

FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION

MINUTES
August 4, 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
Nello Cooper Kevin McCarthy
Michael Wenstrup

MEMBERS ABSENT: Ian Hebert, Brian Flemming

OTHERS PRESENT: Bernardo Hernandez, Director of Community Planning
Doug Sims, Planner III
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** announced that there will not be any nuclear power plant.
 - b. **Mr. Hernandez** stated that the North Pole plan was adopted by the City Council of North Pole. We will have a work session on Sept. 1st.
 - c. **Mr. Hernandez** said that we will have a work session on August 18th for Vision Fairbanks – Design Standards at 6:00 pm. We will be going to City Council on next Monday (August 10th) to have a discussion on the proposed Design Standards.
 - d. There will be meetings with FEMA on Wednesday, August 5th at 3:00 pm and 6:00 pm in the Assembly Chambers.
 - e. We need a representative from the Planning Commission for FMATS.
 - f. There is audio – web training being offered on Dec. 9th from 3:00 – 4:30 pm for “Introductory to the Planning Commission”.

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

a. Agenda items not scheduled for public hearing.

- RZ2009-004 Mary Lee Guthrie Rezone
 - **Oliver Backlund**, resides at 2065 Charlijo Loop and he likes the low density of the subdivision that he lives in. He would not like to see his 2 ½ acre lot further divided.
 - **Larry Landry**, resides at 2240 Railroad Dr., addressed concerns that were raised at the last meeting on the power point. He discovered, since last meeting, that the DNR has sent an opposition letter to the Borough due to potential conflicts with mining and Outdoor Recreation, this is the most compatible zoning available with the Goldstream public use area. The current rural residential area has a much bigger conflict with the mining activities and recreation activities that the Goldstream public use area is suppose to promote. DNR said ideally the Borough would create a conditional use mining condition to appease their concerns over the possibility of any mining taken place there in the future. DNR is suppose to make a management plan for the area and make regulations for mining but haven't done that yet – low priority on their list. To date there is no mining claims in the area that we have opposed for Outdoor Recreation.
 - **Sarah Drew**, resides at 1045 Dawn Drive, wants to speak about the proposed RA zones. They requested zoning on these parcels that fulfills the comprehensive plan as per stated on the overhead projector. Due to the concerns about nonconforming lots, the owner of this parcel is willing to accept RA-20 zoning to this floodplain boggy property. RA-40 is appropriate for this parcel due to the large thaw pond on the property – keeping this parcel large is a benefit to the public and it is an adjacent facility to a produce farm. Her acreage has been cleared since 1958 – all parcels have seasonal ponds and water fowl. Galloway acres borders O'Conner Creek and has spring flooding issues and it is bordered on the west side of O'Conner Creek by 40 4-acre parcels of GU zoning with dog lots and houses on wetlands.
 - **Jen Landry**, resides at 2240 Railroad Dr., wants to speak about the parcels on the northern and western edge of our zone are being referred to as spot zones – we believe this is not the case. Our borders are uneven because we had the understanding that land owners not in support of the rezone on boundary areas would likely be removed from the rezone. We had no idea this could create issues with spot zones. She would have done things differently. Rezoning these parcels with this comprehensive plan benefits the public by working with natural hazards and any development on natural lands, floodplains and wetlands; decreasing hazards by improving zoning standards in the floodplain; increasing water quality; maintaining public enjoyment of trails. The RF-2 and RE-4 parcels are within the Borough's open space corridor. All the parcels have trails through them or adjacent to them. The RF-2 parcel is not a spot zone but it butts an existing RF-2 area. These parcels have features of wetlands. RE-4 zoning is entirely in the floodplain. She proposes that RA5, with the land owner's request, be acceptable.

- **Dale Guthrie**, resides at 2183 Nottingham Drive, referred to the overhead about history on ice wedges and pictures of ice wedges occurring around his house in a residential area.
 - **Larry Johnson**, resides at 2194 Nottingham Drive, stated that the proposal truly affects the will of the property owners in the area. He urges the adoption of this proposal.
 - **William Mendenhall**, resides at 1907 Yankovich Road, agrees with the last speaker and thinks it's a well thought out plan. He strongly supports this rezone.
 - **Mareca Guthrie**, 2183 Nottingham Drive, showed more examples of permafrost in the area of residential zones (RE-2 and RE-4) on the overhead.
 - **John Wright**, resides at 1991 St. Bernard Dr., is not involved in the rezone but is neighboring to it. He described the density of the neighborhood. He talked about the water table in the area.
 - **Mary Lee Guthrie**, resides at 2183 Nottingham Dr., is part of the rezone area. She did this rezone for the hope to revise zoning that could lead to better government process and to avoid unnecessary conflict on land development and land use issues by clearer signaling via zoning.
 - **Grace Pedersen**, resides at 773 Goldfinch Road, lives on a piece of land that borders the rezone. She supports the rezone.
 - **Owen Guthrie** resides at 1470 Ithaca, commented on spot zones.
 - V2009-009 Tim Staton variance:
 - **Tim Staton** resides at 4636 Fairchild, pointed out that he came to the Borough in good faith to apply for a variance with special limitations for a portion of the property. He discussed the variance he needs and referred to his neighbor Mr. Darling's variance.
 - **Mr. Pruhs** asked if **Mr. Staton** measured the neighboring homes.
 - **Mr. Staton** replied no – it was done by Borough staff.
 - **Mr. Temple** asked what square foot of your property encroached into the setback that was grandfathered versus what you are trying to do now.
 - **Mr. Staton** replied that 80 sq ft was grandfathered into the setback and he would be increasing 240 sq ft.
- b. Items other than those appearing on the agenda.
None

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. Temple**, seconded by **Ms. Peterson**.

