Brief Presentation and update by Community Planning staff regarding the Salcha-Badger area plan draft that has been released for public comment.  
(Staff Contact: Kellen Spillman)

AGENDA
Immediately following the Work Session

A. ROLL CALL

B. MESSAGES
   1. 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
   2. Disclosure & Statement of 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 Commission member or citizen so requests. In the event of such request, the item is returned to the general agenda.

D. *MINUTES

E. QUASI-JUDICIAL HEARING
   1. CU2019-009: A request by Travis Johnson for conditional use approval of a guesthouse, located at 1006 Senate Loop, in the Rural Residential (RR) zoning district on Lot 11, Block 1, Bartlett Heights Subdivision (on the southwest side of Senate Loop, north of the intersection of Farmers Loop Road and Summit Drive). (Staff Contact: Kristina Heredia)

F. NEW BUSINESS
   1. Discussion of quasi-judicial procedures, including current code requirements in Titles 4, 17 and 18, potential methods to increase public involvement and comment, and other ways to streamline or make the quasi-judicial process more efficient and effective.

G. EXCUSE FUTURE ABSENCES

H. COMMISSIONER’S COMMENTS/COMMUNICATIONS
   1. Other

I. ADJOURNMENT
FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION

MINUTES
APRIL 9, 2019

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 6:04 p.m. by Mindy O’Neall, Chair.

A. ROLL CALL

MEMBERS PRESENT: John Perreault  Mike Stepovich
Robert Peterson  Eric Muehling
Charlie Whitaker  Chris Guinn
Doug Sims  Mindy O’Neall

OTHERS PRESENT: Christine Nelson, Director of Community Planning
Ben Jaffa, Asst Borough Attorney
Donald Galligan, Transportation Planner
George Stefan, Platting Officer
Michelle Gutierrez, Clerk
Kielecia Coker, Clerk

B. MESSAGES

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

None

Disclosure & Statement of Conflict of Interest

None

C. APPROVAL OF AGENDA AND CONSENT AGENDA

Motion to approve the agenda and consent agenda made by Commissioner Guinn and seconded by Commissioner Muehling. Carried without objection or roll call vote.

D. MINUTES

Minutes from March 26, 2019. Approved.

E. QUASI-JUDICIAL HEARING

OATH ADMINISTERED

VR2019-001: A request by Marsha Woods on behalf of Golden Heart Utilities for a highway setback variance of 14 feet to allow a 6 foot front yard setback in the General Commercial (GC) zone which requires a 20 foot front yard setback. (located at 32 Timberland Drive, Lot 4A, Block 3 Timberland Subdivision at the Steese Highway and College Road intersection). (Staff Contact: Donald Galligan)

Donald Galligan presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval.

Questions by Commissioners
Commissioner Sims asked if this is being done after the fact.

Mr. Galligan answered that it is being done after the fact and staff has discussed ways to avoid having retroactive variances brought to the Commission.

Applicant Testimony

Steven Brooks testified as follows:
- The applicants had nothing more to add and staff did a good job.
- This issue should have resolved before now, but it is out of his department.

Marsha Woods testified as follows:
- The project closeout cannot be completed with the federal highways until the Variance is applied for, which is why the issue is being brought before the Planning Commission at this time.

Questions by Commissioners

Commissioner Peterson asked if the issue is that the applicants would be paid by feds if this variance was not approved.

Mr. Brooks replied that they had already been paid, but that if closeout is not complete, they will have to return the money.

Ms. Woods replied that closeout would mean platting approval, which is contingent on the variance.

Commissioner Muehling asked what DOT’s position was on the hazard of the proximity of the building to traffic.

Mr. Brooks replied adding that the engineers planned the design with the building’s proximity to the street in mind, and there were no concerns during the design phase.

Public Testimony Opened

None

Public Testimony Closed

Mr. Jaffa reminded the Chair that, as this is a quasi-judicial matter, it is a requirement that interested persons can testify. He believed that the applicant had another member of DOT testifying who is also an interested person. He wished to confirm that this member of the audience was an interested person.

Ms. Woods answered that the property owner signed the application and provided an owner’s authorization.

MOTION: I move to approve the requested setback variance of 14 feet to allow a front yard setback of 6 feet in the General Commercial zone which has a minimum front yard setback requirement of 20 feet with one (1) condition, and adopting the staff report and seventeen (17) Findings of Fact in support of the decision by Commissioner Guinn.

Discussion ensued among Clerk and Commissioner Guinn regarding incorrect wording.
MOTION FAILED FOR LACK OF SECOND

Discussion ensued among Clerk and Commissioner Guinn.

MOTION: I move to APPROVE the setback variance of 14 feet to the front-yard setback requirement of 20 feet in the General Commercial zone adopting the staff report and seventeen (17) Findings of Fact in support of the approval by Commissioner Guinn seconded by Commissioner Perrault.

Discussion ensued. Several Commissioners expressed support of the variance approval.

ROLL CALL

Eight in Favor: Sims, Perrault, Guinn, Whitaker, Peterson, Stepovich, Muehling, O’Neall

Zero Opposed:

MOTION PASSED

Condition
1. Owner’s authorization is required for the variance approval to be valid. AKDOT & PF shall provide a copy of such written authority to the Fairbanks North Star Borough Community Planning Department.

Findings of Fact
1. This land was originally platted on August 14th 1951. The lot was not located within the incorporated city limits of Fairbanks. There was no zoning in unincorporated areas at this time.

2. Zoning of General Use (GU-1) was first established on the subject lot in 1988 by the adoption of Ordinance No. 88-010.

3. Ordinance 2001-66 rezoned this property from GU-1 to General Commercial on October 25, 2001. At that time the lot conformed to required minimum setbacks.

4. On May 22, 2001 the subject lot conformed to Title 18 requirements subsequent to the replat and prior to the 2015 Right-of-Way take.

5. The lot was annexed into the City of Fairbanks Corporate limits on July 1 2010.

6. In 1977 the State of Alaska passed AS 35.30.020 which requires DOT to comply with local planning provisions including obtaining variances if required.

7. The acquisition of 505 square feet of right-of-way in 2015 by DOT for the College Road Right Turn Lanes project caused the lot to become non-conforming for the front yard setback adjacent to College Road. To gain compliance with local planning regulations a variance for setback is required.

8. The special condition requiring a variance was the non-conformity of the 6 foot front yard setback resulting from a right-of-way acquisition by the State of Alaska.

9. One other special condition on the lot is the existence of three front yards, each requiring a 20 foot setback.
10. The proposed variance conforms to the intent and purpose of this title and of other ordinances and Alaska Statutes because it is consistent with the FNSB Comprehensive Plan Transportation and Infrastructure Goal 1 “To have a safe, efficient, multi-modal transportation system that anticipates community growth”; and with Land Use Goal 1 Strategy 3, which protects private property rights; and it promotes the public health, safety, and welfare by improved safety and access from College Road on to the Steese Highway.

11. Public health, safety, and welfare are enhanced with the approval of this variance to allow the construction of the College Road Right Turn Lanes project as this improvement alleviates roadway backups through the Old Steese Highway intersection with College road, which was an unsafe situation.

12. All State of Alaska variance criteria (AS 29.40.040(b)) have been met by the applicant. (1) The property owner did not cause the condition that required the variance; (2) the variance will not permit a use that is prohibited in the General Commercial Zone; and (3) the variance is not sought only to relieve pecuniary hardship or inconvenience.

13. FNSBC 18.104.070 allows the Planning Commission to grant variances to the numerical standards of Title 18 that are the direct result of right-of-way acquisition for highway projects.

14. The subject property is developed with a utility building which contains water pumping infrastructure which is an allowed use in the General Commercial zone. In the immediate area to the north across College Road is the Cornerstone Mall, to the west is the Carpenter’s Apprentice Training School. To the south is the Brotherhood of Carpenters Local and a residential home, and to the east across the Steese Highway is The Gas Line, a filling station, convenience store, and car wash combination of services.

15. Neighboring property owners have developed their properties with a variety of commercial uses. With the approved variance, the property owner will be able to continue to use the existing property for the current utility use or for a number of other uses allowed in the General Commercial zone, as the surrounding properties have been allowed.

16. Denial of the proposed variance would deprive the applicant the use of their property in a manner as permitted to the owners of properties in the immediate area because denial of the variance would require DOT to purchase the entire parcel, thereby depriving the current owners of its use. The 6 foot front yard setback does not comply with Title 18 requirements without a variance.

17. The proposed variance is needed for the building setback to be in compliance with Title 18 as the result of property acquisition by DOT for the College Road Right Turn Lane project.

**VR2019-002:** A request by Martin Shurr, Chief of Right-of-Way, ADOT&PF Northern Region on behalf of Farthest North Girl Scout Council for a lot size variance to the 40,000 square feet minimum lot size in the General Use-1 (GU-1) zone. The lot is 21,707 square feet (located at 431 Old Steese Highway). *(Staff Contact: Donald Galligan)*

Donald Galligan presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval.

Questions by Commissioners

**Commissioner Muehling** questioned why the variance was being brought before the Commission now.
Mr. Galligan answered that DOT is going back to clean up their files and the staff discussed how to avoid this in the future.

**Commissioner Muehling** clarified that in 1999 when DOT acquired the 172 feet was when DOT should have applied for the variance.

Mr. Galligan confirmed that was correct.

**Commissioner Muehling** inquired as to whether the procedure would be different today.

Mr. Galligan said no. This would be brought before the Commission prior to construction.

**Chair O'Neall** asked for more information on Mr. Galligan’s previous statement that if the variance was denied, the DOT would need to purchase the building and that the Girl Scout Council would have to move.

Mr. Galligan affirmed that this is the case because the building could not be sold legally without the variance if a bank needed to be involved. If the Girl Scouts didn’t want to move, they would need to purchase the property with cash.

**Applicant Testimony**

- Mr. Brooks added that a Permit Officer would be needed to make sure this was done on the proper timeline, and that if the variance was denied the Girl Scouts would need to move.

**Questions by Commissioners**

**Commissioner Peterson** questioned whether that was actually the case.

Mr. Brooks commented that it would be cheaper to purchase the property with cash than to return money to the federal highway department.

**Commissioner Peterson** asked whether this was more than a file cleanup and if it was mostly financial in nature.

Mr. Brooks mentioned that this was a part of a federal closeout checklist. If they do not meet the permitting deadline, the DOT will need to return the money.

**Commissioner Peterson** remarked that since the State bought the property from the Girl Scouts, this should have been done in a more timely manner.

Mr. Brooks agreed and said this needed to be corrected.

**Public Testimony Opened**

None

**Public Testimony Closed**

**MOTION:** To approve the requested lot size variance of 535 sq. ft. to a legal nonconforming lot to allow a lot of 21,707 sq. ft. in the GU-1 zone which has a minimum lot size requirement of 40,000 sq. ft. with one (1) condition, adopting the staff report and fourteen (14) Findings of Fact in support of the decision by **Commissioner Perrault** seconded **Commissioner Sims**.
Discussion ensued. Some Commissioners mentioned that this should have been done previously, but that there was no reason to deny the variance.

ROLL CALL

Eight in Favor: Sims, Perrault, Guinn, Whitaker, Peterson, Stepovich, Muehling, O’Neall

Zero Opposed:

MOTION PASSED

Condition
1. Owner’s authorization is required for the variance approval to be valid. AKDOT & PF shall provide a copy of such written authority to the Fairbanks North Star Borough Community Planning Department.

Findings of Fact
1. This land was originally platted on May 7, 1940. There was no zoning for this property in 1940.

2. The lot was formed into its present configuration by July 2, 1999 when the purchase of 172 square feet of right-of-way for the widening of the Old Steese Highway took place.

3. When the lot was initially zoned in 1968 it was zoned as Unrestricted Use (UU) and did not have a minimum lot size requirement.

4. In 1977 the State of Alaska passed AS 35.30.020 which requires DOT to comply with local planning provisions including obtaining variances if required.

5. On April 19, 1988 the zoning changed from UU to General Use-1 (GU-1) which established a minimum lot size of 40,000 square feet and made the parcel a legal non-conforming lot.

6. The acquisition of 172 square feet of right-of-way for the Old Steese Highway Widening project, and 363 square feet of right-of-way for the College Road Right Turn Lanes project increased the non-conformity of the existing substandard-sized lot, so compliance with local planning regulations required a variance for lot size.

7. The special condition requiring a variance was the increased non-conformity of an existing substandard-sized lot was created by the State of Alaska.

8. The proposed variance conforms to the intent and purpose of this title and of other ordinances and Alaska Statutes because it is consistent with the FNSB Comprehensive Plan Transportation and Infrastructure Goal 1 “To have a safe, efficient, multi-modal transportation system that anticipates community growth”, Land Use Goal 1 Strategy 3, protects private property rights, and promotes the public health, safety, and welfare by improved safety and access from College Road on to the Steese Highway.

9. The minimum lot size requirement in the GU-1 zone was based on allowing adequate area and separation for well and wastewater systems on site. The subject parcel is connected to City of Fairbanks water and sewer. The acquisition of a small corner has no effect on either of these systems as this is an urban parcel and does not negatively impact public health, safety, and welfare.

10. FNSBC 18.104.070 allows the Planning Commission to grant variances to the numerical standards of Title 18 that are the direct result of right-of-way acquisition for highway projects.
11. The subject property is developed with a commercial building which contains the Farthest North Girl Scouts of America. In the immediate area to the north across the Steese Highway is the VIP Cleaners and a commercial strip mall, to the west is the REI store, Aarons Rentals, and FMH Home Medical. To the south is the Carpenter's Apprentice Training School, and to the east across College Road is the Cornerstone Mall.

12. Neighboring property owners have developed their properties with a variety of commercial uses. With the approved variance the current property owner will be able to continue to use the existing property for the current Girl Scout use or for a number of allowed uses in the GU-1 zone, as the surrounding properties have been allowed.

13. Denial of the proposed variance would deprive the applicant the use of their property in a manner as permitted to the owners of properties in the immediate area. Denial of the Variance would require DOT to purchase the entire parcel, thus depriving the current owners of its use. The undersized lot does not comply with Title 18 requirements without a variance.

14. The proposed variance is needed in order for the lot to be in compliance with Title 18 as the result of property acquisition for the College Road Steese Highway projects.

F. APPEALS

Appeal of VR021-19: An appeal of the Platting Board’s decision to deny variance VR021-19, made by 3 Tier-Alaska, LLC, on behalf of the heirs and devisees of James Edson Moody. Variance VR021-19 was a request to waive the requirement for construction of the subdivision road's 30ft landing at its intersection with the Richardson Highway (FNSBC 17.56.060.A.4). The variance was part of the Moody Subdivision request to subdivide a portion of Gov't Lot 2, Section 13 T7S R5E, a total of approximately 3.53 acres, into two lots of 0.92 acre and 2.61 acres. The property is located within the NW¼ Section 13, T7S R5E, FM. (Staff Contact: George Stefan)

George Stefan presented the staff report. Based on the staff report, the Department of Community Planning and Platting recommended denial.

Questions by Commissioners

Commissioner Guinn asked if DOT was involved in the discussion regarding the angle of the design road.

Mr. Stefan answered that DOT’s requirement was that Tract A shall not have direct lot access onto the Richardson Highway. There was no official comment on the angle of approach, but DOT did want to ensure the section line easement be used for subdivision access, not direct lot access.

Commissioner Perrault wished to clarify the specifics of the design road.

Mr. Stefan responded that there was a minimum curve radius that needed to be adhered to, along with other design requirements. The submitted proposal did not meet the exact requirements, but the applicant attempted a best-fit by keeping the design road as close to 90 degrees as possible while still meeting title and keeping the road within the section line easement corridor.

Commissioner Perrault asked if road design was initially submitted by applicant.

Mr. Stefan responded yes and clarified that this variance is not about the road design, but the variance was simply in regards to constructing what is required by title - a minimum 30 foot landing at the location of the highway.
**Commissioner Perrault** questioned if the variance is to use the existing entrance to highway.

Mr. Stefan confirmed this was the case, and that the variance is also to defer construction so the applicant can use the existing constructed landing in the meantime.

**Commissioner Perrault** mentioned this was a lot of fuss just to build an apron 60 feet away from the existing apron.

Mr. Stefan agreed.

**Commissioner Perrault** asked to whom the resolution would go.

Mr. Stefan said the decision would be a resolution of the Planning Commission’s action taken, but the applicant could then appeal the decision to the Superior court.

Mr. Jaffa interjected that the resolution would be typical of a motion to approve, but the resolution would essentially be the final decision of this body.

**Commissioner Perrault** clarified that he wished to know if any appeal would go to the Superior Court.

Mr. Jaffa confirmed.

**Commissioner Guinn** asked Legal if the courts could act on a resolution.

Mr. Jaffa mentioned that courts can act on any actions taken by local government. If the process is followed, and that if there was nothing specific in code about appeal procedure, then naturally the appeal would go to court.

**Commissioner Sims** questioned if Title 17 was requiring that a separate apron be built 65 feet away that goes nowhere.

Mr. Stefan confirmed. Per the meeting with the Platting Board, one can be eligible for the construction exemption, however you can’t apply for a variance for an exemption.

**Chair O’Neall** asked if this was a condition of the approval of the exemption.

Mr. Stefan confirmed yes. The landing would need to be inspected and approved prior to plat approval.

**Commissioner Muehling** questioned if the design road was entirely within the applicant’s property.

Mr. Stefan replied that the edge of the road does fall slightly outside the boundary. The road design is such that nothing falls outside of the section line easement corridor.

**Questions by Applicant**

Ms. Hicks questioned Mr. Stefan as to whether or not public health, welfare and safety were taken into account when he initially analyzed the variance.

Mr. Stefan said yes, and any Title 17 variance requires this as a mandatory requirement.

**Applicant’s Testimony**
Appellant 3-Tier Alaska presented evidence. Appellant presented witnesses Mr. David Hewko, personal representative for the James E. Moody Estate, and Ms. Paula Hicks and Mr. Steve Lowry, Land Surveyors at 3-Tier Alaska.

Mr. David Hewko gave some historical perspective on the subdivision. The lot was subdivided due to Mr. Moody’s will providing about an acre of property with a cabin to a couple. This was the reason for the subdivision. He did not believe the apron being moved 65 feet would make any difference due to this.

