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 6:11 p.m. by Mindy O’Neall, Chairman.

MEMBERS PRESENT: Chris Guinn John Perreault
Doug Sims Robert Peterson
Charles Whitaker David Brandt

MEMBERS ABSENT: Wendy Presler Mike Stepovich

MEMBERS EXCUSED: Patricia Thayer Eric Muehling

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

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 the American Planning Association Conference will be January 13, 2019 to January 15, 2019. Funds were budgeted for four members to attend the Planning Commission Training on January 13, 2019 and one member to attend the rest of the conference.

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
Commissioner Brandt stated he received a DPO for CU2019-001. Chair O’Neall declared a conflict of interest.

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 with minutes by Commissioner Peterson, seconded by Commissioner Guinn.

CARRIED WITHOUT OBJECTION

D. MINUTES

1. *Minutes from August 28, 2018 PC Meeting

E. QUASI-JUDICIAL HEARING

CU2019-001 A request by Donald J. Krigsvold Sr. for conditional use approval of an existing guesthouse in the Rural Residential (RR) zone on Lot 1 and Lot 2, Block 2, Frito Subdivision. (located at 4693 Rivers Street, on the south side of Rivers Street, on the east side of Bellwood Street). (Staff Contact: Manish Singh)

[Commissioner Brandt left the dais]
[Brief at ease for Clerk to get Applicant on the phone]

OATH ADMINISTERED

Applicant’s Telephonic Testimony

Applicant, Donald Krigsvold Sr testified that he tried to sell the properties earlier this year and financial institutes turned him down because of the encroachment of the structure on lot 1 and the septic system on lot 2. He said moving forward he is trying to get these replatted at one lot with two structures on it so he can meet the financial institute’s requirements.

Questions by Commissioners

Commissioner Peterson asked if Mr. Krigsvold was aware that on east side of the proposed guest house is not within the required setback limits.

Mr. Krigsvold said that he is aware of that and he had an amnesty petition done and approved.
Commissioner Peterson asked if that was also the case on the north side, with the overhang on the building also looks like it is encroaching on that setback.

Mr. Krigsvold said yes it is and he thanked the FNSB Planning department for helping him throughout the process.

Commissioner Peterson asked what the current use of the second property, the proposed guest house, asked if it was a rental house or if it is used as a guesthouse for family members.

Mr. Krigsvold stated it is currently a leased rental house, it was his original residence but he moved out of state.

Commissioner Peterson asked how many units.

Mr. Krigsvold stated there is one house on that lot and one house on the other lot.

Commissioner Peterson asked why instead of under the CU process, he could have applied for a multifamily dwelling and asked if there was a reason he choose guesthouse.

Mr. Krigsvold said that is what was suggested to him by borough staff.

Commissioner Guinn asked if it was Mr. Krigsvold understanding that you cannot have two dwellings on one lot according to the zone other than the fact that one would be a guesthouse.

Mr. Krigsvold stated that was his understanding.

Commissioner Sims asked if either of the structures mobile homes at one point.

Mr. Krigsvold said yes at one point they were.

Commissioner Sims asked if those mobile homes removed.

Mr. Krigsvold said no.

Commissioner Sims asked if he understood correctly that the mobile homes are still on the lot and have been enclosed with framing conventional roofing, etc.

Mr. Krigsvold said yes.

Staff Presentation

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 adopting the staff report, as amended, and three (3) findings of fact, as amended, in support of the approval.

Questions by Commissioners

Commissioner Peterson asked when the term guesthouse was added to the code and what the intent was and what they have been following for the last twenty years as far as guesthouse because that house seemed to be more of a rental unit to him rather than that he would deem a guesthouse.
Mr. Singh stated that many communities have similar provisions under the name of ‘accessory dwelling unit’ where property owners are allowed to have a second dwelling unit which is subordinate in size on the same lot for example, a rental unit, a mother in law apartment. Mr. Singh stated our code does not get into whether it has to be occupied by the property owner or a renter but there are some provisions in the code to restrict this from being a day to day type lease, which would no longer meet the definition of a guesthouse. Mr. Singh said to answer his specific question, the guesthouse definition came into effect when they had their most recent code revision in 1988 and to the best of his knowledge, the intent was to have an accessory dwelling unit in rural areas for certain property owners who have their properties in rural zones.

Commissioner Peterson asked if the accessory dwelling unit could be a rental.

Mr. Singh said yes, in the code even your primary dwelling unit could be a rental unit and the code limits itself to the land use impacts and does not go into exactly who lives in the house.

Chair O’Neall asked if there had been any interpretation by the department or any scenarios where there has been a guest every day or every couple days that might put them over into a different definition of guesthouse or BNB.

Mr. Singh said there has been no such interpretation but sometimes certain property owners will have multiple cabins on the property and they will try getting a BNB permit but that is a very separate case and they have an existing policy that detached dwelling units don’t qualify as BNB.

Commissioner Sims asked when the mobile homes were placed there.

Mr. Singh stated that on page 45 of the staff report that shows exhibit number 3 which shows a photo essay of the property as it was being constructed and somewhere around 2007 is when it was constructed as it shows today.

Commissioner Sims asked if Mr. Singh knows if the mobile homes don’t have CU permit approval and based on the photograph it would have been there after the zoning which took place in 1992.

Mr. Singh said yes, when it was constructed it was an allowed use and even today it is an allowed use and the reason it is a CU is because they are taking out the common property lines and eventually they will have two dwelling units on this one combined lot.

