

**CITY OF UNALASKA
UNALASKA, ALASKA
PLANNING COMMISSION MINUTES
Thursday, April 24, 2014
CITY COUNCIL CHAMBERS, CITY HALL
7:00 P.M.**

1. **CALL TO ORDER:** Chair Chris Bobbitt called the meeting to order at 7:01 PM.

Staff Present:

Erin Reinders, Planning Director

Roll Call:

Commissioners present:

Chris Bobbitt

Doanh Tran

Jessica Earnshaw

Commissioners absent:

Steven Gregory

Vicki Williams

2. **REVISIONS TO THE AGENDA:** *None*

3. **APPEARANCE REQUESTS:** *None*

4. **ANNOUNCEMENTS:** Erin Reinders shared a short presentation on Land Use Planning in relation to the coming Community Assistance Team visit. The CPAT team will lead the community outreach component of creating a Land Use Plan. They will come out here for a week and do a charette, meet with stakeholders and do outreach meetings. Mrs. Reinders highlighted the public meetings scheduled for Monday, May 19, 2014, at 7PM and Thursday, May 22, 2014 at 6PM. She also told the Commissioners that if they would like to have a copy of the City's application to the APA-CPAT, she will be happy to provide them one.

5. **MINUTES:** Ms. Earnshaw moved to approve the minutes from the March 20, 2014 meeting. Ms. Tran seconded the motion. Chair Bobbitt called for a discussion or comments on the minutes. Ms. Tran acknowledged everyone's effort of approving the smaller pieces of the Title 8 changes. Chair Bobbitt asked the Commissioners if there were any further discussion on the minutes. There being no other comments, Chair Bobbitt called for a vote and the motion to approve the minutes was unanimous (3-0). The minutes for the March 20, 2014 meeting were adopted.

PUBLIC HEARING ACTION ITEMS:

6. **Consideration of a portion of Draft City Council Ordinance 2014-04 amending Unalaska Municipal Code Chapter 8.06 updating the definition of Subdivision and Lease Lot and Chapter 8.08 adding the Requirement to Plat.**

Chair Bobbitt opened the public hearing and called for a disclosure of any ex parte communication or conflicts of interest. Hearing none, the Chair called for staff presentation.

Staff Presentation:

Staff informed the Commission that last April 22, 2014, she presented to the City Council the changes in Title 8 that have been approved as well as those still pending. Construction Camps, Planned Unit Development, Building Separation, and Application Deadline have all been recommended to the City Council for final approval.

That leaves only the changes regarding Requirements to Plat, Subdivision, and Lease Lots. Mrs. Reinders explained she is going to review what the State Statute and City Code currently say about these topics, as well as what is being proposed for clarification proposed in City Code now.

Requirement to Plat:

Mrs. Reinders introduced Alaska Statute 29.40.180: *(a) The owner of land located in a subdivision may not transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, filed, and recorded in accordance with this chapter. A person may not file or record a plat or other document depicting subdivided land in a public recorder's office unless the plat or document has been approved by the platting authority. (b) For the violation of a provision of this chapter, a subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a platting authority in the exercise of its powers under this chapter, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days.*

Staff explained that the State Statute and the City's ordinance are similar and in summary require that lands be subdivided through the platting process prior to transferring or selling of land. In general, leasing is a form of transferring.

Mrs. Reinders reviewed current Unalaska Code of Ordinances 8.8.120: *(a) The owner or agent of the owner of land within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, as required by this chapter, is guilty of a misdemeanor in accordance with AS 29.40.180, and upon conviction is punishable by a fine of not more than \$1,000. Each day that a violation is permitted to exist shall constitute a separate offense for purposes of this subsection.*

Staff explained that the City Code is a restatement of general city planning principle and Alaska Statute that requires land to be subdivided by a platting process prior to transferring or selling land. It further reinforces that Leasing is a form of transfer.

Mrs. Reinders reviewed what is being proposed for the Unalaska Code of Ordinances: “§ 8.08.020(E) Requirement to plat. All subdivision of land within the jurisdiction of the city shall be by plat in compliance with this chapter.”