Objections

None

MOTION APPROVED

E. CONSENT AGENDA ITEMS

F. PUBLIC HEARING

G. UNFINISHED BUSINESS

V2009-009 A request by Timothy Staton for a setback variance of twenty five (25) feet to the Rural Estate-2 front yard setback requirement of thirty five (35) feet for an existing and proposed addition to a single family home located ten (10) feet from the front lot line of Lots 04-06, Block 16, Smith Ranch Subdivision. **(located north of Fairchild Avenue, between Broadmoor and Western Avenues)**

Mr. Sims added that a map was added to the addendum packet that describes the different setbacks in the neighborhood provided by our Code and Enforcement Officer. He added that Staff's recommendations have not changed.

Discussion

Ms. Peterson said the reason that this was postponed because this would deprive the applicant the use of his property in the manner equivalent to the use permitted to be made by the owners of the property in the immediate area. Her concern was that the area had multiple properties within the proposed setback area, that the applicant was requesting. The map shows that this is not the case. The setbacks on the map mostly conform to the setback requirements of the neighborhood with some exceptions. She cannot support this variance. It's a large variance and he could build on other areas of the property.

Mr. Temple concurs with Staff recommendations. He supported postponement to give the applicant another chance to provide us with other information. He does not think this variance conforms to the intent and purpose of Title 18. He is in agreement with Staff and is voting denial.

Mr. Wenstrup agrees with what was said previously. He believes that this is a big variance and is out of character for the neighborhood. At this time, he feels a variance is not warranted here.

ROLL CALL

Zero (0) in Favor:

Seven (7) Opposed: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

MOTION TO APPROVE, Denied.

RZ2009-004 A request by Mary Lee Guthrie et al., to rezone approximately 2,000 acres generally located west of Ballaine Road, east of Sheep Creek Road and north and south of Goldstream Creek and described as follows: Reeves Sub., Lots A and B; Birkebakke Sub. Lots 01 and 02 from Rural Estate 2 to Rural Estate-4; Macchione Sub., Lots 01 and 02; Guthrie Sub., Lot 01 from Rural Residential to Rural Estate-4; Picea Sub., Lots 01 and 02, Parthasarathy Sub., Lot 02 from Rural Residential to Rural Estate-2; College Hills Estates 1st Addition Lots A and B from Rural Residential to Outdoor Recreation; Galloway Acres Lots A3 and A4 from General Use 1 to Rural Agricultural 5; Sandhill Sub. Lot 01 from Rural Residential to Rural Agriculture 20 and Sandhill Lot 02 from Rural Residential to Rural Farmstead 2; **within T. 1N R. 1W Section 07**, TL 705 from Rural Agricultural 10 to Outdoor Recreation; **within T. 1N R. 1W sections 30 and 31**, TL 3004, 3027, 3043, 3111, 3112, 3113, 3104, 3102, 3103, 3025, 3030 from Rural Residential to Rural Estate-2; **within T. 1N R. 1W, section 18**, TL 1810, 1811 and 1807 from General Use 1 to Rural Agriculture 10; **within T. 1N R. 2W section 25**, TL 2518, 2509, 2511, 2523, 2528, 2514, 2542, 2531, 2548, 2500, 2539, 2526, 2546, 2536, 2538, 2527, 2549, 2553, 2525, 2547, 2552, 2551, 2537, 2510, 2534, 2524, 2550, 2541, 2504, 2516, 2517 from Rural Residential to Rural Estate-2; TL 2555, 2503, 2519, 2535, 2543, 2554, 2529, 2522, 2513, 2556, 2557, 2545, 2544, 2520, 2521 from Rural Residential to Rural Estate-4; TL 2507 from Rural Residential to Rural Agriculture 5; **within T. 1N R. 2W section 26**, TL 2607, 2619, 2616, 2609, 2627, 2621, 2602, 2603, 2601, 2615, 2605, 2610, 2617, 2618, 2612 from Rural Estate-2 to Rural Estate-4; **within T. 1N R. 2W section 24**, TL 2408, 2413, 2409, 2410, 2406, 2415, 2411, 2416, 2418, 2414, 2412, 2417, 2407 from Rural Residential to Rural Estate-4; TL 2400, 2405, 2404 from Rural Residential to Outdoor Recreation; TL 2402 from Rural Residential to Rural Agriculture 40; **within T. 1N R. 2W section 13**, TL 1302, 1310, 1304, General Use 1 to Outdoor Recreation, **within T. 1N R. 2W section 23**, TL 2306, 2305 from General Use 1 to Outdoor Recreation, TL 2303 from General Use 1 to Rural Estate-4, TL 2317 from General Use 1 to Rural Agriculture 40, TL 2302 from General Use 1 to Rural Agriculture 10, TL 2319 from General Use 1 to Rural Agriculture 5; **within T. 1N R. 2W section 27**, TL 2705 from Rural Estate 2 to Outdoor Recreation, TL 2704 from Rural Estate 2 to Rural Estate 4, **within T. 1N R. 2W section 36**, TL 3602, 3606, 3603 from Rural Residential to Rural Estate 2; or other appropriate zones. **(located north and south of Yankovich Road, west of Ballaine Road, east of Sheep Creek Road, east and west of Miller Hill Road)**

Doug Sims pointed out in the Addendum packet there is a letter from the State Dept of Land, Water, and Mining. At the last meeting, he commented that the State had not commented but they did comment but Staff received it July 27th after the meeting date. This will be part of the rezone file and forwarded to the Assembly but does not change Staff recommendations at all for the Outdoor Recreation portion.

