DENALI BOROUGH LAND PLANNING OPTIONS
LETTER TO PLANNING COMISSION & ASSEMBLY

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"These days no place stays special by accident." *(Planner Ed McMahon)*

Planning and Zoning – Tough Subjects in Alaska

The Denali Borough, like much of Alaska, has very limited controls over use of private land. And lots of people like it that way. Likewise, the borough has an approved comprehensive plan with sensible goals, but with no accompanying land use plan, and few specifics for guiding growth.

At the same time, more Borough residents are pointing out the downsides of the absence of land use planning and regulations in the borough. Some of these concerns, as reported by borough residents, include:

- A less than attractive built environment in "Glitter Gulch"
- Unplanned development that creates safety issues
- Disruption in the character of residential areas, including noise, traffic, unsightly structures

Attitudes about planning are evolving around Alaska. One way to summarize this evolution is to reference a possible spectrum of views. At one end are those who embrace the need for robust land use regulation; at the other end are those who want no regulations whatsoever. Many Alaskans are shifting from wanting no rules to embracing the mid-point on this spectrum, as illustrated in the quotes below:

> ***"Regulate the user down the street, who is creating real problems, but don't bother me".***
> ***"We cheat the other guy, and pass the savings on to you."*** *Chilkoot Charlie's slogan*

A (Very) Brief History of Land Use Planning and Zoning in the US

> ***"I've lived here for over twenty years, and I don't like government, I don't want taxes and zoning, and I'm really irked to see the trashy buildings going up around our borough, and no trespassing signs, and all the changes I've seen in the place I call home"*** *(quote from a meeting participant in Healy, winter 1997)*

"Zoning" is a word that triggers strong responses, especially in Alaska. And "planning" is often seen as the camel's nose into the zoning tent, leading to rules, taxes, and a host of related annoyances. This is an understandable view. One of Alaska's great charms is the opportunity to live a life and use your land in any way you choose. And zoning as historically practiced in many American counties and cities hasn't always produced commendable results – at times leading to monotonous single use neighborhoods, fussy controls on buildings that stifle business growth and owner creativity, and regulations aim at excluding certain people.

But despite these potential drawbacks, the vast majority of Americans and American local governments have chosen to create comprehensive plans that present clear goals and strategies for guiding growth, and then adopt an associated zoning ordinance to implement these goals. The US Supreme Court begin formally recognizing the valid and legal community interest in regulating the use of private land, starting in the early 1900's. Since then a serious of cases, including the famous Euclid case[1], have confirmed and extended the public interest in regulating land in support of public health, safety and welfare.

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[1] In Euclid v. Ambler Real Estate, 1926 the court found there was valid government interest in maintaining the character of a neighborhood and in regulating where certain land uses should occur. The court ruled that zoning ordinances, regulations and laws must find their justification in some aspect of police power and be asserted for the public welfare. Benefit for the public welfare must be determined in connection with the circumstances, the conditions and the locality of the case, and have a rational basis. No legal case has ever challenged this core finding, and many cases have greatly extended these initial local government powers.

The legal and practical logic for zoning is based on a simple reality: what I do with my property can affect my neighbors. This sets the stage for work to balance the benefits of my freedom to use my land as I please, against the public interest in managing the impacts of my uses on neighbors and the community as a whole.

Finding the Balance Point: Individual Freedom vs Off-Site Impacts

"Zoning" is a word that, like the words 'food' or 'fun', covers a vast spectrum of possibilities. Zoning rules can be minimally restrictive, or can regulate everything about land uses down to the color of your front door, or where you park your snowmachine. This wide range suggests it's not always reasonable to be simply for or against zoning; the more practical view is judging the merit of particular rules in particular locations.

In broadest terms, zoning is used to maintain property values and quality of life (e.g. restraining nuisances like excessive noise or glaring lights), protect environmental quality (e.g., protecting drinking water) and promote economic development (e.g., setting standards for attractive, successful commercial districts). Local governments and their communities can shape regulations to respond to the specific concerns of property owners, businesses and residents, and find the level of guidance that best matches local interests. And even in Alaska, few people in a typical residential neighborhood would want an auto wrecking yard next door. The inherent ability to adapt zoning to meet local needs includes the option to have different degrees of regulations in different locations (more on this below).

Before sharing examples of how these tools are commonly used around Alaska and the US, and presenting suggestions on an approach to planning in the Denali Borough, below is background on State planning requirements and the recommendations on this topic in the Borough Comprehensive Plan.

