

FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION

MINUTES
April 7, 2009

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 Tom Marsh, Chairman.

MEMBERS PRESENT: Tom Marsh Tom Temple
Jennifer Peterson David Pruhs
Umit Spencer Ian Hebert
Kevin McCarthy Nello Cooper
Michael Wenstrup

MEMBERS ABSENT: Brian Flemming

OTHERS PRESENT: Bernardo Hernandez, Director of Community Planning
Doug Sims, Planner III
Melissa Kellner, Planner II
Jill Dolan, Asst. Borough Attorney
Marnie Long-Boehl, Secretary

A. ROLL CALL

B. MESSAGES

1. Chairperson's Comments:
None
2. Communications to the Planning Commission
 - a. **Mr. Hernandez** commented on the Planning Commission Retreat scheduled for May 5, 2009. The scheduled Community Planning meeting has been cancelled on May 5th due to no items on the agenda.
 - b. **Mr. Hernandez** stated that we would like to go forward with the Smith Ranch rezone.
 - c. **Mr. Hernandez** added that the Borough Assembly will be having a public hearing on cell tower ordinances on Thursday, April 9, 2009.
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.

1. **Mike Musick**, resides at 4231 Aspenwood Drive, commented on the article in the Borough news column that the Planning Commission was having a work session on ‘Chicago Green Building’ initiatives. Brief history – when he was on the Borough Assembly he suggested that Fairbanks could become the greenest city in North America. I think we are at an opportune moment in time where the State is providing rebate money for energy conservation measures and retrofits for residential structures. The Federal Government is providing energy upgrade money for commercial building. Energy is only one aspect of a sustainable community. We have the highest heating bills in the world with the exception of the rural communities in Alaska. We have some of the worst air quality problems in the United States. There is every reason in the world for all of us to get together. We need to save energy, healthy homes, and a healthy community.

C. *MINUTES

D. APPROVAL OF AGENDA AND CONSENT AGENDA

Approval of Consent Agenda passes all routine items indicated by asterisk (*) on agenda. Consent Agenda items are not considered separately unless any Planning Commission member or citizen so requests. In the event of such request, the item is returned to the general agenda.

MOTION: To approve agenda and consent agenda, including minutes of previous meeting by **Mr. Pruhs**, seconded by **Ms. Peterson**.

Discussion

Mr. Temple stated on top of page 5 in the minutes the motion should read:

MOTION Move to approve V2009-004 with three (3) Findings of Fact by **Tom Temple**, seconded by **Jennifer Peterson**.

MOTION APPROVED with amendment.

E. CONSENT AGENDA ITEMS

HP2009-002 Application by the Alaska Department of Transportation and Public Facilities to construct a southbound right-turn lane on Chena Pump Road at the intersection of Roland Road.

F. PUBLIC HEARING

V2009-005 A request by Randy and Janet Wakefield for a setback variance of three (3) feet to the Rural Estate 2 front yard requirement of thirty five (35) feet for an existing single family home located thirty two (32) ft from the front lot line on Lot 11, Block D Arbor Estates Subdivision. **(located east of Lancaster Drive, east of Summit Drive)**

Doug Sims presented the staff report. Based upon staff analysis, the Department of Community Planning recommended denial of the proposed variance.

Mr. Marsh asked if there were any questions for staff.

Mr. Pruhs stated that it sounded like the applicant screwed up.

Mr. Sims replied that the applicant's narrative describes the challenge in measuring off of a curved radius.

Mr. Pruhs added "Is there any discernable distance or difference – if this is at 35' versus at 32' – would anyone notice it?"

Mr. Sims replied "In my opinion, No, three feet is hard to pick up".

Mr. Pruhs stated that he understood that we are at a 35 ft setback requirement. Basically the recommendation for denial is because of the 35' with no concernable difference. There is a topography issue but it could have been done but - there would have been some economic aspect on this. If we don't approve this, there is a sale in place, there's an economic aspect on the financing.

Mr. Sims stated "My view on the topography is – had the variance been requested before the building was built – with a vacant piece of dirt – with topographic conditions such as they are, and explained to describe the hardship involved – the variance would of stood a far greater chance of positive recommendation".

Mr. Marsh asked if there were any other questions.

PUBLIC HEARING OPENED

Sandra Kimbell, resides at 1935 Red Berry Road, is the pending purchaser of this property. I wanted to confirm that the variance is a necessity for the financing for this property. Without it, we can't purchase it. There is an economic hardship for us and for Randy Wakefield. If the variance isn't granted, we cannot purchase it, but no one can purchase it. Without a variance, the problem gets extended to any buyer that comes up with the funding for it.

Mr. Marsh asked if there were any questions.

Mr. Pruhs asked "How long ago did you go into a contract to purchase this home"?

Ms. Kimbell replied "It was at the end of January or February".

Mr. Pruhs asked when was the problem discovered.

Ms. Kimbell answered "It was revealed to us in the disclosure statement. We were assured that it normally wasn't a problem". My discovery, given the banking situation our nation currently finds itself in, lenders are not willing take any known risks".

Mr. Pruhs asked "On a personal basis, what stress has this brought to you"?

Ms. Kimbell answered “A lot - Our current home is pending sale at the end of this month. We will have to move out. We expected this process to not take this long. There’s stress. We will have to find some place to live.”

Mr. Marsh asked if there were any other questions.

Mr. Cooper asked that one of the underlying issues with concern about a conventional mortgage versus an unconventional mortgage – did you look at other alternatives or sources?