Doug Sims gave the staff report for the following and recommends approval:

- TL2317, 1N 2W, section 23: GU-1 to RA-40 with two (2) Findings of Fact.
- TL 2302, 1N 2W section 23: GU-1 to RA-10 with two (2) Findings of Fact.
- TL 2319 1N 2W section 23 and Lots A3 and A4 Galloway Ares: GU-1 to RA-5 with two (2) Findings of Fact.
- TL 1810, 1807, and 1811, 1N 2W section 18: GU-1 to RA-10 with two (2) Findings of Fact.
- TL 2402 1N 2W section 24; RR to RA-40 with two (2) Findings of Fact.
- Lots 1 and 2 Sandhill Subdivision; Lot 1 RR to RA-20 and Lot 2 RR to RF-2 with two (2) Findings of Fact. Staff recommends Lot 2 be rezoned to RA-5 instead of the proposed RF-2.
- TL 2507 1N 2W section 25, the Musk Ox Farm; RR to RA-5 with two (2) Findings of Fact.

Discussion

Ms. Peterson commented on the Sandhill Subdivision - are your recommendations to do RA-5 instead of RF-2 and has the property owners been talked to.

Mr. Sims replied “no that he has not talked to the property owners”.

Mr. Marsh wanted to know the differences between RA and RF.

Mr. Sims replied that there weren't many differences – in this instance it would be greater lot size.

Mr. Marsh asked if there were any other questions.

Ms. Dolan wanted clarification from **Mr. Sims**. We can't have any property being treated differently – so if there is property that has the same soil classification, same designation on the comprehensive plan, and has the same conditions there has to be a basis for treating it differently. That basis has to be other than ownership or the desire of the property owner. She wants to be clear that property ownership input should carry weight with you but there is a difference between what a property owner in a neighborhood wants and the Government telling you what you can do with your property through legislative action so we can support that legislative action. On TL 2317 there was testimony of a large thaw lake – was that part of your basis for having a larger parcel size RA-40.

Mr. Sims replied “yes” within a sense it's in a flood hazard area and poor soil conditions.

Ms. Dolan replied to considering the difference between some of the other RA zones that have smaller parcel designations that would have been a reason to have the larger 40 acre parcel size?

Mr. Sims replied yes.

Ms. Dolan needed clarification on TL 2302 - is it in the flood hazard area? Mostly the comprehensive plan designation being different that distinguished between RA-5 and RA-10.

Mr. Sims said that the RA-10 parcel has more Open Space designation.

Ms. Dolan asked about TL 1810, TL 1807, and TL 1811 – it was within the flood hazard area. Why were they designated RA-10 versus RA-20 or RA-40?

Mr. Sims said its how it was proposed by the applicant. It's currently GU-1.

Ms. Dolan asked if it was still compatible with our comprehensive plan and the surrounding land areas.

Mr. Sims replied yes.

Ms. Peterson asked if they could vote on the portion before going on.

Mr. Marsh said yes – I need to hear a motion.

Ms. Peterson motioned to vote on the RA zones, second by **Mr. Pruhs**.

MOTION Move to approve RZ2009-004 TL2317, 1N 2W, section 23: **GU-1 to RA-40** with two (2) Findings of Fact by **Ms. Peterson**, second by **Mr. Pruhs**.

Ms. Peterson commented that this rezone seems straight forward. RA-40 next to Outdoor Recreation seems to be a compatible land use for sub-standard soil. She will vote for approval

Mr. Marsh concurs with **Ms. Peterson**.

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

MOTION TO APPROVE, APPROVED.

MOTION Move to approve RZ2009-004 TL 2302, 1N 2W section 23: **GU-1 to RA-10** with two (2) Findings of Fact by **Mr. Temple**, second by **Mr. Pruhs**.

Mr. Temple concurs with Staff recommendations.

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

MOTION TO APPROVE, APPROVED.

MOTION Move to approve RZ2009-004 TL 2319 1N 2W section 23 and Lots A3 and A4 Galloway Areas: **GU-1 to RA-5** with two (2) Findings of Fact by **Mr. Temple**, second **Ms. Peterson**.

Mr. Temple concurs with Staff recommendations.

Ms. Peterson added that this is not in a flood hazard but the area is perma-frost so the larger lot designation is justified but it doesn't have to be as large as RA-40 or RA-10 because it is not in a flood hazard. She concurs with Staff recommendations.

Mr. Marsh added this is the approximate size of the lot so you don't want to increase it to RA-10 because it would be nonconforming.

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

MOTION TO APPROVE, APPROVED.

MOTION Move to approve RZ2009-004 TL 1810, 1807, and 1811, 1N 2W section 18: **GU-1 to RA-10** with two (2) Findings of Fact by **Mr. Temple**, second by **Ms. Peterson**.

Ms. Peterson said that these are 40 acre lots located in a flood hazard area and we have rezoned another lot for the same reason – its seems that this would be best at RA-40 and not a RA-10.

Mr. Marsh said based on the floodplain map – two of these lots are within a floodplain. TL 1810 is about 50% in the floodplain. We did not hear any testimony why RA-10 was requested. All three parcels are in the wetlands area.

Ms. Peterson said based on the testimony heard from these last two meetings – people seem to be open to changes to zoning other than what was proposed. Since we are not the last decision, property owners will be able to talk to the Assembly if they don't like what we are doing.

Ms. Peterson moves to change the zoning from **GU-1 to RA-10** and change it to **RA-40**, second **Mr. Cooper**.

Mr. Cooper concurs with **Ms. Peterson**.

Mr. Marsh asked **Mr. Sims** if he received any information on RA-10.

Mr. Sims replied none other than what was in the narrative – he repeated the narrative proposed on Page 6.

Mr. Temple asked if each of these lots were 40 acres.

Mr. Sims replied only one is a full 40 acres but others are close to 40.

Ms. Peterson would like to amend her motion to RA-20, second by Mr. Pruhs.

Ms. Dolan announced that is out of order.

Mr. Temple asked if this was moved to either RA-40 or RA-20 – none of these lots would be able to be subdivided.

