A regular meeting of the Fairbanks North Star Borough Planning Commission was held in the Mona Lisa Drexler Assembly Chambers, Juanita Helms Administration Center, 907 Terminal Street, Fairbanks, Alaska. The meeting was called to order at 6:18 p.m. by Wendy Presler, Chairperson.

A. ROLL CALL

MEMBERS PRESENT:  Charles Whitaker  Chris Guinn
                    Doug Sims    Mindy O'Neall
                    Eric Muehling  David Brandt
                    Wendy Presler  Mike Stepovich

MEMBERS ABSENT & EXCUSED:  Robert Peterson  Pat Thayer
                            John Perreault

OTHERS PRESENT:  Kellen Spillman, Deputy Director
                 Community Planning
                 Manish Singh, Planner
                 Stacy Wasinger, Planner
                 Wendy Doxey, Assistant Borough Attorney
                 Nicole Nordstrand, Administrative Assistant

B. MESSAGES

1. Chairperson’s Comments

   Ms. Presler reminded Commissioners to mindful of talking over each other or interjecting until called and when making motions be clear and concise and in a finalized form.

2. Commissioner’s Comments

   Mr. Stepovich reported on his experience at the APA Conference.

3. Communications to the Planning Commission

   Mr. Spillman reported that there is an Addendum to CU2018-005 in their folders and also that the grandfather rights appeal, while on the agenda, was postponed at the request of the Applicant.

   Mr. Spillman informed of the upcoming agenda for the January 2018 meeting.

   Mr. Spillman communicated of a recent bid award approved by the Finance Committee specific area plan for the Salcha and Badger Road areas, and proved an overview of the concept of the plan.
4. Citizen’s Comments – limited to three (3) minutes

There were no comments by Citizens.

5. Disclosure & Statement of Conflict of Interest

Commissioner Brandt renewed his disclosure from the November 14, 2017 meeting of being a recipient of a DPO for RZ2018-003. Ms. Presler again acknowledged the potential conflict and asked Mr. Brandt to step away when that item is called.

C. *APPROVAL OF REVISED AGENDA AND CONSENT AGENDA

Approval of Consent Agenda passes all routine items indicated by asterisk (*) on agenda. Consent Agenda items are not considered separately unless any Planning Commission member or citizen so requests. In the event of such request, the item is returned to the general agenda.

MOTION: To approve the Agenda and Consent Agenda by Ms. O’Neall and seconded by Mr. Guinn.

PASSED WITHOUT OBJECTION

D. MINUTES

2. *Minutes from the November 12, 2017 Meeting.

E. *CONSENT AGENDA ITEMS

1. *HP2018-004 Tanana Loop and South Chandalar Intersection Improvements: A request by the Alaska Department of Transportation and Public Facilities for local planning authority approval to reconstruct the intersections of Tanana Loop/Alumni Drive, Tanana Loop/South Chandalar Drive, and Salcha Street/South Chandalar Drive including the portions of South Chandalar Drive between the intersections and up to Ambler Lane on the University of Alaska Fairbanks campus. The project will realign Tanana Loop Road and South Chandalar Drive to improve vehicular and pedestrian safety, and will also modify the layout of two existing intersections to improve sight distance for roadway users and pedestrians and enhance American Disabilities Act accessibility by rebuilding existing sidewalks, and installing new sidewalks in areas where pedestrian facility gaps exist. (Staff Contact: Don Galligan)

F. QUASI-JUDICIAL HEARINGS

1. CU2018-005: A request by Audrey Ranstead, DBA Baked Alaska Edibles, on behalf of S. Corp Inc., for conditional use approval of a marijuana product manufacturing facility, limited in the General Use 1 (GU-1) zone on Lot 21, Fairbanks Industrial Park Subdivision (located at 2745 Hanson Road, on the south side of Hanson Road, between Commerce Street and Deere Street). (Staff Contact: Manish Singh)

OATH ADMINISTERED

The Applicant, Audrey Ranstead, and Steve Hallsten, the property owner, were present.
Mr. Manish Singh provided a presentation of his staff report and recommendations on behalf of the Borough’s Planning Department and recommended approval with conditions listed in the Staff Report, with one amendment.

