PLANNING COMMISSION MEETING

March 21, 2017
AGENDA
6:00 p.m.
March 21, 2017

A. ROLL CALL

B. MESSAGES
   1. Chairperson’s Comments
   2. Commissioner’s Comments
   3. Communications to the Planning Commission
   4. Citizen’s Comments – limited to three (3) minutes
      a. Agenda items not scheduled for public hearing
      b. Items other than those appearing on the agenda
   5. Disclosure & Statement of Conflict of Interest

C. APPROVAL OF 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.

D. *MINUTES

E. CONSENT AGENDA ITEMS

NONE

F. QUASI-JUDICIAL HEARING

NONE

G. PUBLIC HEARING


H. APPEALS

NONE
I. UNFINISHED BUSINESS

J. NEW BUSINESS

K. EXCUSE ABSENT MEMBERS

L. COMMISSIONER’S COMMENTS
   1. Other

M. ADJOURNMENT
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 7:30 p.m. by Wendy Presler, Chairman.

MEMBERS PRESENT: Chris Guinn  Mark Billingsley
Michael Stepovich  Pat Thayer
Charles Whitaker  Wendy Presler
John Perreault  Mindy O’Neall
David Brandt  Eric Muehling

MEMBERS ABSENT: Robert Peterson

OTHERS PRESENT: Christine Nelson, Director of Community Planning
Stacy Wasinger, Planner III
Manish Singh, Planner II
Bryan Sehmel, Code Enforcement Officer
Wendy Doxey, Asst. Borough Attorney
Stephanie Pearson, Community Research Tech
Mary Bork, Administrative Assistant IV
Bridget Hamilton, Permit Tech

A. ROLL CALL
B. MESSAGES
  1. Chairperson’s Comments
     None
  2. Commissioner’s Comments
     None
  3. Communications to the Planning Commission
     None
  4. Citizen’s Comments – limited to three (3) minutes
     a. Items other than those appearing on the agenda.

     Mr. Chris Miller, resident of the Borough, uses the sidewalks extensively and would like to see Title 18 changed to require commercial buildings to have connectivity to the sidewalks. He commented that a lot of sidewalks in town need to be repaired and wheelchair access of sidewalks needs to be updated, as well as better snow removal for access from the sidewalk to a Borough bus on the pull off.
Ms. Presler stated that Mr. Koma Fenton was here and left after signing in and requested he be called telephonically. She explained that arrangements for telephonic testimony need to be made in advance.

5. Disclosure & Statement of Conflict of Interest

None

C. * APPROVAL OF 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. Thayer, seconded by Mr. Billingsley.

ROLL CALL

Ten (10) in Favor: Mr. Stepovich, Mr. Perreault, Mr. Brandt, Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. O’Neal, Mr. Billingsley, Ms. Thayer, Ms. Presler.

Zero (0) Opposed:

CARRIED WITHOUT OBJECTION

D. MINUTES

1. *Minutes from January 10, 2017 PC Meeting

E. CONSENT AGENDA ITEMS

NONE

F. QUASI-JUDICIAL HEARING

1. CU2017-010: A request by Dan Sloan, Fairbanks North Star Borough Public Works Director, for conditional use approval of a solid waste public dumping site in the Multiple-Family Residential/Professional Office (MFO) zone on Lot 1, Chena Pump Solid Waste Transfer Station Subdivision. (Located on the south side of Old Chena Ridge Road, west side of Chena Pump Road, and southwest of Parks Highway).

(Staff Contact: Stacy Wasinger)

OATH GIVEN

Mr. Hosier, applicant, explained that the proposed expansion of the existing Chena Pump Transfer Site will reduce congestion and improve internal traffic flow. The Chena Pump Transfer Site is the fifth most used site in the Borough. The expansion is part of a long term plan to improve transfer sites within the Borough.
Mr. Billingsley Questioned if the surrounding property owners had been asked their opinion about the expansion.

Mr. Hosier replied he had not personally asked them.

Ms. Wasinger presented the staff report. Based on the staff analysis, the Department of Community Planning recommended APPROVAL of the conditional use request with the following six (6) conditions of approval and three (3) Findings of Fact:

Conditions for approval

1. Any development within the Special Flood Hazard Area, including but not limited to filling, paving or grading shall require a Floodplain Permit and compliance with FNSB Title 15 regulations.

2. The minimum 30 foot wide buffer of existing natural vegetation shall be maintained along the north, east, and west property lines.

3. No structures or dumpsters shall be located in the Public Utility Easement (PUE), nor shall any dumpsters, structures or other impediments be located such that the access to PUE is restricted.

4. The existing old driveway shall be revegetated after the construction of the new driveway off of Chena Ridge Road.

5. All dumpsters and other structures shall be constructed and located on the recycled asphalt pavement surfacing and directly relate to the principal use of a solid waste public dumping site.

6. If any modifications are made to the site plan, floor plan, or other FNSB required documents, the applicant or holder of this conditional use permits shall submit revised documents to the FNSB Community Planning Department. If modifications are made to the conditional use, an amendment to the Conditional Use Permit may be required pursuant to FNSBC 18.104.050(D).

Findings of Fact for approval

1. The proposed conditional use will conform to the intent and purpose of Title 18 and of other ordinances and state statutes because it will conform to Title 18 requirements as a conditional use in the MFO zone.

   a. The conditional use is consistent with the Urban Area designation. With appropriate conditions, the conditional use is compatible with the existing land uses. The purpose of Title 18 will be met because the proposed use supports Land Use Goal 4, Strategy 10 of the FNSB Regional Comprehensive Plan, which is to “attract and support development that is compatible with and enhances existing land use”. The use also aligns with Transportation and Infrastructure Goal 2 to “have sufficient public utilities and infrastructure to meet existing and future demand.”

   b. The intent of Title 18 will be met because with the conditions imposed, the conditional use will both protect private property rights and promote public health, safety, and welfare by adding more space for turning and maneuvering and creating a designated
area for household hazardous waste (HHW), thereby enhancing the functionality of the public dumping site.

2. There are adequate existing energy and transportation facilities serving the site and other public services are available to serve the proposed conditional use.

   a. The proposed conditional use does not require water and sewer capacity.
   b. The site is served by the Alaska State Troopers, Chena Goldstream Fire Service Area, and other services.
   c. The site is connected to the GVEA grid which will provide sufficient energy supply for the public dumping site.
   d. The site is served by Chena Pump Road, an AK DOT & PF maintained road, and Old Chena Ridge Road.
   e. The expanded public dumping site will generate additional trips but will not impede vehicular and pedestrian traffic on the surrounding roads because they have adequate capacity for current and future vehicular trips.
   f. Chena Pump Road has dedicated right and left turn lanes. The relocated driveway will increase the queuing capacity on Old Chena Ridge Road.

3. With the conditions imposed, the conditional use will protect public health, safety, and welfare as the facility will comply with Title 18 standards for the MFO zone.

   a. It will expand the capacity for safe disposal of solid waste in the area served by the conditional use.
   b. The existing vegetation and proposed fencing will create a buffer and minimize the visual impact of the proposed conditional use.
   c. Noise impacts are expected with the operation of the public dumping site. The restriction of hauling only within landfill gate hours will eliminate hauler truck noise at night. The minimum 30 foot vegetative buffer along the north, east, and west property lines will also help reduce noise impacts on the surrounding parcels.
   d. Odor impacts involving the solid waste will be minimized by the regular removal of waste to the FNSB Solid Waste landfill.
   e. The structures and dumpsters are not proposed to be located in the floodplain. With the proposed conditions, any filling, paving and grading or other development in the Floodplain are required to comply with Title 15 regulations to ensure public health, safety and welfare.

Mr. Perreault observed there was only traffic numbers in the staff report for one year and queried how much waste had been taken from the Chena Pump Transfer Site.

Ms. Wasinger responded that there is calendar year solid waste volume numbers for 2016 and referenced exhibit 2, the solid waste site master plan that showed 2011-2012 population and transfer site waste volumes.

Mr. Perreault remarked that more than a single year of data would be helpful.

Ms. O’Neall queried about the Chena Pump Road and Old Chena Ridge Road intersection configuration and if there was concern about traffic backing up at the intersection.
Ms. Wasinger explained Chena Pump Road is one lane each direction with turn lanes in both directions and that there are not concerns based on the available traffic counts as well as that moving the driveway location will help with traffic congestion.

Ms. O’Neall inquired if there were DPO’s that were sent out.

Ms. Wasinger replied that there were.

Mr. Stepovich inquired if Old Chena Ridge Road is paved or dirt road.

Ms. Wasinger responded that it is paved as well as road service area maintained.

Mr. Muehling Questioned if having a plan with separate entrance and exit driveways was considered.

Ms. Wasinger stated not according to the application turned in.

Interested Person Testimony Opened

Ms. Presler called for Mr. Koma Fenton; he was not at the meeting during public testimony.

Mr. Steve Heckman interested person, addressed the Planning Commission. “My wife Jo Heckman and I have lived in this home for six years. Right away when we moved there we noticed the traffic coming from Chena Pump Road to the transfer site on Old Chena Ridge Road was horrific. More people turn onto Old Chena Ridge Road to go to the transfer site as opposed to those who are going into the subdivision. They’re usually on a mission; many are not considerate or mindful of traffic rules, stop signs. They pull in front of oncoming traffic and are in general a traffic hazard as things stand right now. That comes from having lived there for six years. In addition to that, the terrible mess that the people are making is shocking to me. I understand the concept of the transfer site, but the dumpster diving, slashing and throwing everything on the ground makes me wonder what has become of our community. All of that in the midst of a really beautiful subdivision with beautiful homes, and quite frankly higher priced homes. The question that has crossed my mind is this, why is the transfer site in the middle of the neighborhood. The one off Farmers Loop is not and the one by UAF is not. Do we plan this right in the beginning, ten or twenty years ago? When we contacted the case manager, Stacy, it appeared that this particular item has to do with expanding the transfer site, cutting down trees, accommodating and expanding more dumpsters. She stated that the expansion will move up Old Chena Ridge Road toward Staffordshire Road and Kentshire Drive, the entrance will be moved up Old Chena Ridge Road closer to an actual slough than where it is now. This is very disturbing to us as it should be to everyone in that neighborhood whether the homeowners fall within the two thousand foot limit that qualified them to get the letter or not. The traffic coming to the dump is horrific already, congesting the intersection and the road. Imagine how congested it will be when they move the entrance further into our subdivision. Now we will hear more traffic, noise from the dumpster bins, cleanings and be subjected to odors etc. This will affect the value of our homes, who wants to live near a dump no matter how expensive your home is. Clearing more trees will affect the view from our homes, do we really want to have a view of the dump from our houses. Do members of the Planning Commission want this in front of your yard or your backyard?”

Ms. Presler questioned Ms. Mary Schrage and Ms. Wasinger to determine whether Ms. Schrage qualified as an interested person and determined that yes, she is.
Ms. Mary Schrage, interested person, addressed the Planning Commission. “We have been in the subdivision as well for six years, during that time we have seen the same things that Steve had addressed. We are also concerned with the slough and having water contamination. Most of those homes in that area all have wells and I would hate to see a contamination get into the waterway, because once it’s in the water system we know it can travel almost anywhere. That is a high concern, the other concern that we have is that we’ve already had problems with vagrants getting into the dump site and setting up camp on the other side of the road. That is also marked as a dump site eventually if it should expand to that area from what I’ve read tonight. There is a public health safety issue there, when you have vagrants that are setting up camp and burning and taking stuff out of the dumpsters and making makeshift camps. I would disagree with the statement that there is no public safety involved with the expansion or with the dump site. The other issue that adds to that traffic is when you’re coming down Chena Pump Road, it goes from four lanes to the two lanes and then you have a very short distance before you hit the pull off to go to the dump site to make that right hand turn. There is many times where vehicles are coming at 45 mph they hit the turn off lane and they keep on going, and if any car that’s parked there, their front end is taken out multiple times. You can see the leftover wreckage on any given day.”

Mr. Whitaker questioned Ms. Schrage, if there is possibly a problem with vagrants there now, do you think there would be more problem with vagrants if it was expanded?

Ms. Schrage replied you would have greater choices of what is being dumped there, so yes.

Mr. Whitaker further questioned, do you know if anything is being done about vagrants camping in the area?

Ms. Schrage responded that when it is reported the policed have come and have pulled them off. We had one that lived there for probably three to four months; they had a complete winter camp set up before they were able to move them out.

Ms. O’Neall queried if Ms. Schrage is familiar with the plans that show the driveway is going to move down further to accommodate some of the traffic concerns, and do you think that will help solve the problem, or do you think there is another solution.

Ms. Schrage replied she doesn’t think it will solve the problem, mainly because you have vehicles coming down Chena Pump Road at a high rate and you have a very short turning lane to come in. The people that are coming out, they don’t stop at the stop sign. Multiple times I’ve come down very, very slow especially if I see headlights coming out because they just wiz right on past. Until people obey the traffic rules, then no matter what you do it’s not going to stop that.

Ms. O’Neall questioned Ms. Schrage if she thought more signage or something might help with that, or is it just blatant disregard.

Ms. Schrage responded that if you don’t believe the laws are for you I don’t think any signage will help that. It comes down to why people don’t think they should obey a stop sign.