Ms. Paula Hicks testified that they are appealing the Platting Board’s decision to deny the variance and mentioned that within the Platting Board staff report, staff originally recommended approval of the variance. She claimed that Title 17 variances state that the Platting Board may modify requirements of the Title, and there is no reason why a variance should not be able to be granted for a driveway entrance. She referenced a previous project she had worked on where she was granted a variance for a similar case without objection, and the Platting Board’s interpretation of the code is what is in error.

Mr. Steve Lowry, Surveyor at 3-Tier Alaska, said variances exist because of the constitution. If one is not allowed a variance, they can sue. If the Borough does not allow parts of title to allow for a variance, they are putting themselves at risk. The Platting Board is in direct opposition to the code in Title 4 and Title 17.

Questions by Commissioners

Commissioner Peterson asked if the applicant believes the design road is safer than the new landing proposed by the Platting Board.

Mr. Lowry confirmed that he believes so. He also mentioned that if the lot were to be further subdivided in the future, they would be required to build the new access and landing regardless.

Discussion ensued between Commissioners and applicant.

Commissioner Guinn questioned how the previous case that was mentioned by Ms. Hicks could act as precedence.

The witnesses responded that the exact same situation happened in that case, and that a variance was granted.

Discussion ensued between Chair O’Neall, Commissioner Muehling, and witnesses regarding the fact that the design road is conceptual at this time.

Questions by Staff

Discussion ensued between Mr. Stefan and applicant.

MOTION: To approve Resolution No. 2019-01, a resolution upholding the Platting Board decision of February 20, 2019 to deny the variance request to waive the requirement for construction of the Moody subdivision road’s 30 ft landing at its intersection with the Richardson Highway by Commissioner Muehling seconded Commissioner Perrault.

Discussion ensued among Commissioners.

Chair O’Neall questioned Mr. Jaffa about where in code it was mentioned that a variance to a variance could not be approved.
Mr. Jaffa stated that this was a legal opinion. It was a condition to an exemption, not a variance to a variance. If one is seeking to exempt oneself from the requirements of Title 17, then one cannot still adhere to the variance process. There is nothing specific in code that he found that states that one cannot apply for a variance from an exemption. He urges the Planning Commission develop a record in order to create a precedent if they wish to reverse the Platting Board’s decision.

Discussion ensued among Commissioners. Several Commissioners mentioned that denying the variance meant that a new apron would need to be built and a functional apron would need to be destroyed.

ROLL CALL

One in Favor: Muehling

Seven Opposed: Sims, Perrault, Guinn, Whitaker, Peterson, Stepovich, O’Neall

MOTION FAILED

Discussion ensued among Commissioners.

Mr. Jaffa mentioned that the Commission could draft a new resolution during this meeting.

MOTION: To postpone date certain by Commissioner Guinn.

MOTION FAILED FOR LACK OF SECOND

Discussion ensued among Commissioners and Mr. Jaffa.

[Commission took a brief at ease.]

MOTION: To approve Resolution 2019-01 with amendments by Commissioner Perrault seconded Commissioner Whitaker.

Discussion ensued among Commissioners and Mr. Jaffa regarding procedures on the motion.

[Commission took a brief at ease.]

MOTION WITHDRAWN BY COMMISSIONER PERRAULT, SECONDED AND WITHOUT OBJECTION

MOTION: To approve a complete Resolution 2019-01 by Commissioner Perrault seconded Commissioner Whitaker.

Discussion ensued among Commissioners. The new complete Resolution 2019-01 would reverse the Platting Board’s decision to deny the variance.

Commissioner Perrault stated that the Commission is exempting the applicant from building a new landing because there is already an existing landing. This is because it is impractical and unnecessary to do so at this time.

Chair O’Neall clarified that when a road is constructed, a new landing will need to be constructed and that the existing landing will need to be removed.
**Commissioner Perrault** confirmed that this is correct. The variance states that the new landing does not need to be constructed until the design road is put in.

**Chair O’Neall** added that there would be no way for the current homes to be accessed if the current landing is destroyed and a new one put in, without the road being built.

Discussion ensued among Commissioners.

Mr. Jaffa stated for the record that this motion is contrary to advice from the Fairbanks North Star Borough Attorney’s Office.

Discussion ensued among Commissioners and Mr. Jaffa.

**ROLL CALL**

Eight in Favor: **Sims, Perrault, Guinn, Whitaker, Peterson, Stepovich, Muehling, O’Neall**

Zero Opposed:

**MOTION PASSED**

Please find the decision by the Planning Commission as described in Resolution 2019-01 to include findings of fact in the posted April 9, 2019 Planning Commission Full Meeting Packet on the FNSB website.

**G. ** **EXCUSE FUTURE ABSENCES**

None

**H. ** **COMMISSIONER’S COMMENTS/COMMUNICATIONS**

**Commissioner Perrault** reported on FMATS.

Discussion ensued among Commissioners regarding FMATS.

**Ms. Nelson** mentioned that the May 14, 2019 meeting could be cancelled due to no new business. She requested Commissioners reach out to anyone from North Pole who might be interested in joining the Commission.

**Commissioner Perrault** spoke on the Accessory Structures Subcommittee.

Commissioners recognized Michelle Gutierrez for her hard work and dedication.

**Ms. Nelson** requested Commissioners bring any quasi-judicial discussion items to her attention if they wished discuss at the next meeting.

**I. ** **ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:24 p.m.
STAFF REPORT

To: Fairbanks North Star Borough Planning Commission
From: Kristina Heredia, Planner II
Date: April 23, 2019
Subject: CU2019-009: A request by Travis Johnson for conditional use approval of a guesthouse, located at 1006 Senate Loop, in the Rural Residential (RR) zoning district on Lot 11, Block 1, Bartlett Heights Subdivision (on the southwest side of Senate Loop, north of the intersection of Farmers Loop Road and Summit Drive).

I. EXECUTIVE SUMMARY

The applicant owns one 3.5 acre parcel located on Senate Loop, in the Rural Residential (RR) Zoning District. There is currently one single-family residence (SFR) on the subject property (Structure A). The applicant has applied for a conditional use in order to build a second SFR on the same property (Structure B), with the expectation that the currently existing SFR (Structure A) will become the guesthouse and will then be removed at a future date, and a third SFR (Structure C) will be constructed in its place. The applicant has provided a site plan that shows the locations and dimensions of all current and proposed SFRs, as well as the location of a future well (see Figure 1 and/or Exhibit 2).

Figure 1: Site Plan showing all Three SFRs
The surrounding properties are predominantly developed with single-family residential uses, except the property directly adjacent to the northwest, where there is an existing duplex. Duplexes are a permitted land use in the RR zoning district, whereas a guesthouse is only allowed through the Conditional Use Permit process.

Both the existing dwelling (Structure A) and the proposed second dwelling (Structure B) will have a shared driveway access from Senate Loop which is a Local 1 type roadway maintained by the Summit Drive Road Service Area. The applicant has stated that the existing dwelling (Structure A) has a 1,000 gallon holding tank for their water needs, as well as an existing septic system, that will both be removed when Structure A is removed. When Structure B is constructed a permanent septic and water well will be installed. When Structure C is constructed, it will share the water well with Structure B, but will have its own septic system.

**Key Issues:**

**Three Proposed Dwelling Units:** While the site plan shows the location of three separate single-family residential dwelling units, the applicant has stated that at no time will there be more than two SFRs on the property. This can be monitored through zoning permits and a condition specifically notating that only two single-family dwelling units may be located on the property at any given time.

**Existing Setbacks:** The existing dwelling (Structure A) has a west side-yard setback of 40 feet +/- instead of the required 25 feet. This will ensure that the privacy of the adjacent neighbor is protected, while still giving the applicant ample room to construct the future guesthouse (Structure C) which will be located in a position south of the current dwelling (Structure A). Structure C will also maintain a west side-yard setback of 40 feet +/-.

Structure A has also been placed 260 feet +/- from the front property line, instead of the required 25 feet. When Structure B is constructed it will also exceed the required front-yard setback, which is proposed to be set back 170 feet +/- from the front property line.

**Staff Recommendation:** Approval with three (3) conditions
## II. GENERAL INFORMATION

### Property Information

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<td>Applicant</td>
<td>Travis Johnson</td>
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### Adjacent Zoning/Land Use

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### Public Services

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### Transportation

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<tr>
<td>Access road</td>
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</tr>
<tr>
<td>Road type</td>
<td>Local 1</td>
</tr>
<tr>
<td>Maintenance authority</td>
<td>Summit Drive Road Service Area</td>
</tr>
<tr>
<td>Daily traffic count</td>
<td>N/A</td>
</tr>
<tr>
<td>Trip generation</td>
<td>9 trips per day for one single-family dwelling, two single-family dwellings would be 18 trips per day</td>
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</table>

### Property Development and Zoning History

<table>
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<th>Property Development and Zoning History</th>
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<tbody>
<tr>
<td>March 28, 1968</td>
<td>Property was zoned Unrestricted Use (UU) by Ord. 67-34</td>
</tr>
<tr>
<td>June, 1972</td>
<td>Plat recorded (FRD1972-026-001) for Bartlett Heights Subdivision</td>
</tr>
<tr>
<td>August 14, 1969</td>
<td>Property was rezoned Rural Residential (RR) by Ord. 69-23</td>
</tr>
<tr>
<td>October 08, 2018</td>
<td>CE2019-0021 – Applicant applied for a zoning permit retroactively for Structure A</td>
</tr>
<tr>
<td>March 14, 2019</td>
<td>Conditional use application (CU2019-001) submitted for a guesthouse on Lots 1l</td>
</tr>
</tbody>
</table>
III. PROPOSED USE AND PROJECT INFO

The subject property for this conditional use application is located in the Farmers Loop area, west of Summit Drive (see Figure 2 for location map).

The applicant owns one parcel, Lot 11, Block 1, Bartlett Heights Subdivision, in the Rural Residential (RR) zone. There is currently one single-family residence (SFR) (Structure A) located on the property (see Figure 1 and/or Exhibit 2) for site plan). The applicant has applied for a conditional use application to build a secondary single-family residence (Structure B) on the property that will be significantly larger than Structure A. (see Figure 1). At that time, the first SFR (Structure A) will become the guesthouse. Eventually the applicant would like to remove Structure A from the property and replace it with Structure C, a more permanent guesthouse. The applicant wishes to do his construction in phases, thus the request to switch the guesthouse from Structure A to Structure C. At no point will the applicant have more than the allowed two SFRs (with an approved conditional use) on his property. Structure A will be completely removed before Structure C is constructed.

FNSBC Title 18 defines guesthouse as "an accessory building, designed as a detached dwelling unit subordinate in size to and located on the same lot as the principal single-family detached dwelling or mobile home it serves. A guest house may be a mobile home in zoning districts where mobile homes are permitted uses (see FNSB Code 18.04.010)."

The existing dwelling, Structure A is 1,248 sq. ft. in size and the proposed Structure B will be approximately 5,000 sq. ft. in size (see Exhibit 2 for dimensions). When Structure A is replaced with Structure C, Structure B will continue to be the "principal single-family
detached dwelling” because Structure C will be 2,400 sq. ft. in size and will thus be “subordinate in size” to Structure B.

**Figure 3: Zoning in the Surrounding Area**

The surrounding properties are all zoned Rural Residential (RR). The surrounding properties are predominantly developed with single-family residential uses except Lot 10 directly to the northwest (See **Figure 3**) which has a two-family residential use.

**Figure 4: Comprehensive Plan Land Use Designations in the Surrounding Area**
The subject property has a Land Use Designation of Perimeter Area Preferred Residential Land, and most of the surrounding properties share the same designation. To the east however, the Perimeter Area Preferred Residential Land boundary cuts through some of the surrounding properties, making them have dual designations of Perimeter Area Preferred Residential Land & Perimeter Area.

IV. PROPERTY DEVELOPMENT AND ZONING HISTORY

In June of 1972, Lot 11, Block 1 was created with the recording of a plat for Bartlett Heights Subdivision (FRD1972-26-001, Exhibit 3). On March 28, 1968, the FNSB enacted their zoning regulations with the adoption of Ord. 67-34 and the subject property was zoned Unrestricted Use (UU). On August 14, 1969, the subject property was Rural Residential (RR) when Ord. 69-23 came in effect. The property remained vacant until September of 2018, when the applicant started construction of the current single-family dwelling unit on the property (Structure A).

V. APPLICABLE APPROVAL CRITERIA

Conditional Uses are governed by FNSBC18.104.050(C) (see Exhibit 4 for details).

VI. PUBLIC NOTICE

The Community Planning Department mailed 151 dear property owner notices and received three inquiry about this case. The applicant posted a public hearing notice sign on April 1, 2019. This sign meets the 'notice by applicant’ requirements (see Exhibit 5)

VII. AGENCY COMMENTS

The FNSB Department of Community Planning contacted following agencies for comments (see Exhibit 6 for agency comments):

a. State Fire Marshal
b. Steese Fire Service Area
c. Alaska State Troopers
d. Alaska Department of Transportation and Public Facilities (ADOT&PF)
e. FNSB Rural Services
f. Summit Drive Road Service Area
g. Alaska Department of Environmental Conservation (ADEC)
h. Golden Valley Electric Association (GVEA)

STAFF ANALYSIS

VIII. FNSBC 18.104.050(C): PLANNING COMMISSION DECISION CRITERIA

(1) Whether or not the proposed conditional use conforms to the intent and purpose of this title and of other ordinances and state statutes;
Purpose of FNSBC Title 18: The purpose of Title 18 is “to implement the Fairbanks North Star Borough comprehensive plan” (FNSBC 18.12.020). The Comprehensive Plan Land Use Map characterizes this area as both ‘Perimeter Area’ and ‘Perimeter Area Preferred Residential Land’.

Perimeter Area land, which is land that is “within a 10 to 20 minute travel time of urban destinations, and which contains primarily residential uses”. Perimeter Area Preferred Residential Land is defined as “Land determined to be more suitable than other lands for development” because “it is generally on slopes of 20% or less, not designated wetlands, and has a lower probability of containing detrimental permafrost conditions”.

This conditional use is to allow an applicant to construct a second single-family dwelling unit (Structure B). The applicant’s property is considered preferred to develop residentially, where “variable densities are encouraged”. While the majority of the surrounding properties were only developed with one single-family structure, there are small variations in the densities of the area. Adding one additional single-family dwelling unit to the applicant’s property will both provide for the variable densities desired in the comprehensive plan with minimum impact allowed by RR zoning with a conditional use, as the subject property is much larger than required for its zoning designation.

The request is consistent with the following goals of the FNSB Regional Comprehensive Plan:

**Land Use Goal 1** – To recognize that the foremost aspect of land use involving private property is the retention and maintenance of private property rights

**Strategy 2** – Work for community end goals with a minimum impact and disruption of individual private property rights

This conditional use application does not propose any development that has the potential to disrupt the surrounding properties. The lot is 3.5 acres in size, and all current and proposed dwelling units are well outside the required setbacks for the RR zoning district. Both the applicant and the neighbors are able to exercise their private property rights as this development will have little impact on the surrounding properties, and two-family residencies are allowed as a permitted use, and two single-family residences are allowed with a conditional use. Therefore, the conditional use supports Land Use Goal 1, Strategy 2 because it doesn’t disrupt the existing residential development of the neighborhood.

---

1 The Comprehensive Plan is a set of goal and policy statements to guide development in the Borough. Those goals and policies are executed, more specifically, by the zoning code. The Comprehensive Plan provides the framework for citizens and officials to make decisions related to land use, and to form the basis for ordinances and programs to guide land development, and use. It is a long-range document to guide the Borough through the next few decades. The Comprehensive Plan thus guides the implementation of zoning; the zoning code is the codified law. A specific area or zone must be “in accordance with” the Plan, which means it must be consistent with the validly enacted plan. It is impossible to instantaneously implement all Plan goals and policies in every designated area of the Borough, and there is no expectation that this be done. Instead, the law merely requires consistency with the Plan. It is important to note that while the Comprehensive Plan reflects Borough’s official land use policy, it is not a zoning ordinance and does not codify any land use standards. It should not be interpreted as restricting the Assembly’s ability to accommodate the actual development of the Borough and the changing needs of the community.
Land Use Goal 3 – To have a variety of land uses that fit the diverse needs of the community

Strategy 7 – Provide a variety of residential land use opportunities

This conditional use application will allow for the applicant to have two single-family dwelling units on 3.5 acres of land. While most of the surrounding properties only have one single-family dwelling unit, the property directly to the northwest has a two-family dwelling unit. By allowing the applicant to build his guesthouse, the Planning Commission is allowing a diverse and varied residential homes. Therefore, the conditional use supports Land Use Goal 3, Strategy 7 because it provides residential land use opportunity in the Farmers Loop area.

Intent of FNSBC Title 18: The intent of Title 18 is “to protect private property rights, to promote the public health, safety and general welfare of the residents of the borough, and safety from fire and to promote the efficient distribution of water, sewage, schools, parks and other public requirements; to provide safe traffic flow on the public streets; to promote economic development and the growth of private enterprise; and to divide the borough into districts (FNSBC 18.12.020).”

This conditional use application will allow for a guesthouse on the applicant’s private property. Allowing the property owner to continue to develop the residential use of his property is an example of protecting private property rights within clearly defined local zoning regulations. The public notification, public hearing procedures and approval criteria for conditional uses help protect the property rights of the surrounding property owners.

The existing dwelling (Structure A) has access from Senate Loop which is a Local 1 type roadway maintained by Summit Drive Road Service Area. Due to the curvature of Senate Loop adjacent to the subject property, the applicant should have only one driveway access point. The current driveway access is sufficient for all current and proposed dwelling units, and can be split into two driveways once on the property, as shown in Figure 1 and the Site Plan.

The existing dwelling (Structure A) has a 1,000-gallon water tank for all water needs. The existing dwelling (Structure A) has a septic system for any sewer needs as well. Both water tank and septic system will be removed with Structure A, and a permanent water well will be built to serve both Structure B and Structure C. Both proposed structures, B & C will have individual septic systems installed.

The conditional use application illustrates that it meets the intent of Title 18 because this application is to protect property rights and it would promote the public health, safety and general welfare of the residents of the borough.

Alaska State Statute and Other Ordinances: The Alaska Department of Environmental Conservation (ADEC) regulates the wastewater disposal system for the property.
Whether or not there are adequate existing sewage capacities, transportation facilities, energy and water supplies, and other public services to serve the proposed conditional use;

Water and Sewage: The existing dwelling (Structure A) has a 1,000 gallon water tank for any water needs. The applicant is proposing to dig a well for the future use of the property.