Mr. Sims answered with if it was RA-40 – that would be the case. If it was RA-20 – it would be trying to find developable ground with poor soil conditions.

Mr. Temple stated that none of these lots equal 40 acres – you are not going get any two 20 acres out of them so they could not be further subdivided if they were RA-20.

Mr. Sims said one parcel could – it's a full 40 acres.

Mr. Temple replied that the owner was in agreement with the RA-10.

Mr. Sims replied yes.

Mr. Marsh communicated with **Ms. Peterson** that she could amend her motion now.

Ms. Peterson would like to amend her motion from **RA-40 to RA-20**, second by **Mr. Cooper** with the Findings of Fact to be changed to reference **RA-20**.

Mr. Marsh said if this is approved, then we will amend the Findings of Fact.

Mr. Temple is concerned that this property is GU-1 and now we are telling the property owner that he can't subdivide. He thinks the owner's wishes are important here. He thinks RA-10 is reasonable and the owner is in agreement with this so he is opposed to the amended motion.

Ms. Peterson added that since we have not heard from this property owner and others were positive with changes being made; she will make the assumption that this property owner will agree with this. If not in agreement, he can give testimony to the Assembly.

Mr. McCarthy concurs with **Mr. Temple**.

Mr. Pruhs thinks we are not being consistent. He can understand going from a RA-40 to a RA-20 because of the configurations of the lots. He is in support of this motion because we must show consistency overall in this zoning.

ROLL CALL

Four (4) in Favor: **Mr. Cooper, Ms. Peterson, Mr. Pruhs, Mr. Marsh**

Three (3) Opposed: **Mr. Temple, Mr. Wenstrup, Mr. McCarthy**

MOTION TO APPROVE, APPROVED

Mr. Marsh announced that we have some Findings of Fact that need to be amended. By simply changing **RA-10 to RA-20** would amend Findings. Do we have a motion?

MOTION Move to amend the Findings of Fact from **RA-10 to RA-20** throughout by **Ms. Peterson**, second by **Mr. Pruhs**.

Mr. Marsh asked if anybody opposed.
None.

Mr. Marsh announced that the Findings are modified to **RA-20**.

Mr. Marsh asked for further discussion on this item.

ROLL CALL

Six (6) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Wenstrup, Mr. Marsh.**

One (1) Opposed: **Mr. Temple**

MOTION TO APPROVE, APPROVED.

- **MOTION** Move to approve RZ2009-004 TL 2402 1N 2W section 24; **RR to RA-40** with two (2) Findings of Fact by **Ms. Peterson**, second by **Mr. Pruhs**.

Mr. Marsh asked for any discussion.

Mr. Temple asked if we approve this – are we creating another nonconforming lot?

Mr. Marsh asked **Mr. Sims** if these were three separate tax lots or is it one tax lot.

Mr. Sims replied that is identified as one tax lot but it is three separate parcels under common ownership.

Mr. Hernandez announced that they are three separate parcels and they can be sold off individually.

Mr. Temple added that two of them would be nonconforming.

Mr. Hernandez replied “that would be correct”.

Ms. Dolan stated that nonconforming lot sizes don’t invalidate zoning – so if you think that’s the appropriate designation you can go forward with it.

Mr. Pruhs moves to amend to rezone this to **RA-20**, second by **Mr. Temple**.

Mr. Marsh added that he heard testimony that the owner was willing to consider RA-20 so that would support this.

Mr. Cooper concurs with **Mr. Marsh**.

Mr. Pruhs believes by changing this to RA-20, the Planning Commission is showing a consistency.

MOTION Move to amend TL 2402 1N 2W section 24: **RR to RA-20** by **Mr. Pruhs**, second **Mr. Temple**.

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

Mr. Marsh added that we need to amend the Findings of Fact to RR to RA-20 throughout.

Mr. Pruhs moves to amend the RA-40 to RA-20 throughout the Findings of Fact, seconded by **Mr. McCarthy**

Mr. Marsh asked if there we any discussion.

None

Mr. Marsh announced that the Findings were amended.

Mr. Marsh asked if there we any further discussion on this rezone.

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

MOTION TO APPROVE, APPROVED.

- **MOTION** Move to approve **RZ2009-004** Lots 1 and 2 Sandhill Subdivision; Lot 1 RR to RA-20 and Lot 2 RR to RF-2 with two (2) Findings of Fact. Staff recommends Lot 2 be rezoned to RA-5 instead of the proposed RF-2.

Mr. Sims added that on this rezone he was recommending that the **RF2 be RA-5** – the property owner will object to this – his preference is to have it be either **RF2 or leave it RR**.

Mr. Temple asked if the owner clarified a reason for this.

Mr. Sims said no.

- **MOTION** Move to approve RZ2009-004 Lots 1 and 2 Sandhill Subdivision; Lot 1 RR to RA-20 and Lot 2 RR to RF-2 with two (2) Findings of Fact by **Mr. Pruhs**, second by **Ms. Peterson**.

Ms. Peterson asked **Mr. Sims** to show the flood map.

Mr. Sims wanted to clarify the motion for Lot 2 to be rezoned to RF2.

Mr. Temple asked Staff why RA-5 would be more appropriate than RF2.

Mr. Sims replied consistency – this is a 5 acre parcel.

Mr. Temple asked if the owner felt it appropriate to break it into two parcels – the RF-2 would allow for that but not the RA-5. Would this jeopardize any public health and welfare in the area?

Mr. Sims replied the current zoning is RR so having a minimum lot size of two acre does limit future subdividing. It will not jeopardize public health and welfare.

Ms. Peterson stated that we have been opting for larger lot sizes if it's in a flood hazard area. Lot 2 is not in a flood hazard area so she thinks the RF-2 is appropriate.

