

FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION

MINUTES
January 12, 2010

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 Michael Wenstrup

MEMBERS ABSENT: Brian Flemming Ian Hebert
 Pamm Hubbard

OTHERS PRESENT: Bernardo Hernandez, Director of Community Planning
 Jim Lee, Deputy Director of Community Planning
 Melissa Kellner, Planner II
 Cynthia Klepaski, Asst. Borough Attorney
 Marnie Long-Boehl, Secretary

A. ROLL CALL

B. MESSAGES

1. Chairperson's Comments:
None
2. Communications to the Planning Commission
 - **Mr. Hernandez** stated every year they elect a Chairman so the meeting of February 2, 2010 a Chairman will be elected.
 - **Mr. Hernandez** announced that the February 2nd meeting will include a work session on Title 15, an ordinance that deals with floodplain management. The work session will be after 7:00 due to a light agenda.
3. Citizen's Comments – limited to three (3) minutes
 - a. Agenda items not scheduled for public hearing.
None
 - b. Items other than those appearing on the agenda.
None

C. *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

*HP2010-01 Application by the Alaska Department of Transportation and Public Facilities to upgrade 23rd Avenue between Cushman Street and Lathrop Street. The existing street surface would be reconstructed and sidewalks upgraded.

F. PUBLIC HEARING

V2010-006 A request by ADOT&PF for a setback variance of 13.1 feet to the General Commercial front yard setback requirement of twenty (20) feet to facilitate right-of-way acquisition and allow an existing gas pump island to be located 6.9' from the front lot line of Lots 1 & 2, Block 8, Fairbanks Townsite North Addition. **(located east of Illinois Street and south of Minnie Street)**

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

Mr. Marsh wanted clarification on the photo with the Chevron sign – is that sign in the area for the future right-of-way. The pumps will not be close to the right-of-way but the edge of the canopy will.

Ms. Kellner concurred. She pointed out, on the overhead, what side of the street that would not require a variance. The over-hang parallel to Illinois will require the variance.

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

PUBLIC HEARING OPENED

John F. Bennett, Right-of-way Chief for Northern Region, ADOT& PF, is present to answer any questions.

Mr. Pruhs commented on the phrase “this variance is necessary in order to acquire a new right-of-way associated with this project” – should this have been applied for prior to this stage of the project.

Mr. Bennett advised that whether the variance is granted or not granted affects the value of the remaining property. It's a factor in the appraisal process and we are now into the appraisal process.

PUBLIC HEARING CLOSED

MOTION Move to approve **V2010-006** with Three (3) Findings of Fact by **Mr. Temple**, seconded by **Ms. Peterson**.

Discussion

Ms. Peterson concurs with Staff recommendations.

ROLL CALL

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

Zero (0) Opposed:

MOTION TO APPROVE, PASSED.

PUBLIC HEARING

V2010-007 A request by ADOT&PF for a setback variance of 10 feet to the Heavy Industrial front yard setback requirement of ten (10) feet to facilitate right-of-way acquisition and allow an existing commercial building and an existing office to each be located 0' from the front lot line of Government Lot 23, Section 3, Township 1 South, Range 1 West. **(located west of Illinois Street and south of Charles Street)**

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

Ms. Peterson asked if there was going to be a sidewalk.

Mr. Boyce pointed out, on the overhead, where the sidewalks will be built.

Mr. Wenstrup asked if there were going to be any site issues with coming off the Charles Street - with moving the road closer to the buildings.

Mr. Boyce replied that he believes there would not be site issues because there are no-curb cuts in the vicinity of these buildings, so there won't be any vehicles pulling out into traffic. The road is very straight.

Mr. Wenstrup asked if the fences were going to be removed.

Mr. Boyce answered the question with no as he saw Mr. Bennett shaking his head no.

PUBLIC HEARING OPENED

John F. Bennett, Right-of-way Chief for Northern Region, ADOT& PF, is present to answer any questions. He clarified on the comment about the fences with Petro chemical facilities like this one it is governed with homeland defense rules that require fences stay in place during construction. Even if we move the fence, we will have to have a temporary fence in place.

