A regular meeting of the Fairbanks North Star Borough Planning Commission was held in the Mona Lisa Drexler Assembly Chambers, Juanita Helms Administration Center, 907 Terminal Street, Fairbanks, Alaska. The meeting was called to order at 6:00 p.m. by Mindy O’Neill, Chairman.

A. **ROLL CALL**

MEMBERS PRESENT: Mike Stepovich Charles Whitaker  
John Perreault David Brandt  
Doug Sims Eric Muehling  
Robert Peterson Mindy O’Neill

MEMBERS ABSENT: Wendy Presler

MEMBERS EXCUSED: Chris Guinn & Patricia Thayer

OTHERS PRESENT: Christine Nelson, Director of Community Planning  
Noah Klein, Asst. Borough Attorney  
Nancy Durham, Planner III, Flood Plain Administrator  
Don Galligan, Planner IV - Transportation  
Mary Bork, Recording Clerk

B. **MESSAGES**

1. Chairperson’s Comments
2. Commissioner’s Comments
3. Communications to the Planning Commission
4. Citizen's Comments – limited to three (3) minutes
5. Disclosure & Statement of Conflict of Interest

**Commissioner Sims** stated he received a phone call from Mr. Ohler expressing how distraught he was from being evicted from his home.

**Commissioner O’Neall** stated that she would like to get the gist of the conversation without getting into any specifics that where discussed during that conversation that may not be in the packet or brought up tonight in testimony.  
Discussion ensued between Commissioner O’Neall and Commissioner Sims on the conflict of interest matter.
Commissioner O'Neall concluded that there may be an appearance to the public that there could have been an exchange of information that could interfere with the decision; rule of conflict.

[Commissioner Sims left the dais]

C. * APPROVAL OF AGENDA AND CONSENT AGENDA

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

MOTION: To approve the Agenda and Consent Agenda by Commissioner Peterson, seconded by Commissioner Muehling.

D. APPEALS

1. GR2018-097: An appeal by Michael Ohler of the denial of a request for affirmative recognition of legal nonconforming use status (grandfather rights) for an existing single-family dwelling unit in the Heavy Industrial (HI) zone at 2220 Donald Avenue. Staff Contact: Nancy Durham.

OATH ADMINISTERED

Ms. Durham provided a presentation of her staff report and recommendation on behalf of the Borough's Planning Department and recommended denial of the appeal and to uphold the administrative determination supported with sixteen (16) findings of facts as listed in the Staff Report.

Questions by Commissioners

Commissioner Muehling stated the 1980 aerial photo showed no dwelling and the 1982 aerial photo showed a dwelling, he asked why they believe the assessor’s field notes did not note a structure from 1982 to 1985. Mr. Brad Accard, Deputy Assessor answered by explaining it was a large area, and they were short personnel. They did not have the advantages of aerial photography to show them in their system how to identify.

Commissioner Brandt asked if the assessor marked this property down as a residential dwelling. Mr. Accard stated no; the field notes showed that it was put down as an ATCO-Type Shed Building on blocks.

Discussion ensued between Commissioner Brandt and Mr. Accard regarding the structure and the assessing department’s inspection process.

Commissioner Peterson asked if the large structure shown on page 58 was converted from an ATCO unit to that large structure. Mr. Accard stated that is correct, based on the history of the assessment notes.
Commissioner Peterson asked from a legal standpoint if the ATCO was there and being lived in, could it get Grandfathered status, but would the addition that was added much later also be part of grandfathering. Ms. Nelson stated that when we look at grandfather rights, we look at the use. This is why they are making the distinction between a shed and a dry cabin. A shed does not grandfather a dwelling but a dry cabin is considered a dwelling. The code allows the expansion of a nonconforming use but it has to have a lawfully established initial use before the code change. The property owner has the burden of proof to show that a residential use existed on that property prior to May 27, 1977. Commissioner Peterson stated the determination was made by the planning department that it was a shed, but nobody actually went there; he could have been living in there, it could have been a dwelling. He asked if that was correct. Mr. Accard corrected him by stating that based on the inspections and conversations with Mrs. Baker in 1987; it was only then that it appeared there were changes going on. Ms. Nelson suggested the review of the notes from the assessor’s records shown on page 73, exhibit 9, which shows the detail about what the condition of the ATCO unit was and speaking with Mrs. Baker, etc.