The applicant has stated that the existing dwelling (Structure A) has a septic system for any sewer needs. When the existing dwelling is removed from the property the current water tank and septic system will also be removed, and new septic will be installed for the proposed structures (B & C)

Emergency Fire Response: The existing dwelling (Structure A) has adequate fire services because the property is served by the Steese Fire Department.

Energy: The existing dwelling (Structure A) has adequate power supply because it is served by the GVEA grid.

Police: The existing dwelling (Structure A) is served by the Alaska State Troopers for law enforcement.

Transportation²: The existing dwelling (Structure A) has access from Senate Loop which is a Local 1 type roadway maintained by Summit Drive Road Service Area. A single-family dwelling unit such as this proposed guesthouse generates approximately 9 vehicle trips per day.³ Adding an additional single-family dwelling unit will increase the vehicle trips to 18 per day in total. FNSBC Title 17 would prohibit the construction of a private road unto the applicant’s property due to its location on a curve. However the applicant is only utilizing a single driveway, not a road and is thus in compliance with both Title 17 and Title 18.

The existing driveway leads to the current Structure A. When the applicant builds the second dwelling unit the driveway will be expanded and will also lead to the south so that both dwelling units have driveway access to Senate Loop. There are no plans to have two separate driveway accesses. Both dwelling units will enter the property through the one driveway access. On April 2, 2019, Floyd Sheesley, the Civil Engineer for FNSB Rural Services Division commented on this conditional use application and had no objections. A condition is recommended which will ensure that all current and proposed dwelling units share the same driveway access point to the property, to address public safety.

The FNSB zoning code does not require any off-street parking spaces for the existing dwelling (Structure A) (FNSBC 18.96.060). Nevertheless, the property has adequate space to provide parking for residents and visitors, if needed.

² This section of this staff report includes comments from Donald Galligan, FNSB Transportation Planner
(3) Whether or not the proposed conditional use will protect the public health, safety and welfare.

This proposed conditional use will protect the public health, safety, and welfare because it does not drastically increase the residential density of the neighborhood and continues an existing dwelling as a guesthouse. Noise, odor, dust and other negative impacts to the neighborhood are not expected to be created by the proposed second single-family dwelling unit (Structure B) because it is located in a residentially developed neighborhood, which allows for the construction of a duplex without a conditional use.

The existing dwelling (proposed guesthouse, structure A) has an east side-yard setback of 40 feet +/- instead of the required 25 feet. Structures B & C will also maintain the 40 foot side yard setbacks in lieu of the required 25 feet. This will ensure that the surrounding properties are not negatively effected by having an additional single-family dwelling unit on the property.

This conditional use approval is for the construction of a primary dwelling unit, and then converting the current dwelling to the guesthouse. While the current dwelling is the only and thus the primary dwelling unit, when the applicant constructs his second dwelling unit, Structure B, the current dwelling will revert to being the guesthouse, as it is significantly smaller in size than Structure B.

Community Planning recommends a condition that if an addition is made to the current dwelling that would increases the size of the guesthouse to be equal to or greater than the principal dwelling, a modification to the conditional use permit be required pursuant to FNSBC 18.104.050(D). Community Planning acknowledges the applicant’s desire to eventually remove Structure A and replace it with a different guesthouse in the future. Adding a second condition to the approval will ensure that no more than two dwelling units are on the property at any given time, and will also address the requirement that a modification be made to the conditional use when the time arrives for Structure C to be built.

IX. RECOMMENDATION

Based on the staff analysis above, the Department of Community Planning recommends APPROVAL of the conditional use permit request for a guesthouse on Lot 11, Block 1, Bartlett Heights Subdivision in the Rural Residential (RR) zone with three (3) conditions.

X. CONDITIONS

1. If an addition is made to the guesthouse that increases the size of the guesthouse to be equal to or greater than the principal dwelling, a modification to the conditional use permit is required pursuant to FNSBC 18.104.050(F).
2. At no time shall more than two single-family dwelling units be located on the property. Structure A must be removed in its entirety before Structure C can be constructed, pursuant to FNSBC 18.104.050(D).
3. Only one shared driveway access will be allowed on the property due to its location on the curve of Senate Loop.

XII. FINDINGS OF FACT

The Department of Community Planning further recommends adoption of the staff report and following findings of fact in support of APPROVAL of the conditional use request.

1. The proposed conditional use conforms to the intent and purpose of Title 18 and of other ordinances and state statutes because:

   a. The proposed conditional use is consistent with the 'Perimeter Area Preferred Residential Land' comprehensive plan land use designation because it supports a variety of residential development.

   b. FNSB Regional Comprehensive Plan Land Use Goal 1 and Goal 3 are supported by the conditional use by increasing the density of the neighborhood in a manner that supports the necessary variety of residential development.

   c. The intent of Title 18 is met because the conditional use, with conditions, protects private property rights and promotes public health, safety, and welfare.

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. Structure A has adequate water capacity because it has an existing 1,000-gallon water tank. The proposed well will provide water to both proposed dwelling units (Structure B & C).

   b. The existing septic system and provides adequate sewage capacity to the current dwelling unit. Both proposed new dwelling units will have their own septic systems installed.

   c. The subject property is served by the Steese Fire Department for emergency fire response.

   d. The subject property has adequate power supply because it is served by the GVEA grid.

   e. The subject property is served by the Alaska State Troopers for law enforcement.

   f. The subject property has access from Senate Loop which is a Local 1 type roadway maintained by Summit Road Service Area. Senate Loop can accommodate the proposed additional trips generated from the property.
g. The FNSB zoning code does not require any off-street parking spaces for the guesthouse/current structure.

3. The proposed conditional use protects public health, safety, and welfare because the property complies with Title 18 standards for the RR zone (FNSBC 18.40) as well as with other applicable land use related laws.

a. The conditional use does not greatly increase the residential density in the neighborhood because it will only add one additional single-family dwelling unit.

b. Noise, odor, dust and other negative impacts to the neighborhood are not expected to be created by the addition of a second dwelling unit as there already an existing dwelling unit in a residentially developed neighborhood that allows for duplexes without conditional use approval.

c. A shared driveway will help ensure the safety of drivers by limiting the number of driveway accesses off of Senate Loop.

**DRAFT PLANNING COMMISSION MOTION:**

I move to approve the Conditional Use Permit (CU2019-009) for a guesthouse on Lot 11, Block 1 with three (3) condition, and adopting the staff report and three (3) Findings of Fact in support of the approval.
### Property Information for PAN#: 0281263

**STATUS:** ACTIVE - ROLL TYPE 1  
**PROPERTY DESCRIPTION:** BARTLETT HEIGHTS, BLOCK: 01, LOT: 11  
**OWNER:** Johnson William Travis [ownership]  
**BILLING ADDRESS:** PO BOX 73202 Fairbanks, AK 99707 3202  
**SITUS ADDRESS:** 1006 Senate Loop  
**PARCEL SIZE:** 151197 SF  
**NEIGHBORHOOD:** Farmers Loop (0902)  
**LAND CLASS:** General Residential Hillside  
**PRIMARY USE:** Other (Misc.)  
**FLOOD ZONE:** X (100%)  
**SPECIAL REG. AREAS:** None  
**ZONING:** RR (100%)  
**COMP PLAN:** Perimeter Boundary (100%), Perimeter Area  
Preferred Residential Land (100%)  
**PLANNING DISTRICT:** North Fairbanks (100%)  
**ROAD DISTRICT:** N/A  
**URBAN BOUNDARY (2003):** NO  
**ROAD SERVICE AREA:** Summit Drive (88%)  
**FIRE SERVICE AREA:** Steese (100%)  
**FIRE SERVICE (Property DB):** Steese Vol Fire S A  
**STRUCTURES:** N/A  
**BUSINESS ON SITE:** N/A  
**MILL GROUP:** Summit Drive Service Area (0970) (Est. Mill Rate: 15.837)  
**PLAT NUMBER:** BARTLETT HTS (FRD1972_26_001)  
**DESCRIPTION (VAULT):** LOT 11 BLOCK 1 BARTLETT HEIGHTS  
OUT OF TL-1400 SEC 14 T1N-R1W  
**COMMUNITY PLANNING PERMITS:**  
Code Enforcement: 20190021  
Zoning: 18179

### Assessment History

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The Fairbanks North Star Borough does not warrant the accuracy of maps or data provided, nor their suitability for any particular application. There may be errors in the data.
Exhibit 2

- All driveways and circulation area will be min 2" compacted gravel.
APPLICABLE APPROVAL CRITERIA

Conditional Uses are governed by the following provisions of Title 18, Fairbanks North Star Borough Code of Ordinances:

18.104.050 (C): Hearing and Decision by the Planning Commission
The planning commission shall review, hear and decide whether or not to approve a request for a conditional use. The planning commission shall also consider and adopt findings in each of the following:

1. Whether or not the proposed conditional use conforms to the intent and purpose of this title and of other ordinances and state statutes;

2. Whether or not there are adequate existing sewage capacities, transportation facilities, energy and water supplies, and other public services to serve the proposed conditional use;

3. Whether or not the proposed conditional use will protect the public health, safety and welfare.

The planning commission may approve or deny a conditional use request or may approve a conditional use request with conditions to ensure the protection of the public health, safety and welfare. Such conditions may relate to any, or more, of the following: traffic flow and access requirements, lighting, pedestrian movements, time limits for commencing or ceasing use.
Public Notice Sign Posting Affidavit

State of Alaska

Fourth Judicial District

I, William Travis Johnson, being first duly sworn, depose and state that:

1. I have submitted an application identified as CU2019-009.
2. I have posted and will maintain public notice sign # 45 in accordance with the following provisions:
   a. Sign is posted on the property on which my request for rezone, conditional use or variance has been made.
   b. Sign is clearly visible from streets and roads.
   c. Sign will be maintained free of snow or other materials which impede readability.
   d. Sign is posted between an elevation of 2’ and 8’ above ground level and no further than 50’ from the edge of the road to further ensure readability from streets.
   e. Sign was posted on 4/11/19 (date) and complies with posting requirements of 20 days prior to the public hearing date.
   f. I shall return the sign to the FNSB Department of Community Planning within 10 days following the final public hearing.
3. I understand a refund check of $200.00 (the amount I have deposited for said sign) will be issued 7-10 days following return of the sign providing that sign is returned in usable condition. I further understand I may receive only partial refund if the sign is damaged when returned to the Borough.
4. This document is null and void when necessary action has been completed as provided in Item #2 f.

STATE OF ALASKA
NOTARY PUBLIC
B. Hamilton
My Commission Ending with Office

[Signature]

(Print Name and Address of Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME on this 2nd day of April, 2019.

[Signature]

Notary Public in and for Alaska

Commission Expires

Fairbanks North Star Borough is subject to the Alaska Public Records Act, AS 40.25 et seq. and this document may be subject to public disclosure under state law.
SAFETY

☒ State Fire Marshal
☒ Fire Service Area (see attachment)
   Specify: Steese
☐ City of Fairbanks
   ☐ Chief of Staff
   ☐ Fire Department
   ☐ Police Department
   ☐ Building Department
☐ City of North Pole
   ☐ City Clerk – Mayor
   ☐ Fire Department
   ☐ Police Department
   ☐ Building Department
☒ Alaska State Troopers

OTHER AGENCIES

STATE

☒ Alaska Department of Environmental Conservation (ADEC)
☒ Alaska Department of Natural Resources (ADNR)
☐ Alaska Department of Fish and Game (ADF&G)
☐ Alaska Railroad (ARR)

FEDERAL

☐ U.S. Department of the Interior Bureau of Land Management (BLM)
☐ U.S. Army Corps of Engineers
☐ U.S. Environmental Protection Agency (EPA) Region 10
☐ U.S. Department of Agriculture (USDA)
   ☐ Natural Resources Conservation Service
☐ Fort Wainwright Army Base
☐ Eielson Air Force Base
☐ Federal Emergency Management Agency (FEMA) Region 10

ROADS AGENCIES

☒ Alaska Department of Transportation and Public Facilities (AK DOT & PF)
☒ FNSB Rural Services
☒ Road Service Area (see attachment)
   Specify: Summit Drive

OTHER BOROUGH

☐ Land Management
☐ Public Works
☐ Parks & Recreation
☐ Assessing
☐ Transit
☐ Chief of Staff
☐ Other ______________________________
UTILITIES

ENERGY

☐ Fairbanks Natural Gas
☒ Golden Valley Electric Association (GVEA)
☐ Interior Gas Utility
☐ Alyeska Pipeline Services Co.
☐ Aurora Energy
☐ Other ________________

WATER/SEWER

☐ Utility Services of Alaska
☐ Valley Water, INC.
☐ City of North Pole Public Works
☐ College Utilities
☐ Golden Heart Utilities
☐ Other ________________

TELECOMMUNICATION

☐ Alaska Communications
☐ GCI FCC (Fiber Optic Cable)
☐ Alaska Wireless Network, LLC (GCI)
☐ AT&T Alascom
☐ AlasConnect
☐ Summit Telephone
☐ Verizon Wireless
☐ Other ________________

Comments to be returned by: 4/15/19 (2 weeks)

I have sent the application materials for File # 2019-009 to all of the agencies checked above on 4/1/19

Kristina Heredia
Name of Planner (PRINTED)

Date Sent 4/1/19

Date Signed 4/1/19
Case No. CU2009-009

State Fire Marshall

David Tyler, Alaska State Fire Marshal/Director  
David.tyler@alaska.gov

David Aden, Building Plans Examiner 1  
David.aden@alaska.gov

Jillian Roberts, Deputy Fire Marshal  
jillian.roberts@alaska.gov

Lloyd Nakano, Assistant State Fire Marshal  
lloyd.nakano@alaska.gov  
Requested owner calls Plan Review Bureau to verify if plans need to be reviewed or not

Steese Fire Service Area

info@steesefire.org

Mitch Flynn, Fire Chief - Appears there is proper access for fire and EMS apparatus  
mitch.flynn@steesefire.org

Samara Steele, Admin Assistant  
samara.steele@steesefire.org

State Troopers

AST Directors Office  
dps.ast.directors.office@alaska.gov

FNSB Rural Services

Floyd Sheesley, Civil Engineer – No comments  
FSheesley@fnsb.us

Road Service Area
Summit Drive
Steve Bouta - Chair
Steve.Bouta@fnsb-rs.us

Alaska Department of Transportation (ADOT)

Randi Bailey, Transportation Planner
randi.bailey@alaska.gov

Pete Eagan, Right-Of-Way Agent IV – No comment
pete.eagan@alaska.gov

Alaska Department of Environmental Conservation (ADEC)
Tonya Bear, Division of Water, Wastewater Discharge
Tonya.bear@alaska.gov

Doug Buteyn, ADEC Solid Waste Program
Doug.buteyn@alaska.gov

Alaska Department of Natural Resources (ADNR)

George Horton, Land Surveyor
George.horton@alaska.gov

Tim Shilling, Natural Resource Manager
Timothy.shilling@alaska.gov

Colin Craven, Natural Resource Specialist
Colin.craven@alaska.gov

GVEA

Julie Karl, Land Management Supervisor
JL.Karl@gvea.com

Richard Possenti, Lead Construction Field Representative
RJPossenti@gvea.com
Dear Sir/Ma’am

The Fairbanks North Star Borough Planning Commission is considering **CU2019-009**, a request by Travis Johnson for conditional use approval of a guesthouse, located at 1006 Senate Loop, in the Rural Residential (RR) zoning district on Lot 11, Block 1, Bartlett Heights Subdivision (on the southwest side of Senate Loop, north of the intersection of Farmers Loop Road and Summit Drive).

This case is scheduled for the Planning Commission meeting on April 23, 2019.

I have attached the application with this email. The department requests you to send us your comments for this proposal by April 15, 2019. For more information about this case, please email Kristina.Heredia@fnsb.us or contact Kristina Heredia at (907) 459-1262. The staff report to the commission will be available online at www.fnsb.us/Boards/Pages/Planning-Commission.aspx at least five days before the hearing. Let me know if you have any questions for me.

Very truly yours,

Kristina Heredia
Planner II
kristina.heredia@fnsb.us
(907) 459-1262
Ma’am,

Please ensure owner calls the Plan Review Bureau at 269-2004 to verify if a plan review is required or not.

If required, submit a plan review in accordance with 13 Alaska Administrative Code 50.027.

13 AAC 50.027. Non-structural plan review and approval; stop work orders
(a) Before beginning the construction, alteration, repair, or changing the occupancy of a building, a substantial land structure, or structure regulated by the state division of fire and life safety, plans and specifications regarding that building's or structure's location on the property, area, height, number of stories, occupancy, type of construction, fire-resistive construction, interior finish, exit facilities, electrical systems, mechanical systems, flammable or combustible liquid and gas storage tanks and their appurtenances, automatic fire-extinguishing systems, and fire alarm systems must be submitted by the owner or the owner’s representative to the state division of fire and life safety for examination and approval. This review does not address structural considerations or mechanical or electrical review beyond that necessary to confirm compliance with fire or life safety requirements. A copy of the approval must be posted as required in 13 AAC 55.100.

Thank you.

v/r
Lloyd M Nakano
Assistant State Fire Marshal
Division of Fire and Life Safety
5700 E. Tudor Road
Anchorage, AK 99507
Phone: 907-269-5491

From: Kristina Heredia [mailto:Kristina.Heredia@fnsb.us]
Sent: Monday, April 1, 2019 4:20 PM
To: David.tyler@alaska.gov; Aden, David G (DPS) <david.aden@alaska.gov>; Nakano, Lloyd M (DPS) <lloyd.nakano@alaska.gov>; info@steesefire.org; Mitch Flynn <mitch.flynn@steesefire.org>; samara.steele@steesefire.org; AST Directors Office, DPS (DPS sponsored) <DPS.AST.DIRECTORS.OFFICE@alaska.gov>; Floyd Sheesley <FSheesley@fnsb.us>; Steve Bouta <Steve.Bouta@fnsb-rs.us>; Bailey, Randi L (DOT) <randi.bailey@alaska.gov>; Eagan, Pete (DOT) <pete.eagan@alaska.gov>; Bear, Tonya (DEC) <tonya.bear@alaska.gov>; Buteyn, Douglas J (DEC) <doug.buteyn@alaska.gov>; Horton, George C (DNR) <george.horton@alaska.gov>; Shilling, Timothy A (DNR) <timothy.shilling@alaska.gov>; Craven, Colin M (DNR) <colin.craven@alaska.gov>; JLRossent@gvea.com; RJPossenti@gvea.com
Subject: CU2019-001: Requesting Comments for conditional use app. for a guesthouse (1006 Senate Loop)

Dear Sir/Ma’am

The Fairbanks North Star Borough Planning Commission is considering **CU2019-009**, a request by Travis Johnson for conditional use approval of a guesthouse, located at 1006 Senate Loop, in the Rural Residential (RR) zoning district on Lot
Kristina Heredia

From: Floyd Sheesley  
Sent: Tuesday, April 2, 2019 8:16 AM  
To: Kristina Heredia  
Subject: RE: CU2019-001: Requesting Comments for conditional use app. for a guesthouse (1006 Senate Loop)

Rural Services has no comments regarding the proposed conditional use. 
thanks

Floyd Sheesley

From: Kristina Heredia  
Sent: Monday, April 01, 2019 4:20 PM  
To: David.tyler@alaska.gov; David.aden@alaska.gov; lloyd.nakano@alaska.gov; info@steesefire.org; Mitch Flynn; samara.steele@steesefire.org; dps.ast.directors.office@alaska.gov; Floyd Sheesley; Steve Bouta; randi.bailey@alaska.gov; pete.eagan@alaska.gov; Tonya.bear@alaska.gov; Doug.buteyn@alaska.gov; George.horton@alaska.gov; Timothy.shilling@alaska.gov; Colin.craven@alaska.gov; JLKarl@gvea.com; RJPossenti@gvea.com  
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This case is scheduled for the Planning Commission meeting on April 23, 2019.