Mr. Marsh asked why the right-of-ways extend past the edge of the sidewalk.

Mr. Bennett communicated that he would have to request Mr. Hopper to testify to answer this question.

Mr. Marsh explained that he objected to having power poles in the middle of sidewalks.

Mr. Bennett answered that the utilities are all going underground.

Mr. Cooper asked about the pecuniary issues – could this have been accomplished with eminent domain or will this delay the project.

Mr. Bennett explained that they may not be able to avoid eminent domain. They are going to strive on reaching an agreeable settlement for the acquisition of these properties. If we can't reach an agreement – we will use the States authority of eminent domain to acquire the properties. We are in the appraisal stage and then we will enter into an agreement with the land owners and attempt to resolve the issues.

Mr. Marsh asked if access to all the properties were look at and that there will be adequate access for the owners to do business.

Mr. Bennett said access is an important part of the design process. Access maybe changed from the current access – maybe reduced – maybe relocated – or changed in size.

PUBLIC HEARING CLOSED

MOTION Move to approve **V2010-007** with three (3) Findings of Fact by **Mr. Temple**, seconded by **Ms. Peterson**.

Discussion

Mr. Temple concurs with Staff recommendations.

ROLL CALL

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

Zero (0) Opposed:

MOTION TO APPROVE, PASSED.

PUBLIC HEARING

V2010-008 A request by ADOT&PF for a setback variance of 9.0 feet to the Heavy Industrial front yard setback requirement of ten (10) feet to facilitate right-of-way acquisition and allow an existing vacant commercial building to be located 1 foot from the front lot line of Government Lot 13, Section 10, Township 1 South, Range 1 West. **(located west of Illinois Street and south of Minnie Street)**

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

Mr. Marsh asked if the sidewalk was colored in on the overhead.

Ms. Kellner replied yes.

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

PUBLIC HEARING OPENED

John F. Bennett, Right-of-way Chief for the Northern Region, ADOT& PF, is present to answer any questions.

Mr. Cooper asked who took the photos.

Mr. Bennett replied FNSB Staff.

PUBLIC HEARING CLOSED

MOTION Move to approve **V2010-008** with three (3) Findings of Fact by Mr. Temple, seconded by Ms. Peterson.

Discussion

Ms. Peterson concurs with Staff.

Mr. Cooper addressed that he likes the idea of the utilities being underground.

Mr. Pruhs concurs with Staff.

ROLL CALL

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

Zero (0) Opposed:

MOTION TO APPROVE, PASSED.

PUBLIC HEARING

V2010-009 A request by ADOT&PF for a setback variance of 6.1 feet to the Light Industrial front yard setback requirement of twenty (20) feet to facilitate right-of-way acquisition and allow an existing commercial building to be located 13.9' from the front lot line of Lot 20C, Block 3, Fairbanks Townsite North Addition. **(located west of Illinois Street and south of Phillips Field Road)**

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

PUBLIC HEARING OPENED

Rudy Gavora, owner of this property, has questions for Mr. Bennett about the effect on appraisals when these variances are granted or not granted.

Mr. Marsh said that is something that you will have to discuss outside of this public hearing – this is an ADOT question. He stated that Mr. Gavora should state what his concerns are.

Mr. Gavora questioned the Findings of Fact as stated below:

3. Because of the existing structure(s) on the property, denial of the proposed variance will deprive the property owner the current use of the property. Further, denial of the proposed variance has the potential of stalling an important road improvement project.

Mr. Hernandez explained the findings of fact. Some people are not having their rights affected by this variance but this is affecting your property.

Mr. Gavora asked if he was against this variance – would his current use of the building be denied to him.

Mr. Hernandez stated if the Planning Commission makes a decision that the property should not receive a variance then Mr. Bennett has to take that into consideration.

Mr. Gavora also has issues about access to and from his property.

