

FAIRBANKS NORTH STAR BOROUGH
Planning Commission
September 14, 2021
7:00 p.m.

A regular meeting of the Planning Commission was held Tuesday, September 14, 2021, in the Mona Lisa Drexler Assembly Chambers of the Juanita Helms Administration Center, 907 Terminal Street, Fairbanks, Alaska.

ROLL CALL

There were present appearing telephonically and in person:

Shane Koester	Kerynn Fisher
Savannah Fletcher	Chris Guinn
Mike Kenna	Sandra Mota
Jason McComas-Roe	Eric Muehling, Vice-Chairperson
John Perreault, Chairperson	

Comprising a quorum of the Commission, and

Sharon Wittenkeller, Administrative Assistant III, Clerk
Melissa Kellner, Acting Community Planning Director
Don Galligan, Transportation Planner IV
Bryce Ward, Borough Mayor
Jill Dolan, Borough Attorney
Annmarie Billingsley, Assistant Borough Attorney
Leah Berman Williams, Assemblymember

Absent & Excused

Doug Sims

MESSAGES

C.1 Communications to the Planning Commission

Melissa Kellner, Acting Community Planning Director, reminded the Commission of the Right-of-Way training session, on September 15, 2021 at 7:00 p.m. in the Assembly Chambers and on Zoom. Ms. Kellner provided status updates on upcoming Planning Commission meeting agenda items and work sessions, the reduced Planning Commission meeting schedule beginning in November, and Community Planning staff vacancies.

C.2.a. Citizen's Comments on agenda items not scheduled for public hearing.

NONE

C.2.b. Citizen's Comments on items other than those appearing on the agenda.

NONE

C.3. Disclosure & Statement of Conflict of Interest

NONE

APPROVAL OF AGENDA

MCCOMAS-ROE, moved to approve the agenda.
Seconded by KOESTER

VOTE ON MOTION TO APPROVE THE AGENDA.

Yeses: Fisher, Koester, Mota, Muehling, Kenna,
Fletcher, McComas-Roe, Guinn, Perreault

Noes: None

MOTION CARRIED 9 Yeses, 0 Noes

PUBLIC HEARING

1. HP2022-001 Richardson Highway MP 359

HP2022-001 Richardson Highway MP 359 Railroad Grade Separated Facility: A request by the State of Alaska Department of Transportation and Public Facilities for local planning authority approval of the Richardson Highway MP 359 Grade Separated Facility project. The proposed project will grade separate the railroad crossing near MP 359 on the Richardson Highway in accordance with the Alaska State Rail Plan. Other project improvements include a troop undercrossing and a multi-use path adjacent to the highway.

Colleen Ackiss, State of Alaska Department of Transportation and Public Facilities (DOT&PF), Engineering Manager noted she did not have any new or additional information from what she presented at the August 24, 2021 Planning Commission Work Session and deferred to staff's presentation.

Don Galligan, Transportation Planner IV, presented the staff report. Based on the staff analysis, the Department of Community Planning recommended approval. Commissioner Muehling questioned and discussed with staff the following:

- Mitigation of ice fog impact; whether the ice fog is from the Fort Wainwright power plant cooling pond, it was noted that it was.
- Whether vehicles are being elevated to cross the railroad track, and what was mitigating the ice fog impact; it was noted that the elevation of the roadway off the valley floor and LED lighting that is associated with the new road section mitigates the ice fog.

Chair Perreault opened and closed public testimony as there were no individuals to provide public comment.

Ms. Ackiss, DOT&PF, Engineering Manager, provided a rebuttal statement which explained: that the lighting noted in the environmental document that was for the interchange portion of the project that has been removed, this portion of the project will not have lighting associated with it because there is no crossing paths of traffic in this section. The ice fog had to do with the interchange location due to where the power plant is located. Lighting will be addressed in the interchange project to mitigate fog.

The Commission did not have questions for Ms. Ackiss.

MUEHLING,
Seconded by KOESTER

moved to approve HP2021-001, the Richardson Highway MP 359 Railroad Grade Separated Facility Project, as being consistent with the FNSB Regional Comprehensive Plan, adopting the staff report and four (4) Findings of Fact in support of the approval.

