



Haines Borough
Planning Commission Meeting
September 12, 2013
MINUTES

Approved

1. **CALL TO ORDER/PLEDGE TO THE FLAG** – Chairman **Goldberg** called the meeting to order at 6:30 p.m. in Assembly Chambers and led the pledge to the flag.
2. **ROLL CALL** – **Present:** Chairman Rob **Goldberg**, Commissioners Rob **Miller**, Don **Turner III**, Danny **Gonce**, Lee **Heinmiller**, and Robert **Venables** (called in). **Absent:** Andy **Hedden**.

Staff Present: Xi “Tracy” **Cui**/Borough Planning & Zoning Technician III, Mark **Earnest**/Borough Manager, Carlos **Jimenez**/Director of Public Facilities

Also Present: John **Carlson**, Jessie **Badger**, Judy **Bryan**, Dave **Berry Jr.**, Mark **Allen**, Karen **Garcia**, Margaret **Friedenauer**, Bill **Kurz**, Janet **Kurz**, Joanne **Waterman**, Sara **Chapell**, Heather **Lende**, Wayne **Cowart**, Henry **Wong**, Fred **Einspruch**, Neil **Einsbruch**, Fran **Tuenge**, Jacobson **Tuenge**, Geoff **Nelson**, Greg **Podsiki**, Randa **Szymanski**, Thomas **Meacham** (called in), Tim **Mullikin** (called in), etc.

3. **APPROVAL OF AGENDA**

Motion: **Turner** moved to “approve the agenda”. **Gonce** seconded it. The motion carried unanimously.

4. **APPROVAL OF MINUTES** – August 8, 2013 Regular Meeting

Motion: **Miller** moved to “approve the August 8, 2013 Regular Meeting Minutes.” **Heinmiller** seconded it. The motion carried unanimously.

5. **PUBLIC COMMENTS**

Einspruch said there have been various enforcement activities that are going on in this community. There was not any enforcement in Planning & Zoning before, but now the Borough wants more enforcement in zoning code, which he is not opposed to. He thinks the Borough needs to consider what the impacts are going to be on this community. The Borough has the responsibility to meet the needs of people.

Einsbruch said he requested for public records on August 6 regarding his appeal to the Planning Commission, which has been denied. In the information that he requested, he found that the last time the Borough posted a public notice to educate people to file a construction declaration was in 2005. It has been more than six years that the Borough did not post any notice regarding this regulation. What the Borough is doing is selective enforcement.

6. **CHAIRMAN’S REPORT**

Goldberg said there was a little confusion about some ordinances that the Planning Commission sent to the Assembly, including the setback restriction in General Use zone and the clarification of the definition of a temporary dwelling. The Assembly set “setback regulations in General Use zone” ordinance for its second public hearing; but the Assembly did not schedule “temporary dwelling” ordinance for a second hearing. **Goldberg** attended

the Assembly meeting two days ago, and he tried to provide more detailed information to them, and he was able to get the Assembly to reconsider the “temporary dwelling” ordinance, which will be on the next Assembly agenda. In the future, **Goldberg** said he would write substantive explanations to the Assembly to avoid a chance of misunderstanding.

7. STAFF REPORTS

Cui reported recent permitting and enforcement activities.

8. PUBLIC HEARINGS

A. Penny Fossman – 633 Mud Bay Road

Goldberg opened the public hearing at 6:40 p.m.

Badger said she can speak for **Fossman**, who was not present. **Fossman** incubated seven chicken eggs in her daughter’s 2nd grade classroom so the class could watch the eggs hatch. Six eggs hatched and they brought them home. The Borough sent a letter with a fine for having chickens. **Fossman** requested Planning Commission consider dismissing the after-the-fact fine of \$250.

Podsiki said he is not sure about the laws, but he thinks this is very silly to fine someone for having six chickens. He does not think the chickens will bother anyone. There should not be a permitting requirement for people raising chickens in town.

Lende said she is a chicken owner in the neighborhood. She also thinks it seems to be a little bit over killed. Actually, the Borough should encourage people to be self sufficient.

Einspruch thinks part of the problem is not about the chickens, it is about the concept of the townsite. The townsite is composed by different zones, so it will be very difficult to have one resolution that is going to work across the whole townsite.

Carlson said the chicken owners have to order at least 21 chickens at once to make a purchase, unless chicken owners need to split the orders with other people who would like to have chickens.