Staff explained that, again, this is to clarify the intent of this section of City Code. It is a restatement of general city planning principle and Alaska Statute. It prevents subdividing

property by means other than platting, for example simply signing a deed that conveys a piece of property that is not a recorded lot.

After presenting the proposed changes in relation to the requirement to plat, Staff proceeded to present the definition of “Subdivision”, again comparing the State’s position and the City Ordinance.

Subdivision:

Mrs. Reinders introduced Alaska Statute 29.71.800(23)(A): *“Subdivision” means the division of a parcel of land into two or more lots or other divisions for the purpose of sale or building development, includes resubdivision, and relates to the process of subdividing or to the land subdivided.*

Staff highlighted how the Statute explains that a subdivision is not only for the sale of property but for the development of property.

Mrs. Reinders reviewed current Unalaska Code of Ordinances’ similar definition: *“(157) “Subdivision” means the division of a tract or parcel of land into two or more lots, sites, or other divisions, or the combining of two or more lots, tracts, or parcels into one lot, tract, or parcel for the purpose, whether immediate or future, of sale or development, including any resubdivision and when appropriate to the context, the process of subdividing or the land actually subdivided.”*

Staff stated that this is a restatement of general city planning principle and Alaska Statute and it explains that a subdivision is not only for sale of property but for the development of property.

Mrs. Reinders reviewed the proposed wording that was discussed at the March Planning Commission meeting that was developed to clearly define that the definition was about non-sale lots: *(157) “Subdivision” means the division of a tract or parcel of land into two or more lots, sites, or other divisions, or the combining of two or more lots, tracts, or parcels into one lot, tract, or parcel for the purpose, whether immediate or future, of sale or development, including development associated with a property lease, including any resubdivision and when appropriate to the context, the process of subdividing or the land actually subdivided.*

Mrs. Reinders added that based on feedback and suggestions from a key stakeholder Staff deemed it necessary to provide a little bit further guidance when that subdividing would occur and so the underlined words below were added to the definition: *(157) “SUBDIVISION” means the division of a tract or parcel of land into two or more lots, sites, or other divisions, or the combining of two or more lots, tracts, or parcels into one lot, tract, or parcel for the purpose, whether immediate or future, of sale or development, including development associated with a property lease, including any resubdivision and when appropriate to the context, the process of subdividing or the land actually subdivided. No such division of a parcel of land into a lease lot or lease property shall constitute a subdivision of land until and unless: (a) the lease term (including all extensions to which the lessee is entitled as a matter of contractual right) is equal to or*

exceeds thirty (30) years; or (b) a building or structure requiring a building permit is constructed or sited upon the lease lot or lease parcel.

Staff reviewed that fact that this definition is a restatement of general city planning principle and Alaska Statute. It explains that a subdivision is not only for sale of property but for the development of property. Clearly outlines that types of non-sale developments covered under this definition would include those which occur on lease lots. It further outlines the intent of this definition in non-sale situations to focus on long-term leases of lease lots or when a structure requiring a building permit is planned for the lease lot.

Lease Lots:

Mrs. Reinders reviewed the current Unalaska Code of Ordinances' definition: (82) *"Lease Lot" or "Lease Parcel" means a parcel or tract of land described and designated by lease lines, and which at the time of applying for a building permit or another use permit is designated as the tract or parcel of land to be used, developed, or built upon as a unit of land. For purposes of zoning information, setbacks, yards, and other dimensional information, lease lots shall be interpreted as if they were actual lots or parcels.*

Mrs. Reinders reviewed the current Unalaska Code of Ordinances' definition: (85) *"Lot" means a measured portion of a parcel or tract of land which is described and fixed on a plat of record, and which at the time of applying for a building permit is designated by its owner or developer as the tract to be used, developed, or built upon as a unit of land having frontage on or access to a public street or an approved easement.*