Mr. Marsh stated that RF-2 is the zone to the immediate west of these lots.

Mr. Temple stated that RF-2 is more appropriate – we are not constricting the owner on what he can do with his land.

Mr. Cooper replied that it's up to the Commission to decide the best use for these lots and he concurs with Staff's recommendation that the minimum lot size be RA-5.

Mr. Cooper moves to amend the rezone for Lot 2 from **RF-2 to RA-5**.

Mr. Temple would be opposed to the amendment.

Mr. Marsh asked for a second on the motion.

None

Mr. Marsh announced since there is not a second – **the motion to amend fails**.

Mr. Marsh asked if there is any further discussion on the main motion.

ROLL CALL

Six (6) in Favor: **Mr. McCarthy, Ms. Peterson, Mr. Pruhs,
Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

One (1) Opposed: **Mr. Cooper**

MOTION TO APPROVE, APPROVED.

Mr. Hernandez asked if they motioned the Findings of Fact.

Mr. Pruhs stated that he did that in this original decision.

Mr. Hernandez said the Findings of Fact were made for the RA-5 designation.

Motion to amend the Findings of Fact from **RA-5 to RF-2** by **Mr. Pruhs**, second by **Ms. Peterson**.

Mr. Marsh stated that we will adopt the amended Findings of Fact.

MOTION Move to approve RZ2009-004 TL 2507 1N 2W section 25, the Musk Ox Farm; **RR to RA-5** with two (2) Findings of Fact by **Ms. Peterson**, second by **Mr. Pruhs**.

Ms. Peterson concurs with Staff recommendations. RA-5 is an appropriate zone – it's not in a flood hazard area. Its current land use is nonconforming. This will bring it into conformance. Its zone is compatible with its surroundings.

Mr. Marsh asked if there was further discussion.

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

MOTION TO APPROVE, APPROVED.

Doug Sims gave the staff report recommends the RE-4 portion with the following lots to be removed from the RE-4 zone and instead be rezoned to RE-2 based on current lot sizes: TL 2529, 2557, 2554, 2555, 2535, 2556, 2533, 2520, 2514, 2543, 2544, 2545, and 2513. Staff recommends TL 2406 and 2403 be rezoned to RA-5 instead of RE-4 with two (2) Findings of Fact.

Ms. Peterson asked to see the flood map. One of the lots that you are proposing that we do is RA-5 instead of RE-4 – what lot number is that?

Mr. Sims replied with TL 2303.

Ms. Peterson thinks it's to the north – that's in the floodplain.

Mr. Sims replied TL 2406.

Ms. Peterson asked if TL 2406 was not in the floodplain and the other one is.

Mr. Sims replied correct.

Mr. Pruhs asked what the sizes of the lots are.

Mr. Sims replied 5 acres.

Mr. Pruhs asked if there was any reason they wanted RE-4 or a RE-2.

Mr. Sims said no.

Ms. Peterson asked to see the surrounding zones on the overhead.

Ms. Dolan wanted clarification on the floodplain boundaries – a lot of the northern properties are proposed to be rezoned to RE-4 look like they are in the flood hazard area.

Mr. Sims said one was and the other was not in the flood hazard area.

Ms. Dolan wanted to know the basis for treating those properties differently than the properties to the left on the overhead (RE-4 proposed to RA-5).

Mr. Sims said that there is not much difference.

Mr. Marsh said that there are a number of these proposed RE-4 lots that are right down the creek bottom that are in the floodplain. Those are all five acre lots.

Mr. Sims answered correct.

Mr. Marsh said it seems inconsistent. It doesn't matter if it's RA-5 or RE-4. They can't be subdivided any further. He asked if they were built on or occupied.

Mr. Sims replied some were and some weren't – largely not built on.

Mr. Marsh asked if there were any further questions.

MOTION Move to approve RZ2009-004 **RE-4** portion as recommended by Staff with two (2) Findings of Fact by **Mr. Pruhs**.

Ms. Peterson asked for Point Of Order; she needs clarification on this motion – are we including the proposed RA-5 zone and proposed RE-2.

Mr. Marsh said the RE-2 portion as recommended to be amended by Staff.

Mr. Sims replied “Yes, you will be considering the movement of the RE-4 nonconforming lots to the RE-2”.

Ms. Peterson asked about the RA-5 to RE-4.

Mr. Sims said correct – the two parcels to be zoned RA-5.

Ms. Peterson said instead of RE-4.

Mr. Sims repeats his recommendations including the two findings.

Mr. Marsh asked if we had a second.

Mr. Temple seconded the **MOTION**.

Discussion

Ms. Peterson does not see a reason to rezone TL 2303 to RA-5 rather than the RE-4 that was proposed by the applicant. She doesn't concur with Staff recommendations on this.

Ms. Peterson moves to amend TL 2303 from RA-5 to RE-4, second by **Mr. Pruhs**.

Mr. Marsh asked if anyone opposed the amendment.

NONE

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

Ms. Dolan asked for the basis for treating TL 2406 differently than the other proposed lots to go RE-4 that are also in the flood hazard area. TL 2522 is excluded from the portions that are going to be rezoned to RE-2 – what are the bases for treating this area differently from the properties around it.

Ms. Peterson asked what tax lot is excluded.

Ms. Dolan replied TL 2522.

Mr. Marsh said that as he understands the lots surrounding it are all under-sized when we were creating a lot of nonconforming lots. TL 2522 was not nonconforming but according to the list it is owned by Mr. Baldrige and there is some correspondence that they wouldn't object to the changes.

Ms. Peterson clarified what Mr. Baldrige correspond says – They understand the conflict created with their non-conforming undersized TL 2513 and would allow that it be added to the RE-2 group, provided that it does not jeopardize the RE-4 listing of their adjoining property.