Ms. Kimbell replied “We had hoped to go VA. What I have been told by my representative with the bank, at Mt McKinley, was that regardless of how we go –conventional, FHA, or VA, the variance will be required because it’s on the assessment”.

Mr. Pruhs asked “So there is no in-house funding from their own loan pool – say with 20% down that they made available to you”.

Ms. Kimbell asked “Who made available to us”?

Mr. Pruhs replied “The bank”.

Ms. Kimbell replied “If we tried to go with a conventional loan, we would have to come up with the 20% down, which we don’t have. Even if we borrowed from our retirement account, we can’t borrow enough. We are restricted with how much we can borrow”.

Mr. Pruhs stated “As so everyone after you that owns the property”.

Ms. Kimbell replied “Exactly”.

Mr. Marsh asked if there were any further questions.

Randy Wakefield resides at 4494 Cranberry Street. I screwed up. I started in real estate in 1976 and building in 1991. I have been involved in numerous subdivisions. I have built approximately 140 houses in the past 28 years. I am very aware of importance of Title 18 and the setback requirements. I respect the importance very much. This is the first time in 28 years that I have had to sit here and deal with the stress. The reason requesting the variances – is the limited use area of the lot. When my wife and I purchased the property in September of 2006 - the driveways, well, and the pad were already established. There was well over 1000 yards of gravel already placed on the pad by the previous two owners. This is third party information and I can’t verify that but I have been told there is documentation and pictures that I could find if I needed to. The photo’s I have shows there’s a 4 foot gravel pad underneath the foundation that extends well out to the septic area. With the well already in, I was kind of limited with the 100 foot arc that I had to come off the well for the septic system. The upper portion of the lot was out of the question, so where we had the house was basically the only place that we could put it to maintain the distance for the septic system. Prior to any construction work or foundation work, we have Three Tier Alaska come out and stake all the corners and all the point curves in June of 2007. The slope of the lot – the front of the house –dropped approximately 40 feet away from the existing structure.

Mr. Pruhs asked **Mr. Wakefield** to continue.

Mr. Wakefield stated that with the 4 foot drop in topography, the farther I moved the septic system down the hill, the steeper that it got. In order to keep from having to have a 10 foot fill over the top of the septic system, we had to place it as close to the house as possible. With the bottom point curve, I started with a 40 foot arch then adjusted it to 37 feet to maximize the southern exposure for the solar gain. At that time, I was positive that I was still two feet over in the limits of the setback.

Mr. Temple stated "Point of order, Mr. Chair. I think there's a difference between asking a specific question than giving a speaker open ended untimed sermontation period. If there isn't a specific question for the speaker, he should be held to the 3 minutes standard time."

Mr. Marsh asked if there were any questions for **Mr. Wakefield**.

Mr. Hebert asked "Is there a tuck under garage"?

Mr. Wakefield replied "Yes".

Mr. Hebert asked "Is there a tight turning radius in your parking lot by the septic"?

Mr. Wakefield answered "Yes there is. I submitted plot plans to **Mr. Sims** that showed the distance from each corner of the house to the shirred drop off which is a 2 to 1 drop off on the northeast corner - 45 feet and it swings around uphill to 50 feet. On the lower corner where it says 75 feet is actually only 35 feet. The vent pipes are 40 feet from the corner of the house".

Mr. Marsh asked if there were any other questions.

Mr. Cooper inquired if there were special needs that would suggest why a 3 foot variance would be necessary.

Mr. Wakefield answered "The special need I was requesting was because of the limited area – there's 25 thousand square feet of useable area on the top potion of the house and limited from the well back a 100 feet. I have this lower corner where the septic system is to work – I have to come across on an angle. By doing all the setbacks and the arch of the curve is what buffaloeed me. Actually the pedestal that Mr. Sims is talking about is 16 feet from the edge of the property line and the road doesn't start for another 6 feet. The entire road is on the other side of the 55 foot easement where the arc comes around".

Mr. Cooper asked "When you started to describe the property, did you say that the septic system was already in"?

Mr. Wakefield answered "Just the well – from there we put the septic system in trying to maintain the integrity of it. It was one of the more difficult systems that I have installed".

Mr. Cooper asked if this was the only miscalculation you have had.

Mr. Wakefield answered "This is the only miscalculation I have had. It's approximately 15 sf that's in jeopardy – It's not the entire house – it's just that corner". I have thought about every architecturally way to do something with the structure but I can't do it. The main reason I am asking for the variance is because of the limitations – this problem will be forever for selling the house".

Mr. Hebert stated that his main inquiry and interest is that southwest corner of the house – why could it not have been rotated. I would like to ask more questions related to your septic and leach field. I think you are trying to use the lot as best as possible but it is a challenging topography. What I want to know is the southwest side of the leach field – how tall is that bank?

Mr. Wakefield replied “On the side where it drops off – from about 5 feet from the edge of the leach field it goes down to the drainage”.

Mr. Hebert asked how many feet is that.

Mr. Wakefield replied “From where the top of the leach field is – to the bottom of the drainage – 12 to 15 feet”.

Mr. Hebert asked if he was the one that installed the leach field.

Mr. Wakefield replied “I installed the leach field and I have adequacy report”.

Ms. Peterson asked “When you’re looking at the topography for building a house – did you consider getting a variance”?

Mr. Wakefield replied “Now in hind sight, but honestly no – I figured I did everything I possibly could – I had surveyed twice, I thought that the surveyors made a mistake. In finding out how the arc affected the radius where it comes into the lot line – it buffaloed me”.

