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 6:21 p.m. by Mindy O’Neall, Chairman.

MEMBERS PRESENT: Wendy Presler  Chris Guinn  
Doug Sims  Charles Whitaker  
David Brandt  Eric Muehling

MEMBERS EXCUSED: Mike Stepovich  John Perreault  
Patricia Thayer

MEMBERS ABSENT: Robert Peterson

OTHERS PRESENT: Christine Nelson, Director of Community Planning  
Manish Singh, Planner III  
Ben Jaffa, Asst. Borough Attorney  
Michelle Gutierrez, Administrative Assistant III

A. ROLL CALL

B. MESSAGES

1. Chairperson’s Comments

Chair O’Neall stated she will need to be excused from the meeting at 10pm to catch a flight.

2. Commissioner’s Comments

3. Communications to the Planning Commission

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

   a. Agenda items not scheduled for public hearing
   b. Items other than those appearing on the agenda

5. Disclosure & Statement of Conflict of Interest

Chair O’Neall determined Commissioner Muehling will be excused from RZ2019-001.

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 Sims, seconded by Commissioner Whitaker.

CARRIED WITHOUT OBJECTION

D. MINUTES

1. Minutes from October 23, 2018 PC Meeting

E. QUASI-JUDICIAL HEARING

CU2019-005: A request by Terrell Towns DBA Tot's 'R' Us Childcare for conditional use approval of a day care facility in the Single-Family Residential 10 (SF-10) zone on Lot 11, Block 7, Taku Subdivision, First Addition (located at 1178 Nenana Street, on the west side of Nenana Street, between Ruby Avenue and Kuskokwim Avenue). Staff Contact: Manish Singh

OATH ADMINISTERED

Mr. Manish Singh provided a presentation of his staff report and recommendations on behalf of the Borough's Planning Department, and recommended approval with one (1) condition and three (3) findings of fact as listed in the Staff Report.

Questions by Commissioners

Commissioner Guinn asked if the conditional approval met the requirements of the complainant.

Mr. Singh explained the complaint was anonymous and no response was submitted by any DPO receiver that was against the conditional use, only one inquiry that was general in nature.

Commissioner Guinn questioned why the permit was for 12 children.

Mr. Singh explained it was to keep consistent with the state license.

Commissioner Muehling questioned the hours of operation and if any DPO's were returned with negative comments.

Mr. Singh stated no negative comments from the interested persons were submitted.

Applicant's Testimony

Applicant, Terrell Towns testified as follows:

- Works for TSA, the daycare is second job.
- Girlfriend is the owner and he is the administrator.
- Number of children fluctuates.
- Passionate to helping families that have a hard time finding childcare.
- Lots of the parents receive state funds for childcare.
- Service to the community.
• Contacted the surrounding neighbors prior to FNSB contacting them, everyone was in support.
• They did not know what a conditional use was prior to this process.
• They want to abide by the rules.
• Not a lot of males in the profession and sometimes children need that male role model.

OATH ADMINISTERED TO ALEJANDRA BARRAGAN

Alejandra Barragan, owner of Tot’s ‘R’ Us, testified as follows:

• 13 years of experience.
• Used to work for FNA Early Headstart.
• Wants to follow regulations and rules; they didn’t know about the process before.
• Not a lot of daycare facilities, so they want to help parents.
• Try to avoid all problems if possible, with neighbors.
• Daycare has yearly inspections and on call inspections.
• Daycare has fire reports every two years.
• Daycare hours can be changed, but parents need 2 week notice.
• Explained for 12 children, two employees are needed.
• Daycare has monthly fire drills.

Questions by Commissioners

Commissioner Presler questioned if another employee works at the daycare.

Ms. Barragan stated they have one worker that fills in for when Mr. Towns is at his other job.

Commissioner Sims asked if they are opened on the weekends.

Ms. Barragan and Mr. Towns said no; Monday to Friday only.

Commissioner Sims asked if a number of clients come from the immediate neighborhood or from outside the neighborhood.

Ms. Barragan stated that most of their clients are from different areas.

Commissioner Muehling asked if there were any issues with non-compliance with the state licensing regulations for the daycare.

Ms. Barragan and Mr. Towns said no.

Commissioner Guinn questioned the amount of traffic generated at pickup and drop-off times.

Ms. Barragan and Mr. Towns stated the drop off times and typically two or three cars at one time; some of the clients have multiple children, siblings, they drop off at once.

Chair O’Neill asked if they had any children of their own and if they are counted into the allowed number of 12 children.
Ms. Barragan stated she has two, one child that goes to school and one that stays home and is included in the total of 12 children.

**Interested Person Testimony Opened**

None

**Interested Person Testimony Closed**

**MOTION:** To approve the Conditional Use Permit (CU2019-005) for a day care facility with one (1) condition, and adopting the staff report, and three (3) findings of fact in support of approval by Commissioner Muehling, seconded by Commissioner Sims.

