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 6:13 p.m. by Mindy O’Neal, Chairperson.

A. **ROLL CALL**

MEMBERS PRESENT:  
Charles Whitaker  
Chris Guinn  
Doug Sims  
Mindy O’Neal  
Eric Muehling  
David Brandt  
Wendy Presler  
Mike Stepovich  
John Perreault

MEMBERS ABSENT & EXCUSED:  
Robert Peterson  
Pat Thayer

OTHERS PRESENT:  
Christine Nelson, Community Planning Director  
Manish Singh, Planner  
Don Galligan, Transportation Planner  
Wendy Doxey, Assistant Borough Attorney  
Nicole Nordstrand, Administrative Assistant

B. **MESSAGES**

1. Chairperson’s Comments

   Chair O’Neal communicated that before after each matter is heard, she would ask for disclosures and conflicts of interest.

   Chair O’Neal stated that fullness of the agenda and asked Commissioners to stay on point and reminded of the intent and purpose of Title 18.

2. Commissioner’s Comments

   Commissioner Muehling reported that due to an illness, he was not able to attend the last FMATS meeting.

   Commissioner Guinn thanked everyone for the condolences.

3. Communications to the Planning Commission

   Ms. Nelson communicated on the Urban/Agriculture memo from the Subcommittee which was sent to the Mayor.

   Ms. Nelson reported on the Badger/Salcha Subarea Plan, and stated she would like Commissioner Brandt to sit on the advisory group, but if he is not available, another could be appointed.
4. Citizen’s Comments – limited to three (3) minutes

There were no comments by Citizens.

5. Disclosure & Statement of Conflict of Interest

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 reorder of the Agenda to move Item G – Public Hearing and Item H - Appeals after Item E – Consent Agenda Items, by Commissioner Sims and seconded by Commissioner Guinn.

PASSED WITHOUT OBJECTION

MOTION: To approve the Consent Agenda by Commissioner Sims and seconded by Commissioner Perreault.

PASSED WITHOUT OBJECTION

D. *MINUTES

1. *Minutes from the December 12, 2017 Meeting.

E. *CONSENT AGENDA ITEMS

1. *HP2018-005 Wembley Avenue Improvements: A request by the State of Alaska, Department of Transportation and Public Facilities, for local planning authority approval of the Wembley Avenue Improvements Project. This project proposes to reconstruct Wembley Avenue from Aurora Drive to Danby Street in Fairbanks, Alaska, and consists of installing a new sidewalk on the north side of the road as well as regrading and resurfacing the road. (Staff Contact: Don Galligan)

F. PUBLIC HEARINGS

1. ORDINANCE NO. 2017-72: An Ordinance Repealing FNSBC Title 4.68 Landscape Review Board and Amending FNSBC Title 18 To Amend and Clarify The Landscape Plan Review and Approval Process. (Sponsor: Mayor Kassel) (Staff Contact: Christine Nelson)

Commissioner Brandt declared that, until recently, he was on the Landscape and Appeals Commission for the City of Fairbanks, and he has been asked to return to that Commission. Chair O’Neall determined there was no conflict.

Ms. Christine Nelson provided an overview of Borough’s working group which is reviewing all the functions of all FNSB boards and commissions, provided a historical background of the Landscape Review Board, and the proposed changes if the Landscape Review Board is repealed.
Questions by Commissioners

Commissioner Guinn inquired on appeal rights, and Ms. Nelson stated she needed to look into the Ordinance to be sure.

Ms. Nelson mentioned the Landscape Review Board’s recommendation in the addendum packet and indicated their concern to be that the ordinance does not establish a “working group” of landscape professionals and a change to the decorative fence definition.

Commissioner Sims asked of the “working group” is informal/ad hoc, and Ms. Nelson explained that the Landscape Manual is not changed often, and indicated it might happen every few years or if the Downtown Plan recommends changes to downtown, the “working group” may be formed.

Commissioner Presler inquired if this method would add additional work to the planning department staff, and Ms. Nelson indicated it would shift work from administrative work to current planning staff.

Ms. Nelson answered Mr. Guinn’s earlier question by pointing to lines 305 to 308 of the proposed Ordinance, and the appeal at lines 318 to 324.

Public Testimony Opened

No one was present for public testimony.

Public Testimony Closed

MOTION: I move to recommend approval of Ordinance No. 2017.72 to the Fairbanks North Star Borough Assembly by Commissioner Muehling and seconded by Commissioner Guinn.

Discussion on the Motion

Commissioner Muehling opined that the Landscape Review Board met infrequently, had difficulty reaching a quorum, the Ordinance streamlines the approval process, and supports the Ordinance.

Commissioner Guinn communicated his agreeance.

Commissioner Sims stated he supports the Ordinance, but cautioned that the “working group” should remain an option on an as needed basis.

ROLL CALL:

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

Zero (0) opposed.

RECOMMENDED APPROVAL ORDINANCE NO. 2017-72
G. **APPEALS**

1. **GR2018-008:** An appeal by Erika Tobin of the denial of a request for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing detached garage with a nonconforming north rear-yard setback of 2 feet and west side-yard setback of 2 feet instead of the required 5 feet in the Two-Family Residential (TF) zone for the property on Lot 4, Block 17, Charles Slater Subdivision (located at 236 Ina Street, on the north side of Ina Street, north of Minnie Street). (Staff Contact: Christine Nelson)

**Commissioner Stepovich** mentioned a relative’s name is in the packet and was likely a realtor. **Chair O’Neall** determined no conflicts exist.

