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 6:03 p.m. by Mindy O'Neall, Chairperson.

A. ROLL CALL

MEMBERS PRESENT: Wendy Presler  Chris Guinn
                  John Perreault  Doug Sims
                  Charles Whitaker  Patricia Thayer
                  David Brandt  Eric Muehling
                  Mindy O'Neall

MEMBERS ABSENT & EXCUSED: Robert Peterson  Mike Stepovich

OTHERS PRESENT: Christine Nelson, Community Planning Director
               Manish Singh, Planner
               Wendy Doxey, Assistant Borough Attorney
               Nicole Nordstrand, Recording Clerk

B. MESSAGES

1. Chairperson's Comments

   There were no comments by the Chair.

2. Commissioner's Comments

   There were no comments by Commissioners.

3. Communications to the Planning Commission

   There was no communication to the Planning Commission.

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

   There were no comments by Citizens.

5. Disclosure & Statement of Conflict of Interest

   Chair O'Neall reminds Commission that she will ask before each case being heard.
C. *APPROVAL OF REVISED AGENDA AND CONSENT AGENDA*

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

**MOTION:** To approve Agenda and Consent Agenda by Commissioner Thayer and seconded by Commissioner Perreault.

*PASSED WITHOUT OBJECTION*

**MOTION:** To Amend Motion to approve Agenda and noting minutes are not available by Commissioner Muehling and seconded by Commissioner Whitaker.

*PASSED WITHOUT OBJECTION*

D. *MINUTES*

1. *Minutes from the February 13, 2018 Meeting were unavailable and removed from the Agenda.

E. QUASI-JUDICIAL HEARINGS

1. **CU2018-010:** A request by Grant Anderson, DBA Fox Creek LLC, on behalf of KGM LLC, for conditional use approval of a marijuana cultivation facility, indoor large in the General Use 1 (GU-1) zone on TL-3103, Section 31, T2N-R1E, F.M. (located at 2304 Old Elliott Highway, on the west side of Elliott Highway, between Old Chatanika Trail and Old Steese Highway N).

*There were no disclosures or statements of conflict of interest.*

**OATH ADMINISTERED**

The Applicant, Grant Anderson was present and indicated he would defer to staff to present first.

**Mr. Manish Singh** provided a presentation of his staff report and recommendations on behalf of the Borough’s Planning Department and recommended approval with three (3) conditions listed in the Staff Report.

**Questions by Commissioners**

**Commissioner Perreault** asked if there is a precedent to drawing a 500 foot line to the boundary of the Lions property. Mr. Singh discussed code requirements and intent of the Assembly and discussed the outer boundary utilized and explained the manner in which distance is measured.

**Commissioner Guinn** questioned whether the building itself is not in a floodplain, and Mr. Singh indicated it is completely in a floodplain. **Commissioner Guinn** drew attention to the Steese Fire Chief’s comments of severe icing on the building and asked if that should be a concern. Mr. Singh indicated that it was noted, but no concerns were expressed.
Commissioner Sims asked if a playground actually exists and Mr. Singh stated he did not investigate further since it is not within 500 feet.

Applicant’s Testimony

The Applicant, Grant Anderson, testified as follows:

- Noted that Assembly’s and public’s concerns is Fox Springs
- Existing septic is being reconstructed with drawings and are currently with ADEC
- AMCO will not release the license until ADEC approves
- Willing to install whatever ADEC requires
- Owner of property adjacent to Fox Springs and has right of first refusal if DOT&PF sells
- Have a well behind Fox Springs and is willing to test if necessary
- Has been in discussion with Friends of Fox Springs
- Changed layout to avoid Army Corp of Engineer

Questions by Commissioners

Commissioner Muehling asked what expertise or experience related to engineering and sizing of carbon filter system that is adequate. Mr. Anderson replied that their HVAC is contracted out and noted that they have a year and a half of experience with no complaints from neighbors. Commissioner Muehling asked Mr. Anderson to describe his irrigation system and how runoff will be handled. Mr. Anderson explained wastewater as a self-contained system and described the process.

Commissioner Sims asked if he has experienced an off ice. Mr. Anderson responded that they have owned the property since summer and have heard about the ice issues and indicated his understanding that the previous owner made some changes and noted it has not been present this year so far.

Commissioner O’Neall questioned whether a contingency plan is in place in the event of a flood. Mr. Anderson explained the plants are not on the floor, affluent is contained in tanks and they have a closed loop system.

Commissioner Sims inquired if the building was a former aircraft hanger. Mr. Anderson responded in the affirmative.

Interested-Person Testimony Opened

Ms. Christine Robert was determined by the Chair not to have interested-person standing.