Foundations: Alaska State Law and the Denali Borough Comprehensive Plan

State of Alaska statutes, Title 29.35.180 states: "A home rule borough (such as Denali Borough) shall provide for planning, platting, and land use regulation." No specific details are specified beyond the general requirements, for reference, "A first or second class borough shall provide for planning, platting, and land use regulation in accordance with AS 29.40". Two critical sections of AS 29.40 are excerpted below (with emphasis added):

- "The comprehensive plan is a compilation of policy statements, goals, standards, and <u>maps for guiding the physical, social, and economic development, both private and public</u>, of the first or second class borough, and may include, but is not limited to, the following:
    1) Statements of policies, goals, and standards;
    2) <u>A land use plan;</u>
    3) A community facilities plan; 4) a transportation plan; and
    4) Recommendations for implementation of the comprehensive plan.

- "In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,
    1) Zoning regulations restricting the use of land and improvements by geographic districts;
    2) Land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;
    3) Measures to further the goals and objectives of the comprehensive plan."

The adopted Borough Comprehensive Plan sets out a series of goals that either require a stronger approach to guiding land use, or directly call for development of a land use plan. Illustrative examples include:

Goals for Economic Development

Goal 1 - Create a sustainable, diversified economic base through the development of natural resources and expansion of the tourist industry.
Goal 2 - Identify and promote development, including federal, state, and borough facilities and private industry to bring new and increased opportunities into the Denali Borough.
Goal 8 – Promote affordable housing for seasonal and temporary workers in the construction and tourism industry.

Land Use

Goal 3 - Develop a Denali Borough Land Use Plan.
Goal 4 - Ensure that each community can retain its individual identity and develop services to support their particular requirements.

Goals for Transportation

Goal 1 – Continue to develop and maintain a Long Range Comprehensive Transportation Plan.
Goal 2 - Expand public transportation.
Goal 10 - Continue to encourage and support DOT and NPS in their efforts to develop multi-use paths along the Parks Highway through communities and in heavily used tourist areas.

Motivations for More Active Planning and Zoning in the Borough?

State law, the borough comprehensive plan, and the views coming forward recently from at least some borough residents provide a reference point for considering a more active approach to managing land use and development. Examples of possible motivations specific to the borough include:

Supporting Economic Development

The borough has a more diverse economy than many Alaskan regions, but nonetheless faces economic challenges. These include declines in coal production, a very seasonal economy focused on the visitor industry, declining populations in portions of the borough, some local schools with enrollments well below their capacity, and the reality that Alaska local governments will soon have to pay more for public services like schools as generous state contributions decline. Examples of how active planning and zoning might help address these challenges include:

- Strategies to give visitors more reasons to spend time and money in the borough. For example:
  - Set standards to guide growth and improve the appearance and walkability of commercial areas like the park entrance.
  - Take steps to protect the views along the highway.
  - Developing practical plans to improve and sustain diverse recreational opportunities, for residents and visitors, for example, through an active, multi-organization/agency trails plan.
- Working with residents, businesses and landowners to create clearer community identity, and clearer centers, such as the long discussed idea of a better defined Healy towncenter.

Protecting Neighborhood Character/Supporting Investment/Protecting Public Safety

The primary driver of zoning in the US is sustaining the character of a place and property values – be that a residential neighborhood or an industrial park. Planning and zoning can do this, for example, by:

- Separating incompatible land uses, e.g. separating industrial from residential uses
- Minimizing potential off-site impacts of adjoining uses – e.g. through setbacks, or limitations on building heights or land clearing

- Setting standards for residential uses, through rules on density and/or guidelines on building form, to help maintain the desired character of a neighborhood

Managing and separating incompatible uses give land owners greater confidence that the qualities that supported an investment today – building a home or starting a business – won't get turned upside down by a future, incongruous neighboring use.

Efficient Planning Infrastructure

Planning and zoning provide a way for local governments to anticipate and synchronize the location and intensity of growth with expansion of roads and other infrastructure. Examples include planning for roads and sidewalks to provide safe and convenient access from resident and employee housing to schools, shopping and jobs.

Defining and Reaching Big Picture Goals

Beyond the specifics of setbacks or other detailed land use policies, planning done right gives a community the chance to work together to bring about what they want for their future – to set out a vision and the steps needed: to make… ***"intelligent use of the borough's resources for its present and future generations"*** *(quote from the Borough Comprehensive Plan)*

A Possible Approach for Planning and Zoning in the Denali Borough

Despite claims about the value of planning and zoning, not everyone in the borough wants to move in that direction. Accepting the validity of that viewpoint, below are some general principles and then a more detailed approach to investigating options for guiding growth in the borough.