**OATH ADMINISTERED**

The Appellant, Erika Tobin was present, and indicated she would defer to staff’s presentation.

**Ms. Nelson,** accompanied by Ivar Halvarson, FNSB Assessor, provided a presentation of her staff report and recommendations on behalf of the Borough’s Planning Department and recommendation to deny the appeal and uphold the administrative determination.

**Questions by Commissioners**

**Commissioner Perreault** inquired what “picked up” means related to the assessor’s note card for 1974. Mr. Halvarson, indicated that “picked up” means they picked it up for that tax year and is a new addition to the tax report.

**Commissioner Guinn** mentioned that during the early 70’s he was the Deputy Director of the Planning Department and supervised code enforcement at the time, and stated he does not remember anything. **Chair O’Neall** made inquiries, and determined there is no conflict.

**Commissioner Sims** asked how certain Mr. Halvarson is on the dates of the 1968 and 1971 aerial photographs. Ms. Nelson indicated that the 1968 and 2017 are Borough photographs and those dates are certain, and the 1971 is out of the Assessor’s personal collection. Mr. Halvarson interjected that he is not certain of the exact date, but confirms it is 1971 through two images; the Nordale Hotel and the Goldroom at the Westmark Hotel.

**Commissioner Muehling** commented that the previous owner and adjacent neighbors indicated the garage was present in 1969, and asked who the Planning Department evaluates the veracity of the photographic images versus public testimony. Ms. Nelson responded that there is definite evidence from 1968, estimated evidence from 1971, and the assessor’s record card which were definitive in the Hearing Officer’s conclusion, and further explained her decision.

**Commissioner Brandt** inquired if any search was done for City building permits. Ms. Nelson responded a search was done and there were no zoning or building permits.

**Commissioner Stepovich** asked to have Exhibit 15 to be pulled up (page 548 of Full Agenda Packet). Ms. Nelson indicated that the neighbor’s records were reviewed to see if that photo would show the garage for the subject property.

**Ms. Erika Tobin** inquired from Mr. Halvarson, if there is a possibility that because the house had burnt down, if the main focus for earlier notations was on the rebuilding of the house completion and
not the garage. Mr. Halvarson indicated that if the garage was there, it would have been added to the card and “picked up”.

**Appellant’s Testimony**

**Ms. Tobin** testified as follows:

- The photograph was accepted as a fact, when it clearly is an estimate which would be a guess.
- The photograph is extremely blurry and it is difficult to even see the roofline of the house.
- Requests that the photograph be disallowed.
- Stated the photograph involving the pipeline could be anywhere from 1969 to 1970.
- The Leskos, adjacent neighbors, were married in 1969 and the garage was in place at that time.
- The previous owner had her daughter in 1968 and said her daughter was just a baby when the garage was built in the fall.
- Feels like more focus was on the burnt down house, and the garage could have been easily overlooked.
- Evidence does not support that there is not a garage during that time.

**Questions by Commissioners**

**Commissioner Presler** inquired if the previous owners or neighbors have photographs of their children playing in the yard that may have shown the garage. Ms. Tobin indicated she had not asked them.

**Commissioner Whitaker** inquired if the neighbors across the street spoke at the Administrative Hearing and asked if a record of the Administrative Hearing is part of the packet, and Ms. Tobin indicated that the neighbors did testify, and were supposed to come tonight, but weather may have prevented it, and advised that she had requested the audio of the Administrative proceedings to be included.

**Ms. Doxey** addressed the *de novo* nature of the proceeding, so there is no record from before, since this matter is being heard brand new.

**Commissioner Muehling** asked if the only fact in dispute is the date the garage was built. Ms. Tobin confirmed, and stated that the previous owner, while memories fade, indicated when the garage was built and should be believed.

**Commissioner Sims** asked if this is a non-conforming financial lending issue, and Ms. Tobin indicated it is not, that she was able to get a loan to purchase the house.

**Commissioner Whitaker** inquired if it was owner-financed, and Ms. Tobin indicated her loan is through Residential Mortgage.

**Interested Person Testimony Opened**

[Clerk connected Ms. Jenny Bell-Jones via telephone]

OATH ADMINISTERED
Ms. Jenny Bell-Jones testified that she supports the request for grandfathering the garage on 236 Ina Street, and stated that to her knowledge the garage has been there the entire time she has lived there since 2000.

Commissioner Perreault sought clarification that her testimony was that the garage had been there since 2000, and Ms. Bell-Jones stated “yes”.

[Ms. Jenny Bell-Jones disconnect]

Interested Person Testimony Closed

Applicant’s Rebuttal

Ms. Tobin indicated she had no rebuttal.

[Chair O’Neall allowed for the matter to be reopened allowing further questions of Staff.]

Commissioner Whitaker addressed Mr. Halvarson and asked what the dash marks indicate. Mr. Halvarson stated it is pretty straightforward beginning on May 19, 1969. Commissioner Whitaker inquired who the assessors were making the assessment, and Mr. Halvarson responded to the ones he knew, and stated both had long careers in assessing in Alaska.

Commissioner Presler inquired where the previous assessor card (prior to 1969) is for this property. Mr. Halvarson said field cards do not go back prior to 1969. Ms. Nelson indicated that on pages 575 to 580 are the Assessing Office’s full record on the property.