Commissioner Muehling asked if in 1980 no structure was shown in that location according to the photographs. He also asked if the rezone to heavy industrial was in 1977. Ms. Nelson stated that is correct.

Commissioner Muehling asked how the planning department values evidence on testimony that is based on some 50 year old recollections being weighed against field cards and photos that show there was no structure there in 1980. Ms. Nelson stated as the hearing officer she asks specific questions of the witnesses to try and elicit what exactly they remember about the site. Had there been some conclusive statement about the appearance of residential use, it would have weighed more than the general information that she received that there was a structure there but nobody could actually recall when it was being used as a dwelling. She did not find anything that contradicted photographs and notes in the assessor’s records that were date specific that put parentheses around that use at that time on either side of 1977.

Commissioner Stepovich asked if the assessor notes on page 73 are correct in stating the building was moved from an adjacent lot in 1987 but there is an aerial photograph that shows it in 1982. Mr. Accard responded by stating that note was per the owner of that property. It was not a statement the appraiser made, he was quoting what the owner stated at that time.

The appellant, Michael Ohler, was present and offered the following:

- Notes state there was no inspection from 1975-1984.
- Assessing footnotes does not show a structure up to 2006, except in1985.
- The price of the land went up, but yet it shows no building in 1981.
- In 1986 records show a building worth $1756.
- Records to him are not straight forward.
- There should not be an argument if records were kept properly.
- Jerry Parker wrote that he has worked with him off and on since 1976.
- The house was there in 1976.
- Irritated that he has to depend on people that he doesn’t know.
- It was not assessed for 11 years.
- He has four people he knows that says the home was there.
- The dimensions are wrong, the building is 26 wide x 60 long with high beams.
- It has never been an ATCO as far as he is concerned.
Questions by Commissioners

**Commissioner Perreault** asked Mr. Ohler when he moved in. **Mr. Ohler** stated in October 2014.

Discussion ensued between Commissioner Perreault and Mr. Ohler in regards to personal recollection of the property.

**Commissioner Muehling** asked if this property is an ATCO building that has been built on continuously. **Mr. Ohler** responded with no, he believes it is a stick home. **Commissioner Muehling** asked Mr. Ohler if he believes the aerial photo is fuzzy and if he can see a structure on that photo. **Mr. Ohler** stated that he can see a building but if they haven't assessed it between 1974 and 1985 why are they taking a picture. Wouldn't that be considered assessing?

**Mr. Ohler** referred to page 73, 74 which stated there never showed a building. He asked how you can raise property value if it was not assessed or reviewed. **Mr. Accard** stated they do value property, it is looked at and it is mass appraisal. He further explained a mass appraisal process.

**Public Testimony Opened**

**Mr. Mark Anthony Davis** testified as follows:
- He has lived and worked in this area for a long time.
- His recollection is that there was a structure living there.
- He continued to describe his relation and how he can shine light to the issue.
- Harley Sims worked on his vehicle in 1977.
- Hanger was owned by Harley Sims located in the area
- He has been in the area since 1975.
- He prides himself on knowing who owns which property in his area and when.

**Commissioner Perreault** asked Mr. Davis to describe the structure of the hanger that is across the street. **Mr. Davis** stated it would be to the north, it is a tan building that is pretty run down. He stated at that time it was just a structure, no ports. He could not tell if it was or was not on wheels at the time. It is now a decent looking place, trimmed and well-manicured now.

**Commissioner Muehling** asked what the foundation is of the property. **Mr. Ohler** stated it is a metal high beam.

Discussion ensued between Commissioner Muehling and Mr. Ohler in regards to the property being skirted and how it got there.