I have attached the application with this email. The department requests you to send us your comments for this proposal by April 15, 2019. For more information about this case, please email Kristina.Heredia@fnsb.us or contact Kristina Heredia at (907) 459-1262. The staff report to the commission will be available online at www.fnsb.us/Boards/Pages/Planning-Commission.aspx at least five days before the hearing. Let me know if you have any questions for me.

Very truly yours,

Kristina Heredia  
Planner II  
kristina.heredia@fnsb.us  
(907) 459-1262
Kristina Heredia

From: Eagan, Pete (DOT) <pete.eagan@alaska.gov>
Sent: Tuesday, April 2, 2019 10:21 AM
To: Kristina Heredia
Subject: Re: Senate Loop (1006), off Farmers Loop -- CU2019-001 -- conditional use app. for guesthouse

No comment.  Pete

From: Kristina Heredia [mailto:Kristina.Heredia@fnsb.us]
Sent: Monday, April 01, 2019 4:20 PM
To: David.tyler@alaska.gov; Aden, David G (DPS) <david.aden@alaska.gov>; Nakano, Lloyd M (DPS) <lloyd.nakano@alaska.gov>; info@steesefire.org; Mitch Flynn <mitch.flynn@steesefire.org>; samara.steele@steesefire.org; AST Directors Office, DPS (DPS sponsored) <DPS.AST.DIRECTORS.OFFICE@alaska.gov>; Floyd Sheesley <FSheesley@fnsb.us>; Steve Bouta <Steve.Bouta@fnsb-rs.us>; Bailey, Randi L (DOT) <randi.bailey@alaska.gov>; Eagan, Pete (DOT) <pete.eagan@alaska.gov>; Bear, Tonya (DEC) <tonya.bear@alaska.gov>; Buteyn, Douglas J (DEC) <doug.buteyn@alaska.gov>; Horton, George C (DNR) <george.horton@alaska.gov>; Shilling, Timothy A (DNR) <timothy.shilling@alaska.gov>; Craven, Colin M (DNR) <colin.craven@alaska.gov>; JLKarl@gvea.com; RJPossenti@gvea.com
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Very truly yours,

Kristina Heredia
Planner II
kristina.heredia@fnsb.us
(907) 459-1262
Hi Kristina,
I have no issues from an emergency services viewpoint other than making sure we have proper access for fire and EMS apparatus, which appears to be the case with the current drawing.

Mitch Flynn, Fire Chief
Steese VFD
800 William C. Leary Lane
Fairbanks, AK 99712
907-457-1519 (office)
907-347-7685 (cell)
907-457-1512 (fax)
mitch.flynn@steesefire.org

On Mon, Apr 1, 2019 at 4:20 PM Kristina Heredia <Kristina.Heredia@fnsb.us> wrote:

Dear Sir/Ma’am

The Fairbanks North Star Borough Planning Commission is considering **CU2019-009**, a request by Travis Johnson for conditional use approval of a guesthouse, located at 1006 Senate Loop, in the Rural Residential (RR) zoning district on Lot 11, Block 1, Bartlett Heights Subdivision (on the southwest side of Senate Loop, north of the intersection of Farmers Loop Road and Summit Drive).

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Very truly yours,
This is fine from a transportation perspective. If he was proposing a road and not just a driveway, then we would have an issue with Title 17 which doesn’t allow intersections on a curve, but since it isn’t a road, and just a drive its all good.

Donald C. Galligan, Jr. AICP | Planner IV—Transportation
Fairbanks North Star Borough | Community Planning
907.459.1272 (direct) | 907.459.1260 (department)
dgalligan@fnsb.us |

Hi Don,

Can you please take a quick peek at this application and site plan and let me know if you have any comments on the driveway or road?

Thanks!!

Very truly yours,

Kristina Heredia
Planner II
kristina.heredia@fnsb.us
(907) 459-1262
Kristina Heredia

From: Bailey, Randi L (DOT) <randi.bailey@alaska.gov>
Sent: Wednesday, April 10, 2019 9:58 AM
To: Kristina Heredia
Cc: Daniel Welch; George Stefan
Subject: RE: CU2019-001: Requesting Comments for conditional use app. for a guesthouse (1006 Senate Loop)
Attachments: Senate Loop Letter.pdf

Kristina,

Attached is the comment letter for the Conditional use permit for 1006 Senate Loop.

Thank you,
Randi

From: Kristina Heredia [mailto:Kristina.Heredia@fnsb.us]
Sent: Monday, April 1, 2019 4:20 PM
To: David.tyler@alaska.gov; Aden, David G (DPS) <david.aden@alaska.gov>; Nakano, Lloyd M (DPS) <lloyd.nakano@alaska.gov>; info@steesefire.org; Mitch Flynn <mitch.flynn@steesefire.org>; samara.steele@steesefire.org; AST Directors Office, DPS (DPS sponsored) <DPS.AST.DIRECTORS.OFFICE@alaska.gov>; Floyd Sheesley <FSheesley@fnsb.us>; Steve Bouta <Steve.Bouta@fnsb-rs.us>; Bailey, Randi L (DOT) <randi.bailey@alaska.gov>; Eagan, Pete (DOT) <pete.eagan@alaska.gov>; Bear, Tonya (DEC) <tonya.bear@alaska.gov>; Buteyn, Douglas J (DEC) <doug.buteyn@alaska.gov>; Horton, George C (DNR) <george.horton@alaska.gov>; Shilling, Timothy A (DNR) <timothy.shilling@alaska.gov>; Craven, Colin M (DNR) <colin.craven@alaska.gov>; JLKarl@gvea.com; RJPossenti@gvea.com
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Very truly yours,

Kristina Heredia
April 10, 2019

Kristina Heredia
Planner II
459-1262
kristina.heredia@fnsb.us

Property Owner/Developer: William “Travis” Johnson

Type of Request: Conditional Use Permit CU2019-009: 1006 Senate Loop

Property Location: Bartlett Heights, Block 1, Lot 11

ADOT&PF has reviewed the above request and has no comments.

Driveways on state owned roads must meet current Alaska DOT&PF standards. If they do not meet these standards, ADOT&PF may request that they be modified to do so. If the owner wishes to modify an existing permitted driveway, or create a new driveway, an ADOT&PF driveway permit is required. The ADOT&PF permitting website can be found at: http://www.dot.state.ak.us/permits/index.shtml

Thank you.

Sincerely,

Randi Bailey
Fairbanks Area Transportation Planner
(907) 451-2386

cc: George Stefan, FNSB
    Dan Welch, FNSB
Senate Loop, looking west

Senate Loop, looking east
Driveway leading to existing dwelling on property, public sign

Driveway connecting to Senate Loop
Existing dwelling on the property

Existing Dwelling on the property
Neighbor’s property to the north

Neighbor’s property to the east
Neighbor’s property to the northwest

Existing travel trailer on the property, looking northwest
Looking southeast from the exiting dwelling

Looking south from the exiting dwelling
Exhibit 8

Application Material Received on
March 14, 2019

CU2019-009
Fairbanks North Star Borough
Department of Community Planning
907 Terminal Street/P.O. Box 71267
Fairbanks, Alaska 99707-1267
(907) 459-1260  Fax (907) 205-5169
planning@fnsb.us

CONCONDITIONAL USE PERMIT APPLICATION

File No. C12019 - 009

*****FEES ARE NON-REFUNDABLE*****

FEES:

$800* conditional use permit application

$200 sign deposit (check or cash recommended)

*Fee is $1,000 for conditional use permits with supplementary regulations in FNSBC 18.96

Applicant:

Contact Name: Travis Johnson
Property Owner: William "Travis" Johnson

Business Name: 
Property Address: Mailing Address: Same

Mailing Address: PO Box 73202
City, State Zip: Same

City, State Zip: Fairbanks, Alaska, 99707
Phone: Same

Phone: (907) 460-1456
Cell: Same

E-mail: wtjohnson70@hotmail.com
E-mail: Same

Property Information:

Property Description: Lot 11 Block 1 Bartlett Apts
Street Address: 1006 Senate Loop
Lot Size: 3.471 Acres
Parcel Account Numbers (PAN): 281203
Zoning District: RR
Existing Use(s): 24' x 52' House

Conditional Use Request Information:

Proposed Use(s):

Request Description and Reasons for the Request:

see narrative

APPLICANT SIGNATURE: 
DATE: 3/14/19

OWNER SIGNATURE (if different): 
DATE: 

If the applicant is not the sole property owner, written consent of all property owners must be provided (FNSBC 18.104.050(B)).
DEPOSIT / REFUND FORM
PUBLIC NOTICE SIGN DEPOSITS &
EXPERT REVIEW DEPOSITS

FILE/CASE #: 042019-009

DEPOSITS

SIGN DEPOSIT ☑

EXPERT REVIEW DEPOSIT ☐ (see box below)

I understand that I owe the actual cost for the expert review of my telecom application and that this is only a deposit towards the cost.

(applicant initials)

Sign #: J
(if required)

DATE Prepared: 3/14/19

Prepared By: Manish Singh
Fairbanks North Star Borough

Contact Phone #: (907) 460-1456

RECEIPT Number: 473561

Contact Email: wtjohnson79@ hotmail.com

PAID By: Cash ☑ Check ☐ Credit Card ☐ Last 4 digits #: 

(if paying by check we MUST refund to name & address showing on check)

Name & Address on Check:

Name & Contact # on Credit Card:

If cash name and address for refund: Travis Johnson P.O. Box 73202 Fairbanks, AK 99707

________________________________________

SIGN REFUNDS

Sign Returned: ____________________________
Date: ____________________________
Initiate Refund: ☐ YES ☐ NO

Staff who took sign in: ____________________________

________________________________________________________________________

Additional Damage Yes ☐ No ☐ Partial Refund ☐ Yes $____

Describe ____________________________
Applicant Initial ____________________________

Fairbanks North Star Borough is subject to the Alaska Public Records Act, AS 40.25 et seq. and this document may be subject to public disclosure under state law.

Rev 07/01/2018
I currently have a permit for structure "A." My plan is to get a construction loan this summer and build structure "B." At same time in the next couple years structure "A" will move off the property. After that I would like to build structure "C" as a mother-in-law house. At any point there will not be more than 2 structures (dwelling units).

Structure "A" has a holding tank (water 1000 gallons) and a septic that will be removed with the structure.

House "B" will have a permanent septic and share a well with the future house "C" that will also have a septic. This will still comply to DEC septic requirements.

The outdoor lighting or any of the structures will not point at any neighbors.

Conditional use criteria

1. My proposal is consistent with perimeter area preferred residential land
2. Proposed well & septic will provide adequate service, OVER Power and I have a drilling permit from the Borough.
3. Dwellings do NOT impact the safety of neighbors because I'm not changing the overall residential density
I currently have a permit for structure “A”. My plan is to get a construction loan this spring to build structure “B”. At some time in the next couple years structure “A” will move off the property. After that I would like to build structure “C” as a mother in-law house. At any point there will not more than two structures (dwelling units).

Structure “A” has a holding tank (1000 Gallons water) and a septic that will be removed with the structure. House “B” will have a permanent septic and share a well with the future house “C” that will also have a septic. This will all comply to DEC septic requirements.

The outdoor lighting on any of the structures will not point at any neighbors.

Conditional use criteria:

#1 My proposal is consistent with perimeter area preferred residential land.

#2 Proposed well and septic will provide adequate service. I will have GVEA power and I have my driveway permit through the Borough.

#3 Dwellings do NOT impact the safety of neighbors because I’m not changing the allowed residential density.
NEW BUSINESS

Discussion of quasi-judicial procedures, including current code requirements in Titles 4, 17 and 18, potential methods to increase public involvement and comment, and other ways to streamline or make the quasi-judicial process more efficient and effective.
Table of Contents

1(A). Current FNSB Code regarding interested person

1(B). 4 FNSB Ordinance RE: Quasi-Judicial Process

2. City of Homer, AK Municipal Code RE: Standing

3. City of Homer, AK Definition of "Person Aggrieved"

4. 2018 Griswold v. Homer BOA Case

5. Blog article on Griswold v. Homer Case
17.04.010 Definitions and 18.04.010 Definitions

"Interested persons" means those individuals who are required in this title to be mailed specific notice of a quasi-judicial hearing or who provide an affidavit or other adequate proof that they reside within that hearing notification area or who timely apply to participate and prove that they possess a specific property interest that may be significantly affected by the proposed action in a way different than that of the general public. For purposes of verbal testimony only, interested persons include, when the applicant is a public entity (including an agency, political subdivision or other component unit of the public entity), the citizens of that public entity.

4.04.150 Procedure. Source
A. Notwithstanding any language to the contrary, all boards and commissions shall follow, as a minimum, the procedural rules set forth in this section. A board or commission may adopt other rules but those rules may not conflict with this section. In all matters of procedure not covered by this or other code sections or rules adopted by the board or commission, Robert's Rules of Order, as revised, shall be applicable and shall govern.

1. Boards and commissions conducting quasi-judicial hearings shall adopt rules permitting telephonic testimony by a party or witness upon request for good cause and in the absence of substantial prejudice to opposing parties. If telephonic participation is approved, then the party requesting it shall be responsible for arranging the telephone call and for payment of associated telephone charges. Adopted rules may limit the number of individuals testifying telephonically due to technological or other valid considerations; however, if an individual's telephonic participation is denied because of these limits, the rules shall permit other reasonably available alternatives such as setting an additional or alternate date for the testimony.

2. Boards and commissions conducting quasi-judicial hearings shall also adopt rules permitting parties to submit their testimony by affidavit subject to the opposing parties' right of cross-examination that the chair determines to be reasonably necessary to explore any matters which tend to contradict, modify or explain the testimony.

3. Boards and commissions conducting quasi-judicial hearings shall establish rules providing for a determination concerning an individual's status as a party sufficiently in advance of the hearing to
allow the person to timely request participation by telephonic or submit testimony by other allowable means. If an individual qualifies as an interested person, the individual may provide testimony but the chair may otherwise limit participation at the hearing unless the person possesses a significant property interest that is not adequately represented by existing parties.

4. Formal rules of evidence do not apply to quasi-judicial hearings; however, the chair may exclude irrelevant, immaterial or unduly repetitious evidence.

B. All de novo quasi-judicial hearings by a board or commission involving an appeal from an administrative determination shall be conducted according to the following procedures:

1. Copies of all procedural rules and any written staff report must be available at least five working days prior to the hearing and at the hearing. At least five working days prior to the hearing, the parties shall exchange copies of all documents intended to be submitted to the board or commission. Staff shall also ensure that the relevant public files are available for inspection and copying by the parties.

2. At the beginning of the hearing, the chair shall give a brief introduction regarding the matter and inquire as to whether any member needs to make any disclosures required by the code of ethics or disclose any ex parte communications regarding the matter at issue. All parties must at this time express their objections, if any, to a member participating in the hearing.

3. Testimony must be taken under oath or affirmation. A group oath or affirmation, including all parties, may be given prior to taking any testimony. Relevant testimony and evidence may be submitted at the hearing. To the extent time limits are imposed, those time limits shall not include time spent responding to questions and shall be evenly applied to all parties.

4. All parties shall, unless their participation is limited by the chair as authorized in this chapter, have the right to present evidence including testimony and exhibits and the right of cross-examination of witnesses to the extent the chair determines to be reasonably necessary to explore any matters which tend to contradict, modify, or explain testimony given on direct. The party bearing the burden of proof shall have the right to first provide testimony and present all relevant witnesses and evidence and shall have the right to rebuttal.

5. If a party seeks to introduce a document not previously copied and exchanged with the other party and the other party objects, the document shall be admitted only if the board finds a good faith reason for its failure to be included in the documentary exchange. A "good faith reason" includes, but is not limited to, the portion of an animal behavior log for the days occurring after the
required documentary exchange. If the late admission creates any prejudice to the opposing party, the chair shall provide the opposing party additional time or take other allowable measures to address any resulting prejudice.

C. All de novo quasi-judicial hearings by a board or commission not involving an appeal from an administrative determination shall be conducted according to the following procedures:

1. Copies of all procedural rules and any written staff report must be available at least five working days prior to the hearing and at the hearing. Staff shall also ensure that the relevant public files are available for inspection and copying by the parties. If additional documents or information is submitted to staff after the report is written, those documents and information shall become part of the public file. If documents or information is added to the public file after the staff report is written, staff shall notify the parties who have previously inspected the file as soon as reasonably practicable and provide a copy to the parties if requested. Documents or information added to the file in compliance with this section may be provided to the board or commission.

2. At the beginning of the hearing, the chair shall give a brief introduction regarding the matter and inquire as to whether any member needs to make any disclosures required by the code of ethics or disclose any ex parte communications regarding the matter at issue. All parties must at this time express their objections, if any, to a member participating in the hearing.

3. Testimony must be taken under oath or affirmation. A group oath or affirmation, including all parties, may be given prior to taking any testimony. Relevant testimony and evidence may be submitted at the hearing. To the extent time limits are imposed, those time limits shall not include time spent responding to questions and shall be evenly applied to staff and the applicant. Time limits for interested persons shall be set by the chair.