Some Starting Principles

- Bottom Up – invest time in understanding issues and options at the local level; build plans and policies based on views of residents, landowners, businesses, visitors, vs. aiming to sell a "top down" approach.
- Start with Agreement on Goals – zoning or any other specific regulatory or fiscal implementation policy should be taken up only *after* a process that creates widely shared agreement around broad goals and strategies, for land use, economic development, environmental projection, transportation, public services and fiscal health. The existing comprehensive plan offers a good start, but lacks sufficient guidance.
- Respect "Sub-Regional" Differences – different portions of the borough have quite different physical settings, land use patterns, economies, attitudes and traditions. Broad goals and strategies, as well as eventual possible implementation actions, can and must respect these differences.
- It's the Economy – there are many reasonable motivations for planning and zoning. A focus on economic opportunity is a strong motivator, and particularly appropriate in a place so dependent on tourism, and at a time of profound decline in the state's budget.
- The Right Process – developing widely understood and supported land use policy requires a process that is inclusive and transparent, and offers diverse ways for people to express their views (more than just through attending traditional meetings). To sustain community interest and make good use of people's time the process needs to move along at a brisk pace with a clear end point.
- Pragmatism – If residents, landowners and leadership together conclude there is a need for more active planning and even zoning, the policies will likely need to be clear, relatively simple, and limited to the most important issues. A particular need will be realism about managing and enforcing any new policies with a limited borough staff.

Outlined below is a specific possible approach.

A Possible Process to Explore Options for Planning & Zoning in the Denali Borough

A note about terms: *Planning* is used here to include the process of setting general goals and strategies on a range of topics including land use, transportation, public facilities, economic development, health, that is, the topics covered in most comprehensive plans/strategic plans. *Zoning* is one of many specific tools used to implement these larger scale plans.

1. *Set a clear path, reflecting both the desire for and the hesitations about planning and land use regulation*

Process and Objective: Start by setting out a schedule and the steps the Borough would follow to explore and perhaps develop new land use strategies and implementation tools. Clarify the roles and responsibilities for carrying out this work. Ensure the process will be broadly inclusive, and also efficient with clear deadlines.

Specific Outcomes:

- Schedule with key benchmarks for products and decisions.
- An explicit engagement process, including the general public, businesses, land owners. This needs to include:
  - An option for an advisory committee
  - Proactive early outreach to stakeholders that typically do not attend general public meetings. Particularly important would be outreach to Native corporations, major employers including tourism companies, Usibelli Coal and other businesses, the National Park Service and State of Alaska
  - A means for people to stay involved in the process, without attending meetings, such as a project website, newsletters, use of social media, etc.
- Clear process for final, formal approval of outcomes (*CB recommends: do not require a vote as a step towards formal adoption of land use policy*)

Time required[2]*:* 3 months

Case Study 1: Talkeetna Agnew::Beck worked with community of Talkeetna, a town where many people were suspicious of planning, but also a location clearly feeling the side effects of rapidly growing tourism. The initial product was a widely supported "community/tourism plan" that identified issues and options and set clear goals and strategies for supporting growth *and* maintaining community character.

This plan in turn set the stage for the first ever zoning code in Talkeetna. The code was supported by people who initially didn't want zoning, as they came to believe that controlling growth was in their economic interest, and because the regulations largely codified what were already seen by the community as sensible building, signage and land use practices.

2. *Start broad scale – a Borough Strategic Land Use and Economic Plan, & a Generalized Land Use Map*

Process and Objective: While some Borough residents have urged the Assembly and staff to move quickly to create a zoning ordinance, we suggest the best place to start would be with more generalized land use planning. This could build on the current comprehensive plan, several previous "visioning exercises" and other relevant past work, and extensive outreach. Starting with broader scale planning means that there can first be agreement on goals, and only then is the stage set for determining how best to achieve those goals.

Specific Outcomes:

- Update facts and trends regarding growth and growth-related issues in the borough.
- Working community by community, develop a draft "Borough Strategic Land Use/Economic Plan" Topics of this plan would need to work back and forth at regional and sub-regional scales, and include:

[2] "Time required" presumes availability of Borough staff and leadership, perhaps supported by consulting services, based on experience in comparable planning work in other portions of Alaska and the lower 48 mountain west.

- A "strategic vision" statement for the borough as whole, which captures broad intentions for the future of the area. This would include refining existing comp plan goals for economic and fiscal health, protection of quality of life of residents, and protection of the natural landscape. These goals would then provide a reference point for discussing topics not included in the comp plan, including the desirable character, locations and magnitudes of future growth in the borough, and the general standards required to help different uses be compatible neighbors.
- Develop an equivalent strategic vision for each of 4-5 subregions of the borough (e.g., Cantwell, Yanert, "greater" Park entry, "greater" Healy, Clear/Anderson).