Commissioner Sims addressed Mr. Halvarson, and drew his attention to Exhibit 6-6 on page 519 of the Full Agenda Packet, and asked that James Kelly is the owner in 1966, and then 1973 there is a increase in building valuation. Mr. Halvarson stated it was due to removal of the incompletion due to the fire, and explained the notations on the field card.

Commissioner Perreault asked Mr. Halvarson to go through the remarks from 1969 and translate. Mr. Halvarson read the notations and explained what he believes those comments mean. Commissioner Perreault further inquired of the 1971 aerial photograph and the certainty of the Nordale Hotel burning down, but is there a record identifying the Westmark Goldroom construction, and Mr. Halvarson indicated he has the 901 Noble Street [PAN 39853] field card and stated it was built in 1971 and pointed to it on the aerial image, and explained that the start date of a project is when they notate “pick up” on the field card.

Applicant’s Rebuttal

Ms. Tobin renewed her assertion that everyone is human and can make mistakes.

MOTION: To move to deny the appeal and uphold the Administrative Hearing Officer decision denying recognition of legal nonconforming structure status (grandfather rights) for the existing detached garage with a nonconforming north rear-yard setback of 2 feet and a west side-yard setback of 2 feet instead of the required 5 feet in the Two-Family Residential (TF) zone by Commissioner Muehling and seconded by Commissioner Sims.

Discussion on the Motion
Commissioner Muehling communicated that the burden is on the Applicant and must make a positive assertion and show proof, and the Commission is required to follow the guidelines in Title 18 of Borough Code. He stated the difficulty in evaluating conflicting evidence presented by the inspectors which are backed up by physical documents and aerial evidence showing when the garage was there and when it was not there all supporting the recommendations from Staff. He continued and explained the other side being the vague 50 year old recollections, and does not believe the burden has been met.

Commissioner Brandt countered that the picture on page 536, Exhibit 11 of the Full Agenda Packet, clearly shows in 1968 the garage is not there, but the photo on page 541, estimated to be 1971, is dark and cannot tell whether a garage exists or does not, especially since the garage has a dark roof, and believes it very well could be there. Commissioner Brandt further stated that although the assessor’s records do not pick it up until 1974 is not proof it was not there prior, and the testimony of the prior owner and neighbors indicate it was there in 1969 based upon significant life events, and feels the assessor’s records are not good enough and the testimony weighs heavy.

Commissioner Guinn communicated his basic understanding of how the assessor's inspect and feels the preponderance of the evidence is the assessor's record which indicated the garage was “picked up” in 1974, and believes it did not exist before that time.

Commissioner Brandt commented there were different assessors prior to 1974, and it is possible that the current assessor in 1974 had not written it down earlier because they thought it was on a previous card which has not been provided.

Commissioner Muehling restated that the Applicant must make a positive assertion in defense which is still missing.

Commissioner Brandt counted that the positive testimony from the previous owner and neighbors stated definitively it was built in 1969 overrides a lack of evidence by the assessor that is was not.

ROLL CALL:

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

Two (2) opposed: Presler and Brandt.

MOTION TO DENY PASSED

Discussion ensued about the appeal process and Ms. Doxey addressed Ms. Tobin’s question.

[Recessed for a break from 7:30 pm to 7:38 pm]

H. QUASI-JUDICIAL HEARINGS

1. CU2018-006: (continued from December 12, 2017; audio of the December 12, 2017 hearing is available on Track 2 at: http://www.co.fairbanks.ak.us/Boards/Pages/Planning-Commission.aspx)

A request by Jessica Dance, DBA Barefoot Grow Company LLC, for conditional use approval of a marijuana cultivation facility, indoor large, in the General Use 1 (GU-1) zone on Lot 1-A, Block 1, Waller Subdivision (located at 940 Star Court, on the south side of Badger Road, at the end of Star Court). (Staff Contact: Manish Singh)
Commissioner Perreault disclosed that he was not at the December 12, 2017 meeting nor has he been able to listen to the audio of that proceeding and asked to be excused, and Chair O’Neall excused him from the proceeding.

[Commissioner Perreault leaves the dais]

OATH ADMINISTERED

The Applicant, Jessica Dance, and her husband, Jeremy Dance, were present.

Ms. Doxey clarified for the record that this is a continuation from the last meeting and everything that was heard at the last hearing is evidence in what will be considered tonight and decision to be made tonight.

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

Questions by Commissioners

Commissioner Guinn recalled that from the previous hearing, the road is a one-way, dirt road, not maintained. He inquired if the road was built to Borough standards. Mr. Singh replied that the Plat does show Star Court with as a 50 foot easement, and his personal observation is that the driving lane is reduced with the snow and was able to access the road with his truck. Mr. Singh clarified that certain subdivision actions do no require road construction.

Commissioner Muehling followed up on Commissioner Guinn’s question, and stated that at the prior meeting, the testimony from Ms. Stolen was that it is a dirt road, travel speeds of 5-8 mph, unmaintained, unpassable for two vehicles traveling in opposite directions. Mr. Singh deferred to the Applicant can elaborate on the summer conditions of the road, and noted that the emergency vehicle access was okayed by the Deputy Fire Chief.