Interested-Person Testimony Closed

MOTION: To approve the Conditional Use Permit for a commercial marijuana cultivation facility, indoor large, with three (3) conditions, and adopting the staff report and three (3) Findings of Fact in support of the approval by Commissioner Guinn and seconded by Commissioner Presler.

Discussion on the Motion

Commissioner Guinn stated his support for the conditional use permit and believes the fox Springs concerns have been addressed and deferred to ADEC and noted it is in an appropriate area.
Commissioner Presler echoed Commissioner Guinn’s statements and added the applicant testified he is working with ADEC and stated his willingness to install a holding tank or whatever ADEC will require and has familiarity with running a marijuana operation and Applicant lives on the property.

Commissioner Muehling communicated that the Applicant has the owner’s approval, satisfied buffer requirements, and appears to have satisfied air quality and water quality with wastewater plan.

ROLL CALL:

Nine (9) in Favor: Perreault, Brandt, Thayer, Guinn, Whitaker, Presler, Sims, Muehling, and O’Neall.

Zero (0) Opposed.

MOTION PASSED

[Brief at ease to 6:55 pm]

2. CU2018-011: A request by Gary Evans, DBA Grass Station 49, on behalf of David Lanning and Morgan Evans, for conditional use approval of a retail marijuana store in the General Use 1 (GU-1) zone on TL-221, Section 2, T1S-R2W, F.M. (located at 2502 Parks Highway, on the north side of Parks Highway, on the west side of Java Lane).

Commissioner Presler disclosed that she is a long-time friend of Mr. Lanning. Chair O’Neill questioned Commissioner Presler on matters that may impact her decision-making on the matter.

Ms. Doxey questioned Commissioner Presler on the nature of their relationship. Commissioner Presler stated it started as a professional relationship and considers him to be a mentor professionally and became friends throughout the years. Ms. Doxey stated that Commissioner Presler is an engineer and asked if Mr. Lanning is also an engineer, and Commissioner Presler stated he is. Ms. Doxey asked if Mr. Lanning is expected to testify in his capacity as an engineer on this matter, and Commissioner Presler said she does not expect that, and Ms. Doxey inquired if Mr. Lanning were to testify in his capacity as an engineer would more weight be given to his testimony due to his being a mentor, Commissioner Presler responded she would. Chair O’Neill at the advice of counsel ruled a conflict exists.

[Commissioner Presler left the dais]

Commissioner Sims disclosed that he has known Mr. Lanning professional over the course of his employ at the FNSB. Chair O’Neill echoed the questions by Ms. Doxey previously. Chair O’Neill ruled no conflict exists.

Commissioner Guinn disclosed he knows Mr. Lanning professionally and Mr. Evans is the son of a colleague and noted he does not personally know Mr. Evans and if, in the future, he were asked to appraise the building, he would consider bidding on it to a local financial institution. Chair O’Neill inquired if he has an existing relationship with Mr. Lanning and Commission Guinn stated he does not.

Ms. Doxey inquired of Mr. Evans, due to Commissioner Guinn’s relationship with his mother, if he would give more weight to his credibility or testimony, and Commissioner Guinn responded he would not. Ms. Doxey inquired of Mr. Lanning the same question and Commissioner Guinn stated he
would not. Ms. Doxey then asked if Commissioner Guinn felt he could be fair and unbiased in 
deciding the matter and Commissioner Guinn stated he could. **Chair O’Neall** ruled no conflict 
exists.

**OATH ADMINISTERED**

The Applicants, Dave Lanning and Gary Evans were present and indicated their deferment to staff 
presenting first.

**Mr. Manish Singh** provided a presentation of his staff report and recommendations on behalf of the 
Borough’s Planning Department, and recommended approval with three (3) conditions the Staff 
Report.

**Questions by Commissioners**

**Commissioner Muehling** questioned how Mr. Singh would characterize a parking lot where traffic is 
not buzzing by rather is pulling in, doors opening and closing, headlights, radios playing compared to 
the comparison used of the Parks Highway. Mr. Singh stated it was not the only consideration and 
pointed to pages 116 and 117 of the packet and explained his analysis. Further discussion ensued 
related to traffic and noise associated with residential versus a focused use and the nearby transfer 
station and that any commercial business operation is not regulated by hours of operation in the GU- 
1 zone.

**Commissioner Thayer** asked for further explanation on the math involved in determining the 
parking required based upon the projected 100 trips per day. Mr. Singh explained the GU-1 has no 
parking requirements so used GC zoning requirements for considering health, safety and welfare 
and explained parking proposed by the Applicant. Further discussion ensued about pickup/delivery 
location and Mr. Singh described his understanding and deferred to the Application to explain level 
of delivery.

