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’Neall, Chair.

MEMBERS PRESENT: Chris Guinn  Mike Stepovich
John Perreault  Doug Sims
Robert Peterson  Charles Whitaker
David Brandt  Eric Muehling

MEMBERS ABSENT:  Wendy Presler  Pat Thayer

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

A. **ROLL CALL**

B. **MESSAGES**

1. Chairperson’s Comments

2. Commissioner’s Comments

None

3. Communications to the Planning Commission

**Ms. Nelson** reminded the commission APA registration is open and 1 spot open for the Sunday Planning Commissioner Training. Ms. Nelson mentioned a 5:30pm Work Session for the October 23rd meeting on MTP progress. Ms. Nelson reminded the commissioners of the three seats that expire in December.

**Chair O’Neall** asked if new members would be seated in January of 2019.

**Ms. Nelson** said that is correct as the existing terms expire in December of 2018.

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 stated a previous conflict on AM2018-007 for Commissioner Muehling so he will be excused from hearing that case.

No other conflicts were stated.

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 Muehling, seconded by Commissioner Peterson.

CARRIED WITHOUT OBJECTION

D. MINUTES

1. *Minutes from September 25, 2018 PC Meeting

E. APPEALS (POSTPONED – DATE CERTAIN)

AM2018-007: An appeal by Travis Naibert of the denial of a request for amnesty relief for an existing lot with a lot size of 54,450 sq.ft. instead of the required 200,000 sq.ft. in the Rural and Agricultural (RA-5) zone for the property on E ½ NE ¼ NE ¼ SW ¼ SE ¼ Sec 30, T1N R1E F.M. (located at 333 Rainbow Ridge Road). (Staff Contact: Manish Singh)

[Commissioner Muehling left the dais]

Chair O’Neall verbally confirmed the two commissioners that were not present at the previous meeting reviewed the audio and/or minutes of the last meeting.

Commissioner Sims said yes; entirely.

Commissioner Perreault said he is all caught up.

Chair O’Neall stated a motion was needed and questions could be reopened while following proper procedures.

Commissioner Guinn asked if the applicant can bring up stuff that was discussed at the last meeting on his own or if there was a procedure as to who can bring it up.

Chair O’Neall stated there was no procedure for that.
Questions by Commissioners for Applicant

Commissioner Sims asked Mr. Naibert from the last meeting to current if he came up with new evidence showing the lots compliance.

Mr. Naibert stated the staff report argued his lot did not meet the definition of lot but the definition of lot does include those words “otherwise permitted by law” and referred to the definition of lot in Chapter 17 where a lot is defined as any measured portion, parcel or tract of land described by deed or a lease of more than five years and stated his property had a deed for 36 years. Mr. Naibert argued that the definition of lot in Chapter 17 could be used for Chapter 18.

Commissioner Sims asked Mr. Naibert to explain any new evidence showing the lot complies with all other FNSB Platting and Zoning requirements.

Mr. Naibert stated in regards to platting requirements he believed his lot meets the requirements of being large enough for a septic and there is access and argued that the subdivision of the property was done by warranty deed rather than by the platting process by the former owner therefore the lot size violation could not have occurred without the mistake of doing the subdivision the wrong way and stated if the former owner had gone through the platting and subdivision process correctly it would not have been allowed because the subdivision ordinance says that lot size has to meet zoning and argued that lack of a plat does not qualify for the “does not meet other requirements of platting and zoning” because the lack of a plat is tied to the fact that the lot is too small and to his knowledge there are no other requirements his lot fails to meet.

Commissioner Sims asked if he had an appraisal done and if it identified the substandard nature of the lot size.

Mr. Naibert stated he had an appraisal and it did not and he first found out about it when caught by the underwriter for his loan.

Questions by Commissioners for Staff

Commissioner Perreault asked of the thousands of lots subdivided by deeds, how many are out of compliance with current zoning and if so what is commonly done.

Mr. Spillman stated there are thousands of tax lots and a high number of those were subdivided by deed and several have been identified as not meeting the minimum lot size and options are a lot size variance or to try to replat the lot which can be difficult in this case because of the Rainbow Ridge Road situation and multiple variances would have to be involved through the platting process.

Discussion ensued between Commissioner Perreault and Mr. Spillman in regards to the history of other lot problems on Rainbow Ridge Road.

Commissioner Perreault asked what the outcome difference would be between this and a variance and if amnesty follows the property.
Mr. Spillman explained in general terms that a variance is permission to go against code and amnesty is still a violation but the FNSB is not enforcing the violation. Mr. Spillman stated the amnesty would run with the property.

Commissioner Sims asked why amnesty was being pursued in the case when there was a zoning permit issue and appeared to be a subdividing problem.

Mr. Spillman described when the administrative decision was issued that all six criteria were met and the denial was based on the lot not complying with other planning and zoning requirements and primarily deals with the definition of lot at the time, when amnesty was created and not the definition of lot when the property was deeded.

Discussion ensued between Commissioner Sims and Mr. Spillman in regards to the zoning permit approval and if that implied the lot being deemed appropriate for the use.

Commissioner Brandt mentioned the eligibility requirement stating the lot must comply with all other platting and zoning requirements but did not state it had to have been platted.

Mr. Spillman read FNSB 18.116.030 (A) and explained that there are very few ways to create a substandard lot other than subdivision by deed.