Commissioner Sims asked if mobile home parks are not conditional in rural residential.

Mr. Singh stated that the RR zoning went into effect in 1992 and the mobile home was there to the best of his knowledge in the early 70’s.

Mr. Spillman clarified that mobile home parks are a conditional use in RR.

Commissioner Sims stated that they don’t know if they are grandfathered or not, the mobile homes.

Ms. Dau stated the definition of mobile home means a structure built on a chassis with a body width of not less than 8ft and a body length not less than 32ft originally designed to be used for
residential purposes with or without permanent foundation whether it is occupied or unoccupied or used for residential purposes.

**Commissioner Sims** stated there are still mobile homes that don’t appear to be grandfathered and that don’t have conditional use approval and he was curious how the guesthouse situation seems to obviate that

**Mr. Singh** said that he understood that and the construction of the dwelling unit started as a mobile home which currently meets the definition of a dwelling unit and no longer meets the definition of a mobile home and reminded the commission that they applied for a CU for guesthouse which is allowed even for a mobile home.

**Commissioner Sims** stated that he understood the guesthouse situation but his concern was that the mobile homes were placed there without conditional use approval originally and there is still mobile home that may be surrounded by conventional framing and conventional roof like structures but there is still a mobile home in there.

**Mr. Singh** clarified that the mobile home was put there in 1971 as a best estimate relying on assessing information, when it was unrestricted use, 20 years before rural residential zoning came into effect and without a grandfather rights application, and this year was his best judgement.

**Chair O’Neall** asked if there is consideration of size in distinction of a guesthouse or any other classification.

**Mr. Singh** stated per code there are some considerations for guesthouse but it’s linked back to the primary dwelling so the guesthouse is supposed to be smaller than the primary dwelling but there is no limit so far.

**Commissioner Peterson** asked how the square footage was determined.

**Mr. Singh** stated that on page 42 in the staff report shows exhibit 1 that shows the floor plans provided by the applicant that were prepared by a professional and there is square footage calculations listed on both of them which is what he relied on.

**Commissioner Peterson** asked if he knew the tax history from 1971 and if those units were always occupied or were they ever vacant for a period of time.

**Mr. Singh** clarified that vacant means no one lived there in the structure.

**Commissioner Peterson** stated that part of the grandfathered rights is that they couldn’t have just moved that trailer there and it sat there vacant for so many years.

**Mr. Singh** stated he did not have that information and that he did not have enough background information to say whether it was occupied or not for a certain period of time but that the property owner may have more knowledge.

**Chair O’Neall** referenced land use goal 1, strategy 2 and stated that the case made is obtaining conventional financing is a private property right that they are trying to protect and asked for the thought process behind that particular strategy.
Mr. Singh stated that he is retracting 3 words from his staff report that are “with conventional financing” and limiting to only the ability to selling a property and this CU is being triggered because the property owner wants to sell this property and if by taking the common property line out, the land use impacts on neighbors are not increasing than the property rights of the property owner shall be protected.

Interested Person Testimony Opened

None

Interested Person Testimony Closed

Rebuttal by Applicant

Mr. Krigsvold responded that his parents purchased the lot 1 residence in 1971-1973 and lot 2 was put there in the summer of 1976 and has been present since then.

MOTION: To approve CU2019-001 for a guesthouse on Lots 1 and 2 with one (1) condition, and adopting the staff report, as amended, and three (3) Findings of Fact, as amended, in support of the approval by Commissioner Guinn, seconded by Commissioner Sims.

CONDITIONS

1. If any addition is made to the guesthouse that increases the size of the guesthouse to be equal to or greater than the principal dwelling, an amendment to the conditional use permit is 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 Comprehensive Plan Land Use Goal 1 and Goal 3.
   b. The intent of Title 18 is met because the conditional use protects private property rights and promotes public health, safety, and welfare.
   c. The conditional use meets the intent of Alaska State Statute and other ordinances because the wastewater disposal method meets the ADEC regulations.

2. There are adequate existing energy and transportation facilities serving the site and other public services are available to serve the proposed conditional use.
   a. The guesthouse has adequate water capacity because it has an existing 2,000 gallon underground water tank.
   b. The existing septic system provides adequate sewage capacity to the guesthouse.
   c. The guesthouse is served by the North Star Volunteer Fire Department for emergency fire response.
   d. The guesthouse has adequate power supply because it is served by the GVEA grid.
   e. The guesthouse is served by the Alaska State Troopers for law enforcement.
f. The guesthouse has access from Rivers Street which is a local type roadway maintained by Moose Creek Road Service Area. Rivers Street can accommodate the trips generated from the guesthouse.
g. The existing 14-foot wide gravel driveway is adequate for the guesthouse.
h. The FNSB zoning code does not require any off-street parking spaces for the guesthouse.

3. The proposed conditional use protects public health, safety, and welfare because the guesthouse complies with Title 18 standards for the RR zone (FNSBC 18.40) as well as with other applicable land use related laws.
   a. The wastewater disposal system for the guesthouse meets the ADEC regulations and protects health, safety and welfare of the neighborhood.
   b. The conditional use does not increase the residential density in the neighborhood because it continues an existing dwelling as a guesthouse.
   c. Noise, odor, dust and other negative impacts to the neighborhood are not expected to be created by the guesthouse use because this is an existing dwelling unit in a residentially developed neighborhood.
   d. The FNSB Administrative Hearing Officer has granted amnesty relief for the side-yard setback violation of the guesthouse and for the front-yard setback violation of the porch attached to the guesthouse.

