FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION

MINUTES
May 22, 2018

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 6:35 p.m. by Mindy O’Neall, Chairperson.

A. ROLL CALL

MEMBERS PRESENT: John Perrault        Doug Sims
                    Robert Peterson    Charles Whitaker
                    Patricia Thayer    David Brandt
                    Eric Muehling      Mindy O’Neall

MEMBERS ABSENT & EXCUSED: Wendy Presler        Chris Guinn
                         Mike Stepovich

OTHERS PRESENT: Christine Nelson, Director of Community Planning
                Manish Singh, Planner II
                Wendy Doxey, Assistant Borough Attorney
                Bridget Hamilton, Recording Clerk in training
                Stephanie Pearson, Recording Clerk in training

B. MESSAGES

1. Chairperson’s Comments

   None.

2. Commissioner’s Comments

   None.

3. Communications to the Planning Commission

   None.

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

   a. Agenda items not scheduled for public hearing

      None.

   b. Items other than those appearing on the agenda

      None.
5. Disclosure & Statement of Conflict of Interest

**Commissioner Thayer** commented that if Mr. Downes’ law firm is representing anyone with regard to the request for a Conditional Use permit which is being presented this evening, she is the plaintiff in an active law suit in this matter.

**Commissioner O’Neall** commented that because this is an active case and because Mr. Downes owns the law firm, she feels that there is an appearance of bias. Commissioner O’Neall provided Mr. Downes an opportunity to consult with his client.

Mr. Downes stated that he spoke with his client and feels that there is no conflict that they can perceive. Mr. Downes stated that he does not know anything about the law suit case at this time. They choose to waive any conflict.

C. * APPROVAL OF AGENDA AND CONSENT AGENDA

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

**MOTION:** To approve the Agenda and Consent Agenda by **Commissioner Thayer**, seconded by **Commissioner Perrault**.

**PASSED WITHOUT OBJECTION**

D. **QUASI-JUDICIAL HEARING**

This hearing item was postponed from the original scheduled date of May 8, 2018:

1. **CU2018-014:** A request by Richerd Olson, on behalf of Calvary’s Northern Lights Mission, for conditional use approval for the replacement of an existing major communications tower for a 425-foot KJNP-AM Antenna tower in the General Use 1 (GU-1) zone on TL-1007, Section 10, T2S-R2E, F.M. (located at 2501 Mission Road, on the northwest side of Mission Road, southeast of Chena Slough). **Staff Contact:** Manish Singh

**OATH ADMINISTERED**

The Applicant, Reginald Swedberg, requested that staff present first.

Mr. Singh presented the staff report and recommendations on behalf of the Borough’s Planning Department and recommended approval with 2 conditions that are listed on page 26 and 15 findings of fact that are listed on page 26 and 28, with a modification to the language of condition 1 listed in the Staff Report.

**Questions by Commissioners**

Commissioner Muehling queried where it is written in code that a tower setback of 212.5 feet is required. Mr. Singh stated that it is written in 18.96.160.C.2, Approval Criteria for Communications Towers. He further stated how he calculated this height and setback.
**Commissioner Muehling** asked if code requires that the height of the tower should it fall, not be able to reach other property. **Mr. Singh** responded that there may be some communities that require a fall distance that is equal to the length of the tower. Our Assembly is charged with creating regulations acknowledging the health, safety and welfare of the residents of the Borough. In 2009 when the ordinance was created, 50% of the length of the tower is what they choose.

**Commissioner Peterson** inquired if the guy-wires also fall within the 200 foot setback. **Mr. Singh** replied that guide wires are not subjected to yard requirements in this case.

**Commissioner Peterson** questioned if the guide wires are required to be within an enclosure. **Mr. Singh** stated that all of the guy wires for this tower are within KJNP property and the property is enclosed with a locking gate.

**Commissioner Peterson** queried why Grandfather Rights do not apply as the tower was in place before the code changed. **Mr. Singh** replied that they became non-conforming in 2009 when the Borough adopted its communication tower ordinance. In this case, a complete replacement of the tower would require the conditional use process that is before the Commission today.