In order to broaden the definition of lease lot to include any lot that is leases, thereby allowing for leases of legally recorded lots to fit this definition, Mrs. Reinders reviewed the propose wording that has been previously discussed by the Planning Commission: (82) *"Lease Lot" or "Lease Parcel" means a parcel or tract of land described and designated by lease lines, or otherwise described in a lease document, and which at the time of applying for a building permit or another use permit is designated as the tract or parcel of land to be used, developed, or built upon as a unit of land. For purposes of zoning information, setbacks, yards, and other dimensional information, lease lots shall be interpreted as if they were actual lots or parcels.*

Mrs. Reinders summarized that in accordance with State Statute and City Code, many lease lots are already required to be platted. With these clarifications to City Code, once it is determined that lease lots are intended for development, they will need to be platted lots. In other words, building permits would not be approved by the city unless the building is on a legally recorded lot.

Mrs. Reinders then outlined why such clarifications to code were so important. The reasoning included the following:

- Development patterns created by leased property are as relevant to the public interest as the development patterns created by sale property; and
- The platting process allows for more efficient and cost effective utility planning and service distribution; and

- Right-of-way access, utility connections, and minimum design standards that are addressed through the platting process need to be maintained for lease lots just as they do on sale lots; and
- These revisions clarify the intent of existing city code which provides better guidance to staff, city official, property owners, property leasers and developers; and
- These revisions help to increase consistency of subdivision requirements with state law.

Questions for Staff:

Chair Bobbitt asked the Commissioners if they have any question for Staff. Ms. Tran asked Staff what the City Council's comments were regarding the Title 8 changes that were presented to them. Staff said no questions were asked but just a clarification on the concept of development. Chair Bobbitt asked the Commissioners if they have any further question for Staff. There being none, Chair Bobbitt called for Public Testimony.

Public Testimony:

Mr. Miller of Ounalashka Corporation started by saying that he appreciated the dialogue that has been going on in the past couple of months with the Planning Department and that they also appreciate the modifications made after the feedback they provided regarding Title 8 changes.

Mr. Miller said that a change in the definition of the "lease lot" has a huge potential impact on OC because they are in the business of leasing, to its shareholders and the community. The corporation owns a lot of land that is under lease. He also said the City's position that a lease is just like any transfer of property is arguable and that it is not a statement of fact. He further said that a lease is a temporary arrangement and for a company like OC who he believes will be here for generations, lease is not just a simple transfer of ownership rights.

He also addressed two primary criteria that have been drawn around the lease lot definition:

The first is the 30-year term which he said was a number they threw out there that was more or less acceptable to the corporation. As they have continued to look closely at their existing leases some of which are long term into and beyond the 30-years especially when one considers the multiple potential extensions of those leases, they see potential problems in the way they may do business. Other potential problems especially when they deal with leases where they have multiple pieces of property that is leased under a single master lease. Also, he questioned the idea that if they lease a property for the purpose consistent with its zoning or a portion of that property consistent with its zoning, how OC should be required to spend energy, time and effort and all that is involved when you subdivide versus not plat and subdivide. That being said, they probably can live with the 30 years, but don't like it.

However, they have a bigger problem with the use of a building permit as the other bright line requiring a resubdivision or plat. Going back to the 30-year term he said it was his understanding that an owner has to re-plat prior to executing a lease and that there is a timing issue involved in the process. Mr. Miller continued his discussion of the building permit and how it is required "if you erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure" which he said is different from a construction of a building which he understood was one of the issue that the City had with some of the leases that OC may have executed in the past on lots that were not platted. He/OC proposed an alternate language that their attorneys came up with, *"No such division of a parcel of land into a lease lot or lease property shall*

constitute a subdivision of land until and unless: (a) the lease term (including all extensions to which the lessee is entitled as a matter of contractual right) exceeds thirty years; and/or (b) a permanent as opposed to temporary, building structure is constructed upon the lease lot or lease parcel.” He asked the Commission to consider that alternative language.

