

FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION

MINUTES January 8, 2008

A regular meeting of the Fairbanks North Star Borough Planning Commission was held in the Assembly Chambers, Borough Administration Offices, 809 Pioneer Road, Fairbanks, Alaska. The meeting was called to order at 7:00 p.m. by Chris Miller, Chairperson.

MEMBERS PRESENT: Emily Bratcher Ryan Colgan
 Jennifer Peterson Dave Pruhs
 Tom Temple Michelle Vlah
 Chris Miller

MEMBERS ABSENT: Bruce Hamilton

OTHERS PRESENT: Bernardo Hernandez, Director, Community Planning
 Doug Braddock, Deputy Director, Community Planning
 Jill Dolan, Assistant Borough Attorney
 Doug Sims, Planner III
 Karin Wolfe, Planning Secretary

A. ROLL CALL

B. MESSAGES

1. Chairman's Comments
 Chris Miller welcomed Mr. Pruhs.

2. Communications to the Planning Commission
 Mr. Hernandez also welcomed Mr. Pruhs, the new Planning Commissioner who represents the City of Fairbanks. He further advised that he was contacted by Bruce Hamilton who stated that because of health problems, he would be unable to continue his position with the Planning Commission. Mr. Hamilton stated that he hoped to continue serving on the Planning Commission at a later date.

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

 a. Agenda items not scheduled for Public Hearing.
 None

 b. Items other than those appearing on the Agenda.
 None

C. APPROVAL OF AGENDA AND CONSENT AGENDA

MOTION: To approve agenda and consent agenda by **Mr. Temple**, seconded by **Mr. Pruhs**.

Discussion

None

Objection

None

MOTION ADOPTED

D. MINUTES from December 11, 2007 PC Meeting

MOTION: To amend Minutes from previous meeting made by **Ms. Vlah**, seconded by **Mr. Colgan**.

Discussion: **Ms. Vlah** stated that she was not present but had sent an e-mail to Rose excusing herself because she was out of town.

Objection:
None

MOTION ADOPTED

E. PUBLIC HEARING

V2008-009 A request by Jomo Stewart and Carrie Ivie for a lot size and setback variance of 2,315 sf and nine (9) feet respectively to the Multiple Family Residential/MHS side yard setback requirement of ten (10) feet and minimum lot size requirement of 10,000 sf, in order to replat Lot 02, Block 55 Bjerremark into a 7,685 sf lot containing 2 single family detached homes with a 1 foot side yard setback (**located south of 23rd Avenue, between Barnette and Gillam Way**).

Mr. Colgan stated that he needed to recuse himself due to his friendship with the Applicant.

Mr. Sims presented the staff report. Based on the staff analysis, the Department of Community Planning recommended denial of the request based on the following findings of fact in support of denial:

1. The proposed variances do not conform to the intent and purpose of Title 18 and other Ordinance and State Statutes. There are no special conditions peculiar to the property consistent with 18.54.040 A1 that warrant approval of the variance. Although the applicant did not create the building encroachment, this condition did exist prior to their purchase. Denial of the variance does not preclude selling both properties together.
2. Denial of the proposed variance will not deprive the applicant the use of property in a manner equivalent to the use permitted to be made by the owners of the property in the immediate area. There are no other 1 ft building setbacks evident in the immediate area.
3. The proposed variance may jeopardize public health, safety or welfare with respect to fire safety concerns, if building code requirements are not followed.

Mr. Miller stated that he understood that the Applicant had provided an amendment for a 3 foot side yard, and that the packet included that information. He asked if the amendment would be a 3-foot side yard with a 2,025 lot variance – a setback and a variance?

Mr. Sims stated that was correct and is set out in the cover memorandum to the Commission.

Mr. Miller asked if it only applied to the new Lot 2A and if the newly-created Lot 3A had no difficulty with this amendment?

Mr. Sims stated that that was correct.

Mr. Miller stated that Mr. Stewart handed him a flyer earlier, and that he had distributed it to the Commission members.

Mr. Stewart stated he resided at 1641 Cottonwood Street, 99701. He advised that he and his wife are the current owners of Lots 2 and 3, Lot 55, Bjerrmark. Because of the 2 foot encroachment, he is asking to move the lot line 5 feet to relieve that encroachment. He added that they have two options: Option A, as proposed by Staff, is to demolish one or both current structures. Option B is to move the lot line. To effectuate that, they would need to obtain a lot line variance and a setback variance. He stated that Applicants chose Option B. Things not in dispute regarding the variance are: Is the variance necessary? Yes. Is this being sought solely for pecuniary interests or to alleviate hardship? No. Applicants using the lot for a permissible use? Yes. This is all in agreement according to the staff Report. The things that are in dispute: Health and safety, special conditions, enjoyment rights. As far as the health and safety are concerned, he stated that he acquired the same page from the Building Code and spoke to the City Director and amended the application. Therefore, health and safety is off the table and is resolved. Regarding the 5 special conditions under Title 18, he stated that as to the first two, Applicants agreed with Staff in that they are inapplicable. The 3 other special conditions available to Applicants are extraordinary exceptional situations, existing situations prevalent in the neighborhood, and pecuniary hardship. Regarding the exceptional situation he stated that Staff agrees that this is exceptional in that it is "not common" and makes Applicant's property unique. Mr. Stewart stated if he is asked to destroy or demolish one or both of the existing structures to alleviate the encroachment, then pecuniary hardship is triggered by Staff. What is left is the common rights and the third special condition. He showed the picture of his neighbor's property on Lot 1 – a 4-plex on a nonconforming lot too small. He showed his 4 ft work ruler standing on the back which is within 3 ft of the lot line and not conforming as to setbacks. He showed the Lot 9 property which is nonconforming as to lot size and that the ancillary structure is within 4 ft of the lot line. Further, on the side that is not visible, it is also nonconforming as to the setback on the adjoiner lot line. Finally, there is the special case which is Lot 10. It is also nonconforming as to setbacks and possibly in violation of its own easements. It was, however, granted a lot size variance in 1990 under special conditions as well as common rights enjoyed. The setback variance was denied because it was only a planned structure simply being reoriented to meet the setback. Regarding common rights: all three have setbacks and lot size issues, and one was even previously granted a variance by the Planning Commission. So, the variance does conform with the intent and purpose of Title 18 statutes as well as the ordinances. He believes because of the existing encroachment, there are sufficient special conditions to warrant the variances. He stated that if the Commission denied him variance, it would be denying him rights commonly enjoyed by others in his immediate area. If the variances are granted, health and safety would not be jeopardized. He stated that they would make a sum balance regarding Block 55 Title 18 adherence. And, finally, he stated that it would be a net improvement to the property.

Mr. Miller requested that Mr. Stewart go back to the "Conclusions" slide and asked that the conclusion be reviewed again, point-by-point.