**Commissioner Peterson** questioned Mr. Davis to his testimony stating his certainty of somebody living in the residence around 1977. **Mr. Davis** stated there was a beaten path from walking back and forth from the building to the hanger. He could not remember who was living there, just that there was a structure there with smoke coming out if it during the fall.

**Commissioner Muehling** asked what Mr. Davis see's in the aerial photograph from 1980. **Mr. Davis** stated he does not see a structure but he also stated that if you have a rundown building with black shingles on the roof, it would not be very detectable unless there was smoke coming
up out of it. He stated he understands the value of a picture and its worth, that he is simply stating what he remembers.

Questions by Staff

Ms. Nelson asked Mr. Davis if he knows who metro company is who owned the property from 1969 to 1980. Mr. Davis responded with yes, he knows every one of the owners. Ms. Nelson asked if he had ever been inside the structure. Mr. Davis said no. Ms. Nelson asked if he realized that Mr. Harold Sims (Harley) did not own the property until 1981. Mr. Davis stated that he did not know who owned the property at that time, he only knows that he was the one who worked on his airplane at the time.

Public Testimony Closed

Rebuttal by Appellant

Mr. Ohler asked if the three men's testimonies, that came in to his first and second hearing, goes to any weight to who had knowledge of the home being there. He continued to list the names of the people who knew the house was there.

Commissioner O'Neall stated that information from the last hearing is included in the packet.

MOTION: To deny the appeal and uphold the Administrative Hearing Officer decision denying affirmative action recognition of legal nonconforming use status (grandfather rights) for the existing single family dwelling unit in the Heavy Industrial (HI) zone, adopting the staff report dated June 12, 2018 and the sixteen (16) recommended findings of fact in support of this decision by Commissioner Muehling.

MOTION FAILS FOR LACK OF A SECOND

[Recessed for an at ease until 7:55 pm]

Commissioner Muehling asked to resubmit his motion with the hopes of a second so the body may discuss it.

MOTION: To deny the appeal and uphold the Administrative Hearing Officer decision denying affirmative action recognition of legal nonconforming use status (grandfather rights) for the existing single family dwelling unit in the Heavy Industrial (HI) zone, adopting the staff report dated June 12, 2018 and the sixteen (16) recommended findings of fact in support of this decision by Commissioner Muehling and seconded by Commissioner O'Neall.

FINDINGS OF FACT

1. The subject parcel contains a single-family dwelling unit in the Heavy Industrial (HI) zone. The single-family dwelling unit does not comply with HI zoning because residential dwelling units are not an allowed use as the primary use.

2. The subject property was zoned Unrestricted Use (UU) with the adoption of Ordinance No. 67-34 on March 28, 1968. The UU zone allowed residential dwelling units.
3. Lot 16, Block 05 was created with the recording of plat FRD1969_12194-001 for Metro Industrial Airpark on December 12, 1969. The subject property was zoned UU at that time.

4. Assessor records indicate that a site inspection was conducted on August 12, 1971 and the lot was found to be vacant. Notes on the field card document that site inspections in 1973 or in 1974 found no change in the vacant condition of the subject property during those years (see Attachment A).

5. The records demonstrate that the land was valued as raw land (vacant) with no improvements (undeveloped) between 1969 and 1985 (see Attachment B).

6. Assessor records show that there were no notes documenting any follow-up site inspections between 1975 and 1984.

7. The subject property was rezoned from UU to Heavy Industrial (HI) with the adoption of Ordinance No. 77-21 on May 27, 1977. Residential dwelling units of any kind were not permitted in the HI zone. Assessor’s records indicate that the land was vacant with no assessed improvements at that time (see Attachment B).

8. FNSB aerial photography dated May 15, 1982 (see Attachment C) shows a structure in approximately the same location as the current dwelling unit existing on the subject property, but a prior aerial photograph dated April 26, 1980 does not illustrate a building in that location (see Attachment D).