Commissioner Guinn asked if amnesty applied to platting.

Mr. Spillman stated that is correct with respect to crossover between the two titles when it comes to lot size.

Commissioner Guinn asked if the lot went through a platting process or waiver process in 1982.

Mr. Spillman stated it appeared in the research that it was created with a deed.

Commissioner Peterson asked if his position changed as a hearing officer on the matter.

Mr. Spillman was not comfortable answering the question and did not feel he has the ability to reevaluate the matter.

OATH ADMINISTERED

Public Testimony Opened

None

Public Testimony Closed

Applicant’s Rebuttal

Mr. Naibert reiterated he is unable to get a convention construction loan or mortgage and it was not done intentionally. Mr. Naibert also referenced the minutes from the Planning Commission Meeting on March 1, 2016 further referencing Mr. Billingsly questioning how a new owner could have intentionally or willfully cause the violation.
MOTION: To deny the amnesty relief request (AM2018-007) for E ¼ NE ¼ NE ¼ SW ¼ SE ¼ Sec 30, T1N R1E F.M. (also known by FNSB as Tax Lot 3017) for the existing 54,450 sq.ft. lot size in the Rural and Agricultural (RA-5) zone adopting the staff report, and eight (8) findings of fact in support of denial by Commissioner Guinn, seconded by Commissioner Peterson.

FINDINGS OF FACT (Original Motion)

1. The lot size violation does not qualify for legal nonconforming lot status (grandfather rights). On June 12, 2018, the FNSB Community Planning Department did not affirm (denied) legal nonconforming lot status because Tax Lot 3017 was created with 54,450 square feet area on October 29, 1982 after Ord. 73-42 established a minimum lot size requirement of 200,000 sq.ft. on September 27, 1973 (GR2018-135).

2. The lot size violation existed as of July 21, 2010 as evidenced by the Warranty Deed recording the description of Tax Lot 3017 on October 29, 1982.

3. A previous owner created Tax Lot 3017 on October 29, 1982 by recording a Warranty Deed. The FNSB Assessor Field Card shows that the ownership of the lot has changed at least three times since 1982 with subsequent Warranty Deeds and therefore, the violation was not intentional or willful on the part of the current owner.

4. The lot size violation does not pose a danger to the public health, safety and welfare of borough residents because the lot has an area of 54,450 sq.ft. which is more than an acre and could potentially support a septic system. A plot plan dated October 20, 1983 shows that the lot is 165.16' wide which is adequate for constructing a residence and other accessory structures.

5. The lot size violation of 145,550 sq.ft., or approximately 72.78% of the required 200,000 sq.ft., is less than 75% of the required lot area.

6. A lot requesting lot size amnesty, must meet the FNSBC Title 18 definition of “lot” because FNSBC 18.116.020(A) states “…any… lot that is in violation of this title with respect to the numerical regulations pertaining to… lot area, and which has received affirmative recognition of amnesty relief under this chapter, may continue…”

7. The lot does not comply with all other FNSBC platting requirements because it was not legally created under the FNSB Title 17 subdivision regulations in effect when the description of the lot was recorded with a Warranty Deed on October 29, 1982.

8. FNSB Title 18 defines a “lot” as being legally created. Therefore, if a property was not legally subdivided or otherwise legally created, it is not a “lot” as defined by FNSBC Title 18 and cannot qualify for amnesty relief.

Discussion on the Motion

Commissioner Brandt referred to Chapter 18.116 and the purpose of amnesty relief and how it related to exactly what the applicant is trying to do; he met all of the requirements and it has
come down to the definition of lot and stated it was legally created by warranty deed 36 years ago and has been taxed as a lot since and spoke against the motion.

**Commissioner Sims** spoke against the motion; referenced land use plan, goal 1 and strategy 1 and Title 18.104.080 which to him constituted tacit approval of the lot and stated that it was unfair to hold this property owner to a standard that has gone unenforced for 36 years.

**Commissioner Whitaker** referred to the assessing records and how it was not assessed as a substandard lot.

**Commissioner Guinn** spoke for the motion and stated the waiver process wasn’t followed; it was not platted properly by the original owner.

**Commissioner Perreault** spoke against the motion because the six out of seven requirements were met and the last one being legally created which was not done correctly by the owner at the time which is why the current owner is seeking amnesty.

**Commissioner Stepovich** mentioned how many out of compliance lots and the amnesty was set up for a case just like this, for a property owners rights and stated if this amnesty is denied then they are going on the wrong foot.

**Commissioner Peterson** spoke in favor of the motion; amnesty is not applicable in the case.

**Chair O’Neall** expressed the opportunity to grant amnesty with the history of the lot and the reason why the amnesty code was created and spoke against the motion.

**ROLL CALL**

Two (2) in Favor:  Guinn and Peterson
Six (6) Opposed:  Sims, Perreault, Brandt, Whitaker, Stepovich and O’Neall

**MOTION FAILED**

[Recessed for a brief at ease]

**MOTION:**  To approve the amnesty relief request (AM2018-007) for E ½ NE ¼ NE ¼ SW ¼ SE ½ Sec 30, T1N R1E F.M. (also known by FNSB as Tax Lot 3017) for the existing 54,450 sq.ft. lot size in the Rural and Agricultural (RA-5) zone adopting some of the staff report, and seven (7) findings of fact in support of the approval by **Commissioner Perreault**, seconded by **Commissioner Brandt**.

