



## NOTICE OF DECISION RE: GR2018-097

April 11, 2018

Michael & Jessica Ohler  
2220 Donald Avenue  
Fairbanks, AK 99701

Property Description: Lot 16, Block 05, Metro Industrial Airpark  
Property Address: 2220 Donald Avenue  
PAN: 0140945  
Issue: Request for affirmative recognition of legal nonconforming use status (grandfather rights) for an existing single-family dwelling unit in the Heavy Industrial (HI) zone

Determination: **NOT AFFIRMED (denied) for single-family dwelling unit**

After a public administrative hearing on March 15, 2018 and April 5, 2018, the FNSB Administrative Hearing Officer **DID NOT AFFIRM (denied)** your request for affirmative recognition of legal nonconforming use status (grandfather rights) for an existing single-family dwelling unit in the Heavy Industrial (HI) zone. The FNSB Administrative Hearing Officer adopted the revised staff report and the following Findings of Fact in support of this determination:

1. The subject parcel contains a single-family dwelling unit in the Heavy Industrial (HI) zone. The single-family dwelling unit does not comply with HI zoning because residential dwelling units are not an allowed use as the primary use.
2. The subject property was zoned Unrestricted Use (UU) with the adoption of Ordinance No. 67-34 on March 28, 1968. The UU zone allowed residential dwelling units.
3. Lot 16, Block 05 was created with the recording of plat FRD1969\_12194\_001 for Metro Industrial Airpark on December 12, 1969. The subject property was zoned UU at that time.
4. Assessor records indicate that a site inspection was conducted on August 12, 1971 and the lot was found to be vacant. Notes on the field card document that site inspections in 1973 and in 1974 found no change in the vacant condition of the subject property (see **Attachment A**).
5. Assessor records show that there were no notes documenting any follow-up site inspections between 1975 and 1984.
6. The records demonstrate that the land was valued as raw land (vacant) with no improvements (undeveloped) between 1969 and 1985 (see **Attachment B**).
7. The subject property was rezoned from UU to Heavy Industrial (HI) with the adoption of Ordinance No. 77-21 on May 27, 1977. Residential dwelling units of any kind were not

permitted in the HI zone. Assessor's records indicate that the land was vacant with no assessed improvements at that time (see **Attachment B**).

8. FNSB aerial photography dated May 15, 1982 (see **Attachment C**) shows a structure in approximately the same location as the current dwelling unit existing on the subject property, but a prior aerial photograph dated April 26, 1980 does not illustrate a building in that location (see **Attachment D**).
9. FNSB Assessor records indicate that on a September 10, 1985 site inspection, they "picked up" an ATCO type unit (manufactured home/trailer) which had been moved from the adjacent lot onto the subject lot (see **Attachment E**). However, this 14 X 56 unit was on blocks, in poor condition, had plants growing inside, and the Assessor classified it as a shed, not a dwelling unit.
10. The date of construction of the ATCO type structure was estimated to be 1968, but the Assessor's records clearly demonstrate that the structure was not located on the subject property at that time.
11. The property owner did not provide any evidence or testimony that a residential structure was ever established in another location on the subject property. FNSB Assessor's records do not indicate that a dwelling other than the residential use associated with the ATCO type structure, was ever established in any location on the subject property.
12. On April 25, 1988, Ordinance No. 88-010 classified the Borough into different districts and regulated the location, construction, reconstruction, alteration, and use of buildings, structures, and land. The subject property zoning classification remained HI with residential dwelling not an allowed use unless the owner or a watchman, caretaker, manager, and family is located on the premises where they are employed in such capacity. There are no commercial or industrial uses on this site.
13. The Borough has not issued any zoning permits for this dwelling unit.
14. Testimony by several neighbors stated that a structure has been present on the property for many years and used as a dwelling but they could not provide exact dates of the residential use or evidence demonstrating the residential use was established prior to May 27, 1977.
15. FNSB 18.108.020 states that "Any nonconforming building, use or lot which existed lawfully prior to the effective date of the ordinance codified in this title or any lawful building, use or lot which has become nonconforming upon the adoption of the ordinance codified in this title or any subsequent amendment thereto may be continued, subject to the restrictions in this chapter."
16. The property owner has the burden of proof to demonstrate that the residential use was established lawfully prior to the ordinance that made the residential use non-conforming.
17. The property owner did not provide substantive evidence contradicting the FNSB Assessor's records listing the property as vacant without improvements from 1970 to 1981, or refuting the April 26, 1980 aerial photo which illustrates that the dwelling was not located on the subject property on that date, after Ordinance 77-21 was adopted on May 27, 1977.
18. FNSB Assessor's interior inspection of the structure in 2003 resulted in the structure being classified as a "dry cabin" because there was no plumbing. No other interior site inspections occurred between 1986 and 2003 so there is not a definite date of when the "dry cabin" residential use was established after 1985.

19. The residential use was established at some date after 1985 when the ATCO type structure was converted from a non-residential "shed" structure to a dry-cabin; and when residential uses were already prohibited in the HI zone.

