

The regular meeting of the Matanuska-Susitna Borough Planning Commission was held on January 18, 2016, at the Matanuska-Susitna Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 6:00 p.m. by Chair John Klapperich.

**I. CALL TO ORDER, ROLL CALL, AND DETERMINATION OF QUORUM**

Planning Commission members present and establishing a quorum:

- Mr. Thomas Healy, Assembly District #2
- Mr. John Klapperich, Assembly District #3 *Chair*
- Mr. Bruce Walden, Assembly District #4
- Mr. William Kendig, Assembly District #5
- Mr. Tomas Adams, Assembly District #6
- Mr. Vern Rauchenstein, Assembly District #7

Planning Commission members absent and excused were:

- VACANT, Assembly District #1

Staff in attendance:

- Mr. Alex Strawn, Development Services Manager
- Ms. Laura Newton, Assistant Borough Attorney
- Ms. Susan Lee, Planner II
- Ms. Mary Brodigan, Planning Commission Clerk

**II. APPROVAL OF AGENDA**

Chair Klapperich inquired if there were any changes to the agenda.

GENERAL CONSENT: The agenda was approved without objection.

**III. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by Commissioner Kendig.

**IV. CONSENT AGENDA**

**A. Minutes**

1. December 21, 2015, regular meeting minutes
2. January 4, 2016, regular meeting minutes

*(There were no minutes available.)*

**A. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS**

*(There were no introductions for quasi-judicial matters.)*

**B. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS**

1. **Resolution 16-05**, A resolution recommending Assembly adoption of the Seldon Road Extension Corridor Access Management Plan: Public Hearing: February 1, 2016. (*Staff: Mike Campfield*)

Chair Klapperich read the consent agenda into the record.

Chair Klapperich inquired if there were any changes to the consent agenda.

GENERAL CONSENT: The consent agenda was approved as amended without objection.

**V. COMMITTEE REPORTS**

*(There were no committee reports.)*

**VI. AGENCY/STAFF REPORTS**

*(There were no agency/staff reports.)*

**VII. LAND USE CLASSIFICATIONS**

*(There were no land use classifications.)*

**VIII. AUDIENCE PARTICIPATION (Three minutes per person.)**

The following person spoke regarding concerns with public process: Mr. Eugene Carl Haberman.

**IX. PUBLIC HEARING: QUASI-JUDICIAL MATTERS** (*Public Hearing not to begin before 6:15 P.M.*)

*Commission members may not receive or engage in ex-parte contact with the applicant, other parties interested in the application, or members of the public concerning the application or issues presented in the application.*

- A. **Resolution 16-02**, A resolution approving a variance to allow an existing single-family residence, to remain set back 14.6 feet from a section line easement on the west side of the lot, on Block 2, lot 9, End of the Rainbow Subdivision; 420 S. Robin Circle, within Township 17 North, Range 2 West, Section 9, Seward Meridian. (*Staff: Susan Lee, Applicant: Neal and Brenda Bullock*)

Chair Klapperich read the resolution title into the record.

Chair Klapperich:

- read the memorandum regarding quasi-judicial actions into the record;
- queried commissioners to determine if any of them have a financial interest in the proposed Conditional Use Permit (CUP);
- have had any ex parte contact with the applicant, members of the public, or interested parties in the proposed CUP; and

- if all commissioners are able to be impartial in a decision.

Ms. Lee provided a staff report:

- staff recommended denial of the variance request.

Commissioners questioned staff regarding:

- was the section line easement (SLE) depicted on the original plat;
- was the land owner required to get a borough land use permit at the time that the property was platted;
- will the substandard issues with each individual lot be resolved if the lots are combined; and
- is the property within a special land use district.

Ms. Joy Cypra, Platting Manager for Alaska RIM Engineering, and Mr. Neal Bullock, property owner, provided an overview of the application.

Commissioners questioned the applicant regarding:

- was there a section line easement on any plat at the time of construction;
- clarification of the effort involved in identifying SLE's and the widths;
- whether the applicant was the builder as well;
- how difficult is it to vacate a SLE; and
- are lot 8 and 9 owned by the applicant, and were they purchased at the same time.