**Commissioner Thayer** asked if the property line could be more clearly defined for safety to avoid 
any overflow into the right-of-way.

**Ms. Doxey** stated the Borough does not typically enforce property lines between property owners 
and there could be encroachments and it is not the purview of the Commission to regulate. She 
further stated if the Commission could articulate a basis for requiring a fence or some other marker 
of the property line specific to the use a condition could be required.

**Commissioner Thayer** explained her safety concern with parking in the public right-of-way.

**Ms. Doxey** explained if there is evidence that there could be a safety issue by using the right-of-way 
for parking, she recommended that the proposed condition be more general.

**Mr. Singh** commented that the email from DOT specifically mentioned previous property owner 
which is a very different type of business and explained this marijuana retail business has customers 
who stay for a very short period.

**Commissioner O’Neall** inquired if the Borough vehicle in the photo on page 134 is parked in the 
right-of-way. Mr. Singh responded he is unsure as the parking lot was not plowed.

**Commissioner Thayer** asked for the distance from the building to the property line. Mr. Singh 
estimated approximately 30 feet and parking spaces are 9 feet wide.
Commissioner O’Neall asked what the shaded areas on the site plan mean, and Mr. Singh respond that his understanding is gravel, but deferred to Mr. Lanning.

Commissioner Muehling questioned how an invisible property line could be protected and if DOT would be willing to place barriers. Mr. Singh deferred to the Applicant and DOT and indicated DOT has enforcement capability.

Applicant’s Testimony

The property owner, Dave Lanning, testified as follows:

- Purchased property knowing it could meet all requirements for a retail marijuana operation
- Described surveys of lots and how lines are defined
- Described history of lots 10 and lots 11
- Explained proposed lot situation and layout
- Described legal requirements vs. practical access
- Explained negative impact of using Java Lane
- Offered to install jersey barriers, rocks, grass to alleviate parking in the right-of-way and have assured DOT they will keep their customers out of right-of-way
- No impact of noise generation compared to 10,000 vehicles traveling the Parks Highway daily
- Drawings have been sent to the State Fire Marshal
- Described floor plan and DEC approval

Mr. Lanning summarized that they can meet the three (3) conditions and has no issues with them.

Questions by Commissioners

Commissioner Whitaker asked if motion detection lighting or lower level kelvin lighting could be considered for the Northside of the building where the cabins are located. Mr. Gary Evans explained that the State requires lighting at all entrances and they elected to have lighting at all times to be able to see what is happening and explained the lights are pointed downwards with minimal light pollution. Discussion ensued on quality of camera images and utilizing lower level kelvin lighting.

Commissioner Sims communicated his support of utilizing barriers to define parking area and noted parking looked really tight and asked for the separation distance of the proposed facility to Java Lane. Mr. Lanning indicated it is approximately 120 – 140 feet. Discussion ensued about alternative layout and the practicality of there being more than six parking spaces.
Commissioner Muehling questioned what kind of easement exists and Mr. Lanning stated it is his desire to incorporate a use easement into a future platting project and explained minimum requirements of an easement.

Commissioner Muehling asked what created the easement. Mr. Lanning stated a desire of the owner of the cabin lot to not have all the previous owners have their stuff on the lot.

Commissioner O'Neall questioned if the exit on the Eastside is open to the public. Mr. Lanning replied that it is just for employee side of sales area and detailed the accessibility to the general public.

Commissioner O'Neall asked hypothetically if DOT had a project would there be no access via Java Lane, and Mr. Lanning replied that may be the case and theorizes that DOT may want to widen it in the future to make it a controlled access. Discussion ensued about the mitigating the safety hazards with the bike path and access via Java Lane and traffic flow.

Commissioner Muehling asked if they intend to have a lighted sign, and Mr. Evans explained the state requirements for signage.

Interested-Person Testimony Opened

Mr. Kyle Ramieriz testified of his concerns, as follows:

- Owner of 2415 Maria Street; a rental and primary residence
- Proposed operation is located directly across from a school bus stop
- Concerned with potential increase in crime
- Frequent power outages for lengthy periods of time resulting in loss of surveillance
- Odor
- Potential loss of rental income due to families not wanting to be in close proximity to a marijuana retail store
- Concerned with hours of operation
- Nearby transfer site will be utilized as a hot spot for using their product
- Traffic flow on the Parks Highway and increase in accident rates
- Access off Parks Highway related to speed of travel and no turn lanes

Questions by Commissioners

Commissioner Muehling inquired if the transfer station off the Parks Highway, and Mr. Ramieriz responded it is off of Little Shot. Commissioner Muehling asked how this business is similar or different than access to other roads in the area and Mr. Ramieriz replied that there are no other businesses are only residential and explained the residents’ familiarity with the area.