**Mr. Jaffa** stated the motion needs to be clear specifically as to which findings of fact are part of the current motion and the need for draft language.

**Chair O’Neall** asked Mr. Jaffa if the motion on the floor could be discussed as the findings of fact were put together.

**Mr. Jaffa** stated since the motion was to approve than the findings of fact need to be incorporated in the motion.
MOTION: To resend the motion by Commissioner Perreault, seconded by Commissioner Brandt.

MOTION: To amend the Findings of Fact from the staff report to reflect an oncoming motion to approve by Commissioner Perreault, seconded by Commissioner Brandt.

Commissioner Perreault stated he wants to cut Findings of Fact #8.

Mr. Jaffa stated the appropriate course would be to have a motion to approve the amnesty and the eight findings of fact then a motion to amend those findings of fact.

MOTION: To resend the motion by Commissioner Perreault, seconded by Commissioner Brandt.

MOTION: To approve the amnesty relief request (AM2018-007) for E ½ NE ¼ NE ¼ SW ¼ SE ¼ Sec 30, T1N R1E F.M. (also known by FNSB as Tax Lot 3017) for the existing 54,450 sq.ft. lot size in the Rural and Agricultural (RA-5) zone adopting the staff report, and eight (8) findings of fact in support of the approval by Commissioner Perreault, seconded by Commissioner Brandt.

MOTION: To amend the motion by striking Findings of Fact #8 by Commissioner Perreault, seconded by Commissioner Brandt.

ROLL CALL (amend)

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

Two (2) Opposed: Guinn and Peterson

MOTION PASSED

MOTION: To amend the motion by cutting the word “other” from the first line of Finding of Fact #7 by Commissioner Perreault, seconded by Commissioner Brandt.

Discussion on the Motion

Commissioner Perreault stated the lot does not comply with all platting requirements, it was not legally created and make a finding that states amnesty is allowable at this point because it does comply with the other zoning and platting requirements just not the one under contention.

Commissioner Brandt stated if the lot did comply with all of the platting and zoning requirements it wouldn’t need the amnesty relief, so the word “other” refers to the one reason they are out of compliance.

Mr. Jaffa suggested the word “other” remain in the finding of fact #7.
Discussion ensued between Commissioner Perreault, Commissioner Brandt and Mr. Jaffa in regards to the interpretation of the use “other” in the finding of fact #7.

ROLL CALL (amend)

Eight (8) in Favor: Perreault, Brandt, Guinn, Whitaker, Peterson, Stepovich, Sims and O’Neall

Zero (0) Opposed:

MOTION PASSED

[Recessed for a brief at ease]

MOTION: To amend the motion to add Finding of Fact #8 to read “Zoning Permit No. 18109 approved on July 26, 2018 constitutes tacit approval of the lot based on 18.104.080 (A) and (C)” by Commissioner Sims, seconded by Commissioner Brandt.

Discussion on the Motion to Amend

Commissioner Sims stated the motion speaks for itself.

Mr. Jaffa stated the motion to amend was ambiguous with the usage of the word approval of lot and it needed to be clarified; approval for what purpose. Mr. Jaffa stated the commission could not abdicate its quasi-judicial responsibilities to the department which seems to be the spirit of the amendment.

Chair O’Neall stated the amendment is clear.

ROLL CALL (amend)

Eight (8) in Favor: Guinn, Whitaker, Peterson, Stepovich, Sims, Perreault, Brandt and O’Neall

Zero (0) Opposed:

MOTION PASSED

MOTION: To amend the motion to add Finding of Fact #9 to read “The definition of a lot in title 18 requires that a lot be established by plat, subdivision, or otherwise permitted by law, adequate for occupancy, providing yards, buildable area, and off street parking. Amnesty is not available unless the lot complies with “all other” FNSB platting and zoning requirements. The lot was not properly established, but
complies with all other requirements, and therefore is available for amnesty” by Commissioner Perreault, seconded by Commissioner Brandt.

ROLL CALL (amend)

Six (6) in Favor: Whitaker, Stepovich, Sims, Perreault, Brandt and O’Neall
Two (2) Opposed: Peterson and Guinn

MOTION PASSED

MOTION: To amend the motion to add Finding of Fact #10 to read “The amnesty request conforms to the comprehensive plan land use goal 1, strategy 1” by Commissioner Sims, seconded by Commissioner Brandt

Discussion on the Motion to Amend

Commissioner Sims stated goal one is to recognize that the four most aspect of land use involving private property is the retention and maintenance of private property rights and strategy 1 reads work for decisions by commissioners and the assembly that protects individual private property rights to the maximum extent possible and he believed the amnesty clause in Title 18 is trying to do that.

Chair O’Neall agreed.

ROLL CALL (amend)

Six (6) in Favor: Stepovich, Sims, Perreault, Brandt, Whitaker and O’Neall
Two (2) Opposed: Peterson and Guinn

MOTION PASSED

MOTION AS AMENDED: To approve the amnesty relief request (AM2018-007) for E 1/2 NE 1/4 NE 1/4 SW 1/4 SE 1/4 Sec 30, T1N R1E F.M. (also known by FNSB as Tax Lot 3017) for the existing 54,450 sq.ft. lot size in the Rural and Agricultural (RA-5) zone adopting the staff report and ten (10) Findings of Fact in support of the approval.