**Applicant’s Testimony**

Applicant, Reginald Swedberg representing Richard Olson and KJNP, presented his presentation and testified as follow:

- The antenna is 50 years old and structurally unsound.
- The replacement will mitigate the safety hazard of the tower falling down
- He reiterated that the replacement antennae will be the same height and width as the original and in the same location.
- What will be different is the replacement tower will be galvanized to add a longer life with less maintenance.
- Lighting will be updated to the medium intensity, red lighting at night and white lighting during the day.
- KJNP has been broadcasting at its current location since 1967 which has been recognized as an historic part of Alaska.
- They are a nonprofit organization, staff are all volunteers.
- Minimal visual impact on neighboring properties.
- There is more RF Radiation from a cell phone in comparison to the KJNP antenna tower.
- RF interference information can be found in the pamphlet on page 679 in the agenda.
- Reiterated that replacing the KJNP antenna under this CU permit will mitigate the safety hazard of the current tower and have minimal visual impact on neighboring properties.

**Questions by Commissioners**

**Commissioner Muehling** asked if the RF levels will change as a result to the antenna change. Mr. Swedberg responded with no because the new antenna will be identical to the old one when it comes to size, width, feed line and wattage. **Commissioner Muehling** confirmed that the impact on the community in terms of RF interference will not change.
[Recessed for an at ease until 7:30 pm]

Interested Person Testimony Opened

OATH ADMINISTERED TO RANDY HUFF

[Brief at ease per Chair]

Mr. Randy Huff testified that he lives near KJNP and serves as Chair of the Far North Missionary Fellowship. He further testified that FNMF shares a common vision with KJNP for over 40 years. He values their contribution to the region and state. Mr. Huff gave whole hearted support of KJNP and asked the FNSB to approve the CU request for the installation of a new communications tower. He was pleased with the recommendation for approval from the Planning Department.

Mr. Paul Ford testified that he is in support of KJNP. He explained that the service KJNP provides is superior to the rest.

Commissioner O’Neall reminded the interested persons to direct comments and testimony towards the property interest at large.

Ms. Sherri Young testified that she is backdoor neighbors to KJNP and they have been wonderful. She would like reassurances that the RF Radiation would remain the same and requested clarification on how the existing tower will be brought down. She stated the RF frequency is heard in her plumbing.

Commissioner Muehling explained that the commission cannot answer her question on how the tower will be brought down. He referred to Ms. Young’s comment to frequency affecting her plumbing; he asked if she hears the radio station through her plumbing. Ms. Young stated she can hear through the baseboard heaters.

Discussion ensued between Ms. Young and Commissioner Muehling about the radio being heard through the baseboard heaters.

Commissioner Thayer asked if Ms. Young received the step by step booklet on how to correct the interference. Ms. Young stated she has not.

Interested Person Testimony Closed

Rebuttal by Applicant

Reginald Swedberg representing Richerd Olson and KJNP stated he had no rebuttal.

MOTION: To approve CU2018-014 for the replacement of an existing 425-foot KJNP –AM Antenna tower, Tower A with two (2) conditions and adopting the revised staff report dated May 15, 2018 and fifteen (15) Findings of Fact in support of the approval as amended by Commissioner Thayer and seconded by Commissioner Peterson.
CONDITIONS

1. The replacement of the 425-foot KJNP-AM Antenna tower (Tower A) shall comply with all local, state, and federal laws.

2. If any modifications are made to the site plan, tower location, tower height, tower design or other FNSB required documents or to the operational characteristics, the applicant or holder of this conditional use permit shall submit revised documents to the FNSB Community Planning Department. If modifications are made to the conditional use, an amendment to the Conditional Use Permit may be required pursuant to FNSBC 18.104.050(D)

FINDINGS OF FACT

1. The conditional use request is for the replacement of the existing Tower A. The tower replacement will be in the same location and of the same configuration, width and height of the existing Tower A except the texture, color and the updated lighting required by the FAA.