Discussion on the Motion

Commissioner Guinn stated that he found it odd that the definition of a guesthouse but this case has conformed to everything the FNSB has required and that everything else stays the same, no increase in traffic and safety seems to be fine.

Commissioner Sims spoke in favor of the application and that he initially had concerns about the mobile homes being there without CU approval but they appear to be grandfathered and based on the photographs in the staff report, this is a definite structure improvement to the neighborhood and the surrounding area.

Chair O’Neill spoke in favor of the approval and stated that according to the departments historical interpretation there may not be a precedent but the department is comfortable with the definition of the meaning being met and with the amended parts to the staff report.

Commissioner Peterson asked what happens to the CU if the platting board doesn’t split the property in half.

Ms. Dau stated that because the lots are under common ownership they can be developed together as a zoning lot so the CU permit would still be valid so long as both lots are still under common ownership but if they were to be sold into separate ownership, the CU permit would no longer be valid because it wouldn’t be in accessory use to the principal building.
ROLL CALL

Six (6) in Favor: Sims, Perreault, Guinn, Whitaker, Peterson and O’Neall

Zero (0) Opposed:

MOTION PASSED

[Recessed for a brief ease]

[Commissioner Brandt returned to the dais]

F.  LEGISLATIVE

ORD2018-25: An Ordinance Amending FNSBC Title 18 to Add a Definition of Commercial Outdoor Recreation and Add it as an Allowable Use in various zones. (Staff Contact: Christine Nelson)

Ordinance sponsor, Lance Roberts, stated the ordinance came about after a constituent got ahold of him because they were looking at a business on some RA land and he felt this was a good opportunity to make sure that a good business should be encouraged and be able to develop where they need to. He stated it is a simple ordinance, just a definition of commercial outdoor recreation and allowing it as a permitted use in three different zones. He mentioned a provision about buildings in the staff report; stating he tried to leave some leeway because they would need some buildings for equipment or for a care taker. He stated that predominantly, you are not going to have many buildings involved with these kinds of enterprises, but you will have some small ones. He mentioned dog sled tour businesses, stated legal thinks that once it got to the point of keeping dogs that it would a “kennel”, which is something that is already defined. He said that it is hard to know how much privately owned open space buffer is there. He mentioned that might be a CU that would give the option in the future. He stated he is hoping they can get this to a point where it is a permitted use.

Ms. Nelson presented the staff report. Based on the staff analysis, the Department of Community Planning recommended that the FNSB Planning Commission recommend that the FNSB Assembly adopt Ordinance No. 2018-25, with five proposed amendments.

Questions by Commissioners

Commissioner Guinn asked for clarification on proposed amendment #5; if staff was talking about RR, RE.

Ms. Nelson said no; staff report refers to RA zone that including all lot sizes.

Commissioner Guinn asked what staff had in mind when they mentioned predominately on the outdoors on natural landscapes. He said to him natural landscapes mean undisturbed ground.

Ms. Nelson stated that is why staff recommended to get rid of the word “unmodified”, but it does say primarily in the outdoors on natural landscapes. She stated that much of outdoor
recreational activities are enjoying the natural outdoor environment. How this was interpreted, it wouldn’t exclude trails but that it is not intended to be a golf course like clearing or a race track. It is intended to be getting out there in nature.

Commissioner Guinn asked if clearing off an area for a building with some parking would be allowed.

Ms. Nelson stated that it would. She also stated that perhaps the sponsor’s intent and how staff is reading it are different. Ms. Nelson stated that when staff was reading it of outside the confines of a building and not dependent, which is pretty restrictive. She stated there appears to be some difference of interpretation of what that really means. They would like it as clear as possible.

Commissioner Sims asked during their review if staff considered the Rural Farmstead Zone at all as a potential for permitted or conditional.

Ms. Nelson stated they were reviewing what had been proposed, which that wasn’t proposed. She stated it was her understanding those tend to be smaller lots. Ms. Nelson stated that we may have less RF land than RA land.

Commissioner Sims asked if she agreed that it should be permitted in OR as a permitted use.

Ms. Nelson said looking at the other uses allowed, it is appropriate, but a CU would give the neighboring property owners more input into what is or isn’t appropriate for their neighborhood. She mentioned that a lot of this RA land is developed residentially and dogs and other noisy things at night can have impacts on the neighbors.

Commissioner Whitaker asked by taking the examples out of line 36-37 would mean that they are not permitted, that it would have to be a CU.

Ms. Nelson said no, that it means that staff is not listing some of the potential allowed uses or CU. She stated the biggest concern is that it is not a comprehensive list and it never will be because somebody will come up with something that isn’t listed. General practice is to not list specific things; to make sure the definition says what you need it to say so there is some flexibility with interpretation but not too much and that it is not too vague.

Public Testimony Opened

Ralf Dobrovolny, owner of First Alaska Tours, member of the board of director of Explore Fairbanks testified including the following points:

- Confused about restrictions
- Wants Commission to consider that ordinance is there for a reason
- Tourism is growing at a fast rate
- We need the economic growth in Fairbanks
- In RA zoning there is BNB, so why are aurora overnights not allowed
- Aurora overnights do not have busloads of tourists coming in; it is very limited
- Wants to commission to consider all kinds of possibilities of economic growth and what the needs of the companies are
Questions by Commissioners

Commissioner Perreault questioned if the type of thing similar to aurora overnights is where you go to an area with tents and RV’s or cabins and permanent structures.