**CONDITIONS**

1. If any modifications are made to the site plan, maximum number of children, hours of operation or other 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 proposed conditional use conforms to the intent and purpose of Title 18 and of other ordinances and state statutes:
   a. The purpose of Title 18 is met because the proposed conditional use is consistent with ‘Urban Area’ comprehensive plan land use designation. The conditional use is consistent with the Comprehensive Plan Community and Human Resources Goal 1, Strategy 1 because the day care facility serves the borough residents by providing essential childcare services.
   b. The intent of Title 18 will be met because the conditional use both protects private property rights and promotes public health, safety, and welfare.
   c. The applicant has obtained a state license for a day care facility from Child Care Licensing (CCL) Program. The applicant has obtained a business license from Division of Corporations, Business and Professional Licensing, Alaska Department of Commerce, Community, and Economic Development. The applicant has also obtained a business license from the City of Fairbanks. The applicant has provided information sufficient to show that they intend to meet the city and state regulations.

2. There are adequate existing sewage capacities, transportation facilities, energy and water supplies, and other public services to serve the proposed conditional use.
   a. The day care facility has adequate water supply because the property is served by Golden Heart Utilities.
   b. The facility has adequate sewage capacities because the property is served by Golden Heart Utilities.
   c. The facility has adequate fire services because the property is served by the City of Fairbanks Fire Department.
   d. The facility has adequate power supply because it is served by the GVEA grid.
   e. The facility is served by the City of Fairbanks Police Department for law enforcement.
f. The subject property has access from Nenana Street which is a local road maintained by the City of Fairbanks. Nenana Street can accommodate the small number of trip ends generated by the day care facility.

g. The site plan shows one parking space and a child drop-off area which are adequate for the day care facility.

3. The proposed conditional use protects public health, safety, and welfare because the day care facility complies with Title 18 standards for the SF-10 zone (FNSBC 18.44) as well as with other applicable land use related laws.

a. The hours of operation for the day care facility do not negatively impact the residential neighborhood because the day care does not operate in the night. These hours of operation are consistent with the City’s noise ordinance. The late fee for late pick-ups incentivizes parents to pick up their children on time.

b. The noise produced by the day care facility does not negatively impact the residential neighborhood because the day care is for a maximum of 12 children and the playtime is limited to 10 am to 12 pm and 4 pm to 6 pm.

c. On December 4, 2017, the day care facility passed their fire inspection from City of Fairbanks Fire Department. The compliance with City of Fairbanks Fire Code and the availability of fire and rescue services through the City of Fairbanks Fire Department minimize fire and other safety risks.

Discussion on the Motion

Commissioner Muehling stated the daycare is fulfilling the need of the community, the applicant stated they are in compliance with state licensing and regulations and there have been no complaints from the neighborhood about their operations.

Commissioner Guinn stated his initial concern for increased traffic but nobody from the neighborhood showed up to complain and reiterated the need the daycare is fulfilling to the community.

Chair O’Neall stated the applicant has a good traffic control flow with the staggered pickup and drop-off times.

ROLL CALL

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

Zero (0) Opposed:

MOTION PASSED

F. PUBLIC HEARING

RZ2019-001:  A request by Don Duncan (Master Guide License #136) DBA Alaska Private Guide Service to rezone approximately 420 acres from Rural Residential (RR) to Outdoor Recreational (OR) or other appropriate zone. The area proposed to be rezoned include parcels described as Shuros Subdivision – Block 2, Schroeder Property Waiver – Tract B and Tract C, Section 28 T1N R1W F.M. – TL-2805, Section 29 T1N R1W F.M. – TL-2914 and GL-16 (located on the south side of Farmers Loop Road, near milepost 6). Staff Contact: Manish Singh

[Commissioner Muehling and Commissioner Brandt left the dais]
Mr. Manish Singh provided a presentation of his staff report and recommendations on behalf of the Borough's Planning Department, and recommended approval with eight (8) findings of fact as listed in the Staff Report.

Questions by Commissioners

Commissioner Sims questioned what zoning Echo Acres is.

Mr. Singh stated Rural Estates.

Commissioner Sims asked if the proposed rezone to OR would be considered a commercial venture.

Mr. Singh stated no and further explained his reasoning and how the proposed rezone would align with existing uses.

Chair O'Neall asked if individuals could ride their snow machines through the area with the current zoning.

Mr. Singh clarified who would need a permit to use a snow machines within Creamers Field.

Commissioner Guinn asked if a conditional use permit will be presented to the commission in the near future.

Mr. Singh stated the applicant addressed that he would be applying for a conditional use permit and reminded the commission and public that once a rezone is approved you are not bound by the application anymore; the rezone is one step and then the property owner could propose any of the permitted or conditional uses that are listed within the zoning description.

Commissioner Guinn asked if the applicant runs his snow machine business if a conditional use permit is needed.

Mr. Singh stated yes.

Commissioner Whitaker asked if the applicant sells the property and if it would be allowed that the new owner wanted to put in a conditional use permit for a shooting range which will have no noise or lighting restrictions.

Mr. Singh stated if the rezone is approved, the applicant could sell his property and the new property owner may apply for a conditional use permit for one of the uses listed in the description.

Discussion ensued between Commissioner Sims and Mr. Singh in reference to taking a perimeter lot, zoned RR and changing it to OR in reference to consistency with the comprehensive plan and land use map.