VOTE ON MOTION TO APPROVE HP2021-001, THE RICHARDSON HIGHWAY MP 359 RAILROAD GRADE SEPARATED FACILITY PROJECT, AS BEING CONSISTENT WITH THE FNSB REGIONAL COMPREHENSIVE PLAN, ADOPTING THE STAFF REPORT AND FOUR (4) FINDINGS OF FACT IN SUPPORT OF THE APPROVAL.

Commissioner Muehling mentioned the work session presentation on August 24, 2021 and noted the project reduces railroad collisions, has a bike path pedestrian facility that will eventually connect Fairbanks to North Pole which are positive reasons to support the project.

Chair Perreault reiterated Community Planning Department's effort to point out the ways in which the project is consistent with the Regional Comprehensive Plan, improving safety

and transportation access across several modes of transportation and he supported the motion.

Yeses: Muehling, McComas-Roe, Fisher, Guinn, Koester, Fletcher, Mota, Perreault

Noes: Kenna

MOTION CARRIED 8 Yeses, 1 Noes

HP2022-001 FINDINGS OF FACT IN SUPPORT OF THE APPROVAL

1. The project supports Goal 1, Strategy 5, Action A of the Transportation and Infrastructure Chapter which states: "Encourage a reroute of the railroad to reduce the number of at-grade railroad crossings; create separate grade crossings for the remainder, when possible."
2. This project supports Goal 1, Strategy 1, Action C ("Ensure that project designs improve safety and minimize adverse impacts") of the Transportation and Infrastructure Chapter of the Fairbanks North Star Borough Comprehensive Plan. By separating the grade and eliminating conflict between vehicles and trains on this high-speed facility, it greatly reduces the risk of serious collision. Also, by adding new pathway facilities, this project improves safety for both bicycles and pedestrians throughout the project area. In addition, the improvements are being constructed within the existing right-of-way, thus minimizing adverse impacts from right-of-way acquisition.
3. The project is consistent with Strategy 3 Transportation and Infrastructure which states, "Make the Borough more pedestrian-friendly in urban and suburban areas", because adding a pathway connection to the pedestrian and bicycle network makes the borough a more pedestrian friendly area and helps to accommodate all travel modes.
4. The project is consistent with Strategy 4, Action B Transportation and Infrastructure which states, "Integrate safe multi-use trail circulation into road networks and maintain multi-use trails for commuter and recreational purposes. Encourage use of non-motorized transportation systems".

LEGISLATIVE HEARING

1. Ordinance No. 2021-27 (Duplicate Appeal)

ORDINANCE NO. 2021-27: An Ordinance Amending Fairbanks North Star Borough Code Of Ordinances Titles 4, 15, 17, And 18 Regarding Appeals From Decisions And Determinations Of The Planning Director, Platting Board, And Planning Commission. (Sponsors: Assemblymembers Cooper, Williams and Sanford)

Leah Berman Williams, Assemblymember, presented the sponsor report and highlighted the following:

- Previous appeal ordinance defeated by the Assembly.
- Several Assemblymembers felt there were good ideas mentioned in the original ordinance such as streamlining the appeals process.
- The overarching idea within the newly proposed ordinance is that everyone can have their appeal case heard by a committee, board or commission.
- There should only be one step in the appeal process.
- Explained the grid which commissioners received via addendum that describes the current process and the more streamlined process being proposed in the new ordinance.
- As the Planning Commission are the experts on Title 18, the Platting Board is being viewed by the Assembly as the experts on Title 17.
- Decisions made by the Planning Commission are appealed to the Board of Adjustment.
- Decisions made by the Platting Board are being proposed to be appealed directly to the Board of Adjustment.

The Commission questioned and discussed with Assemblymember Williams the following:

- Whether the Board of Adjustment is the Borough Assembly or their designee in the form of an Administrative Hearing Officer. It was answered it would be the Assembly and that they are not changing the structure of the Board of Adjustment in the ordinance.
- Who is the Board of Adjustment; it was answered the Assembly.
- Whether the Assembly can appoint an Administrative Hearing Officer to hear a matter in their place; it was answered, yes, the Borough Assembly is the Board of Adjustment, in code is the option to designate an Administrative Hearing Officer.
- Whether the Borough Assembly is often likely to designate an Appeals Officer; it was noted not to be believed so.
- In the event that the Borough Assembly does designate an Administrative Hearing Officer, who is it likely to be; it was answered the Borough Assembly would select from an approved list of individuals who could be appointed as a Hearing Officer.