Mr. Stewart stated that the proposed variance is to conform with the intent and purpose of the Fairbanks North Star Borough Comprehensive Plan, Title 18, and other Ordinances and State Statutes existing under an encroachment not of the Applicant's making and having been constructed prior to Title 18 standards. Sufficient special conditions exist on the property consistent with Title 18.54.04A1 to warrant approval of the variances. With other properties in the immediate area being nonconforming as to current zoning ordinance, both for grandfathering and for positive grant by the Planning Commission, he felt that denial of the variances would deny or deprive Applicant of rights commonly enjoyed by properties in the same zoning district. He stated that the proposed amendment plot plan does not jeopardize the health, safety or general welfare as a sum balance regarding general Block 55, Title 18 adherence, and is a net improvement on the existing situation.

Mr. Miller stated his question had to do with the fourth point – “sum balance.” Is Mr. Stewart referring to the balance between Title 18 and the existing situation?

Mr. Stewart responded that by granting the variance, there would be no net effect upon the overall adherence to Title 18 by the neighbors because everyone is nonconforming. He stated he would still be nonconforming, but that he would be legal nonconforming as are the neighbors.

Mr. Pruhs asked Mr. Stewart how long he had owned the property?

Mr. Stewart stated it has not been quite 4 years.

Mr. Pruhs stated that on Lot 2 there is a cottage. He then asked if there were 2 structures on the lot?

Mr. Stewart replied that was correct and that he had a PowerPoint on that as well. He stated that there are 3 structures on 2 lots. The last time he appeared before the Commission on his Appeal, he stated that he felt it was questionable whether or not he needed a lot size variance. The cottage, in his mind, does not meet the threshold for detachment. Therefore it cannot be a single-family detached home and doesn't need 5,000 sf. He was told that he could write a letter and get a decision. That is outstanding.

Public Hearing Closed

MOTION: Motion to approve Variance 2008-009 made by **Mr. Temple** and seconded by **Ms. Vlah**.

Discussion

Ms. Vlah stated that nothing seems to have changed from the first time the Planning Commission reviewed this case. The distances are changing and the variance asked for has changed, but overall, the project is the same. She felt the zoning on these lots came a long time after a lot of the buildings existed, and that the zoning does not fit everything there. There are a lot of nonconforming lots. She never fully understood why a person loses their grandfather rights when a lot line is changed.

Ms. Bratcher appreciated the presentation and supports the Applicant in the variance.

Mr. Temple stated he was in favor of approving the request at this time. He felt that Mr. Stewart met his burden of showing why the variance is appropriate. He is reluctant to toy with setback requirements or impact on neighbors. But, in this case, two lots are being split up with a lot line a few feet away from a home, versus one that goes right through the structure. Therefore he does not see it as being a worse situation. He believes Mr. Stewart had made his case for approval.

Ms. Peterson stated she concurred with Mr. Temple. Even though it was denied in the summer, having more information helped her make her decision.

Mr. Pruhs stated he appreciated the presentation and that sanitation, per Mr. Shuttleworth, was not a safety issue. He stated he is in favor of the variance because it cleans up a situation that was not caused by the Applicant. He further stated that since Applicants own both the lots, any subsequent buyer(s) can make a determination of they want to purchase or own the property at that time.

Mr. Temple stated that he is in favor of the 3 foot setback as amended, and not the 1-foot as originally proposed.

Mr. Pruhs stated he agreed.

Mr. Miller stated that the Commission should get that on the record.

MOTION: Motion to amend the request to a 3-foot side yard with 2,025 sf lot size variance for 2A made by **Mr. Pruhs** and seconded by **Mr. Temple**

Objections

None

Mr. Miller stated that the main motion, as amended, with 3-foot, 2025 sf is now before the Commission.

Discussion

Ms. Dolan stated that there needed to be a little more discussion on the record on what the special conditions are on the property that justify a variance – both the lot size and setback. The grandfather rights that exist on the property cannot also provide the basis for the special condition. The property can exist as it is right now because it has nonconforming rights. Mr. Stewart presented two options to the Commission, but there is a third option, which is to convey all the properties together. The split is being done so the properties can be conveyed separately. The Borough has a code provision on nonconforming lots. The goal is to get lots to be conforming and to get structures conforming. By finding a special condition to be grandfather rights, we are moving away from conformance instead of cleaning them up. This is not consistent with how the area has been zoned.

Mr. Hernandez also stated that the Commission needed to make Findings of Fact which support the decision.

Mr. Miller stated that both Mr. Sims and Mr. Stewart have provided conditions. The Commission struggles with the variances and the Code and with cleaning up conditions and problems. He stated that sometimes the cleanups make more messes for future things. However, he feels that this case, as proposed, is completely inappropriate. He stated he needed to find a way to make it work. The special conditions may not be topographic or extraordinary from a physical nature, but there is a problem, though not unique. Anytime there is retrofitting on top of existing structures, there are problems. Neighbors have a similar type problem. Is this an exceptional and undue hardship? Yes. Is it better for the community to have individual lots and individual ownership, or to have this be conveyed as one? Ms. Dolan made reference to special conditions or procedure for variance under Title 18.54. Is there any discussion regarding the special condition clause? Mr. Stewart did provide what he felt were the special conditions to this property.

Ms. Peterson stated that because of existing conditions generally prevalent in the immediate area which are similar to the variance request, the Commission is looking at a generally nonconforming area.

Mr. Miller stated that the character in the surrounding area is similar and the variance would not create anything that was not similar to the area.

Ms. Dolan clarified that when nonconforming rights are talked about, those other areas have nonconforming rights too. If you are talking about the character similar to the neighborhood, Mr. Stewart's property currently has nonconforming rights. If you grant the variance, it is not keeping it in conformance; it is keeping it in nonconformance. She urged the Commission to beware of that. Also, when talking about peculiar, exceptional and undue hardships from a legal perspective, it is referring

to property that cannot be developed at all for the use that it is zoned. If the property was completely unbuildable or useless or there was no way to get any type of use out of it, that would be legal type of hardship.

Ms. Vlah asked if a new hardship was defined?

Ms. Dolan replied that it was not in the Code.

Mr. Miller asked if it was a legal precedent?

Ms. Dolan stated it is a constitutional standard because we do not want to render people's property completely un-useful by the way we zone them.

Mr. Hernandez wanted to make sure that the Commission understood what the findings of fact were: (1) whether or not the proposed variance conforms to the purpose and intent of Title 18 and other Ordinance and State Statutes; (2) whether or not the denial of the proposed variance will deprive the applicant the use of his or her property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area; (3) --

Mr. Miller – whether or not the proposed variance will protect public safety and welfare.

Mr. Hernandez stated that those 3 findings need to be made.

Ms. Bratcher stated she felt Mr. Stewart addressed #3, with Mr. Shuttleworth having signed off regarding the public health and welfare. Regarding finding of fact #2, she felt that more instances of variance requests would have been seen if property owners in the area could not sell their individual lots. She believes that the property owners in the general area are selling their individual lots and that that might be a right commonly enjoyed, except in this case.

Ms. Peterson asked Ms. Dolan whether she thought to ability to sell 2 lots separately as opposed to 2 lots together is a hardship that Mr. Stewart might have that other people in the neighborhood do not have?