Nelson said he has numerous issues with it. One of the issues is that it looks to him that the Borough is telling the people how to feed themselves. The Borough is punishing people for trying to be self sufficient. Also, what does the \$250 fine represent? How does the number come up? The fine is even higher than registering a car. Another issue is who decides to enforce that? A lot of people in town have chickens. People don’t know if they need a permit to have chickens or not. People have the right to take care of themselves above everything.

Janet **Kurz** said a lot of people moved here because of freedom. She thinks the Borough needs to look up the code and take those people’s advice; otherwise, the Borough will lose a lot of people.

Friedenauer said she lives next to Penny **Fossman**. She did not know her neighbor has chickens. She did not know it violated the code for having more than three chickens. However, it is in the code, and it is put there for public process. She is glad to see it brought up to the Planning Commission’s attention, and the Planning Commission will recommend the Assembly consider amending the code. She does not see the Planning Commission as against chickens and chicken owners. This is just a public process.

More discussion ensued.

Goldberg closed the public hearing at 7:00 p.m.

Goldberg said the Borough has different zones. According to the code, the property owners are not required to obtain a permit to raise animals in General Use zone, Mud Bay Planning District, and Lutak Planning District. However, some lots in certain zones that are a lot smaller, rules are being put in to minimize the impacts among neighbors. For instance, the property owner is required to have a conditional use permit to have chickens. A conditional use permit is a permit that the Planning Commission can grant conditions on. If the neighbor's residence is very close by, the Planning Commission may not grant the permit; if the lot size is big enough, the Planning Commission may allow more chickens. The purpose of Planning and Zoning is to try to reduce the conflicts between neighbors. **Goldberg** agrees with the opinions from the audience tonight, he personally thinks people should not be fined \$250 for having chickens. He supports animal husbandry and personal agriculture. However, the Borough has to comply with what is currently in the code. It was discovered by the Borough staff, and the code requires property owner Penny **Fossman** shall obtain a conditional use permit for having chickens in single residential zone. Also, the code requires a fine when a violation is discovered. There are two items on tonight's agenda to address this issue. One is to discuss changing the fine structure in Title 18; the other one is to consider possibly increasing the limit on the number of chickens.

Turner said Penny **Fossman** did not intend to raise chickens on her property. She was merely fostering them after a school project and was actively trying to find homes for them.

Motion: Gonce moved to "recommend the Assembly stay the \$250 after-the-fact fee being assessed to Penny **Fossman** for having chickens on her property without a conditional use permit." **Miller** seconded it. The motion passed unanimously.

B. Jessie Badger – Lot 1, Block A, Cathedral View Subdivision

Goldberg opened the public hearing at 7:21 p.m.

Badger said she requested Planning Commission approval of a conditional use permit to allow her to keep five chicken hens and one rooster on her property.

Goldberg closed the public hearing at 7: 25 p.m.

Goldberg said raising roosters is not allowed on lots of less than three acres.

Miller said he does not think it will be a problem if the neighbors have no objection.

Turner said he thinks the chicken coop has to be electrified to deter bears.

Motion: Miller moved to "approve Jessie **Badger**'s conditional use proposal for having up to 12 chicken hens with an electric fence to deter bears, but no roosters." **Turner** seconded it. The motion passed unanimously.

C. Ral West – 6.2 Mile Mud Bay Road

Goldberg opened the public hearing at 7:39 p.m.

Szymanski said she can represent Ral **West**, who is requesting the Planning Commission approve a conditional use permit to allow the operation of a lodging rental business on her property.

Carlson said he was involved with every aspect of this cabin's evolution.

Einspruch said turning this cabin into a rental is not the only option to keep it from being vacant.

Carlson said this property is declared as a Family Trust. It is not able to be sold.

Goldberg closed the public hearing at 7:42 p.m.

Goldberg said the property is located at Paradise West on Mud Bay Road. It is a beautiful cabin. He thinks it is a good thing to grant this permit so the cabin can be shared with visitors.

Motion: **Miller** moved to “approve the West conditional use proposal.” **Gonce** seconded it. The motion passed unanimously.