Questions by Commissioners

Ms. Presler inquired of the 2,500 gallon water tank is shared with the cultivation facility, and Mr. Singh deferred to the Applicant.

Mr. Sims asked if the single-family dwelling on the property is considered a non-conforming use in a light industrial zone, and Mr. Singh reported that the zoning is general use and stated that the dwelling in question is mixed-use, and stated that if there were no dwelling units on the adjacent property, a zoning permit would have only been needed.

Applicant’s Testimony

Mr. Steve Hallsten testified that the water tank only serves the south end of the building which is the manufacturing end, and there is a well on the property which serves the north side of the building. He further stated both sides share the septic for domestic purposes only.

Questions by Commissioners

Mr. Sims questioned the site plan on page 127 and the appearance that the building is located in a portion of the 30’ utility easement on the east side. Mr. Hallsten questioned that a portion of building is in the easement as he built the building and it was surveyed, and indicated the fence is off from where the lot is surveyed by approximately 10’, and there are no water and sewer and power runs down Hanson Road.

Ms. Presler drew attention to it not being an “as built” survey.

Mr. Muehling inquired if the carbon air filtration system in place for the cultivation facility would be increased for the bakery, and what expertise would be drawn upon to determine size the system. Ms. Ranstead replied that the bakery would have its own filtration system. Mr. Hallsten communicated that they would hire L64 Design to determine size, and mentioned that the cultivation would be completely separate from the bakery and the only shared systems is the domestic waste for the restrooms.

Interested-Person Testimony Opened

No interested-persons were present to offer testimony.

Interested-Person Testimony Closed

Mr. Muehling inquired from the Applicant if any waste would be produced as a result of the baking and how it would be disposed. Ms. Ranstead replied that all plant waste would be disposed of according to State requirements.

MOTION: To approve the Conditional Use Permit for a commercial marijuana product manufacturing facility, limited with three (3) conditions, as amended, and adopting the staff report and the staff report amendment dated December 11,
2017, and three (3) Findings of Fact, as amended, in support of the approval by Mr. Guinn and seconded by Ms. O’Neall.

Discussion on the Motion

Mr. Guinn communicated that this is not much different than the marijuana cultivation application that was approved recently, and all concerns expressed have been dealt with, so he stated his intent to vote to approve.

Mr. Muehling stated it satisfies the health and safety of the community with the air filtration system and utilization of approved methods for disposal of waste products, and the hauling of waste water offsite.

Mr. Sims indicated his comfort with the easement, and stated he wanted to bring it to the attention of the owner, and further stated that it is no different than a commercial kitchen.

Ms. Presler mentioned that the staff report also mentioned adequate transportation facilities in the area, power, and brings diversification to the Borough and helps the economy, and is in line with this Board’s approval in the past.

ROLL CALL:

Eight (8) in Favor: Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. O’Neall, Mr. Sims, Mr. Stepovich, Ms. Presler, and Mr. Brandt.

Zero (0) Opposed.

MOTION PASSED

2. CU2018-006: A request by Jessica Dance, DBA Barefoot Grow Company LLC, for conditional use approval of a marijuana cultivation facility, indoor large, in the General Use 1 (GU-1) zone on Lot 1-A, Block 1, Waller Subdivision (located at 940 Star Court, on the south side of Badger Road, at the end of Star Court). (Staff Contact: Manish Singh)

The Applicant, Jessica Dance, was not present.

Mr. Manish Singh provided a presentation of his staff report and recommendations on behalf of the Borough’s Planning Department, and recommended approval with conditions as listed in the Staff Report.

Questions by Commissioners

Mr. Guinn asked if there is any indication why the Applicant isn’t present, to which Mr. Singh responded he had no indication she would not be present, and stated the Applicant has been cooperative in the entire process, and she was notified of the date and time.

Ms. Presler asked if the Applicant gave any indication if they would be using a mechanical contractor to appropriately size the carbon filters. Mr. Singh replied that application does not provide that information other than the application indicated the Applicant intends to mitigate odor by a filtration system. Ms. Presler inquired if the State monitors the issue of odor, and Mr. Singh described zoning violations and enforcement ability of the Borough on this issue of odor.
Ms. Spillman added that odor cannot be detected outside the property is a State of Alaska regulation.