Chair Klapperich opened the public hearing.

The following person spoke regarding concerns with public process, and holding a public hearing during a state holiday: Mr. Eugene Carl Haberman.

Chair Klapperich invited the applicant or representative to respond to questions and comments made by the audience.

Ms. Cypra stated that they didn't have anything further to add.

There being no one else to be heard, Chair Klapperich closed the public hearing and discussion moved to the Planning Commission.

**MOTION:** Commissioner Kendig moved to approve Resolution 16-02. The motion was seconded.

Commissioner Kendig:

- opined that the applicant did his due diligence and was not able find information on the SLE; and
- this was beyond the control of the applicant.

Commissioner Walden:

- stated that he agrees with Commissioner Kendig;
- he tends to err on the side of the property owner; and

- suggested that the borough needs to do something to prevent this in the future.

Commissioner Adams:

- acknowledged that most homeowners do not typically do the research to identify SLE's;
- noted that there were no requirements that SLE's be shown on plats at the time this was platted;
- opined that the owner/builder did his due diligence and was very thoughtful in how he built his building within the site constraints that he had;
- noted that there used to be a Mandatory Land Use Permit that may have prevented this, but it was not in effect at the time of the original plat;
- the commission needs to very careful of putting out there that this is the responsibility of the borough;
- in order to grant a variance, the commission will need to find that there are unusual conditions;
- opined that the topographical constraints of these two parcels certainly meet that requirement;
- also feels that the strict application of this SLE on these topographically constrained lots may deprive a reasonable development opportunity on these lots;
- noted that this is a residential structure and appears to be consistent with the adjacent development in the area;
- wants the applicant to understand that the commission isn't authorizing any expansion of the structure going forward;
- opined that combining two substandard lots will help weigh the set-back encroachment to the SLE;
- he supports approving this variance; and
- stated that he has prepared facts and findings to support approval of this variance.

Commissioner Healy:

- shares a concern that variances are difficult to get both through state and borough law;
- opined that this situation warrants a variance; and
- supports this resolution and the facts and findings as proposed by Commissioners Adams.

Mr. Strawn requested a ten minute recess to insert the facts and finding prepared by Commissioner Adams into Resolution 16-02 for the Commissioners review.

*(The meeting recessed at 7:24 p.m., and reconvened at 7:38 p.m.)*

- MOTION:** Commissioner Adams moved a primary amendment to Resolution 16-02 to insert the following facts and findings as whereas statements to support approval:
- End of the Rainbow Subdivision was platted in 1970, which was prior to the adoption of borough setback requirements in 1973; and
  - when the subdivision was platted in 1970, section line easements were not required to be depicted on plats; and
  - there are topographic issues with the lot as a narrow ridge runs through the property; and
  - the top of the ridge had to be cut down and widened in order to construct

- the driveway and a building site; and
- the average grade from the top of the ridge to the lower portion of the lot is 60 percent; and
- there are unusual conditions and circumstances applicable to this property as the lot was platted prior to section line easements being shown on plats and prior to the adoption of setback requirements, and the lot has topographic issues; and
- based on the evidence submitted, granting the variance will not be injurious to nearby properties, or harmful to the public welfare (MSB 17.65.020(A)(3)); and
- the proposed setback variance is consistent with the policies and goals of the MSB Comprehensive Plan (2005 Update) and the Meadow Lakes Comprehensive Plan (2005) as the variance will allow residential development; and
- the structure was constructed prior to the adoption of the Mandatory Land Use Permit requirements; and
- the person seeking the variance did not cause the topography of the lot; and
- the person seeking the variance did not plat this subdivision which did not depict the section line easement on the plat; and
- the person seeking this variance is doing so in order to resolve the setback violation so that Lots 8 and 9 can be combined and create a utility lot for the telecommunication tower on the property; and
- when the applicants/owners constructed the house in 2005, they were unaware of the section line easement; and
- residential structures are permitted on this property; and
- the variance, will not permit a land use in a district in which that use is prohibited, as residential structures on this site. The variance, will allow an illegally constructed structure to remain in its current location (MSB 17.65.030(A)(2)); and
- the subject lot is not in a special land use district.