Mr. Pruhs said TL 2522 does border other RE-4 areas and he thinks our rezone to the RE-2 to clean up nonconforming uses on those lots to the north and the south of TL 2522.

Ms. Peterson said the RE-4 rezone for this area is not the best rezone for the land type but the situation on the ground is that we have small lot sizes in this area. To be consistent, we would zone this with the lowest density we could and that would leave us with the RE-4 zone in these areas where we have nonconforming lots in the RE-2 zone. She believes the TL 2522 is not a spot zone.

Mr. Pruhs concurs with **Ms. Peterson**.

Mr. Marsh asked if there were additional comments.

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

MOTION TO APPROVE, PASSED.

Mr. Hernandez asked if this was with Findings of Fact.

Mr. Marsh said yes.

Mr. Hernandez asked if all the properties proposed to be rezoned RE-4 saved the RA-5.

Mr. Marsh added that Staff recommendations RE-4 save to RA-5 and the TL 2513 to RE-2.

Doug Sims gave the staff report for the **RE-2 zoning** and recommendations as follows:

- Lots south of Yankovich Road; TL 3602, 3603, 3606, T1N R 2W section 36, Picea Subdivision Lots 1 and 2; TL 3102, 3103, 3104, 3111, 3112, 3113, T1N R1W section 31 and Lot 2 Parthasarathy Subdivision from **RR to RE-2** with two (2) Findings of Fact.
- TL 3004, 3027, 3043, 3025, and 3030 T1N R1W section 30 with two (2) Findings of Fact.
- Remaining portion of RE-2 proposal located in the NE1/4 of section 25 T1N R1W and TL 2547, 2546, 2542, 2526, 2552, 2553, 2550, 2551, 2517, 2516 **remain RR** or alternative to be moved from the RE-4 proposal to the RE-2 zone with two (2) Findings of Fact.

Mr. Marsh wanted clarification – there are lots not getting zoned because the soils are appropriate for dense development.

Mr. Sims replied that it gets back to a question legal staff has been asking about distinguishable features on the ground that would justify treating similarly parcels differently. In this case, he sees distinguishing features as reflected in this proposed amendment. I do not see those features for these areas that are presently zoned RR in conjunction with that subdivision plat that was ongoing – there should be an attempt to honor that.

Ms. Peterson asked what the lot sizes of the properties to the north.

Mr. Sims answered that they are larger than the one acre minimum required by RR. (2.3 acres)

Mr. Marsh said it appears that the RE-2 is keeping with the predominant lot size in the area.

Mr. Hernandez said “but not the zoning”.

Mr. Marsh said it’s the predominant character of the neighborhood – the platted lot sizes.

Mr. Sims said it varies.

Mr. Marsh asked if there were other questions for Staff.

MOTION Move to approve RZ2009-004 **RE-2 zoning** Lots south of Yankovich Road; TL 3602, 3603, 3606, T1N R 2W section 36, Picea Subdivision Lots 1 and 2; TL 3102, 3103, 3104, 3111, 3112, 3113, T1N R1W section 31 and Lot 2 Parthasarathy Subdivision from **RR to RE-2** with two (2) Findings of Fact by **Ms. Peterson**, second by **Mr. Pruhs**.

Discussion

Ms. Peterson said that this rezone seems straight forward.

ROLL CALL

Seven (7) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

Zero (0) Opposed:

MOTION TO APPROVE, APPROVED.

MOTION Move to approve RZ2009-004 **RE-2 zoning** TL3004, 3027, 3043, 3025, and 3030 T1N R1W section 30 remain **RR to RE-2** with no Findings of Fact by **Ms. Peterson**, second by **Mr. Pruhs**.

Mr. Marsh announced that Staff's recommendation is to maintain these RR due to not creating two nonconforming tax lots (TL 3027 and TL 3030).

Ms. Peterson said a part from the nonconformity of these tax lots, the proximity of these lots and all of this area – we have been zoning rather large sizes due to the proximity of town. We have done this because we believe that the sub-standard soil warranted it. In this area that is preferred, a perimeter preferred with good soil – she does not see a reason why we would rezone this to RE-2 since it looks like a spot zone.

Mr. Marsh asked if there was further discussion.

Mr. Marsh said we have a choice of voting RE-2 or vote it down and maintain RR.

ROLL CALL

Two (2) in Favor: **Mr. McCarthy, Mr. Temple**

Five (5) Opposed: **Mr. Wenstrup, Mr. Cooper, Ms. Peterson, Mr. Pruhs, Mr. Marsh**

MOTION TO APPROVE, Denied.

Mr. Marsh asked **Mr. Sims** if the Findings of Fact are in support of the denial.

Mr. Sims replied correct.

Mr. Marsh said we need to adopt the two (2) Findings of Fact.

Ms. Peterson moved to adopt the two (2) Findings of Fact provided by Staff, second by **Mr. Pruhs**.

Mr. Marsh asked if anyone opposed.

None

MOTION Move to approve RZ2009-004 Remaining portion of **RE-2** proposal located in the NE1/4 of section 25 T1N R1W with no Findings of Fact by **Ms. Peterson**, second by **Mr. Pruhs**.

Mr. Pruhs moved to amend having TL 2547, 2546, 2542, 2526, 2552, 2553, 2550, 2551, 2517, 2516 remain RR as per Staff recommendation, second by **Ms. Peterson**.

Mr. Pruhs said that **Mr. Sims** demonstrated why this should remain RR because you have other properties involved on a contiguous basis with their slopes – with what is happening in the area that they should not be penalized and this area has been RR and would not jeopardize or hurt any of the other rezoning.

Ms. Peterson added that with the proximity of town a smaller lot size is preferred when possible and these lots Staff has shown to be buildable lots. A higher density would be preferred in that area according to the comprehensive plan.