FINDINGS OF FACT (Motion as Amended)

1. The lot size violation does not qualify for legal nonconforming lot status (grandfather rights). On June 12, 2018, the FNSB Community Planning Department did not affirm (denied) legal nonconforming lot status because Tax Lot 3017 was created with 54,450 square feet area on
October 29, 1982 after Ord. 73-42 established a minimum lot size requirement of 200,000 sq.ft. on September 27, 1973 (GR2018-135).

2. The lot size violation existed as of July 21, 2010 as evidenced by the Warranty Deed recording the description of Tax Lot 3017 on October 29, 1982.

3. A previous owner created Tax Lot 3017 on October 29, 1982 by recording a Warranty Deed. The FNSB Assessor Field Card shows that the ownership of the lot has changed at least three times since 1982 with subsequent Warranty Deeds and therefore, the violation was not intentional or willful on the part of the current owner.

4. The lot size violation does not pose a danger to the public health, safety and welfare of borough residents because the lot has an area of 54,450 sq.ft. which is more than an acre and could potentially support a septic system. A plot plan dated October 20, 1983 shows that the lot is 165.16’ wide which is adequate for constructing a residence and other accessory structures.

5. The lot size violation of 145,550 sq.ft., or approximately 72.78% of the required 200,000 sq.ft., is less than 75% of the required lot area.

6. A lot requesting lot size amnesty, must meet the FNSBC Title 18 definition of “lot” because FNSBC 18.116.020(A) states “…any… lot that is in violation of this title with respect to the numerical regulations pertaining to… lot area, and which has received affirmative recognition of amnesty relief under this chapter, may continue…”

7. The lot does not comply with all FNSBC platting requirements because it was not legally created under the FNSB Title 17 subdivision regulations in effect when the description of the lot was recorded with a Warranty Deed on October 29, 1982.

8. Zoning Permit No. 18109 approved on July 26, 2018 constitutes tacit approval of the lot based on 18.104.080(A) and (C).

9. The definition of a lot in title 18 requires that a lot be established by plat, subdivision, or otherwise permitted by law, adequate for occupancy, providing yards, buildable area, and off street parking. Amnesty is not available unless the lot complies with “all other” FNSB platting and zoning requirements. The lot was not properly established, but complies with all other requirements, and therefore is available for amnesty.

10. The amnesty request conforms to the comprehensive plan land use goal 1, strategy 1.

ROLL CALL (Motion as Amended)

Six (6) in Favor: Perreault, Brandt, Whitaker, Stepovich, Sims and O’Neill

Two (2) Opposed: Guinn and Peterson

MOTION PASSED

[Commissioner Muehling returned to the dais]

Staff Contact: Manish Singh

Mr. Singh presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval.

Questions by Commissioners

Commissioner Sims asked Mr. Singh if lots that did not sign the petition stated opposition or if the signatures were just not available.

Mr. Singh said the stated oppositions in form of comments were included in the addendum packet and stated he could not speak to if they were contacted or if they denied signing the petition and stated the signatures were not included in the application.

Commissioner Sims asked if another appropriate zone was considered or discussed for GL-85, GL-78A and GL-78B.

Mr. Singh stated it was discussed and was not an easy recommendation; considered Chena Pump Road having commercial potential. Mr. Singh commented that General Commercial and Light Commercial zoning were considered and discussed with Mr. Ross but the Comprehensive Plan Designation asked for perimeter area which is primarily residential and rezoning one property differently than everything else would fall into spot zoning which is why staff recommended approval for RR Zoning but the other appropriate zoning can be used if the commission deemed them appropriate for the recommendation to the Assembly.

Discussion ensued between Commissioner Sims and Mr. Singh in regards to the nature of Chena Pump Road as a minor arterial rendered less attractive to low density residential.

Commissioner Stepovich asked if all it took was a petition to be signed to start a major rezone and asked if the rezone was done for free.

Mr. Singh recited 18.104.020 Procedures for Rezoning and the application fee was waived because it met both provisions but only required to meet one.

Commissioner Perreault asked if the lots that are not in compliance with the rezone be given categorical grandfather status or if an application was needed individually if the rezone were to go through.

Mr. Singh stated if the rezone passes, individual applications will be required.

Commissioner Perreault asked if those would be a counter visit unless complicated.

Mr. Singh stated it to be a counter visit for lot sizes and structures that can be approved by the Community Planning Director within ten business days if the application is complete and will
require an administrative hearing for any non-conforming uses to obtain affirmative recognition of grandfather rights.

**Commissioner Muehling** asked why GL-81 was not included in the application and why it stopped to the west and north where it did.

**Mr. Singh** stated that was a question for the applicant to address and described how the process of the rezone started. Mr. Singh also reiterated that GL-85 was not included in the initial application and that Mr. Ross postponed the initial Planning Commission hearing and later included GL-85.

**Commissioner Sims** asked if multiple-family office was considered for GL-85 and if that would conform to MFO.

**Mr. Singh** said he considered light commercial and the reasons why urban zones such as MFO were not considered because the urban area zones are appropriate for areas that have community water and sewer which that area does not have.