Mr. Dobrovolny said there are different possibilities but in the future, there will be more of BNB type of structures coming up. The nature of the business cannot be in the area where there is a ton of neighbors due to light pollution. Aurora overnights are in areas that are not highly populated.

Commissioner Perreault said that looking at some of the other businesses like dog mushing, a couple of the areas don’t allow kennels. He asked if the way that it is worded where there is outdoor recreation allows for that sort of activity but not for a kennel, is a workable operation for that type of business.

Mr. Dobrovolny said it depends on the business and that aurora is not connected to dog mushing. He said that it is a very important part of tourism but it does not mean that aurora overnight doesn’t have to be necessarily connected with dog mushing.

Commissioner Perreault said he was not trying to connect them together, that those are the two big ideas for the tourism region.

Commissioner Sims said that the aurora overnight viewing doesn’t have to be attached to a BNB either.

Mr. Dobrovolny said that is correct and maybe it is not even called a BNB. He said that it would likely not happen in a tent. It would be in a Yurt like structure with heat.

Commissioner Sims asked if it would not be in a guestroom that was contained within a larger building and considered a BNB.

Mr. Dobrovolny said they have so many options that he cannot answer that question with a yes or a no. He said there could be a structure built just for aurora viewing that is how the igloos and cabins being put up are being built with big glass windows or ceilings to be able to see the aurora lights from inside.

Commissioner Whitaker reiterated the statement of aurora viewing wouldn’t be going to Rural and Agricultural Zoning where there are a lot of residents but to places with few residents. He asked if those few residents should have a say in whether one of the businesses is right next door to them like a CU permit rather than an outright permitted use.

Mr. Dobrovolny said yes, that a neighbor should have some say. He also said that it would depend on how big the properties were. He said it is a huge difference if you have a two acre property next to each other or a fifteen or twenty acre next door and somewhere in the middle of that property there are a couple of cabins where people sleep overnight. He said we should also consider how much of an impact does the neighbor have. He said the aurora viewing is not as loud as a rock band playing, that you might have a coach coming in at 9pm and leaving around 2am. He said there is no traffic going back and forth.
Rick Port, owner of Midnight Sun ATV Tours, testified as follows:

- Concerned that recommendation states commercial outdoor recreation should be a CU in the RA Zoning districts; uses are neither agriculture nor residential uses, which is the purpose and intent of the zone which means a potential land use impacts of commercial outdoor recreation use on neighboring property owners.
- Stated the current uses on RA land of archery ranges, shoot ranges are prime examples of commercial outdoor recreation which are neither agriculture nor residential
- It gives the appearance of picking and choosing as to which commercial outdoor recreation businesses are permitted and which should be a CU.
- Stated the planning commission should keep commercial outdoor recreation permitted as the ordinance currently states.
- He stated it is an unambiguous ordinance with clear guidance and not prone to misinterpretation and he believes the commercial outdoor recreation is already permitted personally and passing the ordinance would codify that.
- He knows people who are looking for land to expand their tourism businesses.
- If the ordinance passes as written it would be a really good thing.
- No potential business owner is going to buy property as a CU not knowing if they will get a permit or not after investing a lot of money.
- Tourism growth is a major factor in the health and welfare of the community and the commission should show support for tourism by supporting the ordinance.
- No one is going to expand on a property if they don’t know if they can use it or not.
- The ordinance should stay as a permitted use and not amended to a CU.

Questions by Commissioners

Commissioner Whitaker asked where he operates.

Mr. Port said he uses the Mike-Kelly Trail out of Two Rivers

Commissioner Whitaker said that is one of the higher trails, there is not a lot of disruption by ATV's.

Mr. Port said it is a multipurpose trail.

Commissioner Perreault asked if he sees a need or a use for his business to have permanent structures and how would you use them.

Mr. Port said yes and that they have been trailering for three years. He said that he purchased property out there knowing that it was RA5 and he is rolling the dice.

Nita Rae Fowler with Serious Sled Dogs, testified as follows:

- Last winter was shut down from operating on public trails
- There is not enough definition in the zoning
- Came in to the meeting to find out more about this
- They don't have the need for a building
- Not staying there all day, maybe two, one hour dog sled rides
Questions by Commissioners

Commissioner Whitaker asked who shut her business down.

Ms. Fowler said the FNSB, she said the FNSB said she needed a CU permit.

Commissioner Whitaker asked if FNSB said they had control over the DNR trails.

Ms. Fowler said yes, as far as she knows. She explained the DNR permit that she could get to operate her tour.

Commissioner Sims asked where the trailhead is that she most commonly used.

Ms. Fowler said she used Lincoln loop off Abraham Road, state land.

Commissioner Whitaker asked if someone complained.

Ms. Fowler said one of the neighbors complained, it had nothing to do with the tours that it was personal.

Frank Stelgis runs a photography school, testified as follows:

- Reiterated that the Commission doesn't consider commercial outdoor recreation as its intended purpose use in rural agriculture.
- He did not understand how other recreational uses are not falling under permitted use.
- Something like a golf course has a lot of land impact when you cut down trees.
- He stated permitted uses such as an airport, which will disturb neighbors more than an aurora viewing.
- Fairbanks tourism is growing and it is not the highest developed area.
- These businesses provide labor to local companies and they pay more property taxes.
- He mentioned businesses who just use a van and who stand on the road who do not pay anything.
- He wants the commission to consider making it easy for the people who want to invest and benefit for the community.