Mr. Muehling asked for Mr. Singh’s thoughts on the security measures proposed by the Applicant. Mr. Singh explained the Applicant’s intentions to meet the State requirements.

Interested-Person Testimony Opened

Ms. Cathleen Coiley Stolen testified of her concerns on this matter as follows:

- Storage tank placement and potential run-off on adjoining properties.
- Composting on site.
- Very secluded area allowing “carte blanche for doing what they want”.
- Star Court is an access road given to the previous owner, is not a dedicated road.
- Parking issues.
- Maintenance of road.

Question by Commissioners

Ms. O’Neall asked if she had seen the site plan submitted for approval to the Borough, and Ms. Stolen indicated she had not seen it. Ms. O’Neall commented that according to the site plan in the packet, it indicates the location of the compost and proposed parking. She further explained the process the Borough and the State for ensuring Applicants are conforming to the site plan. Ms. Stolen expressed concern that other property owners not having a say in placement.

Ms. Doxey reminded the Chair that it is the time for questions and eliciting testimony.

Mr. Muehling inquired who uses Star Road, number of users, and current condition. Ms. Stolen replied that it is a dirt road with travel speed of approximately 5-8 mph, and is an unmaintained road, and is unpassable for two vehicles traveling in opposite directions, and serves one dwelling and three (3) lots, and noted there is a lot that has a developer interested in developing it.

Ms. O’Neall asked if Ms. Stolen has met the Applicant and discussed her concerns, and Ms. Stolen indicated she has met her, but has not discussed her concerns with the Applicant.

Interested-Person Testimony Closed

(note that the Applicant was still not present)

MOTION: To deny the Conditional Use Permit for a marijuana cultivation facility by Ms. O’Neall and seconded by Ms. Presler.

Discussion on the Motion

Ms. O’Neall opined that there is not enough information from the Applicant based upon the testimony given and there is concern about the access road which is a health concern for landowners and the Applicant.

Mr. Guinn stated his desire to postpone allowing the Applicant to participate for the same reasons expressed by Ms. O’Neall.
Ms. Doxey advised that denial is conclusive action and the Applicant would not be able to come back with another Application unless she materially modifies the application or plan, and it is an option to postpone seeking more information.

Mr. Guinn questioned if postponing would be for a date certain, and Ms. Doxey confirmed.

ROLL CALL (Motion to Deny):

Zero (0) in Favor:

Eight (8) Opposed: Mr. Brandt, Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. O’Neill, Mr. Sims, Mr. Stepovich, and Ms. Presler.

MOTION TO DENY FAILED

MOTION: To postpone the item until the January 16, 2018 Planning Commission Meeting by Mr. Guinn and seconded by Mr. Sims.

Discussion on the Motion

Mr. Muehling asked in the event of a postponement, what is on the agenda for January.

Ms. Presler replied that we would hear the Staff Report again, hear from the Applicant and would take additional public testimony.

Ms. Doxey indicated that Ms. Stolen would be able to testify again in January as the Applicant will be presenting.

Discussion ensued about procedural matters of noticing requirements.

Mr. Muehling commented that it appears to fall within the type of permit that has been approved in the past, and is going to vote against postponement.

Ms. O’Neill stated her not comfortable with approving any application in the Borough without the Applicant appearing and answering questions.

Mr. Guinn stated he does not want to establish precedence for approving an application without the Applicant appearing, and felt that the road, in the condition presented, is a safety concern that the Applicant may be able to address.

Mr. Brandt drew attention to the Fire Department's concern with the road.

ROLL CALL:

Eight (8) in Favor: Mr. Whitaker, Ms. O’Neill, Mr. Sims, Mr. Stepovich, Mr. Brandt, Mr. Muehling, Mr. Guinn, and Ms. Presler

Zero (0) Opposed.

MOTION TO POSTPONED PASSED
(The meeting recessed from 7:33 – 7:44 p.m.)