Mr. Pruhs asked “You said you built 148 homes over 30 years and this is the first time you have ever had to come before the Board for a variance”.

Mr. Wakefield replied “first time”.

Mr. Pruhs added “This is not a common thing for you”.

Mr. Wakefield replied “I like to correct my own mistakes but I can’t do it. This is the first time before the Board for a variance”.

Mr. Wenstrup asked “You stated that the whole driveway had been put into place”.

Mr. Wakefield replied “Circular driveway from the top portion coming out on the bottom portion”.

Mr. Wenstrup asked “So the bottom portion was in”.

Mr. Wakefield replied “It was down where the first driveway comes across, on the lower portion where it drops off, we installed about 300 yards of tailings to make that curve”.

Mr. Wenstrup stated “You said that the gravel pad that you put the house on was already there”?

Mr. Wakefield replied “Over 1000 yards – it was over 4 foot deep. In the pictures of the septic system, I went down almost five feet – 30 feet out from the house – I was still in the gravel pad”.

Mr. Hernandez asked “Do the topographic qualities on your property – are they similar to the topographic qualities of properties of your neighbors”?

Mr. Wakefield replied “Not really. There are drainages that come down but none of the lots are affected with three drainages. I have one on northern portion that runs east and west. One on the northwest corner running east and one at the bottom.”

Mr. Marsh asked “You don’t normally ask a surveyor to set your corners for you”?

Mr. Wakefield replied “Normally before we start a project, we set the corners. Whether the surveyor sets them or we find the corners. In this case, we had them come out and set them because we couldn’t”.

Mr. Marsh stated “No, I meant setting the house corner”.

Mr. Wakefield replied “No, normally we don’t”.

Mr. Marsh asked if you had them locate the setback.

Mr. Wakefield said “Just the point curves and the existing corners”.

Mr. Temple asked “Is your position due to the topography – you really didn’t have a choice where to put the house or that there was room to put the house – it was just a simple miscalculation? Could you have repositioned the house to be able to be out of the setback on the property”.

Mr. Wakefield replied “Probably I wouldn’t have tried to get the solar gain by moving it more southernly – trying to adjust the arc caused the miscalculations”.

Mr. Marsh asked if there were any more questions.

Mr. Cooper asked “Are there alternatives to financing that property other than conventional, FHA, or VA”?

Mr. Wakefield replied “I’m sure there are – I couldn’t answer that”.

Mr. Cooper replied “If you receive a variance – do you know if they are still going to allow financing”?

Mr. Wakefield replied “I am under that impression – Yes. I am trying to rectify the problem down the line.”

Mr. McCarthy asked “You mentioned in your testimony that you have a lot of experience with solar work – I understand how important southern exposure is – in your opinion and experience – is this house in the best place for this application. Is this what you’re saying”?

Mr. Wakefield answered “Could of gone a few more degrees uphill but yes – this is the best spot. I was trying to utilize the best spot on the lot line.

Mr. Marsh asked if there any more questions.

PUBLIC HEARING CLOSED

MOTION Move to approve V2009-005 with three (3) Findings of Fact by **Mr. Temple**, seconded by **Ms. Peterson**.

Discussion

Ms. Dolan asked Chair if she could make a couple legal clarifications.

Mr. Marsh replied "Yes".

Ms. Dolan stated "I just want to be clear – I heard a lot of questioning about personal impacts to the applicant. We really shouldn't be considering those tonight. It's not a matter of the type of financing available. It's a land use issue to determine. There's one criterion in the staff report stating: Strict interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance. What that means in this situation – it can mean do other properties in the area have variances. But in this situation it's going to mean – can they use that property, under those uses in RE2 zoning, like building a residence giving the limited usable lot area. It's going to be a factual determination for you to figure out if there is a topographic condition that limits the usable lot area. Whether things like the lack of public sewer and water needing separation distances for the well and septic would play a role in the property being used for that purpose. Those are your factual determinations. I have reminded you of this before, treat this as though the house isn't built yet. Look at the land whether there's usable area for purposes allowed for this zone then determine whether the applicant will be deprived of rights if you didn't grant the variance.

Mr. Temple communicated that when we look at these variances, we will get an application that may tug at our heart strings. What we are required to do is follow the statutes of how we must rule or consider. In Title 29 it states that we are instructed "A variance may not be granted for three reasons: 1) Special conditions that require the variance are caused by the person seeking the variance (Staff report shows there are no special conditions unique to this property); 2) The variance will permit a land use in a district in which that use is prohibited (Staff report touches on that it would permit a land use in the district which is prohibited); 3) The variance is solely to relieve a pecuniary hardship or inconvenience. The reason for the variance is because it is going to be expensive for someone if they don't get the variance. The statutes don't provide us to grant a variance just because it was an innocent mistake. Title 29 was drafted by our Legislature and if there needs to be some consideration for us – it is an issue for the Legislature. We should not ignore the statutes because we are sympathetic. I concur with staff recommendations.

Ms. Peterson agrees with **Mr. Temple**. I would also add that for us to make an approval based on the facts at hand; we are setting ourselves up for dangerous precedence later on. When someone comes to us for a variance request, they can point to this and say "Well you did this time" and we would have some shaky grounds to stand on in the future.

Mr. Pruhs commented that he heard other aspects that should be considered in approval of this variance such as three drainage ditches. If you look at the foot print of the property and the way he had to place everything – he also testified that the better place would be towards the road of this lot. I am looking at this as a justifiable aspect because the lot topography, placement of the setback requirements on the well and the septic – the footprint of the home

– I believe this is a justifiable aspect to approve this variance and not taken any aspects of financial burdens. This is one of those lots that bound us to agree with this variance request.