Commissioner Brandt asked if the school bus stop is at Nash. Mr. Ramieriz replied that is correct. Commissioner Brandt asked if there is a lot of kids, and Mr. Ramieriz stated there is a good amount of children present.

Commissioner O'Neall asked how the bus uses the road to pick up and drop off students, and Mr. Ramieriz explained that the bus driver expands the stop sign and makes sure traffic is stopped prior to releasing students.

Interested-Person Testimony Closed
Rebuttal by Applicant

Mr. Mason Evans offered the following rebuttal testimony:

- Co-owner of Grass Station 49 with his brother Gary Evans
- Zero complaints of noise or odor at existing location which is open 24/7
- Past business at the proposed location is an eyesore and was basically a junkyard
- Building will be developed into a clean professional looking building with landscaping to the DOT standards
- High-end security system that will directly point towards the bus stop which increases safety to that area
- Single-handedly combating the “black market” sales
- It is a cash only business, but no cash is left on sight as they have security that moves money away from the site
- Catering to the residence of the area, so it will not be adding 100 more vehicles per day
- Industry is heavily regulated by the State
- Exiting the property there is a large right-of-way allowing for a view shed for a few hundred feet.

Questions by Commissioners

Commissioner Guinn inquired what happens to the product when you close. Mr. Evans explained it is placed in secured storage with heavily guarded security gates in the interior as well as exterior doors and the security system immediately notifies the authorities and five cell phones.

Commissioner Brandt asked how often alarms have gone off at the Cushman location, and Mr. Evans replied they have had zero alarms due to theft and it has not been tripped.

Commissioner Muehling asked what the effect would be on business if hours were limited to 10:00 pm. Mr. Evans explained that they are bringing this store to cater to the residence and a lot of their clientele are nightshift workers. Mr. Evans further explained that the hours are primarily driven to allow employees to have an 8 hour shift for a 40 hours work week.

MOTION: To approve the Conditional Use Permit for a commercial retail marijuana store with three (3) conditions, and adopting the staff report and three (3) Findings of Fact in support of the approval by Commissioner Thayer and seconded by Commissioner Whitaker.

Discussion on the Motion

Commissioner Thayer communicated that there was a lot of discussion about the health, welfare and safety, and the public comment to the school bus drop off and pick up directly across the highway with a 300 foot right-of-way for bus allowing for a buffer. She further commented that odor at existing location has not been an issue. She stated while she understood the concern of potential lost rentals, it meets all the health, safety and welfare concerns and stated her intent to support approval.

Ms. Doxey clarified there is no condition concerning odor.

Commissioner Guinn stated his support of approval though expressed concern with the hours of operation.
Commissioner Brandt stated he would support limiting hours and is especially concerned with 65 residences nearby and stated he cannot support a marijuana establishment going into a residential neighborhood. He further expressed concern with traffic turning in and out of the business.

Commissioner Whitaker commended Applicants for cleaning up an eyesore. He further stated there are lots of other commercial operations (Gold Hill Liquor, Blue Loon) with direct access from the Parks Highway without incident.

Commissioner Muehling communicated that the Applicant’s property is on an interstate type highway, so no access through a residential area, there is adequate buffer distances, DEC will have no issue with aboveground water and sewer and does not believe this would add significantly more traffic on the Parks Highway nor is access to this property any different then access to other businesses and properties along the highway. He further communicated they have met the minimum parking requirement, and there has been no testimony to support limiting hours of operation.

Commissioner Sims stated he is comfortable with conditions imposed related to parking and stated he took exception to the classification that the area is residential since the majority of the area is general use and explained the history of the area development.

MOTION: To amend the Motion to add a condition to limit hours of operation from 9 am to 10 pm by Commissioner Guinn and seconded by Commissioner Muehling.

Discussion ensued about the motion and its intended purpose.

MOTION: To amend the Motion to Amend to limit hours of operation for public use by Commissioner Guinn and seconded by Commissioner Sims.

Discussion on the Motions

Commissioner Muehling stated while it is zoned GU, there is a residential character to the area and limiting the hours to 10 pm would be appropriate.

Commissioner Thayer indicated she cannot support limiting the hours where there are businesses along the highway within a half mile radius that are open until midnight and it is not this Body’s job to tell them how to operate.

Commissioner O’Neall stated her agreement with Commissioner Thayer and noted too it is not within the purview of the Commission and that over 100 DPO letters were sent out and there was no response to staff and only one interested person appeared, and other businesses are open until 2 am.

Commissioner Sims spoke in favor of the amendment and stated that the former business at the location did not stay open till midnight and shorter hours of operation is less impactful to the residential character of the neighborhood.

Commissioner Brandt stated despite the GU zoning, it has developed into a residential neighborhood and limiting hours would respect the neighbors.