Commissioner Whitaker clarified that there is no legal basis to require the Applicant to improve the road. Mr. Singh responded that there is not enough nexus in connection to the type of use (marijuana cultivation) and the zone, GU-1 could have heavy impact uses without requiring any road maintenance.

Applicant’s Testimony

Applicant, Jessica Dance, testified as follows:

- Apologized for her absence at the December 12, 2017 meeting.
- Updated on where they are at with all governing body’s:
  - State licensing underway.
  - In contact with Tim Fisher in the State Fire Marshal’s office for plan review.
  - North Star Volunteer Fire Department issued a letter of access and the road is functioning fine for access to their property and once they are up an operational, they will maintain the road.
  - In contact with ADEC about soil waste and wastewater, and their plan has been approved and explained their plans.
  - Carbon filtration will be provided.
  - Objective is that no one will know what is going on inside.
Questions by Commissioners

**Commissioner Guinn** queried if in the road is a two-way road in the summertime, and Ms. Dance replied that it is not a narrow dirt road, and is not regularly traveled with two established lanes, and indicated there are clearings along the ½ mile length of the road and pointed to the aerial showing the clearings which would allow for someone to pull over and let someone else pass. **Commissioner Guinn** stated that emergency vehicles have to be able to enter and leave the road, and Ms. Dance replied that in an emergency situation there is plenty of room for vehicles to get by each other.

**Commissioner Presler** asked Ms. Dance to explain the outdoor composting process. Ms. Dance explained the State processing requirements of composting and stated it would not be marijuana when it goes outside.

**Commissioner Muehling** queried what background, skills and training are they relying on to determine the appropriate size of a carbon filter. Ms. Dance noted that she is a licensed architect and work with product manufacturers frequent, knows the amount of air needed to be moved, has a list of manufacturers who are experienced in this type of odor filtration, and intent is to work closely with them to make sure their product is going to meet objective.

**Commissioner Sims** asked Ms. Dance to describe the typical daily traffic use, including the type and size of vehicles. Mr. Dance responded that they have never had to stop and turn around or let someone by, and explained the traffic pattern would have an influx during harvesting every two months.

Interested-Person Testimony Opened

*No interested-persons were present to offer testimony.*

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 dissatisfaction with the answer related to access, but indicated since the fire people did find that the access was adequate, so will support it.

**Commissioner Presler** indicated it was helpful to have the Applicant answer questions and speak to the health, safety and welfare and will support it too.

**Commissioner Muehling** stated his belief that the Applicant has addressed the health and safety issues of this proposal; composting handled per DEC requirements, the air will be protected by carbon filters, and the North Pole Volunteer Fire Department has stated they can get through.
Commissioner Sims stated he is in favor; the access issue is adequate when you consider the current zoning and what could occur now.

Commissioner O’Neal stated the Application meets the intent and purpose of Title 18 and other ordinances and State Statutes.

Ms. Doxey identified that from the previous testimony, her notes indicated there were concerns with the location of the storage tank, runoff off from this property onto neighboring properties, and secluded area making it hard to monitor.

Commissioner Sims responded that it is in an area one would want it to be; not in a sensitive use area. He further stated that it is right next door to Brown’s Hill Quarry which is much higher elevation typographically with significant runoff.

Commissioner Presler added that the wastewater storage happened after the last meeting, so concerns have been answered, and stated that Golden Heart Utilities has been contracted for disposal of wastewater, and any runoff will be a rich organic soil and it is on the Quarry side.

Commissioner O’Neal added that it is an accessible property.

ROLL CALL:

Eight (8) in Favor: Stepovich, Presler, Sims, Brandt, Guinn, Whitaker, Muehling and O’Neal

Zero (0) Opposed.

MOTION PASSED

[Commissioner Perreault returned to the dais]

[Clerk connected Mr. Dan Britton via telephone]

2. CU2018-007: A request by David Prusak from Interior Gas Utility, on behalf of Fairbanks Natural Gas, LLC, for amendment of the conditional use approval of a bulk fuel (liquefied natural gas) distribution and storage facility in the Heavy Industrial (HI) zone on Tract C, Tanana Levee Industrial Park Subdivision and on a portion of Tract D, Tanana Levee Industrial Park Subdivision within the HI zone (located at 2942 Tria Road, on the north side of Tria Road, east of Gas Court). (Staff Contact: Manish Singh)

Chair O’Neal passed the gavel to Vice-Chair Muehling for determination of whether or not she has a conflict of interest. Commissioner O’Neal disclosed she was previously employed by the Interior Gas Utility. Acting Chair Muehling questioned Commissioner O’Neal to determine bias or the appearance of bias, personal relationships with previous employers, and financial interests. Ms. Doxey asked follow up questions to explore Commissioner O’Neal’s relationships with Mr. Prusak, Mr. Britton, and Mr. Chris Miller. It was determined that Ms. O’Neal has no conflict.

Commissioner Sims disclosed that in his previous employment with the FNSB, he dealt with the 2006 Conditional Use Permit in this matter. Chair O’Neal questioned of his knowledge of the matter being heard today. Commissioner Sims indicated he knows Chris Miller through various aspects in town, and stated he does not believe to have a conflict. Ms. Doxey inquired if he has knowledge of the property from the previous process that is not going to be presented at tonight’s
hearing. **Commissioner Sims** responded that he did not believe he has any outside knowledge. **Chair O’Neall** determined that Commissioner Sims does not have any conflicts.