2. The existing Tower A was constructed in 1967, prior to zoning on the property.

3. Tower A is located on a 28.37 acre parcel. The tower is located in a cleared area toward the northwestern portion of the property which is closer to the Chena Slough. This location and the size of the property reduce the visual impact onto the neighboring properties because it allows Tower A to be approximately 507 feet away from the north property line, 406 feet away from the west property line and more than 500 feet away from south and east property lines. Additionally, there are existing trees on the subject property and along the slough that help reduce the visual impact of existing Tower A.

4. The replacement Tower A meets the existing yard requirements and the applicant has not requested any yard modifications.

5. KJNP is a broadcasting station with their only location on the subject property. There are no existing structures or towers within 1,000 feet that meet the KJNP’s technical requirements to relocate the functions of the existing Tower A.

6. It is not technically feasible to relocate the existing Tower A with the broadcasting station to a new property away from the existing adjacent residential neighborhoods. If Tower A was to be relocated on another property, other microwave users in the FNSB would be impacted as the existing microwave STL links are coordinated with other broadcasters and users of the radio frequency spectrum and relocation may result in interference.

7. The residential neighborhoods around the subject property were developed after Tower A was constructed in 1967.

8. The replacement Tower A cannot accommodate or support any antennas or equipment because the existing Tower A is an AM broadcast tower which is insulated at the base and acts as the antenna itself.

9. The height of Tower A (425 feet) is the minimum to meet KJNP’s technical needs.

10. The replacement Tower A will only have the lighting required by the FAA.
11. The replacement Tower A will be galvanized silver-gray in color and will blend better with the overcast or blue sky during the daytime than the painted tower. In sunlight, the impact of white flashing lights will be minimal and will be less visible than existing painted Tower A. At night, the replacement Tower A will have a comparable visual impact as the existing Tower A because the reduced number of lights on the replacement tower will be offset by more lights that flash.

12. The applicant has provided a copy of drawings for the replacement of Tower A stamped by an engineer registered in the State of Alaska.

13. With the conditions imposed, the proposed conditional use will conform to the intent and purpose of Title 18 and of other ordinances and state statutes:

   a. The purpose of Title 18 will be met because the proposed conditional use is consistent with ‘Perimeter Area Preferred Residential Land’ comprehensive plan land use designation. The Comprehensive Plan Land Use Goal 1 and Community and Human Resource Goal 3 are enhanced by the replacement of Tower A.

   b. The intent of Title 18 will be met because with the conditions imposed, the conditional use will both protect private property rights and promote public health, safety, and welfare.

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

   a. The replacement of Tower A doesn’t require any water and sewage facilities.

   b. The property is served by the North Star Volunteer Fire Department for emergency fire response.

   c. The facility is served by Alaska State Troopers for law enforcement.

   d. The facility is currently connected to the GVEA grid which will provide sufficient energy supply.

   e. The property has access from Mission Road, a minor collector type roadway maintained by ADOT&PF. The property has a 40’ driveway easement across Tract K-1. Mission Road can accommodate the small number of trip ends generated by the tower maintenance.

15. With the conditions imposed, the proposed conditional use will protect public health, safety, and welfare because the replacement Tower A will comply with Title 18 standards for the GU-1 zone (FNSBC 18.84) and Standards for Communications Towers (FNSBC 18.96.160) as well as other applicable laws; including:

   a. The replacement Tower A will have a plan review from State Fire Marshal’s office which will minimize fire and other safety risks.

   b. The replacement Tower A has a “determination of no hazard to air navigation” from FAA which will minimize aviation safety risks.

   c. The replacement Tower A is not located in a floodplain and also appear to be outside the wetlands.
Discussion on the Motion

Commissioner Thayer stated the development of the entire property is around the main antenna, the setback requirements for the antenna are more than is what is required. The needs are there for KJNP to update their main tower due to the age of the existing tower. She believes KJNP provides public health and support to the general public, especially those in the outlining area. The FAA lighting requirements are being met. She stated there is no code for distance for falling, but there is more than sufficient buffer if something were to happen. The health, safety and welfare criteria’s have been met.

Commissioner Muehling reiterated the applicant has no intention of increasing the power output of the antenna and that the effect of hearing the radio station through plumbing is known. Suggested an amendment to the conditions, condition 2 states if any modification is made to the site planned tower location, tower height or tower design; this does not address the power of the tower.