- Is it correct, if the ordinance is adopted, that in the event of an appeal, an appellants case may go before the Board of Adjustment, which is the Borough Assembly, or may also go before an Administrative Hearing Officer appointed by the Borough Assembly; it was answered that was correct, if the Assembly, acting as Board of Adjustment had a conflict, that is a situation where they may need to appoint a Hearing Officer from an approved list of individuals who can serve as a Hearing Officer.
- Whether some of the individuals on the approved list are borough attorneys; it was answered no, they would not appoint an attorney who is a borough employee because it would be a conflict.
- Quick Plat appeal process; why the process was not proposed to be more streamlined and still requires a second administrative review process; it was answered quick plats can be easily handled with an Administrative Hearing or they can be handled directly by the Platting Board. They want to ensure there is still an option in case the quick plat was heard initially by the Platting Board for the appellant to appeal the decision.
- Is there any impact on staff's workload; it was answered, it is not anticipated to have a significant impact on staff and will hopefully decrease the amount of work because they are taking a step out.
- How the Assembly felt about taking on the workload being lifted from the Planning Commission; it was answered that was yet to be determined.
- Approved list of individuals who may be appointed as Administrative Hearing Officers acting as the Board of Adjustment and where the list is; it was answered, there is an Assembly approved list of individuals to select from who may serve as a Hearing Officer and those individuals have adequate experience, such as having served as lawyers or judges. Conflict checks are completed prior to selecting a Hearing Officer.
- Whether Assemblymembers were potentially conflicted in serving constituents who had appeals before the Assembly; it was answered there are some matters that go before the Assembly that they may want to make legislative changes to or take other positions on. This makes few changes to what goes before the Board of Adjustment, with the exception of Platting Board appeals.

Melissa Kellner, Acting Community Planning Director, presented the staff report. Based on the staff analysis, the Department of Community Planning supported the ordinance and recommended that it be advanced with a recommendation of approval.

The Commission questioned and discussed with staff the following:

- Whether there is a reduction in staff workload with the proposed ordinance; it was answered that was the understanding, and it would not increase Community Planning's staff time or presumably increase the Clerk's Office staff time.
- Whether there would be any changes to the fees citizens pay to file an appeal application with the proposed ordinance; it was answered, the fee schedule is already established and is adopted as part of the budget every year, and there was uncertainty as to how borough fees compare to court fees.

- Does the elimination of any situations where Planning Commission and Platting Board hear the same case streamline the process; it was answered, yes.
- The number of cases that come before the Planning Commission and Platting Board in a year; it was answered, low two-three hundreds.
- Is it fair to call this process streamlined when typically, only two appeals a year are heard; it was answered, yes, when the process comes into play it is streamlined.
- The general knowledge of Planning Commissioners of Title 17 under current code, would hear the appeal of a Platting Board issue.
- How many Planning Commission appeal decisions were reversed by the Board of Adjustment; the information was not readily available.
- Whether Planning Commission appeal decisions are generally appealed to the Board of Adjustment; it was answered, that is not necessarily the case.
- The number of staff hours spent on the appeal process; it was answered, it varies widely and is unique to each case.
- Whether the appellant pays a fee to the borough for filing an appeal; it was answered, there is an appeal application fee and costs associated with preparing materials for the appeal.
- How staff hours would be affected if an appeal were to advance to Superior Court.
- How long the current appeals process has been in place; it was answered, over a decade.
- Whether any comments from citizens who have gone through the appeal process were considered in preparing the ordinance; it was answered there were no comments considered.

Chair Perreault opened and closed public testimony as there were no individuals to provide public comment.

Assemblymember Williams did not have a rebuttal.

MUEHLING,
Seconded by FLETCHER

moved to recommend approval of
Ordinance No. 2021-27 to the FNSB
Assembly.

Commissioner Muehling supported the motion and expressed the proposed ordinance is consistent and streamlined. The process needs to be fair and begin with a community board, either Title 17 or Title 18. The ordinance satisfies the need for any citizen to come before a community board. Conditional uses are unaffected and there is little impact on staff and fees. The Assembly will need training and insight on what defines a legal lot and the definition of "lot" with respect to the subdivision platting process, and other issues concerning property tax and amnesty.