Ms. Dolan replied that State law prohibits basing things just on pecuniary reasons. These lots can be conveyed; they can be sold. There is nothing saying they cannot be sold and there is no enforcement preventing them from being sold. The lots just have to be sold together or the 1 structure would have to be removed to eliminate the nonconformity to allow them to be conveyed separately. She stated she does not know what has been going on in that neighborhood or what is conforming, but that she just knows what the zoning is and what we are trying to move towards requiring in conformance with zoning instead of just validating the nonconformities.

Mr. Miller stated that the Commission is not trying to create more nonconformity. There are individual structures. It will make similar things nonconforming to similar things that are nonconforming. This would deprive the Applicant use of his property equivalent to that of his neighbors. It would be a revision of #2 that says denial of this variance would deprive the Applicant of the use of the property equivalent to his owners. There are other nonconforming similar setbacks evident in the immediate area and the findings of fact needed to be addressed.

Ms. Dolan reiterated that the Commission needed to look at the difference between property rights of those other people and the nonconforming right. He has the nonconforming right now. It's not that the other people have been giving variances. If you look at the layout of the neighborhood and all the individual lots, and about giving variance for each nonconforming use there, then, is the appropriate

issue being addressed? Is the area zoned appropriately or are we looking at the intent of the zoning code and what variances are? This needs to be considered in the findings of fact and the Commission's decisions often have implications further on down the road.

Mr. Hernandez stated the Borough knows that the other properties are nonconforming and that we do not know if they are legally nonconforming. The property in question is legally nonconforming and it could be that this property has more rights than the properties that are adjacent because we haven't been shown that they have grandfather rights. He wanted to make sure the Commission understands and knows that the Applicant has legal nonconforming rights to use the property as it is today and that we do not know about the properties adjacent. We know they are nonconforming, but are they legal? That's a different question.

Ms. Bratcher asked Ms. Dolan what the repercussions of the variance granted in 1990 were?

Ms. Dolan stated that she did not know, but the setback variance was not granted. The lot size variance was granted. Within the Grandfather Rights ordinance, the way lot size variances work, if property has been lawfully subdivided and recorded before rezone, the properties can be developed without obtaining a lot size variance. They become legal, nonconforming lots. She stated that she did not know if that provision of code was in place in 1990. The part of the nonconforming rights law is for that reason – so that people do not present subdivisions to the Platting Board, record them, and then get rezoned. Then they are prohibited from developing their property.

Mr. Temple asked Legal if the cottage is not considered a separate, or rather attached unit, then the Commission is not dealing with the problem of the lot size.

Mr. Dolan stated that was her understanding. However, Community Planning's interpretation of what a dwelling is has always been that the structure would be a dwelling. If that structure was not there or was not a dwelling, then the lot size variance would not be required.

MOTION: Approval of the variance as amended, with 3-foot and 2,000 sf of lot size.

ROLL CALL: Ms. Bratcher, yes; Ms. Peterson, yes; Mr. Pruhs, yes; Mr. Temple, yes; Ms. Vlah, yes; Mr. Miller, yes.

VARIANCE APPROVED

Mr. Temple suggested two proposed findings. (2) The approval of the proposed variance will not deprive the Applicant of use of the property, etc., and (3) The proposed variance will not jeopardize public health, safety, and welfare. He thought that they would be sufficient findings.

Mr. Miller asked if the motion was to bring forward the 3 findings of fact, or just those two. He stated that they need all 3 findings.

Mr. Temple said they would start with findings (2) and (3) and work out (1).

MOTION to bring forth (1) (2) and (3) by **Mr. Temple**, seconded by **Mr. Pruhs**.

Discussion:

Mr. Sims asked for clarification on (2), "Will deprive Applicant the use of equivalent" –

Mr. Miller stated he thought Mr. Temple changed it to say "approval."

Mr. Temple stated it could be done either way – either “approval will not deprive” or “denial will deprive.”

Mr. Miller asked if the way it was presented on the screen worked for him.

Mr. Temple replied that it did.

Mr. Miller asked if the last sentence of (2) –

Mr. Temple replied “with the immediate area.”

Mr. Miller asked if what was on the screen was what he meant to second.

Mr. Pruhs replied it was.

Mr. Miller read, “The proposed variance will not jeopardize,” from the comma on.

Mr. Temple said it would make sense for fire safety concerns.

Ms. Peterson stated she thought the fire safety issue was about the 1 foot variance, and so that now they could just end with “welfare.”

Mr. Temple said it could read “the proposed amended variance.”

MOTION: Motion to end at “welfare” made by **Ms. Peterson**; seconded by **Mr. Temple**.

Objection

None

Mr. Miller asked if there were any objections to the findings as amended.

Objection

None

VARIANCE APPROVED WITH THREE FINDINGS

CU2008-012 A request by Emulsion Products for conditional use approval for storage of a hazardous substance in order to construct an asphalt storage tank on Lots 01 and 02 Flightline Industrial Subdivision in the General Use 1 zone. **(located south of Holland Aviation Street, west of Bradley Sky Ranch Airport and north of the Tanana River Levee)**

Mr. Sims presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval of the request with the following conditions.

1. Prior to use of the proposed tank, the applicant shall receive an approved State of Alaska Oil Discharge Prevention and Contingency Plan.
2. The proposed tank shall be elevated at least one foot above base flood elevation and adequately secured to prevent disturbance by flood waters.

Mr. Temple asked what the elevation of 483 feet meant and whether the tanks would be sitting off the ground and how high they would be?

Mr. Sims stated that was a base flat elevation, which is a surface elevation of the anticipated 100 year flood event.

Mr. Temple asked how high off the ground it sits.

Mr. Sims replied that he did not know and did not know the currently existing site elevation and grade. The method of elevation would be compacted gravel or perhaps concrete.

Mr. Miller asked if the site had been there before there was any zoning in the area.

Mr. Sims stated that was correct. The 1988 date is significant and is when GU-1 was adopted. The Applicant's narrative described that the tanks were in operation in 1987 under the old, unrestricted use.

Mr. Miller asked if the zoning was unrestricted use.

Mr. Sims replied that there was some debate whether unrestricted use is actually a "zoning," but it was not GU.

Mr. Miller asked whether GU-1 zoning requires a conditional use because of the storing of hazardous substances.

Mr. Sims stated that was correct.

Mr. Miller referenced the refinery tanks and asked whether they were part of the refinery conditional use and therefore would not need a separate conditional use?

Mr. Sims said that was correct.

Public Comment

Shannon Wyman, 2387 Piper Street. He stated his main concern is in regard to potential smells. He stated he was unaware of the history since 1987. He does not know what the area and smells produced during the previous years were. He just recently purchased lots very close to the property and he has concerns about being outside without experiencing irritating, noxious smells.