Ms. Tammi Ganguli, interested person, addressed the Planning Commission. “I am opposed to the expansion of this transfer site, I agree with Mr. Heckman and Ms. Schrage on their comments of concern regarding the water safety in the slough and also regarding the visual that we’re going to be getting and the devaluation of our home. I want to refer to page 36, if you look at the document it talks about overflow of trash and problems. We go there regularly, we don’t
see that, the only time something like that occurs is very rarely and it would be on a long holiday. I would also like to refer to figure 112 on page 51, this is a current image of our transfer site and if you look all the way to the back towards the Pumphouse restaurant area, there is plenty of room for more canisters if they really felt like we need to have more canisters, all of the space is not being used. Also page 38 and 43 talks about approval criteria and I think the statement contradicts the statements that are on page 45. On page 45 it says it's going to be better for our public health and safety and they list five bullet points. If you go to page 36 it says that it increases the risk of public health and safety, it in fact says "this expansion is likely to generate more impacts on the nearby residential neighborhoods related to increased lighting, odor, noise, traffic and visual impacts". One of the other things cited in here is that all the noise happens when they clear the dumpsters, no, it snows a lot in Fairbanks, Alaska and snow clearing takes place at very, very bad hours, it is not during the day. If you’re going to expand the site there is going to be more clearing. I get woken up a lot and I personally think sleep is important to my safety and health. As was cited by my neighbors, the traffic is really bad, not because of the site, but because of the way the people are driving. One of the Commissioners mentioned why wasn’t there a one way traffic flow, one way in and one way out, why can’t that be right off of Chena Pump Road, why does it have to come into our neighborhood. We are abiding by our rules and we know that there are children and people who do their recreational activities there."

**Mr. Perreault** questioned if traffic from the transfer site bleed up into the neighborhood.

**Ms. Ganguli** replied it does not, but people from the neighborhood will physically jog and walk past and it is very dangerous. I don’t let my children go anywhere near the transfer site because I’m afraid of the vagrants and I am afraid of the traffic. It is not a healthy or safe situation as it currently is, expanding it further into the neighborhood is only going to expand that danger closer to our children and our animals.

**Mr. Whitaker** queried Ms. Ganguli about the sentence she read from page 36. Part of that sentence is lighting, are you looking down at the site and seeing that lighting might become available there.

**Ms. Ganguli** responded she can see the whole site from her house, she can see it in the winter time, and it is harder to see in the summertime. If you look from my house you see the lighting, you see it empty, I can see the snow clearing when it wakes me up. If you’re going to take away seventy five percent of the vegetation at the front, that is going to not only be an eyesore to anybody coming into the neighborhood, but it’s going to affect the amount of noise that we hear. We already hear people going in and out of the site as it is; you take away seventy five percent of the vegetation it is going to be louder for us.

**Mr. Whitaker** questioned if they were to decrease their lighting slightly on the amount of lumens would it alleviate your concerns on that.

**Ms. Ganguli** responded she sees the whole thing and at night when you’ve got nice beautiful trees and then this glaring dump site and you see the headlights going in and out there is really no way to decrease it. I do think that the traffic flow could be improved, but I don’t think that this plan is what will do it. I think having it enter and exit off of Chena Pump Road with a turn lane. One way in and one way out sounds reasonable to keep the dangers from the people who live in the community. Expansion and an entrance that is closer to where we live, closer to our children and animals is not going to be safer.
Mr. Rajive Ganguli, interested person, addressed the Planning Commission. I would like to express my opposition to the plan, I am unsure what problem it would solve. Most of the time the dumpster cans are not overflowing. The projection of demand sometime in the future, I don’t know how thorough that study was, I question that and it seems like an unnecessary project. Yes, there are traffic problems which could probably be solved by making the access to the dump from Chena Pump Road. I would rather the access to the dump not be from Old Chena Ridge Road. The reason I am opposed, besides the traffic, is the impact on property. If you come to buy a property in the winter, you’re going to see a much larger dump as you drive by. There is of course the noise and the light impact that is already there. The vagrants are there, and there could be an increased impact by making more places to hide in there. I do not wish for it to be expanded.

Mr. Guinn questioned Mr. Hosier if DOT regulations prevented them from having the access onto Chena Pump Road.

Mr. Hosier replied that they had considered moving the access to Chena Pump Road, and hadn’t pursued it because they did have questions whether it would be accepted by DOT.

Mr. Guinn queried that the idea of pushing the entrance further from Chena Pump Road was to help with the current traffic problems.

Mr. Hosier responded that is correct, moving the entrance further away from the intersection would help with the queueing of the traffic. There would be more room, the way it is now the traffic ends up queueing actually inside the entrance to the transfer site because there is not enough space on Old Chena Ridge Road.

Mr. Guinn further queried if the new entrance will be wider, and have better drainage along the sides.

Mr. Hosier replied the entrance will be moved further up Old Chena Ridge Road so that there will be more space to queue.

Mr. Whitaker questioned Mr. Hosier, if there is a rule of thumb for how many miles or what the population difference is between dumpster locations.

Mr. Hosier responded he is unaware of a methodology for determining where the transfer sites go. He believes it is more about making them centrally located for the population.

Mr. Perreault queried Mr. Ganguli how long he has been living in his current home.

Mr. Ganguli replied about three and a half years. The lines I see queueing up are very fleeting, they happen for very short times and it is a very rare problem. This is a big solution for a small problem.

Mr. Perreault stated that it seems the problem is traffic coming onto Old Chena Ridge Road from Chena Pump Road and is where most of the risks that you’re seeing occur happen.

Mr. Ganguli responded the queueing that the gentleman mentioned happens when somebody is on Old Chena Ridge Road and they’re planning on taking a left onto Chena Pump Road. The time that you see traffic queued up is usually about seven in the morning you’ll see about 3-4 cars. The turn itself is a hazardous turn, to come into Chena Ridge Road from Chena Pump Road; it is very slippery when you take a right turn.
Mr. Stepovich questioned Mr. Hosier if they considered adding dumpsters in the open back area where there appeared to be no current use.

Mr. Hosier replied that the area is probably being used as snow storage space. With the new design we tried to have all the snow storage inside of the fence. This project came about because of a study done by PDC Engineers, looking at capacity, the need for improvements and expansion.

Ms. Thayer queried Mr. Hosier about drainage for the snow storage area.

Mr. Hosier responded the plan is for it to melt and drain off of the pad.

Ms. Thayer further queried which way the snow drains off of the pad.

Mr. Hosier answered that snow storage is on the south side of the site and new snow storage would be in the same spot.

Ms. Thayer questioned which direction the snow drains towards or if it is just absorbed into the ground.

Mr. Hosier replied for the new site it will drain towards the south, because it will be sloped towards the south. At the current site the he believes snow is not within the fence and there is not a constructed snow storage pad; the snow melts and drains off.

Ms. Thayer stated the snow just disperses wherever.

Mr. Hosier responded that is correct.

Mr. Richard Maier, interested person, addressed the Planning Commission. I agree with what has been said already. The intersection is very dangerous; a lot of people that live on the ridge avoid the intersection and use a different route. The homeless people pulling stuff out of the dump and making camps build fires and I was worried about a forest fire summer before last. Moving the entrance is a good idea for the traffic problems, but it will move the homeless camps closer to the homes in the subdivision. The land trust is trying to get Cripple Creek cleaned up for the salmon to move through it, and the run off will be moved right up to the creek. The people who maintain the transfer site are doing a good job at keeping it clean. The idea of an entrance off of Chena Pump Road is fantastic, especially if it could be moved farther down away from Old Chena Ridge Road. Then the site would be fenced in and the homeless people couldn’t drag the stuff that they find across the road and build their camps that would solve a problem. This is going to increase the traffic on Kentshire Drive, because more people will be unwilling to go through that dangerous intersection. I would like to see the buffer increased to at least fifty feet all the way around, thirty feet is not adequate, especially from the creek. It is a convenient location, I like that, and it was there when I moved in. It is very noisy; you can hear the dumpsters, the backup alarms, the banging. The lights are too bright at night.

Mr. Muehling asked Mr. Maier his opinion on what the traffic would be like throughout the day if the entrance was moved to Chena Pump Road.

Mr. Maier stated the problem with changing the entrance is drivers would be unsure if other drivers are turning into the dump or onto Chena Pump Road. The entrance will be super busy and there will be a lot of people turning. I am unsure as to how traffic could be controlled for
that, but moving the entrance would help to eliminate the problems with the vagrants making

camps. I would consider a traffic light as well.

Mr. Guinn questioned Mr. Hosier regarding a fifty foot buffer along the slough. Would that

interfere with the new site plan?

Mr. Hosier replied that the master plan from PDC recommended a certain size of expansion for

the pad. We would also like to incorporate grade separated roll off bins, people can drive up to

the bin and throw stuff in, they don't have to try and shove it in the side of the bin. It wouldn't be

workable to make the pad any smaller than the plans already call for. The entire plan would

need to be redesigned in order to create the fifty foot buffer and it would put us off our timeline.

Mr. Whitaker queried Mr. Hosier if it was changed to a fifty foot buffer and a redesign needed to

be done how important is the timeline, would you lose your funding because of it.

Mr. Hosier responded funding would not be lost, but we would also not be able to get all of the

features we want in this site. Constricting the square footage would interfere with the grade

separated roll off bins. The perimeter road is a feature Solid Waste has been very adamant that

they want, it allows them to get around the outside of the fence to clean up and it makes it less

appealing for people to build a camp right outside of the fence because there is a road there.

Ms. Janet Curtiss, interested person, addressed the Planning Commission. We live right

across the street from the dump and there is partying all the time. It is a bad idea to expand the
dump, if there is any way, even possibly moving the whole dump that would be great. I don't
want to the value of our homes decrease, especially in these economic times. My son’s window
is the closest to the vagrant camps; they had to clear them out numerous times. There are
drugs being done back there, they party all night and at one time point they had cars in there
until we called and reported it. I don't see the problem that they are talking about how there is
too much trash, I don't notice the bins being over full. There is a lot of space in the dump site
and it could be better utilized. I am against the expansion of the dump.

Ms. O’Neal questioned Ms. Curtiss if there is a fence currently on the property that separates
the area.

Ms. Curtiss responded no, there is not.

Ms. O’Neal queried that the new plan proposes a fence, do you think that would help.

Ms. Curtiss replied I don't think anything would help, I don't like the idea whatsoever, and I do
not want to see the dump expanded. It’s embarrassing to say, when you come to my house just

turn right at the dump.

Ms. O’Neal questioned if the size of the dump was left the same would a fence be any help
with the vagrants and noise.

Ms. Curtiss responded she is not sure. They go to the dump, get the tents and stuff they need
in order to set up camp. It isn’t just vagrants that are the problem; the dump site is just very
noisy.
Interested Person Testimony Closed

Mr. Hosier stated in rebuttal that there has been quite a bit of talk about increased traffic and activity at the site. From our perspective we don’t see that will happen. Making the site bigger doesn’t mean there is going to be more trash there; it just means there is going to be more room to drive around inside the site. It will be safer for the general public because the trucks that pick up the bins have to drive in forward to pick up the bins and then they have to back out and go get another bin. The way it is how it might look like there is a lot of space, when you have a large truck that is backing around and you have a lot of vehicles in there, it can be dangerous. The truck drivers have to be careful when they’re backing around. It would be a lot safer if there was more room for the trucks to be able to drive around in. Making the site itself bigger isn’t going to increase the traffic; the people that use that transfer site are still going to be the same people. We are clearing the area in lot one of vegetation in order to help with the vagrancy issue. There will be a perimeter road that creates a more open feel and deters vagrants from camping out. We are looking at lower color temperature lights at this site in order to help with the light pollution.

MOTION: To approve CU2017-010 with six (6) conditions, adopting the staff report, and three (3) findings of fact in support of approval by Mr. Perreault, seconded by Mr. Whitaker.

Mr. Perreault stated that the concerns raised by the public are numerous and understandable. He pointed out that the changes are meant to accommodate existing traffic and allow for growth in the area. It is not the purview of the Department of Public Works to deal with vagrants, that isn’t a condition that we can set upon them. There is a lot of improvement that could be made to the traffic pattern there; this is not the Department of Public Works responsibility. There isn’t a way within this application to demand larger changes from other entities.

Mr. Guinn detailed that he would not impose a fifty foot buffer along the slough, and it would behoove the applicant to look into making the buffer wider if it will work with the new site plan. It is good that light pollution is being taken seriously; directing the light downward rather than outward would help. Expanding the facility will help to create better traffic flow within the site, I think that will be a big improvement to safety.

Mr. Whitaker concurred that there is a problem with vagrants throughout all the dumpster sites, expanding the site won’t affect the amount of vagrants that come to the area. He appreciates the effort to address the light pollution.

Ms. O’Neall identified with Mr. Perreault’s statement on expanding the site. She encourages the community members to take the listed issues to the next step, address them with DOT for the traffic and to public safety for vagrants. Hopefully the other agencies can help to find the right solutions.

Ms. Presler indicated that the applicant has demonstrated, and staff has shown, that the conditional use permit and the use of the existing property conform to Title 18. The applicant has shown that existing infrastructure and utilities are in place. The plan, to the extent that we can consider, does provide for public health, safety and welfare by increasing the area inside the site where the trucks are turning around. Moving the entrance further from Chena Pump Road, from the perspective of this site use is an improvement and it does increase the safety for the public particularly when leaving this site. This isn’t the most desirable situation for the
residents of the nearby subdivision, she concurs with Ms. O’Neall that perhaps there are other avenues to try and improve the current problems in the future.

