to comply with permitting notice requirements.[7] Further, Shoreline also began renovating the space at 2400 E. Snider Drive.[8] On July 13, 2022, Shoreline retained counsel to aid in the AMCO permit application process.[9] On July 13, 2022, the Mat Su Borough was notified with Public Notice of the retail marijuana shop, and on July 23, 2022, Appellee submitted its retail marijuana application and related fees to AMCO.[10]

On June 13, 2024, AMCO voted to approve Appellee's application contingent on whether all other outstanding approvals were received.[11] On February 7, 2024, Appellee sent an email to Mat Su Borough planners requesting a 1000-foot buffer map for the E. Snider Road property.[12] This map was meant to show whether the location was more than 1000 feet away from any sensitive areas, like a school. The planners sent the map on February 8, 2024.[13] The map indicated that Cottonwood Creek Elementary was located outside of the 1000-foot buffer.[14] Notably, the map included in Borough staff's initial

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[6] R at 1301.
[7] R at 648.
[8] BOAA Hearing Transcript at 43.
[9] R at 1403.
[10] R at 1405.
[11] R at 412.
[12] *Appellee's Brief in Response to the Matanuska-Susitna's Opening Brief on Appeal* at 6 (Appendix item ii).
[13] *Id.*
[14] R at 361.

report indicated Knik Charter School, but the map did not include a buffer line from the E. Snider property to Knik Charter.[15]

Knik Charter School was approved for operation in December of 2021.[16] On August 16, 2022, Knik Charter School began instruction for students.[17] Knik Charter has been operating as a school since that date. Knik Charter is located at 758 N. Shoreline Drive, Wasilla, Alaska, which is 530 feet away from Shoreline's proposed location.[18]

Shoreline submitted the conditional use permitting fees to the Borough on February 12, 2024.[19] On May 10, 2024, the Borough sent out public notices and request for comment on Shoreline's application.[20] Borough staff recommended supporting Shoreline's permit. At a PC meeting on June 17, 2024, the Chair inquired about Knik Charter School's proximity to the proposed retail store as it was not in the staff's recommendation or findings.[21] Based on this observation, the resolution on the permit was postponed to July 15, 2024.[22] Hours before the meeting, Shoreline's counsel received new findings and a recommendation for denial from Borough Staff.[23] At the July 15th meeting, the PC ultimately passed a resolution denying the CUP.[24]

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[15] *Id.*
[16] R at 1292-1293
[17] Regular School Board meeting Record December 15, 2021, R at 1287-88.
[18] R at 1291, 815.
[19] BOAA Hearing Transcript at 57.
[20] R at 373-376.
[21] R at 1384.
[22] *Id.*
[23] *Appellee's Brief in Response to the Matanuska-Susitna's Opening Brief on Appeal* at 8.
[24] R at 1384.

Shoreline appealed the planning commission's decision to the BOAA. At a hearing Nov 20, 2024, the BOAA voted to reverse the denial of the CUP.[25] The BOAA found that Shoreline Cannabis was established prior to Knik Charter School and therefore approved the permit. Shoreline Cannabis has been operating as a marijuana retailer since.[26]

**III. Standard of Review**

AS 29.40.060 stipulates that the superior court hears appeals from the board of adjustment. When acting as an intermediary appellate court, the superior court will independently review the merits of an agency decision.[27] The court hears an administrative appeal solely on the records established by the board of adjustment.[28] The court reviews the agency decision according to one of two standards: 1) the reasonable basis standard where issues raised involve agency expertise, or 2) the independent judgment standard where the issues involve pure statutory construction or questions of law within the special competency of the courts.[29] Under the reasonable basis standard, a zoning body's decision is presumed valid provided that the board supplies a reasonable basis for its decision and it is supported by substantial evidence.[30] Under the independent judgment standard, if a

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[25] *See* BOAA Hearing Transcript.
[26] *Appellee's Brief in Response to the Matanuska-Susitna's Opening Brief on Appeal* at 10.
[27] *S. Anchorage Concerned Coal., Inc. v. Municipality of Anchorage Bd. of Adjustment,* 172 P.3d 768 (Alaska 2007).
[28] Alaska Stat. Ann. § 29.40.060 (b).
[29] *Griswold v. City of Homer*, 55 P.3d 64 at 67-68 (Alaska 2002).
[30] *Heller v. State, Dep't of Revenue*, 314 P.3d 69, 72 (Alaska 2013); *Pruitt v. City of Seward* 152 P.3d 1130, 1139 (Alaska 2007).

decision involves a question of law, courts can substitute their independent judgment, adopting the "rule of law that is most persuasive in light of precedent, reason, and policy."[31]

Because this appeal centers on the construction of the Borough code, which is a question of law, the Court therefore applies the independent judgment standard to resolve the issue.