Sabrina Knapp, 2378 Grumman Street. She voiced her opposition to the construction of an asphalt storage tank. She stated it has been difficult to get details regarding whether it will jeopardize their health or welfare. She found the staff report vague and that the report did not mention that the storage unit would be for hot asphalt. She thinks the heating of the substance would require ventilation and create potential fume escapement. The scale of this tank has the maximum capacity of 1.5 million gallons. The fumes of the heating and transporting of this substance will naturally increase as the quantity stored increases. The company has stated that it only has limited storage, but since the transfer of ownership, the fumes emitted have already increased dramatically since 2006. The person she spoke with at the Borough knew very little about the proposal and the information came too late to do research. She stated that residents need more participation in this matter regarding health, safety and welfare. If a large grocery store were to move next door, residents would have more rights to question the company than when a company wants to put in a huge vat of hazardous material right next door. She would like to be able to ask the company questions, such as what an increase in traffic would mean. Diesel trucks produce toxic fumes and they will be driving right behind her children's playground and jeopardize their health. She asked if

the asphalt tank captured fugitive emissions and how? She wondered how the unit would be maintained, how would the company insure that adequate maintenance is observed, and whether there was a plan to address noise abatement? Additional traffic and increase of trucks honking their horns to gain the company's attention will affect owners' enjoyment of their property. She stated that even with the opportunity to ask these questions, she probably would not be given enough information to form an accurate assessment of the danger. She knows it is natural for a business to put a positive spin on the information. The website for Emulsion Products' parent company, Colas refers to 1,400 profit centers it works in – not communities, not neighborhoods. She requested the Commission to consider this when it listens to the information provided by the company. To be good employees, you must put this proposal in the best light. There is a great deal of information about asphalt, but it would be naïve to think that the company will give all relevant information that would negatively impact the company's profit. She requested that the Commission not simply rely on the company to determine if this will hurt the property owners surrounding the proposal. The Borough website roughly states the Community Planning Department's job is to plan for the moment in order to address threats to the ability of residents to live in safe residential areas or to recreate or to enjoy the land. She asked that the Commission pose this proposal or at least postpone the hearing so independent research could be done to help the Commission better understand the threats to the residents. She stated she had a petition signed in opposition to the request, signed by 17 residents who live within a 1 mile radius.

Ms. Bratcher as Ms. Knapp to better describe changes she had seen in the last year.

Ms. Knapp stated they moved into their house in 1998. It had not been disclosed that the plant was there, but they did not seem to be bad neighbors at all, until 2006. That was when there was a change in ownership, and, as well, a change of ownership at Exclusive Paving. The smells were much more noticeable the summer of 2006 and she was surprised to learn that there was only limited storage with the smells. She stated that they did not call the EPA or any kind of administrative agency because they had always been good neighbors. The following summer of 2007 the smells were very noticeable but not as bad as 2006. The smells absolutely impacted our enjoyment even at the limited storage level. There were times when she would call her boys in because the smell was so bad.

Mr. Hernandez asked Ms. Knapp where she lived.

Ms. Knapp stated that believed it was Lot 4, Sky Ranch. The traffic goes right by. There is a taxi way and the road right next to the taxi way is their road.

Mr. Pruhs asked if her property was accessed by the taxi way or by –

Ms. Knapp – No, Grumman Street is on the other side.

Mr. Pruhs asked whether they access their road on Grumman or on taxi way?

Ms. Knapp stated it was a taxi way for airplanes.

Mr. Miller stated that Ms. Knapp has been there for many years, and that in recent years –

Ms. Knapp – since the transfer of ownership –

Mr. Miller – and that the smells, increased traffic or similar traffic –

Ms. Knapp stated that she felt there was increased traffic although she did not sit out there and watch the trucks go by. The fumes are what she was talking about.

Mr. Miller stated that the traffic, noise and smell were the things that concerned her.

Sylvester Starman, 2412 Piper Street. He stated his lot borders Exclusive's property. His concerns are about the huge storage tanks, groundwater monitoring, and fume recovery when the tanks are filled. He stated he agreed with Ms. Knapp about the increase in fumes, noise and traffic problems. He said that small tanks have been added every couple of years, but that now they are looking at one or more huge tanks. He is against the project. As it is operated now, he does not have an issue; however, he is against the major storage of asphalt products down there.

Mr. Miller asked what lot he owned.

Mr. Starman replied Lot 21.

Mr. Miller asked how long he had lived there.

Mr. Starman replied that he had been there since 1992.

Mr. Miller asked if smells were a relatively recent change.

Mr. Starman stated that with the increase in activity and the adding of the small tanks, the amount of product going out of there will increase substantially. He stated that they have always been good neighbors.

Louis Knapp, 2378 Grumman Street. He stated he is in opposition to the storage tank. His wife and he have done research and have found out that once these type of facilities are approved, they are difficult to get rid of. Online you can find information about the distress of communities and local governments around the country who are faced with fumes far worse than originally described by a company, but who have no means of rectifying the situation. The EPA and DEC do have some control over the emissions, but they are hampered by regulations that do not require that all bothersome fumes be eliminated. Nor, do they have the staff to consistently enforce the regulations on the book. There's a report online by the State of Alaska, where the DEC agency details the troubles: "DEC agrees that it does not have adequate personnel to monitor all industrial activities and emissions throughout the state. That is the reason that DEC must rely on self reporting by the facilities and by citizen reports of excessive emissions." DEC agrees that in some areas of the state, the proximity of residential areas to industrial areas has resulted in problems and the location of residential areas and industrial areas is a problem to local planning and zoning handled by local municipalities and boroughs. The DEC is saying not to rely on it to protect the Borough citizens, but that these decisions need to be made prior to there being trouble. The Planning Commission will have to weigh dangers with the benefit of the Applicant's proposal. The cost of this project is tied to the price of oils, so the savings are going to naturally be impacted. The company admits that asphalt is available right down the road at the refinery which has substantial security and a large buffer between its facility and residents. He urged the Commission to consider air pollution caused by open burning. In such cases, the Borough prohibits discharges of air contaminants that cause a threat to human health, life or property, or which reasonably interfere with the enjoyment of life or use of property. The summers have already been impacted by the fumes with limited storage. If there are regulations in place for open burning, why shouldn't they apply to asphalt fumes? The regulations also state that the Borough can stop open burning when it impairs the value of property, whether public or private. If the Borough recognizes that open burning impairs property values, then a huge vat of a hazardous substance has to have the same impact. He stated his family would like to sell the property and move to an area in the Borough involved with few public hearings, but they are forced to fight because there is no doubt this project hurts their ability to sell and it will be difficult to get near the

Borough's assessed value. He agrees that the company has been a good neighbor until the last two years when it sold.

Mr. Hernandez asked what was generating the current fume condition.

Mr. Knapp stated the he was not sure. He thought it was storage of asphalt.

Mr. Miller asked if the petition that was passed around was something that Mr. Knapp and his wife worked on together.

Mr. Knapp said that it was.

Mr. Miller stated that Mr. Sims noted in the Staff Report that Borough notices were sent out and that there were none returned. He asked if Mr. Knapp had gotten the notice about the meeting.

Mr. Knapp stated they had. They received it Christmas Eve and they sent around the message to others who may not have gotten a notice but who could be impacted.