**ROLL CALL**

Seven (7) in Favor: Mr. Perreault, Mr. Brandt, Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. O’Neall, and Ms. Presler,

Zero (3) Opposed: Mr. Billingsley, Ms. Thayer, Mr. Stepovich,

**MOTION CARRIED**

**G. PUBLIC HEARING**

1. **ORDINANCE NO. 2016-71**: An Ordinance Amending FNSBC 18.96.240(A)(3) Regarding Marijuana Establishments To Amend Buffer Distances For Vocational Programs And Trade/Technical/Vocational Schools. *(Sponsors: Assembly members Roberts and Cooper)*

Mr. Cooper presented that he and Mr. Roberts have heard concerns from certain trade/technical/vocational schools that are federally registered and provide services to secondary high school age students. The schools were concerned about the impact of a two hundred foot buffer for marijuana establishments on their eligibility for federal funding. Five hundred foot buffers already exist for K-12 schools and it would make sense to do the same for trade/technical/vocational schools that provide training to the same types of students. The five hundred foot buffer is consistent with the federal drug free school zone, as well as in Title 18. Community Planning is supporting the ordinance with suggested revisions. The revisions narrow the scope of the ordinance amendment by limiting the five hundred foot buffer applicable to trade/technical/vocational schools to those that have a written agreement with the FNSBSD. The revision requires a little more administrative work on behalf of Community Planning and applicants to research for written agreements with FNSBSD. He expressed Mr. Roberts has a slightly different opinion on the revision and wished he was there to speak as well.

Ms. O’Neall queried whether amending the ordinance would affect any existing businesses.

Mr. Cooper replied that any existing establishments would be grandfathered.

Mr. Billingsley inquired whether Assembly Member Roberts is opposed to Community Planning’s revision to the ordinance amendment.

Mr. Cooper responded he cannot speak for Mr. Roberts. His impression is that Mr. Roberts would prefer to keep the ordinance amendment as proposed.

Mr. Billingsley questioned whether some of the organizations are receiving federal funding and can it be confirmed that any of them will not receive federal funding if the ordinance amendment doesn’t go through.
Mr. Cooper answered there was no confirmation that organizations will not receive federal funding. Several of the programs are registered federal apprenticeship programs.

Mr. Billingsley asked whether that means they are getting federal funding or that they are eligible for federal funding.

Mr. Cooper replied his understanding is they are receiving and eligible for federal funding.

Mr. Billingsley stated that an issue might be how impractical or practical it is to implement the ordinance without knowing which schools this should be applied to or not.

Mr. Cooper acknowledged that could be an issue and that there have been long discussions with Community Planning about how best to address how to implement the ordinance. There were other options discussed besides the written agreement and recognized there isn't really a perfect solution.

Mr. Perreault queried what Mr. Cooper and Mr. Roberts had in mind as a definition for a trade/technical/vocational school and how that implementation was going to look when as pointed out it is ambiguous.

Ms. Doxey directed the commission's attention to the already defined term. The term used in the proposed ordinance already has a definition in Title 18.

Mr. Perreault expressed he understood that the definition from Title 18 is in the Community Planning report and that it is also pointed out in the report that the definition is different at the state level versus when you ask the Marijuana Control Board. He questioned knowing that since there are differences in definition, what implementation was envisioned?

Mr. Cooper stated from a Borough perspective the definition he would rely on would be the Title 18 definition. Implementation would involve work with Community Planning and applicants for licensed marijuana establishments to look at the area surrounding the proposed establishment to see what was there. If there was a union hall or a type of trade/technical/vocational school within the buffer there would have to be more inquiry.

Ms. Doxey read the Title 18 definition “trade/technical/vocational school means a school on a secondary or post-secondary level that offers instruction and practical experience in skilled trades including, but not limited to aviation, mechanics, carpentry, plumbing and construction.”

Mr. Billingsley summarized that the ordinance amendment would be implemented through the applicant and Community Planning working together to research which schools are within the zone and that the overall burden would fall on Community Planning because it is their obligation under the regulations. Community Planning is saying that the new regulations would be difficult for the department.

Mr. Cooper affirmed that is correct.
Ms. Nelson presented that Community Planning does support the intent and purpose of the ordinance to protect K-12 students with a five hundred foot buffer while attending trade/technical/vocational training off site from school district buildings or campuses. Community Planning has concerns relating to the actual administration of code if it is adopted as written, specifically the ambiguity of what is considered a trade/technical/vocational school for the purposes of the five hundred foot buffer for schools that provide training to 18 years of age and under. How the determination of which of those schools get a five hundred foot buffer and which don’t is the issue. There is not a single database that lists all of the trade/technical/vocational school. What Community Planning is proposing is to try and limit or define which of those schools should qualify for this buffer and which should not. The same issue came up with daycares and group homes. The word licensed was utilized with daycares in order to use the state database of licensed daycares, if they are on that list they qualify for a buffer; group homes that serve clients 18 years of age and under are defined as qualifying for a buffer. If Community Planning can’t find the schools how is the applicant going to find them and how is Community Planning going to verify the applicant’s findings. There will be a lot of work on the applicant to find out how many students the school serves, on what basis, how frequently, and a determination on whether those are regular services or not. There would also likely be appeal process attached to it since Community Planning would be making decisions on a person’s private property rights as to whether they can or cannot operate a business solely based on a buffer distance. Schools, applicants and interested parties may want to appeal the decisions. The ordinance would add a great number of layers to process, time, cost both to the applicants and the tax payers. Community Planning makes the following recommendations, first that there is a written agreement with a public school district or private school and second provide educational programs to K-12 students, and which does so on a regular and continuing basis.

Mr. Billingsley inquired whether legal has an opinion on Ms. Nelson’s analysis and the likelihood of being subjected to lawsuit.

Ms. Doxey responded “yes, I do and I would take the opportunity also to clarify a few points. I don’t think the language that we’re considering today is unduly vague or legal doesn’t administer this at the level that Community Planning does but that creates new implementation problems. So I want to clarify that the language we’re considering now at least is in your packet on page 110 and 111 and there was mention of this applying just to 18 and under, 18 year olds and under, and then also a question about what regular services would mean. I think those are references to different versions of language that were previously considered but that’s not what’s in the ordinance before you currently. Right now what is before the Planning Commission is an ordinance to change, you can see on page 111, 3 sub-a. Five hundred feet of primary and secondary buildings (K-12) and then there’s a comma and then it would be a second use of trade/technical/vocational schools. So that’s not modified by the K-12 that comes before it, so all trade/technical and vocational schools which is already in our code and already defined are gonna fall within that five hundred foot buffer. There’s no consideration as currently before the Planning Commission about whether the services are regular. I just want to further point out that the definition of trade/technical/vocational schools already exists and it’s already in Title 18. So that’s already being administered at least in theory, that definition. Just one other thing that I would point out, in our standards for commercial marijuana establishments in 18.96.240 that code provision puts the burden on an applicant to bring forward the map to show what uses are within the buffer when they bring in their application.”

Mr. Billingsley questioned is that conflicting in some way though, with the Borough’s duty to evaluate the applications.
Ms. Doxey responded “no, I don’t think it’s conflicting. The Borough, Community Planning still has its independent duty to verify like Ms. Nelson did mention and then of course before you.”

Mr. Billingsley stated they could still be sued even though there’s the burden on the applicant, there’s also the burden on the Borough there.

Ms. Doxey replied “I guess I have a hard time seeing where a suit would come from. I mean the Planning Commission is ultimately going to be the deciding decision maker when we’re talking about a conditional use permit and your decisions are going to be based on substantial evidence in the record.”

Mr. Billingsley queried some of these might not be conditional uses though.

Ms. Doxey responded “right, but then it’s an outright permitted use.”

Mr. Billingsley asked then it would be solely them evaluating it.

Ms. Doxey replied “for a zoning permit.”

Mr. Billingsley questioned what you are saying is, you don’t really see the uncertainty and ambiguities because they’re already having to find all the trade/technical/ vocational schools. There are no new ambiguities at least.

Ms. Doxey responded “Correct”.

Mr. Muehling inquired what kind of time and effort, how does the applicant go about finding out is there a trade/technical/vocational school with this amendment.

Ms. Nelson replied they would have to go to the businesses nearby and find out whether or not they’re teaching courses there. Some of them may be on a list somewhere and some of them may not be. They would have to find out information, how many students, what kind of courses, how frequently, all of that information will need to be evaluated against our definition of trade/technical/vocational schools.”

Ms. Doxey pointed out that FNSB code does not require any inquiry into the number of students or how often training is going on.

Mr. Billingsley noted that would only happen if Ms. Nelson’s amendment is adopted, which requires regular use. He then questioned Ms. Nelson why she was referencing the ACPE list.

Ms. Nelson responded that the ACPE list is acknowledged by the State of Alaska as post-secondary programs and is a source of information as to whether a business offers approved training. The Borough attorney has told me that we can make determinations by policy; however we have to have information in which to evaluate each individual circumstance against that policy.

Mr. Billingsley inquired if the Borough interprets trade/technical/vocational to include the ACPE list.

Ms. Doxey replied she has not seen the ACPE list. It might be a starting place to see where these schools are located. The ACPE list might sweep in schools that don’t fit our definition or they might all fit our definition, but there might be more that also fit our definition, the ACPE list is not based on our definition of the use.
Mr. Perreault noted that the Community Planning use of the ACPE list is really as a starting point to try and define the differences between something like the University’s downtown branch and whether or not students from there are placed in a hair salon to learn how to cut hair. As well as to whether the hair salon is a school or is just the building that they’re based out of a school. He queried if that what he is supposed to be getting from the ACPE list. Not looking at it as a definition, but as a starting point about trying to parse what’s a school versus what is a place that kids sometimes go to.

Ms. Nelson responded correct, the ACPE list is one of the sources; there are multiple sources none of which are comprehensive.

Mr. Perreault queried that the ACPE list is not something you are suggesting as a definite list but a starting point at where to begin.

Ms. Nelson replied should this ordinance amendment pass we would give all applicants a list of sources; however there are programs and schools that aren’t on any list. There could be other lists out there; there is not one comprehensive list of all of these programs.

Mr. Perreault questioned such as there is for State of Alaska licensed daycares.

Ms. Nelson responded “Correct”.

Ms. Thayer inquired you are saying that the FNSBSD can’t give us a list; they don’t know where their students are going.

Ms. Nelson answered that the FNSBSD can come up with a list of programs they have written agreements with. Their students might be going to other programs that they are not getting school credit for or not going through the FNSBSD for.

Mr. Muehling questioned if there is a distinction being made between trade schools training which is primarily post-secondary and a high school student involvement may be incidental to the primary mission of a trade school.

Ms. Nelson replied that is a distinction that the amendment is trying to get to. The way the ordinance is currently written, as proposed without any option 1 or option 2, would give a five hundred foot buffer to all trade schools even those that are primarily 21 years of age and up. Throughout the marijuana regulation process, 18 years of age was where we made distinctions between what needed to have a five hundred or a two hundred foot buffer for educational purposes. Youth centers, playgrounds and all sorts of other places only have a one hundred foot buffer; those are more predominantly under the age 18 than trade/technical/vocational schools.

Public Testimony Opened

Mr. Pomeroy spoke in support of the ordinance. Mr. Pomeroy pointed out that the Laborer’s Union Hall and the Labor Management URISA Training Trust are two separate entities. The training trust is registered with the U.S. Department of Labor as a federally registered apprenticeship program. There are milestones that have to be met in order to be a recipient of State of Alaska STEP grants or any federal government funding. Many of those milestones are designed to identify, target and train disadvantaged youth in the age group being discussed and training is held year round.

Mr. Perreault queried Mr. Pomeroy’s input on how to separate union halls from the facilities where there are kids under 18 years of age coming to learn a trade.
Mr. Pomeroy responded that the ordinance presented by Assembly members Cooper and Roberts stated it well as a federally registered apprenticeship program.

Mr. Perreault questioned is it the Department of Labor that does the recognizing at the federal level?

Mr. Pomeroy replied yes, if there is an apprenticeship program that has not been accredited by the U.S. Department of Labor there are state programs that the state will accredit as state approved apprenticeship programs.

Mr. Perreault stated that part of the confusion is that the term federally accredited is not part of the actual ordinance, separating the two is key.

Mr. Guinn questioned after hearing testimony do you think there should be additional language added to the proposed amendment.

Ms. Nelson responded she is open to adding better language to the amendment. The wording in its original form protects all vocational programs, no matter the age of the participants, or it can be further defined.

Mr. Guinn further questioned if the list maintained by the Department of Labor is not adequate.

Ms. Nelson replied no, and there are no lists available that are inclusive.

Ms. Presler inquired if an applicant came in to apply under the current ordinance the burden is on them to research their proposed location for any buffer violations.

Ms. Nelson answered "Initially yes".

Ms. Presler queried what would happen if an applicant went through the process, was granted a permit, opened their doors and then found out there was a violation of the buffer zone.

Ms. Doxey responded Permits are issued on the basis of the information presented. If the information presented by the applicant was incorrect then potentially that could be a basis for voiding that permit. When you are issuing a permit, particularly a conditional use permit, it’s going through a vetting process for a reason and people are going to rely on that. There is a duty for Community Planning to do due diligence and be checking these applications.