Commissioner Sims questioned why Farmers Loop Road was listed as adequate buffer.
Mr. Singh stated the impression of buffer is subjective and stated his professional opinion that Farmers Loop Road provides some buffer and where it is adequate or not depends on the use across the road.

Commissioner Presler asked for clarification on if the zone changes, would the applicant have to apply for a conditional use permit to operate his business, even though the applicant currently has a permit from Creamers Field and asked if going forward would the public would still be able to use their snow machines on Creamers Field.

Mr. Singh stated the applicant has a current permit to operate his business through Echo Acres Drive and if he uses his own property for access and puts a trail head and/or a restroom for his customers then he will require a CUP from the FNSB and stated the way the public uses within the Creamers Field are not likely to change.

Applicant’s Testimony

Applicant, Don Duncan testified as follows:

- Thanked Mr. Singh for educating him on the process.
- He mentioned he offered Fish & Game to build a parking lot for them on Midnight Sun Drive for public use.
- There is a trail in the middle of his property that has been there for many years that people access.
- He has a permit that will allow him to connect his property with Fish & Game’s trail.
- His intention is to allow an increased public use of the area.
- He never had intentions to make it a shooting range or anything else.
- Mentioned the 100ft well that has crystal clear, pure water that is on his property.
- The property has 3 artesian wells.
- The building on the property is not in good condition.
- Primary use of the property will be for the snow machine business that will help cut time with not having to trailer snow machines every day.
- Mentioned the fear of conflict between snow machinners, dog mushers, skijorers and fat tire bikers but they had a meeting with Fish & Game to resolve the fears that never materialized.
- No major conflicts in the past five years.
- His snow machines on the trails are going slower than the dog mushers on the trails.
- Spent 100s of man hours keeping the trails open.
- Mentioned the guided tours are not allowed to run free and they are under control as best as possible.
- Gave his word that he will not ask for a conditional use permit to make it a shooting range.
- Mentioned the trails are multi-use and snow machines are allowed.
- The snow machines he uses grooms the trails.
- He doesn’t plan on using dog teams on the property.
- Mentioned he cleared trees for the safety of people just learning to ride a snow machine.
- Stated the property is down low that acts as a double buffer.
- He doesn’t think noise will be a problem.
- Uses snow machines that don’t have tuned exhaust, they are not loud.
- He doesn’t use paddle track snow machines cause it pulls up snow that could harm the dogs paws.
- Has been operating his business for 4-5 years.
• If he thought it would be a negative impact, he wouldn’t be asking for the rezone.
• Thinks his business and what he does for the public is an overall good impact.
• There is a 19 mile trail junction on the property, where all the trails come together.
• He bulldozed it and it is permafrost.

Questions by Staff

**Mr. Singh** asked if he had any plans to expand his operation in the near future or to acquire additional land.

Mr. Duncan stated he made two offers to the property to the east of his but was unacceptable to the land owner. The property just east of that eastern property, next to the Fish and Game properties, was willing to join the rezone but is out of town for work. Mr. Duncan stated he couldn’t afford the property right next to his.

Questions by Commissioners

**Commissioner Whitaker** asked how many snow machines are in his fleet and how many clients are taken out at a time.

Mr. Duncan stated he has 40 to 45 snow machines and the busy season can range up to 40 people but on average outside of the busy season, it is an average tour group of two people here and there. He reiterated the need for a central base operation for days that it’s just two people to avoid hauling work.

**Commissioner Presler** asked how long a typical snow machine tour is and how many people are taken out at once during the busy season.

Mr. Duncan stated it is typically a one hour tour and stated he has one guide per every four to six snow machines and if it is more than six people, you need another tour guide.

**Commissioner Sims** asked if the Echo Acres area has any structures or parking lots or outhouses and asked why he is moving from Echo Acres to the proposed rezone location to facilitate his business.

Mr. Duncan said his permit from Fish & Game didn’t allow for an outhouse but he built one because the girls were having to walk across the street, through the woods and have to do their business in front of someone’s property, which he felt was wrong. He stated Echo Acres is perfect in a lot of ways and he doesn’t know if he would abandon entirely and continued to explain how the road is one of the last to be maintained and it is not an easy road to trailer a 8 ½ ft wide trailer full of snow machines on.

Discussion ensued between **Commissioner Sims** and Mr. Duncan in regards to his snow machines being two stroke machines and not tuned exhaust pipes and how his machines are not loud.

**Commissioner Sims** asked if he briefs his clients of trail etiquette.

Mr. Duncan said yes, they have an online training video and they walk them through everything and explained how they received a grant to make signs for the trail.
Commissioner Whitaker questioned if some of the dog walkers are unhappy with him in that area.

Mr. Duncan said not that he knows of.

Commissioner Whitaker queried the amount of blue smoke in the air if quite a few machines are idling and asked how long they would sit idling before the tour.

Mr. Duncan stated they are started and warmed up on the trailer first, then they are put onto the starting line and they are then shut off and then they are restarted when it’s time for the tour and if they are able to be at the property as proposed, then they would only need to be started once.