**Commissioner Peterson** asked why the lots are listed as GL (government lot) rather than TL (tax lot).

**Mr. Spillman** explained that the government lots in that area were government small tracks that predated FNSB.

Applicant Don Ross, testified as follows:

- Beginning interest for the rezone was to preserve the best interest of the rural residential character of the neighborhood.
- Concerned of the direct effect of expanded businesses.
- GU-1 has no current setback requirements.
- New property owner could build up to his property line.
- Lot owner adjacent to Chena Pump Road wanted to see that his property was rezoned to RR as well.
- He stated he did not have the time to go see a lot of the other lot owners that were not included in the application.
- Read the benefit to the property owners, the benefit to the adjacent landowners and the benefit to the community from page 15 of the staff report and reemphasized there are no setback requirements under GU-1 zone.

**Questions by Commissioners**

**Commissioner Muehling** mentioned GL-81 cuts a knot into the west boundary and asked if that land owner was contacted.

**Mr. Ross** stated he contacted the owner and he did not want to be included in the application.

**Commissioner Muehling** asked for the other specific land owners that did not want to be included.

**Mr. Ross** said the only one he was aware of was Mr. Siftar on GL-85, the Siemens business.
Public Testimony Opened

Robert Siftar, owner of GL-85 at 2520 Roland Road, Testified as follows:

- Owner since 1998 and Siemens have rented the space since 2004.
- Siemens is a group of engineers that save customers money by reducing the electric and heat bills by using modern controls which reduces air pollution in the FNSB.
- In the past 14 years, no complaints about the Siemens business noise or traffic.
- Negotiating another space for 10+ employees for Siemens, they have agreed to a 1 year extension of the lease to have time to build extra space and a 7 year lease after built.
- Siemens will move out if more room is not added for them.
- $26,500 has been sent on sight preparations and plans for the new addition and trees were not removed on the shared boundary to preserve a green band.
- The applicant reached out to him about the rezone in hopes to prevent the opening of a pot store in the area.
- Spoke to Todd Anderson, owner of Alice Lot 1 who signed the petition said his building or Siemens was never mentioned by Mr. Ross.
- His building was added two months after Mr. Ross took signatures which should nullify the application.
- Vigorously opposed of any rezone that prevents them from providing additional space for tenants to continue their business.
- The use of the private property with the existing office building is compatible with the existing residences and other businesses along Chena Pump Road.
- A rezone would deny and limit all economical feasible uses of the property.
- Their lot is an investment for their children’s future.
- Urged commission to disapprove the rezone.
- Mr. Ross’ second house is within a few feet of the boundary line.
- His commercial building is set far away from the side boundary.

Questions by Commissioners

Commissioner Sims asked for a description of the proposed new addition on his lot and the nature of work being conducted there.

Mr. Siftar said they are electrical engineers that work quietly for 8 hours a day until 4:30pm and stated that he built a new pad at the end of the building that extends towards JustaStore that is far away from the property boundary.

Commissioner Sims stated it is a professional office space.

Commissioner Muehling asked for clarification on the newly built pad.

Mr. Siftar explained that 60 truckloads of pit run gravel was brought in and stated his lot is level with Roland Road and that it is a preconstruction pad.

Commissioner Whitaker asked if the new building will have the same width as the old one and asked how wide the existing Siemens building is.
Mr. Siftar said the new building plans are not done yet but it could be 40ft wide or 50ft wide and the Siemens building is 40ft wide.

Commissioner Brandt asked if he was explained grandfather rights.

Mr. Siftar said yes and it sounds like a bunch of hog-wash compared to GU-1 and he doesn’t want that to change and that he would not build up directly to the side boundary.

Commissioner Peterson asked how much room would be between the proposed new structure and the property boundary.

Mr. Siftar said 85ft that leaves room for the new leach field that will be vegetated.

Chair O’Neall asked if there is a residential structure on the lot.

Mr. Siftar said there is a small rental cabin on the property that is within 8ft of the boundary line that is shared with Mr. Ross that has been there for 40 years but can go away if conflicts with the commercial building.

Commissioner Muehling asked when the preconstruction pad was put in.

Mr. Siftar said it was put in this summer.

Kate Siftar, owner of GL-85 at 2520 Roland Road, Testified as follows:

- Siemens is looking to add on 10 more employees on top of the current 25 which won’t create an increase in traffic.
- The petition doesn’t meet the application requirements; the petition to include their property was only signed by Mr. Ross.
- The other signatures were obtained prior to their property being added.
- 8 established businesses on Chena Pump Road.
- The area is surrounded by GU.
- 13 existing structures will become non-conforming and 6 existing uses.
- 1 signature wanted to withdraw his signature.
- The proposed rezone is only a portion of the 5.3 mile stretch of Chena Pump and will not restrict further incompatible land uses or traffic beyond Roland Road.
- Singling out their property is a detriment.
- Stated land use strategy 1 and 2.
- Urged commission to disapprove.

Questions by Commissioners

Commissioner Stepovich asked if the petition included a map and what did it look like.

Ms. Siftar said Mr. Siftar received a call.

Commissioner Perreault asked if she was ever offered the opportunity to look at the petition to sign it.
Mr. Siftar answered for Ms. Siftar and said he only received 1 or 2 phone calls from Mr. Ross and in June Mr. Ross talked about the efforts to keep marijuana stores out of the neighborhood and told Mr. Ross they did not want to be a part of the application.

Chair O’Neall asked if there was any discussion to exclude GL-85, GL-78A & GL-78B from the applicant.

Ms. Siftar said no.