Deb Hickok, President and CEO of Explore Fairbanks, testified as follows:

- Stated that Explore Fairbanks doesn't have a position on this ordinance, she just received it on Friday.
- Explore Fairbanks usually has a process, to include the public policy advisory committee.
- Most of them agree the intent is really good.
- Tourism has grown in the winter that brings in 38% of the hotel motel tax collections and 45% of the direct expenditures.
- Stated there are many different ways people come to enjoy the aurora but in general it's a mobile or with aurora chasers.
- With a stationary aurora viewing, you are predominantly inside, not outside in the freezing temperatures.
• Stated it is wise to disassociate with the sentence that says generally not dependent on buildings because it’s just not feasible. Otherwise you have people sitting in idling vehicles and that has its pros and cons also.
• Wondered if this would have a negative impact on those existing businesses currently.

Questions by Commissioners

Commissioner Whitaker asked if there has been any talk about trying to get some lighting ordinances in so they don’t get chased out of areas by light pollution.

Ms. Hickok said there has not, she only knows of an Airport Way plan being developed that offers guidelines for Airport Way. She wants them to think of this as an aurora destination and have lights where they need to be and not lights where they don’t need to be. She stated most of the businesses go out to places, or they buy places that are not being interfered with light pollution. She mentioned a beautiful aurora photo from a cabin that showed the aurora and the city in the back ground. She stated the point of just going outside of the city to view the aurora.

Commissioner Whitaker asked if she was are the way the current lighting ordinance with the FNSB is that we cannot shine a light on a neighbor’s house but if you had an upset neighbor they could flood the sky with lights.

Ms. Hickok stated that would be a good thing to look into. She stated that nobody expected winter tourism to explode like it has and that is a good thing but it’s better to take a step back and see how does aurora tourism work and what exists right now in zoning and what doesn’t that could accommodate that and take a more comprehensive look at some of the issues and concerns to try to resolve those.

Commissioner Guinn mentioned the percentages she gave and how they were interesting and that he has never heard those before. He asked if most of the aurora viewing is done in small structures and stated that maybe you would not just go to a hotel and look out the window.

Ms. Hickok stated that some do; there is wake up calls at hotels and they have little corners that you can avoid the light to view the aurora from. She stated that ideally people go out and leave the city and there is aurora viewing lodges specifically for this purpose. She stated there are some people looking for land to further establish places for this purpose and they can be small that can only hold a handful of people or they can be much larger.

Discussion ensued between Commissioner Guinn and Ms. Hickok in regards to a small building for aurora viewing and making that a CU permit and how a larger building should be a CU permit due to its impacts.

Tonya Schlentner testified as follows:

• Lives in the Goldstream Valley area
• Stated trails are a really valuable community asset
• She also does commercial dog mushing tours
• Recommends that small buildings be allowed in the areas discussed
• Asks that RA5 remain open to especially dog teams
• Stated if stables are allowed then why not dog teams
• Dog teams used to carry the mail in Alaska instead of horses
• She asked if the commercial use will be closed off because of light pollution, dog team noise, maybe snow machines driving too fast
• Same issues will happen with recreational use as more people are using them recreationally
• If a trail user is not respecting other trail users; what would we do about that
• The commercial use is a huge asset to the economy and with the trails, you either use them or lose them

Questions by Commissioners

Commissioner Sims asked if she was aware that major and minor kennels are permitted in RA.

Ms. Schlentner said yes because she has a RA5 property and she is allowed to have a kennel and said that she would hope that she doesn’t have to pull her grandfathered rights.

Commissioner Sims said that she wouldn’t have to they are permitted out right and then asked her if she runs tours from her RA property.

Ms. Schlentner stated that she does not currently, but she would like to keep the possibility open; she stated she is mobile most of the time to go to flat trails for safety issues. She stated she used to run 12 dog teams out of the house she owns on Ivory Road but as more neighbors have moved in she fells it is no longer fair to run a dog team. She mentioned that small buildings, out houses would be a huge asset.

Rebuttal

Mr. Roberts highlighted the point brought up about the open space buffers and being near the water; this ordinance would include some water recreation even though it is not listed in the examples. He stated the reason examples are good is because when someone who isn’t used to reading the code and tries to read it, it is legalese. Mr. Roberts stated that we need something in the code that they can easily refer to and understand. He agreed the list needs to be larger but that you will never have a complete list. Mr. Roberts stated the list is important for the general public.

Public Testimony Closed

[Recessed for a brief at ease]

Ms. Nelson stated as they read the definition staff did not anticipate that it would cover any sort of overnight lodging, it was put in as an exclusion. specifically because there were other uses listed in the OR and the RA zones that covered lodging. Ms. Nelson clarified, in the OR zone campgrounds and travel trailer parks are allowed as permitted uses but not BNB’s. She stated that in the RA zones there are the BNB home stay which are one to four guest rooms and BNB residents which is five to nine guest rooms. Ms. Nelson stated they have had a legal interpretation that those all have to be in a single structure not individual yurts, cabins or spread out guestrooms or units. Ms. Nelson stated one potential way to address that is to change the definition of BNB that clearly indicates whether those disbursed units would be allowed. Ms. Nelson said the reason they did not consider overnight lodging as incorporated in the commercial outdoor recreation definition is because of the language that clearly states outside the confines of a building. Ms. Nelson said many of the examples used tonight were related to
the GU zone; if you consider McGrath Road area which is zoned RA, that’s an example of where RA might be used for outdoor commercial recreation.