Another issue that Mr. Miller discussed was their concern of the number of temporary uses that OC have that would require them to subdivide. He cited the recently approved resolution on construction camps that are by their nature considered temporary but they do require a building permit in order to site them but they do not need to be platted. He sees an inconsistency because on the one hand the City is requiring them to plat a lease lot for anything that requires a building permit. He said that if the Commission chooses to impose this requirement that it would truly be for a permanent improvement and structure not just clearing of land, flattening of land, those kinds of things. He also asked if this were enacted how was the City going to enforce and mentioned that OC has hundreds of leases some of which are recorded and some are not. Would they be required then to submit all or portions of those leases for review? Mr. Miller also talked about “term” and why they have an issue with submitting leases for review because “term” is a quality in their business often as important as making business decision as is price, location etc. To them it may be a competitive issue, the disclosure of that item to specific pieces of property.

He believes that their current activity even where there are structures have been sited and constructed on un-subdivided pieces of property have all met the City’s requirements for setbacks, parking and easements. They are all compliant with those requirements. He mentioned that there are a couple of cases where the amount of land leased would not have met minimum lot size for commercial development but it allowed small businesses to obtain access to pieces of property which they could construct something that met setbacks, parking & easement requirements. He said that he doesn’t believe that this is a compliance problem and if they are it should be dealt with on a case by case basis.

To sum up, Mr. Miller said that they see this as making it more difficult, more challenging and more costly for them to conduct their business. And all of those elements will have an effect on their ability to promote development in the City.

Chair Bobbitt asked the Commissioners if they had any questions for Mr. Miller.

Ms. Earnshaw asked Mr. Miller if he discussed with the Planning Director his comments such as the enforcement issue and the language that OC would like added to the definition. Mr. Miller said that the additional language on item (b) of the definition was discussed with the Planning Director and it was generally seen as an part of conducting private business. The issue of enforcement was not discussed with Planning prior to the meeting but the harder they looked at it the more they are concerned especially with 30-year leases of multiple tracts of land. They haven’t fully evaluated it but they see it as potentially problematic as they move forward with negotiating and configuring those types of leases. He cited for example, a lease with ten-year terms with three ten-year terms extension therefore they must plat. On the fifth year of that lease the lessee wants to lease a portion of an adjacent property that they need to enhance their operation. Initially, they would add it on as a partial lease on a month to month basis but at some point usually during the extension time they would sit down with the tenant and try to incorporate the adjacent property into a single lease. Sometimes those are portions and in fact there are number of existing leases that they could not configure but for the fact that they are

already that way, in short grand-fathered in. He said that they look at it as a potential infringement on flexibility when it was not impacting the community the way they are doing business as they are now.

Chair Bobbitt addressed the issue of timing that Mr. Miller brought up earlier and the perception that platting is required before the lease. The Alaska Statute states that, but the City's version does not have anything about the timing at all and nowhere is it stated in the proposed ordinance. Once OC has signed a lease or done with the negotiation, OC can plat at that point if it met other filing criteria. Mr. Miller said that it should be explicitly stated, it should be clear how this is supposed to work. He believes that he and the Planning Director can work these things out in a productive manner but wondered how the ordinance would be interpreted by whoever replaces them in the future. He cited an example of WWII facilities that are scheduled for demolition on un-subdivided piece of land. It would appear that the demolition would require a building permit. This ordinance, if he read it right, it just says if a building permit is required. Chair Bobbitt clarified that the ordinance is talking about construction of a building requiring a building permit. Mr. Miller said that in his example there is a structure sited on the lease lot. Chair Bobbitt read in full item (b) which states "a building or structure requiring a building permit is constructed or sited upon the lease lot or lease parcel". Chair Bobbitt said in this case "constructed or sited" is intended to be a verb rather than an adjective. Mr. Miller pointed out that they see it differently and the ordinance doesn't address it clearly.