- Based on the Strategic Vision, develop a borough-wide, generalized land use map that reflects differences in market and physical constraints and opportunities, access, and the range of views of residents and landowners.
  - Build the map by considering the specific existing and desired land uses in different locations. These might be expressed in traditional single use land use categories, like rural residential use, commercial and industrial. More helpful may be using mixed use categories that reflect the unique characteristics of different portions of the borough. Examples might be areas where the primary use is low density residential, but the intent is also to allow a range of business activities in ways that do not significantly disrupt neighborhood life. Another example might be a mixed use towncenter area, where the deliberate idea is to promote a mix of uses in compact, concentrated walkable location.
  - Identify the assumptions about actions needed to support the desired future land use patterns, including transportation and other public facilities, coordination with partners, and perhaps new fiscal strategies, such as creating road service areas to cover local road maintenance costs.
  - This stage may lead to quite different outcomes in different sub-regions of the borough, with some areas pushing forward with fairly detailed ambitious land use plans, and other sub-regions wanting to move more slowly.
- Bring forward the combined package – "Strategic Land Use/ Economic Plan" and Generalized Land Use Map – for formal Planning Commission and then Assembly approval.

T*ime required: 6-8* months

3. *Develop the specific tools most appropriate to implement conclusions of broad scale planning*

Objective: After the work above is complete the borough will be well positioned to consider what specific tools may be needed to implement these broader policy intentions. One likely implementation tool would likely be a zoning code, with the following characteristics:

Case Study 2: Methow Valley WA/Bend OR These two destinations provide examples of how good planning and zoning, good marketing, and active partnerships between governments and non-profits can create economic opportunities well beyond what any given landowner or agency can do on its own. The Methow Valley has become a premier four season destination for trail-based activities, created through collaboration of multiple land owners, and anchored by a series of small, walkable downtowns. Bend has experienced remarkable growth based on thoughtful development of 4 season recreational opportunities, and public & private investments to create a lively, brewpub-rich, riverfront downtown.

- Allow for different portions of the borough to have different levels of land use regulation, while recognizing the code has to be fair
- Allow for significant latitude in use of private land, but provide standards that control the subset of uses most likely to create significant off-site adverse impacts. One specific strategy is for the great majority of common uses to be allowed "by right". This can be coupled with a conditional use process to provide for higher standards and more public review for proposals for larger scale uses likely to have significant off-site impacts, such as industrial activities, high density housing or large scale tourism development.[3]
- Establish specific land use policies, consistent with resident, business, landowner and borough leadership desires, in specific locations. Possible candidates include:
  - Provide new standards for commercial development and commercial signage, aiming to elevate the quality of commercial centers like "Glitter Gulch" in a way that increases tendency of visitors to spend time (and money) in the borough
  - Provide standards that maintain the unique, positive qualities of lower density residential areas
  - Work towards creating more identifiable community centers, such as the long discussed "Healy town center"

Specific Outcomes:

- Preparation and refinement of a draft and then final zoning code, working with extensive public and land owner input
- Adoption of other actions to implement the strategic plan, for example, a trail plan or a CIP for roads and other public services and infrastructure,
- Preparation and refinement of a practical approach to implementing and enforcing the zoning code, based on realistic expectations regarding staffing and budgets.

T*ime required:* will vary based on conclusions in previous steps regarding extent of regulations desired in the borough. A reasonable, starting estimate is 6-12 months.

Above: *neighbors talking to neighbors, Petersburg Borough Comprehensive Plan*

Case Studies 3: Alaska Borough Comprehensive Plans/Municipal Zoning Plans

Experiences in Alaska with regional and borough scale land use planning show both the value and challenges of bringing the planning tools to places where not everyone welcomes their arrival. The first ever zoning code for Talkeetna was developed start-to-finish in 4 months. Ambitious, multi-year attempts to create borough- wide zoning in the Mat Su Borough and to comprehensively overhaul the Kodiak Island Borough Code both collapsed in rancor. In early 2016, the Petersburg Borough Assembly approved a comprehensive plan, which encompassed a large area recently absorbed into this newly established borough, & included a call for creating new zoning and subdivision rules.

The lessons? Strong leadership and a sincere commitment to working with the public "where they are" gets the job done.

[3] A note on CCR's – Codes Covenants and Restrictions - Using CCR's to manage land use vs. zoning is often proposed in Alaska. The track record for CCR's in Alaska is weak at best. CCR's can work in established neighborhoods, such as Anchorage subdivisions, where most homes are all built at the same time, to a similar standard, and occupied by people with similar values and incomes. In different settings, particularly in rural subdivisions that will be built out slowly over time by people with widely divergent values and funds for construction, CCR's tend to be ignored and are very difficult to enforce.