Ms. Nelson questioned what level of investigation is appropriate or expected of an applicant. If there is no way of identifying there is a training facility in the buffer zone the applicant isn’t going to be able to differentiate that training is happening at that facility even if they go speak to them. The standard has been to rely on Assessor’s records and visual inspections to evaluate the situation.

Ms. Presler stated what business doesn't provide some form of training; the definition could be very broad.

Ms. Nelson replied the definition exists in our code now and policy can be written to set parameters. Based on that policy we would be making case by case decisions in many of the cases.

Mr. Perreault questioned Mr. Pomeroy if the amendment would cover your facility and do you have a written agreement with the school district.
Mr. Pomeroy responded not the laborer’s campus through FNSBSD, through the Fairbanks Pipeline Training Center yes.

Mr. Perreault further questioned most but not all of the facilities you’re involved with would fall under the language where this is a written agreement with the FNSBSD.

Mr. Pomeroy replied it would, but not all of them.

Ms. Doxey clarified “This language that’s been proposed says a written agreement; we’re talking about a trade/technical/vocational school as defined in Title 18 that has a written agreement with a public school district or a private school. In order to meet the definition of a trade/technical vocational school it’s already been determined that it is a school. I would argue that a trade/technical/vocational school would fit in this category of private schools that could then have a written agreement with that trade/technical/vocational school.”

Mr. Perreault stated we don’t have a definition for school, we have a definition for school building which specifically excludes trade/technical/vocational schools. Because we don’t have a separate definition for what is a school and what is not a school, this ordinance needs to stand on its own.

Ms. Doxey replied “That’s correct, we would go to the common definition or the common understanding of what a school is which is a pretty well defined use, I think common understanding of what a school is. What I’m trying to point out here is that this language could have a school providing a written agreement to its own school.

Mr. Perreault pointed out that the goal is to draw a line for the five hundred foot buffer to account for kids under age 18.

Ms. Doxey responded to address just the distinction between 18 years of age and younger and 18 years of age and older, if you look at attachment six option one, that language accomplishes that distinction.

Public Testimony Closed

MOTION: To recommend approval of Ord 2016-71 with Option 1 language to the FNSB Assembly with the amendment to the Option 1 language of 3(a) to read as follows: Trade/technical/vocational schools having a written agreement with a public school district or private school to provide educational programs to K-12 students, and which does so on a regular and continuing basis, by Mr. Billingsley, seconded by Ms. Thayer.

Discussion

Mr. Billingsley and Ms. Doxey clarified language needed for the amendment wording.

MOTION: To amend the motion to change the wording of 3(a) to read as follows: Trade/technical/vocational schools providing regular services to students ages 18 years of age and under, by Mr. Billingsley, seconded by Ms. Thayer.

Discussion on the motion to amend
None
ROLL CALL

Ten (10) in Favor: Mr. Brandt, Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. O’Neall, Mr. Billingsley, Ms. Thayer, Mr. Stepovich, Mr. Perreault, Ms. Presler

Zero (0) Opposed: 

MOTION CARRIED

Further discussion on the main motion as amended
None

Main motion now reads as follows:

To recommend approval of Ord 2016-71 with Option 1 language to the FNSB Assembly with the amendment to the Option 1 language of 3(a) to read as follows: Trade/technical/vocational schools providing regular services to students 18 years of age and under, by Mr. Billingsley, seconded by Ms. Thayer.

ROLL CALL

Seven (10) in Favor: Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. O’Neall, Mr. Billingsley, Ms. Thayer, Mr. Stepovich, Mr. Perreault, Mr. Brandt, Ms. Presler

Zero (0) Opposed: 

MOTION CARRIED

H. APPEALS

None

I. UNFINISHED BUSINESS

None

J. NEW BUSINESS

None

K. EXCUSE ABSENT MEMBERS

None

L. COMMISSIONER’S COMMENTS

1. FMATS

   Ms. Thayer relayed information regarding ongoing projects at FMATS.

2. Other
Ms. O’Neall appreciated the work session today and the work put into making our community more accessible. She looks forward to seeing improvements and commends the people who work on it.

Mr. Muehling commented this is his first meeting and he is impressed with the staff reports and legal support.

Ms. Nelson shared there may not be a meeting on March 21, 2017 Planning Commission meeting unless there is an item postponed from the second meeting in February.

**M. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:28 p.m.
MINUTES

March 7, 2017
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 6:00 p.m. by Wendy Presler, Chairman.

MEMBERS PRESENT: Chris Guinn  Mark Billingsley  
Michael Stepovich  Pat Thayer  
Charles Whitaker  Wendy Presler  
John Perreault  Mindy O’Neall  
David Brandt  Eric Muehling

MEMBERS ABSENT: Robert Peterson

OTHERS PRESENT: Christine Nelson, Director of Community Planning  
Kellen Spillman, Deputy Director of Community Planning  
Manish Singh, Planner II  
Wendy Doxey, Asst. Borough Attorney  
Stephanie Pearson, Community Research Tech  
Laura McLean, Administrative Assistant  
Bridget Hamilton, Permit Tech

A. **ROLL CALL**
B. **MESSAGES**

1. Chairperson’s Comments

   None

2. Commissioner’s Comments

   None

3. Communications to the Planning Commission

   **Ms. Nelson** informed the commission there had been a new appeal and an appeal matrix will be given to them at the next Planning Commission meeting.

4. Citizen’s Comments – limited to three (3) minutes

   a. Items other than those appearing on the agenda.

   None
5. Disclosure & Statement of Conflict of Interest

Mr. Guinn stated he was contacted by Mr. Ray Brasier, the owner of one of the properties involved in the Conditional Use Permit being heard tonight. Mr. Brasier is a longtime colleague and called to ask about giving telephonic testimony because he could not attend the meeting. He added he feels he can remain objective.

Ms. Doxey asked if Mr. Brasier talked about the substance of the Conditional Use Permit or Mr. Brasier’s testimony.

Mr. Guinn responded he did not.

Ms. Presler inquired if any future business would be influenced by his decision on the Conditional Use Permit.

Mr. Guinn replied he did not think his decision would affect his future business with Mr. Brasier.

Ms. Presler stated there is not a conflict.

C. * APPROVAL OF 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. Thayer, seconded by Mr. Billingsley.

CARRIED WITHOUT OBJECTION

D. MINUTES


E. CONSENT AGENDA ITEMS

None

F. QUASI-JUDICIAL HEARING

CU2017-012: A request by Matthew Langberg DBA CI’s Canna LLC on behalf of Rod & Lori Cahill and Norseman Investments LLC for conditional use approval of a marijuana cultivation facility, indoor large in the General Commercial (GC) zone on Lot 3A & Lot 3B, Block 6, Rickert Subdivision (located at 1616 Cushman Street, on the west side of Cushman Street, between 16th Avenue and 17th Avenue).

OATH GIVEN
Mr. Singh presented the staff report. Based on the staff analysis, the Department of Community Planning recommended **APPROVAL** of the conditional use request with the following four (4) conditions of approval and three (3) Findings of Fact: The staff analysis finds that the marijuana cultivation facility, indoor large, with proposed conditions, will meet the intent and purpose of Title 18 and of other ordinances and state statutes, will have adequate public services and will protect public health, safety and welfare.

**Conditions for Approval**

1. Prior to the commencement of operations, the applicant or holder of this conditional use permit shall comply with all applicable land use related laws. Applicable permits and approvals may include but are not limited to:
   a. As required by the FNSB and the Department of Commerce, Community, and Economic Development (Alcohol and Marijuana Control Office), the applicant or holder of this conditional use permit shall ensure the site meets all licensing requirements for a commercial marijuana cultivation facility.
   b. The applicant or holder of this conditional use permit shall obtain a formal plan review by the City of Fairbanks Building Department and Fire Department and shall comply with all recommendations and/or requirements resulting from the plan review.
   c. The applicant or holder of this conditional use permit shall obtain a written wastewater control plan review by Golden Heart Utilities and shall comply with all requirements and/or recommendations resulting from the plan review.

2. Indoor cultivation, drying, and processing rooms or portions of the building shall be equipped with appropriately sized odor filtration systems and marijuana odor shall not be detectable by the public from outside the cultivation facilities.

3. If any portion of the first floor is used for any functions supporting a marijuana establishment an amendment to the Conditional Use Permit or a new Conditional Use Permit shall be required.

4. If any modifications are made to the site plan, second story floor plan, or other FNSB required documents, the applicant or holder of this conditional use permits shall submit revised documents to the FNSB Community Planning Department. If modifications are made to the conditional use, an amendment to the Conditional Use Permit may be required pursuant to FNSBC 18.104.050(D).

**Findings of Fact for approval**

1. With the conditions imposed, the proposed conditional use will conform to the intent and purpose of Title 18 and of other ordinances and state statutes:
   a. The purpose of Title 18 will be met because the proposed conditional use is consistent with ‘Urban Preferred Commercial Area’ comprehensive plan land use designation. The Comprehensive Plan Land Use Goal 3 and Economic Development Goal 2 are being enhanced with the redevelopment of this site as a marijuana cultivation facility.
   b. The intent of Title 18 will be met because with the conditions imposed, the conditional use will both protect private property rights and promote public health, safety, and welfare.
c. 3AAC 306 governs the state licensing and operational standards for marijuana facilities. Title 18 requires that a borough permitted commercial marijuana facility obtain a license pursuant to all state regulations. The applicant has provided information sufficient to show they intend to meet the state regulations and to apply for a state issued license.

2. With the conditions imposed, there are adequate existing energy and transportation facilities serving the site and other public services are available to serve the proposed conditional use.

a. The site is served by City of Fairbanks sewer and water.
b. The site is served by City of Fairbanks Police and Fire Department.
c. The site is currently connected to the GVEA grid and will provide sufficient energy supply for indoor cultivation activities.
d. Five (5) required off-street parking spaces and a loading area have been provided on-site, which are adequate for the proposed cultivation conditional use.
e. Traffic generated by the proposed use will have relatively little impact on South Cushman Street which is maintained by the City of Fairbanks and has adequate capacity for the additional trips generated.

3. With the conditions imposed, the proposed conditional use will protect public health, safety, and welfare as the facility will comply with Title 18 standards for the GC zone and Standards for Commercial Marijuana Establishments (FNSBC 18.64 and 18.96.240, respectively) as well as state requirements for a commercial marijuana cultivation facility.

a. With the conditions imposed, security systems, alarms, locks, cameras and lighting will meet state regulations required to obtain a commercial marijuana cultivation license.
b. With the conditions imposed, any solid or liquid waste including marijuana plant waste will be disposed of according to state and local regulations.
c. With the conditions imposed, odor will be mitigated with appropriately sized odor filtration systems on cultivation, drying, and processing facilities.
d. All marijuana and marijuana products would be secured inside the building to ensure the general public does not have access to them.
e. The noise generated from this cultivation operation would be negligible because the operation is completely indoors.
f. The outdoor lighting would point downwards on the parking area and would not negatively impact adjacent residential zones.
g. The hours of operation do not negatively impact the neighborhood because the facility is located on South Cushman Street which is arterial type roadway and experiences 24-hour traffic.

Mr. Whitaker asked if the parking lot for the proposed cultivation facility owned by Norseman investments

Mr. Singh replied the parking lot on the west side is owned by Norseman Investments. The proposed cultivation facility building is not currently owned by Norseman Investments per FNSB Assessing record, but is owned by Rod and Lori Cahill, who have both provided consent for the facility.

Mr. Whitaker questioned if the lots across Stacia Street from the proposed cultivation facility are currently vacant.
Mr. Singh answered the lots to the west of the proposed cultivation facility are currently raw vacant land.

Mr. Perreault asked for clarification on the 100 foot buffer and where it does or does not reach. He stated it looks like the residential area starts across the street from the proposed cultivation facility. He also asked how wide Stacia Street is.

Mr. Singh referred Mr. Perreault to the Site Plan in the Planning Commission meeting packet. Stacia Street is a 50 foot wide right-of-way; the building of the proposed cultivation facility is approximately 80 feet from Stacia Street. Therefore, the proposed cultivation facility is more than 100 feet away from the property line of the residential zone, this is the reason staff did not require a more detailed drawing from the applicant.

Ms. Thayer inquired who owns the building of the proposed cultivation facility.

Mr. Singh responded the building is owned by Rod and Lori Cahill, and they have made a statement that they are giving the building back to Norseman Investments. The FNSB Assessing Department will list the property as owned by Rod and Lori Cahill until the transaction is complete.

Ms. O’Neall inquired about the apartments above the proposed cultivation facility and if there would be tenants in the apartments once the facility opens or if the upstairs would be used for the cultivation facility.

Mr. Singh replied the applicant has mentioned in their application that the upstairs has three active apartments. During the staff site visit, it was found there was one person living in an apartment. The applicant clarified the upstairs would be completely modified for the marijuana cultivation facility pending approvals and would no longer be used as apartments.

Mr. Whitaker questioned whether it is truly possible to have no odor outside a marijuana facility.

OATH GIVEN TO MS. NELSON

Ms. Nelson answered in her experience of visiting marijuana facilities outside of Alaska she found it is entirely possible to eliminate odor. It will take monitoring to ensure a facility has the right size and the right number of filters though.

Mr. Whitaker asked if monitoring the odor of marijuana facilities would be complaint driven requiring a neighbor to report the odor and staff to visit the marijuana facility to inspect for odor.