Bob Camilli, Manager for Emulsion Products Company. He stated that Emulsion Products Company is a manufacturing company that manufactures specialty asphalt products. He said that they have been manufacturing and selling products at the existing site since 1987 and that the products are used mostly on federal, state and municipality paving projects statewide. Recently, there have been numerous price increases of asphalt cement, which is the base ingredient for making their products. Their goal is to have more asphalt storage capability in order to counter the rising costs which would enable the company to stockpile asphalt when prices are favorable. It then works to protect capital projects from unexpected price increases throughout the duration of projects. This saves owners, federal, state, municipalities and taxpayers thousands of dollars. Because projects are bid in one season but construction takes place the next season, jobs become vulnerable to huge price increases during the off-season. The company's desire is to fill the large tank in order not to affect the pricing of a certain project, especially if the project is to be done during the following season. Asphalt cement as bought by the local refinery is considered to be a hazardous material only because of its elevated temperature, which is above 212 degrees F. The product is kept hot inside the storage tank by a hot oil heater and coil system. When the product is not in need or the tank is empty, the heat is shut off. Any asphalt left in the tank turns into a solid state until it is reheated. In 20 years of manufacturing asphalt products, there has never been a recorded spill. Every precaution is taken to prevent spilling. The plant crew consists of 4 experienced people who have been with the company for many years. The site is somewhat secluded and is not near any navigable waters. The daily operations do not impact distant neighbors. There has never been a complaint in the 20 years they have been in business. They plan on having a formal bid package sent to companies that specialize on on-site tank construction. All phases of the project will abide by Federal, State and Borough regulations, as well as all fire and safety requirements. The tank will be built to all petroleum institute standards and will be an API certified tank by the builder. The goal is to have the tank completed and operational by September 1, 2008. The company employs approximately 20 people during the construction season, from April 15 through approximately October 15. The hours of operation are typically from 6:00 a.m. until 6:00 p.m., but can vary depending upon the customers' paving schedules.

Dan Agoya, Assistant Manager for Emulsion Products. He stated he spent the last 10 years for Wilder Construction and Quality Construction throughout the state, and that in all the regulations dealing with boroughs, assemblies and municipalities, they have never had a complaint dealing with the smell of asphalt. When he worked for Quality the past years, there was an asphalt plant in the middle of downtown Anchorage. There are noise complaints from loaders and construction materials, but there has never been a complaint regarding the smell of asphalt. Two other major companies in

downtown Anchorage, one of which is Wilder, have never had a complaint regarding asphalt smell either. They were regulated by Stormwater, SPCC's Spill Pollution Controls, and ADEC's Title 5 Report which also apply to the mining industries, electric companies, construction companies, and refineries. So, the reports they have to do, we do. These agencies have the access to come out whenever they want to inspect us. Regarding the elevation of the tank and the elevation of the ground, that could be solved by a dike that would be required. One could use the existing ground level. But, per the SPCC's for federal regulations and DEC, we have to build dikes around these for containment. So the height of the dike could be above 483 feet. Regarding the traffic increase, in 2007 state and federal funding was down, and volumes of modified oil products actually decreased in 2007. The same asphalt oil being stored in our tanks on this site, and that all the other construction companies in this Borough are storing on their sites, are the same asphalt oil that is being stored at the refinery. If there are smells on our site, then they should be the same smells that are throughout the whole Borough. And they should be the same smells you smell when pavement is going down. So, that would be the same smell all over the state in general little areas. The tank is going to be put in and possibly stored at the end of the season. It is the same asphalt oil that is going in the other tanks and it is just going to be stored in a larger tank so a larger quantity can be stored. It will solidify and go into a solid state immediately for the whole winter, and then heated up and used the following spring.

Mr. Temple asked the size of the current storage tank versus what the company plans to install.

Bob Camilli stated that the largest current storage tank is 56,000 gallons and that the tank they are proposing to build is 1.5 million.

Mr. Temple asked if there was more than one tank.

Bob Camilli stated that there is another storage tank which holds about 35,000.

Dan Agoya stated that the total storage is around 1,300 tons on-site and that they are looking at putting in just 6,000 tons.

Bob Camilli stated that there are tanks that are also for their finished products. But as far as base stock asphalt that they are trying to stockpile, there is a 56,000 and a 35,000.

Mr. Temple asked if it is a rough estimate, without a calculator, that they are going to increase their storage about 15 times under the new system.

Bob Camilli replied that if that is what the math works out to be.

Mr. Temple referenced the 2006 fumes being harsher than they were in the past, but not quite as harsh in 2007. He asked what that was attributed to.

Bob Camilli said he could not answer that. The insinuation was made that once the new company took over there were more odors in 2006. The plant sold May 5, 2005 and there have been no changes in personnel or company policy to generate more fumes. The volumes have gone down drastically since the company purchased the operation. Generally we do 12,000 tons in a year; this year we only did 1,200 – or 1/10th the volume of a normal season. Funding was down and other straight need asphalt was being used right out of the refinery, which does not involve the company. The State has gone to straight need asphalt because of the cost of the product and it has affected their sales.

Mr. Temple asked if there was an objective way to measure fumes or odors on adjacent properties.

Bob Camilli said he was not aware of any.

Mr. Temple asked if bigger tanks and more products sold meant more odors.

Bob Camilli stated that it does to a certain degree. If a tank is filled, it needs a 3 inch venting system. It does not go by the size of the tank but by the size of the pumping facility. The air has to escape the same volume as the liquid is pumping in. Because you have a larger tank does not mean you have a larger venting system. There will not be more trucks with the new tank. He gave an example of the Airport job being bid in 2007, but that will not be paved until 2009. The contractor has no protection so we are stockpiling in advance the amount of asphalt to be used and it will not affect traffic.

Ms. Bratcher asked if there are any other tanks the size of the proposed tank in the Borough right now.

Bob Camilli replied that the tank would be a 6,000 ton tank and Flint Hills has that capacity at their facility, which is one mile away from their facility. He said other refineries nearby have plumes of exhaust coming out of them 24 hours a day, 365 days out of the year. Some fumes could be coming from there. Their capacity is about 15,000 tons between the 4 tanks that they have.

Ms. Bratcher asked if they are used for the same exact thing they are proposing.

Bob Camilli replied they were. His company buys products from them and delivers it to their tank farm. Before we had limited storage, but since crude oil prices have gone through the roof, they need more storage facilities to protect themselves one year to the next. Most of the time the tank might be empty especially if there are no big projects coming up and if there is a downward trend in oil prices, it would not be filled. The tank is like an insurance policy.

Dan Agora stated that in 2004-05 Flint Hills did not even produce asphalt oil and shut down part of the season.

Mr. Pruhs asked where the asphalt plant in Anchorage was located.

Dan Agora said the Wilder plant was by Chugach Electric, on Minnesota/International. There is residential all around it. Quality Asphalt's is on C Street, between International and Diamond.

Mr. Pruhs asked about access off Holland Avenue and taxi way.

Bob Camilli stated there is a taxi way that runs parallel to Holland Aviation Street.

Mr. Pruhs asked if Holland Aviation goes all the way down to the company's property.

Bob Camilli replied that officially it ends about halfway down, and then it's on private property from the gate to their property.

Mr. Pruhs asked if someone else's private property is traversed to get to their property.