Dr. Charles Scott, 2625 Roland Road, Testified as follows:

- Owns multiple properties in the area.
- He owns the SimplexGrinnell building.
- He located to that part of town because it was zoned GU-1 and he could have a business.
- He is aware of grandfather rights and stated he may want to sell his building in the future and what if the grandfather rights no longer is available.
- Stated there was a reason people wanted to locate out there, to allow them to do what they wanted with their properties within the law.
- Opposed to the rezone.
- His building could make a nice church.

Questions by Commissioners

Commissioner Perreault asked if his residence on Roland Road a part of the proposed rezone.

Dr. Scott stated his property is not included.

Commissioner Muehling clarified that Dr. Scott does not own any lots that are in the proposed rezone.

Dr. Scott said no and voiced his concern on future changes to the neighborhood.

OATH ADMINISTERED TO MARTHA ROTH

Martha Roth, 408 Iver Lane, Testified as follows:

- Purchased the 8 plex in 1982 that was originally built in the 70’s for pipeline workers.
- Nobody asked her about the rezone, the first she heard was when she received a letter in the mail.
- She doesn’t have a strong feeling one way or the other.
- Referred to page 102 and suggested to eliminate the lots along Chena Pump.

Questions by Commissioners

None

Public Testimony Closed

Rebuttal
Applicant Don Ross stated at the beginning of the process there were no defined boundaries to distribute to the owners he contacted because the process was that he received the signatures to submit to the Community Planning Department. Mr. Ross said when he contacted the owners for the petition the example he gave was a marijuana business being established it was not meant to be an inclusive sort of thing as portrayed. Mr. Ross voiced that grandfather rights should be taken seriously and stated the current businesses would be grandfathered in. Mr. Ross restated the character of the neighborhood needed to be preserved.

Questions by Commissioners

Commissioner Muehling asked if Mr. Ross thought the rural character could be maintained if a strip of four properties that are contiguous to Chena Pump were allowed to remain GU-1 zone.

Mr. Ross said no because there are no restrictions under GU-1.

Chair O’Neall asked if he was aware that all of the other properties surrounding the potential rezone are GU-1 and could develop under the character of GU-1.

Mr. Ross said yes and if he had the time to contact more owners he would have.

Commissioner Perreault asked when he first built his place on Roland Road and if the gravel pit across the street operational at that time.

Mr. Ross said in 1975 and the gravel pit was not operational at that time.

Questions for Staff

Chair O’Neall asked if GL-85, GL-78A, GL-78B and GL-64 were to be excluded would it still meet the definition of a rezone.

Mr. Singh explained the department gave a recommendation and the Planning Commission may take a portion of that recommendation and recommend it to the Assembly and then the Assembly could decide what is appropriate. Mr. Singh stated the comprehensive plan must be considered and implemented, and reiterated the three ways a rezone could happen; Assembly, Mayor or the Property Owner initiated.

Commissioner Brandt asked for clarification on the petition process and asked if a map not being included is correct.

Mr. Singh explained that Mr. Ross contacted the Department of Community Planning for a potential rezone and that the Department presented a larger area map including property owners to Mr. Ross and recommended to Mr. Ross that the larger he could go the likely hood of the rezone overcoming the spot zone criteria is higher; and then Mr. Ross went back, obtained signatures and then decided the boundary. Mr. Singh explained that the petition itself was valid because it had more than 51% of land owner’s signatures. Mr. Singh said Mr. Ross could speak to whether or not he presented a map to the property owners or not.

Discussion ensued between Commissioner Brandt and Mr. Singh in regards to concerns of the petition form and the line that says what is being rezoned was left blank.
Commissioner Muehling referred to the petition on page 127 and asked if people knew what they were signing since it said “from GU-1 to RR” on the petition.

Mr. Singh said that was his understanding.

Commissioner Perreault verified the application process with Mr. Singh in regards to the freedom on how the map is drawn.

Commissioner Perreault asked why road bordering business harboring lots are included in the rezone to RR rather than leaving them GU-1.

Mr. Singh explained the rezone criteria as listed in the FNSB Code and the considerations of the comprehensive plan and how they play a role in deciding which zone is appropriate.

Commissioner Brandt asked in 2005 when the comprehensive plan was adopted if most of the businesses were already in place.

Mr. Singh stated he did not have dates on all of the businesses, just a date on the comprehensive plan.

Commissioner Sims noted the comprehensive plan map was adopted in 1984 versus the goals and the policies that were updated and amended in 2005 which contemplates commercial use outside of the non-urban areas. Mr. Sims asked if the request was evaluated against land use goal 3.

Mr. Singh stated he did and read language from Action B on page 11 of the comprehensive plan which states that in non-urban areas commercial development should be allowed with the consideration of the need served that could not be met elsewhere in the preferred commercial area.

[A brief at ease was taken]


FINDINGS OF FACT

1. The FNSB Regional Comprehensive Plan characterizes the subject property as ‘Perimeter Area’ which is defined as “…10 to 20 minute travel time of urban destinations… contains primarily residential use… compatible with the surrounding community, sensitive to natural systems…”

2. The current GU-1 zone is not consistent with the ‘Perimeter Area’ designation because it allows for most residential, commercial, and industrial uses without any permits with the exception of a few very intensive commercial and industrial uses that require a conditional use permit.
3. The proposed RR zone is more consistent with the ‘Perimeter Area’ designation because it will limit the residential density of a lot to a maximum of two dwelling units establishing a low-density residential neighborhood.