Ms. Nelson responded monitoring would generally be complaint driven or if staff was already on site they could address the odor.

Mr. Whitaker questioned if it is an applicant’s responsibility to research the proper filtration size and to implement it.

Ms. Nelson replied the applicant is responsible for researching the proper filtration size. A filtration system is dependent on your HVAC system, room configuration and size making it impossible for staff to prescribe filtration systems.

Ms. Thayer queried what the distance is between the proposed cultivation facility and the nearby marijuana facility. How wide are the lots?
Mr. Singh answered each lot is approximately 50 feet wide. He estimated the facilities would be at least 150 feet from each other.

Mr. Brandt inquired if the Housing First Homeless Assistance Program run by Tanana Chiefs directly across Cushman Street from the proposed cultivation facility is not considered a sensitive use.

Mr. Singh responded the Housing First Homeless Assistance Program is not a FNSB sensitive use because it is not owned by a public housing authority with children as residents.

Mr. Brandt countered his understanding is the Housing First Homeless Assistance Program houses people with substance abuse problems and questioned if they offer substance abuse counseling.

Mr. Singh replied he has not personally spoken with the Housing First Homeless Assistance Program, but in looking at their website it appears to be a housing program.

Mr. Stepovich asked for clarification on the marijuana matrix and whether the buffer distance is measured from the lot line or the building.

Mr. Singh answered it is both; buffer distance is measured from the lot line of the sensitive use and the building of the marijuana facility; which in this instance is more than 100 feet.

Mr. Perreault questioned if there have been any complaints about other marijuana facilities in the neighborhood up to this point.

Mr. Singh responded the nearby approved marijuana facility is not yet active. With no operation in place he cannot comment if there have been any complaints.

Ms. Thayer queried how many dear property owner letters were sent out by staff and how many responses were received for this conditional use permit.

Mr. Singh replied 231 dear property owner letters were sent out by staff and he received two phone calls and one walk in inquiry in response to the letters.

Ms. Thayer asked Mr. Singh to elaborate on the inquiries.

Mr. Singh answered the people who responded in regards to this case were trying to understand what the proposed Conditional Use Permit would do. Staff tried to educate them on the substance of the conditional use and encouraged them to participate in the hearing.

Mr. Matthew Langberg applicant addressed the Planning Commission. He stated he had not prepared a formal presentation; his understanding was he would be answering questions and presenting his rebuttal to someone else’s questions. He requested the Planning Commission approve the Conditional Use Permit.

Mr. Spillman inquired if Mr. Langberg reviewed the conditions that were prepared for this Conditional Use Permit and if he had any issue with them.

Mr. Langberg responded he had reviewed them. He does not have any issues with the conditions and is prepared to comply with them.
Ms. O’Neall asked if Mr. Langberg had spoken with anyone at Housing First Homeless Assistance Program or any of the neighbors in the area about the plans to open a marijuana cultivation facility.

Mr. Langberg replied there were a few people who asked about his plans to open the marijuana cultivation facility as well as the gentleman who has received approval to open a marijuana facility nearby.

Ms. O’Neall questioned if Mr. Langberg had thought about how his business would impact the character of the neighborhood.

Mr. Langberg responded he has thought about it and he thinks there will be little impact. Ample parking is available; a maximum of 6 people will be working, security will be added to the inside and the outside of the cultivation facility building. He is prepared to comply with all the conditions set before him.

Ms. O’Neall queried Mr. Langberg’s plans for the space currently being used as an apartment.

Mr. Langberg answered non-structural partitions will be taken down and the current tenants lease expires at the end of March.

Mr. Muehling asked for clarification of where the standard came from for mixing 50% marijuana waste and 50% cardboard to render the marijuana unusable and ready for disposal.

Mr. Langberg replied he does not have documentation that states the ratio to use, but he did speak with growers in Colorado who are much farther along in the industry than we are locally and those are the numbers recommended for him to use to render the marijuana unusable for disposal.

 Interested Person Testimony Opened

Mr. Lyall Raymond Brasier interested person, addressed the Planning Commission. He is the co-owner of multiple properties and co-owner of Norseman Investments. He supports the proposed cultivation facility.

Mr. Perreault inquired if the rest of Mr. Brasier’s properties are in the same neighborhood.

Mr. Brasier responded he owns a 19-plex, 14-plex a 7-plex and five houses within 180 feet of the proposed cultivation facility.

Ms. Lisa Brasier stated she is in full support of the marijuana cultivation facility being in the area.

The recording Clerk read into record the written affidavit testimony of Mr. George Weaver
“We are against CU2017-012. We own property at 204 18th Avenue, 304 18th Avenue, 305 18th Avenue. Our family has lived at 304 18th Avenue since it was built in 1953.”

"Over that time I have seen the South Cushman Street area go from an expanding vibrant neighborhood with both business and residential areas thriving, to a declining and less vibrant neighborhood. We have been robbed twice in the last 3 years. We have homeless people living in the vacant lots in the area. I have even had a guy pull up to my garage and start loading his pickup with my stuff."
“Over the past 10 or so years the City of Fairbanks and the Fairbanks North Star Borough have allowed at least 10 or more places to buy alcohol just from Airport and Cushman Street to 30th Avenue and Cushman. You have allowed a facility for inebriates to sleep off their condition. Far too often there are shootings at bars, police and ambulance calls to take some inebriate to the hospital so they don’t freeze to death. Every morning there is a parade of staggering people heading toward the liquor stores to get more of their beverages, they can’t afford. Along the way they bother customers of other businesses up and down Cushman Street.”

“Now you are considering the development of a marijuana cultivation facility right in the middle of this declining neighborhood. The developers will promise to be good neighbors and be an asset to the area, but I have found that profit always trumps safety and security.”

'It is hard to believe there is not a more suitable place for this kind of facility, away from the residential area, away from the schools nearby and away from the daycare center just down the street. Please don’t add to the existing problems of the South Cushman area and deny CU2017-012.”

Interested Person Testimony Closed

Mr. Langberg stated the marijuana cultivation facility will not be open to the public and will not have a retail space. There won’t be many signs up advertising there is a cultivation facility. The impact will be low and won’t add to the homeless problems in the area, if anything the cultivation facility would help add security to the area with cameras, security and lighting.

Mr. Perreault asked staff to explain what the as amended and addendum are.

Mr. Singh responded additional wording was added to Condition number 3, it now reads “If any portion of the first floor shown as ‘not related to marijuana cultivation’ in Addendum A is used for any functions supporting a marijuana cultivation establishment, an amendment to the Conditional Use Permit or a new Conditional Use Permit shall be required. Condition number 4 has the addition of the letter s to the word ‘plan’ and has the deletion the phrase ‘second story’. The staff report has been supplemented with Addendum A which is a floor plan for the first floor, staff received it this afternoon.

MOTION: To approve CU2017-010 for a commercial marijuana cultivation facility, indoor large with four (4) conditions, as amended, and adopting the staff report, Addendum A and three (3) findings of fact, in support of approval by Ms. O’Neall, seconded by Mr. Guinn.

Ms. O’Neall stated she had concerns at first about the housing facility across the street but with the security the marijuana cultivation facility would add and because the applicant has no plans to open a retail facility she is now in support of the Conditional Use Permit.

Mr. Guinn plans to vote in favor of the Conditional Use Permit. He commented the alcohol problem in the neighborhood is a separate issue from this Conditional Use Permit. Since the marijuana cultivation facility will not be selling marijuana there won’t be people running around the neighborhood with marijuana in their system.
Mr. Billingsley affirmed he will vote against the Conditional Use Permit to be consistent with his voting on other Marijuana Conditional Use Permits the Planning Commission has heard recently. Marijuana facilities were made a conditional use in areas like this so that the decisions could be made on a case by case basis. He thinks the criterion most subject to the Planning Commissions discretion is the health, safety and welfare; his judgement takes into account the proposed marijuana cultivation facility’s proximity to sensitive uses or similar uses and residences.

Mr. Perreault stated the proposed marijuana cultivation facility is one of the lowest impacts to the surrounding area you can have with marijuana businesses. There will be minimal signage for the cultivation facility since it is not a retail facility. The cultivation facility will be abutting a primary commercial street in one of the primary commercial corridors in our city. For those reasons he will support the proposed Conditional Use Permit and added this location is a useful place to put the cultivation facility.

Mr. Muehling pointed out the Conditional Use Permit applicant has addressed many of the impacts that a marijuana cultivation facility could have on a neighborhood. The proposed Conditional Use Permit will have a low impact and he will support it.

Ms. Thayer agreed with Mr. Perreault in regards to the proposed marijuana cultivation building having improvements made which will help immensely and the vacant lots will now be utilized. Security, cameras and lighting will be added to help the area in regards to safety. The proposed marijuana cultivation facility will have very low impact and she will be voting in favor of it.

Ms. Presler commented the part of Cushman Street in which the Proposed Conditional Use Permit will be is a bit run down and poorly maintained. She thinks the proposed cultivation facility will help with those issues and help the owner to improve this property. The cultivation facility will not be open to the public and shouldn’t affect the nearby residential area or the housing facility. The property will be more secure, the property will look better than it does now, there won’t be a significant amount of traffic added to the neighborhood, the conditional use conforms to the intent of Title 18 and it will help improve the economy.

ROLL CALL

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

Two (2) Opposed:  Mr. Brandt, Mr. Billingsley

MOTION CARRIED

G.  PUBLIC HEARING

Ordinance 2017-14: An Ordinance Amending FNSBC 18.96.240(A)(3) Regarding Buffer Distances For Marijuana Establishments And Deleting The Definition of Cultivation Broker Facility And Deleting It As A Used in Title 18.
Kathryn Dodge, Assembly member and co-sponsor, stated that the staff report was as usual fabulous. The ordinance is being put forward because someone came to her and said they were trying to put in a retail facility; they explained how the current code impacts people if there is a sensitive use in a mall. Currently a buffer is measured from a marijuana establishment to the lot line of the sensitive use, which can be problematic for many reasons. Primarily because a lot line is not necessarily a clear thing, due to historical easement practices and mapping that is a little off it is not the best thing to measure to. Secondly, with regards to sensitive uses in malls and multiple principal buildings; large areas are taken out of the options for marijuana facilities. The proposed ordinance addresses those concerns by measuring from the main public entrance of the marijuana facility to the building used by the sensitive use and not the entire lot.

John Davies, Assembly member and co-sponsor, added that the ordinance should reduce workload for Community Planning staff by making the process used to make the determinations more specific.

Mr. Spillman presented the staff report. This ordinance is proposing three different changes:

1. To change the majority of buffer distances from lot line of the sensitive uses to the building or outer boundary, rather than lot line.
2. To change the measurement point from the marijuana establishment to the nearest public entrance of the establishment, rather than the establishment.
3. To delete cultivation broker facility from any reference in our zoning code, which is not a valid license type in Alaska. When the FNSB zoning code marijuana regulations were being created the State of Alaska’s regulations were in draft format. At that point they had the use of cultivation broker facility as a license. When the States final regulations were being adopted the cultivation broker facility was deleted from their license types.

Mr. Spillman continued that current practice is to measure from lot line to the marijuana establishment and difficulty staff runs into with measuring this way is easements. Many roads within the FNSB are constructed using an easement and not fee simple dedicated right-of-way. Cases come before staff where an owner has lot ownership to the centerline of the road way or somewhere into the easement. When a sensitive use is on a lot with an easement there has been a lot of staff hours put into researching which roadways are built in easements versus fee simple right-of-way. When the original marijuana regulations were proposed it is unclear if the intention was to measure to the centerline of the roadway compared to what most people would perceive as the lot. In the proposed ordinance there are four different methods proposed, depending on the type of sensitive use or zone:

1. Outer boundaries of school buildings, including outdoor school facilities where students are regularly found;
2. Outer boundaries of playgrounds;
3. The lot line of a lot in a residential zone; or
4. The principal building containing other uses listed in subsections (A)(3)(a) through (c) of this section.

Subsections (A)(3)(a) through (c) include uses such as daycares, correctional facilities, group homes, etc. This ordinance proposes to simplify the method used by measuring from the actual building containing the principal use to the nearest public entrance of the marijuana establishment, which conforms to the language used in the Alaska Administrative Code. By making these changes it brings FNSB regulations into consistency of how the certain measurements are applied with Alaska Administrative Code, without using shortest pedestrian route.
Mr. Spillman said that the language for outer boundary of playgrounds, outer boundary of schools where outdoor school facilities where students are regularly found is somewhat ambiguous and could be interpreted in different ways. If the proposed ordinance passes Community Planning would likely need to develop a policy on how to apply the language in those cases. Potential examples of Community Planning policy to be included for a school building outer boundary would be playgrounds, sports fields, bus drop-offs, anything that could be associated as having to do with the principal use of the school building. Potential examples not to be included in school buildings outer boundaries would be trails, undeveloped space, other principal buildings that are not school buildings. An example of other principal buildings that are not school buildings would be a strip mall with a school in the mall. The new measurement would be for the outer boundary of the school use within the strip mall and not the outer boundary of the strip mall lot.

Mr. Spillman said that the changes proposed in this ordinance would result in smaller buffer distances, be more consistent with State of Alaska regulations, be potentially more accurate and easier to administer, more consistent with the comprehensive plan by enhancing development opportunities while minimizing land use conflicts. Based upon staff analysis, the Department of Community Planning recommended approval of Ordinance 2017-14 to the Assembly with the following recommendations.