The motion was seconded.

VOTE: The primary amendment passed without objection.

Chair Klapperich noted that there was no public objection to this variance.

VOTE: The main motion passed as amended without objection.

## **X. PUBLIC HEARING LEGISLATIVE MATTERS**

- A. **Resolution 16-01**, A resolution recommending the Assembly approval of Ordinance Serial Number 16-003 Amending MSB 17.60 to include Permit Requirements and Standards for Marijuana Related Facilities, and Repealing Inapplicable Definitions. Referred to the Planning Commission on December 15, 2015, for 45 days. (*Staff: Alex Strawn*)

Chair Klapperich read the resolution title into the record.

Mr. Alex Strawn provided a staff report:

- staff recommended approval of the resolution with amendments.

Commissioners questioned staff regarding:

- referred to proposed amendments provided by staff in the commissioners hand out files, and questioned which proposed amendments staff supports;
- is this the only opportunity the commission has for a public hearing, and what will the ramifications be if it is continued; and
- when was the ballot initiative approved for the October election.

Ms. Laura Newton, Assistant Borough Attorney:

- clarified the specifics regarding the initiative to ban marijuana related businesses in the borough with the exemption of industrial hemp;
- if the initiative passes in October 2016, it will be illegal to own any marijuana business unless it deals with industrial hemp;
- if the borough doesn't pass an ordinance regulating marijuana businesses, state regulations will be the default and they will begin issuing permits regardless of what happens at a local level; and
- stated that anyone that applies for a conditional use permit between now and the initiative in October, will be informed that if the initiative passes, their business will not be grandfathered in.

Chair Klapperich opened the public hearing.

The following persons spoke in favor of Resolution 16-01: Mr. Joe McAneney with a proposed amendment number 7; Ms. Sara Williams, Chair of the Marijuana Advisory Committee; and Mr. Robert McMaster.

The following person spoke regarding concerns with public process and meeting during a state holiday: Mr. Eugene Carl Haberman.

There being no one else to be heard, Chair Klapperich closed the public hearing and discussion moved to the Planning Commission.

**MOTION:** Commissioner Healy moved to approve Resolution 16-01. The motion was seconded.

Commissioner Healy questioned vague language in the ordinance such as “potentially damaging”, “obtrusive advertising”, and “garish signage” without any standards for determination.

**MOTION:** Commissioner Healy moved a primary amendment to Resolution 16-01 to recommend the Assembly remove language regulating signage from Ordinance 16-003. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

Discussion ensued regarding:

- is there adequate time to address this ordinance thoroughly;
- is it acceptable to generalize recommendations to the Assembly;
- will license requests pop up before the borough has had a chance to initiate regulations;
- is it vague and speculative to include language in the ordinance that land uses including marijuana retail facilities and cultivation facilities may be potentially damaging to the property values and usefulness of adjacent properties;
- providing definitions for “adequate parking”, “unreasonable traffic hazard”, and “reasonably expected increase in traffic”; and
- what are the consequences of postponing a decision until the next Planning Commission meeting.

Discussion ensued regarding what changes the Planning Commission would like the Assembly to make to Ordinance 16-003 given the limited amount of time that they have had to review the document.

**MOTION:** Commissioner Healy moved a primary amendment to request that the Assembly explicitly prohibit marijuana related facilities from residential areas, eliminate the 5,000 square foot cap on marijuana cultivation facilities, and to exempt cultivation facilities less than 500 square feet. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Adams moved a primary amendment to request that the Assembly include objective parking and traffic standards; and adopt definitions for recreation facilities, marijuana product manufacturing facilities, and marijuana products. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Rauchenstein moved a primary amendment to request that the Assembly eliminate setback requirements from boat ramps, and modify the setbacks within MSB 17.60.150(B) to be consistent with state standards. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Adams moved a primary amendment to request the Assembly amend 17.60.15 to require the applicant to provide written documentation of compliance with:

- all applicable licenses as required by 3 AAC 306.005;
- fire code, including but not limited to AS 18.70 FIRE PROTECTION, and 13 ACC 50.025 FIRE CODE.