4. The proposed rezone to RR conforms to the FNSB Regional Comprehensive Plan because it advances:
   a. Land Use Goal 3, Strategy 7, Action B which refers to compatibility of surrounding community and recognizing the importance of the rural lifestyle in the borough.
   b. Land Use Goal 4, Strategy 10, Action B which refers to developing a pattern of compatible land uses.

5. The proposed RR zone conforms to the public health, safety or welfare because:
   a. The proposed RR zone helps implement the ‘Perimeter Area’ land use designation by protecting the predominantly residential character of the lots located within the rezone area.
   b. This rezone request does not have the potential to increase the current traffic and trip generation levels existing in the neighborhood because most properties in the rezone area are already developed with residential uses. Moreover, this rezone and the resulting residential character of the neighborhood will eliminate the potential for unknown, and potentially unlimited, trip generation under its current GU-1 zoning classification.
   c. The proposed RR zone will make certain existing lots, structures, and uses nonconforming. The nonconforming lots, structures, and uses may be eligible for grandfather rights affirmation.

6. The rezone is not a spot zone because:
   a. The proposed RR zone will limit the residential density of a lot to a maximum of two dwelling units establishing a low-density residential neighborhood which would be more consistent with the Comprehensive Plan ‘Perimeter Area’ land use designation. Additionally, the proposed RR zone promotes FNSB Regional Comprehensive Plan goals referring to the compatibility of surrounding community, recognizing the importance of the rural lifestyle in the borough, and developing a pattern of compatible land uses.
   b. The proposed RR zone has benefits to
      i. A majority of property owners within the proposed rezone area by protecting the predominant residential character of the neighborhood.
      ii. A majority of adjacent property owners by protecting the predominant residential character of the neighborhood and eliminating the potential for unknown and potentially unlimited trip generation under its current GU-1 zoning classification.
      iii. The FNSB residents have developed a land use vision for the area through the comprehensive planning process which designated this area as ‘Perimeter Area’. Therefore, the implementation of the land use plan is a benefit to the community.
   c. The case law provides guidance that parcels over 13 acres are almost always found not to be a spot zone. The total area of the proposed rezone boundary is 28.96 acres which is more than 13 acres.
   d. The area within the remainder GU-1 zone boundary is estimated to be more than 500 acres. Therefore, this rezone does not constitute a reverse spot zone because this rezone does not single out parcels of GU-1 zoned land totally different from that of the surrounding area.

Discussion on the Motion
Commissioner Muehling stated the commission has to make decisions that affect everybody and those are not always easy decisions and looked at the rezone with respect to the effect of rezoning everything to RR which seemed like a great compromise; the businesses that are there will remain and the people that are concerned with business growth are satisfied with the recommendation to rezone to RR.

Commissioner Sims stated the current businesses wouldn't be able to expand which he disagreed with. Mr. Muehling stated such as GL-85 has intended to do and if the proposed rezone were to go through prior to the completion of the expansion, then it can't happen under the grandfather rights.

Mr. Spillman pointed out the provision on page 93 of the staff report and stated his belief of Mr. Sims comments not being entirely correct. Mr. Spillman stated there are provisions for expansions of existing non-conforming uses and read from code the following: Except as otherwise permitted in the subsection a building or premise devoted to or designed to in whole or part a non-conforming use maybe enlarged or altered as long as the use reflects the nature and purpose of the use prevailing when the zoning took effect and there is no difference in the quality of the character of the use.

Commissioner Guinn stated his concern with GL-85 being residential and he would like to see this lot removed from the recommendation.

Commissioner Perreault reiterated his concern with the process in regards to no map, the petition form not specifying which area to be rezoned and the preliminary maps leaving some areas in and then in the subsequent maps the areas are now included for example the GL-85 property. Mr. Perreault expressed how he was not keen on how many non-conformities are created and how few signatures were needed to turn the neighborhood. Mr. Perreault voiced his concern about the base created were GL-81 was created with a clear exception to the inclusion of the rule at the request of the landowner but GL-85 is included at the express of disapproval of the land owner which seemed unfair. Mr. Perreault stated the property owners along Chena Pump Road do not wish to be included or not included in the signatories and suggested an amendment to the list of properties which would not reduce the area by enough to create a spot zone problem.

**MOTION TO AMEND:**

To remove Section 14 T1S R2W F.M. – GL-64, GL-78A, GL-78B and GL-85 by Commissioner Peterson, seconded by Commissioner Sims.

Discussion on the Motion

Commissioner Perreault stated the owner of GL-78B was one of the signatories on the petition to change.

Commissioner Brandt questioned if the removal of the four lots would lower the percentage enough to make the petition invalid.

Mr. Singh stated the 51% criteria is for making the application and the Planning Commission or the Assembly have the latitude to decide which properties are to be rezoned and which properties to be kept at the existing zoning.
Commissioner Brandt stated the removal will change the nature of the petition; and to change which properties are rezoned is not fair to the people that signed the petition.

Commissioner Peterson touched base on the uncertainty of how the comprehensive plan characterized the properties as perimeter area and how it is appropriate to allow the four lots to remain as GU-1.

Chair O'Neal stated the four lots indicate a trend of commercial businesses and with their lots adjacent to the road it makes sense that they are excluded from the rezone.