**Public Testimony Opened**

Susan Miller, Viewpointe neighborhood, testified as follows:

- Strongly requested the rezone be denied.
- Mr. Duncan’s request should have been a spot zone and denied.
- Creamer’s field is inappropriately zoned RR.
- The applicant’s property is 1% of the rezone and the residents shouldn’t be subjected to a nearby business.
- Let the state request the rezone and not by a private land owner.
- She didn’t see how tourism will be improved.
- Mentioned the noise, and air pollution of the business which is not conducive of the health, safety and welfare of the neighborhood.
- Requested a denial to maintain a stable and quiet area.

Patrick Marlow, 1418 Farmers Loop Road, testified as follows:

- Uses the trails often.
- The snow machine tours are extremely well behaved and the business is well ran.
- Mr. Duncan clears the trails.
- The neighborhood uses the trails to walk their dogs, etc.
- Hard to believe that the business will go unheard or unseen.
- When it comes time to sell his property, if there is a commercial use in the area, he may not get the same value out of the property.

Kathryn Baird, Viewpointe Subdivision, testified as follows:

- Urged the commission to deny the request.
- Rezoning the property would allow a potential archery range, camp ground, minor communications tower, or a shooting range.
- The potential uses if rezoned are not compatible with the environment of the neighborhood.
- The applicant’s property is a small part of the rezone request.
- The state didn’t ask for the rezone.
- The area is not appropriate for 40 people practicing how to use a snow machine, so close to houses.
- If there is an increase in tourism, the traffic would also increase.
- If the applicant already has a successful business, then the rezone wouldn’t impact it.
Matthew Banning, owner of 1311 Farmers Loop Road, testified as follows:

- Against the proposed rezone.
- It’s basically a spot zone according to the definition.
- It will have a negative impact to the area.
- There will be a conflict of interest with the surrounding property owners.
- To say the property cannot be used for residential premises is not accurate; he owns rentable cabins.
- If the applicant chooses to use the land as zoned or not is his choice.
- The business already exist and to move it from one place to another for the owner’s convenience is a detriment to the community.
- Contacted the Core of Engineers and found out the applicant did not file proper paperwork.
- The applicant cleared the land with a dozer and there is an ongoing investigation with the Core of Engineers for this violation.
- If the applicant has no regard for protocol, how will the Planning Commission keep him within his conditional use permit?
- The rezone will have a negative impact to the surrounding community.

Siegmar Siebeneich, 1304 Farmers Loop Road, testified as follows:

- Recently purchased their property for residential area, not to have a commercial use nearby.
- Cannot justify the rezone application based on 40 snow machines being across the road from his property.
- Questioned the hours of operation and suggested it would be at 11pm when people are sleeping.

Alan Jubenville, 1300 Shuros Drive, testified as follows:

- Uses the property in the winter time.
- The rezone will change the area dramatically.
- RR is the best zoning for the area because nothing has taken place in the area for a long period of time since Creamers Field existed.
- There will be more congestion in the area if rezoned.
- The rezone will cause conflict.
- Before anything is done, a wetland permit is required and no one has applied for one.
- Most of the 400 acres is wetlands.
- The area is currently very enjoyable.
- If rezoned, there will be a lot more noise in the area and more demand for trail development.
- The rezone is not suitable.

Audra Brase, 725 Ridge Point Drive, testified as follows:

- Represented the Alaska Department of Fish and Game as the Regional Supervisor, Division of Habitat.
• ADF&G has been delegated land management authority for the Creamer’s Field Migratory Waterfowl Refuge from the ADNR.
• Division of Habitat is responsible for issuing Special Area Permits for activities that occur within the refuge.
• The proposed rezone will place a portion of Creamer’s Field into a more appropriate category as the principal activities that take place at the refuge are providing habitat for wildlife and year-round public recreation on the multi-use trails.
• If the rezone is approved, ADF&G has no plans to make any changes to currently allowed uses on the lands.
• If the rezone is not approved, ADF&G may pursue rezoning the Creamer’s Field lands in their entirety, with a future request.
• ADF&G has no objection to the rezoning of the portions of Creamer’s Field currently designated as RR to the category of OR.
• ADF&G continues to have no objection to the rezoning of the adjacent private parcel.

Questions by Commissioners

Commissioner Guinn asked if there is any requirement for a Core Permit.

Ms. Brase stated what is currently going on, being just trails, there is no Core Permit needed.

Commissioner Whitaker asked if she was supervisor when the original snow machine permit was issued for the applicant and asked what the application process was.

Ms. Brase said yes and explained the process of a new application.

Discussion ensued between Commissioner Whitaker and Ms. Brase about the uses of the parking lot on Echo Acres and the idea of putting outhouses on the barn side of things.

Commissioner Presler asked for clarification on Ms. Brase testimony of ADF&G pursing the rezone to OR if the proposed rezone is not approved.

Ms. Brase said yes, they did not realize how it was currently zoned and if they wanted to put in new trails it would potentially not be allowed.

Commissioner Presler asked if the rezone is approved, will they still look into bringing the rest of the zoning up to something that is more appropriate for the use.

Ms. Brase said yes they have discussed that.