Mr. McCarthy concurs with **Mr. Pruhs**, looking at the well hasn't already been existed and that the ideal place for the placement of this house to receive full solar efficiency would be closer to the road. I think that this would have had a good chance of a variance prior to construction. I think it would have been approved.

Mr. Hebert expressed that he has built septic systems in more challenging conditions based on Title 18 where it lines out the special conditions deserve a variance – I believe that this land warrants those special conditions. In the staff report it says “The subject property does have limited usable area due to drainage courses and topography. The western portion of the property adjacent to Lancaster Drive is most useable”. I am very familiar with this area and I would agree. The applicant did build on the western portion. Are they going to say that the eastern portion is in-accessible practically speaking due to the presence of a drainage gully that would have to be crossed? Strict interpretations of the provisions of the zoning ordinance would deprive the applicant of his rights. Commonly enjoyed by other parties in the same district, under the terms of the zoning ordinance and I do believe there are special conditions in the area including challenging topography, conventional septic systems are challenged by this situation. You are required with a septic to build so far out from the bottom of disturbed slope or so far back from the tailings of your disturbed slope when you put in a septic system – based on the testimony, I believe this septic would have been much more a challenge to build if it would have been further down a slope. The consideration of solar gain – I can appreciate it and I consider that part of the consideration of the unique properties of the lot. There's tight access to the garage. There's less road frontage than the majority of the surrounding lots on the lower side of the road. The initial drive that was in – needed to use the western side of the lot – puts it in a position where he's perpendicular and it's harder to get down to his house site so that his grade of his driveway is 25% - I can understand why he laid out this house as he did. He was pinched into a corner and I believe it was an appropriate use of his lot. We can approve if an applicant would be denied a basic right and one of our basic rights is pursuit of happiness and the right to expression.

Mr. Cooper expressed that he would side with **Mr. Hebert** on the grounds that Title 18.54.040 suggests topography such narrowness, shallowness or shape of the lot but it also make exceptions where the strict application of this title would result in a peculiar, exceptional and undue hardship upon the owner of such property. I would suggest that denying him a three foot variance would be a hardship on the owner.

Ms. Dolan clarified Title 18. The solar issue is not necessarily appropriate for your consideration. When we are talking about the use of the property – can it be used for the residential purposes allowed in that zone? It's different to say “I want to build a 2,000 sq ft house when you can build a 1900 sq ft house and meet the terms of the zoning codes”. I think you're walking up a fine line when you start viewing that as a basis for your decision. It needs to be more focused on the actual ability to use the property.

Mr. Wenstrup commented that he finds himself in a difficult spot. I agree with **Mr. Temple** on Title 29 that if the applicant had come to us prior to building the house and said I would like to do this 3 feet to maximize solar panels but I can build with the thirty five foot setback – we would have turned him down. We are all asking him questions and trying to push him to say “I needed to build it here because of the land and I don’t think he ever said that fully. He did say that it could have been a slightly smaller house to build on the pad. Based on the fact that he has created this problem and he wants us to fix it, I think that goes against Title 29.

Ms. Peterson added that the topography didn’t come in to play when he built the house. He’s a professional – he knows what has to be done – he would have requested the variance prior. Can you build a house on this property – Yes? Is it a result of a miscalculation – Yes? Topography is not denying use of this property.

Mr. Temple added “It’s only three feet but understand the legislature has already set a line in the sand. How could we oppose the next person that comes in with 3’ 3” and so on? Legislature gave the limits and it’s not up to us to do away with Title 29”.

Mr. Hebert added “I believe we are here to interpret and administer the laws and the regulations of our State and Community. One of the finding of facts in support of the denial was that the proposed variance will not deprive the applicant the use of his property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area based on the lack of other approved setback variances or non-conforming setbacks. I believe this property is unique and deserves special considerations”.

Ms. Spencer said she is looking at the last portion of the findings of fact – the proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increased danger of fire. I agree with **Mr. Hebert’s** explanation and that’s why we are here to weigh the facts and find out if the facts are never to be weighed we wouldn’t have a job here.

Mr. Marsh stated “This lot is a little bit constrained with topography, I agree with that. There was a substantial pad in place. **Mr. Wakefield** said that all he had to do was not skew it a little bit more – he would have had a problem. That was using the plan he had. There are many other building plans with a little bit different shape could have accommodated it also. The applicant could have had the surveyor locate the setback line or the corner of the house just to verify that. That’s commonly done in construction. We are told that we need to look at this as un-built property; would we grant a variance. I don’t believe so. I believe the applicant made an honest mistake – he thought he was building it correctly. He did cause his own problem. I don’t believe the statute allows us to correct his mistake. I will have to vote for denial.

ROLL CALL

Five (5) in Favor: **Mr. Cooper, Mr. Hebert, Mr. McCarthy, Mr. Pruhs, Ms. Spencer**

Four (4) Opposed: **Ms. Peterson, Mr. Temple, Mr. Wenstrup, Mr. Marsh**

Mr. Marsh called a 10 minute recess to come up Findings of Fact to support the approval.

Mr. Marsh asked **Mr. Sims** for the Findings.

Mr. Sims stated: 1) to include "There are special conditions unique to the subject property that necessitates the variance that include multiple drainages, portions of steep topography and limited useable area. 2) Change "will not" to will deprive the applicant the use of property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area. 3) No change.