(Commissioner Brandt left the dais)

G. PUBLIC HEARINGS

1. **RZ2018-003:** A request by Northland Surveying & Consulting LLC, on behalf of Ainley International Memorial Fund, to rezone approximately 218 acres from Two-Family Residential (TF), Single-Family Residential (SF-10), Multiple-Family Residential (MF), General Commercial (GC), Light Industrial (LI), Outdoor Recreation (OR), and Multiple-Family Residential/Professional Office (MFO), and Waterway Setback Designation (WS) overlay zone, all with the Groundwater Damage Protection overlay (GWP) to Two-Family Residential (TF), Multiple-Family Residential (MF), General Commercial (GC), and Light Industrial with Special Limitations (LI/SL), all with the Groundwater Damage Protection (GWP) overlay zone and a 25’ Waterway Setback Designation (WS) overlay zone from Beaver Springs Creek or other appropriate zone. The proposed rezone boundary includes parcels described as all of North Star II Subdivision and all of North Star II Buzby Subdivision (located southwest of the Richardson Highway, west of Buzby Road, east of the Alaska Railroad and Old Richardson Highway).

The Applicant, Northland Surveying and Consulting LLC, Paula Hicks, and Ainley International Memorial Fund representative Jerry Koerner were present.

**Ms. Presler** advised that she had made a prehearing determination that Staff would be permitted the opportunity to present a supplemental staff report and presentation.

**Ms. Stacy Wasinger** provided a presentation overview of the November 14, 2017 presentation with focus on her supplemental staff report and recommendations on behalf of the Borough's Planning Department.

**Ms. Presler** stated for the record that Commissioners O’Neall and Stepovich had both listened to the November 14, 2017 proceedings on this matter; and both confirmed that they had.

Questions by Commissioners

**Mr. Whitaker** asked how future property owners would be made to abide by the waterway setback. **Ms. Wasinger** advised it would be a zoning violation if it is done without a conditional use permit. **Mr. Spillman** added that during the sale of a property, the zoning must be disclosed. Discussion ensued on potential instances and remedies.

**Ms. Presler** asked for confirmation that in the proposed LI/SL zone would only allow for resource extraction. **Ms. Wasinger** explained that special limitations and permitted uses versus conditional use in GC and LI zones.

**Mr. Guinn** asked if community water is brought into the area, but no community septic, the minimum lot size will be set by the Platting Board. **Ms. Wasinger** said DEC regulations dictate placement. **Mr. Spillman** interjected that regulations have changed from the minimum lot size requirement of 40,000 square feet, to the emphasis now being the separation of wells and leach fields.

**Mr. Muehling** asked what the water table is in the area and how that affects the percolation and the effectiveness of a septic system. **Ms. Wasinger** replied that it is in the Ground Water
Protection overlay and prohibits the building of basements below grade, but it does not determine the minimum lot size.

Applicant’s Testimony

The property’s owner representative, Jerry Koerner, testified as follows:

- Project will clean up split zones.
- Ability to sell properties to support charities in the area and around the world.
- Spoke of a violation of a property owner who removed vegetation, and explained how they educate property owners.
- Advised of putting waterway protection in covenants and in disclosure.
- City sewer infrastructure in the 1970s.
- City water available by tapping into the 12” main.
- Properties are all outside of the Flint Hills plume.
- Waterway Protection around the Lake (page 5) has no purpose as there is no natural vegetation around the Lake.
- Cannot dedicate to City without Army Corp of Engineers permitting.
- Extra zone layers do not matter – it will only hinder if the 25’ waterway protection is applied as it becomes unbuildable land.

Questions by Commissioners

Mr. Sims sought confirmation that the waterway setbacks would be established in covenants, and Mr. Koerner confirmed. Mr. Sims asked for an update on the pond with the City on it being a park, and Mr. Koerner reiterated on the Army Corp of Engineers permitting and explained the process of what they are doing to develop it in accordance with permitting processes. Mr. Sims asked if they would continue to hold onto the property, and Mr. Koerner indicated it would be held. Finally, Mr. Sims inquired if the LI/gravel pit would include off site sales, and Mr. Koerner explained there would have to have that ability in order to be viable.

Ms. Presler asked the depth of the gravel extraction. Mr. Koerner responded that Fish and Game recommends 50 feet. Ms. Presler questioned if he knew what percentage of the materials will go back into the subdivision, and Mr. Koerner explained how they calculated the amount anticipated to be extracted on another pond project and the uncertainty at this time.

Mr. Guinn stated his confusion with the proposed draft motion of a 50 foot waterway setback designation from Beaver Springs Creek and the pond, but the testimony talked about a 25 foot setback. Mr. Koerner indicated it should be struck through and is a 25 foot.