1. It is more appropriate public policy to buffer from the actual sensitive use than a lot line.
2. In the case of multiple principal uses on a lot or zoning lot, buffer distances will be measured from the principal building and accessory outdoor space devoted to the principal use.
3. With this recommendation it is understood that the Community Planning Department will develop a policy about what will constitute “outer boundaries” and “outdoor school facilities where students are regularly found”.
4. Changing the measurement point from “commercial marijuana establishment” to “nearest public entrance of a commercial marijuana establishment” will bring FNSB Code into consistency with Alaska Administrative Code.
5. There is no longer a listed license type of “cultivation broker facility” in Alaska Administrative Code.

Mr. Perreault stated that Mr. Spillman brought up a concern he had, which is the shortest pedestrian route. It is pointed out in the administrative code and the background of the staff report; however it is not in the ordinance language. He queried how the ordinance will relate to the administrative code and how not using that wording is being avoided.

Mr. Spillman responded that the administrative code is State of Alaska regulation and the State is responsible for enforcing and administering that regulation. Staff saw shortest pedestrian route as troubling and did not want to use that wording in our zoning code. This ordinance is not proposing the shortest pedestrian route; it is keeping it as the actual distance.

Mr. Brandt questioned if the buffer zones worked both ways. Meaning that if there is an existing marijuana facility use in the area is a sensitive use able to move into the marijuana buffering zone.

Mr. Spillman replied the buffer zones do not work both ways, the marijuana facility use would be grandfathered in and it is specifically noted in Alaska State statute. If a sensitive use moves into the area that does not mean the marijuana use has to leave.

Mr. Whitaker asked for clarification on the new measuring method being proposed in the ordinance.
Mr. Spillman answered that the measurement is exact and the way that zoning code is written, it states that the applicant has to present evidence to Community Planning that they meet the measurement requirements.

Mr. Billingsley inquired whether the Cole Memo from the Federal government has a buffer distance.

Mr. Spillman responded that it does not specifically; the Cole Memo outlined some main factors, one of which was keeping away from children. Staff has interpreted that schools are in the USC double penalty zone.

Mr. Billingsley queried how the FNSB buffers compare to those in other states, boroughs or counties.

Ms. Nelson answered other buffers for schools range from three hundred and fifty feet to fifteen hundred feet, the FNSB buffer is five hundred feet.

Mr. Spillman commented that during a conversation with Cynthia Franklin, the former director of the Alcohol and Marijuana Control, she noted that five hundred feet had been chosen because that is the drug free school zone in Alaska. The State of Alaska Administrative Code measures from the outer boundary of the school, which is being proposed in this ordinance.

Mr. Billingsley questioned that it would be measured from the lot line if it is a residence and why it is done that way. He stated that it seems to single out one particular thing for a policy reason whereas a lot of it is based on the practicality of implementation, this just seems like a policy decision.

Ms. Nelson replied that it’s not a residence it is a residential zone and marijuana facilities are not allowed in residential zones. The rationale when the marijuana regulations were developed was marijuana facilities would not be allowed in residential zones and there would be a buffer from the zone line.

Mr. Billingsley inquired what the policy is behind not including residential.

Mr. Davies responded it follows what Ms. Nelson said, it is a residential zone and the other areas where you are not in a GU circumstance are clear the boundary is the area of the residential zone. When talking about a sensitive use the only place where this is a factor is where you have GU zoning and a conditional use. The concern was there is a lot of residential development in GU zones and the zoning is not the same as the use.

Mr. Billingsley stated residence is a use just like childcare is a use; childcare could take up the whole lot.

Mr. Davies replied that was the reasoning for measuring from the edge of the property line.

Mr. Brandt questioned who determines on a sensitive use whether students are regularly found there.

Mr. Spillman answered it would be up to staff to determine and would likely be through an internal policy.
Mr. Muehling summarized that the method of measuring the distance from sensitive use in the proposed ordinance is more convenient and easier. It also complies with language and method the State of Alaska uses for buffering. This ordinance conforms to the five hundred foot intent, there is still a five hundred foot buffer, it is just a different way of measuring it and it matches the State of Alaska definition. He queried if that was a correct summarization.

Mr. Spillman responded that staffs position is the State of Alaska didn’t intend to be buffering sensitive use from the centerline of the road in some cases, rather where students would be found.

Mr. Billingsley asked how Ms. Dodge and Mr. Davies felt about this ordinance measuring the buffer distance differently since it could affect the overall buffer distance.

Mr. Davies answered that it is a more reasonable way of measuring the buffer distance.

Ms. Dodge agreed with Mr. Davies. The proposed ordinance seems to measures sensitive use the way it was intended in the first place as opposed to what seemed easier initially.

**Public Testimony Opened**

None

**Public Testimony Closed**

**MOTION:** To recommend approval of Ordinance No. 2017-14 to the FNSB Assembly, by Ms. Thayer, seconded by Mr. Guinn.

**Discussion**

Mr. Billingsley expressed that he generally supports this ordinance; he thinks it is significant and it could have made a difference in cases that were previously seen. There are concerns about the smaller buffer distances and singling out residences, but not the other sensitive uses.

Mr. Guinn stated that he will vote in favor of the ordinance, it brings efficiency to the staff time used and the reasoning behind it.

Mr. Muehling commented that this ordinance fully supports the intent of a five hundred foot buffer, only the measuring method will be changed, he is in support of the ordinance.

Mr. Brandt countered this ordinance would take away some of the rights of the adjacent property owners. He understands that they have the right to build close to the marijuana facility if they want to. He added that they might already own land in the area and in the future would like to expand but they don’t because a marijuana facility has moved in. He pointed out that an owner of a strip mall might not be able to draw customers/renters to the mall because the establishment is within a buffer zone.

Mr. Perreault expressed his intent to approve the ordinance and pointed out it can be difficult to make buffer zones and policies because it can seem like a good plan until you start to try and implement it. This ordinance is in general a clarification and a step forward in a developing set of rules.
ROLL CALL

Nine (9) in Favor:  Mr. Perreault, Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. O’Neall, Mr. Billingsley, Mr. Stepovich, Ms. Thayer, Ms. Presler

One (1) Opposed:  Mr. Brandt

MOTION CARRIED

Ordinance 2017-21: An Ordinance Amending FNSBC Title 18 To Define Community Gardens And To Add Community Gardens As A Permitted Use Or Conditional Use In Appropriate Zones.

Mr. Spillman presented the staff report. The proposed ordinance would create two new uses: a Neighborhood Community Garden and a Regional Community Garden to be inserted into appropriate zones, either permitted or by conditional use. Periodically zoning codes need to be updated; there are new types of uses that come into the community that don’t fit well within the zoning code. This ordinance is an example of a use wanted by community members that didn’t quite fit within our existing zoning code. When a use is not listed specifically in the zoning code it must be interpreted to either the closest use listed or it is not allowed. The closest use to a community garden listed in the zoning code is agriculture, which means the cultivation of the soil or nutrient solution, including but not limited to indoor agriculture, the growing of crops and/or plants, animal and poultry husbandry, dairying, grazing and accessory uses customarily incidental to agricultural activities. This definition does not include commercial cultivation of marijuana. Agriculture, as defined, is very wide encompassing, it could include the smaller community garden, larger community garden or a large scale farm. The potential impact of those different uses within agriculture can be very different from each other. Agriculture is currently permitted in only two zones, Rural Agriculture and Rural Farmstead; it is allowed outright in the General Use zone.

Mr. Spillman clarified that the definitions of the new uses are similar to agricultural with one main difference: it references the size of the community garden and allowed uses. When the area under cultivation is less than 10,000 sq. ft., it would fall under the definition of Neighborhood Community Garden; when the cultivation area is larger than 10,000 sq. ft., it would be defined as a Regional Community Garden. Proposed regulations for a Regional Community Garden would be different due to potentially larger impacts to the community.

Mr. Spillman pointed out that community gardens have consistency with the Comprehensive Plan in the following ways.

- Community and Human Resources Goal 1, Strategy 1, Action E is “to create community gardens on selected public or private land to provide agriculture opportunities to densely populated areas.”
- Land Use Goal 4, Strategy 10, Action B is to “encourage agricultural development that is compatible with surrounding land uses and densities, and the intention of the Rural and Agricultural Zone and the Rural Farmstead Zone is for ‘agricultural uses.’”
- Economic Development Goal 1, Strategy 4, Action B is to “promote agriculture by supporting non-profit and volunteer organizations that promote agricultural development within the Borough.”
Based upon staff analysis, the Department of Community Planning recommended approval of Ordinance 2017-21 to the Assembly.

Mr. Billingsley questioned whether the Legal Department agreed that community gardens are currently prohibited and are community gardens interpreted as the closest thing to agriculture.

Ms. Doxey answered as a principal use, yes.

Mr. Billingsley queried the type of land that the Fairbanks Community Garden is on.

Mr. Spillman responded the existing Fairbanks Community Garden is in the OR zone. He clarified that under a previous zoning code they did receive a conditional use permit.

Mr. Billingsley commented that it doesn’t seem like this is an issue that comes up often and questioned whether it is necessary. He expressed concern that the Planning Commission is creating regulations that the staff will have to spend time processing conditional use permits on. He inquired why it shouldn’t be made a permitted use in all the zones, or as much as possible, in order to minimize the burden to staff.

Mr. Spillman replied ultimately staff is responsible for health, safety and welfare; there could be impacts on the community associated with community gardens. He stated that in looking at what other communities have done and looking at agriculture we would not permit things like livestock or the growing of marijuana in a community garden.

Mr. Guinn commented that 10,000 square feet doesn’t seem like much, there are plenty of lots in the 10,000 to 20,000 square foot range that could be used as a community garden and have low impact. He added that the size limit would possibly be better if it was set at 20,000 square feet.

Mr. Whitaker stated that he agreed it would be better to have it available in all the zones.

Mr. Muehling asked if there had been discussion about impacts when there is a large community garden. What impacts can happen over 10,000 square feet and why does the definition change.

Mr. Spillman answered that the impacts are unknown and are dependent on each case. Larger community gardens could have more impact. There would be a conditional use process in a lot of cases to evaluate what the impact would be and restrictions as to operating hours, and that machinery could be used as well.

Mr. Billingsley inquired how many unapproved community gardens there could be in the Borough currently.

Mr. Spillman responded staff has not identified any nor has staff gone to an effort to do so. He added that there was a potential proposal recently submitted by applicants who then were told that a community garden would not be allowed where they wanted it due to zoning code.

Mr. Billingsley questioned why the applicants came to Community Planning. He also commented it is surprising they would have known to go to Community Planning and submit an application. He pondered that there must be a number of people who wouldn’t have known to come in and submit an application.

Mr. Spillman answered for zoning permission.

Mr. Billingsley queried what would distinguish a Neighborhood Community Garden from a garden at my residence.
Mr. Spillman replied a garden at Mr. Billingsley’s house would be considered an accessory use to a residence being the principal use. When there is not a principal use on the lot and there is a garden on it, the use would be agriculture or if the proposed ordinance passes it would be a community garden.

Mr. Billingsley further queried that if half of his residence lot could be a community garden, would it be legal due to the community garden not being the principal use of the property.

Mr. Spillman responded it would depend on if a residence was determined to be the principal use or if the garden was. For example there was a tiny cabin on the lot as well as a four acre community garden it would be difficult to say the community garden was an accessory use.

Ms. O’Neall commented she does not view the proposed ordinance as being more regulatory as opposed to using land use in a way that the public would like to use it. Since there are already lots with community gardens in the community instead of making them an outlaw we should make them an in-law by putting language in code that clearly states how people can use the land that they want to for the purpose that they want.

Mr. Muehling asked for clarification of personal use that a Neighborhood Community Garden would not allow trade or sale of produce or products on site and under 10,000 sq. ft. He also questioned if that would also be the rules for a Regional Community Garden.

Mr. Spillman answered yes, while crafting the definition staff tried to eliminate the community garden turning into an onsite commercial operation or a farm stand.

Mr. Whitaker questioned what would keep a community garden from having a 2,000 gallon cesspool to fertilize plants without a conditional use permit.

Mr. Spillman replied bio-solids are defined and regulated in code; a cesspool would potentially be regulated differently.

Mr. Billingsley inquired if community gardens could be a permitted use in more areas.

Mr. Spillman responded that it is important to read the specific intent of each zone; staff is required to take the intent of a zoning district into consideration when evaluating land use conflicts.

Mr. Whitaker queried why the proposed ordinance did not automatically zone community gardens into RE and RR.

Mr. Spillman replied when evaluating the zoning districts for this ordinance staff suggested RE and RR zones allow neighborhood community gardens by conditional use permits. The reasoning was RE and RR is intended to be low density residential development where community sewer and water is not available or may be available. The potential impact from Regional Community Gardens coming into a neighborhood is that it generates traffic and they may not be in proximity to sewer and water facilities. Also, the Comprehensive Plan specifically outlines community gardens in urban areas.

Mr. Guinn asked if there would be a parking problem associated with a community garden. He commented if you have ten different people parking in the area to work on their garden that’s ten different cars parking on the side of the street.
Mr. Spillman responded parking was a considered by staff and 10,000 square feet seemed a good threshold for that particular issue. In speaking with the Fairbanks Community Garden that has close to 120,000 square feet of community garden, they've indicated very rarely have there been more than four to five cars parked there at one time.