Mr. Hebert addressed the staff: Could you please delete that staff recommends denial. Just let it read "Findings of Fact."

Mr. Pruhs motioned to approve with three findings of fact as presented to us; seconded by **Ms. Spencer**.

MOTION TO APPROVE, APPROVED.

PUBLIC HEARING

CU2009-005 A request by the David H. Ainley Trust to amend condition #2 of CU2007-005, a natural resource extraction conditional use permit, in order to extend gravel mining at the existing pit located on the easterly portion of TL 1502, T. 1S R. 1E in the Light Industrial zone, until December 31, 2010. (**located south of the New Dawson Road overpass and west of Buzby Road**)

Doug Sims presented the staff report. Based upon staff analysis, the Department of Community Planning recommended approval of the proposed ordinance with Condition #2.

Mr. Marsh asked if there were any questions for staff.

Mr. Pruhs asked "For the continuing construction – what work needs to be done"?

Mr. Sims replied "I called the on-sight construction manager of the project but wasn't able to get in touch with him. My knowledge on what remaining work needs to be done with respect to DOT's respective – there contemplating October 2009 completion – seeding and finish grading. The reclamation of the pit area is more a factor from the DNR, Fish & Game, and Corp of Engineers permit. That will entail further movement of the stock pile gravel – moving it off-site to a different site. Perhaps the applicant could further address this question.

Mr. Marsh asked if there were any further questions for staff.

PUBLIC HEARING OPENED

Marilyn Nagin resides at 1241 North Star in North Pole. It would be nice to include a time limit of operation. Lots of noise for 24 – 7. It would really be important if you approve this; to keep a time limit where they cannot go all night long.

Mr. Marsh asked if there were any questions.

Jerry Kerner, resides in North Pole, stated that this site is from the David Ainley legacy. He has done about 800 areas of subdivisions in North Pole and loved green zoned, buffer zones, and wide streets. What he liked to do is put in things, in the subdivision, that are for future generations. This lake that we are developing is a joint venture with Fish & Game, Corp of Engineers, and about six other agencies. What we are doing is taking the gravel out – utilizing it for the overpass – making it so there’s no hazard to public. This gravel pit will be joined to the streams and will be stocked with fish. The public will be able to canoe. The State awarded the contract late so the contractor wasn’t able to begin until the fall of 2007. It threw a whole summer off. This project needs one more season to be able to complete it into the recreational site that we want to build for the community. I talked with the contractor today and said that the dragline cannot run 24 hours a day. We did it for a month last year but will not do it again. He is in full agreement.

Mr. Marsh asked if there were any questions.

Ms. Spencer asked about the noise “How long has this been going on? Was it the same time as the construction of the over pass or was this going on prior to that?”

Mr. Kerner replied “Exclusive bailed about 56 yards in anticipation the State would have awarded the contract on time. The State ran into problems; so the whole operation just stopped. Last year the dragline went 24 hours then stopped for maintenance issues”.

Ms. Spencer answered “I am really surprised that it went this far.”

Mr. Kerner replied “It went 30 days for 24 hours”.

Ms. Spencer stated from the Findings “Dragline hours of operation are limited to 7:00 am to 10:00 pm daily. Who is to enforce this?”

Mr. Kerner replied “We are to enforce this on them”.

Ms. Spencer replied “That’s my only concern that the enforcement on the noise after hours”.

Mr. Marsh asked if there were any other questions.

Mr. Wenstrup asked “Having this time limit to run things – is that going to slow the process down where you are going to need more time later”?

Mr. Kerner replied “No – now they are doing all the final stuff”.

Mr. Pruhs asked “When you’re done with this, are you going to do some reclamation”?

Mr. Kerner replied “Yes”.

Mr. Pruhs asked “What’s it going to become”?

Mr. Kerner replied “It becomes a big huge lake. The Corp of Engineers has designed it so the north section - about 400 feet of that will be removed so the stream will flow into the lake. Fourteen hundred feet on the other side gets connected to the stream. The lake becomes part of the stream. The Trust will set this up through the Deed so it will become an Outdoor Recreational Site”.

Mr. Hebert wanted to clarify “Are you saying the whole 81 acres site”?

Mr. Kerner replied “It’s going to come out 8 ½ or 9”.

PUBLIC HEARING CLOSED

MOTION Move to approve CU2009-005 with four (4) Findings of Fact by **Mr. Pruhs**, seconded by **Mr. Hebert**.

Discussion

Mr. Pruhs addressed that it’s very rare that something like this comes before us. It is very good that the Trust is donating this and the planning - that you have listened to the thoughts and complaints of what didn’t go well and you have addressed that here. You’re to be commended

Mr. Hebert seconds that statement.

Mr. Cooper wanted to agree with **Ms. Spencer** about the noise and that I believe it’s going to be crucial to apply that condition to the operation.

Mr. Marsh remarked that it looked as though this was just an extension of the existing conditional use do to the extended time of the project. With the additional limitation of hours of operation – I don’t see any problem of extending this at all.

ROLL CALL

Nine (9) in Favor: **Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Ms. Spencer, Mr. Temple, Mr. Wenstrup, Mr. Cooper, Mr. Hebert, Mr. Marsh.**

Zero (0) Opposed:

MOTION TO APPROVE, Approved.

PUBLIC HEARING

RZ2009-010 A request by Sharon K. Duskin to rezone Lot 12, Block 103 Townsite from Two Family Residential to Multiple Family Residential/Professional Office or other appropriate zone. **(located on 8th Ave between Barnette and Cushman Streets)**

Melissa Kellner presented the staff report. Based upon staff analysis, the Department of Community Planning recommended denial of the proposed ordinance.