Staff clarified that the intent here is to clearly state that the ordinance is about long-term leases of a property which are similar to a sale of a property due to the lease term or the development of that property. To further provide guidance on what is development, it is the siting or construction of a structure or building that requires a building permit that will go through the DRT review process. It is not about deconstruction or demolition. Chair Bobbitt proposed to change the sentence to read, "*(b) a building or structure requiring a building permit is to be constructed or to be sited upon the lease lot or lease parcel.*"

Mr. Miller suggested to leave out building permit altogether. The language they proposed is "*(b) a permanent as opposed to temporary, building or structure is constructed upon the lease lot or lease parcel.*" Chair Bobbitt mentioned that Planning has recently made changes to the definition of "temporary" with regards to structure in code. Staff agreed and the intent of not including that wording "permanent as opposed to temporary" was on purpose because based on the definition of construction camps that the Commission just recently approved, the overall intent of the construction camp is that they will not be here for 30 years but could very well be here for a long time. And now with the current changes that the Commission approved that construction camps would be a by-right use in two industrial districts. Planning anticipates that they will be needing utilities and if things start picking up as we anticipate that it would with the coming oil and gas exploration, construction camps will be here for a longer period of time. Mr. Miller asked if temporary improvements would require subdivision and plat. Chair Bobbitt said that is currently how it is treated and he understands Mr. Miller's point that he doesn't want to have the added expense, time and effort to plat a property that will only be used for two years but he also understand Planning's issue where we've had several instances in the past where temporary becomes permanent. That is the reason why the Commission is having this discussion so we can plan for the community and try to make things work for everyone's interest.

Ms. Reinders said that Title 8 changes in the definition of "subdivision" were limited to citing building and structures and "improvement" was purposely left out. The current Title 8 definition

of “(75)”IMPROVEMENTS” mean any construction incident to furnishing facilities for a subdivision, including, but not limited to: grading, street surfacing, curbs and gutters, drive approaches, sidewalks, water mains and lines, sanitary sewers, storm sewers, other utilities, culverts, bridges, and other appropriate items.” Staff said that Planning is trying to strike a balance and still offer the guidance that people need for clear and predictable standards.

Chair Bobbitt asked the Commissioners if they have any questions for Mr. Miller. Hearing none, Chair Bobbitt closed the public hearing and called for a motion to approve Resolution 2014-13 or move to continue Resolution 2014-13 to the next public hearing. Ms. Earnshaw moved to continue the discussion of Resolution 2014-13 to the next scheduled public hearing. Ms. Tran seconded the motion. Chair Bobbitt stated that the resolution has been moved and seconded to continue in the next scheduled public hearing. Chair Bobbitt asked the Commissioners if there were any discussions.

Commission Discussion:

Chair Bobbitt requested Staff to research what the Federal Statute says about leasing a property. Staff clarified that from a legal perspective, the state statute gives the authority for the municipality to make their platting regulations, and the City can't be any less restrictive than what the state statute says.

Ms. Tran asked how many incidents this Resolution would save the Planning Department from going into situations that would cause more complication related to this definition. Staff answered that this has caused not only the Planning Department but the City as a whole several challenges where you are forced to deal with issues after the fact rather than being pro-active about the siting and location of utilities and the need for related easements that typically would be addressed during the platting process. There is also a case that the City is reviewing right now for a building permit on a piece of property that is leased which needs utilities and does not have direct right-of-way access which would have been addressed in the platting process. Because the requirements of a lease lot have not been properly defined the applicant has now been required to get an easement from an adjacent property. Mrs. Reinders said that developing can quite frustrating process, especially when issues are not being addressed in a comprehensive and proactive manner. It is her goal to limit these frustrations as much as possible the a more effective planning and platting process intended to addresses issues on the front end.

Ms. Tran asked how Planning is going to enforce the requirement to plat before leasing and is the Planning Department going to do a full inventory of the lease documents from private corporations. Ms. Reinders said that Planning does not have staff or time to review leases and that is certainly not the intent of these changes. It is only when people apply for a building permit, rezoning, conditional use and variance permit that these things are brought to light.

Chair Bobbitt called for a vote regarding the motion to continue on Resolution 2014-13 to the next scheduled meeting and public hearing. This motion requires a majority vote. Chair Bobbitt called for a vote and all were in favor (3-0) continuing the discussion to the next scheduled public hearing.