Bob Camilli stated that that was correct. There is a gate part way down the road to the plant, about $\frac{3}{4}$ of a mile down to the facility. Halfway down they go through a gate. We are on Bradley Sky Ranch property.

Mr. Pruhs asked if the gate was controlled by the Bradley's.

Bob Camilli stated that the company has a recorded legal agreement – an ingress/egress for that road.

Dan Agora added that the road is all chip sealed.

Ms. Vlah asked if fumes were created only when the product was heated.

Bob Camilli stated that was true.

Ms. Vlah asked if the product was heated all the time between April 15 – October 15.

Bob Camilli stated that the proposed tank would only be heated when volume was needed. It would be filled in the fall and not heated, and then used in the spring as called upon by customers. He gave the example of the airport paving job.

Dan Agoya asked if the prices did not drop, would the tank be left solidified and then you could just haul from Flint Hills. Would you have to heat the tank in that case?

Bob Camilli stated that they probably would not heat the product back up again and would haul it locally from the refinery and tap into that tank later if the price went back up.

Mr. Hernandez referenced folks smelling something in the neighborhood and asked what it might be?

Bob Camilli responded it apparently was asphalt fumes of some sort. He stated he lives 1,200 feet from the plant and that he does not smell fumes, but maybe he is used to them. He has never received any kind of complaint of odor and truck traffic from anyone in the room. There are two refineries within 1 mile of our plant.

Mr. Hernandez referenced the Anchorage plants in the middle of town and asked when filling the tanks if the asphalt was hot and whether there was an associated smell with it? He asked whether there was a potential for the smell to be going out of a 3-inch vent at that time.

Bob Camilli stated there would be that potential.

Mr. Hernandez asked if otherwise there would not be that potential and asked when the product is kept hot in the tanks if the vents are open?

Bob Camilli said the vents are open. He added there are 6 asphalt plants in Borough area, and most are within the city limits of Fairbanks. Paving Products has 2; Great Northwest has 1; University Redi-Mix has 1; Exclusive Paving has 1; and HC Contractors has a plant. They all store asphalt cement.

Mr. Miller asked if what they are storing is thick hot oil.

Bob Camilli stated it would be like tar.

Dan Agora said that if it was dropped on the ground, it would not run like water.

Mr. Miller said that the reason they were before the Commission was because it is hazardous and that it is only hazardous because it is hot.

Bob Camilli replied that according CFR 49, anything about 212 F (sic) is considered hazardous because of its elevated temperature.

Mr. Miller asked if it comes to the plant in a tanker truck that is over 212.

Bob Camilli said it comes to the plant at about 290 degrees.

Dan Agora said that the Coast Guard considers it not hazardous for shipping on waterways throughout western Alaska as long as it is a solid.

Mr. Miller asked if the tanks were currently filled with solidified oil.

Bob Camilli replied that the two base tanks – the 56,000 and 34 are.

Mr. Miller stated that they did not know the elevation. Therefore you do not know the impact of the tank versus flood protection and what that is going to mean to the project?

Bob Camilli replied that he does not know the exact elevation in comparison to the flood level elevation.

Mr. Miller asked if the current tanks were diked.

Bob Camilli said that the tanks that require diking, the fuel and chemical tanks are and the asphalt tank is not.

Mr. Miller asked if anything was being done for fume management.

Bob Camilli responded that there is not.

Mr. Miller stated there would be no increase in traffic and asked if it was just a storage issue?

Bob Camilli responded yes.

Mr. Temple asked the difference between a spill and recorded spill.

Bob Camilli said there have been small, minor bucket spills over the years. But, they have never had any kind of major overflow or rupture of a tank.

Ms. Bratcher asked if they had to obtain previous conditional uses for the current tanks.

Bob Camilli replied that they did not.

Ms. Bratcher asked if that was due to size.

Bob Camilli said it was due to size and that in 1987 it was not required.

Ms. Bratcher asked if all the tanks were as old as 1987.

Mr. Camilli said that a couple of tanks had been added that were not newly-built tanks. They were part of their early-on project but had not been put in place at the time. He added that he has 2 more tanks that are still laying there which were acquired from the Unocal tank farm downtown. As they need, they will stand up a tank and insulate it and put it on line.

Dan Agora stated that not all the tanks hold 212 degree asphalt.

Ms. Bratcher asked if he was aware of what the State will require for an oil discharge contingency plan.

Bob Camilli stated that they are aware of that.

Ms. Bratcher asked if that contained anything regarding fume mitigation.

Dan Agora replied that it did not. It is basically a SPCC spill control countermeasure, and there is some other stuff they require. But, nothing the State requires.

Ms. Bratcher asked if they considered asphalt fumes noxious.

Bob Camilli replied he might be biased towards it since he has worked with it all his life. He would not expect a neighbor to feel the same way. He is baffled that the neighbors have not said something to him in the past. This is the first he has ever heard of an odor issue.

Dan Agora figures if you had a smell, you would smell it with the refinery going outside. In the refinery in Nikiski owned by Tesoro, there are no complaints. If there was an odor, it would dissipate and not funnel straight to one area.

Ms. Peterson referenced Applicant's examples of other places without an odor problem. She asked if any of the tanks are the size of the proposed tank.

Dan Agora said Tesoro has more storage and that they bring in ships of oil and process it in Nikiski. Quality Asphalt Paving total storage is around 1,500 – 2,000 tons. Presently, there are over 5,500 tons of asphalt oil stored in Seward by Quality, which is filled every summer in Seward and shipped out to western Alaska. It is the exact same product.

Mr. Hernandez asked whether it was possible to mitigate the fumes from the tank, and if the tanks in Anchorage are mitigated?

Dan Agora replied that in Anchorage, Seward, and Nikiski, the fumes are not mitigated. There is some kind of mechanism that the refineries use.

Mr. Colgan asked what type of price range is there for a 6,000 ton tank.

Dan Agora responded it would be perhaps 1.5 million dollars. That would be for the steel, contractor, dirt work and given the short season.

Public Hearing Closed

(5 minute break)

MOTION: To approve CU2008-012 with two findings of fact by **Mr. Temple** and second by **Ms. Bratcher** for approval.

Discussion

Mr. Temple stated he concurred with staff recommendations. He understands the neighbors' concerns. He said in 20 years there were not complaints and that the traffic issues were addressed. .

Ms. Peterson states that it is unfortunate for Emulsion that they are so close to the neighborhood and they have not proved to her that the neighborhood will not be adversely affected by the fumes. She does not believe a case has been made for the protection of the neighborhood.

Mr. Pruhs stated it was a unique situation, with a residential neighborhood right next to a growing industrial area. However, it's been a growing industrial area since the 70's. The requirements are met and they have a very good track history and he cannot think of a reason to deny the permit.

Mr. Colgan stated that the industry and neighborhood have coexisted for 20 years and it does not appear that there have been past complaints. There has only been a recent complaint. He is inclined to approve the application with the conditions. He hasn't heard or seen evidence that there will be increased smell.