Mr. Spillman confirmed that the request is to remove the waterway protection or setback around the existing pond and keeping it on the slough, and Mr. Koerner confirmed. Mr. Spillman pointed out that the initial request was for both, and Ms. Hicks confirmed the initial request was that, but that they desire a change.

Mr. Muehling asked what route in and out of the subdivision will be used in the gravel extraction process and the condition of that roadway, and traffic, noise, and dust mitigation. Mr. Koerner stated the roadway to be used is a hard compacted thoroughfare and there are time and dust restrictors, plus there is a contract development agreement with the City of North Pole specifying restrictions.
Mr. Whitaker inquired if the waterway protection around the pond has no vegetation such as moss and sedges, and Mr. Koerner replied that it is all just rock and dirt.

Ms. Hicks commented that the initial request was for waterway setback and has now changed to a waterway protection, but for the pond, it is not necessary since there is nothing to protect.

Public Testimony Opened

No one was present for public testimony.

Public Testimony Closed

MOTION: I move to recommend approval of the rezone of all of North Star II Subdivision and all of North Star II Buzby Subdivision from Two-Family Residential (TF), Single-Family Residential (SF-10), Multiple-Family Residential (MF), General Commercial (GC), Light Industrial (LI), Outdoor Recreation (OR), and Multiple-Family Residential/Professional Office (MFO), and Waterway Setback Designation (WS) overlay zone, all with the Groundwater Damage Protection overlay (GWP) to Two-Family Residential (TF), Multiple-Family Residential (MF), Multiple-Family Residential/Professional Office (MFO), General Commercial (GC), and Light Industrial with Special Limitations (LI/SL), all with the Groundwater Damage Protection (GWP) overlay zone and a 25 foot Waterways Protection Designation (WP) overlay zone from the meander line of Beaver Springs Creek or other appropriate zone, and adopt the revised staff report and eight (8) revised Findings of Fact in support of the recommendation of approval by Mr. Muehling and seconded by Mr. Whitaker.

Discussion on the Motion

Mr. Muehling commented on expansion of North Pole, zoning created is compatible with other zoning in the area and addresses health, safety and welfare of the Community with the availability of City water, lot sizes, and septic systems.

Mr. Sims stated his support and believes it is well thought out and addresses the riparian qualities of the existing ponds and slough and waterways, and supports the waterway protection designation, and the Commission will see the matter again for the resource extraction.

Mr. Guinn stated his belief that the plan meets the goals of the City of North Pole’s master planning.

Ms. Presler stated her concern on the gravel extraction portion of the project, and conveyed her belief that it could be done responsibly and courteously to the property owners and the final result will be a benefit to the Community.

Ms. Doxey stated there was no discussion on section 2 of the supplemental staff report on adjusting of the boundary lines.

Mr. Spillman stated that with the potential complications with adjusting zoning boundary lines to comply with the subdivision, that portion was dropped from being a condition.
Ms. Doxey stated based upon it being eliminated, the motion needs to be amended to strike that portion of the staff report on page 246 of the packet.

**MOTION:** I move to amend the motion on the floor to include striking section 2 of the staff report, on page 246 of the packet, and is titled “Rezone Boundary Lines with Concurrent Platting Application” by Ms. Presler and seconded by Mr. Muehling.

**PASSED WITHOUT OBJECTION**

Ms. Doxey read the waterway protection designation as written in code. She further asked for more discussion on the light industrial with special limitation proposed and explained that zoning is for the benefit of the Borough as a whole and not one particular landowner or property, and if the pond never comes to fruition.

Mr. Sims stated that if the pond never gets developed, it remains light industrial with the special limitations which carry with the property.

Ms. Presler stated that the other permitted uses all seem to be of a residential nature.

Mr. Spillman reiterated the permitted uses.

Ms. Presler summarized the uses and stated they all appear appropriate for the area.

Mr. Sims stated that the light industrial with special limitations fits with the North Pole land use designation.

Ms. Doxey indicated the appearance of a light industrial significantly dialed back to look a lot more like general commercial, bordering a residential zone, and requested further discussion on whether CBD, GC or Light Commercial is more appropriate than the proposed zone.