Mr. Jaffa advised the commission that the proposed amendment is to remove some of the properties included in the initial application. Mr. Jaffa quoted FNSB Code 18.104.020 (C) Procedures for Rezoning that reflects the four possible actions the Planning Commission may make. Mr. Jaffa stated the removal of properties is not a special limitation. Mr. Jaffa stated his interpretation of the third option, to recommend an amendment to the request to a more appropriate zoning district, means the entire proposed area not to pick and choose certain properties to be included or excluded.

Chair O'Neal mentioned the recommendation to the assembly can be accompanied with a memo to include the commissioner's suggestions on what to do.

Chair O'Neal asked Mr. Jaffa if the motion to amend is inconsistent with the commissioner's obligations or legal limits.

Mr. Jaffa stated that is his interpretation and the special limitations refer to imposing more restrictive use on certain aspects as opposed to omitting a portion of the proposed rezone.

Commissioner Stepovich asked if the entire rezone would be negated since signatures were obtained prior to the boundary changing and then signatures after as well.

Commissioner Perreault stated the final boundaries of the zone were created after the signatures were gathered.

Chair O'Neal stated the commission may want to reconsider the amendment and vote down the amendment on the floor and move forward with a new motion of disapproval based on the conclusions from the discussion and communicating that to the Assembly in a memo.

Commissioner Perreault stated he would be in support of the petition and in the memo strongly recommend the removal of the four properties rather than in an amendment to the motion.

Commissioner Sims reflected on past procedures to modify a request as submitted by amending it and forwarding two ordinances to the Assembly, one for the original applicants request and one being the Planning Commissions substitute that reflected the amendment. Mr. Sims respectfully disagreed with legal's interpretation of point 3 of 18.104.020 (C) and stated the commissioners are doing exactly what point 3 says they can do; they are making an amendment to the request to a more appropriate zone for the four lots within the original request. Mr. Sims stated the reasons being the proximity to Chena Pump Road, its minor arterial, less attractive to low density residential, testimony in opposition to the request for at least two of those properties.
**Commissioner Muehling** stated there was no map presented during the petition process and though not required; a legal property description is.

**Commissioner Brandt** identified the petition did not state property descriptions when the signatures were gathered. Mr. Brandt reiterated one property owner wanting to resend their signature because one property was added on after he signed. Mr. Brandt made it clear that he had a problem with the process itself and in particular the petition, on page 127 of the meeting packet, form being incomplete.

**Commissioner Muehling** referred to the petition on page 127 and stated people knew what they were signing since it said "from GU-1 to RR" and the signers listed their addresses. Mr. Muehling said it’s typical to not know your tax lot number but the address alone would explain it.

**Commissioner Stepovich** asked if the idea of signing the petition would be changed if knowing what lots where on the petition.

**Commissioner Muehling** responded by saying if he were the first to sign the petition, hypothetically speaking, he would hope his neighbors sign in.

**Commissioner Brandt** stated the petition states that all blanks must be completed and the first blank was left blank which was supposed to have what was to be rezoned. Mr. Brandt suggested that if the petition had stated exactly what was to be rezoned or had a map then that person would have known when they signed the petition; the commission doesn’t know what they were told when they signed the petition or why they signed it therefore by altering the map it is unknown if it goes against what the petition signers wanted or not since there was no map included when signatures were gathered.

**Commissioner Sims** stated the application for rezoning doesn't require a map and it is all conjecture as to what Mr. Ross said as he approached these property owners in regards to the intent, scope and size of the rezone area was and if it changed later on, the amendment is to be made to a more appropriate zone and move forward with a recommendation to the Assembly.

**Commissioner Perreault** asked if the rezone would still go in front of the Assembly if no recommendation is made.

**Chair O'Neall** said it still goes.

**Mr. Jaffa** clarified the recommendation goes to the Assembly unless it is not legally approved by the FNSB Attorney.

**Mr. Jaffa** clarified special limitations are more restrictive use regulations that are contemplated in the general rezone and omitting properties does not constitute a special limitation.

**Commissioner Whitaker** asked if the commission could recommend to the Assembly to remove the four lots somehow.

**Chair O'Neall** stated her understanding was the commission does not have the authority to make the decision, they are to make a recommendation to the Assembly to view the facts and to consider the commissioners opinions and the recommendation goes to the Assembly with or without a memo.
Discussion ensued between Chair O’Neall and Commissioner Whitaker on the process of the recommendation going before the Assembly.

Commissioner Peterson asked if his motion to amend needs to be removed.

Chair O’Neall stated that was the understanding.

Commissioner Sims objected to the removal of the motion to amend and stated it was appropriate for the commission to take action on the motion.

ROLL CALL (MOTION TO AMEND)

Eight (8) in Favor: Brandt, Guinn, Whitaker, Peterson, Stepovich, Sims, Perreault and O’Neall

One (1) Opposed: Muehling

MOTION PASSED


ROLL CALL (AMENDED MOTION)

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

Zero (0) Opposed:

MOTION PASSED

G. EXCUSE FUTURE ABSENCES

Commissioner Peterson will be absent until April 1, 2019

H. COMMISSIONER’S COMMENTS

1. FMATS

   Commissioner Muehling relayed information regarding ongoing projects at FMATS.

2. Other

I. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:07 p.m.