9. FNSB Assessor records indicate in 1985 they “picked up” an ATCO type unit (manufactured home/trailer) which had been moved from the adjacent lot onto the subject lot (see Attachment E). However, this 14 X 56 unit was on blocks, in poor condition, had plants growing inside, and the Assessor classified it as a shed, not a dwelling unit. The estimated date of construction of that structure was 1968.

10. The property owner did not provide any evidence or testimony that a residential structure was ever established in another location on the subject property. FNSB Assessor’s records do not indicate that a dwelling other than the residential use associated with the ATCO type structure, was ever established in any location on the subject property.

11. On April 25, 1988, Ordinance No. 88-010 classified the Borough into different districts and regulated the location, construction, reconstruction, alteration, and use of buildings, structures, and land. The subject property zoning classification remained HI with residential dwelling not an allowed use unless the owner or a watchman, caretaker, manager, and family is located on the premises where they are employed in such capacity. There are no commercial or industrial uses on this site.

12. The Borough has not issued any zoning permits for this dwelling unit.

13. Testimony by several neighbors stated that a structure has been present on the property for many years and used as a dwelling but they could not provide exact dates of the residential use or evidence demonstrating the residential use was established prior to May 27, 1977.
14. FNSB 18.108.020 states that “Any nonconforming building, use or lot which existed lawfully prior to the effective date of the ordinance codified in this title or any lawful building, use or lot which has become nonconforming upon the adoption of the ordinance codified in this title or any subsequent amendment thereto may be continued, subject to the restrictions in this chapter.”

15. The property owner has the burden of proof to demonstrate that the residential use was established lawfully prior to the ordinance that made the residential use non-conforming.

16. The property owner did not provide substantive evidence disputing the April 26, 1980 aerial photo which demonstrates that the dwelling was not located on the subject property on that date or contradicting the FNSB Assessor’s records listing the property as vacant without improvements from 1970 to 1981, after Ordinance 77-21 was adopted on May 27, 1977.

Commissioner Peterson questioned if the same person can make the same motion twice, under the Commission’s rules.

Mr. Klein read Robert’s Rules of Order in regards to Commissioner Peterson’s question. It is allowed.

Discussion on the Motion

Commissioner Muehling made the observation that the purpose of having a Residential Zoning and a HI use zoning is that those are not compatible uses. He stated that grandfather rights require an affirmative recognition that the applicant has to prove the case. They are basing evidence on 50 year old recollections which can be vague although the person can be truthful. He put a lot of weight on what he can see in the aerial photographs. The zoning went from UU in 1977 to HI which at that time no residential units were allowed. He reiterated that in order for grandfather rights to be achieved, the structure had to have existed prior to the rezone in 1977 which the aerial photograph does not show. This is why he moved to make his motion weighing heavy on the physical evidence.

Commissioner Brandt reviewed the photograph from 1980 shown on page 112 and explained how the bottom right hand corner of the lot shows a darker brown smoke, cloud or vegetation that could easily be obscuring a building. He also stated that in the 1982 aerial photograph there appears to be a straight line going east and west.

Commissioner Stepovich stated that it is hard to tell what is going on in that photo. He stated that it would have been nice if Community Planning pointed out other land marks to verify the year of the photo. He would like more information on the year of the photo.

Commissioner Peterson stated that he is not in favor of the motion. He believed the testimony that was given tonight by Mr. Davis leading him to believe that there was a structure there that someone was actually living in. He valued someone actually being on the ground there and knowing the area in 1977.
Mr. Klein suggested the commission expand on the comment brought up in regards to someone living in the assumed structure, prior to calling the question, to discuss whether it was used as a residence.

Commissioner Stepovich stated that he valued Mr. Davis’ comments and testimony on Mr. Sims living there at the time, seeing smoke coming from the area of where the structure would have been.