Mr. Pruhs asked Mr. Gavora if he was in favor of this variance.

Mr. Gavora replied with No, I am not but it depends a little of what Mr. Bennett has to say about these concerns I need addressed.

Mr. Wenstrup asked what Mr. Gavora was against and why.

Mr. Gavora commented that it depends how it affects the appraisal process – that question needs to be answered.

Mr. Wenstrup said that Mr. Gavora has concerns about if his appraisal value were to go down because of giving the variance.

Mr. Gavora replied yes.

Mr. Wenstrup asked if your appraisal value were to go up – would you be in favor.

Mr. Gavora replied possibly but he has problems with access – losing access completely on Phillips Field Road would affect his business – we lose parking.

Mr. Cooper asked if Mr. Gavora responded to the letters or notices that were sent out.

Mr. Gavora has not responded because he was out of town.

John F. Bennett, Right-of-way Chief for the Northern Region, ADOT& PF, is present to answer any questions.

Mr. Marsh wanted clarification of the process once the variance is granted.

Mr. Bennett said the variance will be transmitted to the appraiser plus other information and he will assess what the value is of the part taken and the monetary damages to the remainder. The question will be - is the businesses that exist there – are they survivable in the condition the State is leaving them. The State wants the businesses to survive. If the variance is not granted – it will become a non-conforming property with the respect of the Title 18 zoning rules regarding setbacks. Non-conforming properties might be viewed as less desirable and therefore less valuable. If the variance is granted – the property becomes conforming.

Mr. Wenstrup asked if we did not grant the variance, would that stop the project.

Mr. Bennett replied no. The State would have to go to court in resolving the damages and the court would rule to continue.

Mr. Wenstrup asked if granting a variance would be advantageous to the property owner.

Mr. Bennett said he thinks so because it will not be a black mark against the remainder of the property.

Mr. Pruhs asked Mr. Bennett if a postponement on this item would be beneficial to Mr. Gavora so he can have all the information in front of him so he can make an informed decision of acceptance or rejection.

Mr. Bennett replied that they need to get through this step in order to get the appraisal finished. They cannot present the appraisal to Mr. Gavora for negotiations until they have all the pieces of the puzzle.

Mr. Hernandez advised that this variance is not based on value of property but based on health and safety of the Community. Will this property continue to function with this zone – that's what your decision needs to be based on?

Mr. Pruhs replied that the person here is not fully informed about this variance.

PUBLIC HEARING CLOSED

MOTION Move to approve **V2010-009** with three (3) Findings of Fact by **Mr. Temple**, seconded by **Ms. Peterson**.

Discussion

Mr. Hernandez clarified that one of the conditions for this variance to be final is that it has to be signed by the owner of the property.

Mr. Wenstrup is in favor of this variance based on the property will be in conformance.

Mr. Cooper added that the variance is going to be part of the appraisal process based on it being a conforming property. He is in favor.

Mr. Marsh commented that the property owner will have the opportunity to demonstrate his concerns at the negotiation process.

Mr. Marsh asked if there were any other comments.

ROLL CALL

Five (5) in Favor: **Mr. Cooper, Ms. Peterson, Mr. Temple, Mr. Wenstrup, Mr. Marsh.**

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

MOTION TO APPROVE, PASSED.

PUBLIC HEARING

V2010-010 A request by ADOT&PF for a setback variance of 9.6 feet to the Light Industrial front yard setback requirement of twenty (20) feet to facilitate right-of-way acquisition and allow an existing commercial building to be located 10.4' from the front lot line of Lot 16, Block 6, Fairbanks Townsite North Addition. **(located east of Illinois Street and south of Slater Street)**

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

Mr. Pruhs asked if Staff received any letters of acceptance or rejection from Mrs. Kelly, the owner.

Ms. Kellner replied no.

PUBLIC HEARING OPENED

Lillian Kelly, resides at 269 Illinois Street, owns Kelly Tire. She is hearing impaired and needs people to speak up. She stated that the property will not have any value when they change the entrance to Slater Street. There will be no access on Illinois Street. She would like to know if this will affect the value of the property that she has now.