Mr. Marsh stated that we are voting on the amendment to remove the stated parcels from the rezoned RE-2.

ROLL CALL

Five (5) in Favor: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple**

Two (2) Opposed: **Mr. Wenstrup, Mr. Marsh**

Mr. Marsh asked if there was any further discussion on these lots.

Ms. Peterson added that they are in a Perimeter-preferred residential area - the poor soil quality, because of the thermokarst, are such that a larger lot size is appropriate to rezone from RR to RE-2

Mr. Pruhs added that contours of land shown by Staff on their maps – you will need more of a lot size for any road building for site development.

ROLL CALL

Seven (7) in Favor: **Mr. Wenstrup, Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Pruhs, Mr. Temple, Mr. Marsh**

Zero (0) Opposed:

MOTION TO APPROVE, APPROVED.

Mr. Marsh said we have to adopt the Findings.

Ms. Peterson moved to adopt the Findings of Fact proposed by Staff, second by **Mr. Wenstrup**.

Mr. Marsh asked if there were any objections to the Findings.

None

Ms. Dolan wanted to make a Point of Order. When you acted on the RE-4 portions – there were two areas that were outside of the main portion – the little parcel of RE-4 that is southernmost and the western most parcel of RE-4. Were they included in your motion?

Mr. Marsh replied that these were not discussed by themselves.

Ms. Dolan does not have concerns about the southern portion but the western portion of RE-4 is surrounded by RE-2. You may want to have a finding in there of why it's not a spot zone.

Mr. Marsh replied that the overall map shows that there is a parcel of Outdoor Recreation that separates it from the main RE-4.

Ms. Dolan said that the Findings of Fact that were general for the RE-4 area should cover it.

Mr. Marsh replied that he believes so.

Mr. Wenstrup asked what the tax lot numbers were.

Mr. Sims replied TL 2704. It's in a flood zone as well.

Mr. Marsh said it was part of the RE-4 map and we did not specifically talk about those two lots but they were included in the general discussion.

Ms. Dolan said she would make a finding or two on TL 2704 to justify it being RE-4. There is a small portion in RE-2.

Mr. Sims is making a Findings of Fact.

Mr. Hernandez said that we will work on that – one regarding the open space and one regarding the flood hazard.

Mr. Sims stated the following:

- TL 2704 is partially in a flood zone, its open space natural area, and it's contiguous to a proposed Outdoor Recreation zoning.
- If it weren't for that Outdoor Recreation parcel, it would be contiguous. It's not as isolated as the map makes it appear.

Mr. Pruhs motioned to adopt the revised Findings of Fact, second by **Ms. Peterson**.

Mr. Marsh asked if there were any objection.
None

Mr. Hernandez commended the residents and Mr. Sims for their hard work.

Mr. Marsh noted that the rezone will be passed onto the Assembly and you will have another opportunity to speak.

OC2009-006 An Ordinance amending Title 18 of the Fairbanks North Star Borough Code of Ordinances as it relates to Nonconforming buildings, structures, uses and lots and adding procedures for nonconforming status determinations and appeals.

Discussion

Mr. Marsh stated that the information was in the packet for the July 21st meeting.

Mr. Hernandez addressed the changes to the ordinance as follows:

- Starting on line 117 the following words italicized should be added: “Natural resource extraction *and outside storage* uses shall be allowed to expand to the boundaries of the lot on which they are located at the time they become nonconforming.”
- Starting on line 151 the following should be removed: “*If two or more contiguous lots are of substandard size and held in common ownership, the lots cannot be transferred or developed as individual nonconforming lots unless a variance is granted.*”
- Starting on line 190 the following words italicized should be added: “Any applicable fees shall be waived if the request for nonconforming status is brought within 90 days of a rezone *or amendment to Title 18* creating the nonconformity.”

MOTION Move to recommend adoption of **OC2009-006** with three (3) changes by **Mr. Pruhs**, seconded by **Ms. Peterson**.

Mr. Pruhs commented on the ordinance of how it’s a much better aspect overall than what is currently on the books at FNSB. He thinks it’s a well put together ordinance.

Mr. Wenstrup made a motion to amend the application fees for a successful applicant - If they are successful in bringing something before the Planning Commission that the fee be returned or waived.

Mr. Temple seconded the motion.

Mr. Hernandez asked for clarification.

Ms. Dolan read the ordinance as stated in the Staff report.

Mr. Wenstrup asked to amend the cutoff being 90 days.

Mr. Marsh asked within 90 days of what.

Mr. Temple clarified what **Mr. Wenstrup** was saying. He phrased it by saying: Any applicable application fees shall be waived if the request for nonconforming status is brought within 90 days of a rezone action creating the nonconformity or if the request for nonconforming status is granted.

Mr. Wenstrup agreed with **Mr. Temple**.

Mr. Hernandez commented that would make it with no fees at all.

Mr. Wenstrup explained how if he brought an application in and paid the \$250 and became a successful applicant – he doesn't feel the 90 days is enough time to get the fee waived.

Mr. Hernandez commented that if you don't like the 90 days maybe extend the days. If you have no days at all – there will be no fees. There is a lot of work involved in making determinations on these Grandfather Rights to not charge a fee.

Mr. Wenstrup stated that some applicants won't know if their property is nonconforming until they try to sell it or someone brings it to their attention.

Mr. Temple stated that if you leave it at 90 days then when you do a major rezone Planning Commission will get flooded with applications.

Mr. Hernandez replied that the Planning Commission will not be handling these applications. This will be administratively done. As long as they get the application in within 90 days does not mean we have to handle them all at once – we would stagger them out. We want these applications in a timely manner.

Ms. Dolan agrees with **Mr. Hernandez** and said the provision was put in because Staff has already been out to these properties within 90 days before the rezone and if you wait years down the road more time will be spent pulling records for the applicant.