D. Chilkoot Indian Association (CIA) – Lots 2-6, Block D, Presbyterian Mission Subdivision

Berry said the CIA was assessed a \$250 after-the-fact fee for building a temporary driveway and putting a 12” diameter culvert on the same site without a right-of-way permit in October of 2012. CIA paid the fine because he did tell their sub-contractor to place a culvert in the right-of-way without a permit because of water coming in from several culverts that someone had installed to empty out into their land. The CIA received the permit 16 days after from the Borough requiring removing the 12” diameter culvert and installing an 18” diameter culvert. If the CIA had waited for the permit the CIA would have lost their building pad. In September of this year, CIA installed an 18” diameter culvert for their office parking lot. Several days later the CIA received a letter from the Borough, stating that CIA is being assessed a \$250 after-the-fact fee again for putting an 18” diameter culvert without a right-of-way permit, and being required to remove the 18” diameter culvert and install a 24” diameter culvert. The Borough code requires the minimum size of driveway culverts is to be 18 inches. The Tribe will not pay the fine again because the CIA has all the necessary permits. So the CIA decided to appeal this enforcement order to the Planning Commission.

Turner said it looks to him that the only right-of-way permit that the CIA obtained is for the temporary driveway in 2012. Once a right-of-way permit application is submitted, the Public Works have to take a look at it and may require the developers to install certain size culverts. This is one of the reasons that the Borough requires a driveway right-of-way permit. No one can construct a driveway located in a right-of-way without having obtained a permit from the Borough. All such work needs to be done in accordance with specifications and standards approved by the Public Works.

Cui said work within the right-of-way is required to commence within 60 days of the permit approved date. If work does not commence within this time period, the permit will expire and it will be necessary to re-apply for a new permit, including all applicable fees. Right-of-way permits are valid for six months. If work is not complete within six months of the permit approval date the developer will be required to apply for a new permit. The CIA obtained a right-of-way permit for installing a 12” diameter culvert in 2012, but that permit had expired after six months, and the CIA had not applied for a new one.

Berry said it would be very helpful for developers to receive a list of all necessary permits from the Borough prior to commencement of construction. The Borough shall not assume the developers know everything about permitting.

Motion: **Gonce** moved to “recommend the Assembly stay the \$250 after-the-fact fee being assessed to CIA for installing an 18” diameter culvert in the Borough Right-of-Way

without a Right-of-Way permit.” **Miller** seconded it. The motion failed 1-5 with **Goldberg, Gonce, Heinmiller, Turner, Miller** opposed.

9. **UNFINISHED BUSINESS** - None

10. **NEW BUSINESS**

A. **Historic District/Building Review** - None

B. **Haines Borough Code Amendments – Title 18 Revisions**

1. **Clarify “Setbacks and Height Restrictions” in HBC 18.80.030 and “Setback” in HBC 18.20.020**

Goldberg said **Cui** found a conflict in the code about setback regulations that needs to be addressed. Per HBC 18.20.020, setback means the perpendicular distance from the appropriate lot line to the nearest point on a building or structure, including, but not limited to, porches, steps, and roof edges. However, per HBC 18.80.030, cantilevered floors, decks or other similar building extensions are exempt from setback regulations.

Motion: **Turner** moved to “recommend the Assembly adopt the proposed draft ordinance amending HBC 18.80.030(A).” **Heinmiller** seconded it. The motion passed unanimously.

2. **Fees and Penalties in HBC 18.30.070**

Goldberg said the Planning Commission determined to consider adjusting the fine structure. The Planning Commission will take a look at the draft changes at this meeting, and a draft ordinance will be reviewed at the next meeting. The proposed changes are to separate the fees and penalties into A and B. The after-the-fact fees remain the same, but all other violations of Title 18 drop from \$300 to \$100. Also, the procedure for notifying violators is described. There are two types of violations – those that cost the Borough money (i.e. failure to file a construction declaration that does not get on the tax rolls or beginning work without a permit) and those that do not cost the Borough money (i.e. having more than three chickens or failure to file an application for temporary use of an RV as a residence). **Goldberg** thinks that in light of the recent fines and subsequent appeals for minor offenses, a letter of warning is warranted. The letter shall state the nature of the violation and inform the violator that they will have ten business days to conform to the code. If the violation is not corrected within ten business days a penalty of \$100 shall be assessed. If a penalty is not paid within 30 days, interest of 1.5% per month (18% annually) will accrue. If the penalty is not paid within one year, the sum will be added to the violator’s property tax.

The commission agreed to let the Borough staff draft the ordinance, and put this on the next meeting’s agenda.

No motion was made.

3. **Possibly Increasing the Limit on the Number of Hens under “Agriculture, personal use” in HBC 18.20.020**

Chapell said currently the code requires a property owner to obtain a conditional use permit for having more than three chickens in single and multiple residential zones. She suggests increasing the limit on the number of chicken hens under

“Agriculture, person use” to allow people having a few more chickens. The families that have young children consume two or three dozen eggs every week.