Mr. Marsh replied that is not something that the Planning Commission can answer, that's up to the appraiser. When the variance becomes approved, it will begin the appraisal process and that will help determine the value to your property.

Mr. Pruhs asked if she has met with ADOT Right-of-Way Department to ask these questions.

Ms. Kelly replied with not recently.

Mr. Pruhs asked if she has scheduled anytime for an appointment in the future.

Ms. Kelly replied no – she just got the notification – her address is 269 Illinois instead of 261 Illinois.

Mr. Cooper asked if there were any other concerns other than limited access to the business.

Ms. Kelly replied that if they compensate her, she will not have any problems.

John F. Bennett, Right-of-way Chief for the Northern Region, ADOT& PF, is present to answer any questions.

Mr. Pruhs asked if any time has been setup to talk with these property owners.

Mr. Bennett replied that this is one step in the appraisal process. With the Kelly property, they have done the appraisal inspection of the building to see if there could be some modifications to allow the business to survive or to repurpose it for another use. They have had building contractors inspect it to provide cost estimates. They cannot complete the appraisal without a granted variance. When the appraisal is completed, they have a process to send it to their headquarters for a review appraiser. The review appraiser issues the State's Determination of just compensation and that is the formal document of what the State is offering. Then we will have negotiations with Ms. Kelly.

Mr. Bennett wanted to comment on the condition that requires the property owner's signature before it becomes a valid variance. We hope to have a mutually agreed settlement with the property owners. If we cannot reach a mutually agreed settlement – the owners will not sign the variance and then it will be the order of the court to get their signatures.

PUBLIC HEARING CLOSED

MOTION Move to approve **V2010-010** with three (3) Findings of Fact by **Mr. Temple**, seconded by **Ms. Peterson**.

Discussion

Mr. Pruhs is going to be supporting this recommendation and findings of fact.

Mr. Cooper believes that the ADOT is making a good effort to resolve any disputes over the owner's property and he believes the owner's rights will be preserved under Title 18.

Ms. Peterson concurs with Staff recommendations.

ROLL CALL

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

Zero (0) Opposed:

MOTION TO APPROVE, PASSED.

PUBLIC HEARING

RZ2010-003 A request by Guyan Mandich et al to rezone all lots in Lucky Shot Subdivision from General Use-1 to Rural Residential or other appropriate zone. **(located south of the Parks Highway and on all sides of Faith Lane)**

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

Mr. Temple wanted to see on the overhead the lots in support of this rezone.

Mr. Pruhs asked if there were cabin sites currently under construction.

Ms. Kellner replied yes.

Mr. Pruhs asked what the zoning change does to the cabins – are there grandfather rights for these.

Mr. Hernandez addressed that they could have grandfather rights if they establish those uses before the zoning is changed. If the uses are not fully constructed by the time the rezone finishes, they could be eligible for vested rights. The Planning Department is responsible for determining vested rights. There is a criterion for determining vested rights.

Ms. Peterson asked about the multiple structures.

Ms. Kellner pointed out the properties on the overhead not in favor of this rezone.

Mr. Wenstrup asked which property has the four cabins already built.

Ms. Kellner replied with 4A.

Mr. Pruhs asked if there were any subdivision covenants on this subdivision.

Ms. Kellner replied that there are no covenants on this subdivision.

Mr. Temple asked if there were other uses that would not be in line with Rural Residential.

Ms. Kellner replied that 5 lots have single family homes and one had a 4-plex.

Mr. Pruhs asked if every lot has something built on it right now. Does the neighbors in favor of this rezone - do they not want any more cabins built in their neighborhood?

Ms. Kellner replied yes.

Mr. Wenstrup wanted more clarification on vested rights. – is this something that the Planning Department staff would decide?

Mr. Hernandez replied yes and we would work with the FNSB Legal Department as well. Planning Staff will make findings and issue a decision.