4. Staff Report. Staff may provide a report on any technical or other issues within their expertise and may make recommendations to the board or commission. Questions of staff by the decision-making body and by the applicant, if present, should be asked at this point.

5. Applicant. The applicant or the applicant's representative, if present, may present testimony and evidence to support the application. To the extent the applicant wishes to present expert witnesses, they should testify at this point. Questions of the applicant by the decision-making body or staff should be asked at this point. The applicant shall be provided a minimum of 10 minutes which may be extended by the chair dependent upon the complexity of the issue. In addition, if the staff report opposes the application in whole or in part, the applicant's time shall be extended if necessary to ensure the applicant receives time equivalent to that provided to staff.
6. All parties shall, unless their participation is limited by the chair as authorized in this chapter, have the right to present evidence including testimony and exhibits and the right of cross-examination of witnesses to the extent the chair determines to be reasonably necessary to explore any matters which tend to contradict, modify, or explain testimony given on direct.

7. Rebuttal. The applicant shall be provided a minimum of five additional minutes to respond to any testimony presented by interested persons. This time may be extended by the chair in consideration of lengthy or complex testimony. In addition, to the extent the decision-making body decides, after testimony, to ask any further questions, the applicant shall be given a reasonable time to respond.

D. All legislative hearings by a board or commission shall be conducted according to the following procedures:

1. Sponsor Report. If present, the sponsor(s) of the proposed legislation or the sponsor's designee(s) shall first be afforded an opportunity to provide a report on the proposed legislation. The sponsor may choose to present before or after the staff report. If time limits are applied, the sponsor and staff shall receive equivalent time. Questions of the sponsor by the decision-making body concerning the proposed legislation should be asked at this point so that the members of the public wishing to comment can be reasonably informed.

2. Staff Report. Staff may then provide a report on any technical or other issues within their expertise. Questions of staff by the sponsor(s) or the decision-making body concerning the proposed legislation should be asked at this point so that the members of the public wishing to comment can be reasonably informed.

3. Public Comment. Members of the public may comment on legislative issues. Time limits may be placed on individual comments. If time limits are placed, they should be applied in an equal manner to all individuals providing public comment. Comments may be limited to the hearing subject.

4. Sponsor Response. The sponsor(s) or designee(s) shall be afforded a reasonable opportunity to respond to any questions, issues or concerns raised during the staff report or public comment.

E. If a hearing involves both a legislative issue and a quasi-judicial matter, the quasi-judicial procedures shall apply except that if the matter is scheduled for a public hearing, the public may comment on the legislative issue. Time limits may be placed on individual comments (excluding applicant and staff presentation). If time limits are placed, they should be applied in an equal manner to all individuals providing public comment. Comments should be limited to those relevant to the hearing subject.
F. Definitions.

1. "Applicant" means any person or entity whose specific legal rights are being adjudicated in the quasi-judicial hearing.

2. "Staff" means borough employees who as part of their job responsibilities are tasked with providing the board or commission with technical or other relevant information or those individuals from whom the board has specifically sought, after notice to the applicant, their input or advice.

3. "Sponsor" means the mayor, assembly member, chairperson of committee draft, or a member of the public whose authorized application created the proposed legislation. If the authorized application involves multiple owners or multiple properties, "sponsor" only includes one owner representative for each property.

4. "Party" means the applicant, any appellant(s) and staff. It also includes "interested persons" or "persons aggrieved" to the extent their participation is expressly permitted by borough code in a quasi-judicial matter. It does not include members of the public testifying under public comment. (Ord. 2016-40 § 20, 2016; Ord. 2015-74 § 2, 2016; Ord. 2013-50 § 2, 2013; Ord. 2012-44 § 3, 2012; Ord. 82-30 § 2, 1984. 2004 Code § 2.21.150.)

18.104.010 General procedures for rezoning, conditional uses and variances. Source

A. Initiation. Applications for rezoning, conditional [uses] and [variances] shall be made and reviewed according to the following procedures:

1. The applicant shall complete and submit the application forms provided by the borough, along with the required processing fee, prior to the time and date established as the deadline for the planning commission meeting.

2. The department of community planning shall review the submitted request, and submit its recommendation and all other applicable information to the planning commission and borough assembly, as appropriate. The recommendation shall be based upon conformance to the comprehensive plan and other factors required to be considered by law.

3. Applications involving property within 150 feet of the ordinary high water mark of the Chena River shall first be submitted to the Chena riverfront commission for review and recommendation.

B. Hearings. The planning commission shall conduct public hearings on all proposed rezones and quasi-judicial hearings for conditional [use] permits and [variance] requests unless specifically exempted under this title. Interested persons may testify and submit other admissible evidence for the planning
commission's consideration at a quasi-judicial hearing. When the applicant is the borough the public may submit written comments and general public comment may be permitted. In its rezone deliberations the planning commission shall consider all oral and written statements from the applicant, the public and the department of community planning. Public testimony on rezones shall be relevant and related to the proposed land use.

C. Public Notification. Rezonings shall become effective only after a public hearing has been held at which all interested persons and/or citizens shall have an opportunity to be heard, and approval has been granted by the borough assembly. Conditional used and variances shall become effective only after a quasi-judicial hearing has been held and approval granted by the planning commission.

1. Publication of Notice. Notice of the time and place of the public or quasi-judicial hearing shall be published at least 10 days prior to the date of the hearing in a newspaper with general circulation in the jurisdiction of the planning commission and borough assembly.

2. Mailing of Notice by the Department of Community Planning. Notice of the public or quasi-judicial hearing shall be mailed to all owners, as shown by the records of the borough assessor, of property in the area to be considered for a rezoning, conditional used or variance. Notice shall be sent to owners of lots or land either within an area measured 1,000 feet in all directions from the boundaries of the area being considered if the request is of land within the incorporated areas of the cities of Fairbanks and North Pole, or within an area measured 2,000 feet in all directions from the boundaries of the area being considered if the request is of land outside of the incorporated areas of the cities of Fairbanks and North Pole. In either instance at least 10 owners of lots or land outside of the area being considered shall be notified by mail, whereby these distance requirements shall be increased.

3. Notice by Applicant. The applicant shall provide notice of the public or quasi-judicial hearing by posting the land subject to the application for a rezone, conditional used or variance with notice clearly legible from each improved street adjacent to the land, or as determined by the community planning director or his designee. All posted notices shall be in the standardized form provided by the department of community planning and shall be posted at least 20 calendar days prior to the date of the public or quasi-judicial hearing and remain until final action has been taken on the matter. Twenty days before the public or quasi-judicial hearing, the applicant shall submit to the department of community planning a signed affidavit that the notice was posted as required by this subsection and photographs of all posted notices. If a site inspection is conducted, staff will note in the staff report the presence or absence of the posted notice. The applicant shall remove the sign within 10 days following the final public or quasi-judicial hearing.
D. Limitations. A proposed rezoning, conditional use or variance which has been denied by the planning commission and/or the borough assembly on a particular tract of land for a particular purpose cannot again be applied for within six months from the date of the denial, unless a new request is submitted that is determined to be substantially different from the original request (e.g., an application for a different but not necessarily a more restrictive zoning district, use, distance, area, etc.). (Ord. 2017-46 § 3, 2017; Ord. 2015-74 §§ 4 – 6, 2016; Ord. 2014-43 § 2, 2014; Ord. 2002-11 § 2, 2002; Ord. 88-010 § 2, 1988. 2004 Code § 18.54.010.)

2017- Amends §§ 21.28.010, 21.28.030(E)(1)(d) and (F)(3) and 21.28.060(F), participation of interested persons in certain air pollution control commission hearings (21.28)
2015- Amends §§ 2.21.150, 18.06.010, 18.54.010, 18.54.040(D), 18.54.070(A) and
74 18.56.025(C), quasi-judicial hearings (4.04, 18.04, 18.104, 18.108)

2014- Amends §§ 18.54.010, 18.54.020, 18.54.030, 18.54.040(D) and 18.54.045(D)(2);
43 repeals §§ 18.54.040(C), 18.54.045(C) and 18.54.050, amendments, changes and
procedures (18.104)

2013- Amends §§ 2.21.150(F)(4), 17.20.010, 17.30.030, 17.30.060(F) and (H),
50 17.30.090, 17.80.010 and 17.80.020; repeals § 17.80.030, quasi-judicial hearings
and platting board appeals (4.04, 17.04, 17.12, 17.16, 17.20, 17.68)

2012- Amends §§ 2.21.010, 2.21.150 and 2.39.050(D), board and commission
44 procedures (4.04, 4.84)
FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2012 - 44

AN ORDINANCE AMENDING CHAPTER 2.21 AND 2.39.050 REGARDING
PROCEDURAL RULES FOR BOARDS AND COMMISSIONS

WHEREAS, conducting a thoughtful, fair public process ensures that citizens have an opportunity to be heard and provide input into the decision making process; and

WHEREAS, public hearings on legislative matters help obtain public input on matters of policy; and

WHEREAS, private parties may have due process rights in a quasi-judicial public hearing; and

WHEREAS, written procedures guiding the conduct of quasi-judicial hearings help not only inform the public and participants but help insure that important procedural safeguards are provided; and

WHEREAS, written procedure rules applicable to all Fairbanks North Star Borough Boards and Commissions will help protect citizens’ due process rights and insure the public a fair hearing, equal treatment and opportunity to participate.

NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

Section 1. This ordinance is of a general and permanent nature and shall be codified.

Section 2. FNSB 2.21.010, Board and commission members subject to this chapter, is hereby amended as follows:

CODE AMENDMENTS ARE SHOWN IN LEGISLATIVE FORMAT
Text to be added is underlined
Text to be deleted is [BRACKETED AND CAPITALIZED]
All boards or commission, with the exclusion of the board of equalization, shall be
governed by each of the provisions set forth in this chapter unless it conflicts with a
specific provision applicable to a particular board or commission. The board of
equalization, however, shall still be subject to the code of ethics for boards and
commission and the rules of procedure in this chapter.

Section 3. FNSB 2.21.150, Procedure, is hereby amended as follows:
A. [A BOARD OR COMMISSION SHALL ESTABLISH ITS OWN PROCEDURAL
RULES AND ORDER OF BUSINESS, EXCEPT AS OTHERWISE PROVIDED BY LAW.
AN APPEAL OR QUASIJUDICIAL BOARD OR COMMISSION SHALL ESTABLISH
RULES GOVERNING PROCEEDINGS BEFORE THE BOARD OR COMMISSION.]
Notwithstanding any language to the contrary, all boards and commissions shall follow,
as a minimum, the procedural rules set forth in this section. A board or commission
may adopt other rules but those rules may not conflict with this section. In all matters of
procedure not covered by this or other code sections or rules adopted by the board or
commission, Robert's Rules of Order, as revised, shall be applicable and shall govern.
B. All de novo quasi-judicial hearings by a board or commission involving an appeal
from an administrative determination shall be conducted according to the following
procedures:

1. Copies of all procedural rules and any written staff report must be
available at least five working days prior to the hearing and at the hearing. At least five
working days prior to the hearing, staff and the appellant shall exchange copies of all
documents intended to be submitted to the board or commission. Staff shall also
ensure that the relevant public files are available for inspection and copying by the
appellant.

2. At the beginning of the hearing, the chair shall give a brief introduction
regarding the matter and inquire as to whether any member needs to make any
disclosures required by the code of ethics or disclose any ex parte communications
regarding the matter at issue.

3. Testimony must be taken under oath or affirmation. A group oath or
affirmation, including appellant and staff, may be given prior to taking any testimony.
Relevant testimony and evidence may be submitted at the hearing. To the extent time
limits are imposed, those time limits shall not include time spent responding to
questions and shall be evenly applied to all parties.

4. All parties shall have the right to present evidence including testimony and
exhibits and the right of cross-examination of witnesses. The party bearing the burden
of proof shall have the right to first provide testimony and present all relevant witnesses
and evidence and shall have the right to rebuttal.

5. If a party seeks to introduce a document not previously copied and
exchanged with the other party and the other party objects, the document shall be
admitted only if the board finds a good faith reason for its failure to be included in the

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documentary exchange. "A good faith reason" includes, but is not limited to, the portion
of an animal behavior log for the days occurring after the required documentary
exchange. If the late-admission creates any prejudice to the opposing party the chair
shall provide the opposing party additional time or take other allowable measures to
address any resulting prejudice.

C. All de novo quasi-judicial hearings by a board or commission not involving an
appeal from an administrative determination shall be conducted according to the
following procedures:

1. Copies of all procedural rules and any written staff report must be
available at least five working days prior to the hearing and at the hearing. Staff shall
also ensure that the relevant public files are available for inspection and copying by the
applicant. If additional documents or information is submitted to staff after the report is
written, those documents and information shall become part of the public file. If
documents or information are added to the public file after inspection by the applicant,
staff shall notify the applicant as soon as reasonably practicable and provide a copy to
the applicant if requested. Documents or information added to the file in compliance
with this section may be provided to the Board or Commission.

2. At the beginning of the hearing, the chair shall give a brief introduction
regarding the matter and inquire as to whether any member needs to make any
disclosures required by the code of ethics or disclose any ex parte communications
regarding the matter at issue.

3. Testimony must be taken under oath or affirmation. A group oath or
affirmation, including applicant and staff, may be given prior to taking any testimony.
Relevant testimony and evidence may be submitted at the hearing. To the extent time
limits are imposed, those time limits shall not include time spent responding to
questions and shall be evenly applied to all parties.

4. Staff report. Staff may provide a report on any technical or other issues
within their expertise and may make recommendations to the board or commission.
Questions of staff by the decision making body and by the applicant, if present, should
be asked at this point.

5. Applicant. The applicant or the applicant’s representative, if present, may
present testimony and evidence to support the application. To the extent the applicant
wishes to present expert witnesses they should testify at this point. Questions of the
applicant by the decision making body or staff should be asked at this point. The
applicant shall be provided a minimum of 10 minutes which may be extended by the
chair dependent upon the complexity of the issue. In addition, if the staff report
opposes the application in whole or in part, the applicant’s time shall be extended if
necessary to ensure the applicant receives time equivalent to that provided to staff.

6. Public Testimony. If the matter is scheduled for a public hearing, the
public may testify. Time limits may be placed on individual comments (excluding
applicant and staff presentation). If time limits are placed, it should be applied in an
equal manner to all individuals providing public comment. Comments should be limited
to those relevant to the hearing subject.

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7. Rebuttal. The applicant shall be provided a minimum of five additional minutes to respond to any testimony presented by the public. This time may be extended by the chair in consideration of lengthy or complex public testimony. In addition, to the extent the decision-making body decides, after public testimony, to ask any further questions of staff, the applicant shall be given a reasonable time to respond.

D. All legislative hearings by a board or commission shall be conducted according to the following procedures:

1. Sponsor Report. If present, the sponsor(s) of the proposed legislation or the sponsor's designee(s) shall first be afforded an opportunity to provide a report on the proposed legislation. The sponsor may choose to present before or after the staff report. If time limits are applied the sponsor and staff shall receive equivalent time. Questions of the sponsor by the decision-making body concerning the proposed legislation should be asked at this point so that the members of the public wishing to comment can be reasonably informed.

2. Staff Report. Staff may then provide a report on any technical or other issues within their expertise. Questions of staff by the sponsor(s) or the decision-making body concerning the proposed legislation should be asked at this point so that the members of the public wishing to comment can be reasonably informed.

3. Public Comment. Time limits may be placed on individual comments. If time limits are placed, it should be applied in an equal manner to all individuals providing public comment. Comments may be limited to the hearing subject.

4. Sponsor Response. The sponsor(s) or designee(s) shall be afforded a reasonable opportunity to respond to any questions, issues or concerns raised during the staff report or public comment.

E. If a hearing involves both a legislative issue and a quasi-judicial matter, the quasi-judicial procedures shall apply.

F. Definitions.

1. "Applicant" means any person or entity whose specific legal rights are being adjudicated in the quasi-judicial hearing.

2. "Staff" means borough employees who as part of their job responsibilities are tasked with providing the Board or Commission with technical or other relevant information or those individuals from whom the Board has specifically sought, after notice to the applicant, their input or advice.

3. "Sponsor" means the Mayor, Assembly Member, Chairperson of Committee Draft, or a member of the public whose authorized application created the proposed legislation. If the authorized application involves multiple owners or multiple properties, sponsor only includes one owner representative for each property.

4. "Party" means the applicant and staff. It also includes any other person determined by the chair to have a significant property interest triggering due process. It does not include members of the public testifying under public comment.
Section 4. FNSBC 2.39.050 D. regarding platting board rules of procedure, is hereby amended as follows:

The board may, by resolution, adopt written rules of procedure, subject to the requirements of state law and FNSBC [TITLE 17].

Section 5. Effective Date. This ordinance shall be effective at 5:00 p.m. of the first Borough business day following its adoption.


Diane Hutchison
Presiding Officer

ATTEST:

Mona Lisa Drexler, MMC
Municipal Borough Clerk

Ayes: Davies, Howard, Sattley, Dukes, Want, Winters, Musick, Kassel, Hutchison
Noes: None
FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2013 - 50

AN ORDINANCE AMENDING FNSBC 2.21.150 F. 4 AND TITLE 17 REGARDING QUASI-JUDICIAL HEARINGS AND PLATTING BOARD APPEALS

WHEREAS, the Borough Assembly recently adopted procedural rules governing boards and commissions; and

WHEREAS, it was discovered during that process that certain other code sections granted persons other than parties the right to participate in quasi-judicial appeals; and

WHEREAS, as a matter of fundamental fairness it should be clear, prior to a quasi-judicial hearing, whether interested persons other than the applicant, will be permitted to participate in the quasi-judicial matter; and

WHEREAS, participation in a quasi-judicial matter affecting property interests should be limited to the parties and others whose property interests may be impaired or impeded; and

WHEREAS, except for matters concerning vacations or the dedication or realignment of trails, the platting board does not set or determine public policy but is legally required to approve a subdivision if it meets Title 17 requirements; and

WHEREAS, quasi-judicial appeals to the planning commission should be limited to those parties who participated in the platting board hearing and arguments presented to the platting board that are within the platting board’s jurisdiction and authority; and

WHEREAS, all participating parties in the platting board hearing should receive notice of the right to appeal and participate in any filed appeal.

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NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

Section 1. This ordinance is of a general and permanent nature and shall be codified.