Commissioner O’Neall stated the photo is pixelated and hard to tell. She stated the testimony from Mr. Davis and other testimonies are admissible as evidence. She further explained how sometimes records are missed and not kept adequately. If the commission were to vote to overturn the decision, she was uncertain if that would jeopardizes the zone and if it goes against the Comprehensive Plan. She stated there are some strict criteria that the commission has to follow in order to grant grandfather rights.

Commissioner Muehling stated that he believes all sixteen (16) findings of fact read very accurate, the detail in the findings of fact seems to provide substantial evidence that the building did not exist prior to 1977 when the area became HI.

ROLL CALL

Seven (2) in Favor: Muehling and O’Neall

Two (5) Opposed: Perreault, Brandt, Whitaker, Peterson and Stepovich

MOTION FAILED

Mr. Klein suggested findings be drafted prior to making a motion.

MOTION: To approve the appeal and not uphold the Administrative Hearing Officer decision denying affirmative action recognition of legal nonconforming use status (grandfather rights) for the existing single family dwelling unit in the Heavy Industrial (HI) zone, not adopting the staff report by Commissioner Peterson and seconded by Commissioner Perreault.

Commissioner O’Neall reminded the commission they need to develop the record into the findings of fact that support this motion and the decision before the commission.

Commissioner Peterson based his decision on the testimony of Mr. Davis and the fact that prior to 1977 there was a structure and he was by the structure quite a bit and believed it was used as a residence.

Commissioner Muehling stated there are a number of findings of fact from the original motion that may not be in dispute and questioned if Commissioner Peterson would consider including the findings of fact into his motion.
Commissioner O'Neall stated they are just developing the record and findings of fact were not part of the motion.

Mr. Klein reminded the commission that a motion to amend could be called to explicitly include findings if those are the commission’s findings. If the commission wanted to adopt specific findings they would be added to the motion through an amendment.

[Recessed for an at ease]

Commissioner Peterson asked staff to include the original findings of fact numbers 1, 2, 3, 4 and 5 and to add new findings of fact, number 6 that reads:

6. Testimony by several neighbors stated that the structure had been present on the property for many years and used as a dwelling including testimony by Mr. Davis that the property had existed prior to 1977.

Commissioner Muehling suggested adding finding of fact number 12 from the previous motion, which gives the definition of grandfather rights. Also finding of fact number 16; the property owner has the burden of proof and that the appellant has met that burden of proof.

Commissioner O'Neall added a finding of fact; the assessor records indicated a significant increase of value between 1975 and 1976.

MOTION: To amend motion to adopt the nine (9) Findings of Fact by Commissioner Stepovich, seconded by Commissioner Whitaker.

Commissioner Muehling stated that Finding of Fact five (5) of the assessor’s records indicate a significant increase in value between 1975 and 1976 was addressed in testimony that stated there was a borough wide increase. He questioned if this FF indicates an improvement to the property.

Commissioner O'Neall stated the testimony said that they assessment was around 1970.

Commissioner Brandt stated it stayed level from that point on through 1981 which indicated that there was something built there that was not improved upon in that amount of time.

Commissioner Muehling asked if the commission knows that the increase in value was a result of a residence and not nearly a shed. Commissioner O'Neall stated that based on the testimony and the findings of fact that were included are being taken as evidence that there was a residential dwelling on that property.

ROLL CALL (motion to amend)

Seven (7) in Favor: Brandt, Whitaker, Peterson, Stepovich, Muehling, Perreault and O'Neall

Two (0) Opposed:

MOTION TO AMEND PASSED

ROLL CALL (main motion)
Seven (6) in Favor: Whitaker, Peterson, Stepovich, Perreault, Brandt and O’Neall

Two (1) Opposed: Muehling

MOTION PASSED

E. EXCUSE FUTURE ABSENCES

Commissioner Brandt is excused from the July 10, 2018 meeting.

F. COMMISSIONER’S COMMENTS

Commissioner Muehling reported on the FMATS Technical Meeting he had intended.

G. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:40 p.m. after a motion by Commissioner Muehling seconded by Commissioner Whitaker.