Commissioner O’Neall communicated that imposing hours of operation using neighbors as a basis is not fair since they did not come forth with their concerns.
ROLL CALL (Motion to Amend Motion to Amend):

Seven (7) in Favor: Guinn, Whitaker, Sims, Perreault, Brandt, Muehling and O’Neall

One (1) Opposed: Thayer.

MOTION PASSED

Ms. Doxey asked for further discussion and explained that to be legally supportable a condition cannot be arbitrary and a test to determine would be whether a similarly situated business that was not subject to this conditional use process would have the condition or if this use can be distinguished from that similarly situated other business. She asked if there is a reason this particular use requires limitations on the hours of operation that a bar or another similar use would not have.

Commissioner Sims offered that to the west the distillery operates and closes early, and noted the Blue Loon further down the road in the same zoning and no limitation to hours. He stated his belief the nature of the use and that it is a conditional use permit it allows for limitations.

Commissioner Guinn echoed Commissioner Sims’ comments.

Ms. Doxey clarified that further discussion needs to be had on what is it about this use and the land use impacts of this use that require limiting hours of operation in a way different then a similar use, such as a bar, that could go into this location and potentially have similar land use impacts.

Commissioner Guinn offered that limiting the hours would prevent a lot of traffic coming and going late at night.

Ms. Doxey expressed concern that if a bar was to go in on this property, since it is GU-1, it could operate until midnight or later and have all of the same impacts that Commissioner Guinn just indicated. She further communicated the Body has no ability to regulate those uses and those impacts for that bar, similarly situated business owner on this same lot, there is concern that this permit holder is being treated arbitrarily.

Commissioner Guinn stated that if a bar asked for a conditional use permit he would feel the same way in limiting the hours.

Commissioner Muehling stated that the suggested midnight closing by the Applicant is also arbitrary and businesses throughout the Borough close at various time. He stated when we talk about this property and its surroundings and its surroundings are characterized as residential.

Commissioner O’Neall countered that the Applicant testified it is not arbitrary that it is an established business practice.

Commissioner Brandt added that this particular marijuana establishment requires a conditional use permit which gives the ability to add conditions versus a business that does not require a conditional use permit such as a bar. He stated his belief it is the least that should be done for the neighbors.
Commissioner Thayer respected what is being said, she stated by imposing this condition treating this Applicant different then another business that could go in this location and the Body could not impose any restrictions.

Commissioner O’Neall added that she agrees with Commissioner Thayer and the implications being imposed on the residence in the area that will be affected by less hours of operation.

Commissioner Brandt mentioned that of all the property owner letters that were sent out that are renters and are going to be impacted which is why there may be why there are not more people here.

Commissioner Muehling discussed arbitrary versus non-arbitrary.

Commissioner Sims stated he looked up the hours of operation for Ursa Major.

Ms. Doxey interjected that Commissioners cannot offer testimony if it is not in the record.

Commissioner Sims stated hours are limited by State law and the Commission has the ability to limit hours of operation as a means to mitigate the effect of the use on surrounding properties.

ROLL CALL (Motion to Amend):

Four (4) in Favor: Brandt, Guinn, Sims and Muehling

Four (4) Opposed: Perreault, Thayer, Whitaker and O’Neall

MOTION FAILED

ROLL CALL (Main Motion):

Seven (7) in Favor: Guinn, Whitaker, Sims, Perreault, Thayer, Muehling and O’Neall

One (1) Opposed: Brandt.

MOTION PASSED

[Brief at ease till 9:21 pm]

[Commissioner Presler returned to the dais]

F. LEGISLATIVE

1. ORDINANCE NO. 2018-06: An Ordinance Amending Chapter 18.104 FNSBC Regarding Notification of Rezoning, Conditional Uses, And Variances And Amending Procedures For Rezoning And Conditional Use Permits (Sponsor: Assembly Member Roberts)

There were no disclosures or statements of conflict of interest.

Assembly Member Lance Roberts was present and explained the intent and basis for his proposed ordinance:
To address controversial uses in residential neighborhoods
He received a list of all conditional use permits that have been denied to see what type of controversial uses were denied
The proposed ordinance was developed to address controversial uses in what effectively are residential neighborhoods and would allow property owners the opportunity to rezone
Explained the timeframe for a conditional use beats the timeframe for a rezone by at least thirty (30) days
General public is not educated on zoning and the processes available to them to change their zoning: most people do not know the zoning on their property and what it entails
Explained the change would provide a thirty (30) stay on a conditional use permit to allow property owners the opportunity to file an “notice of intent to rezone”
Allows property owners to be more proactive
No change in the scope of who could apply for a rezone
Purpose is to let the property owners make the decision on controversial land issues (gun ranges, marijuana operations, etc.) and allow them to maintain the character of their neighborhoods, such as the Shannon Park neighborhood by rezoning
Alternatives such as supplemental regulations are based on the current zoning
Gives all neighborhoods the ability to decide to rezone when an issue arises

Questions by Commissioners

Commissioner Perreault asked why someone should wait to rezone when they have the ability to do so now; not when someone purchases property and they do not like what their neighbor is going to do. Assemblymember Roberts replied that they should rezone proactively, and noted most people do not have the level of knowledge to understand the things that could show up in their neighborhood, and this will give them the opportunity to get educated on what their rights are.