Einspruch said it really does not matter how many chickens are allowed unless the chickens are not annoying the neighbors. The number is not critical.

Nelson asked if the Borough has smoke house regulations. How many fish shall I put in my smoke house? Shall I install an electric fence around my smoke house? This is relevant. How about ducks? He thinks the Borough needs to figure out what the purpose is of requiring people to have a “chicken” permit. What are the potential impacts of raising chickens? Why do people pay the Borough for feeding themselves? He asked for the Planning Commission to consider those.

Heinmiller said he remembered people complained about their neighbors having two dozen chickens next to their houses in the past. This “chicken” regulation was put in the code for solving the problems among neighbors. A conditional use permit for raising chickens is not because the Borough wants to tell the people what to do; it is because the people want to tell their neighbors what not to do.

Turner suggests reducing the permitting fee from \$150 to \$25, because it seems to be a burden to the people who want to have chickens. However, he does not think there are problems with the current code. Requiring a conditional use permit for having more than three chickens in single and multiple residential zones is necessary. The public hearing process should be there.

Chapell said she is in favor of the idea of reducing the “animal husbandry” permitting fee.

Heinmiller suggests allowing up to 12 chickens as a use-by-right and allowing over 12 chickens if approved as a conditional use by the Planning Commission.

Venables thinks it could be a problem to raise 12 chickens on consecutive small lots.

Gonce said the number needs to be conservative, he suggests allowing up to six chickens as a use-by-right.

Goldberg said he supports and encourages people having personal agriculture. He thinks it is very important for the people here to be self sufficient. He is in favor of allowing up to six chickens as a use-by-right. And he also wants to reduce the permitting fee, because a \$150 fee makes the eggs very expensive.

No motion was made. The Planning Commission will review the draft ordinance at the next regular meeting.

4. ATV Use on Chilkat River Inlet Beaches in the Townsite Service Area

Goldberg said the area is currently zoned Recreation. The residents around the area have been under the impression that motorized use is disallowed in this beach area; however, neither the Haines Police Officers nor the Alaska State Troopers could identify the regulation that would allow them to publicize the area as off limits to private ATV users. There is confusion regarding what is and what is not allowed on this beach area or portion of the beach area.

Lende said the 2001 City of Haines plan had the beach area zoned non-motorized. Also, the Chilkat Beaches have a special management designation, as HT-14, and are managed by Alaska Department of Natural Resources (ADNR).

They are non-motorized, no overnight camping and have limited tours which ADNR does the permitting for.

More discussion ensued, and no motion was made.

Goldberg said he will get together with the Borough staff to come up with a solution. This topic will be on the next meeting's agenda.

C. Project Updates – None

D. Other New Business

1. Granting Utility Easements to Ocean Beauty – Excursion Inlet

Meacham, Mullikin called in at 9:48 p.m.

Earnest said this issue has been ongoing for decades and is now being resolved. On tonight's agenda for review and recommendation to Haines Borough Assembly are a proposed Record of Survey and a proposed Easement Grant (Utility Line Easements). Ocean Beauty's utility improvements have been in place for many years. Under this approach, Ocean Beauty's lease from the Borough would not be treated as a "new" easement lease for new utilities to be constructed in the future. It would not be assessing a "fair market value" easement fee or lease rental charge for the easement grant.

Motion: **Turner** moved to "recommend the Assembly grant utility easements to Ocean Beauty at Excursion Inlet." **Heinmiller** seconded it. The motion passed unanimously.

2. Classification of Borough Lands for Sale – Human Resources Building

Earnest stated the Human Resources Building needs major renovation and is energy inefficient. The CIA has expressed interest in purchasing the Human Resources Building. The Borough has not received a detailed proposal, but CIA intends to seek funding from the Federal Government to restore this historic building. It will be a great opportunity to have the building upgraded and restored.

Gonce asked if the CIA will pay the property tax on this property.

Earnest answered that will be a part of future discussion. It depends on the method of disposal. Borough land may be disposed of by negotiated sale or competitive bid, etc.

More discussion ensued.

Motion: **Turner** moved to "recommend for the Assembly to classify Human Resources Building for sale." **Heinmiller** seconded it. The motion passed unanimously.

11. COMMISSION COMMENTS

12. COMMUNICATION - None

13. SET MEETING DATES – The next regular Planning Commission meeting is scheduled for 6:30 p.m. on Thursday, October 10, 2013.

14. ADJOURNMENT– 10:15 p.m.