**Because the property was vacant and the residential use was not established prior to May 27, 1977 when Ordinance 77-21 was adopted, the residential use was not lawfully established on the subject property and therefore is not a legal non-conforming use in the Heavy Industrial (HI) zone under Chapter 18.108, Nonconforming (Grandfathered) Uses and Lots.**

This decision does not grant or provide any variances or exceptions to any other Fairbanks North Star Borough or state regulations, building codes, ordinances or statutes. The issuance of this notice is an administrative decision and is appealable within fifteen (15) days from the date of this notice to the Fairbanks North Star Borough Planning Commission. An appeal application may be filed with the Community Planning Department office.

Sincerely,



D. Christine Nelson, AICP  
FNSB Administrative Hearing Officer

DCN/nd



ATTACHMENT A

Other Description:

Size: 10.4x208  
Valuation Code:

Area: 21,632.8  
Land Use:

Use Zone: H4  
Unit Price: 35

INFLUENCES:	PLUS	MINUS
Depth		
Topography		
Irregular Modification		
View		
Drainage		
Physical Barriers		
Access		
Corner		
Water		
Sewer		
Sidewalk		
Paving		
Curb & Gutter		
Other		
TOTAL		
Net + (-)		

Year of Valuation: 1970-AB-73      Basic Land Value 7571  
DAP-72      AB-74-76      Plus or (Minus) Factors  
Net Price of Land

Remarks: Lot 16

LAND VALUE  
7575

YEAR	OWNER	ASSESSED VALUATION			REASON FOR CHANGE
		Land	Bldgs.	Total	
1969	Metro Co.			2100	
1970	"	975		975	
1971	"	975		975	
72	"	975		975	
73	"	1950		1950	
74	"	2175		2175	
75	"	3900		3900	
76	"	7575		7575	
77	"	7575		7575	
78	"	7575		7575	
79	"	7575		7575	
80	"	7575		7575	
81	James Harold J.	7575		7575	4/27/81 8210 p835

REMARKS:

8-12-71 → VACANT LOT - S15/100m  
JAN-73 REVIEW N/C SVS/KEM  
8-74 - N/C SVS LK

PICTURE:

PLACE PICTURE HERE



Other Description:

ATTACHMENT B

Size: 104x208  
Valuation Code:

Area: 21,632.8  
Land Use:

Use Zone: H1  
Unit Price: 35

INFLUENCES:	PLUS	MINUS
Depth		
Topography		
Irregular Modification		
View		
Drainage		
Physical Barriers		
Access		
Corner		
Water		
Sewer		
Sidewalk		
Paving		
Curb & Gutter		
Other		
TOTAL		
Net + (-)		

Year of Valuation: 1970-AB-73  
Basic Land Value 7571  
DRP-72 AB-74-76 Plus or (Minus) Factors  
Net Price of Land

Remarks: Lot 16

LAND VALUE  
7575

YEAR	OWNER	ASSESSED VALUATION			REASON FOR CHANGE
		Land	Bldgs.	Total	
1969	Metro Co.	21632.8	0	21632.8	
1970	"	975	-	975	
1971	"	975	-	975	
72	"	975	-	975	
73	"	1950	-	1950	
74	"	2175	-	2175	
75	"	3900	-	3900	
76	"	7575	-	7575	
77	"	7575	-	7575	
78	"	7575	-	7575	
79	"	7575	-	7575	
80	"	7575	-	7575	
81	Lewis Harold J.	7575	-	7575	4/27/81 B210.p835

REMARKS:

PICTURE:

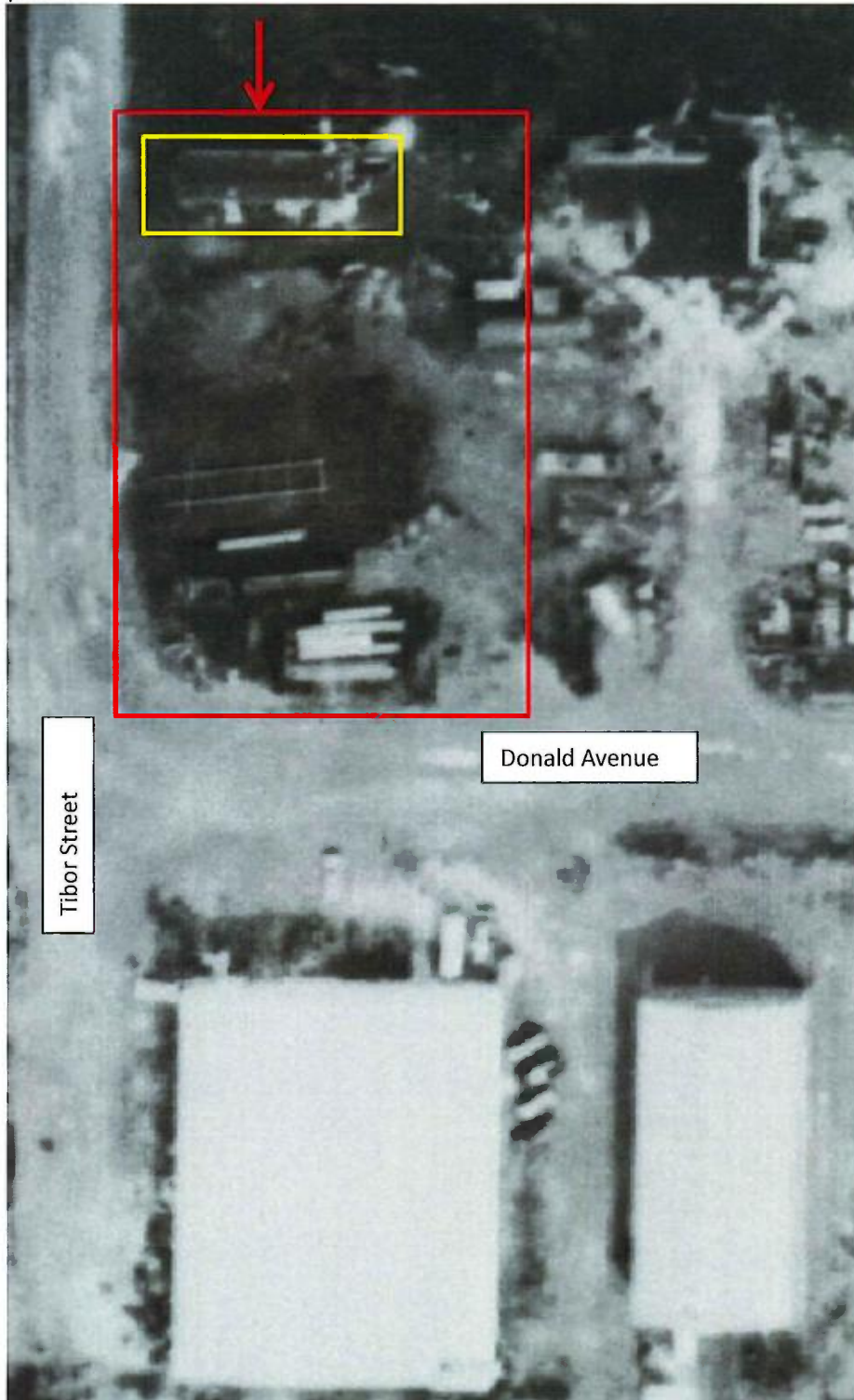
8-12-71 -> VACANT LOT - S15/30m  
JAN-73 REVIEW N/C SVS/KEM

8-74 - N/C SVS LK

PLACE PICTURE HERE

ATTACHMENT C

May 15, 1982 Aerial Photography – There appears to be a building on corner lot. Building is outlined in yellow.



Source: FNSB 1982\_City\_Fairbanks\_Islw21.jpg



ATTACHMENT D

April 26, 1980 Aerial Photography – There appears to be no building on corner lot.



Source: FNSB 1980\_Fairbanks\_Color\_FAI-4-012.jpg

DESCRIPTION:

ATTACHMENT E

104 x 208

USE ZONE:

INFLUENCES	%	(+) or (-)	SIZE: 21,632 #
Topography			
Drainage			AREA CHANGES:
Access			
Irreg. Mod.			REMARKS:

YEAR	APPR.	UNIT AREA	UNIT PRICE	BASIC VALUE	(+) or (-)	NET UNIT PRICE	LAND VALUE
1982	7812	21,632 #	.70	15,142	-	.70	15,150

YEAR	OWNER	ASSESSED VALUATION			REASON FOR CHANGE
		LAND	IMP	TOTAL	
1981	Sims, Harold J.	7,575	-	7,575	
1982	" "	15,150	-	15,150	
1983		15,150	-	15,150	
1984		15,150	-	15,150	
85'	Baker, Elisabeth L.				Sims to Baker B420 P418 4-10-85 WD
86		15142	1756	16898	
1986	Sims, Harold J. + Baker, Elisabeth L.				B478-P401 7/2/86 C/D
91	Sims, Harold J. (Harold died prior to 1991 title held as h/w w/rights) Baker, Elisabeth L. Trust (need death/certification trust)				B3694 P763 2/28/91 QC
94	Sims, Harold J. Estate of + Baker, Elisabeth L.				B808 P996 8-23-99 QC
2004	Baker, Elisabeth L. Trust				d/c 8-4-87 Harold Sims
2005	Martin, Randy, John + Kelly E + Martin, Herman J + Patricia L				d/c 6-29-2002 Elisabeth Louise Baker
2006	Arctic Thunder Towing Inc. + Martin, Herman J + Patricia L				2005-024254-0 11-2-05 QC
2006	Arctic Thunder Towing Inc.				2005-026735-0 12-1-05 QC

REMARKS: 9/10/85 P/U ATCO type unit, 14x56 on dikes, used but in poor condition - entered as shed under Miss. improvements (P/W/GN) 7-31-90 A/C H/L lamp pr unit 5mb R/W - C/B. 10/24/97 - DW - Revolve Land - WC 12/18/2003 - DW - Franchise Engineering - Fr. 2000 -

PLACE PICTURE HERE  
 DOTE 32,873 12-17-03 (w/Lot 15)