Mr. Wenstrup asked if this is something that they could do now or do they have to wait for the results of the rezone.

Mr. Hernandez replied that the rezone has not transpired so we don't know if it will be approved or denied.

Mr. Wenstrup stated that there is no way the owners would know if they could build until the rezone goes into effect.

Mr. Hernandez said we would have to see if the rezone passes, then we would address their concerns.

Mr. Wenstrup asked if we were to grant the rezone today – it goes to the Assembly – in theory if the owners were to put up cabins during this time frame – would they be grandfathered.

Mr. Hernandez stated if the cabins were completed. If they were not completed, we would have to take into consideration vested rights. There would have to be good faith on the part of the developer so if they knew the rezone is going to pass and they do additional building that might not be considered substantial development. If the person already started constructing this and the rezone was just started – that would be considered the vested rights.

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

PUBLIC HEARING OPENED

Guyan Mandich, applicant, explained that when he moved into Lucky Shot Subdivision it was zoned General Use-1 (GU-1). It worked out at that time being zoned GU-1. Everyone that moved in had the same mentality and the type of quality homes they wanted to live in. The two investment builders that have recently purchased property are not in favor of this rezone. We are talking about 19 cabins on two lots – that will triple the amount of homes in this area. He was surprised at the options that the FNSB has for zoning. The only option other than GU-1 that would fit in this neighborhood is Rural Residential (RR) which is very restrictive in nature.

Ms. Peterson wanted a description of the lot with the 4 dwellings in comparison to what will be built.

Mr. Mandich stated the difference is that the 4 dwellings have running water and septic systems. They are made of logs and he gave the dimensions of the 4 dwellings. These 19 cabins will be using outhouses.

Mr. Wenstrup asked where he got the figure 19 for cabins.

Mr. Mandich replied that it is up in the air. One lot has five cabins going in and he heard there could be up to eleven. Then they will have six on the other property. That could be the worst case scenario.

Mr. Pruhs asked if the applicant owned two pieces of property.

Mr. Mandich replied yes.

Mr. Pruhs announced that you own a multi-family unit – the 4-Plex.

Mr. Mandich replied yes.

Mr. Pruhs asked if he knew it was GU-1 when he purchased his property.

Mr. Mandich replied yes.

Mr. Pruhs asked if he knew what GU-1 means.

Mr. Mandich replied yes.

Mr. Pruhs announced that the applicant did build a 4-plex.

Mr. Mandich replied yes.

Mr. Pruhs stated that you are now protesting that other people are building cabins.

Mr. Mandich stated that he is protesting 19 dry cabins. The dry cabins are not comparable to the 4-plex.

Mr. Pruhs said that your protest is more the quality of the home.

Mr. Wenstrup asked when he purchased his property.

Mr. Mandich replied 2004 and 2006.

Mr. Wenstrup asked which property was bought second.

Mr. Mandich replied Lot 1B.

Mr. Wenstrup said - the one with the 4-plex. When you bought this property, you understood that you could build a 4-plex or cabins on it.

Mr. Mandich replied yes.

Mr. Wenstrup stated that there are only two properties that weren't built on when you bought.

Mr. Mandich replied three.

Mr. Wenstrup wanted the properties to be pointed out on the overhead.

Mr. Mandich stated that the 3 properties were 2A1, 2A3, and 2A4.

Mr. Wenstrup asked if he knew when these lots were up for sale and that anyone could buy them and put what they wanted on them.

Mr. Mandich replied yes. He also knew that if you had a majority of land owners for a subdivision – it is possible to rezone.

Mr. Wenstrup asked why it was not done when those properties became available.

Mr. Mandich stated that it takes effort to do this process and he was busy in life. He agreed that it should have been done back then.

Mr. Marsh asked if there were further questions for the applicant.

Mr. Cooper asked why he used such strong adjectives in his letter.

Mr. Mandich apologized. He said it was very emotional and life will be disruptive if these cabins get built.