Section 2. FNSBC 2.21.150 F. 4, Procedure, is hereby amended as follows:

4. "Party" means the applicant, any appellant(s) and staff. It also includes "interested persons" or "persons aggrieved" to the extent their participation is expressly permitted by borough code in a quasi-judicial matter [ANY OTHER PERSON DETERMINED BY THE CHAIR TO HAVE A SIGNIFICANT PROPERTY INTEREST TRIGGERING DUE PROCESS]. It does not include members of the public testifying under public comment.

Section 3. FNSBC 17.20.010, Definitions, is hereby amended to add the following definitions in alphabetical disorder:

"Adjoining owners" means record owners of those properties of which one or more boundaries are in common with a boundary of the property being subdivided and the record owners of property located within the following distances of the boundaries of the property being subdivided according to the size of the proposed subdivision:

- Up to 20 acres—one quarter mile
- 20-100 acres—a half mile
- 100-500 acres—3/4 mile
- More than 500 acres—1 mile.

If the property being subdivided is within a city then the distances shall be decreased by 50%. Record owners shall be determined by the records entered in the file of the borough assessor. Adjoining owners includes those separated by a dedicated right-of-way.

"Party" means the Applicant and Borough staff.

"Interested persons" means those individuals who received notice as an adjoining property owner or who timely apply to participate and prove that they possess a specific property interest that is significantly affected by the proposed action in a way different than that of the general public; except that when the property owner is a public entity, any member of the public shall be deemed an interested person.

Section 4. FNSBC 17.30.030 C., Action on major plat applications, is hereby amended as follows:

C. After acceptance of the application and at least 14 calendar days prior to the time set for the platting board review and action, the platting officer will:

  1. Prepare a staff report that includes a recommendation for approval or denial of the proposed subdivision;
  2. Send notice of the proposed subdivision to adjoining property owners.

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[A. INDIVIDUALS MAY RESPOND IN WRITING PRIOR TO THE
PLATTING BOARD MEETING.

B][3]D. Verbal testimony by parties and interested persons may be
given at the platting board meeting. If the plat dedicates trail easements to conform to
the adopted comprehensive recreational trail plan or is realigning existing trails the
public may submit written or oral comments for consideration by the platting board in
applying this title’s requirements concerning dedications and realignment of trails.

[3][4[E. No revisions to the application will be considered which are
subsequent to the preparation of the staff report and notice of the proposal to adjoining
property owners. Any such revisions will be treated as a new application and reviewed
at the next regularly scheduled meeting of the platting board.

[4][5[E. All plans, data, and other supporting material shall be available for
public inspection at the department of community planning at least 14 calendar days
prior to the time set for platting board review. (The clerk shall re-alphabetize the
remaining section)

Section 5. FNSBC 17.30.030 F., Action on major plat applications, is
hereby amended as follows:

F. [ANYONE WHO OBJECTS TO THE BOARD’S DECISION MAY APPEAL THE
DECISION BY SUBMITTING WRITTEN NOTICE OF APPEAL] The board’s decision
may be appealed as provided in Chapter 17.80 FNSBC.

Section 6. FNSB 17.30.060 F., Action on quick plat application, is
hereby amended as follows:

F. The hearing officer will hold a public hearing in accordance with a published
hearing schedule and shall make a decision on the application based on compliance
with this title.

[1. INDIVIDUALS MAY COMMENT IN WRITING PRIOR TO THE QUICK
PLAT HEARING;]  

[2]1. Verbal testimony by parties and interested persons may be given at the
quick plat hearing;

[3]2. The hearing officer may impose conditions deemed necessary to ensure
compliance with the requirements and purpose of this title.

Section 7. FNSB 17.30.060 H., Action on quick plat application, is
hereby amended as follows:

H. [ANYONE WHO OBJECTS TO THE HEARING OFFICER’S DECISION ON A
QUICK PLAT] A party or interested person who appeared at the quick plat hearing may
appeal the decision by submitting written notice of appeal and paying the appropriate
fee within two working days of the hearing. Appeal of hearing officer decisions will be
heard by the platting board under procedures adopted and established by the platting
board.

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Section 8. FNSB 17.30.090 C., Action on waiver applications, is hereby amended as follows:

C. After acceptance of the application and at least 14 calendar days prior to the time set for the platting board review and action the platting officer will:

1. Prepare a staff report that includes a recommendation for approval or denial of the proposed subdivision;

2. Send notice of the proposed subdivision to adjoining property owners.

[A. INDIVIDUALS MAY RESPOND IN WRITING PRIOR TO THE PLATTING BOARD MEETING.

B. Verbal testimony by parties and interested persons may be given at the platting board meeting.

No revisions to the application will be considered which are subsequent to the preparation of the staff report and notice of the proposal to adjoining property owners. Any such revisions will be treated as a new application and reviewed at the next regularly scheduled meeting of the platting board.

All plans, data, and other supporting material shall be available for public inspection at the department of community planning at least 14 calendar days prior to the time set for platting board review. (The clerk shall re-alphabetize the remaining section)

Section 9. FNSB 17.30.090 J., Action on waiver applications, is hereby amended as follows:

J. [ANYONE WHO OBJECTS TO THE BOARD’S DECISION ON A WAIVER OF A PLAT MAY APPEAL THE DECISION BY SUBMITTING WRITTEN NOTICE OF APPEAL] The board’s decision may be appealed as provided in Chapter 17.80 FNSBC.

Section 10. FNSB 17.80.010, Appeals from platting board to planning commission, is hereby amended as follows:

Except for a final plat and action on a vacation application, any party or interested person who participated in the hearing before the platting board may appeal a decision of the platting board to the planning commission by submitting a written notice of appeal with the platting officer within seven days of the date of the decision. Members of the public may appeal the platting board’s application of this title’s requirements concerning the dedication or realignment of trails.

Section 11. FNSB 17.80.020, Notice of appeal, is hereby amended as follows:

A. A notice of appeal submitted pursuant to this title must be in writing and contain the following information:

1. Names and addresses of the appellant(s);

2. Plating serial case file number or other identification of the matter from which the appeal is taken;

3. Date and identity of the specific action or decision from which the appeal is taken;

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4. Specific grounds or reasons for the appeal, with reference to all title provisions upon which the appellant relies. Appeals are limited to allegations of error arising from the platting board’s interpretation, application or failure to apply the requirements of this title and unless based on changed circumstances or new evidence which with due diligence could not have been discovered for presentation to the platting board, must be based on facts or arguments raised below.

B. A notice of appeal shall be accompanied by the appropriate fee for appeals from the platting board.

C. This fee is refundable to a successful appellant.

D. An appeal may be accepted by the planning commission only if it complies with the requirements of this chapter.

E. After acceptance of an appeal, notice of the appeal must be sent to all parties and “interested persons” who participated in the hearing before the platting board notifying them of the right to request participation in the appeal on or before the deadline established by the chair or by the rules of the commission.

Section 12. FNSBC 17.80.030. Action on appeal, is hereby deleted:

[AN APPEAL TO THE PLANNING COMMISSION SHALL BE HEARD AND DECIDED UNDER THE PROCEDURE SET FORTH IN THIS SECTION:

A. PLATTING OFFICER SHALL MAKE A REPORT CONCERNING THE APPLICATION, THE ACTION FROM WHICH THE APPEAL IS TAKEN, AND THE SPECIFIC GROUNDS OR REASONS FOR THE APPEAL.

B. CHAIRPERSON SHALL REQUIRE THAT ALL INTERESTED PERSONS WHO INTEND TO PARTICIPATE IDENTIFY THEMSELVES AND THEIR INTEREST IN THE MATTER.

C. APPELLANT SHALL BE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT.

D. OTHER INTERESTED PERSONS PREVIOUSLY DETERMINED BY THE CHAIRPERSON SHALL BE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT.

E. PLATTING OFFICER AND APPELLANT SHALL BE GIVEN THE OPPORTUNITY TO PRESENT BRIEF STATEMENTS IN REBUTTAL.

F. PLANNING COMMISSION SHALL THEN RENDER ITS DECISION IN THE FORM REQUIRED BY FNSBC 17.80.040.]

Section 13. Effective Date. This ordinance shall be effective at 5:00 p.m. 30 days following its adoption.
PASSED AND APPROVED THIS 8th DAY OF AUGUST, 2013.

Diane L. Hutchison
Presiding Officer

ATTEST:

Nanci Ashford-Bingham
Municipal Borough Clerk

Ayes: Davies, Roberts, Lawrence, Dodge, Kassel, Hutchison
Noes: Sattley, Howard, Dukes
FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2014 - 43

AN ORDINANCE REQUIRING ASSEMBLY REFERRAL PRIOR TO PLANNING COMMISSION CONSIDERATION OF REZONING ORDINANCES INITIATED BY A MEMBER OF THE BOROUGH ASSEMBLY OR MAYOR AND AMENDING TITLE 18.54 REGARDING PUBLIC AND QUASI-JUDICIAL HEARINGS, SPOT ZONE DETERMINATIONS, RELATED REQUIREMENTS INCLUDING APPEALS

WHEREAS, while most rezones are initiated and requested by property owners, borough code also permits a rezone to be initiated by any member of the borough assembly or the mayor; and

WHEREAS, although citizen initiated rezones require a petition favoring the rezone signed by at least 51 percent of the property owners within the area proposed to be rezoned, no similar process exists for rezones initiated by a member of the borough assembly or the mayor; and

WHEREAS, requiring an assembly referral prior to the planning commission’s consideration of a rezone requested by an assembly person or the mayor will provide that initial notice and screening process; and

WHEREAS, currently Title 18’s requirement that all rezone ordinances be placed on the assembly’s agenda for public hearing conflicts with FNSBC 2.09.035 B. which requires legal approval before placement on the assembly agenda; and

WHEREAS, some of the language in Title 18 concerning various hearings held by the planning commission needs some cleanup, differentiation between public and quasi-judicial hearings, and could be streamlined into one general section.

NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

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Text to be deleted is [BRACKETED AND CAPITALIZED]
Section 1. This ordinance is of a general and permanent nature and shall be codified.

Section 2. FNSBC 18.54.010 is hereby amended as follows:

A. Initiation. Applications for rezoning, conditional uses and variances shall be made and reviewed according to the following procedures:

1. The applicant shall complete and submit the application forms provided by the borough, along with the required processing fee, prior to the time and date established as the deadline for the planning commission meeting.

2. The department of community planning shall review the submitted request, and submit the recommendation and all other applicable information to the planning commission and borough assembly. The recommendation shall be based upon conformance to the comprehensive plan and public safety.

B. Public Hearing. The planning commission shall conduct public hearings on all proposed rezones and quasi-judicial hearings for conditional use permits and variance requests unless specifically exempted under this title. In its rezone deliberations the planning commission shall consider all oral and written statements from the applicant, the public and the department of community planning. Public testimony on rezones shall be relevant and related to the proposed land use.

C. Public Notification. [B. PUBLIC HEARING.] Rezonings[. CONDITIONAL USES AND VARIANCES] shall become effective only after a public hearing has been held at which all interested parties and/or citizens shall have an opportunity to be heard, and [AT WHICH] approval has been [RECOMMENDED OR ]granted by the [MEMBERS OF THE PLANNING COMMISSION OR] borough assembly. Conditional uses and variances shall become effective only after a quasi-judicial hearing has been held and approval granted by the planning commission.

1. Publication of Notice. Notice of the time and place of the public or quasi-judicial hearing shall be published at least 10 days prior to the date of the hearing in a newspaper with general circulation in the jurisdiction of the planning commission and borough assembly.

2. Mailing of Notice by the Department of Community Planning. Notice of the public or quasi-judicial hearing shall be mailed to all owners, as shown by the records of the borough assessor, of property in the area to be considered for a rezoning, conditional use or variance. Notice shall be sent to owners of lots or land either within an area measured 500 feet in all directions from the boundaries of the area being considered if the request is of land within the incorporated areas of the cities of Fairbanks and North Pole, or within an area measured 1,000 feet in all directions from the boundaries of the area being considered if the request is of land outside of the incorporated areas of the cities of Fairbanks and North Pole. In either instance at least 10 owners of lots or land outside of the area being considered shall be notified by mail, whereby these distance requirements shall be increased.

3. Notice by Applicant. The applicant shall provide notice of the public or quasi-judicial hearing by posting the land subject to the application for a rezone, conditional use or variance with notice clearly legible from each improved street.
adjacent to the land, or as determined by the community planning director or his
designee. All posted notices shall be in the standardized form provided by the
department of community planning and shall be posted at least 20 calendar days prior
to the date of the public or quasi-judicial hearing and remain until final action has been
taken on the matter. Twenty days before the public or quasi-judicial hearing, the
applicant shall submit to the department of community planning a signed affidavit that
the notice was posted as required by this subsection and photographs of all posted
notices. If a site inspection is conducted, staff will note in the staff report the presence
or absence of the posted notice. The applicant shall remove the sign within 10 days
following the final public or quasi-judicial hearing.

D. Limitations. A proposed rezoning, conditional use or variance which has been
denied by the planning commission and/or the borough assembly on a particular tract of
land for a particular purpose cannot again be applied for within six months from the date
of the denial, unless a new request is submitted that is determined to be substantially
different from the original request (i.e., an application for a different but not necessarily a
more restrictive zoning district, use, distance, area, etc.).

[D. PUBLIC HEARINGS. TESTIMONY SHALL BE LIMITED TO MATTERS
DEALING WITH PUBLIC HEALTH, SAFETY AND GENERAL WELFARE.]

Section 3. FNSBC 18.54.020, Procedures for rezonings, is hereby
amended as follows:

A. Initiation. The borough assembly may, from time to time, change the zoning of
parcels of land within the borough. These changes in zoning classification shall be for
the purpose of meeting the land use needs of the residents of the borough in
conformance with the comprehensive plan. A change in zoning classification may be
initiated by:

1. Any member of the borough assembly or the mayor;
2. Any person or persons; provided, that an application for rezoning is
accompanied by a petition favoring the proposed rezoning signed by the owner or
owners of at least 51 percent of the property within the area proposed to be rezoned. If
any individual property owner owns more than 25 percent of the land area proposed to
be rezoned, then the petition shall contain such property owner’s signature. Land
owned by the state of Alaska or by the United States of America shall not be included in
these computations.

B. Application for a Rezoning. Any member of the borough assembly or the mayor
may initiate a rezone by preparation of a suitable ordinance and introduction of same to
the borough assembly in accordance with assembly procedures. The planning
commission, however, shall not consider a rezone initiated by a member of the borough
assembly or the mayor unless the assembly votes to refer the ordinance to the planning
commission. Any other person or persons who wish to initiate a rezone shall complete
and submit the application forms provided by the department of community planning
along with all requested information. The written consent of the owner of the interest in
the property to be rezoned, or an authorized representative having power of attorney,
shall accompany all applications. The written consent of a holder of a security interest

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in the property does not need to be obtained. The application shall also include the following information:

1. The legal and common description of the property to be rezoned;
2. The property’s present and proposed zoning classification;
3. The recommendation for use of the property by the borough’s comprehensive plan;
4. The reasons for requesting the rezoning.

C. [PUBLIC HEARING. THE PLANNING COMMISSION SHALL CONDUCT PUBLIC HEARINGS ON ALL PROPOSED REZONES, INCLUDING REZONES INITIATED BY MEMBERS OF THE BOROUGH ASSEMBLY.]

D. Hearing and Recommendation by the Planning Commission. The planning commission shall review, hear and recommend whether or not a request for rezoning should be approved. [THE PLANNING COMMISSION SHALL CONSIDER ALL ORAL AND WRITTEN STATEMENTS FROM THE APPLICANT, THE PUBLIC, THE DEPARTMENT OF COMMUNITY PLANNING, AND ITS OWN MEMBERS PRIOR TO MAKING ITS RECOMMENDATION.] The planning commission shall also consider and adopt findings of fact demonstrating whether or not the proposed rezoning conforms to the comprehensive plan and to the public health, safety and welfare.

The planning commission shall recommend to the assembly one of the following actions:

1. Approve the rezoning request as submitted;
2. Approve the rezoning with special limitations;
3. Recommend an amendment to the request to a more appropriate zoning district; or
4. Disapprove the rezoning request.

D[E]. Submission to the Borough Assembly. Unless the ordinance is not legally approved by the Borough attorney [WITHIN 30 DAYS OF THE PLANNING COMMISSION’S RECOMMENDATION] a report of said recommendation together with an ordinance shall be submitted within 30 days of the planning commission’s recommendation to the borough assembly [AND A PUBLIC HEARING DATE SHALL BE ESTABLISHED]. If a rezone is not submitted to the borough assembly because it is not legally approved by the Borough Attorney a written report including the reason will be submitted to the planning department and borough assembly within 10 business days to complete the file.

E[F]. Hearing and Determination by the Borough Assembly. The borough assembly shall review, hear and decide whether or not a request for rezoning shall be approved.

1. The assembly may approve a rezoning as submitted, or with special limitations approved by a majority of the votes cast by the planning commission members who voted on the rezone, or amend the request to a more appropriate zoning district.

2. The assembly may disapprove the rezoning or remand the request to the planning commission with instructions for its reconsideration.
Section 4. FNSBC 18.54.030 C. regarding public hearing for conditional uses is hereby deleted and the section shall be re-lettered.
[C. PUBLIC HEARING. NO CONDITIONAL USE REQUEST SHALL BE APPROVED UNTIL A PUBLIC HEARING HAS BEEN HELD THEREON BY THE PLANNING COMMISSION IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED HEREIN.]

Section 5. FNSBC 18.54.030 D. regarding hearing and decision by the planning commission on conditional uses is hereby amended as follows:
D. Hearing and Decision by the Planning Commission. The planning commission shall review, hear and decide whether or not to approve a request for a conditional use.
[IN ITS DELIBERATIONS, THE PLANNING COMMISSION SHALL CONSIDER ALL ORAL AND WRITTEN STATEMENTS FROM THE APPLICANT, THE PUBLIC AND THE DEPARTMENT OF COMMUNITY PLANNING.] The planning commission shall also consider and adopt findings in each of the following:

1. Whether or not the proposed conditional use conforms to the intent and purpose of this title and of other ordinances and state statutes;

[2. WHETHER OR NOT THE PROPOSED CONDITIONAL USE IS IN THE INTEREST OF THE APPLICANT;]

[3.] 2. Whether or not there are adequate existing sewage capacities, transportation facilities, energy and water supplies, and other public services to serve the proposed conditional use;

[4.] 3. Whether or not the proposed conditional use will protect the public health, safety and welfare.