**Commissioner Presler** disclosed that Chris Miller is the President of a company she used to work for and that she still works with Mr. Miller in her current job as a consultant. **Chair O’Neall** inquired of her relationship today and whether it would impact her decisions today. **Ms. Doxey** asked if Commissioner Presler works as a consultant on the matter to be heard and if she has any financial interests in the matter, and Commissioner Presler stated “no”. **Chair O’Neall** determined that Commissioner Presler does not have a conflict.

**Commissioner Muehling** objected to the determination, and stated other Commissioners have prior contact with the company, whereas Commissioner Presler has current involvement as a consultant.

**MOTION:** To make the determination that Commissioner Presler has a conflict due to her current status as a consultant to the Applicant by **Commissioner Muehling** and seconded by **Commissioner Stepovich**.

**ROLL CALL:**

Two (2) in Favor: Guinn and Muehling

Six (6) Opposed: Sims, Perreault, Brandt, Whitaker, Stepovich, and O’Neall

**MOTION FAILED**

**OATH ADMINISTERED**

The Applicant, David Prusak, was present with the property owner, Dan Britton appearing telephonically, and Chris Miller as the design consultant.

**Mr. Manish Singh** disclosed that he also knows Mr. Miller in his capacity as a member of the Fairbanks Downtown Plan working group, and has not discussed this matter previously with Mr. Miller. **Chair O’Neall** stated no conflict exists.

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

**Questions by Commissioners**

**Commissioner Muehling** questioned the transportation and access to the site with 25 trucks per day carry hazardous materials and what are other communities doing to consider the routes the trucks travel and potential risks. **Ms. Singh** deferred to the Transportation Planner, but stated that other communities have provisions of road maintenance. **Mr. Don Galligan** explained that there is a planning disconnect and the lack of an unmaintained road into an industrial area, and imposing a road maintenance requirement on one property owner is not an appropriate condition.

**Ms. Doxey** interjected that the focus should be on the parcel off Tria Road and not on the delivery of natural gas to other locations.

**Commissioner Muehling** stated that he would like an answer as to how the trucks are going to be getting in and out of Tria Road.
Ms. Doxey indicated she did not have any problem with the questions.

Mr. Singh deferred to the Applicant to address the concern, and explained his primary focus was on Tria Road, and he did not consider the route the trucks would take to get to Tria Road.

Commissioner Muehling questioned what type of training would be required for first responders, and Mr. Singh deferred to the Applicant for specificities, though stated that the existing facility was annexed into the University Fire Service Area in 2006 as it was a condition of approval. Commissioner Muehling inquired if any community evacuation plans exist in the event of an emergency, and Mr. Singh responded he has only seen an emergency shut down procedure.

Commissioner Perreault asked who enforces the Alaska pipeline Act, and Mr. Singh indicated he believed it is DOT, and deferred to the Applicant. Commissioner Perreault asked if the Applicant has a plowing plan for maintaining the road, and Mr. Singh stated that in conversations, there is an informal practice between existing property owners maintaining the road.

Commissioner Sims asked why letter of map revision for the flood plan requires fill. Mr. Singh advised that the Floodplain Administrator advised that due to movement of the dirt, it could change the elevation.

Applicant’s Testimony

Applicant, David Prusak, introduced himself, property owner Dan Britton and Mr. Chris Miller, consultant. Mr. Prusak testified as follows:

- Explained Interior Energy Project and Alaska Industrial Economic Authority and this project is an extension of those original efforts.
- Currently have 1,100 customers with only 500 with uninterrupted service throughout year.
- Project will allow uninterrupted service for all existing customers and the ability to add additional.
- Fully able to comply with all conditions recommended by Staff.
- FEMSA is an arm of the federal department of transportation and conduct annual audit.
- Transportation route comes from Cook Inlet via the Parks Highway to the Mitchell Expressway to Pegar Road to Tria Road.
- Explained that annual training is provided to the University Fire Department.
- Flood Plain requirement is a FEMA requirement, and are prepared to meet the requirement.
- Explained the three entities involved in the road maintenance and how they manage its upkeep.

Mr. Chris Miller addressed the community evacuation plan and explained that natural gas is a localized hazard and extends to the Fire Department.

Mr. Dan Britton, property owner, expanded on the specialized fire training that is conducted with the fire department, staff, and any other emergency responders.

Questions by Commissioners

Commissioner Whitaker inquired the purpose of a double wall holding tank. Mr. Miller explained it is a localized big deal in that they do not want to lose the rest of the tank, the facility, and want to be safe. Commissioner Whitaker asked if the single wall tanks currently in place will remain and are
they still federal DOT approved. Mr. Miller replied that the existing tanks are ASME pressure vessels and will remain during construction and are intended to be decommissioned and relocated to North Pole for its project.

**Commissioner Stepovich** inquired where the valve controls would be housed and how they will be monitored. Mr. Miller stated that it is automatically watches for both flame and methane gas detectors, and if detected, it automatically rings Fairbanks Natural Gas. Mr. Britton added that there are on-call personnel available 24 hours a day, seven days a week, and explained their safety plan.

**Commissioner Sims** asked if geo-technical investigations have taken place given wetlands and possible poor soil. Mr. Prusak explained extensive geo-technical efforts taken with soil borings and seismic considerations for design. Mr. Miller explained the components of the foundation.