Mr. Marsh asked if there were any questions for staff.

Ms. Peterson asked “The parking situation – this is a triplex regardless if it is in the wrong zone – that’s out of compliance currently – Correct?”

Ms. Kellner replied “For a triplex – Yes”.

Ms. Spencer said “You stated that the DPO was returned not in favor or in favor”

Ms. Kellner replied “In favor”

Mr. Hebert asked “Is there a requirement for a triplex in a multi-family zone to have a certain number of parking spots”.

Ms. Kellner replied “Yes, regardless of the zone – a triplex requires three spots”.

Mr. Marsh asked if there were any other questions for staff.

PUBLIC HEARING OPENED

Larry Zervos resides at 654 9th Avenue. This neighborhood has been called upon to come down here quite frequently to enforce what use to be the R15 covenants. This property is the subject of a permanent injunction issue by the Superior Court prohibiting the home owners for using it in any way that violates the covenants or land restrictions. This is a unique residential area, right in the heart of Fairbanks, and it is unfortunate that any steps will be taken to reduce the residential character of this area. I agree with the recommendations of staff and I hope you will support that tonight – this request for rezone. I do disagree that it might not be a spot zone. I think its bad public policy for this Commission to be called upon to sanction a home owner’s decision to violate zoning ordinances. Even though Ms. Duskin may not be the one that established that duplex there – I don’t know. She should have known that she was buying something out of conformity.

Mr. Marsh asked if there were any questions.

Ms. Peterson asked “What are your thoughts on the fact that the Comprehensive Plan and the Downtown Plan calls for this area to need more density populated”?

Mr. Zervos replied “I don’t care for that idea since we are trying hard to keep it as a single family or duplex area but if that’s something we will have to confront, we will do it when it comes time to do it”. The one person that did respond to this for approval is a person that called her house a duplex and now it’s a 4-plex”.

Ms. Peterson asked “You were talking about some sort of covenants – that covenant is in place now”?

Mr. Zervos replied “No – they expired some time at the beginning of this decade”.

Mr. Marsh asked if there were any further questions.

Ms. Spencer asked “Is there any reason for this objection”?

Mr. Zervos expressed “I think it in violation of the best interest of the neighbors. It changes the character of this neighborhood. It’s not in the best interest of the City. My belief - if people come down here to live – businesses will follow. I think it’s a mis-service of your job to be called upon to sanction somebody else’s violation”.

Mr. Wenstrup asked about the parking on the street. What is it like?

Mr. Zervos answered “We live on the other street but two cars park one in front of the other”.

Mr. Wenstrup asked if there was parking on the street.

Mr. Zervos answered “People park on the street”.

Janet Kelly resides at 642 9th Avenue. I have lived here 10 years. Ms. Duskin has been there 15 years. There have been no problems, what so ever, in parking. The State building is right across the street. I request that her parcel be zoned multiple family.

Mr. Marsh asked if there were any questions.

Mr. Pruhs replied “Over the course of the next few years, is it your thought that this whole area will be multi-family office”?

Ms. Kelly answered “I think eventually it will be all multi-family as our City is growing. You have the police station next to me, behind that you have City Hall, the Boys and Girls Club, State of Alaska across the street. Across on tenth – it’s all condominiums and apartment houses”.

Mr. Marsh asked if there were any other questions.

Mr. Cooper commented that the property is better suited as multi-family residential opposed to the MFO. Did you give that consideration?

Ms. Kelly “I don’t understand the question”.

Mr. Cooper rephrased the question “One of the concerns under multi-family office is that property would not be able to meet setback requirements and as a multi-family – the setback requirements would be greater than it would be if it’s a multi-family extension.

Ms. Kelly replied “There’s no property in the entire two block area that comes to that code on the parking”.

Mr. Cooper replied “I understand. Have you given consideration”.

Ms. Kelly interrupted to state that she has five parking spots in the back of my triplex but yet it’s not a ranchette. You cannot turn around on the property.

Sharon Duskin resides at 651 8th Avenue. I own this property. Whether you change the code or not – I can move on – it would be nice if it happened. There are all zones around us and I do have three parking spots and two in the front on the street. The no parking zone is a driveway and the City put it there so it would be safer for the people that take their children to the Girls and Boys Club. There are three units in that house and of course I can't change it. I didn't find it out until I went to get financing. I didn't know it when I bought it – I didn't check into zoning. I bought it from a friend. It's a nice house.

Mr. Marsh asked if there were any questions.

Mr. Hebert asked "If there were not vegetation in front of your house, could you have three parking spots that would not require backing onto the street"?

Ms. Duskin replied "You will still have to back onto the street" Nobody has turn-a-rounds; they all back onto the streets.

Mr. Cooper asked "About the MFO Office and MFO Residential – Is there any consideration given to request for multi-family residential? I understand that no one in the area is – or everyone is – non-conforming. For multi-family setbacks it's 20 ft in front, 20 ft in the back, and ten ft on the sides. Multi-family office is 20 – 20 – 10 on each side. That puts you way out on the muti-family office as opposed to bringing more but still not conforming".

Ms. Duskin replied "Maybe you can't change the zoning for that reason but you can't knock down all these houses either. You will have to decide that. I think at some point it will be multi-family office".

Mr. Pruhs asked "When was the structure built"?

Ms. Duskin replied "The 70's".