Public Testimony Opened

None

Public Testimony Closed

MOTION: To recommend approval of Ordinance No. 2017-21 to the FNSB Assembly, by Mr. Billingsley, seconded by Mr. Whitaker.

Discussion

Mr. Billingsley expressed that community gardens do not seem to be a big problem and it should be a permitted use in most of the areas. He stated he would not be in favor of the ordinance as proposed and would propose an amendment.

Mr. Guinn stated that a community garden is a temporary use and tend to not be permanent as a building would be; he would like to see them in most zones.

Mr. Whitaker commented that local food is essential to the community and he would like to see them in more zones.

Ms. Doxey clarified that if there are five 10,000 sq. ft. lots all next to each other in a residential zone and where all developed as community gardens, you then have an acre of community gardens. Theoretically, that could look like a big agricultural lot which is not an appropriate impact to a residential area.

Mr. Billingsley questioned what criteria would staff use to keep Ms. Doxey’s example from happening and would it only require a zoning permit in the proposed ordinance.

Mr. Spillman responded if the ordinance were to be passed that this would be correct.

Mr. Perreault commented that there wouldn’t really be a problem with there being a full acre of community gardens as there has rarely been a negative impact from gardening. A conflict would most likely arise if there was a community garden in an industrial zone and someone wanted to have an industrial use, the garden would then be the one to not want an industrial use nearby. He suggested the Planning Commission limit Regional Community Gardens in commercial and industrial areas because of those conflicts. Industrial uses should continue to be zoned and used for those industrial purposes when there are thousands of acres in the Borough that could be gardened.

Mr. Billingsley replied the person who put a community garden in the middle of a heavy industrial area should realize it from the start.

Ms. Presler stated the proposed ordinance would be defining what a community garden is and this would be the first attempt at applying that term to some existing zoning districts. As has been pointed out there are not a lot of illegal community gardens currently and not a lot of people are interested in putting them in industrial areas. She doesn’t see that being a problem.
The proposed ordinance would be a step forward in enabling people to have community gardens and this ordinance opens the door to gardens, not restricting them.

Mr. Muehling agreed the proposed ordinance was a good first step; it highlighted the issue of food security and encouraged community gardens.

Mr. Guinn commented that the Planning Commission should look at this ordinance as opening the door and the commission may need to make changes to it in the future if needed.

Mr. Billingsley recommended the Assembly not pass this ordinance, but rather re-draft it instead.

Mr. Brandt supported Mr. Billingsley because there aren't any complaints about community gardens and they shouldn't be limited.

Planning Commission discussed alternatives to the proposed ordinance to make community gardens more permissible in more zones. In order to amend the proposed ordinance to add community gardens to more zones or all zones it would need to be voted down and brought back before the Planning Commission with the proper public notice beforehand. The other option would be to vote in favor of recommending the ordinance to the Assembly and afterwards work on a more expansive ordinance amending the first ordinance to propose to the Assembly.

Mr. Whitaker stated he plans to vote in favor of the proposed ordinance although he would like to see it come before the Planning Commission again soon in order to expand it.

Mr. Perreault said he plans to vote in favor of the proposed ordinance and would be willing to volunteer to work on expanding and amending it in the future to be more permissible in more zones.

Ms. O’Neall commented she is in support of the proposed ordinance for the reasons staff listed that it most complies with the Comprehensive Plan that directs the Planning Commission’s work and addresses food security.

Mr. Guinn stated he would vote in favor and that he would like to see it come back before the Commission with a stronger form that allows uses in more zones.

Mr. Billingsley expressed that his fellow commission members had changed his mind and he plans to vote in favor of the proposed ordinance.

ROLL CALL

Ten (10) in Favor: Ms. O’Neall, Mr. Billingsley, Ms. Thayer, Mr. Stepovich, Mr. Perreault, Mr. Brandt, Mr. Muehling, Mr. Guinn, Mr. Whitaker, Ms. Presler

Zero (0) Opposed:

MOTION CARRIED

Ordinance 2017-19: An Ordinance Amending FNSBC Title 18 Definitions And Sign Regulations To Delete And Amend Content-Based Sign Regulations To Comply With First Amendment Protection, Exempting Flagpoles From Required Yards And Amending FNSBC 1.20.080 Fine Schedule.
Ms. Nelson presented the staff report. The primary purpose of this proposed ordinance is to delete content-based sign regulations which have been deemed by the United States Supreme Court as unconstitutional under First Amendment protections while maintaining the intent and purpose of FNSB’s existing sign regulations by revising them into content-neutral language. Content-based signage essentially means that if you have to read the sign to determine whether the sign complies with the regulation, it is most likely considered to be content-based, and therefore unconstitutional. Content-neutral sign regulation can regulate the number, size, type and placement but not what the sign says. For example, free-standing or roof signs could be allowed in certain zones and may be regulated by the total number of signs, maximum height, total square footage, dimensions, setbacks, and potentially other requirements, but not the text or graphics on the sign itself. This limitation changes the definitions of certain signs in our current code such as political, directional, menu or price signs, all of which have been eliminated from the proposed code since they are content-based. It also mandates that the remainder of the sign code be written differently to reflect the content-neutral focus. Finally, in order to make the sign regulations easier to understand and functional, some of the provisions were re-organized for clarity. A matrix has been provided to compare the current sign regulations to the proposed regulations to demonstrate what was changed. The matrix includes code references as well as line numbers in the ordinance to show where the current and the proposed language can be located in the proposed ordinance for your review.

Substantive changes include:

- Clarifying and expanding the purpose and intent of the sign code to regulate signage in order to manage and mitigate aesthetic impacts as well as protecting pedestrians and motorists from potential hazards from signs. This language sets the context for all of the subsequent regulations.
- Extending general regulations of signage to all signs in all zones, including the GU zones, and in public rights-of-way. Most of these regulations are safety-related and should apply no matter where the sign is located.
- Eliminating content based definitions and adding some clarifying definitions to support new sign provisions.
- Dwellings are currently allowed one identification sign; they would be allowed 2 signs per dwelling unit but no restriction on what the sign says. The increase to 2 signs was based on inclusion of the building number as a sign. More than 2 signs were not proposed because of aesthetics and the potential for excess signage associated with multi-family dwellings and apartment complexes.
- Non-residential uses in residential zones would be allowed 3 signs, rather than 1 sign currently. The increase to 3 signs was based on inclusion of the building number as a sign and also to reflect more realistic commercial signage currently existing in residential zones. More than 3 signs were not proposed because of aesthetics and the potential for excess commercial signage in residential zones.
- Two additional signs would be allowed on any property that is for sale or rent but could say anything; the sign would not be restricted to advertising property for sale or rent.
- One additional sign would be allowed for a commercial or non-residential use such as a home occupation or a daycare that is accessory to a residential use. The sign could say anything and would not be required to advertise that commercial or non-residential use.
- Directional, price, menu, no trespassing and other miscellaneous signs are content-based regulations but these types of signs would be allowed as individual signs of 3 square feet or less hung separately for a cumulative total of not more than 35 square feet. Government signs could also replace some of these sign types.
In commercial and industrial zones, proposed language clarifies that 1 sign is allowed per street lot line if one principal use is in operation on the lot and this is consistent with the current code. Language was added to allow 2 signs per street lot line if more than 1 principal use is in operation on the lot. This helps address signage limitations for malls and other developments with multiple tenants on a single parcel.

Proposed language was added to address several new sign types not currently listed in the sign code including signage on mailboxes or signs not visible from roads or trails, as well as legal non-conforming signs. Legal non-conforming signs must be brought into compliance within 5 years unless the sign is altered, enlarged or replaced in which case, the sign must be brought into compliance at that time.

Proposed language was added to clarify that signage in public rights-of-way and those signs not visible from streets, roads, highways and trails open to the public would only be subject to the general sign regulations of FNSBC 18.96.070(A).

Political signage which is currently content-based regulation is proposed to be replaced with 2 additional temporary signs that can only be posted for the period of June through November. These temporary signs can say anything, not just political advertising or sentiments. Currently political signs are unlimited but because the content can no longer be limited to political information, allowing unlimited temporary signs is not conducive to good sign management or aesthetics.

Off-premise sign regulation which is currently content-based was addressed by allowing signage on any lot where a principal use is in operation but the sign is not required to advertise only those activities or businesses located on the site. Proposed language requires signs be removed if the principal use is no longer in operation. This approach helps limit signage on vacant land and concentrates signage where commercial and other activity is already located.

Ms. Nelson pointed out that the Comprehensive Plan is generally silent about signage; however a couple of goals and strategies emphasize aesthetics which is one of the principal purposes of sign regulation.

- Environment Goal 4 is: To protect and enhance both the natural and formal landscape; Strategy 12: Support beautification measures; and Action B: Maintain the aesthetic integrity of rural highways and community roads.
- Economic Development Goal 1 is: To strengthen and expand the existing economy; Strategy 4: Emphasize development and expansion of mining, local manufacturing, agriculture, tourism, conventions, hospitality and forest-related businesses; Action C: Promote tourism by beautification through landscaping and/or signage of highways and junctions that create “first-impressions” of Fairbanks.

Ms. Nelson clarified that changes to the sign code are necessary to comply with federal law. The intent to revise the sign code with only minimal changes in order to have functional, understandable and consistent sign regulations has been met. The minor changes proposed are intended to clarify, standardize, and organize sign requirements for better implementation of the purpose and intent of FNSB sign regulation.

Based upon staff analysis, the Department of Community Planning recommended approval of Ordinance 2017-19 to the Assembly.

Ms. Thayer commented that for over 21 years she regulated signs for AKDOT highway rights of ways. She does not support the removal of height limits, or having signs advertising an establishment that is not on that property. She does not support the proposed ordinance.
Mr. Whitaker stated with the change under home occupation there would be no size limit or limit on the illumination of the sign on someone's dwelling or entrance to their driveway and questioned how staff came up with it.

Ms. Nelson answered that for the proposed ordinance as written that is correct. Staff discussed limiting number of signs, square footage per sign and cumulative total square footage; the concern was twofold. There were two options; have a lateral shift to remove the content based language and keep code essentially the same or conduct an overhaul of sign code. There will eventually need to be an overhaul of the sign code; but the decision was whether to do it now or later. The staff recommendation was to do so at a later time due to the extensive public process needed. In the end the administration’s decision was made to conduct a lateral shift and get rid of the content based in order to be in compliance with the First Amendment.

Ms. Thayer asked if there was any coordination done with other agencies when the proposed ordinance was being worked on.

Ms. Nelson responded that staff did not coordinate with other agencies because these agencies are currently regulating signs. When there is an overhaul of sign code staff will coordinate with other agencies.

Ms. Thayer queried why there is a substantive change column in the Sign Comparison Matrix if there aren’t changes being made.

Ms. Nelson replied because it was going from content based to content neutral there were in fact some substantive changes that resulted. Staff wanted the Planning Commission to know what those substantive changes were in order to make it clear what actual changes would happen with the proposed ordinance.

Ms. Thayer inquired if the Sign Comparison Matrix has proposed substantive changes or changes that are already in place.

Ms. Nelson responded if the proposed ordinance is adopted as written then the substantive changes in the Sign Comparison Matrix would be the changes that resulted from the conversion to content neutral language.

Mr. Muehling clarified his understanding that previously complaints about code violations could not be made anonymously but was recently changed so they could be made anonymously. He questioned if that could be a reason why staff hasn’t seen very many complaints about signs.

Ms. Nelson answered that could be part of it.

Mr. Muehling commented that feather flags are considered flag poles and questioned how the proposed ordinance addresses numerous flags when a flag is normally thought of as an insignia for the nation or the state.

Ms. Nelson replied that because code has to be content neutral we can’t read flags to determine compliance. Flags are a very controversial issue; so staff tried to fall on the side of allowing more things that could be called flags rather than trying to limit them.

Mr. Muehling asked if a business could have vinyl signs hung on the outside of their building in addition to a regular sign along the curb and there wouldn’t be a limit under the proposed ordinance.
Ms. Nelson responded that is correct. Wall signs are not regulated currently and that would not change.

Mr. Muehling inquired if there were vinyl signs hung on a chain link fence on a property line what would the limitations be.

Ms. Nelson answered the signage on the entire property would be looked at to see which signs would be allowed in their zone and with their use, but potentially could be allowed.

Ms. Thayer questioned whether the proposed ordinance would follow United States Post Masters requirements on mailboxes.

Ms. Nelson replied that the proposed ordinance would not limit what someone can put on their mailbox based on content, but is limited to letters and numbers.

Public Testimony Opened

None

Public Testimony Closed

MOTION: To recommend approval of Ordinance No. 2017-19 to the FNSB Assembly, by Ms. Presler, seconded by Ms. O’Neall.

Discussion

Ms. Presler commented the proposed ordinance seems to be more restrictive and is unsure what to vote without more discussion.

Mr. Whitaker questioned Ms. Doxey what the sign type home occupation and no longer limiting the sign size or illumination has to do with the Supreme Court decision.

Ms. Doxey responded in order to translate home occupation to content neutral, and then if you have a home occupation you get one extra sign. The language could still be you get an eight square foot sign and have lighting limitations but when you’re shifting all of the other regulations over and you’re not size restricting any other signs, it made sense to take that language out.