Taylor Englert, 1640 Cottonwood Street, testified as follows:

• Neighbor to the applicant and offered to work for him to help trim the trails.
• Advocated for the rezone.
• Currently it is hard to get into the refuge.
• The current zoning is wrong.
• The tourism is increasing and finding stuff closer to town to entertain them is important.
• Most people don’t want to smell dog feces on a trail.
• Picture of a moose to a Chinese person is invaluable.
• Stated the applicant wants everyone to use the trails and not for his business only.
• Plans to possibly buy the applicants business in the future.

Jennifer Gehrke, 1402 Farmers Loop Road, testified as follows:

• Uses the trails often.
• Main issue is with air quality and the snow machines creating a health impact while idling.
• Purchased their property because nothing was developed commercially in the area.
• Concerned about property values.

Glen Hemingson, 1011 Denali Street, Anchorage, testified as follows:

• Operations manager for Alaska Skylar Travel with offices in Fairbanks, Anchorage and China.
• Supports the rezone.
• The applicant is the primary vendor for snow machine tours for Skylar Travel and they value their partnership and know the applicant to be honest, ethical, hardworking and committed to the company.
• The tour service requires the applicant to transport snow machines daily to Echo Acres.
• The applicant purchased the property in hopes to eliminate the arduous daily task.
• The applicant intends to apply for a CUP in the hopes of building a permanent structure on the property for storage, guest restrooms and for guests to have a place to change.
• Requested approval of the rezone which will improve the business operations which will continue to grow tourism.

Cory Jackman, 1185 Farmers Loop Road, testified as follows:

• Many problems with the proposed rezone, which he deemed inappropriate for the area.
• Houses all around that have a problem with road noise and with diesel pollution from school buses.
• Huge difference between the uses of OR and Commercial operations utilizing OR.
• People purchase homes in the area thinking they will have a nice, safe surrounding with clean air.
• 40 loud snow machines is asinine.
• Moose run off if they encounter a snow machine.
• Every other person utilizing the trails is affected by the snow machine fumes.

Chris VanDyke, 1325 Shuros Drive, testified as follows:

• Opposed to the rezone.
• Purchased his property specifically because there were no commercial businesses in the area and for the access to the trails.
• Uses the trails along Midnight Sun on a daily basis in the winter.
• The road is opposite from a buffer because you line of sight of the property with no trees for a sound buffer.
• The passing of the rezone would diminish the value and the enjoyment of his property.
• Stated there is nothing forcing the applicant to keep his promises, and if he sells his business there is nothing preventing others using tuned exhaust.
• The only benefit of the rezone would be for the applicant and his business partners and not to the public.

Questions by Commissioners

Chair O’Neall asked if in the event that Fish and Game in the future asks to change the zone, if his opinion would change about the use.

Mr. VanDyke said as long as the private portion was not included, he would be fine with it.

Discussion ensued between Chair O’Neall and Mr. VanDyke in regards to the public access of trails.

Eric Muehling, Po Box 84415, testified as follows:

• Testifying as an effected resident and not in any official capacity and will not be using any inside information and had no expectation of any special consideration, the information he used is available to any and all residents.
• Strongly opposed to the proposed rezone.
• Stated that with the applicant’s original application, he couldn’t get what he wanted due to the spot zoned restrictions so he expanded his request to include public land.
• The general public may be thinking, what gives the applicant the right to request a rezone since he doesn’t have any ownership interest in the 416 acres of public land, at least no more property interest than any other citizen.
• According to public records, the applicant is currently permitted to operate a commercial guide business in the waterfall refuge on Echo Acres and because of that, the comprehensive economic development goals already being satisfied with the applicants activity.
• There is little or no change in the economic impact to the FNSB if the business moves from one location to another, no financial hardship but there would be an impact on the residents in the area.
• Mentioned the applicant stated his property is not buildable because it has permafrost; He owns 10 lots within 1500 feet of the applicant’s property, his house and cabins were all successfully built over the past 40 years on the same permafrost on pads and pilings.
• There is already a public trailhead on the applicant’s west property line, a parking lot on Midnight Sun Street and Farmers Loop Road has signs posted by Fish and Game that directs walk-in hunters and other trail users where to park.
• The rezone for the applicants residential property to OR would be the first step on a path to commercial or other high end activities that are not compatible in the residential neighborhood.
• Urged the commission to deny the request.

[Brief at ease was taken]

Public Testimony Closed

Rebuttal by Applicant

Mr. Duncan responded to testimony and stated that he doesn’t need a Core of Engineers permit to clear his own trees on his property, his hours of operation would be somewhere
between 10am to 5pm and later in March, and stated most days his business would not have 40 snow machines fired up and during November to March, most days won’t have any snow machines running. Reiterated his intentions to eliminate trailering the snow machines back and forth. Mr. Duncan stated the Midnight Sun trail is narrow and has a turn into trees that someone could hit. He mentioned people use his trail which he believes is better. He mentioned the road is 15-20 feet high and has a berm in front of that and he believes that they won’t be able to see or hear his business much.

MOTION: To recommend approval of the rezone (RZ2019-001) of Shuros Subdivision – Block 2, Schroeder Property Waiver – Tract B and Tract C, Section 28 T1N R1W F.M. – TL-2805, Section 29 T1N R1W F.M. – TL-2914 and GL-16 from Rural Residential (RR) to Outdoor Recreational (OR), and adopt the staff report and eight (8) Findings of Fact in support of the recommendation of approval by Commissioner Sims, seconded by Commissioner Presler.