The planning commission may approve or deny a conditional use request or may approve a conditional use request with conditions to ensure the protection of the public health, safety and welfare. Such conditions may relate to any, or more, of the following: traffic flow and access requirements, lighting, pedestrian movements.

Section 6. FNSBC 18.54.040 C. regarding public hearing for variances is hereby deleted.
[C. PUBLIC HEARING. NO VARIANCE REQUEST SHALL BE APPROVED UNTIL A PUBLIC HEARING HAS BEEN HELD THEREON BY THE PLANNING COMMISSION IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED HEREIN.]

Section 7. FNSBC 18.54.040 D. regarding hearing and decision by the planning commission on variances is hereby amended as follows:
D. Hearing and Decision by the Planning Commission. The planning commission shall review, hear and decide whether or not to approve a request for a variance. [IN DELIBERATIONS, THE PLANNING COMMISSION SHALL CONSIDER ALL ORAL AND WRITTEN STATEMENTS FROM THE APPLICANT, THE PUBLIC AND THE DEPARTMENT OF COMMUNITY PLANNING.] The planning commission shall also consider and adopt findings in each of the following:

1. Whether or not the proposed variance conforms to the intent and purpose of this title and of other ordinances and state statutes;

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2. Whether or not the denial of the proposed variance will deprive the applicant the use of his/her property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area;

3. Whether or not the proposed variance will protect the public health, safety and welfare, traffic and parking conditions from danger of fire.

The planning commission may approve or deny a variance request or may approve a variance request with conditions upon the property benefitted by the variance as may be necessary to comply with the standards set forth in this title to ensure consistency with the general intent of this title.

Section 8. FNSBC 18.54.045 C. regarding notification requirements for highway project variances is hereby deleted.

[C. NOTIFICATION REQUIREMENTS. NOTIFICATION REQUIREMENTS SHALL BE AS SPECIFIED IN FNSBC 18.54.010.]

Section 9. FNSBC 18.54.045 D.2. regarding hearing and decision process for highway project variances is hereby amended as follows:


Section 10. FNSBC 18.54.050, Procedures for amendments to this title, is hereby deleted.

[18.54.050 PROCEDURES FOR AMENDMENTS TO THIS TITLE.

A. INITIATION. AMENDMENT TO THIS TITLE MAY BE INITIATED BY THE BOROUGH ASSEMBLY, PLANNING COMMISSION. AN AMENDMENT TO THIS TITLE INVOLVES CHANGES IN ITS TEXT AND WORDING, INCLUDING BUT NOT LIMITED TO CHANGES IN THE REGULATIONS REGARDING USES, SETBACKS, HEIGHTS, LOT AREAS, DEFINITIONS, ADMINISTRATION AND/OR PROCEDURES.

B. APPLICATION FOR AN AMENDMENT TO THIS TITLE. AN AMENDMENT TO THIS TITLE MAY BE INITIATED BY ANY MEMBER OF THE BOROUGH ASSEMBLY BY PREPARATION OF AN APPROPRIATE TITLE AND INTRODUCTION AND ENACTMENT OF SAME IN ACCORDANCE WITH ASSEMBLY PROCEDURES. AN APPLICATION FOR AN AMENDMENT OF THIS TITLE INITIATED BY THE PLANNING COMMISSION SHALL BE MADE BY THE COMPLETION AND SUBMISSION OF THE APPROPRIATE APPLICATION FORMS PROVIDED BY THE DEPARTMENT OF COMMUNITY PLANNING.

C. REVIEW AND DECISION BY THE BOROUGH ASSEMBLY. THE BOROUGH ASSEMBLY SHALL REVIEW, STUDY AND DECIDE WHETHER OR NOT TO ADOPT A PROPOSED AMENDMENT TO THIS TITLE.

D. LIMITATIONS, AMENDMENTS AND REVISIONS. THE BOROUGH ASSEMBLY MAY APPROVE THE PROPOSED AMENDMENT, DENY IT OR REFER

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IT BACK TO THE PLANNING COMMISSION FOR FURTHER REVIEW AND
CONSIDERATION. IF APPROVED, THE DEPARTMENT OF COMMUNITY
PLANNING SHALL REVISE THIS TITLE ACCORDINGLY.]

Section 11. Effective Date. This ordinance shall be effective at 5:00 p.m.
of the first Borough business day following its adoption.

PASSED AND APPROVED THIS 23rd DAY OF OCTOBER, 2014.

[Signature]
John Davies,
Deputy Presiding Officer

ATTEST:

[Signature]
Nanci Ashford-Bingham
Nanci Ashford-Bingham, MMC
Borough Clerk

Ayes: Hutchison, Roberts, Lawrence, Dodge, Davies
Noes: Golub, Sattley
Excused: Kassel, Dukes
FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2015-74

AN ORDINANCE AMENDING FNSBC 2.21.150 REGARDING BOARD AND COMMISSION PROCEDURES INCLUDING PROVIDING FOR TELEPHONIC AND OTHER MEANS OF PARTICIPATION IN QUASI-JUDICIAL HEARINGS AND AMENDING TITLE 18 TO CLARIFY AND EXPRESSLY PROVIDE FOR PARTICIPATION BY INTERESTED PERSONS

WHEREAS, Quasi-judicial hearings like conditional use permits and subdivision applications often involve subjects specifically impacting their neighbors and others who possess a specific property interest that is significantly affected by the proposed action in a way different than that of the general public;

WHEREAS, Quasi-judicial hearings significantly impacting property interests require procedures providing minimum due process guarantees including requiring testimony under oath subject to cross-examination; and

WHEREAS, Authorized hearing participants may not be able to personally attend a hearing due to scheduling or other legitimate constraints; and

WHEREAS, Allowing affected individuals to testify telephonically or by affidavit with appropriate procedural safeguards may enable those who cannot personally attend a hearing to still participate while still maintaining due process safeguards; and

WHEREAS, Although Title 17 includes a definition of "interested persons," Title 18 currently does not clearly delineate or define who can testify or otherwise participate in a quasi-judicial hearing; and

WHEREAS, There should be clear provisions, procedures and rules governing the extent to which an interested person can participate as a party in a hearing or appeal a quasi-judicial decision.

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NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

Section 1. This ordinance is of a general and permanent nature and shall be codified.

Section 2. FNSBC 2.21.150 regarding procedural rules for boards and commissions is hereby amended as follows:

A. Notwithstanding any language to the contrary, all boards and commissions shall follow, as a minimum, the procedural rules set forth in this section. A board or commission may adopt other rules but those rules may not conflict with this section. In all matters of procedure not covered by this or other code sections or rules adopted by the board or commission, Robert’s Rules of Order, as revised, shall be applicable and shall govern

1. Boards and commissions conducting quasi-judicial hearings shall adopt rules permitting telephonic testimony by a party or witness upon request for good cause and in the absence of substantial prejudice to opposing parties. If telephonic participation is approved, then the party requesting it shall be responsible for arranging the telephone call and for payment of associated telephone charges. Adopted rules may limit the number of individuals testifying telephonically due to technological or other valid considerations; however, if an individual’s telephonic participation is denied because of these limits, the rules shall permit other reasonably available alternatives such as setting an additional or alternate date for the testimony.

2. Boards and commissions conducting quasi-judicial hearings shall also adopt rules permitting parties to submit their testimony by affidavit subject to the opposing parties’ right of cross-examination that the chair determines to be reasonably necessary to explore any matters which tend to contradict, modify or explain the testimony.

3. Boards and commissions conducting quasi-judicial hearing shall establish rules providing for a determination concerning an individual’s status as a party sufficiently in advance of the hearing to allow the person to timely request participation by telephonic or submit testimony by other allowable means. If an individual qualifies as an interested person, the individual may provide testimony but the chair may otherwise limit participation at the hearing unless the person possesses a significant property interest that is not adequately represented by existing parties.

4. Formal rules of evidence do not apply to quasi-judicial hearings; however, the chair may exclude irrelevant, immaterial or unduly repetitious evidence.

B. All de novo quasi-judicial hearings by a board or commission involving an appeal from an administrative determination shall be conducted according to the following procedures:

1. Copies of all procedural rules and any written staff report must be available at least five working days prior to the hearing and at the hearing. At least five working days prior to the hearing, [STAFF AND THE APPELLANT] the parties shall
exchange copies of all documents intended to be submitted to the board or commission. Staff shall also ensure that the relevant public files are available for inspection and copying by the [APPELLANT] parties.

2. At the beginning of the hearing, the chair shall give a brief introduction regarding the matter and inquire as to whether any member needs to make any disclosures required by the code of ethics or disclose any ex parte communications regarding the matter at issue. All parties must at this time express their objections, if any, to a member participating in the hearing.

3. Testimony must be taken under oath or affirmation. A group oath or affirmation, including [APPELLANT AND STAFF] all parties, may be given prior to taking any testimony. Relevant testimony and evidence may be submitted at the hearing. To the extent time limits are imposed, those time limits shall not include time spent responding to questions and shall be evenly applied to all parties.

4. All parties shall, unless their participation is limited by the chair as authorized in this chapter, have the right to present evidence including testimony and exhibits and the right of cross-examination of witnesses to the extent the chair determines to be reasonably necessary to explore any matters which tend to contradict, modify, or explain testimony given on direct. The party bearing the burden of proof shall have the right to first provide testimony and present all relevant witnesses and evidence and shall have the right to rebuttal.

5. If a party seeks to introduce a document not previously copied and exchanged with the other party and the other party objects, the document shall be admitted only if the board finds a good faith reason for its failure to be included in the documentary exchange. A “good faith reason” includes, but is not limited to, the portion of an animal behavior log for the days occurring after the required documentary exchange. If the late admission creates any prejudice to the opposing party, the chair shall provide the opposing party additional time or take other allowable measures to address any resulting prejudice.

C. All de novo quasi-judicial hearings by a board or commission not involving an appeal from an administrative determination shall be conducted according to the following procedures:

1. Copies of all procedural rules and any written staff report must be available at least five working days prior to the hearing and at the hearing. Staff shall also ensure that the relevant public files are available for inspection and copying by the [APPLICANT] parties. If additional documents or information is submitted to staff after the report is written, those documents and information shall become part of the public file. If documents or information is added to the public file after [INSPECTION BY THE PARTIES APPLICANT] the staff report is written, staff shall notify the [APPLICANT] parties who have previously inspected the file as soon as reasonably practicable and provide a copy to the [APPLICANT] parties if requested. Documents or information added to the file in compliance with this section may be provided to the board or commission.

2. At the beginning of the hearing, the chair shall give a brief introduction regarding the matter and inquire as to whether any member needs to make any
disclosures required by the code of ethics or disclose any ex parte communications addressing the matter at issue. All parties must at this time express their objections, if any, to a member participating in the hearing.

3. Testimony must be taken under oath or affirmation. A group oath or affirmation, including [APPLICANT AND STAFF] all parties, may be given prior to taking any testimony. Relevant testimony and evidence may be submitted at the hearing. To the extent time limits are imposed, those time limits shall not include time spent responding to questions and shall be evenly applied to [ALL PARTIES] staff and the applicant. Time limits for interested persons shall be set by the chair.

4. Staff Report. Staff may provide a report on any technical or other issues within their expertise and may make recommendations to the board or commission. Questions of staff by the decision-making body and by the applicant, if present, should be asked at this point.

5. Applicant. The applicant or the applicant's representative, if present, may present testimony and evidence to support the application. To the extent the applicant wishes to present expert witnesses, they should testify at this point. Questions of the applicant by the decision-making body or staff should be asked at this point. The applicant shall be provided a minimum of 10 minutes which may be extended by the chair dependent upon the complexity of the issue. In addition, if the staff report opposes the application in whole or in part, the applicant's time shall be extended if necessary to ensure the applicant receives time equivalent to that provided to staff.

6. [PUBLIC TESTIMONY. IF THE MATTER IS SCHEDULED FOR A PUBLIC HEARING, THE PUBLIC MAY TESTIFY. TIME LIMITS MAY BE PLACED ON INDIVIDUAL COMMENTS (EXCLUDING APPLICANT AND STAFF PRESENTATION). IF TIME LIMITS ARE PLACED, THEY SHOULD BE APPLIED IN AN EQUAL MANNER TO ALL INDIVIDUALS PROVIDING PUBLIC COMMENT. COMMENTS SHOULD BE LIMITED TO THOSE RELEVANT TO THE HEARING SUBJECT.] All parties shall, unless their participation is limited by the chair as authorized in this chapter, have the right to present evidence including testimony and exhibits and the right of cross-examination of witnesses to the extent the chair determines to be reasonably necessary to explore any matters which tend to contradict, modify, or explain testimony given on direct.

7. Rebuttal. The applicant shall be provided a minimum of five additional minutes to respond to any testimony presented by [the PUBLIC] interested persons. This time may be extended by the chair in consideration of lengthy or complex [PUBLIC] testimony. In addition, to the extent the decision-making body decides, after [PUBLIC] testimony, to ask any further questions [OF STAFF], the applicant shall be given a reasonable time to respond.

D. All legislative hearings by a board or commission shall be conducted according to the following procedures:

1. Sponsor Report. If present, the sponsor(s) of the proposed legislation or the sponsor’s designee(s) shall first be afforded an opportunity to provide a report on the proposed legislation. The sponsor may choose to present before or after the staff report. If time limits are applied, the sponsor and staff shall receive equivalent time.

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Questions of the sponsor by the decision-making body concerning the proposed legislation should be asked at this point so that the members of the public wishing to comment can be reasonably informed.

2. Staff Report. Staff may then provide a report on any technical or other issues within their expertise. Questions of staff by the sponsor(s) or the decision-making body concerning the proposed legislation should be asked at this point so that the members of the public wishing to comment can be reasonably informed.

3. Public Comment. Time limits may be placed on individual comments. If time limits are placed, they should be applied in an equal manner to all individuals providing public comment. Comments may be limited to the hearing subject.

4. Sponsor Response. The sponsor(s) or designee(s) shall be afforded a reasonable opportunity to respond to any questions, issues or concerns raised during the staff report or public comment.

E. If a hearing involves both a legislative issue and a quasi-judicial matter, the quasi-judicial procedures shall apply except that if the matter is scheduled for a public hearing, the public may comment on the legislative issue. Time limits may be placed on individual comments (excluding applicant and staff presentation). If time limits are placed, they should be applied in an equal manner to all individuals providing public comment. Comments should be limited to those relevant to the hearing subject.

F. Definitions.

1. “Applicant” means any person or entity whose specific legal rights are being adjudicated in the quasi-judicial hearing.

2. “Staff” means borough employees who as part of their job responsibilities are tasked with providing the board or commission with technical or other relevant information or those individuals from whom the board has specifically sought, after notice to the applicant, their input or advice.

3. “Sponsor” means the mayor, assembly member, chairperson of committee draft, or a member of the public whose authorized application created the proposed legislation. If the authorized application involves multiple owners or multiple properties, "sponsor" only includes one owner representative for each property.

4. “Party” means the applicant, any appellant(s) and staff. It also includes “interested persons” or “persons aggrieved” to the extent their participation is expressly permitted by borough code in a quasi-judicial matter. It does not include members of the public testifying under public comment.

Section 3. FNSB 18.06, Definitions, is amended to add the following definition:

“Interested persons” means those individuals who are required in this title to be mailed specific notice of a quasi-judicial hearing or who provide an affidavit or other adequate proof that they reside within that hearing notification area or who timely apply to participate and prove that they possess a specific property interest that may be significantly affected by the proposed action in a way different than that of the general public. For purposes of verbal testimony only, interested persons include, when the

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applicant is a public entity (including an agency, political subdivision or other component unit of the public entity), the citizens of that public entity.

Section 4. FNSB 18.54.010 B. is amended as follows:
B. [PUBLIC] Hearings. The planning commission shall conduct public hearings on all proposed rezones and quasi-judicial hearings for conditional use permits and variance requests unless specifically exempted under this title. Interested persons may testify and submit other admissible evidence for the planning commission's consideration at a quasi-judicial hearing. When the applicant is the borough the public may submit written comments and general public comment may be permitted. In its rezone deliberations the planning commission shall consider all oral and written statements from the applicant, the public and the department of community planning. Public testimony on rezones shall be relevant and related to the proposed land use.

Section 5. FNSB 18.54.010 C is amended as follows:
Public Notification. Rezonings shall become effective only after a public hearing has been held at which all interested [PARTIES] persons and/or citizens shall have an opportunity to be heard, and approval has been granted by the borough assembly. Conditional uses and variances shall become effective only after a quasi-judicial hearing has been held and approval granted by the planning commission.

Section 6. FNSBC 18.54.010(C)(2) is hereby amended as follows:
2. Mailing of Notice by the Department of Community Planning. Notice of the public or quasi-judicial hearing shall be mailed to all owners, as shown by the records of the borough assessor, of property in the area to be considered for a rezoning, conditional use or variance. Notice shall be sent to owners of lots or land either within an area measured [500] 1,000 feet in all directions from the boundaries of the area being considered if the request is of land within the incorporated areas of the cities of Fairbanks and North Pole, or within an area measured [1,000] 2,000 feet in all directions from the boundaries of the area being considered if the request is of land outside of the incorporated areas of the cities of Fairbanks and North Pole. In either instance at least 10 owners of lots or land outside of the area being considered shall be notified by mail, whereby these distance requirements shall be increased.

Section 7. FNSB 18.54.040(D), is hereby amended as follows:
D. Hearing and Decision by the Planning Commission. The planning commission shall review, hear and decide whether or not to approve a request for a variance. In deliberations, the planning commission shall consider all [ORAL AND WRITTEN STATEMENTS] admitted evidence from the applicant, [THE PUBLIC] interested persons and borough staff. The planning commission shall also consider and adopt findings in each of the following:
1. Whether or not the proposed variance conforms to the intent and purpose of this title and of other ordinances and state statutes;

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2. Whether or not the denial of the proposed variance will deprive the applicant the use of his/her property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area;

3. Whether or not the proposed variance will protect the public health, safety and welfare, including protection from the impact of traffic, parking conditions, and the danger of fire.

4. The history of the development of the property.

The planning commission may approve or deny a variance request or may approve a variance request with conditions upon the property benefited by the variance as may be necessary to comply with the standards set forth in this title to ensure consistency with the general intent of this title.