Ms. Presler stated she had asked early on if there is a more appropriate zone that could be used with special limitations and were told no.

Mr. Spillman drew attention to proposed revised finding #2, page 248 of the meeting packet; it specifically emphasizes two section of the Comprehensive Plan. He read strategy 8, action B of Land Use Goal 3.

Ms. Presler stated that the property is adjacent to the Old Richardson Highway and convenient for traffic, the gravel extraction plan includes a significant vegetative buffer, parking appears sufficient, and is separated from other industrial zones, and stated her only concern is the compatibility with the neighboring uses and would be strongly opposed to it being up against residences, but it will not go on in perpetuity and its end use is compatible with the neighborhood.

Ms. O’Neall read the intent of light industrial in code, and stated her belief that its intended usage would meet the area by the words “urban” and “sub urban” environments and is not detrimental to the rest of the community.

Mr. Sims reiterated there are special limitations, and it does benefit of Community as a whole, not just this project, but the growing community of North Pole and the longer-term view of the benefit of the public park.
Mr. Muehling asked if there is a minimum acreage that triggers a spot zone.

Mr. Spillman talked about the case law in Alaska which establishes spot zoning and explained the three-prong test, specifically its consistency with the Comprehensive Plan, but also the size of the area being rezoned.

Ms. Doxey added that the case law and the treaties are clear that zoning is for community purposes and if a rezone is done to benefit one property owner, it could fail the spot zone analysis.

Mr. Spillman pointed out the Comprehensive Plan speaks to buffering and automatic setbacks or fencing and the gravel extraction will be a conditional permit application and sunset dates could be imposed for gravel extraction.

Ms. Presler inferred that since the Comprehensive Plan does address light industrial with residential, it is recognition that it may happen, although may not be preferred.

Ms. Doxey stated that was a correct inference.

Mr. Muehling opined that the gravel extraction will benefit the community as a whole beyond this subdivision.

ROLL CALL:

Seven (7) in favor: Mr. Sims, Mr. Stepovich, Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. O’Neall and Ms. Presler.

Zero (0) opposed.

RECOMMENDED APPROVAL RZ2018-003

Ms. Doxey stated that the motion was actually a motion to recommend approval.

(Commissioner Brandt returned to the dais)

(The meeting recessed from 8:53 – 9:04 p.m.)

H. APPEALS

1. GR2018-042: An appeal by Andrew Lyon of the denial of a request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing duplex residence with a nonconforming south side-yard setback of approximately 4 feet to the building and 0.5 feet to the roof overhang instead of the required 5 feet to the building and 3 feet to the roof overhang and an east front-yard setback of 5 feet instead of the required 20 feet in the Two-Family Residential (TF) zone for the property on Lot 1, Block 6, Riverside Park Subdivision (located at 1120 Park Drive, on the west side of Park Drive, north of Airport Way). (Staff Contact: Stacy Wasinger)

Mr. Guinn disclosed that he appraised the house in question a couple of months ago, and recognized there were setback issues that needed to be resolved, and appraised it as if those issues were resolved, and stated his belief he has a conflict of interest.
Ms. Presler inquired if he felt his client for the appraisal could consider his participation a conflict.

Ms. Doxey made inquiries into Mr. Guinn’s level of outside knowledge on this matter, and Mr. Guinn explained his knowledge and client and the basis for his belief he has a conflict.

Ms. Presler found that Mr. Guinn has a conflict and excused Mr. Guinn from this matter.

(Commissioner Guinn left the dais)

Mr. Sims reported that he is an acquaintance/friend of the Applicant’s representative Martin Gutoski for thirty years. Mr. Presler asked if his relationship with Mr. Gutoski will affect how he votes on this matter and if he stands to gain, and Mr. Sims stated it would not.

Ms. Doxey inquired if he would be more or less likely to believe what Mr. Gutoski says or presents, and Mr. Sims indicated it would have no bearing whatsoever.

Ms. Presler determined Mr. Sims does not have a conflict.

Mr. Muehling disclosed that he has known Mr. Gutoski and his wife for over thirty years and have been mutually involved in a couple of organizations in town. Ms. Presler asked if he has any knowledge about this matter of Mr. Gutoski’s work, and Mr. Muehling indicated he did not. Ms. Presler questioned whether he would be more or less likely to believe testimony from Mr. Gutoski. Mr. Muehling stated his belief that he could be fair in evaluating his testimony.