Questions by Commissioners

Commissioner Guinn said Ms. Nelson brought up the inconsistencies of the permitted uses that were allowed in some of these zones, but making this one a CU did not seem to be consistent with that; he asked for comments on that.

Ms. Nelson stated some of the facilities are agricultural in nature like riding stables; horses are considered agricultural use by the zone and shooting ranges are not. Ms. Nelson said Kellen can speak to why shooting ranges were included as a permitted use versus a CU. Ms. Nelson stated there is inconsistency and staff wanted to give a recommendation based on what they thought the purpose and intent of the code was and to inform the commission of the other uses that were permitted and some were conditional and to let the commission make the judgement call both on what the community wants and needs as well as the intent and purpose of the zone which is stated as Residential and Agricultural despite uses that may conflict with that.

Mr. Spillman explained the shooting range ordinance came about four years ago. Mr. Spillman reminded the commission that there are strict parameters on when those are permitted uses versus conditional. He stated to be a permitted use it has to be a quarter mile away from a dwelling unit; very few of these will actually be a permitted use but would rather go through the CU process.

Commissioner Perreault asked how much private land in the FNSB that is zoned OR; he asked if it is not mostly publicly held land.

Mr. Spillman stated the vast majority of it is public land. Mr. Spillman stated he did a quick analysis which found with the exception of very small strips of OR zoning, which in the past was used as a buffer before we had the overlays, he found four private property owners of OR land.

Commissioner Perreault asked when will the commercial use rise to the level of commercial outdoor recreation and not fall under these many permitted uses. He mentioned where or not the businesses can build yurts or BNB but that guest houses are already allowed. Commissioner Perreault asked what is the need here and why aren’t these activities that would be permitted under this definition already permitted under the standing permitted uses.

Ms. Nelson stated they incorporate a lot of uses that are not listed in the zone which is the reason that Mr. Roberts sponsored this and is the reason they have had to say no to a lot of interested property owners to date except in the GU because of yurts or disbursed lodging units don’t qualify as a BNB therefore that definition and use are out. Ms. Nelson stated that aurora viewing and dog mushing tours are not listed as a use, they don’t qualify for any of the existing uses, kennels do but the tour of bringing people to a property and taking them out on a tour does not fall into the definition of kennel. Ms. Nelson said you can raise your dog on the property with the permitted use or CU depending on what zone you are in, but when you start having tourists come onto your property and take them somewhere, that piece of that business model is not covered. Ms. Nelson said you would have to take your dogs to an existing trail head, where people can park and then take them out, which is allowed but the coming from the property, directly to a trail is not, if you are not zoned GU.
Commissioner Sims asked if staff evaluated the home occupation element of what she just described and being able to run a sled dog tour out of your property zoned RA, under home occupation.

Mr. Spillman stated staff tried that evaluation and the catch is “only indoors”, home occupation says only indoors, which does not pertain unless you are taking people on really short tours.

Commissioner Brandt stated in the RA zones, mobile home parks are permitted and asked that someone couldn’t put up a couple of yurts; stated it did not make sense to him.

Ms. Nelson stated that they are not mobile homes, so they do not qualify for a mobile home park and they have had the interpretation of what a bed and breakfast is, which may not meet modern standards but it is what we have now without modification or amendment and the disbursed model does not meet that use either.

Mr. Spillman corrected that mobile home parks are not permitted in RA, they are a CU.

Ms. Dau reminded the commission to allow the sponsor the opportunity to respond to any concerns raised in the staff report.

Chair O’Neill asked Mr. Roberts if he would like to address anything that he has heard since his last rebuttal.

Mr. Roberts said no.

MOTION: To recommend adopting ORD2018-25 with amendments 1, 2, 3, & 4 from Community Planning Department by Commissioner Perreault, seconded by Commissioner Guinn.

Discussion on the Motion

Commissioner Perreault said in general it seems it is moving in a positive direction and there is no question that as a group and community they want to support these businesses and give them room to grow and operate to bring people to the borough, the first four amendments seem reasonable but will support alterations.

Commissioner Guinn stated that he liked where this is going and there was plenty of discussion about definitions which seem to be old and after listening to some of the testimony he stated the ordinance needs more work and maybe it should go back for more work. Commissioner Guinn recognized the hard work staff has put in and stated the overlap of what the business needs are.

Commissioner Sims said it seems to be a matter of scale, learning what the businesses are up against with respect to what the zoning code says or doesn’t say; seeking clarification when you can and learning that aurora overnight using stationary viewing which involves structures versus mobile viewing which does not and trying to find the right mix of intensity. Commissioner Sims stated he liked the motion as it has been put forward but he did struggle with the inconsistencies between having this commercial use be conditional in the RA given the other permitted uses in the RA such as major dog kennels which can be highly disruptive to neighboring properties.
**Commissioner Whitaker** agreed with Commissioner Guinn that it needs more work.

**Commissioner Peterson** said that we cannot control what is already in the code but in this case we are getting to make recommendations so he would rather proposed amendment number five stay in there, he is not suggesting that commercial outdoor recreation isn’t allowed it is just not an out righted permitted use, if it is a CU then this board has the ability to add conditions to those such as lighting, what time a pack of snow machines can run through the area at night, because people do live in the area.