FINDINGS OF FACT

1. The FNSB Regional Comprehensive Plan designates approximately 96% of the area proposed to be rezoned as Open Space/Natural Area. “Open space is an undeveloped area in a natural state, golf course, park, or cemetery, along a road that provides some visual relief from urbanization and public recreation. Open space may or may not be improved, but it does serve to interrupt more intense land uses. Natural area is an area left in natural state deemed not suitable for development. Natural areas may be minimally improved, i.e., to provide access to or through them, or to accommodate a trail, but basically they are left to their natural state.” The FNSB Regional Comprehensive Plan designates approximately 4% of the area proposed to be rezoned as Perimeter Area.

2. The current RR zone is not consistent with the Open Space/Natural Area designation. The RR zone is intended for low density residential development and does not protect the existing recreational use of the Creamer’s Field Refuge. The land uses in the Open Space/Natural Area designation (such as recreational open space, golf courses, and trail facilities) are not allowed in the RR zone.

3. The proposed OR zone is more consistent with the Open Space/Natural Area designation. The OR zone is intended to protect outdoor recreational uses on public lands or on private lands if requested by the property owner. The OR zone would better protect the predominant outdoor recreational uses in the rezone area.

4. The rezone conforms to the following FNSB Regional Comprehensive Plan goals because it would better protect the existing outdoor recreational uses within the refuge and outdoor recreational uses are essential to support the winter tourism market in the Borough:
   a. Economic Development Goal 1, Strategy 4, Action C which refers to promoting tourism and hospitality.
   b. Economic Development Goal 2, Strategy 6, Action C which refers to promoting the characteristics of the Borough that have potential for economic development.
   c. Environment Goal 3, Strategy 8, Action A which refers to providing for opportunities to enjoy the outdoors.
   d. Land Use Goal 4, Strategy 10 which refers to minimizing land use conflicts. The conditional use public hearing process required for higher impact land uses help minimize the land use conflicts.

5. The rezone conforms to the following FNSB Comprehensive Economic Development Strategy (CEDS), Industry Cluster Development Goal 3 (Tourism) which refers to
increasing winter tourism. The CEDS identifies tourism industry cluster with strong potential for growth as winter tourism expands in the Borough.

6. The rezone conforms to the public health, safety or welfare because:
   a. The proposed OR zone would be more consistent with the Open Space/Natural Area land use designation and would better protect the existing predominant recreational use of the rezone area.
   b. The proposed OR zone permits recreational uses such as recreational open space, boat launch, community garden, skiing facilities etc. that could be compatible with the surrounding rural residential development.
   c. The OR zone would protect the existing recreational uses within the Creamer’s Field Refuge. The refuge would continue to be compatible with the nearby rural residential development by providing recreational opportunities.
   d. The Farmers Loop Road would act as a buffer between the existing residential uses on the west side and the proposed outdoor recreational uses on the east side. The Farmers Loop Road provides direct access to other OR zoned property with recreational uses such as the Fairbanks Gold Course.
   e. The FNSB zoning code also requires a conditional use permit for high impact land uses within the OR zone such as commercial outdoor recreation, outdoor shooting ranges, convention centers, organized trail facilities, stadiums etc. Any conditional uses in the OR zone require a public hearing with the FNSB Planning Commission and thereby, help protect health, safety and welfare of the surrounding property owners.
   f. This rezone request does not have the potential to significantly increase the current traffic and trip generation levels associated with the road and the Creamer’s Field Refuge.

7. The rezone is not a spot zone or a reverse spot zone because:
   a. The rezone is consistent with the comprehensive plan. The OR zone would protect the predominant outdoor recreational uses in the rezone area, which would be more consistent with the Open Space/Natural Area land use designation. Additionally, the existing outdoor recreational uses within the Creamer’s Field Refuge, along with the applicant’s proposed snowmachine tour business, would help advance FNSB Regional Comprehensive Plan and FNSB Comprehensive Economic Development Strategy (CEDS) goals.
   b. The rezone benefits both property owners within the rezone area. The State wants to correct the zoning within a portion of the refuge which is inappropriately zoned RR. The applicant intends to apply for a conditional use to operate a snowmachine tour business from his 3.8-acre private property.
   c. The rezone of the 416-acre western portion of the Creamer’s Field Refuge benefits all surrounding property owners because the OR zone would be more consistent with the existing recreational use of the refuge. The OR zone would protect the existing recreational uses within the Creamer’s Field Refuge. The refuge would continue to be compatible with the nearby rural residential development by providing recreational opportunities.
   d. The rezone of the 3.8-acre private property may not benefit the surrounding property owners to the north and west though, because their properties are developed residentially and the snowmachine business might have certain incompatible land use impacts. The FNSB zoning code requires a conditional use permit for high impact land uses within the OR zone such as commercial outdoor recreation, convention centers, organized trail facilities, stadiums etc. In a conditional use public hearing, the surrounding property owners could express their concerns about the specific conditional use proposal. The FNSB Planning Commission is required to
make findings of fact regarding the protection of public health, safety and welfare to support their decision. The required conditional use process would protect the health, safety and welfare of these surrounding property owners.