Ms. Bratcher stated she agreed with Ms. Peterson. She would like to see what fume mitigation practices the refinery is currently using. She would like to get some honest and affirmed information regarding other refineries in populated areas that are not disturbing anyone. There may be a future for approval of this conditional use, but she also believes they need more information.

Ms. Vlah feels that since the place has been in operation for 20 years, there is a "buyer beware" thing. Everybody at that meeting moved there after the original tanks were there. She does not feel there is a hazard being created.

Mr. Miller agreed that it is an operation that has been there a long time. It is next to an airport known for its difficulty with neighbors. This area has had a long reputation of being more industrial and commercialized and is all GU-1. All the residences testifying tonight are adjacent to taxi ways related to the airport. The reason they are at the meeting is because it is a hazardous substance. He stated that he would like to know more. He is not certain what the hazard is, what the fire hazards are, what type of tank construction is in place, and that tanks need to be vented. He feels he can support the conditional use for the storage tank, but he is not certain he has all the information he needs and wonders if there are other conditions that need to be put on the storage tank to make it safe for the public. There will be incidental fumes forever. Will the new construction make the fumes worse? Smells are difficult to quantify. Is the application for a conditional use for a storage tank okay? He is willing to support the storage tank.

Mr. Temple clarified that the wording in the motion referenced two findings of fact, and it should have been the 2 conditions and the 4 findings of fact.

Ms. Bratcher would like to reiterate that we are going from approximately 50,000 gallons to 1.5 million gallons. How does it hurt us to ask for more information in this case and others? She wants more information on fume mitigation practices at Flint Hills; whether there is actual documentation from refineries in Anchorage and locally that they are not emitting noxious fumes, documentation regarding what we can expect of an increase of this magnitude from what is being experienced now to the 1.5 million gallon volume. Nothing mentions smells that come from Emulsion Products. She has learned they have a good spill record. She still will not support the request, and still recommends a more inclusive and convincing application in the future.

MOTION: To approve CU2008-012 with the 2 conditions – elevation and oil discharge plan – and the 4 findings of fact.

Further Discussion
None

ROLL CALL: Mr. Colgan, yes; Ms. Peterson, no; Mr. Pruhs, yes; Mr. Temple, yes; Ms. Vlah, yes; Ms. Bratcher, no; Mr. Miller, yes.

APPROVED

G. UNFINISHED BUSINESS

None

H. NEW BUSINESS

None

I. COMMISSIONER'S COMMENTS

Mr. Hernandez brought up "Vision Fairbanks." It is a planning process and an adoption process. He referenced the presentation on December 12 to the Planning Commission, Borough Assembly, City Council and City Mayor. On January 18 the complete plan should be available. On February 25 he wants to go to the City Council for a work session. On March 10 he would like the City Council to prepare a recommendation to the Planning Commission and Borough Assembly. On March 11 the Planning Commission will have its work session with a public hearing on the 25th. On April 17 the Borough Assembly will have its work session and on April 24 there will be public hearing and adoption.

Davis Road Rezone. We have had two meetings thus far and they have been very productive. He thinks one more meeting is necessary and it will be held on the 17th, and then he hopes to come back to the Planning Commission for a special meeting on the 22nd of January. After that meeting, he is hoping the Commission will forward onto the Mayor a rezone for that area.

Comprehensive Plan Advisory Board: The Planning Commission voted on a resolution that would support the establishment of a Comprehensive Plan Advisory Board. He has written a letter with a copy of the resolution and it gives an idea of when and where we would meet. A Planning Commission member has to be part of that Comprehensive Plan Advisory Board. He would like the Commission to make a decision about who will be represented on the Comprehensive Plan Advisory Board from the Planning Commission. Letters have been sent to the City of Fairbanks, City of North Pole, the Assembly, and Planning Board. We are working on getting 3 representatives from the community. He stated he would like to start the meetings with the Comprehensive Plan Advisory Board in the first weeks of March.

American Planning Association's Annual Conference: It will be held in Las Vegas this year. He has two people already from the Planning Commission that are willing to attend. He cannot pay for the hotel or flight down, but can afford the conference registration, which is \$700.00. If one or two others would like to participate and attend, he would entertain that. He stated that we need more people to understand broad planning concepts and that it will benefit our community.

Sustainable Infrastructure Training: This training is scheduled for the week of February 11 – 4 ½ days of training. Along with the downtown planning effort, this is the next step. We need to begin focusing on land use planning for the rest of the Borough. He stated he took the training in October and found it very worthwhile. This training and subsequent planning will be the underpinnings for the rest of the planning the Borough needs to do. He stated that we need a basic understanding of our community and plan for it. The registration fee is \$100 and the Borough would pay for the Planning Commissioner's to attend. We need to know who will be attending by January 11.

Riverfront Plan: We were going to have a presentation at the December 13th meeting; the person who was going to make that presentation was in an accident. We need to schedule another time for that meeting, perhaps February 5 or February 19 in a work session. They want to make a change to the Riverfront Plan and need to go before the Commission before they have a public hearing and then go to the Borough Assembly.

Bruce Hamilton: Bruce is resigning from the Planning Commission so that leaves us with just 8 members on the Commission. He urged the Commission members to come to every meeting they can.

Recommendation of Tom Marsh: The City Council had on its agenda the recommendation of Tom Marsh to be on the Planning Commission. That recommendation was approved and it needs to go before the Borough Assembly so that it can be officially ratified. That will get us up to 9 members and we are working on getting 2 others. It is difficult because the City finds someone, and then the person(s) needs to meet the APOC requirements that are more rigorous than they used to be.

Clerk: He thanked Karin Wolfe for helping clerk the meeting and mentioned that Rosie had decided to move onto another job in Hawaii. He advised that the Department is looking for a replacement.

Title 17 Training: There is scheduled training on January 17 for learning more about Title 17 because the Commission is the Appeals Board for Title 17. Right now, there are no appeals. There is an outline. The training is at 5:30 p.m. and will take perhaps an hour or an hour and one-half. Snacks will be provided.

Comments Regarding Variance Request Decision Made This Evening: He stated it is difficult to be a Planning Commissioner. He felt their decision was a reversal of a decision they had made before. He urged the Commission to really think about their decisions. Overall, he believes the Commission has been making good decisions for the community.

Mr. Miller asked if there was anything about F-MATS.

Ms. Vlah stated they are having a meeting Wednesday, the 9th.

Mr. Miller brought up the Title 17 re-write? Ms. Horner was serving on that. He asked what the status was.

Mr. Hernandez said they have selected someone to do it and that a contract price is being negotiated.

Mr. Miller asked if continuing technical meetings are being required of the Planning Commission at this time. Ms. Horner was sitting on that.

Mr. Hernandez stated that she is still sitting on that. She will continue to report to the Commission.

Mr. Miller brought up the North Pole Plan Use.

Mr. Hernandez stated the plan is basically completed and it needs to be put in a format to present to the City of North Pole and the residents. It is hoped it will be done either the end of January or the beginning of February.

Mr. Miller asked if the Commission could see the plan.

Mr. Hernandez responded that they could although it was not ready for adoption. It is in the form of 3 alternatives, or in the form of “no,” which is to do nothing.