Thomas Bear represents his son Chad and Tonya Bear who reside in Lot 1A. They sent in a letter. He is here because he is in favor of this rezone. Unless the owner is living on the lot with the dry cabins, they tend to de-value the property around the area.

Aaron Welterlen owns Lot 2A3. He is building six rental cabins total – one is constructed – the remaining five have foundations, power trenched, driveways, and outhouses drilled. He purchased this land in May 2009 for rental cabins – it was zoned GU-1 without covenants. No one has spoken to him since he has started building. He only met Mr. Mandich once when he first started building. We have done nothing wrong – this is zoned GU-1. He said he is a builder, this is retirement income, and his cabins are built 5 star without running water. GU-1 does fit this property – we are building high quality dry cabins for college students. We are close to the University. No one ever came and looked inside the cabins. The land is permafrost and ice lens not suitable for a foundation. My lot is useless for building anything other than dry cabins.

Mr. Pruhs said he keeps hearing about 19 cabins being constructed.

Mr. Welterlen said he has no idea where that number came from.

Mr. Pruhs stated that there is a lot with a 4-plex and a lot with 4 big cabins – when you purchased and started construction – did this rezone initiative start after that?

Mr. Welterlen said it started 12 days ago is the first he heard about it and he bought the land in May 2009. He never heard a word when he finished the first cabin last year. He has not met any of the adjoining neighbors.

Mr. Pruhs asked how many cabins will be built on your lot.

Mr. Welterlen is building 6 total.

Mr. Pruhs asked how large the lot is.

Mr. Welterlen replied 2.25 acres.

Mr. Pruhs added that it is one of the larger lots. He asked if he was financing the cabins.

Mr. Welterlen replied self financing or he might go to the bank if he needs to but if it gets rezoned – his investment is worthless.

Mr. Wenstrup asked how long was he looking for property to purchase.

Mr. Welterlen replied 4 years for property near the University.

Mr. Wenstrup asked how much the rent would go for.

Mr. Welterlen stated \$575.00 a month.

Ms. Peterson asked if he was concerned when he purchased the property that there were no other existing dry cabins in the neighborhood.

Mr. Welterlen didn't think of that because there were already 4 log cabins in the neighborhood and a 4-plex.

Brad King the owner of 2A1. He is the developer and is planning on putting in 10 cabins. He has plans to install a bath house to be available to his tenants and that would be a future expansion. This neighborhood already had a 4-plex and 4 log cabins so it looked as if others were using GU-1 to their advantage. Now there seems to be double standards. This area is convenient for the University students and affordable. He owns other cabins as well. He has incurred extra costs to put a yard pole for electricity to supply the power to the cabins.

Ms. Peterson asked if his plan was to build 10 cabins.

Mr. King replied yes.

Ms. Peterson added that there are 5 foundations in at this time.

Mr. King replied yes.

Mr. Pruhs asked if there were any other vacant lots.

Mr. King believes no but someone spoke up and said there is one more undeveloped lot.

Mr. Pruhs asked what kind of attitude that person has that owns that property.

Mr. King replied that he never met him.

Mr. Pruhs asked when he purchased his lot.

Mr. King stated 2009.

Mr. Pruhs asked if he was aware of this rezone request prior to his purchase of this property.

Mr. King said that he found out 12 days ago. He is already installed driveways, cleared land for the individual cabins, drilled holes, sonic tubes and concrete installed and materials bought and delivered.

Mr. Wenstrup stated that Mr. King is building 10 cabins and possible will have 10 cars – what about the up-keep of Faith Lane.

Mr. King added that he is a General Contractor and he holds snow contracts throughout the City and will be taking care of all of his cabins.

Mr. Marsh asked about a power line on one of the photos – does that come through your property.

Mr. King stated that it was in the right-of-way.

Mr. Marsh said that in your letter you stated that some of the soil is unstable.

Mr. King replied yes. Some of the property contains ice lenses – it has cracks in the ground not suitable for conventional foundations.

PUBLIC HEARING CLOSED

MOTION Move to approve **RZ2010-003** with two (2) Findings of Fact by **Mr. Temple**, seconded by **Ms. Peterson**.