e. The FNSB residents have developed a land use vision for the area through the comprehensive planning process which designated this area predominantly as Open Space/Natural Area. The implementation of the land use plan is a benefit to the community.

f. The case law provides guidance that parcels over 13 acres are almost always found not to be a spot zone. The 420-acre rezone area is significantly more than 13 acres and therefore, does not constitute a spot zone.

g. The area within the remainder RR zone boundary is estimated to be more than 1,000 acres. Therefore, this rezone does not constitute a reverse spot zone because this rezone does not single out parcels of RR zoned land totally different from that of the surrounding area.

Discussion on the Motion

Commissioner Sims stated he disagreed with some of what staff analyzed in the staff report with respect to it not being a commercial use and had a proximity issue; a potential commercial use too close to a well-established residential area and he also contended that a perimeter area lot zoned RR and then changed to OR is not consistent with the comprehensive plan by virtue of it being a potential commercial use located outside of the Urban Preferred Commercial area. Mr. Sims stated he understands why the applicant wants to move and stated he also had air quality concerns. Mr. Sims stated there is an alternative site that is usable and available, presently and expressed that he is on the fence on the decision. Mr. Sims stated it would be wise for the state to come forward for the rest of their refuge and zone it appropriately.

Commissioner Presler expressed her initial agreement with the rezone and has been back and forth throughout the evening for different reasons. Ms. Presler’s initial agreement was because of the large portion being Creamer’s Field which is the most appropriate zone for the refuge. Ms. Presler stated the discussion was not in regards to the conditional use, it was for the rezone and after hearing the concerns from the testimonies in opposition to the one personal property and was unsure of where she stood on the matter.

Commissioner Guinn stated the Creamer’s Field property should be rezoned to OR and mentioned the business being operated on the private property by the applicant will be discussed under a conditional use permit at a future date. Mr. Guinn stated if rezoned, any future CUP request will be with conditions and stated he felt the private property was not an ideal candidate for OR and stated he wanted to see it removed from the proposed rezone.

Commissioner Whitaker stated his support of the state rezoning their property but did not support Mr. Duncan’s request. Mr. Whitaker reiterated the testimonies stating they want to protect the character of the neighborhood.

Commissioner Sims asked legal if a rezone application fails at the Planning Commission would it still forward to the Assembly.

Mr. Jaffa stated the commission had a few options, one is to recommend approval, it is simply a recommendation that goes before the Assembly, or recommend disapproval or to recommend reclassification to a more appropriate zone which can include certain parcels but when doing that the commission will need to do an independent spot zone analysis if the commission
intends to remove Farmers Loop frontage parcels from the rezone. Mr. Jaffa explained that the request would go before the Assembly as written along with the commission’s recommendation and the Assembly could go with the recommendation or they could go with the original request or they could determine a different zone as being more appropriate. Mr. Jaffa explained that if the commission chose to remove certain parcels there would need to be specific factual findings different from findings in the staff report that are written in support of the rezone.

ROLL CALL

Zero (0) in Favor:

Five (5) Opposed: Guinn, Whitaker, Presler, Sims, and O’Neall

MOTION FAILED

MOTION: To recommend disapproval of the rezone (RZ2019-001) of Shuros Subdivision – Block 2, Schroeder Property Waiver – Tract B and Tract C, Section 28 T1N R1W F.M. – TL-2805, Section 29 T1N R1W F.M. – TL-2914 and GL-16 from Rural Residential (RR) to Outdoor Recreational (OR), and adopt one (1) Finding of Fact in support of the recommendation of disapproval by Commissioner Sims, seconded by Commissioner Presler.

FINDING OF FACT

1. The proposed rezone of the Farmers Loop perimeter lots to Outdoor Recreational (OR) is not consistent with the FNSB Regional Comprehensive Plan designation of Perimeter Area.

Discussion on the Motion

Commissioner Guinn asked for clarification on the perimeter lots.

Chair O’Neall stated there are three.

Commissioner Whitaker clarified the process of the recommendation going forward to the Assembly.

ROLL CALL

Five (5) in Favor: Whitaker, Presler, Sims, Guinn, and O’Neall

Zero (0) Opposed:

MOTION PASSED

G. LEGISLATIVE HEARING

ORDINANCE NO. 2018-40: An Ordinance Amending FNSBC 18.108.040(A) To Allow Reconstruction Of A Nonconforming Building. Staff Contact: Christine Nelson

[Commissioner Muehling returned to the dais]
Ms. Nelson provided her staff report on behalf of the Borough’s Planning Department in support of the purpose and intent of the Ordinance. She expressed some concerns about the lack of a definition for a permanent foundation and recommended several amendments to clarify administration of this code section.

Questions by Commissioners

Commissioner Muehling asked where it was appropriate to start listing all types of foundations that would not be considered permanent and can a list be complete.