**IV. Discussion**

**A. Knik Charter was operating as a school before Shoreline's establishment.**

Parties agree that the date of Shoreline Cannabis's establishment is dispositive in this case. The Code states that "at the time of their *establishment* marijuana related conditional uses shall meet the following requirements and not be located within one thousand feet of school grounds."[32] The Code does not provide a definition of establishment. In such a case where the code does not furnish a definition, the Illustrated Book of Development Definitions supplements.[33] Here, the book defines establishment as "an economic unit where business is conducted or services or industrial operations are performed."[34]

The PC did not address the definition of establishment, but denied Shoreline's permit because it determined that the marijuana retail business was within one thousand feet of Knik Charter.[35] Conversely, on appeal, the BOAA focused its determination on

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[31] *S. Anchorage Concerned Coal.*, 172 P.3d at 771.

[32] MSB 17.60.150 (B)(1).

[33] There is no definition in MSB chapter 17. *See generally* MSB 17.125, MSB 17.60.

[34] *The Complete Illustrated Book of Development Definitions*, 188-189.

[35] *See Matanuska-Susitna Borough Planning Commission Resolution* No. PC 24-08.

which entity was established first.[36] The BOAA determined that Shoreline was established by its economic activity prior to receiving permit approvals. In other words, the date of Lake Landing LLC's Articles of Organization were filed and the date Knick Charter applied for an educational development grant marked each entity's establishment. Lake Landing LLC was formed on June 5, 2020, and Knik Charter submitted its grant application on July 1, 2020.[37] Therefore, the BOAA found that Shoreline was established "26 days prior to Knik Elementary."[38] Based on this finding, the BOAA reversed the PC's decision and approved the permit.

The Borough disagrees that economic activity can establish a business prior to legal approval.[39] The Borough argues that this interpretation of establishment does not "square with the definitions of establishment" noted in its brief.[40] The Borough further states that Knik Charter began instructing students more than a year before Shoreline submitted its permit application to the Borough.[41] Additionally, Knik Charter obtained approval from the school board to operate as a school five months before Shoreline signed a lease at the E. Snider location.[42] The Borough argues that Shoreline was or should have been on notice that its retail location was within one thousand feet of a school.[43]

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[36] *See BOAA Notice of Right to Appeal and Final Decision.*
[37] *BOAA Notice of Right to Appeal and Final Decision* at ⁋ 34-35.
[38] *Id.* at ⁋ 42.
[39] *Matanuska- Susitna's Brief on Appeal* at 17.
[40] *Id.*
[41] *Id.* 17-18.
[42] *Id.* at 18.
[43] *Id.* 8-9.

The Court agrees with the Borough. The BOAA's interpretation of the Code would lead to an absurd result: any LLC, regardless of its actual operations or location, could retroactively claim establishment as of the date its articles were filed, thereby circumventing the Code's buffer requirement for sensitive uses. The more reasonable interpretation is that "establishment" occurs when all necessary permits for the proposed location have been approved.

The Code requires that, at the time of establishment, a marijuana-related facility must not be within 1,000 feet of a school. Consistent with the Illustrated Book of Development Definitions, the Court interprets "established" or "establishment" to mean "open for business," which necessarily includes obtaining all requisite permits. The Court further finds that Knik Charter was operating as a school under the Code before Shoreline became "established."[44] Because Shoreline lacked both AMCO and Borough permits, it was not "open for business" before Knik Charter commenced operations. The BOAA reached an incorrect legal conclusion, and thus erred in reversing the PC's decision to deny Shorline's CUP.

**B. The BOAA's alleged procedural errors are not dispositive in this case.**

The Borough's second core argument on appeal is that the BOAA exceeded its review authority and erred by introducing new testimony at the BOAA hearing.[45] The Borough contends that the BOAA improperly sought definitions of "establishment."[46]

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[44] *See* MSB 19.08.023 Site Approval Process For Lease of Charter School Facilities.
[45] *Id.* at 21, 23.
[46] *Id.* at 21.

However, these definitions were readily available to the PC, and the Court does not find that seeking clarity from legal authorities is outside of the BOAA's review authority. The Borough also indicates that the BOAA erred in reviewing Lake Landing's Articles of Organization and in introducing new testimony at the BOAA hearing.[47] However, under the proper construction of the Code, Lake Landing's Articles of Organization are not relevant to the Court's ruling. Likewise, testimony from new interested parties merely advanced Shoreline's policy arguments, which have no bearing on the central issue—the proper interpretation of the Code. Accordingly, the Court need not determine whether the BOAA exceeded its authority or committed procedural error in regards to this issue.

**C. The PC provided adequate findings to deny the CUP.**

In addition to its argument that its economic activity established the business, Shoreline offers several alternative arguments to bolster its position. Nevertheless, none ultimately affect the Court's ruling.