Discussion

Mr. Temple stated that no one has done anything wrong here. He has concerns about this proposal – the property is appropriate for GU-1. There is a need for affordable housing in this area. There is nothing wrong with building multiple cabins on one lot. His concern is if this rezone gets approved – we will be denying rights to the owners that are in objection. There have been plenty of opportunities in the past for the neighborhood to rezone. Now we have owners that have maximized their lots and want to stop others from doing so. The soils would support the outhouses for the dry cabins. He is in favor of denying this rezone.

Ms. Peterson said that she can't think of any persons that have come before the Planning Commission for changing GU-1 zoning that we haven't congratulated them for coming forward. GU-1 zone is not a good zone for residential use because anything goes in GU-1. The majority of the people in the subdivision want this rezone and they should be able to rezone. The timing is unfortunate. The 6 cabins to be built on one property and the five on the other will probably go through but by zoning this now we will only be stopping the additional five cabins from being built. There is no property at this time with 10 cabins on it. She will be voting for this rezone.

Mr. Wenstrup doesn't think that rezoning this would be in the best interest of the Comprehensive Plan. He thinks that affordable, quality rentals for students are needed in this community. A lot of times there is a rental shortage. He thinks it's important to have these kinds of places available. He is voting for denial.

Mr. Cooper is concerned about the letter that came from Mr. Mandich and he used some inappropriate adjectives to describe the neighborhood. He doesn't know if the applicant is using the Planning Commission to settle a neighborhood dispute and that would be inappropriate. He believes that the applicant is using the Planning Commission to deprive other owners of their rights under Title 18. He is not in favor of this rezone.

Mr. Pruhs thanks the Borough Staff.

Ms. Peterson wanted Staff to go over how we should be analyzing this rezone.

Mr. Hernandez communicated that it should be from a land use perspective. He sees the Planning Commission asking who was there first, who was there second, and what did you know – this is not the issue. The issue is what these properties should be zoned at for the benefit of the community. Things to consider is if left at GU-1 it could be residential but it could have other uses as well – many other kinds of uses that may not be compatible with residential use. You have to look at the broad picture from a land use perspective.

Ms. Klepaski added that a lot of you are talking about the vested rights – what rights do these property owners have – if they do have a right that is vested in that property, that will be determined after the rezone. Zoning can always change but if you have a vested right, those rights will not be taken away. Just buying the property because it was zoned GU-1 is not a vested right.

Ms. Peterson responded that she cannot think of an instance that we had a chance to change GU-1 to something else and that we have denied it.

Mr. Temple explained that there was an instance that this happened in the past but it is very rare. This would deny rights to property owners that would be enjoyed by others. He believes the proposed rezone does not conform to the intent and purpose of Title 18. He is concerned that this maybe a spot zone. He thinks this would serve the community as a whole by remaining GU-1.

Mr. Wenstrup concurred with Mr. Temple. He asked Staff to show a picture on the overhead of the properties in the area. He finds that Rural Residential would be too restrictive as a land use in this area.

Mr. Pruhs said that this area fits the GU-1 criteria.

Ms. Peterson stated that 72% of the land owners disagree with both of you.

Mr. Marsh asked Mr. Hernandez what other zones could be used for someone to build multi-cabins.

Mr. Hernandez stated Multi-Family or General Commercial. The General Commercial is meant for urban areas where the water and sewer is present.

Mr. Marsh said it occurred that maybe there is a hole in our zoning. There should be another residential zone that would accommodate the cabins within reason. He is troubled with the perception of "I have mine but you can't have yours". It is not a single family area.

Mr. Cooper added that all the rezones that came before us had some purpose to bring all the other properties in line

Mr. Hernandez wanted Staff to point out, on the overhead, what each lot has built on it.

Ms. Kellner explained it as she was pointing it out on the overhead.

ROLL CALL

One (1) in Favor: **Ms. Peterson**

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

MOTION TO APPROVE, DENIAL.