[Recessed for a break from 9:15 pm to 9:23 pm]

[Clerk reconnected Mr. Dan Britton via telephone]

Interested-Person Testimony Opened

No interested-persons were present to offer testimony.

Interested-Person Testimony Closed

**MOTION:** To approve the conditional use amendment CU2018-007 for a bulk fuel liquefied natural gas distribution and storage facility with two conditions and adopting the revised staff report and three findings of fact in support of the approval by **Commissioner Presler** and seconded by **Commissioner Whitaker**.

Ms. Doxey pointed out that the last paragraph of text in the Executive Summary has a carryover from the original staff report.

**MOTION:** To amend the revised staff report to strike the text “and that a portion of the Tria Road is maintained” on page 1 of the revised staff report by **Commissioner Stepovich** and seconded by **Commissioner Perreault**.

PASSED WITHOUT OBJECTION

Discussion on the Motion (main motion)

**Commissioner Presler** stated her support of the conditional use amendment, and communicated the new tanks are an improvement, benefit the community, and Applicant has demonstrated it is a well thought out engineered plan and risks are localized. **Commissioner Presler** further commented that Tria Road is already used by heavy vehicles in an industrial area and power currently exits on site.

**Commissioner Muehling** communicated that the Applicant has no objections to the conditions imposed, and stated his satisfaction with the mitigation plans in place to address the hazards. **Commissioner Muehling** further commented that the health and safety issues have been addressed.
Commissioner Sims stated that the owner/applicant has a vested interest to maintain the road, and pointed out that the comprehensive plan designates this area heavy industrial which is where something of this nature should be located.

ROLL CALL:

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

Zero (0) Opposed:

CU2018-007 APPROVED

[Mr. Dan Britton disconnected]

[Recessed for a break from 9:40 pm to 9:51 pm]

3. CU2018-001: A request by Leigh Strehlow for conditional use approval of a minor kennel in the Rural Estate 2 (RE-2) zone on Lot 1, Rossow Subdivision (located at 505 Line Drive, on the west side of Line Drive, between Sheep Creek Road and Hafele Avenue). (Staff Contact: Manish Singh)

OATH ADMINISTERED

The Applicant, Leigh Strehlow, and her husband, Andrew Pagel, were present, and advised they would have staff to present first and she would need an hour.

Chair O’Neall questioned the amount of time requested and advised she would allow it, and encouraged her to try to make her presentation shorter.

Mr. Manish Singh pointed out some corrections to the staff report.

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

Questions by Commissioners

Commissioner Brandt asked for clarification on what constitutes a commercial kennel, and Mr. Singh responded that as long as the kennel is being used for personal recreation and not generating revenue.

Ms. Doxey read definition of “commercial” from Title 18.

Commissioner Brandt questioned whether the Applicant competing in the Yukon Quest where there could be profit, would make it commercial in nature. Mr. Singh further explained his focus on the property, not another location such as where the Yukon Quest is held.

Commissioner Perreault asked Mr. Singh to speak of any other kennels in RE zones around the Borough. Mr. Singh indicated in the past three (3) years of service one conditional use permit was before the Commission off of Ballaine Road, which was denied.
Commissioner Stepovich asked if the Applicant’s proposal to build all the fences and then the Planning Department decided to make them into conditions. Ms. Singh replied that all the fences were proposed by the Applicant, and establishing them as conditions and milestones for completion allows for enforceability.

Commissioner Whitaker stated the proposal is for 12 dogs, but questioned if that means there is no limit to the amount of puppies. Mr. Singh responded that the code does not regulate dogs that are less than six months of age or being maintained in heated buildings. Commissioner Whitaker questioned if the conditional use permit goes with the property or the applicant, and Mr. Singh indicated it follows the property.

Commissioner Muehling stated that the application makes reference to “multi-user equinox trail”, and asked if the trail is multi-user, non-motorized, does it cross private property, and are there rules governing the use. Mr. Singh replied that he limited his research to in and around the properties and equinox trail appears to overlap the trail near the property.

Commissioner Sims queried why there is no condition limiting the kennel to 12 dogs. Mr. Singh stated he is relying on condition number 11 which would require them to come back to the Planning Department. Commissioner Sims commented that one fence will be complete in 4 years, there other complete within 12 years, and questioned how noise is going to be handled in the meantime. Mr. Singh reiterated the conditions requiring mitigation of noise which is not just the fencing and explained vegetative buffer and kennel placement on property.

Commissioner Muehling pointed to page 419 related to tree noise buffer, and stated that all the trees listed are known to drop their leaves in the winter, and asked what the actual noise mitigation in the winter with that type of vegetation. Mr. Singh responded he has basic knowledge of how noise travels and having trees and fence structures and does not believe there is much difference between summer and winter, and deferred to the Applicant to offer their mitigation strategies.

Commissioner O’Neall asked if there is a particular material/brand name used for sound barrier fences. Mr. Singh pointed to the application that specified two types of fencing and explained the brands proposed.

Commissioner O’Neall asked Mr. Singh to define “all activity” listed in proposed condition number 10, and Mr. Singh stated he is not counting the residential use, rather kennel related activities, such was feeding, watering, and running the dogs. Commissioner O’Neall followed up to understand that the dogs need to be contained prior to 9:00 p.m., and asked how the Applicants are going to ensure “no barking”, and Mr. Singh indicated that except in emergency situations, all activity must be curtailed prior to 9:00 p.m.