First Shoreline asserts that the PC's findings were overly vague and therefore the BOAA properly reversed its decision.[48] Shoreline cites to *Weyerhaeuser v. Pierce County,* a Washington Supreme Court case that is not binding on this Court, to support this contention. In *Weyerhaeuser*, the appellate board reversed the county council's decision

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[47] *Id.* at 22.

[48] *Appellee's Brief in Response to the Matanuska-Susitna's Opening Brief on Appeal*, 23-24.

to deny a permit due to insufficient or subjective grounds.[49] More specifically, the county council drew several conclusions, but did not explain how and why they reached them.[50]

Even if *Weyerhaeuser* were binding precedent in Alaska, it is inapplicable here. In the PC's Resolution ultimately denying the permit, although it did not explicitly provide a definition of "establishment," its findings were objective and logical. The PC found that Shoreline had not received permit approval from AMCO, and was not "open for business."[51] The PC also defined school grounds, and established that Knik Charter had been operating as a school during the 2022-2023 and 2023-2024 school years.[52] Thus, the school was in existence before Shoreline was licensed or "open for business." These are adequate findings to support the PC's logical conclusion—Shoreline proposed to operate a marijuana retail facility within 1000 feet of school grounds, in violation of MSB 17.60.150(B)(1). Moreover, even if the PC's findings were arguably incomplete, the BOAA subsequently addressed the definition of "establishment," however, the Court finds that the BOAA misapplied the Code and agrees that the PC's initial decision is the lawful result.

**D. Shoreline's policy arguments do not overcome the Code's mandate.**

Shoreline advances several policy arguments. Shoreline warns that marijuana and alcohol retailers can languish in the state permitting review queue, during which time a

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[49] *Weyerhaeuser v. Pierce Cnty.*, 124 Wash. 2d 26 (1994).
[50] *Id.*
[51] *Matanuska-Susitna Borough Planning Commission Resolution* No. PC 24-08, R at 1334-1337.
[52] *Id.*

school or church could move in and effectively "box out" these budding businesses.[53] The Court does not dispute that the permitting process, as described by the parties, may impose burdens on new enterprises. However, the Code clearly establishes that an operating school takes precedence over a proposed marijuana retailer. Accordingly, while the policy concerns Shoreline raises may merit legislative attention, they do not override the clear statutory framework that governs this case.

**E. Shoreline's vested rights and takings arguments are unpersuasive.**

Shoreline contends that its investment in the property, efforts to obtain permitting, and establish a driveway easement supports a "vested rights" claim.[54] Shoreline uses another Washington case, *Seven Hills, LLC v. Chelan County* to support the "vested rights" approach. Again, *Seven Hills* is not binding on this Court, nor is it relevant to the facts at hand. In *Seven Hills*, the Washington Supreme Court recognized vested rights in a non-conforming use despite a retroactively applied moratorium.[55] The Court stated that the moratorium deprived those with "vested rights," or lawfully established uses, which included the plaintiff's cannabis business.[56] Here, however, the Code's mandates have remained constant throughout Shoreline's application process. Even if the Code had changed, it would make little difference here because without proper permitting Shoreline never had a vested right in a "lawfully established use."

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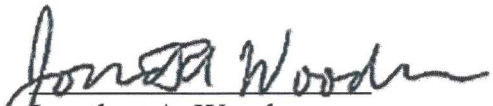
[53] BOAA Hearing Transcript at 14.
[54] *Appellee's Brief in Response to the Matanuska-Susitna's Opening Brief on Appeal*, 24-25.
[55] *Seven Hills, LLC v. Chelan Cnty.*, 198 Wash. 2d 371, 495 (2021).
[56] *Id.*

In tandem with the vested rights argument, Shoreline asserted in its briefing and at the BOAA hearing that it had sunk considerable cost into the E. Snider property and had investment backed expectations— alluding to a Fifth Amendment takings claim.[57] As a general principle, mere land-use regulation—such as the enforcement of the Code—does not constitute a taking under the Fifth Amendment.[58] Further, regardless of Shoreline's investments, it was neither afforded nor guaranteed legal authorization, so Shoreline's reliance was both misplaced and premature. Thus, because Shoreline had not obtained vested rights and the applicable Code provisions have remained consistent, compliance with those regulations does not support a takings claim, regardless of Shoreline's sunk costs.

**V. Conclusion**

For the foregoing reasons, the Court finds that the BOAA erred in approving Shoreline's CUP. The Court thus reverses the decision below and remands this case to the BOAA to make findings consistent with this *Order*.

DATED at Palmer, Alaska, on October 16, 2025



Jonathan A. Woodman
Superior Court Judge

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[57] *Appellee's Brief in Response to the Matanuska-Susitna's Opening Brief on Appeal*, 25-26; BOAA Hearing Transcript at 14, 16, 17.
[58] *Alaska R. Corp. v. Native Vill. of Eklutna*, 43 P.3d 588, 597 (Alaska 2002).

# Alaska Trial Courts

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