Ms. Doxey indicated her desire to explore his ability to listen to Mr. Gutoski’s presentation or testimony due to hesitation in answering Ms. Presler’s question.

Ms. Doxey asked if during the time he has known Mr. Gutoski, has he formed an opinion about his truthfulness, general character, him in his professional capacity, and Mr. Muehling stated he had. Ms. Doxey inquired whether Mr. Muehling has the ability to set those opinions aside and listen to what he hears tonight to assess creditability, truthfulness, and reliability based upon what is said on this matter.

Ms. Presler determined Mr. Muehling does not have a conflict.

The Applicant, Andrew Lyon was present, along with his surveyor, Martin Gutoski.

OATH ADMINISTERED TO MS. WASINGER

Ms. Stacy Wasinger provided a presentation of her staff report and recommendations on behalf of the Borough’s Planning Department.

Questions by Commissioners

Mr. Muehling asked if there are other residences in the neighborhood encroach the setbacks, and Ms. Wasinger indicated she has not had other grandfather rights cases in this neighborhood, and she showed an aerial photograph and stated there may be some that encroach the setbacks, but it would be difficult to determine of those it they qualify for grandfather rights.

Ms. O’Neall asked to see the timeline, and Ms. Wasinger put the bulleted timeline on the screen.
Mr. Muehling inquired if there was a site plan at the time the garage permit was issued. Ms. Wasinger indicated there was and is Exhibit 17 on page 493 of the packet.

Mr. Muehling asked if everything was within the setbacks when the garage was built. Ms. Wasinger indicated that the south side-yard does show a 5’ dimension, but there no measurement for the front property line as it measures to the edge of the pavement.

Questions by Applicant’s Representative

Mr. Martin Gutoski asked Ms. Wasinger if she did a site inspection, and Ms. Wasinger indicated she did not.

Applicant’s Testimony

The Applicant’s Representative, Martin Gutoski, presented on behalf of the Applicant, and testified as follows:

- Spent five (5) days surveying the subject property
- Alaska Statutes calls for priority of Deeds and Plats
  1. Intent of the Parties
  2. Artificial Mines – river, lakes, streams, trees
  3. Artificial Monuments – rebar and concrete
  4. Bearings – angles related to the stars
  5. Distances – function of equipment
  6. Coordinates – latitude and longitude
  7. Areas
- City building permit shows original intent of the parties and was approved by the City
- Garage added in 1984
- Discussed drawings prepared by an engineer of the garage overhang, trusses, and setback (drawing of Bryan Borgeson)
- Building permits are highly regulated by various City officials
- Building permit process is more rigorous than a zoning permit
- Explained efforts taken to determine property lines and how he arrived at the measurements

Questions by Commissioners

Ms. Presler asked what Mr. Gutoski’s actual determinations of measurements were. Mr. Gutoski replied it is 4.1’ from the edge of the garage to the closest part of the lot line; plus or minus a tenth of foot. Mr. Gutoski gave further testimony on the processes of retracing blocks.

Mr. Whitaker asked if he has done a lot of surveying within the City and if it appears surveys may be off, and Mr. Gutoski indicated he had limited exposure in the Borough due to his prior employment with the Borough and stated there is a one foot in two miles accuracy within the City.

Mr. Brandt asked for the aerial photograph be displayed and inquired the distance between the building on the adjoining lot to its lot line, and Mr. Gutoski responded the item is not a structure.

Mr. Sims asked if he disagreed with the dates of zones set forth in the Staff Report, and Mr. Gutoski indicated he did not disagree with the determination it has to be 5’, but disagrees with
the interpretation of the intent of the party in that they intended it to be compliant. **Mr. Sims** communicated that the nature of grandfather rights is factual based and must be proven, and measurement interpretation is not part of that consideration.

**Mr. Muehling** asked how people determined their lot lines in 1984. Mr. Gutoski explained if they were in doubt, generally they would ask a surveyor and up until the 1974 engineers could do surveys.