The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Adams moved a primary amendment to modify the fourth whereas statement in Resolution 16-01 on page 154 of the packet, to read “whereas, after considering all available information, the Planning Commission recommends the Assembly make the following changes to Ordinance Serial Number 16-003:” to include all of the previous recommended changes. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Healy moved a primary amendment to Resolution 16-01 to insert “and Planning Commission Resolution 16-01” to the third whereas statement on page 154 of the packet to read: “the Planning Commission held a public hearing for the proposed ordinance and Planning Commission Resolution 16-01 on January 18, 2016”; and to delete the sixth whereas statement from page 154 of the Planning Commission packet. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Healy moved a primary amendment to Resolution 16-01 by inserting "and the suggested amendments listed below" to the fifth whereas statement on page 154 of the packet, to read: “the Planning Commission finds that the draft ordinance and the suggested amendments listed below meet the intent of Ballot Measure 2 by allowing for the production and distribution of marijuana while ensuring it is done in a manner that will preserve and will not detract from the neighboring land uses”. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Healy moved a primary amendment to Resolution 16-01 to add "not limit security to education measures” as a third item under the amendment to require the applicant to provide written documentation of compliance with”. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Kendig moved a primary amendment to Resolution 16-01 requesting the Assembly consider removing measurable standards for traffic impacts. The motion was seconded.

**VOTE:** The primary amendment passed without objection.

**MOTION:** Commissioner Healy moved a primary amendment to insert "in the limited timeframe available" in the fourth whereas statement on page 154 of the packet to read: “after considering all available information in the limited timeframe available, the Planning Commission recommends the Assembly make the following changes to Ordinance Serial Number 16-003:” to include all of the previous recommended changes. The motion was seconded.

VOTE: The primary amendment passed without objection.

VOTE: The main motion passed as amended without objection.

**XI. CORRESPONDENCE AND INFORMATION**

*(Correspondence and information was presented and no comments were noted.)*

**XII. UNFINISHED BUSINESS**

*(There was no unfinished business.)*

**XIII. NEW BUSINESS**

*(There was no new business.)*

**XIV. COMMISSION BUSINESS**

A. Upcoming Planning Commission Agenda Items

*(Commission Business was presented and no comments were noted.)*

**XV. DIRECTOR AND COMMISSIONER COMMENTS**

Commissioner Rauchenstein:

- referred to a statement made by one of the TAB members in their minutes dated 11/18/15, where he said that being on TAB reminds him of the daughter of one of the Greek gods who was cursed with seeing the future, but no one believed her; and
- opined that commissioners are in the same boat.

Commissioner Healy thanked Commissioner Walden again for his service.

Commissioner Adams:

- thanked Commissioner Walden for staying the extra month until his position was filled, and stated his appreciation for the extra effort;
- acknowledged the work that Marijuana Advisory Commission (MAC) did on Ordinance 16-003; and
- opined that this was important work that the PC only had a couple of hours to address.

Chair Klapperich:

- appreciates the attendance, the hard work, and good information brought forward by the public tonight;
- opined that they were articulate and respectful of opposing views; and
- appreciates that citizens want quality of life, clean air, clean water, and economic development.

Commissioner Walden:

- stated that he is really leaving this time and bids everyone a very fond farewell;
- it has been a great honor to serve; and
- he will be around and will be very loud this year.

**XVI. ADJOURNMENT**

The regular meeting adjourned at 11:27 p.m.



JOHN KLAPPERICH, Planning Commission  
Chair

ATTEST:



MARY BRODIGAN, Planning Commission  
Clerk

*Minutes approved: March 21, 2016*