Ms. Kellner changed the Findings of Fact to read as follows:

1. The request is not consistent with the goals and policies of the Comprehensive Plan, specifically Land Use Goal 3, to provide a variety of residential development opportunities that are compatible with surrounding land use and Strategy 7, Action A, maintain existing residential areas that accommodate diverse lifestyles.
2. Approval of this rezone would deprive property owners of rights enjoyed by other owners in the area.

MOTION Move to approve **RZ2010-003** with two (2) Findings of Fact as recommended by Staff by **Mr. Pruhs**, seconded by **Mr. Wenstrup**.

Mr. Hernandez stated that the Planning Commission has recommended denial of this rezone to the Assembly but the Assembly makes the final decision.

G. UNFINISHED BUSINESS

RZ2010-001 A request by E. Andrew and Anita L. Bryan to rezone Lot 1, Section 18, Township 1 South, Range 2 East from Rural and Agricultural-5 to Rural Farmstead-2 or other appropriate zone. **(located east of Cloud Road and south of Porter Ave)**

Mr. Marsh asked Staff if we have additional information.

Ms. Kellner stated that the Planning Commission voted to postpone on November 17, 2009 and since then the applicant has had a test hole drilled, a preliminary plat, and a professional engineers soils report completed. The soils report stated that the soils have been found suitable for conventional onsite waste water treatment and disposal systems. There is adequate usable area for the construction of onsite well water supply and waste water disposal. Staff recommends approval with the same findings.

Mr. Hernandez added that the only time the applicant had a chance to speak on this was through public comments.

Ms. Klepaski noticed that the Chairman said at the beginning of the meeting that there are no agenda items not scheduled for public hearing so the applicant did not have an opportunity to speak at that time.

Mr. Marsh agreed that he was in error.

Ms. Klepaski thinks that since this statement was made, we should give the applicant an opportunity to make citizens comments at this time.

Mr. Marsh said that we will open Citizens Comments for items not scheduled for public hearing.

Andrew Bryan said since November 17, 2009 he took these actions to show that the lot size was adequate. He had Fairbanks Pumping and Thawing come out and drill a bore hole. Jim Ringstad did a soil survey report. He had a surveyor do a plot plan for six lots. Now the lot size is almost 2.2 acres. GVEA looked over the plan and saw no problems getting power to the lots, if this is approved.

Mr. Marsh asked if there were any questions for the applicant.

Mr. Cooper asked about access to the lots.

Ms. Kellner announced - that it is in the packet.

Discussion

Mr. Marsh asked if there were any comments.

Mr. Wenstrup asked Staff to see the zones on the overhead.

Ms. Peterson said with the additional information sees no reason to deny this rezone. She is in favor and concurs with Staff.

ROLL CALL

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

Zero (0) Opposed:

MOTION TO APPROVE, PASSED.

MOTION Move to approve **RZ2010-001** with two (2) Findings of Fact by **Mr. Temple**, seconded by **Ms. Peterson**.

Mr. Temple asked if we could include the minutes if it is over one meeting.

H. NEW BUSINESS

I. COMMISSIONER'S COMMENTS

1. FMATS

- **Mr. Wenstrup** said that we are scoring the Tanana Loop Round-a-bout. The University is trying to get that paid for by an earmark.

2. Title 17 Rewrite Project

- **Mr. Hernandez** said that we are moving forward on this.

3. Vision Fairbanks Update

- **Mr. Hernandez** said this will be at the Assembly meeting this Thursday, January 14, 2010 to be introduced and then it will be forwarded to City Council and the Planning Commission for review.

4. North Pole Land Use Plan

- **Mr. Hernandez** said this will be at the Assembly meeting this Thursday, January 14, 2010.

5. Comprehensive Plan Advisory Board (CPAB)

- **Ms. Peterson** said there were no meetings in the month of December.

6. Other Commission Comments

I. ADJOURNMENT

There being no further business the meeting was adjourned at 9:48 p.m.