7. Consideration of a Zoning Map Amendment to Zone 2.94 acres, more or less, of State tidelands within Captains Bay adjacent to Offshore Systems, Inc. as Developable Tidelands (Owner: State of Alaska; Applicant: City of Unalaska; Property ID: N/A)

Chair Bobbitt opened the public hearing and called for a disclosure of any ex parte communication or conflicts of interest. Hearing none, the Chair called for staff presentation.

Staff explained that this was pertains to the City's application to acquire 2.94 acres, more or less, of State tidelands within Captains Bay to accommodate existing and planned development by Offshore Systems, Inc. This was approved by the Commission and endorsed to the City Council for final approval. The state has required that the tidelands has to be rezoned and development approved by the municipality prior to them transferring the tideland to the City. Staff is recommending approval of this resolution.

Chair Bobbitt asked the Commissioners if they have any questions for Staff. Hearing none, the Chair called for Public Testimony. There being no representative from the public willing to testify Chair Bobbitt closed the public hearing and open Commission Discussion. Chair Bobbitt called for a motion to approve Resolution 2014-16. Ms. Tran moved to approve Resolution 2014-16. There was a second. Chair Bobbitt asked the Commissioners if there were any discussion on the resolution. Hearing none, Chair Bobbitt called for a vote to approve Resolution 2014-16. The vote was unanimous (3-0) and the motion was carried and adopted.

8. A 12-Month Extension of the Approval of the Preliminary Plat for Ptarmigan Flats Subdivision – Replat of Tract B, Parcel 1-A, and ATS 1353, a 15.24 acre subdivision of Parcel 1-A and Tract B Ptarmigan Flats Subdivision, Plat Number 90-5 and Alaska Tideland Survey Number 1353, Plat Number 88-4, Aleutian Island Recording District. (Owner: Rick Miller, CEO, Ounalashka Corporation/FDOC, Inc.; Applicant: Delta Western; Property IDs: 04-03-340, 04-03-345, and 01-10-180)

Chair Bobbitt opened the public hearing and called for any ex parte communication or conflicts of interest to be disclosed. Hearing none, the Chair called for staff presentation.

Staff explained that an applicant is given 12 months to develop the final plat and submit Mylar for signatures and recordation. The applicant and surveyor are requesting an extension to allow for more time to fulfill all the conditions of approval.

Chair Bobbitt asked the Commissioners if they have any questions for Staff. Ms. Earnshaw asked what was delaying the approval of the plat. Staff explained that the Mylar has not been submitted to Staff yet, due to ongoing discussion related to required easements associated with the development.

Chair Bobbitt asked the Commissioners if they have any further questions for Staff. Hearing none, the Chair called for applicant's presentation. There being no representative from Delta Western to testify and the Property Owner having nothing further to add Chair Bobbitt closed the public hearing and open Commission Discussion. Chair Bobbitt called for a motion to approve Resolution 2014-17. Ms. Earnshaw moved to approve Resolution 2014-17. There was a second. Chair Bobbitt asked the Commissioners if there were any discussion on the resolution. Hearing none, Chair Bobbitt called for a vote to approve Resolution 2014-17. The vote was unanimous (3-0) and the motion was carried and adopted.

REGULAR MEETING: *None*

WORK SESSION: *None*

Last revised: 5/15/2014 6:19:06 PM

11. OTHER BUSINESS: Staff announced that the next Planning Commission meeting will be on May 15, 2014. Staff also reminded everyone that May 19 and 22 are the days that they will be meeting with the Community Planning Assistance Team.

12. ADJOURNMENT: Chair Bobbitt adjourned the meeting at 8:09PM.

PASSED AND APPROVED THIS 15th DAY OF May 2014 BY THE CITY OF UNALASKA, ALASKA PLANNING COMMISSION.



Chris Bobbitt
Chair

5/15/14

Date



Erin Reinders, AICP
Recording Secretary

5/15/14

Date

Prepared by Veronica De Castro and Erin Reinders, Planning Department