Mr. Pruhs is curious if there would be a Grandfather Rights available here.

Mr. Pruhs has a question for staff "If some time in the future, we wanted to make this all MFO, would that be available with these restricted parking aspects"?

Ms. Kellner replied "You would have to change the parking standards".

Mr. Hernandez added "This is a long range plan – it's a land use plan – things can change in 10 – 20 years. Perhaps somebody does want to buy the lots and zone it multi-family and they raise some of the buildings and they can go ahead and build others but it would have to have a real plan. If there was more than one lot that factored into it".

Mr. Pruhs comment that the structural properties here are going to be affecting the long range plans.

Mr. Hernandez added "Parking standards – we require one space for each dwelling unit. We have looked across the country and that's the lowest you can find for any community".

Mr. Marsh asked if there were any further questions.

Mr. Wenstrup wanted to know why you wanted MFO opposed to multi-family.

Ms. Duskin talked with **Mr. Sims** and he thought that since there was MFO next to me – maybe we could take in my lot but the other lots that are not compiling – why not multi-family. What would that matter to anybody?

Mr. Marsh stated that we had no further questions.

Marilyn Nigro resides at 651 9th Avenue. I am favoring the recommendation of your Planning Committee that this proposal to rezone is not accepted. I am not in favor of her request. She kept saying that the properties were out of compliance in this area and I know my property is not. One of the people that testified today – in favor of it – is also out of compliance.

Mr. Marsh asked if there were any questions.

Karla Zervos resides at 654 9th Avenue. We owned our house for almost 28 years and during that time we have prevented two instances that involved this particular property – It was a construction office for Alcan construction. One of the conditional uses that we prevented was a daycare center. The lot and the house have been out of compliance because of the setback requirements as well as the parking. It's been a difficult house in terms of complying with the covenants that was in effect when we all purchased our houses as well as the community has changed. We appreciate the lower density and I know that's in conflict with the Vision Fairbanks. If you look at the map where it talks about the different zoning uses, we are the nearest to the central business district that is still a two family area. There are people who move to that area in 1960 to be urban pioneers because we wanted to live in the downtown area. We want to keep it as desirable a neighborhood as possible. It is a unique neighborhood and we have more decades to try and keep it that way.

Mr. Hebert asked “Are you on 8th or 9th”?

Ms. Zervos replied “9th – our property is Lot 25 on the overhead map. We are looking directly at the lot in question”.

Mr. Hebert asked “Do you know if any accidents have taken place on 8th avenue”?

Ms. Zervos replied “It's heavily used – the Boys and Girls Club is there so there is quite a bit of traffic but our access is basically on 9th”.

PUBLIC HEARING CLOSED

MOTION Move to approve **RZ2009-010** by **Ms. Peterson**, seconded by **Mr. Cooper**.

Discussion

Ms. Peterson stated that she doesn't understand that the parking is significant to a rezone request; if we're just looking at whether or not this particular lot would be good as a multi-family or MFO – what's on it now doesn't seem to matter.

Mr. Dolan replied “One of the things of a rezone request is that you should form to other parts of your Title – that would include parking standards”.

Mr. Hernandez said that this property already has other problems such as setback as well as parking. Parking is important especially when you have children and people that are backing out into the street. That's a public, health, and safety issue. I think the long range plans says that we would like to see this as multiple-family but if you have a public health safety issue more than two cars – single family residents can back out to the street, duplex can back out onto the street, but if you have triplex or greater, you need to drive out first looking for traffic or pedestrians. Many of these cases – you have the positive side and the negative side of public health and safety issues outweigh other considerations.

Ms. Peterson added "It's out of compliance in parking whether we rezone this".

Mr. Hernandez replied "That's correct".

Ms. Peterson commented "Because parking is already a problem, it seems to me that we are dealing with if this property should be two family or multi-family without really considering the parking.

Mr. Marsh added that it is his understanding that as a two family – the parking is ok.

Mr. Hernandez stated "That's correct".

Mr. Marsh added but its non-conforming right now.

Mr. Hernandez stated "Because it's a triplex now – they are not meeting the parking requirements".

Ms. Peterson asked "And it's being used as a triplex"?

Mr. Hernandez replied "That is correct".

Ms. Peterson added "My other issue is that I would like to hear more talk of the spot zone aspect of this. It seems very spot zone like to me. If it's just one lot in this neighborhood that wants to make MFO but that's not one of the findings of fact in the staff report".

Mr. Kellner added "Another factor to consider in thinking about spot zoning – is whether it is in compliance with the Comprehensive Plan or Vision Fairbanks. Increasing density in that neighborhood is a goal of Vision Fairbanks. For that reason, it may not be a spot zone.

Mr. Hernandez added "We look at the compatibility and if you look to the east – they have a large complex – City Hall, Boys and Girls Club, and office building. We look at all these factors and say - Is this incompatible with the surrounding uses – perhaps it's not – but right now the way it's developed – there is so many other safety issues – our recommendations is to recommend denial on this".

Ms. Peterson would like to hear what other Planning Commissioners have to say.

Ms. Dolan would like to ask staff to elaborate also. I think the most important factor on spot zones is whether we are doing it for the benefit of private land owner or for a public benefit. If there's a public benefit, we should look more to that. That's probably what your calling compliance with the Comprehensive Plan.

Ms. Kellner stated “The Vision Fairbanks Plan was created through a public process and was created to benefit the public. Increasing density in this neighborhood is valuable because it’s a downtown neighborhood. It increases density in compliance with the surrounding land use. It would be to the benefit of the community as a whole”.