Chair O’Neall restated her concern for the excessive request for an hour of time, and encouraged the Applicant to limit her time to 30 minutes, and the Commission’s authority to end the meeting at midnight and stated the time of 10:35 p.m.

Applicant, Leigh Strehlow, introduced herself, and her husband, Andrew Pagel, gave a presentation and testified as follows:

- Clarified they wish to amend to only have ten (10) kennel dogs
- Spoke of their recent marriage in Hawaii and delay in moving forward with permit
- Well rounded cultured people who enjoy outdoor activities
- Grown up with livestock – horses
- Clarified on the animal control complaints related to their cow
Chair O’Neall asked Ms. Strehlow to speak only as to the conditional use permit and explained it should intent and purpose of how the requested conditional use permit relates to Title 18 adequate public access and facilities, and the health, welfare, and safety of the property.

Ms. Strehlow continued her testimony as follows:

- Discussed dog names and ages
- Explained her introduction into mushing and familiarity with sled dogs and integration of the dogs into their family
- Highlighted trail system around property and explained how it leads into the greenbelt system
- Shows videos on “shock collar yelling”, running with the dogs, passing a biker on the trail, and coming into the yard, control over dogs’
- Stressed the amount of time spent running dogs and noise is not a factor because they are sleeping

Chair O’Neall applauded Ms. Strehlow on developing the record of her character and care of the dogs, and stressed the need for her to speak to the property interest, and advised if she did not she would call her out of order.

Ms. Strehlow continued her testimony as follows:

- All the trails are accessible from her property
- Dogs are well cared for and proper food storage to avoid any contamination
- Explained photographs of the dog yard during various seasons
- Dog yard is not visible from neighbors
- Clarified there is little runoff due to the compaction and bowl areas created by the dogs
- Described the Yurt structure on the property and spoke to the recently installed fence
- Showed Borough GIS aerial of property clearing
- Explained odor eliminators and waste disposal
- Described acoustifence and echo barrier for noise mitigation
- Expanded on history of facts concerning property and their purchase of the property

Chair O’Neall stated that testimony concerning neighbors and actions of neighbors are not appropriate for this hearing, and stated she would only allow testimony related to the conditions in the staff report, and stated would not allow testimony related to neighbors.

Ms. Strehlow continued her testimony as follows:

- Described distance dog barks carry

Chair O’Neall disallowed the playing of any further videos.

Ms. Strehlow continued her testimony as follows:

- Described what the videos would have shown if played

Chair O’Neall asked if Ms. Strehlow has any other information on the conditions addressed in the staff report, and Ms. Strehlow indicated her confusion on the presentation.

Ms. Strehlow continued her testimony as follows:
• Described pictures outlining the trails on the property and the trees
• Stated her intention of addressing concerns from neighbors, letter from doctor, emails going around the neighborhood

Chair O’Neall explained that the neighbors would have an opportunity to testify and she would have the opportunity to question them and provide a rebuttal at the end.

Ms. Strehlow turned the remaining time allotted to her over to her husband.

Mr. Andy Pagel testified it is their belief that they have been singled out on this matter, and respect to what is left of their standing in the neighborhood and what friends they have, he stated, they would like to rescind their application for a conditional use permit. He further thanked the Commission for its time and apologized for feeling of wasted it. He stated they want to do with their land without conditions.

[Recessed for a brief at ease from 11:15 pm to 11:22 pm]

Chair O’Neall reconvened the meeting and explained that although the applicant has officially withdrawn their application, the process now is that the motion and application belongs to the Body and opening up for discussion to proceed with denying permit or approve the permit.

Ms. Nelson indicated staff has no objection to the withdrawal and stated it is in writing.

Discussion on Action

Commissioner Perreault questioned if there is a possibility that another permit could be applied for with different circumstances in the future. Chair O’Neall explained it would have to be significantly different then this permit.

Commissioner Sims commented that they cannot reapply within a six month period and then only if it is significantly different.

Ms. Doxey clarified that there is that provision in code, in a quasi-judicial proceeding; they would be foreclosed for the same or substantially similar permit as the matter been adjudicated.

Commissioner Sims clarified that is the case if it is denied, but if the Body accepts the withdrawal they could come in and reapply tomorrow, and Ms. Doxey confirmed. Commissioner Sims stated it should be formally denied.

Commissioner Whitaker stated his agreeance.

Commissioner Perreault stated the Body should accept their withdrawal.

Commissioner Muehling expressed that the Applicant rescinded their request, stated his belief that they do not want it, and it should be denied.

Commissioner Presler stated her agreeance with denial in the interest of fairness to everyone who showed up tonight to listen and speak and the Commission did not get the opportunity to question them.

Commissioner Muehling questioned the process of hearing testimony.
Commissioner O’Neill explained if the decision is to move forward with approval or denial, testimony would be heard.

Ms. Doxey confirmed, and explained the Commission has the option, if the applicant has met their burden, denial can be made on that basis. She further explained that the applicant has the burden to demonstrate that this conditional use permit is appropriate for this location meeting all criteria in Title 18.

Commissioner Sims communicated that the applicant has an appeal right if the decision is to deny.

Commissioner Perreault commented that although frustrated, it is not the purpose of this Body to be punitive.

Commissioner Stepovich stated his agreeance with Commissioner Perreault.