**Commissioner Brandt** stated that amendment number two, adding the words overnight lodging which would not allow overnight lodging for commercial outdoor recreation did not make sense to him when there is already BNB’s and guesthouses that are permitted uses and mobile home parks as a CU permit and he stated there is already so many commercial uses that are permitted in RA zone that are far more disruptive than a lot of the outdoor recreation commercial uses that are being proposed and he stated that he agrees this needs a little bit more work, allowing major and minor kennels as a permitted use but not allowing them to run a tour out of their kennel made no sense to him, the definition needs change to take care of that problem.

**Commissioner Perreault** recapped the sentiment from other commissioners is the need to allow these things is there, they want these things to happen and it may come with its own set of problems whereas changing the definition of kennels to allow tours on and off the property or changing the definition of BNB that would allow yurts and overnight lodging on the property and that more work is needed on this. Commissioner Perreault asked if the commission is allowed to add notes to the recommendation or if the texts are all that will proceed to the next level.

**Chair O’Neall** said they make a recommendation based on the motion and that recommendation can be accompanied by a memo that is from the planning commission to the assembly.

**Ms. Dau** said that is correct but for the body to make a recommendation, the body needs to have voted on that, for it to be the planning commission recommendation to the assembly it needs to be added to the motion that the entire body votes on, the chair can communicate to the assembly that this is some of the discussion that was had but cannot say that the planning commission as a body took a position recommending more work be had on this ordinance unless added to the motion and it is voted on.

**Commissioner Perreault** stated that the commission should recommend something to the assembly however we choose to amend it at this time whether it is an amendment two, four or five and it is a starting point for a conversation that needs to happen.

**Chair O’Neall** said that she is comfortable with the ordinance, with the ability to have conditional uses within each of the sections so there is consideration of scale and of impact to the land use along with a check by the department to see that the impact and the intent of the use matches the intent of the code and the interpretation of the comprehensive plan.

**Commissioner Guinn** said that he agrees that this ordinance should go forward with some sort of memo stating that it needs more work and he would leave it to staff or legal to write something out.
Ms. Dau said no, that the commission needs to have the language that the body is going to consider and vote on and suggested a motion to amend be voted on.

Commissioner Guinn said to perhaps leave it in the chair’s hand to communicate to the assembly if the motion passes that it needs more discussion.

Chair O’Neall questioned that the commission can amend the motion based on a clause without having the particulars of the communication which can be worked on with an agreement with the intent of what that communication is.

Ms. Dau said the commission needs to have enough clarity that the body knows what they are voting on and what they are going to communicate to the assembly, if you don’t add that kind of language to communicate and you approve the motion as it currently is on the floor than you are communicating to the assembly that you want this ordinance as it is drafted with these proposed four amendments which is a definite statement of what the planning commission wants to see happen with this ordinance, if you want to communicate with the assembly formally that you want them to consider these amendments but you still consider this a starting point that needs more work than the commission needs to add some language that the body votes on as a whole to communicate that formally.

Commissioner Guinn stated if the motion is passed without an amendment, when it goes before the assembly at some point the chair is going to be asked to comment on this to the assembly and perhaps that is the time to bring up the concerns.

Ms. Dau said that is a correct understanding and often the chair does talk about what the discussion was and the deliberations were but she would not be able to take any position on behalf of the body if you don’t vote on it.

Commissioner Guinn said he just wants the assembly to know that it needs more work and if they want to go in their own direction, that’s fine.

Chair O’Neall reiterated the motion on the floor and the thought of an amendment.

Commissioner Guinn clarified that he was trying to make an amendment but the discussion went beyond that, so there is no amendment currently on the floor by him.

MOTION TO AMEND: To amend the motion to add proposed amendment number 5 back in by Commissioner Peterson, seconded by Commissioner Whitaker.

Discussion on the Motion to Amend

Commissioner Peterson said when you start adding new uses in these zones, they need to be careful and do it as a CU so everybody has time to look at it and add conditions to some of those uses.

Commissioner Whitaker agreed and stated that the RA zone in his opinion, is not mostly agricultural and he thinks it is mostly residential so an outright permitted use is not the right way to go.
Commissioner Brandt said that he thinks a lot of the outright permitted uses are not appropriate for that zone, that they should be a CU permit, anything going forward he would like to place conditions on.

Commissioner Sims stated the relation to structures; the definition is used as proposed which doesn’t include overnight lodging so if they see a CU permit that includes overnight lodging they are going to be in a pickle. Commissioner Sims stated that he struggles with the overnight lodging and that he can see the need and he understands the nature of aurora overnight viewing and the need for overnight lodging.

Commissioner Brandt reminded Commissioner Sims that the discussion on the floor is in regards to proposed amendment number five and that Commissioner Sims can propose another amendment if he wishes.

Commissioner Guinn agreed with Commissioner Sims.

Commissioner Perreault disagreed and stated that he did not include it originally was because the impacts of the use compared to the existing permitted impacts it did not rise to a level above those impacts and for consistency sake he stated it should stay a permitted use.

Commissioner Sims said he did not have a problem with it being a CU that he had a problem overnight lodging being excluded.

Ms. Dau stated prior to the vote on the amendment that is currently on the floor, she suggested discussion on how the commission has viewed the impacts of this new use and how those impacts are being distinguished from some of the more impactful permitted use in the RA zone.

Commissioner Sims said leaving it as a permitted use was fine and he agreed that there are other similar permitted uses in RA5 zone that are in RA districts that can be pretty onerous and perhaps that explained why the ordinance needs more work.