Commissioner Fletcher expressed one perspective of importance is that of the individual appealing a decision. Streamlining the process makes it clearer for the appellant and spares them time with respect to removing another review process.

Commissioner Mota noted the need for an appropriate balance between the costs associated with the public process and the benefits of the public process. She didn't hear anything in terms of costs of the borough process that will support that the reduction costs outweigh the benefits of the additional level of appeal. The additional step adds to the procedural thoroughness.

Commissioner Koester described his personal experience with the current appeal process all the way to Supreme Court. He noted the process was very costly. He supported keeping the appeal processes in-house to minimize costs to citizens. He would like to see the Assembly take on tax lots, which affects more people than the entire appeals process and the average two appeals a year. There are bigger issues that could be addressed and clarified through ordinances other than the appeal process that is rarely used.

Commissioner Kenna expressed he has not heard anyone in his two years of service accuse the appeal process of being unfair or that the process needs to be changed. Before the ordinance was introduced, the Commission should have received from the presenters, information on how the appeal process was initially established, why it was established and why it entails several steps. He does not see any issues with the current process. The only complaint and justification he heard for the proposed streamlined process is the de novo process for sake of repeating workload. The correction to that issue is to do what de novo review hearings are supposed to do; they are not supposed to be re-presentations of evidence, they are not supposed to be used for presentation of new evidence, rather review of the record in its entirety with deference given to the assessments who review the appeal before. If the de novo appeal process was followed as is stated in its definition, the notion of the double workload is irrelevant, and the process is streamlined. There is no reason to change the current process or take away a level of appeal from citizens.

Commissioner Perreault noted the two biggest roadblocks to previously attempt to change the appeal process were to have a single borough employee serve as an adjudicating officer and remove boards and citizens as part of the process. The proposed ordinance process removes the single adjudicator, and it keeps boards and citizens in the process. Having seen the biggest issues updated in the newly proposed ordinance he supported the motion.

VOTE ON MOTION TO RECOMMEND APPROVAL OF ORDINANCE NO. 2021-27 TO THE FNSB ASSEMBLY.

Yeses: Guinn, Fisher, Muehling, Perreault

Noes: McComas-Roe, Fletcher, Mota, Koester, Kenna

MOTION DEFEATED

4 Yeses, 5 Noes

MCCOMAS-ROE,
Seconded by KENNA

moved to recommend against approval of Ordinance No. 2021-27 to the FNSB Assembly.

VOTE ON MOTION TO RECOMMEND AGAINST APPROVAL OF ORDINANCE NO. 2021-27 TO THE FNSB ASSEMBLY.

Commissioner McComas-Roe expressed his appreciation of Commissioner comments. He felt the proposed ordinance was an anti-democratic bureaucratization of what is currently a reasonable public process. The commission denied the proposal previously and the commission should deny it again.

Commissioner Fletcher expressed her desire to have more evidence of citizens firsthand experience with the process.

Yeses: Mota, Fletcher, Koester, McComas-Roe, Kenna

Noes: Guinn, Fisher, Muehling, Perreault

MOTION CARRIED

5 Yeses, 4 Noes

EXCUSE FUTURE ABSENCES

Commissioner Sims is excused for the September 29, 2021 meeting and Commissioner Muehling is excused for the October 12, 2021 meeting.

COMMISSIONER'S COMMENTS/COMMUNICATIONS

Commissioner Guinn enjoyed the discussion on the ordinance and saw both sides of the argument.

Commissioner Koester inquired about the Right-of-Way training and if it was related to the Downtown Plan.

Commissioner Fisher echoed Commissioner Guinn's comment on the ordinance, noting there were very good points made. She plans to attend on Zoom while Covid case counts remain high.

Commissioner Fletcher echoed other commissioner comments on the ordinance discussion and was torn on the decision. She wants to use the process that best serves the community. She noted she will be attending future meetings through Zoom.

Commissioner Muehling also enjoyed the discussion.

Commissioner Perreault reminded the commission of the Right-of-Way training.

ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:40 p.m.

APPROVED: October 12, 2021