Commissioner Perreault counted that someone purchasing the property has done their homework to know where they can do something and why are their private property rights subservient to other people in that area? Assemblymember Roberts responded that sometimes people will make a deal to buy a piece of property based on the zoning getting changed or the conditional use permit being granted.

Commissioner Muehling expressed his concern with “standing” and it now allows for any person to be able to request a rezone and asked why it is not the same as having standing like the conditional use permits have? Assemblymember Roberts explained it is not a change to the current language for the rezone.

Commissioner Muehling followed up by communicating that the purpose of a conditional use is to give flexibility in the zoning where there are gray areas for allowances and expressed concern with attempting to fix a problem which is not broken. Assemblymember Roberts replied that the Commission only imposes conditions on those uses that have been prescribed by the Assembly as being an allowed conditional uses. He followed up with saying of the six (6) residential zones marijuana establishments are not allowed at all. He noted that it is not something that is completely variable that the Commission can make exceptions wherever it wants only if the Assembly has established a policy for allowing the conditional use.
Commissioner Muehling expressed concern that the proposed ordinance does not require the applicant to state what they intend to rezone to. Assemblymember Roberts explained that a complete rezone application must be filed no later than 30 days after filing their “intent to rezone” and is necessary to allow them to work with Planning Staff to determine the best zone. Commissioner Muehling asked what is trying to be fixed. Assemblymember Roberts explained it is to fix the fact that there is not enough knowledge and educating property owners.

Commissioner Presler questioned the number of days that could potentially result if multiple notices of intent are received.

Ms. Doxey explained that a notice of intent to rezone must be filed within the initial 30 day period and if they waited until the 30th day, the maximum delay for that process is 60 days.

Commissioner Sims asked what kind of research has been done to look at the neighborhoods around the Borough and be more proactive. Assemblymember Roberts commented that when the Borough has done a couple of rezones which were done with lots of public meetings and it would be more preferable to do covenants, though that process may not be feasible or too costly, and a long time in the works while this proposed ordinance gives immediate relief.

Commissioner Muehling stated that this is disadvantaging the process of conditional uses which has been working. Assemblymember Roberts replied the proposed ordinance may potentially slow down the process and opined that it does not work as one might think due to the inability of the Borough to do enforcement on conditional use permits. He further stated there was a fundamental misunderstanding that the Commission could make the decision not to allow these contentious uses versus the reality of approving it with conditions.

Staff’s Presentation

Ms. Christine Nelson summarized the concerns about incompatible use issues that had been heard from the community over the last several years and how the current code requirements in the conditional use criteria or supplemental regulations addressed those concerns. She expressed the following:

- The conditional use process currently takes up to 90 days
- Rezones must go to 3 Assembly meetings subsequent to the Planning Commission meeting in order to reach a decision while conditional uses do not, thereby creating a timing issue
- Delay in processing conditional use applications unduly disadvantages those seeking a conditional use
- Land use and economic development goals in the Comprehensive Plan do not support this approach in the proposed ordinance to balancing neighborhood concerns with conditional use permit requests
- Land use goals address preserving and maintaining private property rights, but are silent on establishing priorities or preferences amongst property owners’ individual property rights
- The proposed ordinance stymies and reverses the streamlining procedures that have been working well
- A primary and critical need for business is certainty of process and establishing this level of uncertainty is not advantageous to business or economic development in the community
• Community Planning recently advocated for the current public notice distances as a result of concerns expressed by the community and recommends keeping them at 1,000/2,000 feet
• The number of notices would double since the notice of the pending conditional use would need to be sent out and then later, notice of public hearing for the conditional use must be sent
• Lack of enforcement on previous conditional use cases is largely due to the lack of specific conditions written to enable enforcement in the past which has changed over the last 3 years to more specificity of conditions today
• Summarized the process of how a conditional use and rezone applications would be processed
• The decision time on a conditional use permit would increase from 90 days to a minimum of 155 days and up to 185+ days while an applicant is waiting on a stay and potentially a rezone decision
• Due to limited Community Planning resources, conditional use permit applications could not be worked on during the pending “stay” period until a rezone decision is made and the case is scheduled for a public hearing date
• The Regional Comprehensive Plan includes direction for adopting better criteria for specific uses which is not currently supported in zoning code
• There are other solutions which could balance private property rights more effectively, including:
  o Reevaluating zones for appropriate uses and updating code to address what should be allowed in zones as the community changes
  o Supplemental regulations for potentially incompatible uses
  o More specific conditional use criteria
  o Proactively rezone