Section 8. FNSB 18.54.070 A., is hereby amended as follows:

A. Initiation of Appeal. Decisions may be appealed to the board of adjustment or a hearing officer by:

1. An applicant for a conditional use or variance;

2. The permittee or owner of land for which a conditional use has been revoked;

3. Any governmental agency or unit;

4. Any person aggrieved by a decision or determination made by the director of the department of community planning in the enforcement of this title, or by a decision of the planning commission concerning a request for conditional use or variance. To be considered a “person aggrieved,” the person must [PRESENT PROOF OF THE ADVERSE EFFECT THE DECISION HAS OR COULD HAVE ON THE USE, ENJOYMENT, OR VALUE OF HIS OWN PROPERTY. THE DECISION APPEALED FROM MUST PERSONALLY AFFECT A MATTER IN WHICH THE PERSON HAS A SPECIFIC INTEREST OR PROPERTY RIGHT IN A WAY DIFFERENT FROM THAT OF THE GENERAL PUBLIC.] qualify as an interested person and if a quasi-judicial hearing was held must have participated in the hearing as a party or interested person. A request for variance from the terms of the land use regulations may be appealed when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

Section 10. FNSB 18.56.025 C, is hereby amended as follows:

Within 15 days of the hearing the department shall issue an administrative determination of the grandfather rights. If no hearing is required the administrative determination shall be issued within 10 working days of the application. Administrative determinations granting structural-related grandfather rights without a hearing must be mailed to the applicant and owners of nearby lots or land as set forth in FNSBC 18.54.010(C)(2). Administrative determinations may be appealed to the board of adjustment (as designated by FNSBC 18.52.030) within 15 days of the date of the determination. Appeals shall be

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heard de novo. The board of adjustment shall uphold or reverse the
determination and adopt specific findings of fact after considering the oral and
written statements of the applicant, interested persons [THE PUBLIC], and the
department of community planning. This decision is appealable to the superior
court in accordance with the civil rules.

Section 10. Effective Date. This ordinance shall be effective at 5:00 p.m. of the
first Borough business day following its adoption.

PASSED AND APPROVED THIS 24th DAY OF MARCH, 2016.

John Davies
Presiding Officer

ATTEST:

Nanci Ashford-Bingham, MMC
Borough Clerk

Ayes: Sattley, Hutchison, Cooper, Lawrence, Dodge, Quist, Davies
Noes: None
Excused: Roberts, Westlind
Chapter 21.93
ADMINISTRATIVE APPEALS

Sections:

Article I. General Provisions

21.93.010 Appeals, general.
21.93.020 Decisions subject to appeal to Planning Commission.
21.93.030 Decisions subject to appeal to the Board of Adjustment or a hearing officer.
21.93.040 Decisions not subject to appeal.
21.93.050 Standing – Appeal to Planning Commission.
21.93.060 Standing – Appeal to hearing officer.
21.93.070 Time for appeal.
21.93.080 Notice of appeal.
21.93.090 Authorized representative.
21.93.100 General appeals procedure.
21.93.110 Appeal decisions.

Article II. Planning Commission Appeal Procedures

21.93.300 Appeals to the Planning Commission.
21.93.310 Other procedures.

Article III. Board of Adjustment Appeal Procedures

21.93.500 Parties eligible to appeal Planning Commission decision to the Board of Adjustment or a hearing officer – Notice of appearance.
21.93.510 New evidence or changed circumstances.
21.93.520 Preparation of record.
21.93.530 Written briefs.
21.93.540 Appeal hearing.
21.93.550 Board of Adjustment or hearing officer decision.
21.93.560 Remand.
21.93.570 Other procedures.

Article IV. Conflicts of Interest and Ex Parte Contacts

21.93.700 Appeals – Conflict of interest.
21.93.710 Appeals – Ex parte communication prohibited.

Article I. General Provisions

21.93.010 Appeals, general.

This chapter governs administrative appeals to the Planning Commission and the Board of Adjustment from actions and determinations taken under the Homer Zoning Code. [Ord. 08-29, 2008].
21.93.020 Decisions subject to appeal to Planning Commission.

The following acts or determinations made under this title by the City Manager, City Planner, or their staff members may, when final, be appealed to the Commission by a person with standing:

a. Approval or denial of a zoning permit.

b. Approval or denial of a sign permit.

c. Approval or denial of any other permit that is within the authority of the City Planner to approve or deny.

d. An enforcement order issued under HCC 21.90.060.

e. Any other decision that is expressly made appealable to the Commission by other provisions of the Homer Zoning Code. [Ord. 08-29, 2008].

21.93.030 Decisions subject to appeal to the Board of Adjustment or a hearing officer.

The following acts or determinations of the Commission, when final, may be appealed to the Board of Adjustment or a hearing officer appointed by the City Manager by a person with standing:

a. Grant or denial of a conditional use permit.

b. Grant or denial of a variance.

c. Grant or denial of formal recognition of a nonconforming use or structure, or a decision terminating a nonconforming use or structure.

d. Grant or denial of a conditional fence permit.

e. A decision by the Commission in a matter appealed to the Commission under HCC 21.93.020.

f. Any other final decision that is expressly made appealable to the Board of Adjustment or a hearing officer by other provisions of the code. [Ord. 17-07(S-3)(A) § 5, 2017; Ord. 08-29, 2008].

21.93.040 Decisions not subject to appeal.

The following acts or determinations may not be appealed:

a. A decision to cite or not cite a person for a violation of the code under HCC 21.90.090 or any other provision of the code.

b. A decision to not issue an enforcement order under HCC 21.90.060, 21.40.150, or any other provision of the code.

b. An order of abatement issued under HCC 21.90.070 after all appeals have been exhausted or the time for appeal has expired.

d. Any legislative act or determination, including any recommendations, to approve or reject any proposal or ordinance for the adoption, revision, or amendment of the zoning code, the zoning map, a
comprehensive plan or any component thereof, any other plan, a rezoning, or any other legislative matter.

e. Any matter not expressly made appealable by this section or another provision of the Homer Zoning Code. [Ord. 08-29, 2008].

21.93.050 Standing – Appeal to Planning Commission.

Only the following have standing to appeal an appealable action or determination of the City Planner to the Commission:

a. The applicant for the action or determination, or the owner of the property that is the subject of the action or determination.

b. The City Manager or City Planner or any governmental official, agency, or unit.

c. Any person aggrieved by the action or determination. [Ord. 08-29, 2008].

21.93.060 Standing – Appeal to hearing officer.

Only the following have standing to appeal an appealable action or determination of the Planning Commission to the Board of Adjustment or a hearing officer:

a. Applicant for the action or determination, or the owner of the property that is the subject of the action or determination under appeal.

b. The City Manager, the City Planner or the City Planner’s designee, or any governmental official, agency, or unit.

c. Any person who actively and substantively participated in the proceedings before the Commission and is aggrieved by the action or determination.

d. Any person who actively and substantively participated in the proceedings before the Commission and would be aggrieved if the action or determination being appealed were to be reversed on appeal. [Ord. 17-07(S-3)(A) § 6, 2017; Ord. 14-45 § 1, 2014; Ord. 08-29, 2008].

21.93.070 Time for appeal.

a. An appeal to the Planning Commission must be filed within 30 days after the date of distribution of the final action or determination to the applicant or other person whose property is the subject of the matter being appealed.

b. An appeal to the Board of Adjustment or a hearing officer must be filed within 30 days after the date of distribution of the final action or determination to the applicant and other parties, if any. [Ord. 17-07(S-3)(A) § 7, 2017; Ord. 08-29, 2008].

21.93.080 Notice of appeal.

a. A notice of appeal from an action or determination of the City Planner or the Planning Commission shall be filed with the City Clerk.
b. A notice of appeal shall be in writing, be signed by the appellant, and shall contain, but is not limited to, the following information:

1. The name and address of the appellant.

2. A description of the action or determination from which the appeal is sought and the date upon which the action or determination became final.

3. The street address and legal description of the property that is the subject of the action or determination being appealed, and the name and address of the owner(s) of that property.

4. Detailed and specific allegations of error, including reference to applicable provisions of the zoning code or other law.

5. A statement of whether the action or determination should be reversed, modified, or remanded for further proceedings, or any other desired relief.

6. Proof showing that the appellant is an aggrieved person with standing to appeal under HCC 21.93.050 or 21.93.060, whichever is applicable.

7. The appellant’s choice of decision maker, which may be either the Board of Adjustment or a hearing officer appointed by the City Manager.

c. The City Clerk shall reject any notice of appeal that does not comply with HCC 21.93.070 and this section and notify the appellant of the reasons for the rejection. If a notice of appeal is rejected for reasons other than timeliness, a corrected notice of appeal that complies with this section will be accepted as timely if filed within seven days of the date on which the City Clerk mails the notice of rejection.

d. The City Clerk shall mail copies of the notice of appeal to all parties of record in the proceeding appealed from within seven days of the date on which the City Clerk determines the notice of appeal complies with HCC 21.93.070 and this section.

e. Any person with standing under HCC 21.93.050 or 21.93.060, whichever is applicable, may, within seven days after the date the City Clerk mailed copies of an accepted notice of appeal, file notice of cross appeal. Any notice of cross appeal shall, to the extent practical, comply with subsection (b) of this section.

f. The City Clerk shall promptly give notice of the cross appeal to the appellant and all other parties who have filed a notice of appearance. [Ord. 17-07(S-3)(A) § 8, 2017; Ord. 08-29, 2008].

21.93.090 Authorized representative.

No person may represent a party to an appeal without filing with the City Clerk written authorization, which shall be signed by the party so represented and provide the name and address of the party’s representative. If the person representing another is a lawyer licensed to practice law in Alaska, an entry of appearance signed by the attorney is acceptable in lieu of authorization signed by the person so represented. [Ord. 08-29, 2008].
"Person aggrieved" means a person who shows proof of the adverse effect an action or determination taken or made under the Homer Zoning Code has or could have on the use, enjoyment, or value of real property owned by that person. An interest that is no different from that of the general public is not sufficient to establish aggrievement.
THE SUPREME COURT OF THE STATE OF ALASKA

FRANK GRISWOLD, Appellant, v. HOMER BOARD OF ADJUSTMENT, RICK ABBOUD, JOSE RAMOS, and KENTON BLOOM, Appellees.

) ) Supreme Court No. S-16660
) ) Superior Court No. 3HO-15-00021 CI
) ) OPINION
)
) No.7295 – September 14, 2018
)
)
)
)

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Homer, Carl Bauman, Judge.


Before: Stowers, Chief Justice, Winfree, Maassen, Bolger, and Carney, Justices.

STOWERS, Chief Justice.

I. INTRODUCTION

Frank Griswold twice appealed the Homer Advisory Planning Commission’s approval of a conditional use permit to the Homer Board of Adjustment and later appealed the Board’s second decision to the superior court, which sua sponte
dismissed his appeal for lack of standing. Because Griswold did not have notice that his standing was at issue, his due process rights were violated. We therefore reverse and remand for the superior court to decide his appeal on the merits.

II. FACTS AND PROCEEDINGS

In January 2014 the Homer Advisory Planning Commission approved a conditional use permit allowing “[m]ore than one building containing a permitted principal use” on Lot 1-A-1 Carl Sholin Subdivision No. 5 in the Central Business District in Homer. Frank Griswold, as a resident of Homer and as an owner of several lots in the area,\(^1\) appealed the Commission’s decision to the Homer Board of Adjustment. In June the Board issued a decision affirming the Commission’s decision in part; it rejected two findings for insufficient evidence and remanded for consideration of additional evidence. On remand the Commission again approved the conditional use permit. Griswold again appealed. In January 2015 the Board affirmed the Commission’s decision, and Griswold appealed to the superior court.

Oral argument before the superior court was held in February 2016, and the court subsequently accepted supplemental briefing. In January 2017 the court sua sponte dismissed the appeal for lack of standing by Griswold. In its dismissal order the court recognized that “the briefs by the parties did not address the issue of standing,” but it noted that AS 29.40.060 provides for an appeal by “a person aggrieved from a decision,” and it determined that the concerns raised by Griswold regarding the conditional use permit “do not rise to the level of aggrievement sufficient to satisfy the Homer ordinance

\(^1\) Griswold reports that he owns eight lots “in very close proximity to the subject property,” including his place of residence, and that one of his lots is “within 300 feet of the subject property.” He indicates that one of the eight properties (not the one within 300 feet) was acquired after the notice of appeal was filed.
on standing." The court also found that Griswold’s "potential injury is indistinguishable from the potential adverse effect . . . on any member of the general public of Homer."

Griswold filed a motion for reconsideration, which was denied. He then filed a motion for clarification of the order that denied reconsideration, arguing that because "[t]he order [was] captioned ‘Order For Reconsideration[,]’ . . . the [c]ourt may have intended to grant [the motion] rather than deny it." (Emphasis in original.) In response, the court issued an order explaining that "the body of the Order reflects the opinion of this [c]ourt that reconsideration was and is not appropriate." Griswold appeals.

III. STANDARD OF REVIEW

"We review due process claims de novo, ‘adopting the rule of law most persuasive in light of precedent, reason, and policy.’ "\(^2\)

IV. DISCUSSION

Under the Alaska Constitution, "[n]o person shall be deprived of life, liberty, or property, without due process of law."\(^3\) "[P]rocedural due process under the Alaska Constitution requires notice and opportunity for hearing appropriate to the nature of the case."\(^4\) In order to "have a reasonable opportunity to be heard," the "[p]arties must have notice of the subject of proceedings that concern them."\(^5\) "A hearing is required in


\(^3\) Alaska Const. art. I, § 7.


\(^5\) Id. (quoting Potter v. Potter, 55 P.3d 726, 728 (Alaska 2002)).
order to give the parties an opportunity to present the quantum of evidence needed [for the court] to make an informed and principled determination.”

Griswold argues that his due process rights were violated by the superior court’s sua sponte dismissal for lack of standing. He points out that he asserted standing in his notices of appeal to the Board based on several lots he owns “within one block of the subject property,” including one lot within 300 feet, and based on his belief that the uses approved via the conditional use permit “will create congestion, visual blight, and leaching/migration of sewage and other contaminates that will adversely affect the general character of the neighborhood and the value of his real property.” In his second notice of appeal to the Board, he also alleged that the uses approved via the conditional use permit “will promote . . . criminal activity that will adversely affect the general character of the neighborhood and the value of his real property.” He points out that the city clerk found these notices of appeal compliant with Homer City Code (HCC) provisions relating to the timing for and notice of appeal and cites Griswold v. City of Homer, where this court held that “[t]he delegation [to the city clerk] of the authority to reject appeals for lack of standing was . . . lawful.” He also notes that the Board did not raise the issue of his standing. He argues that his motion for reconsideration, which was limited to five pages under Alaska Civil Rule 77(k)(2), was his only opportunity to defend his standing.

The Board responds that “Griswold had ample notice that his standing was at issue and opportunity to demonstrate he met the standing requirement.” It argues that “Griswold had ample notice of the criteria for determining his standing to appeal” and “fully understood his obligation to meet the standing criteria,” noting that “[h]e

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6 Id. (alteration in original) (quoting Walker, 960 P.3d at 622).
previously litigated his standing to appeal a Homer land use decision” and that his notices of appeal to the Board responded to the requirement to show that he had standing to appeal. It contends that Griswold did not “identify[] the specific location of his property”; that his “allegations regarding the harm that would result from [the conditional use permit were] nonspecific, conclusory and speculative”; and that he therefore failed to prove standing. The Board asserts that Griswold “had multiple opportunities to present evidence that showed he met [the standing] criteria[] and had a final opportunity to argue against the dismissal of his appeal through his motion for reconsideration.” It also argues that “Griswold used his motion for reconsideration to advance new, and spurious, arguments for his standing, rather than directing the [s]uperior [c]ourt’s attention to specific facts in the record.”

Contrary to the Board’s assertions, the record shows that Griswold did not have notice that his standing was at issue. After Griswold addressed the standing criteria in his notices of appeal and the city clerk found those notices compliant with HCC 21.93.070 and 21.93.080, he had no reason to believe that standing was at issue — his standing was never challenged. And while Griswold may have had “opportunities to present evidence that showed he met [the standing] criteria,” he had no reason to seek to present such evidence because he had no notice that standing was at issue. Because no one had raised the issue of standing and the superior court sua sponte dismissed the appeal for lack of standing, without providing any opportunity to Griswold to make a showing of standing or remanding the case for him to present evidence, Griswold’s only opportunity to present any argument regarding standing once the superior court determined sua sponte he did not have standing was his motion for reconsideration. The Board’s arguments about the motion for reconsideration highlight the due process issues in this case. The Board argues that the motion for reconsideration “advance[d] new, and spurious, arguments for his standing, rather than directing the [s]uperior [c]ourt’s
attention to specific facts in the record.” But any arguments Griswold could make at that point would necessarily be new arguments because the issue of standing had never been raised until the dismissal order, and there had been no notice of the need to place any additional facts in the record to support his standing. Because Griswold did not have notice that his standing was at issue, his due process rights were violated.

V. CONCLUSION

We REVERSE and REMAND for the superior court to decide Griswold’s appeal on the merits.
This case is the fifth Supreme Court case in the last fifteen years by “frequent flyer” Frank Griswold against the City of Homer on land use and zoning. In it he filed a notice of appeal of the Homer Advisory Planning Commission’s grant of a conditional-use permit to a mariculture association to construct an “8,373 square foot two-story structure using the existing platform at 3851 Homer Spit Road.

The city clerk rejected his appeal for lack of standing because Griswold did not show that the permitted action would have an adverse effect on the use, enjoyment, or value of his property, and because Griswold’s interests were not distinct from those of the general public. Griswold appealed to the superior court which affirmed. On May 14, 2009, the superior court issued its “Decision of Appeal.” On December 16, 2009 the superior court issued “Final Judgment” dismissing the case and awarding attorney’s fees and costs. On December 23, 2009 Griswold filed his appeal to the Supreme Court.

The Supreme Court discusses in some detail the provisions of the Homer City Code in relation to the rules on standing and finds them in compliance. Perhaps more important to appellate practice is the finding that the appeal to the Supreme Court was not timely under Appellate Rule 204(a)(1) requiring the appeal to be filed within thirty days of the judgment appealed from. When the superior court is sitting as an intermediate appellate court, Appellate Rule 507(a) applies which states that “[t]he opinion of the appellate court...shall constitute its judgment.” The Supreme Court further points out that Civil Rule 58 regarding judgments does not apply since the superior court is not acting as a trial court.

The appeal is allowed by relaxing the rule primarily because, even though experienced, Griswold is still a pro se litigant. The Court further states that “[T]he application of Appellate Rule 204(a)(1) in the present case might have confused even a law-trained individual.” (We have been warned.)

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