Mr. Miller asked whether the Commission could be invited to the meeting.

Mr. Hernandez stated that they could and that it could be advertized that the Commission may be in attendance.

Mr. Miller stated that there is still action at the Assembly level as to what to do with appeals. The Planning Commission is losing its resolution as far as what it wants to do about appeals. The Assembly is still discussing the issue.

He mentioned Mr. Hernandez’s desire to have a work session on March 11. The Commission has a public hearing on March 25.

Mr. Hernandez pointed out that those are not the regularly scheduled meeting dates and that they are additional to the regular meeting dates because we expect there would be a lot of public testimony. The size of the project merits its own meeting.

Mr. Miller asked if the City Council was doing its public meeting as well.

Mr. Hernandez said it was and it would be making their decision –

Mr. Miller asked if the Commission’s work would be dependent upon the City’s recommendation.

Mr. Hernandez stated that he scheduled it that way so the Commission would be able to hear what the City had to say.

Mr. Miller asked if the City postponed on the 10th, would the Commission change its meeting on the 11th.

Mr. Hernandez said that he did not think so.

Mr. Miller asked if it was hierarchal – if it had to go in that order.

Mr. Hernandez stated that it did not, except it did have to go to the Planning Commission before it went to the Borough Assembly.

Mr. Miller stated that on the 11th and the 25th need to be calendared, along with the regularly-scheduled meeting.

He brought up the Davis Road Rezone. There is a meeting on the 17th.

Mr. Hernandez stated that he would just like to have a work session on the 22nd to present the findings and what the recommendation is for the rezone. On a subsequent meeting we will put it on the Commission’s agenda to make an official recommendation to the Borough Mayor for an ordinance creation to rezone the area. Public hearing would be scheduled before the Planning Commission. The Commission needs to review the information to make a recommendation to the Mayor.

Mr. Miller wondered if the Commission needed a special meeting or should it be scheduled for a work session before the next regular meeting on the 5th?

Ms. Bratcher asked how many work sessions have already been scheduled for the New Year.

Mr. Hernandez replied that the only one now is for the 15th – the training. There are no other works sessions scheduled. The Planning Commission did have a sense of urgency to get through the Davis Road rezone.

Mr. Miller stated that the Davis Road meeting is on the 17th, and asked if the Planning Commissioner's would be notified that they could attend?

Mr. Hernandez stated that was correct.

Mr. Miller stated that February 11 through 15 is another planning opportunity.

Mr. Hernandez asked how many people would be able to participate in that training.

Ms. Bratcher replied that she would not be able to attend all week.

Mr. Miller stated he could not make that kind of time commitment during the work week. He stated he would attend the beginning and end and see what everybody came up with.

Mr. Hernandez asked if anyone else could do it. He recognized Ryan as being able to do so.

Mr. Miller asked when the APA was.

Mr. Hernandez stated it would be the last weekend in April or the beginning of May.

Ms. Bratcher stated it was the 27th through the 1st?

Mr. Miller stated that it was not one of the immediate agenda issues. What about Davis Road?

Mr. Colgan suggested they meet on the 22nd.

Mr. Miller asked if there was an objection to 6:00 on the 22nd to talk about Davis Road?

No objection.

Mr. Miller brought up the Riverfront Plan and its scheduling and asked whether that could be held on the 22nd as well?

Mr. Hernandez replied that he could make it happen. The Davis Road work session would be about 1 hour and the Chena River Plan about 45 minutes or so.

Mr. Colgan stated that if she is not able to make it, it should be scheduled before the next regularly scheduled meeting on the 5th. He also brought up the CCPAB appointment.

Mr. Miller asked for volunteers for the Community Comprehensive Plan Advisory Board.

Mr. Hernandez said that they were looking at probably 2 meetings a month, maximum 4 hours a month. Each meeting would be 1.5 hours. It is essential a person be in attendance.

Mr. Miller stated it would be a noon meeting, two times a month for a couple hours at the most and he heard 4 people who may be interested: Ms. Bratcher, Mr. Pruhs, myself, and Ms. Peterson.

Mr. Pruhs withdrew his interest.

Ms. Bratcher said she did not mean to show interest.

Mr. Hernandez stated Ryan and Emily were at a meeting where, as part of the Downtown Vision Plan, the implementation of a zoning code would implement the Downtown Vision Plan. We are discussing how to create zoning standards and design guidelines for potential developers to develop downtown.

Mr. Miller asked Ms. Peterson if she would be willing to do the Comprehensive Plan Advisory Board.

Ms. Peterson that she fought hard for a Planning Commission member to be part of the Board.

Mr. Miller asked for any objection. He further said he would help as he was able.

Mr. Hernandez asked if anybody else would be interested in the APA so that he could get started right away. It is not until the end of April, but he needs to start making arrangements.

Ms. Bratcher stated it was possible that she may go. She has 40,000 miles but she is not sure.

Mr. Hernandez asked to know within in the next week or so.

Mr. Temple referenced the decisions made tonight. He stated he did not see the variance decision as a reversal. The first time information was presented by the Applicant it was very slim and the Planning Commission voted no. The Appeal came back and the Commission continued to vote no. Tonight Applicant presented new information and the Commission reviewed it as a new matter and made their decision based on the facts. It was clear it was disagreeable to Legal and Staff, and he respects that. However, he does not want to be in a position to be afraid to reverse himself. There are times it is appropriate. Sometimes a change even involves a strong decision by the Commission. I agree we need to think about our decisions and we should not make decisions to please Legal or even other Commissioners. He stated he appreciated the comments, but did not agree on them.

Ms. Dolan stated that there are so many perils of arbitrary decisions and implications to the rest of the Borough. She added that when she is sitting there, she is not giving advice because she wants to influence the decision, but because she is there because of the Borough Code and to keep the Borough out of litigation. If she asks for more discussion, it is because of a legal standpoint and to address the facts. When a decision has been made in which the Commission has gone two different ways on the same set of facts and conditions, it raises a red flag in people's minds as to whether we are making our decision based on who the applicant is. She stated she is not saying that was their intention, but it raises a red flag and subjects the Borough to litigation. Consistent decisions need to be made, applying the same standards. There are quotes from the last hearing that are completely opposite to statements made by Commissioners this evening and she finds that disturbing and difficult to defend from a legal standpoint.

Mr. Hernandez stated he appreciated Mr. Temple's comments.

Ms. Bratcher asked that if the variance was the same thing that the Commission looked at this summer, are people allowed to continue resubmitting for variances that have decisions made on them?

Ms. Dolan stated that they have to be different in some respect. It was modified slightly with respect to the numbers. There is a 6 month limitation in Borough Code. You cannot bring the same request, but you can modify numbers, so it is difficult not to allow them to make their presentation again.

Mr. Pruhs stated he liked her comments during the discussion with the Applicant. They were swaying and in the future he will be asking her legal opinion.

Mr. Colgan stated he wanted to welcome Mr. Pruhs to the Commission.

J. ADJOURNMENT

| There being no further business, the meeting was adjourned at 9:20 p.m.