Chair O’Neall stated that she would support adding in an amendment number five to add commercial outdoor recreation as a CU because she believed that phrase is more ambiguous than a minor or major kennel and the impacts are known but commercial outdoor recreation is open to interpretation.

ROLL CALL (MOTION TO AMEND)

Three (3) in Favor: Whitaker, Peterson and O’Neall
Four (4) Opposed: Perreault, Brandt, Guinn and Sims

MOTION FAILED

MOTION TO AMEND: To amend the motion to strike amendment number 2 by Commissioner Sims, seconded by Commissioner Perreault.
Discussion on the Motion to Amend

Commissioner Sims stated it leaves the overnight lodging in the definition and after listening to testimonies there is a range of different venues available for aurora overnight viewing and by adopting that amendment by keeping the overnight lodging in the definition it retains the stationary viewing aspect.

Commissioner Guinn stated that he supports Commissioner Sims and stated that lodging has to be one component.

Ms. Dau clarified that removing the overnight lodging as proposed to be added as excluded does not mean that overnight lodging is going to be allowed by this use because it is still going to be required that the recreation is predominantly in the outdoors on natural landscapes so that may or may not allow overnight lodging and there will be some analysis there.

Chair O’Neall asked if it will be subject to CU.

Ms. Dau said if the commission were to put it as a CU in a zone but if it is a permitted use than that analysis would be done by community planning staff and the zoning permit analysis.

ROLL CALL (MOTION TO AMEND)

Seven (7) in Favor:  Brandt, Guinn, Whitaker, Peterson, Sims, Perreault and O’Neall
Zero (0) Opposed:

MOTION PASSED

ROLL CALL (MAIN MOTION, AS AMENDED)

MOTION, AS AMENDED:  To recommend adopting ORD2018-25 with amendments 1, 3, & 4 from Community Planning Department by Commissioner Perreault, seconded by Commissioner Guinn.

Seven (7) in Favor:  Sims, Perreault, Brandt, Guinn, Whitaker, Peterson and O’Neall
Zero (0) Opposed:

MOTION PASSED

G. NEW BUSINESS

Update from FNSB Planning Commission Subcommittee on setback requirements in Title 18 related to Rural Residential and Rural Estates zoning districts.
Mr. Spillman reminded the commission that this started from a memo, from Commissioner Guinn, pointing out issues about building violating setbacks in the RE and the RR zoning districts and to reevaluate those setbacks. Mr. Spillman stated the Commission formed the Rural Estates and Rural Residential Subcommittee, consisting of Mr. Guinn, Mr. Sims and Mr. Muehling. Mr. Spillman stated the subcommittee has had five publicly noticed in-depth meetings, which involved complex GIS analysis, reviewed the number of properties in all of these zones and how many had setbacks. Mr. Spillman said there are about 13,000 properties in either the RR or RE zoning districts and about 3000 of those, or 23%, are estimated have a structure constructed in the setback. The department has not done 3,000 variances or grandfather rights, so these numbers do back up the observations that Mr. Guinn had. Mr. Spillman said the subcommittee has two recommendations that are contained in the memo. The subcommittee members did direct staff to author an ordinance which has been sent to the Borough Attorney, with some potential legal problems. Mr. Spillman explained the first recommendation that is to reduce setbacks for substandard lots in the RR zoning district; about a fourth of the lots in RR zoning district are undersized under the required one nominal acre that are having a tough time meeting those setbacks. The second recommendation is very similar to a provision we have in urban zones, that if you have small accessory structures for instance, sheds, greenhouses you can have them out right in the setback with a couple parameters. Mr. Spillman explained that in the memo the Subcommittee proposes one accessory structure in a side or rear yard as long as it is not a guesthouse, nonresidential, and is no larger than 200 sqft.

Commissioner Sims said long story short, they are not done yet and the memo that staff produced explains a good history about what has been done to date but the draft ordinance has generated some legal concerns, which he was not clear what those are and stated the subcommittee work needs to be continued with the presence of legal staff to understand what the concerns are and if they have alternatives that will suit those concerns, The concerns typically relate to the setbacks on substandard lot sizes; accessory buildings, exemptions, similar to what we have in the urban zones in not of concern, it is the principally the setback for substandard lots.

Commissioner Guinn said that is very complete and that says it all.

Mr. Spillman clarified his direction to notice another subcommittee meeting to continue the work.

H. **EXCUSE FUTURE ABSENCES**

Commissioner Perreault and Commissioner Sims were excused from the September 25, 2018 Planning Commission Meeting.

I. **COMMISSIONER’S COMMENTS**

1. Commissioner Perreault relayed information regarding ongoing projects at FMATS.
2. Commissioner Sims asked for clarification from staff in regards to the testimony heard about being shut down in Lincoln Creek on state trails by the FNSB.

Mr. Spillman generally stated there was a code enforcement case.

Ms. Nelson stated it had to do with her property not being appropriately zoned; there was OR zoning on DNR property across the road but the issue was having parking and a trailhead that DNR did not want on their property, she was offered an option and an
alternative but because it was state land, they have control over what they want developed on their property.

Chair O'Neall reminded the commission if discussion ensued in regards to the matter, it would have to be publicly noticed.

Ms. Dau reminded the commission that it was time for commissioner's comments and not questions to staff.

3. Commissioner Whitaker asked for the updated appeals matrix.
4. Chair O'Neall stated it was her intention to run for Chair of the Commission again and she would like to attend the full APA training in January.

M. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:22 p.m.