Questions by Commissioners

Commissioner Brandt asked what the timeframe for some of those solutions and are they being actively worked. Ms. Nelson replied that research is being conducted on how other communities have addressed compatibility issues through conditional use criteria and supplemental regulations and indicated it could be 4 - 5 months, and explained staffing issues and the priorities of new ordinances with the Mayor.

Commissioner O’Neall asked if a working group has been considered to address some of these issues. Ms. Nelson explained she would expect a working group or subcommittee to be established to work through these issues in the future.

Commissioner Muehling sought clarification on the timing and number of days and expressed concern filing a “notice of intent to rezone” could be a tactical measure to prevent a property owner from ever getting a conditional use permit.

Discussion ensued about the method for counting the initial thirty (30) days and then the thirty (30) days that would follow to allow for the filing of a completed rezone application.

Public Testimony Opened

No one present

Public Testimony Closed
Rebuttal

Assemblymember Roberts stated his agreeance with the solutions suggested by Ms. Nelson, and recognized that with time constraints and staffing, it could be a long time in materializing. He further stated the proposed ordinance would be a temporary fix and allow people the ability to rezone and maintain the character of their neighborhoods.

Commissioner O'Neall asked if he would entertain a sunset date.

Assemblymember Roberts indicated he would.

Commissioner O'Neall suggested a one year period, to which Assemblymember Roberts felt that would be too short of a period of time.

MOTION: To recommend that the FNSB Assembly approve Ordinance No. 2018-06 by Commissioner Presler and seconded by Commissioner Thayer.

Discussion on the Motion

Commissioner Presler opined this allows people in neighborhoods potentially affected by conditional use applications to affect the outcome and stated most people are not aware of the process and many are taken by surprise and personally does not believe it is up to the Commission or the Borough deciding which GU-1 areas need to be rezoned.

Commissioner Brandt stated his agreeance with Commissioner Presler, and communicated that it is not a perfect solution, but would be a band aid until the Planning Department can do the larger fix.

Commissioner Sims indicated the proposed ordinance has good and bad concepts, especially how it induces more citizen involvement, but delays a legitimate conditional use permit application, and feels a sunset clause would be beneficial.

Commissioner Thayer stated she does not believe it is a perfect fix by any means, but is a start and with a sunset clause could be effectuated immediately allowing time to develop long-term solution and it creates more awareness and education.

Commissioner Whitaker quantified he is not supportive as it stifles potential businesses that have done their due diligence and invested time and money ensuring all paperwork is in place and then a delay is caused and a rezone proceeds, the owner then locates a different property, same thing happens which causes delays way beyond 60 days.

Commissioner Perreault indicated he will not vote to approve this ordinance due to it being reactionary rezoning and that is not the best way to do land use planning or zoning which should be a deliberative and thoughtful process. He further stressed that this should include a property interest and the reaction cannot come from outside the 2,000 foot and the bottom line is there are people paying attention and they are motivated for and against things which can hinder the process and should not be making a way for uninterested parties who have an outside reason.

Commissioner Guinn communicated he agrees with everything that has been said, and supplemented to it on his belief that Ms. Nelson’s comprehensive approach is the best way to
go, but noted it would take years and so much effort. He commented that the proposed ordinance is not comprehensive and wind up being patch work.

**Commissioner Muehling** reiterated his concern with “standing” and is contrary to interested-persons within a defined radius affected by the outcome. He further communicated that education is the key, but we need education now, this new ordinance will need to be communicated and it is not happening now, and right now everyone has the option to apply for a rezone at any time. He stated a sunset clause as well as a change to who has standing would have to be added before he would support it.

**Commissioner Brandt** communicated that this only affects someone buying land that they may or may not get a conditional use permit, and noted that if the proposed ordinance passes, it would discourage people from buying land in a largely developed residential area.

**Commissioner Sims** expressed concern that it lets controversy and conflict determine land use patterns through zoning rather than being more proactive in implementing the Comprehensive Plan through zoning.

**Commissioner Brandt** agreed with Commissioner Sims statement and expressed that this is a short-term fix on a process that would take two years, to alleviate tearing neighborhoods apart.

**Commissioner O’Neall** took issue with the statement that “this Commission is tearing neighborhoods apart” with decision on conditional use permits.