Commissioner O’Neall reminded the commission that there is an FCC regulation that prevents the body from actually considering frequency in the decision and an amendment cannot be made that has to do with frequency. Commissioner Muehling stated that he was not going to propose anything about frequency, only limiting the power of the antenna to the current operational wattage. Commissioner O’Neall ruled that his statement has a direct connection to frequency.

Commissioner Perreault pointed out that condition 2 addresses the changes to the operational characteristics, which is one of the things that would trigger revised documents being submitted to planning. Power output falls under operational characteristics.

Ms. Doxey cautioned the commission not to rely too heavily on condition 2 operational characteristics language because the commission and community planning is focused on land use impacts. To regulate the power to this tower for purposes of limiting radio frequency omissions, the federal government has already said that we are not allowed to do that. It would be an unenforceable condition. She could legally support a condition that requires the applicant to comply with the federal regulations, as far as omissions go.

Commissioner Muehling feels the testimony that the visual impacts are mitigated, the galvanized light grey color will blend in with the sky in many different sky conditions. While the visual impact will be greater due to the FCC requirements of white lights during the day and red lights at night, he believes there is no way around that.

ROLL CALL

Seven (8) in Favor: Mr. Sims, Mr. Perreault, Mr. Brandt, Ms. Thayer, Mr. Whitaker, Mr. Peterson, Mr. Muehling and Ms. O’Neall

Two (0) Opposed:

MOTION PASSED

[Brief at ease while the room clears]
E. **LEGISLATIVE**

1. **ORDINANCE NO. 2018-14:** An Ordinance Amending FNSBC Title 18 To Define Brewery, Brewpub and Microbrewery and to Add Brewpubs and Microbreweries as Permitted Uses in Various Zones. **Staff Contact: Christine Nelson**

Ms. Nelson stated that the intent of this ordinance is to add a couple new uses of Brewpub and Microbrewery to the General Commercial zone and therefore also to the Central Business District, Light Industrial and Heavy Industrial zones as described on page 771 in the packet.

Ms. Nelson continued that the intent of this ordinance is to add flexibility for these businesses to be allowed in the downtown area as well as other General Commercial areas. They are proven economic generators and encourage downtown redevelopment. There have been a number of inquiries over the last several years about why brewpubs are not allowed in the downtown area since craft distilleries are.

Ms. Nelson stated that this is an ordinance that Mayor Kassel supports and it is also sponsored by Assembly member Aaron Lojewski. This ordinance will add three definitions to code. Ms. Nelson spoke to the three definitions, brewpubs, breweries and micro-breweries and explained each one.

Ms. Nelson concluded by stating there was one element that was discovered late that was part of the craft brewery ordinance that was not included in here; which states that in a CBD for craft breweries they explicitly prohibited outdoor storage related to the craft brewery. Stated that if the commission is inclined to make that recommendation, it would be taken back to the Mayor, which is likely to be supported.

Questions by Commissioners

Commissioner O’Neill asked Ms. Nelson if there was any particular reason why the suggestion was made to store outside. Ms. Nelson explained that in the central business district, it was prohibiting outdoor storage.

Commissioner Peterson requested clarification of Line 53. He questioned if the intent was to not only sell on the premises but to also allow for consumption on the premises. Ms. Nelson clarified that they are trying to allow for consumption on the premises as well as take-away from the premises.

Commissioner Perrault queried if these businesses will be required to have liquor licenses to operate. Ms. Nelson confirmed that they will be required to have a state liquor license.

Commissioner Muehling questioned if on Line 53, excludes wholesale sales. Ms. Nelson clarified that the ordinance would allow up to 75% to be sold wholesale. The intent is that at least 25% is retail sale on the premise.

Commissioner Muehling asked what odors and noises are associated with breweries and if they need to be concerned with odor mitigation. Ms. Nelson stated that it is her understanding that if there is any odor, there might be a slight odor of hops.

Commissioner O’Neill questioned if a brewpub would have to meet the 25% threshold immediately for on-site sales. Ms. Nelson responded that the ordinance does not clearly state
this but would likely be on an annual basis. This definition is based on the Brewers Association definitions within their own market segments. **Ms. Nelson** read the definition to the Planning Commission.