**Mr. Muehling** inquired if the neighborhood is one of one yard runs into the next or fenced and how would someone know where they could build. Mr. Gutoski suggested a surveyor would need to tell them and explained the process he went through in determining his client’s property lines. Discussion ensued between the parties on the measurements reached.

**Mr. Brandt** asked how he could explain the 20’ discrepancy in the front yard setback. Mr. Gutoski drew attention to the 25’ to the edge of asphalt to be their lot line. **Mr. Brandt** asked who would have made the inference, and Mr. Gutoski pointed to Bryan Borgeson or Mr. Mohr, the neighbor who built the garage, and explained the basis of his opinion.

**Ms. Presler** asked the Commission to focus on the setback (grandfather) issues and not the survey results.

**Mr. Sims** inquired if this came about due to a financing for the renovations, and Mr. Andrew Lyon responded affirmatively. **Mr. Sims** asked if he had discussed equal conveyance with the neighboring landowner, and Ms. Becky Lyon responded that would be their next step. **Mr. Sims** asked if they had looked into a variance, and Mr. Lyon responded that they have been advised variances are “very not attainable”.

**Mr. Whitaker** queried how long they have owned the property, and Mr. Lyons responded they owner financed four (4) years ago.

**Ms. Presler** explained restrictions on the grandfather rights, and asked if there were plans to bring the roof and garage in conformance, and Mr. Lyons stated the roof would be modified to be in conformance with the setback, and the porch would be brought into the 50% conformance to apply for Amnesty and Mr. Lyons and Ms. Lyons explained the modifications.

**Mr. Whitaker** asked if the carport can go away, and Mr. Lyon responded that it covers the downstairs entrance.

**MOTION:** To move to deny the appeal and uphold the Administrative Hearing Officer decision to not affirm recognition of legal nonconforming structure status (grandfather rights) for an existing duplex residence with a nonconforming south side-yard setback of approximately 4 feet to the wall and 0.5 feet to the garage roof overhand instead of the required 5 feet to the garage wall and 3 feet to the roof overhand and an east front-yard setback of 5 feet to the covered porch and 11 feet to the garage wall instead of the required 20 feet in the Two Family Residential (TF) zone for the property on Lot 1, Block 6, Riverside Subdivision, adopting the Staff Report and eleven Findings of Fact by **Mr. Muehling** and seconded by **Mr. Sims**.

**Mr. Muehling** communicated that the application is for grandfather rights and the requirements for grandfather rights are specific, and conditions to not exist allowing any other options.
Ms. Presler communicated she agrees with Mr. Muehling and the evidence does not show it was ever in conformance with zoning codes.

ROLL CALL:

Seven (7) in favor: Mr. Whitaker, Ms. O’Neall, Mr. Sims, Mr. Stepovich, Mr. Brandt, Mr. Muehling, and Ms. Presler

Zero (0) opposed.

MOTION TO DENY PASSED

(Commissioner Guinn returned to the dais)

I. NEW BUSINESS

1. Election of chair and Vice-Chair for 2018.

Mr. Whitaker nominated Ms. O’Neall for Chair which was seconded by Mr. Muehling. Ms. O’Neall accepted the nomination, and hearing no other nominations and voting by secret ballot, Ms. O’Neall was appointed Chair for 2018.

Mr. Whitaker nominated Mr. Muehling for Vice Chair which was seconded by Ms. Presler. Mr. Muehling accepted the nomination, and hearing no other nominations and voting by secret ballot, Mr. Muehling was appointed Vice Chair for 2018.

J. EXCUSE FUTURE ABSENCES

Ms. Presler indicated that Mr. Peterson had previously reported he would be absent and is confused.

K. COMMISSIONER’S COMMENTS

Mr. Muehling reported on FMATS and his involvement in the scoring of projects.

Ms. O’Neall reported on the Urban/Agriculture Subcommittee, and expressed her desire to see the Commission have more ability to make difference or offer more solutions to resolve grandfather rights.

Mr. Sims reported on the Polaris Building Group and his involvement, and asked if there is any feedback to the Commission that the conditions of a conditional use permits are being complied with. Mr. Spillman responded how matters might come back before the Commission.

(Clerk inquired if Mr. Guinn’s request to hearing RR and RA setback requirements.

Mr. Guinn explained his request and the Body agreed to hear it on January 16, 2018.

L. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:30 p.m.