**Commissioner Brandt** interjected that he meant the “situation” not the Commission, rather the whole marijuana operations going into residential neighborhoods.

**Commissioner O’Neall** stated that by default of the decision and the authority of the body speaks to how we make decisions, and there are times the Body has had to list out specifics to create a basis for how and why the decision has been reached. She stated her agreeance that rezoning is more of a reactionary solution that invokes emotion to prevent something and there has been a lot of discussion in the community about cannabis and if they are concerned about it at all, they have the power to change it now under current code.

[Brief at ease from 10:55 – 11:02 pm]

**Chair O’Neall** stated, in the interest of time, that Commissioners limit their comments to one per person to express their concerns.

**MOTION:** To amend the motion to add a recommendation to the Assembly to add at line 100 after the word “persons”....“who receive a notice of an application for a conditional use permit and”....by **Commissioner Muehling** and seconded by **Commissioner Whitaker**.

**Ms. Doxey** clarified line 100 would read if amended: “B. Notice of Intent to Initiate a Rezone. Any person or persons who receive a notice of an application for a conditional use permit and who wish to initiate a rezone may file a Notice of Intent to Initiate a Rezone prior to submitting a complete application.

**Commissioner Muehling** communicated his basis for the amendment establishing that only those persons receiving a DPO should have standing to file a notice of intent to rezone.
Commissioner Perreault stated his support.

Commissioner Presler questioned whether it solves anything because language in code currently allows for anyone to file for a rezone.

Ms. Doxey clarified that code does allow for anyone to apply for a rezone and noted the requirement that they have 51% of the property owners in the area sign off on the rezone request.

Commissioner Brandt stated it does not change the fact that anyone outside of this process can apply for a rezone and only those people in the area would receive the DPO.

Ms. Doxey indicated if amended it would change in that only those receiving DPOs would be able to file a Notice of Intent to Rezone and clarified anyone not receiving a DPO could file a Notice of Intent to Rezone it just would not effectuate a stay.

Commissioner Perreault communicated that what is trying to be accomplished is that anyone can file a request to rezone which is useful when the Borough does the filing to allow for the process to move forward. He stated he supports preventing outside interests from affecting what a neighborhood is trying to accomplish for themselves.

Commissioner Presler stated that Ms. Doxey's clarification is that only those receiving the DPOs can effectuate the Notice of Intent which is helpful.

Discussion ensued about the process for moving forward with a recommendation to the Assembly.

Commissioner Muehling stated that modifying this document sends the appropriate message to the Assembly on limiting who can file a rezone.

Commissioner Brandt questioned the distance for the DPO letters for this ordinance being cut in half and would it change for just the notice of intent or all DPOs.

Ms. Doxey clarified the distances would change all DPO letters would be 500 and 1,000 feet.

Ms. Nelson further clarified it is the same distance for all DPO letters; conditional uses, variances, etc.

ROLL CALL (Motion to Amend):

Nine (9) in Favor: Guinn, Whitaker, Presler, Sims, Perreault, Brandt, Thayer, Muehling, O’Neall

Zero (0) Opposed.

MOTION PASSED

MOTION: To amend Motion to maintain the current distance for DPO notification by Commissioner Muehling and seconded by Commissioner Brandt.

Commissioner Muehling stated the process has been working.
Commissioner Brandt stated the only reason given was to save money, and staff indicated it would not be an issue, and believe the more notification the better.

Commissioner Guinn stated from an education perspective, the more DPOs are sent out, the more people are aware of zoning.

ROLL CALL (Motion to Amend):

Nine (9) in Favor: Sims, Perreault, Brandt, Thayer, Guinn, Whitaker, Presler, Muehling and O’Neill

Zero (0) Opposed.

MOTION PASSED

Commissioner Perreault called for the question.

ROLL CALL (Main Motion):

Three (3) in Favor: Brandt, Thayer and Presler

Six (6) Opposed: Perreault, Guinn, Whitaker, Sims, Muehling and O’Neill.

MOTION FAILED

G. EXCUSE FUTURE ABSENCES

Commissioner Peterson is excused from the March 27, 2018 meeting and Commissioner Sims will be excused from the March 27, 2018 meeting.

H. COMMISSIONER’S COMMENTS

Commissioner Guinn reported on the RE/RR setback subcommittee and indicated they would be meeting again in the future.

Commissioner Muehling applauded the Borough’s mapping tools utilized at the RE/RR subcommittee meeting

Commissioner Sims spoke on the ease of administration on the RE/RR setbacks and the impacts to the department with exceptions to the rules versus a carte blanche approached.

Commissioner O’Neall thanked the Commission for their dialog.

I. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:25 p.m.