**Commissioner O'Neall** asked if there was a reason why the ordinance chose to use the words “alcoholic beverages” rather than just “beer.” **Ms. Nelson** stated that there are other products that are not considered beer such as mead and other fermented drinks that could be allowed under the category of “craft brewery.” For this reason, the ordinance has been drafted to allow for these other types of beverages.

**Commissioner Sims** commented to the fact that barley wine is alcoholic but not necessarily a beer, though made with barley.

**Commissioner Peterson** questioned if Line 51 should be changed to “alcoholic beverages” rather than “beer.” **Ms. Nelson** responded that because a craft distillery has a separate license and is already a use in the zone, they were trying to make the distinction between the two.

**Ms. Doxey** stated that if there is a definition for a distillery and someone is meeting that definition, they are going to be categorized as a distillery. If they are doing both things on the premises, they are going to have to be able to be zoned properly for those two different uses. **Ms. Nelson** concurred with Ms. Doxey.

**Commissioner Perrault** suggested categorizing by fermented beverages as opposed to distilled beverages.

**Public Testimony Opened**

**Rick Mensik**, public member, addressed the Planning Commission. He stated that he is the agent for the Midnight Mine LLC, which plans to open a brewpub. He understood the zoning stated that you can manufacture alcohol in the zone, which he presumed means brewing beer. He began the application for a brewpub license. He spoke in favor of this ordinance. He made himself available for any questions.

**Commissioner Whitaker** queried if the Downtown Association will be in favor of Mr. Mensik’s plan if this ordinance is approved. **Mr. Mensik** replied that the Downtown Association expressed an interest in the type of development that he is pursuing.

**Mr. Mensik** also spoke to the regulations that are required by the Federal government with regard to taxes.

**Commissioner Muehling** inquired if there are odors associated with the activity that Mr. Mensik is suggesting. **Mr. Mensik** stated that there is very little odor in the actual process. He further elaborated on the brewing process and the time involved in the process.

**Public Testimony Closed**

**MOTION:** To approve Ordinance No. 2018-14 Amending FNSBC Title 18 To Define Brewery, Brewpub and Microbrewery and to Add Brewpubs and Microbreweries as Permitted Uses in Various Zones by **Commissioner Thayer**, seconded by **Commissioner Perrault**.
Discussion on the motion

Commissioner Thayer spoke to the fact that this ordinance seems to be cleaning up the existing language. It is part of the economic development goal, to strengthen and expand the existing economy. She stated that she is supportive of the ordinance being passed on to the FNSB Assembly and will be voting for approval.

Commissioner Sims stated that this ordinance will not only affect the downtown area but all of the General Commercial zones. He stated that he is in support of the ordinance and will be voting in favor of approval.

ROLL CALL

Eight (8) in Favor: Mr. Perreault, Mr. Brandt, Ms. Thayer, Mr. Whitaker, Mr. Peterson, Mr. Muehling, Mr. Sims and Ms. O’Neall

Zero (0) Opposed:

MOTION PASSED

F. NEW BUSINESS

1. FY2018-2019 Budget Update and Community Planning Department FYE2019 Work Plan

Ms. Nelson reported to the Planning Commission regarding the 2018-2019 Budget and some of the impacts that it will have on the Planning Commission. She will provide the Planning Commission with the FYE2019 Work Plan at a later date.

Further discussion ensued regarding the 2018-2019 Budget.

G. EXCUSE ABSENT MEMBERS

Commissioner Thayer stated that she will not be in attendance for either meeting during the month of June.

Commissioner Sims stated that he will not be in attendance for the June 26th meeting.

H. COMMISSIONER’S COMMENTS

Commissioner Whitaker questioned if members of this Commission are able to phone in to a meeting. Ms. Nelson stated that participating telephonically is not possible for this Commission.

Commissioner Thayer suggested a “Thinking of you” card for Commissioner Guinn who is recovering from a medical issue.

I. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:00 p.m. after a motion by Commissioner Thayer, seconded by Commissioner Peterson.