Ms. Nelson stated it gives better direction about those ends of the spectrum of what is and is not a permanent foundation, and it narrows the gray area that has to be interpreted by the public. Since the FNSB doesn’t have building codes, we can’t refer to any foundation that meets IBC residential codes. The list will further clarify what a permanent foundation is.

Commissioner Sims asked what the difference is between a full poured concrete or masonry foundation and a slab foundation; excluding slab confused him.

Ms. Nelson said closed perimeter; the difference is that there actually is a perimeter versus a slab that is flat. Ms. Nelson also stated this contrasts with a post and pier foundation. You would have to have a continuous edge, you don’t have to have a complete poured foundation that covers all the dirt but you would have to have a perimeter and a slab doesn’t have a perimeter, it goes from edge to edge but there is no enclosure.

Commissioner Presler stated a slab does have a thickened edge if it is a foundation.

Ms. Nelson explained that a number of foundation definitions were reviewed which many referred to building codes and asked for clarity and direction from the commission.

Commissioner Sims asked if the builders association was spoken to.

Chair O’Neall asked for clarification that it was brought to the attention by a couple of Assembly members.

Ms. Nelson stated the ordinance as it currently is written was and the amendments came from the Department of Community Planning because they don’t know what they meant by an existing permanent foundation.

Ms. Nelson further discussed the amendment put forth by the Department of Community Planning.

Commissioner Muehling asked what happens if the building is not completed in the timeline.

Ms. Nelson stated it would be a code violation and if the commission doesn’t want to put a timeline on an extension then they would have to come back and explain to the Assembly why they can’t get it done in 3 years and the Community Planning Director along with the Assembly have the option of giving them no extension up to an indefinite amount of time and stated that 5 years is a long time to work on a building even if constructed out of pocket. Ms. Nelson stated the general purpose of having nonconforming language in the code is to eventually comply with the community vision of what they want to see in the future.
Commissioner Muehling stated the nonconforming timeline is liberal and reasonable.

Discussion ensued between Commissioner Muehling and Ms. Nelson in regards to potentially adding a definition to another section of code because the ordinance title is very limited to referencing about one section of the code.

[Chair O'Neal recused herself and left the dais]

[Commissioner Muehling proceeded as acting chair]

Public Testimony Opened

None

Public Testimony Closed

MOTION: To recommend that the FNSB Assembly approve Ordinance No. 2018-40 with two (2) amendments by Commissioner Presler, seconded by Commissioner Sims.

MOTION TO AMEND: To amend amendment #1 to read “Foundation permanent” means a supporting substructure of a building permanently affixed to the ground such as a concrete or masonry foundation, thickened edge slab-on-grade, driven or drilled piles, spread footings, and continuous footing. This definition excludes skids or other non-permanent moveable support substructure by Commissioner Presler, seconded by Commissioner Sims.

Discussion on the Motion

Chair Muehling asked if any of those definitions in the code.

Ms. Nelson stated there are no definitions of these foundation types in Title 18 but they are generally well understood terms in the construction industry and will give the Department of Community Planning considerable direction on what is and what is not considered a permanent foundation.

Commissioner Whitaker asked if a geodesic foundation would be considered spread footing.

Commissioner Presler said yes and explained what spread footings are.

ROLL CALL

Five (5) in Favor: Presler, Sims, Guinn, Whitaker, and Muehling

Zero (0) Opposed:

MOTION TO AMEND PASSED

Discussion on the Motion
Chair Muehling stated 3 years is a liberal time to build a foundation or to rebuild on top of an existing foundation.

Commissioner Guinn agreed.

Discussion ensued in regards to exterior shell.

MOTION TO AMEND: To amend line 53 of the ordinance to add “of the exterior structure” after the word “reconstruction” by Commissioner Muehling, seconded by Commissioner Sims.

Discussion on the Motion

Chair Muehling stated it better explains what is meant by reconstruction.

ROLL CALL

Four (4) in Favor: Sims, Guinn, Whitaker, and Muehling
One (1) Opposed: Presler

MOTION TO AMEND PASSED

Discussion ensued in regards to the word “occur” not being clearly understood.

MOTION TO AMEND: To amend line 53 of the ordinance to replace the word “occur” with the words “be complete” by Chair Muehling, seconded by Commissioner Guinn.

ROLL CALL

Five (5) in Favor: Guinn, Whitaker, Presler, Sims and Muehling
Zero (0) Opposed:

MOTION TO AMEND PASSED

Discussion ensued in regards to the extension period not necessarily needing to be defined which will allow flexibility in an unusual situation.

MOTION AS AMENDED: To recommend that the FNSB Assembly approve Ordinance No. 2018-40 with three (3) amendments by Commissioner Presler, seconded by Commissioner Sims.

ROLL CALL

Five (5) in Favor: Presler, Sims, Guinn, Whitaker, and Muehling
Zero (0) Opposed:

MOTION AS AMENDED PASSED

H. EXCUSE FUTURE ABSENCES
I. **COMMISSIONER'S COMMENTS**

1. FMATS
   
   Chair Muehling relayed information regarding ongoing projects at FMATS.

2. Other

Commissioner Guinn stated the RR/RE Subcommittee plans to have a work session at the January 8, 2019 Planning Commission meeting.

J. **ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:21 p.m.