Mr. Hernandez stated that we want to see the downtown to be a more vibrant place. Overall it’s consistent with the public good for increasing density – increasing vitality downtown.

Mr. Hebert said “I started off conflicted on this as well due to my interest in seeing Vision Fairbanks come to some vitalization downtown. As I considered it further, I think it does jeopardize public health, safety, and welfare. If a developer had come in with a plan and said here’s how we would want to go to multi-family office and here’s how we are going to comply with the setbacks and the need for parking – that would look attractive. This will not comply with parking. It will make it a further infringement on the setback because of the more limiting setbacks of MFO and for those reasons I will be recommending denial as well”.

Mr. Wenstrup stated “I am not familiar with Vision Fairbanks but I look at this as a island of two family residential area surrounded by other uses but it still has been a whole as a two family and this would be the first time we would be changing that and I don’t think that’s a good idea. It probably would be a spot zone. I think the safety issue is a factor here. I would agree, if we would want to change this area – our goal is growth of the area and have more dense population in that spot. We should look at it as a whole and get community input. I am for denial”.

Mr. Cooper said “I can’t see moving further out of conformity – making it greater doesn’t do anything for me. I believe it further jeopardizes the health and safety of others. I am opposed of the rezone at this time”.

Mr. Pruhs replied “Looking at this, you have a lot of long term factors that you will want to look at and looking at it now – multi-family and multi-family office is not going to be the solution to this property due to the fact of the structures on it and parking issues. Over a ten to thirty year period – this is going to be more central businesses or commercial. This is not going to work – it’s a spot zone and should not be multi-family office”.

Ms. Peterson stated “That means that part of our Vision Fairbanks is not workable for this neighborhood. The reason I am troubled with this – is because I am a big supporter of Vision Fairbanks and we can’t even take this first step - I see more problems down the road. However, I agree with my fellow Commissioners – I think this is a spot zone and multi-family is not workable and will disrupt this neighborhood”.

Ms. Spencer expressed that she agreed with most of the comments but looking at this picture gives the impression that it’s bursting at the seams. Parking is not safe. Safety of the children and public trumps everything else. Anything that jeopardizes health and safety, I cannot support.

Mr. McCarthy concurs with **Mr. Cooper**.

Mr. Marsh asked if we had any further comments.

ROLL CALL

Zero (0) in Favor:

Nine (9) Opposed: **Mr. Pruhs, Ms. Spencer, Mr. Temple, Mr. Wenstrup, Mr. Cooper, Mr. Hebert, Mr. McCarthy, Ms. Peterson Mr. Marsh**

Move to approve RZ2009-010 with two Findings of Fact by **Mr. Hebert** and seconded by **Mr. Temple**.

Ms. Dolan made a suggestion "Given some Commissioners departure from Staff's feelings on spot zone and your discussion on it perhaps you craft a third finding of fact. The Assembly does often look to you to determine whether or not something is a spot zone.

Mr. Hebert replied that he doesn't believe it to be a spot zone based on the activity on 8th Avenue and the existing land uses in the area. I wouldn't be supportive of that finding.

Mr. Marsh concurs that it wouldn't be a special finding.

Mr. Marsh asked if there were any opposition to the findings as presented.

Mr. Marsh said the findings are adopted.

MOTION TO APPROVE, DENIED.

G. UNFINISHED BUSINESS

H. NEW BUSINESS

I. COMMISSIONER'S COMMENTS

1. FMATS

Mr. Hernandez stated that we are going through the process and we are going to get 5 million dollars from the State. The money that we should have gotten through the Congressional Appropriation from the stimulus bill; we were not given money.

2. Title 17 Rewrite Project

Mr. Hernandez stated that yesterday our consultant came and gave an update. He is ready to begin working on the first draft and we should have that by May 11th. Our steering committee will work with him and give him back some comments. We hope to go to public hearing on July 29th. We hope to have a workshop with Planning Commissioners and the Platting Board.

3. Vision Fairbanks Update

Mr. Hernandez stated that we are still working through it. I think will be working on the Design Standards in house very shortly and we will be working with our legal department. Mr. Hebert added that David sent out an email for the final design guidelines were already approved. Mr. Hernandez replied "That's not true; the administration has given us approval to go forward.

4. **North Pole Land Use Plan**

Mr. Hernandez stated that one of our Staff is at a meeting in North Pole working with the business owners on the Land Use Plan. People are now really interested in the Land Use Plan.

5. **Comprehensive Plan Advisory Board (CPAB)**

Ms. Peterson stated that we have chosen the consultant to do the Land Suitability Analysis. They are out of Anchorage, Agnew Beck. We have been working on the GU-1 positioning paper to bring to this body to discuss making zoning requirements in GU-1 areas.

6. **Other Commission Comments**

Mr. Hernandez wanted to hear comments on the rezone of Smith Ranch and also talked about the retreat. Mr. Marsh commented on Smith Ranch that it looks pretty well crafted out. He thinks it's a very do able project. It would be a nice thing to get it resolved. Mr. Hebert added that he is excited to look over the proposal – is this the problem statement we look over. Mr. Hernandez replied “Yes, that's correct”. There was some discussion on voting issues. Ms. Dolan interrupted and stated that you need to be careful talking about specific decisions because you have an appeal period and you have other people that can ask for reconsiderations – I would avoid talking about specific cases but you can talk about variances in general. Mr. Hebert asked Ms. Peterson to explain more about GU-1 zoning.

I. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:35 p.m.