Mr. Muehling stated there is language about aesthetics and there would be a problem with a large sign in a residential neighborhood, aesthetically larger than eight inches square seems like it doesn’t fit in a residential neighborhood. He would be in favor of maintaining a limit on the size in a residential neighborhood for the home occupation sign type.

Mr. Billingsley asked how the home occupation sign type and the dwelling sign type are distinguished from each other.

Ms. Nelson answered you could have two signs for the dwelling unit and if there is a commercial or non-commercial residential use accessory to the dwelling unit you could have another sign.

Mr. Billingsley queried that would be content based.
Ms. Nelson replied it wouldn’t be content based because you would get a sign that can say anything you want it to say; if you have the commercial or non-residential use accessory to your residential use you would get a third sign.

Mr. Billingsley said that non-residential is content.

Mr. Perreault responded it would not be because the sign can be whatever you want it to be, it is just by virtue of having the non-residential use you get a third sign that could say whatever you want, it is not required that it advertise the business.

Ms. Doxey stated it is a fine distinction; this would be the ability to have a sign based on the use. The sign does not have to be looked at in order to determine if it is legal, the use would be looked at to see if you get a third sign.

Mr. Brandt inquired about dwelling sign type you would get two signs per dwelling unit, would that include signs that say no parking, use other door or don’t block the driveway. With those three signs would they be out of compliance with code.

Ms. Nelson answered you would also have three individual signs of three square feet for a total maximum of thirty five square feet. It would not be either or, it would be a cumulative amount of signs by zone and use.

Mr. Whitaker asked if the Planning Commission could amend the proposed ordinance home occupation sign type to keep it the way it currently is.

Ms. Nelson replied you wouldn’t be able to call it a home occupation sign; you could say one sign of no more than eight square feet for a commercial or non-residential use of accessory to the residential use and shall not be lighted. The square foot totals are inconsistent with the lack of limitations on all other residential signage.

Mr. Billingsley questioned why it couldn’t be called a home occupation sign.

Ms. Nelson responded you would have to read it in order to know it advertises the home occupation.

Mr. Billingsley countered you would have to know if there is a use existing, just assess whether there is a use without reading the sign.

Ms. Nelson replied the current code says you have to advertise the home occupation versus a sign that can say anything because the home occupation is there.

Mr. Muehling stated that in the Sign Comparison Matrix in residential zonings, under current regulations the only sign type give a maximum size is home occupation. He questioned if there is under current regulation size limits on residential sign types.

Ms. Nelson answered the only other size limitation in current code is for sexually oriented businesses.

Mr. Muehling asked if it would be consistent to provide a size limit for all residential zoning.

Ms. Nelson responded that is an option in order to be consistent.
Mr. Perreault countered that would be increasing the regulation that currently exists, all the other signage that exists in regulation currently is not limited. That would be adding a burden to all the other types of signage that does not currently exist; we shouldn’t be finding ways to try to limit people’s use of signs.

Ms. Doxey clarified that in looking at the proposed ordinance title; what people are on public notice for is amending title 18 definitions and sign regulations to delete and amend content based sign regulation, exempt flag poles and amend the fine schedule. People wouldn’t be on public notice that the Planning Commission would be adding size restrictions.

Mr. Perreault replied he agrees with Ms. Doxey, and commented that a big concern is off premise signs. He stated by removing size restrictions we could be creating a back door for billboards and he is not ready to say yes to that.

Ms. Doxey commented that based on Mr. Perreault’s comments, the Planning Commission would be within public notice if the Commission wanted to not change the size considerations that are currently in code.

Ms. Presler questioned why content based parts of the descriptions in the current regulations leaving numbers and sizes alone.

Ms. Nelson responded when you remove content based language from the wording it doesn’t always read correctly afterwards. The easiest way to remove the content based language was to repeal the entire sign code and have no sign regulations which the Legal Department advocated for initially. Staff did not feel it was appropriate, and worked with the Legal Department for months to reorganize the sign code in order to remove the content based language and to keep the sign code reading correctly after the content based language was removed.

Mr. Perreault stated he respects the amount of work put into the proposed ordinance and how difficult it is to keep all of it together in an organized way; in general he supports the ordinance. He does have concerns about billboards coming in. He questioned if this ordinance is passed, are there state regulations in place that will protect against billboards?

Ms. Doxey replied she cannot give a definitive answer to that.

Mr. Billingsley questioned if government signs could be considered content based.

Ms. Doxey responded government speech is not subject to the same first amendment restrictions and does not have the same free speech considerations. When you extend the government speech to a private person or business because you’re requiring them to have some speech in order to comply with the government’s regulation is called a catspaw and can be content based.

Mr. Billingsley commented the proposed ordinance is not requiring them to; it is giving them the option to.

Ms. Doxey replied that is correct, if they are posting the signs in order to exercise a property right then they are getting the catspaw extension.

Mr. Muehling stated he is still uncomfortable with eliminating the sign size requirement for the home occupation sign type. He suggested a motion to maintain the existing sign size limits for home occupation sign type.
Planning Commission discussed what lines in the proposed ordinance to amend to keep the sign size restrictions for home occupation sign type the same.

MOTION: To amend the motion to recommend approval and recommend on lines 152 after the word sign add the words “of not more than eight square feet and shall not be illuminated” by Mr. Whitaker, seconded by Mr. Muehling.

Discussion on the motion to amend

Mr. Muehling stated the purpose of the amendment is to maintain the size restriction.

ROLL CALL

Ten (10) in Favor: Mr. Perreault, Mr. Brandt, Mr. Stepovich, Mr. Guinn, Ms. O’Neall, Mr. Billingsley, Ms. Thayer, Mr. Muehling, Mr. Whitaker, and Ms. Presler

Zero (0) Opposed:

MOTION TO AMEND CARRIED

Further discussion on the main motion as amended

Mr. Billingsley asked Ms. Thayer her thoughts on the amendment.

Ms. Thayer replied she understands what staff is trying to accomplish and there has been a lot of work put into the proposed ordinance. There is a lot more work that still needs to be done and there are concerns about not coordinating with agencies that already enforce a lot of this. Also concerns about billboards and no height restrictions and the proposed ordinance is not proposing to put a height restriction.

Mr. Guinn stated he views the proposed ordinance as an interim until we get to an overhaul of sign code.

Main motion now reads as follows:

MOTION: To recommend approval as amended of Ordinance No. 2017-19 to the FNSB Assembly, by Ms. Presler, seconded by Ms. O’Neall.

ROLL CALL

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

Two (2) Opposed: Mr. Brandt, Ms. Thayer

MOTION CARRIED

H. APPEALS

None
I. UNFINISHED BUSINESS
   None

J. NEW BUSINESS
   None

K. EXCUSE ABSENT MEMBERS
   Ms. Thayer will be absent from the April 4, 2017 meeting.
   Mr. Brandt will be absent from the March 21, 2017 meeting.

L. COMMISSIONER’S COMMENTS
   1. FMATS
      Ms. Nelson gave a brief summary on FMATS.
      2. Other
      Mr. Billingsley questioned the status of Vision Fairbanks.
      Ms. Nelson responded they are drafting an ordinance so that it can be introduced and put in front of the Planning Commission.

M. ADJOURNMENT
   There being no further business, the meeting was adjourned at 10:07 p.m.
ORDINANCE 2017-22
STAFF REPORT

TO: Fairbanks North Star Borough Planning Commission
FROM: D. Christine Nelson, Director
Department of Community Planning
DATE: March 13, 2017
SUBJECT: ORDINANCE NO. 2017-22: An Ordinance Amending FNSBC Title 18 Regarding Appeals Of Grandfather Rights Determinations

Purpose and Intent

The attached ordinance was referred by the FNSB Assembly on February 23, 2017. The purpose of this ordinance is to change who the initial appeal body is for legal non-conforming (grandfather rights) determinations, from the Board of Adjustment to the Planning Commission.

Proposed Ordinance

Ordinance No. 2017-22 proposes to amend Title 18 by changing the appeal body for legal non-conforming (grandfather rights) determinations from the Board of Adjustment to the Planning Commission. The Planning Commission’s decision would then be appealable to the Board of Adjustment.

Consistency with the FNSB Regional Comprehensive Plan

The first land use goal in the FNSB Regional Comprehensive Plan is the retention and maintenance of private property rights. The concept of continuation of legal non-conforming uses, structures, etc., otherwise known as “grandfather rights” is one of the primary methods by which private property rights are preserved. A structure or use is generally found to be legal non-conforming if it was lawfully established prior to a change in code that made that use or structure to be no longer in compliance with current regulation.

Land Use Goal 1 is: To recognize that the foremost aspect of land use involving private property is the retention and maintenance of private property rights

Strategy 1: Work for decisions by commissioners and the Assembly that protects individual private property rights to the maximum extent possible.
Strategy 2: Work for community end goals with a minimum impact and disruption of individual private property rights.

Preservation of legal non-conforming status protects those uses and structures that were created legally under the regulations in effect at that time and protects their ability to continue under certain regulations for alteration or expansion. Changing the initial appeal body from the Board Adjustment to the Planning Commission for appeals of grandfather rights determinations is consistent with Land Use Goal #1 and both strategies because the Planning Commission is the primary land use hearing body for the borough and has the land use knowledge and experience to weigh all the evidence and aspects associated with a land use appeal. In addition, this proposed amendment would add an additional level of local review to the appeal process. Both of these factors help protect private property rights to the maximum extent possible.

Analysis

The primary purpose of this proposed ordinance (Exhibit #1) is to change who the appeal body is for grandfather rights determinations, from the Board Adjustment to the Planning Commission. The Planning Commission appeal hearing would be held de novo; allowing all parties to submit new evidence to the Planning Commission. An appeal of the Planning Commission decision would go to the Board of Adjustment and would be heard on the record. Because the Planning Commission is the primary hearing body for land use decisions and appeals, it makes sense to make the Planning Commission the initial appeal body for these types of land use determinations too. This proposed amendment make this appeal process consistent with appeals of other administrative land use decisions which are heard by the Planning Commission. The added benefit of this amendment is the establishment of a second level of local appeal rights by the Board of Adjustment. These elements increase the opportunity for property owners to be heard regarding a grandfather rights determination and minimize the impact and disruption to private property rights.

Recommendation

The Community Planning Department recommends that the FNSB Planning Commission recommend that the FNSB Assembly approve Ordinance No. 2017-22.

Proposed Draft Motion:

I move that the Planning Commission makes a recommendation of approval of Ordinance No. 2017-22 to the FNSB Assembly.
FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2017-22

AN ORDINANCE AMENDING FNSBC TITLE 4 AND FNSBC TITLE 18 REGARDING APPEALS OF GRANDFATHER RIGHTS DETERMINATIONS

WHEREAS, Grandfather rights determinations are currently appealable to the board of adjustment using de novo procedures; and

WHEREAS, The board of adjustment has typically heard on the record appeals from a decision of another quasi-judicial body; and

WHEREAS, Appeals of grandfather rights determinations are more appropriately heard by the planning commission first, with a right to appeal to the board of adjustment.

NOW THEREFORE BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

Section 1. Classification. This ordinance is of a general and permanent nature and shall be codified.

Section 2. FNSBC 4.24.020, Procedures for appeals from administrative determinations for grandfather rights, is hereby deleted as follows:

A. APPELLANT OF GRANDFATHER RIGHTS DETERMINATIONS MUST PAY A NONREFUNDABLE APPEAL FEE OF $75.00.

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be added is underlined
Text to be deleted is [BRACKETED, CAPITALIZED]
B. APPEALS SHALL BE HEARD DE NOVO. THE BOARD OF ADJUSTMENT SHALL UPHOLD OR REVERSE THE DETERMINATION AND ADOPT SPECIFIC FINDINGS OF FACT AFTER CONSIDERING THE ORAL AND WRITTEN STATEMENTS OF THE APPLICANT, INTERESTED PERSONS, AND THE DEPARTMENT OF COMMUNITY PLANNING. THIS DECISION IS APPEALABLE TO THE SUPERIOR COURT IN ACCORDANCE WITH THE CIVIL RULES.]

Section 3. FNSBC 18.108.030.C, Affirmative recognition of grandfather rights, is hereby amended as follows:

C. Within 15 days of the hearing the department shall issue an administrative determination of the grandfather rights. If no hearing is required the administrative determination shall be issued within 10 working days of the application. Administrative determinations granting structural-related grandfather rights without a hearing must be mailed to the applicant and owners of nearby lots or land as set forth in FNSBC 18.104.010(C)(2). Administrative determinations may be appealed [TO THE BOARD OF ADJUSTMENT (AS DESIGNATED BY FNSBC 4.24.010)] within 15 days of the date [OF] the determination was mailed. The appeal shall be heard de novo by the planning commission. The planning commission shall uphold or reverse the determination and adopt specific findings of fact after considering the oral and written statements of the applicant, interested persons, and the department of community planning. This decision is appealable to the board of adjustment.

Section 4. Effective date. This ordinance is effective at 5:00 p.m. on the first Borough business day following its adoption.

PASSED AND APPROVED THIS _____ DAY OF ____________, 2017.

__________________________
Kathryn Dodge
Presiding Officer

AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be added is underlined
Text to be deleted is [BRACKETED, CAPITALIZED]
ATTEST:

Nanci Ashford-Bingham, MMC
Borough Municipal Clerk

APPROVED:

Jill S. Dolan
Borough Attorney
STAFF PRESENTATION

Ord2017-22: None