Mr. McCarthy declared that 90 days is where it should be. If you give them more time, they will procrastinate and forget about it.

Mr. Wenstrup asked if Staff is going out to the properties – are people being notified that they are nonconforming – will they get a letter?

Mr. Hernandez replied that if it's obvious, we will make note of them and bring it forward at the Public Hearing.

Mr. Sims added that on the Davis project, they had some nonconformities go away. Setbacks are hard to determine without a site plan. After the Davis rezone took place, every property owner received a letter to how they were rezoned.

Mr. Marsh suggested that people should be notified that they have 90 days to apply for Grandfather Rights as well as the limitations of the uses on the new rezone.

Mr. Pruhs agreed with **Mr. Marsh**. Most of these will never come up until the property owners look at a survey.

Mr. Marsh addressed the amendment to add the following on the end of Line 191: or if applicant is successful.

Mr. Marsh asked if there were any further discussion.

Mr. Wenstrup added that most people will not realize it until later that they are nonconforming and should not be penalized for it.

Ms. Peterson added that you run into a lot of trouble with these Grandfather Rights hanging out there not confirmed at the time the Grandfathering took place and the longer you are away from this – the harder it will be to deal with it. The property owner should take responsibility.

Mr. Marsh asked for roll call on the amendment.

ROLL CALL

Three (3) in Favor: **Mr. Pruhs, Mr. Temple, Mr. Wenstrup**

Four (4) Opposed: **Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Marsh**

MOTION TO APPROVE AMENDMENT, DENIED.

Mr. Marsh asked for roll call to pass the ordinance onto the Assembly to recommend for adoption.

ROLL CALL

Seven (7) in Favor: **Mr. Pruhs, Mr. Temple, Mr. Wenstrup, Mr. Cooper, Mr. McCarthy, Ms. Peterson, Mr. Marsh**

Zero (0) Opposed:

H. NEW BUSINESS

Mr. Hernandez announced the ordinance on minimum lot size in the GU-1 zoning district. The Comprehensive Plan Advisory Board (CPAB) recommended an ordinance to change the minimum lot size to GU-1 to GU-5. If you wanted to subdivide smaller than 5 acres, you would have to have a different zone to subdivide. GU-1 allows all uses and can't provide with many incompatibilities. This will give a sub-divider a chance to choose his own zone before the zoning takes place if he wants smaller than 5 acre parcels.

Ms. Peterson added that the GU-1 zone is very popular. The people like the idea of doing what they want on their land. By making the minimum lot size 5 acres, we can maintain that Fairbanks aesthetic by not hurting the neighbors.

Mr. Temple asked if we are doing away with GU-1 and it no longer exists.

Mr. Hernandez replied – that’s correct it will become GU-5.

Mr. Temple asked if there was a fee for zoning permits.

Mr. Hernandez replied no.

Mr. McCarthy stated that it sounds like a really good idea and why wasn’t done years ago.

Mr. Hernandez stated that if the Commission recommends this – it doesn’t mean it’s going to be adopted by the Assembly.

Mr. Pruhs see this all the time where people put several cabins on a one acre lot.

Mr. Temple says that he sees the GU-1 serves the purpose and doesn’t see any reason to change anything.

Mr. Wenstrup asked if we were thinking of changing GU-1 in a certain overlay area.

Mr. Hernandez replied “No we haven’t discussed an overlay”.

Mr. Marsh is concerned that this might be construed as a taking. Generally he is in favor of doing away with GU-1 and GU-5 makes more sense to him.

Mr. Hernandez added that any one acre lot now would maintain its Grandfather Rights.

Mr. Marsh asked **Mr. Hernandez** when he was looking at going to the Borough Assembly.

Mr. Hernandez replied that we want to bring it to the Planning Commission under Public Hearing and I want to ask if we can bring it forward for Public Hearing and have you make a recommendation on it.

Mr. Temple stated that he sees a problem with folks that may not be able to afford 5 acres. He thinks this discriminates against the people who are less economically fortunate.

Mr. Cooper is for doing away with GU-1 on the basis that some people put a lot of cabins on one parcel and zero lot lines showing up.

Ms. Peterson stated that she lives in a GU-1 neighborhood on 5 acre lots and someone moved into the neighborhood and turned his property into a junk yard – if that had been on a 1 acre lot and I was next to it - I would argue that that person is taking away my rights. If both properties were 1 acre lots – your value would go down upon selling your property.

Mr. Pruhs added that that happens everywhere. He is worried that all the people that have GU property; how many will realize it until they want to do something to their property.

Mr. McCarthy added that the advantage to the GU-1 is that there are one area lots that are popular with the recreational miners. These people would be disturbed. You might consider having some areas that are rich in minerals – keep them GU-1 and other areas that are more suitable for residential or other uses be GU-5.

Mr. Wenstrup agrees that something should be done with GU-1. He would like to see more information before it goes to Public Hearing.

Mr. Marsh replied with this is something we are interested in hearing.

Mr. Sims stated that we are not being were active or assertive with our enforcement with zoning we do have.

Mr. Marsh agrees with **Mr. Sims**.

Mr. Hernandez announced that we will bring this forward in the near future.

Mr. Marsh stated that at the next meeting, we have a work session at 6:00 pm. on Vision Fairbanks.

Mr. Hernandez replied – Design Standards for Vision Fairbanks.

I. COMMISSIONER'S COMMENTS

1. FMATS

- **Ms. Peterson** is resigning from FMATS.
- **Mr. Wenstrup** is interested.

2. Title 17 Rewrite Project

3. Vision Fairbanks Update

4. North Pole Land Use Plan

5. Comprehensive Plan Advisory Board (CPAB)

6. Other Commission Comments

I. ADJOURNMENT

There being no further business the meeting was adjourned at 10:45 p.m.