Commissioner Guinn stated his belief that the applicant has not met their burden and is not convinced they are even willing to meet the conditions.

MOTION: To deny for the Applicant’s failure to meet their burden by Commissioner Muehling and seconded by Commissioner Presler.

Discussion on the Motion

Commissioner Muehling commented he did not hear a significant amount of defense of the application from the presentation presented.

Commissioner Presler added that it was not clear that they intended to comply with all the conditions.

Commissioner Sims echoed the statements made and commented that the location proposed is not the proper location for this type of kennel.

Ms. Doxey asked for expansion on Commissioner Sims’ comments makes it inappropriate for this location based on what was heard tonight.

Commissioner Sims responded that the proximity to trails is problematic, the fencing noise attenuation scheme is farfetched, and timelines involved does not address immediate issues.

ROLL CALL:

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

One (1) Opposed: Perreault

CU2018-001 DENIED

I. NEW BUSINESS

1. Discussion of whether the Planning Commission wishes to sponsor an amendment to FNSBC Title 18 which would reduce the setback requirements in Rural Residential and Rural Estate zones. (Commissioner Guinn)
Commissioner Guinn explained his proposal to reduce the setback requirements in the RE and RR zones, reducing requests for grandfather rights, and requested the Chair form subcommittee to look into the matter.

Chair O’Neill requested that a subcommittee be formed to discuss this matter, consisting of Commissioners Guinn, Commissioner Stepovich, and Commissioner Sims.

Commissioner Muehling stated he prepared a statement he would like read in the record, and read as follows:

“We have property setbacks to support the health, safety and general welfare of our community. What kind of research has been done to support setbacks in the original code?

With respect to HEALTH: How would reducing setbacks affect required separation of septic systems and wells? How might someone be affected with a reduced distance to the neighbor’s wood stove — or hydronic wood stove?

With respect to SAFETY: Changing the setbacks might change access for fire or emergency vehicles. Houses built in close proximity present a fire hazard.

With respect to PRIVACY: Property owners currently enjoy a certain amount of privacy with setbacks.

Good fences make good neighbors. Setbacks also make good neighbors.

With respect to property rights:
A borough-wide change affects land owners who purchased property with an expectation of certain setback and the privacy that provides. No property owner within a zone has more or fewer property rights. Property rights should be consistent with future development. I imagine few property owners want to lose this protection.

We should consider whether DOT might object to a smaller safe setback from traffic. What happens if the house is right up next to the street … there’s no room to expand the road.

With respect to fewer grandfather rights hearings: There seems to be an assumption that this commission will have fewer grandfather rights hearings if we reduce setbacks. What statistics do we have to base that assumption on?

Consider this may cause a greater hardship for people who have abided by the law, to cater to the people who want less setback standards in order to block marijuana industry activity in their neighborhood.

Is this proposed change an accommodation to neighbors in GU-1 to block the marijuana industry? If so, a reduction in setbacks is an injustice to the people who have abided by the standards to begin with throughout the borough.

Just because residents don’t want marijuana, that’s not a substantial reason to change borough-wide zoning.
Property owners will have the same property rights as every other RR or RE property owner, so their property rights are protected. Remember, many people with the more protective zoning appreciate the setbacks. Reducing setbacks is a loss of protection.

Is this a solution without a problem? We don't know if rezoning will reduce the number of grandfathering determinations we need to hear.

Using today’s technology and aerial surveys, the ability to determine grandfather rights is more efficient and requires less time than it has in the past. What are our long-range goals with planning? I think consistent policies are important.

The setbacks that we have now have validity and were established for good reasons. There has been a rational case for setting the current setbacks. Before changes are considered, the history of why setbacks were originally established should be reviewed.

The people who chose to go from no [sic] setbacks to setbacks should prove their case.

We need good, consistent, common sense zoning. Setbacks are common sense. Setbacks make good neighbors.

By maintaining the setbacks that have been in place, you maintain a consistent quality of life, health, safety and welfare."

Chair O’Neall asked if he’d like to submit his comments to the subcommittee and if he would like to sit on the subcommittee, and Mr. Muehling indicated he could submit and would like to sit on the subcommittee. Chair O’Neall formed the subcommittee without objection consisting of Commissioners Guinn, Muehling and Sims.

Ms. Doxey mentioned that some direction should be given to the subcommittee.

Chair O’Neall stated the purpose of the subcommittee would be to evaluate with staff the impacts of reducing setbacks within the zone and take into consideration the impact to the community as well as property rights.

Ms. Nelson communicated that they are looking at what the issues really are, and if there are other ways to solve that issue.

J. **EXCUSE FUTURE ABSENCES**

Commissioners Thayer and Peterson are excused from the February 13, 2018 meeting.

K. **COMMISSIONER’S COMMENTS**

Commissioner Sims requested an update of the floodplain mapping projects – Chena/Badger Slough and Tanana River. He further expressed desire to get conditional use permits for kennels off the books, and conveyed “job well done” to the Chair.

Commissioner Muehling thanked staff for all their working in putting together the materials.

Commissioner Guinn thanked everyone for their kind thoughts.
Ms. Nelson responded to Mr. Sims comment and stated that there is an action item in the Comprehensive Plan to fix zoning in regards to kennels. Chair O’Neill suggested Commissioner Sims set up a meeting with Planning staff to move forward with his concern.

L. **ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:49 p.m.