

Mayor
John K. Handeland
City Manager
Lee Smith
Deputy City Clerk
Brad Soske



Nome Planning Commission
Kenneth Hughes III, Chair
John Odden
Gregory Smith
Carol Piscoya
Melissa Ford
Adam Lust

**NOME PLANNING COMMISSION
REGULAR MEETING AGENDA
Tuesday, June 03, 2025 at 7:00 PM
COUNCIL CHAMBERS IN CITY HALL**

102 Division St. ▪ P.O. Box 281 ▪ Nome, Alaska 99762 ▪ Phone (907) 443-6663 ▪ Fax (907) 443-5345

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

- [A.](#) May 13, 2025 Nome Planning Commission Meeting Minutes,

PAGE 2

HISTORIC PRESERVATION COMMISSION ACTIVITIES

COMMUNICATIONS

CITIZENS' COMMENTS

NEW BUSINESS

- [A.](#) Public Hearing for the Appeal of Joe Burnham of the City Determination of Zoning for Parcel 190.1.040,

Record of City Action for June 3, 2025 Appeal

PAGE 5

Memo from Nome City Planner re: A Summary of Background, Findings and Recommendations,

PAGE 19

NCO 18.160 Appeals,

PAGE 23

UNFINISHED BUSINESS

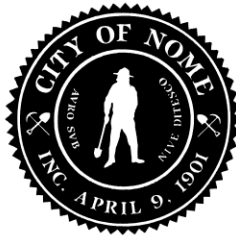
STAFF REPORTS

COMMISSIONERS' COMMENTS

SCHEDULE OF NEXT MEETING

ADJOURNMENT

Mayor
John K. Handeland
City Manager
Lee Smith
Deputy City Clerk
Brad Soske



Nome Planning Commission Item A.
Kenneth Hughes III, Chairman
John Odden
Gregory Smith
Carol Piscoya
Melissa Ford
Adam Lust
Rhonda West

**NOME PLANNING COMMISSION
REGULAR MEETING AGENDA
TUESDAY, MAY 13, 2025 at 7:00 PM
COUNCIL CHAMBERS IN CITY HALL**

102 Division St. ▪ P.O. Box 281 ▪ Nome, Alaska 99762 ▪ Phone (907) 443-6663 ▪ Fax (907) 443-5345

ROLL CALL Start 7:00pm

Members Present: C.Hughes; C.Piscoya; C.Lust; C.Ford; C. Odden
Members Absent: C. Smith - Excused
Also Present: Lee Smith, City Manager; Dan Grimmer, City Clerk; Erin Reinders, City Planner; Anna Lionas, Nome Nugget Newspaper; Kate Osborn; Chuck Fagerstrom. Wali Rama, KNOM; 10 people also viewing on KNOM YouTube.

APPROVAL OF AGENDA

A motion was made by C.Lust and seconded by C.Piscoya to approve the agenda as presented.

At Roll Call:

Aye: C.Hughes; C.Piscoya; C.Lust; C.Ford; C. Odden:

Nay:

Abstain:

THE MOTION CARRIED

APPROVAL OF MINUTES

A. 25-03-04 Nome Planning Commission Meeting Minutes

A motion was made by C.Ford and seconded by C.Piscoya to approve the Regular Meeting Minutes as presented.

At Roll Call:

Aye: C.Hughes; C.Piscoya; C.Lust; C.Ford; C.Odden:

Nay:

Abstain:

THE MOTION CARRIED

HISTORIC PRESERVATION COMMISSION ACTIVITIES

Nothing to add at this time.

COMMUNICATIONS

A. A Memo regarding property 190.1.040 owned by Joe Burnham of Kanosak, LLC,

Information only and Mr. Burnham will be given a little time.

CC Grimmer stated that Mr. Burnham is appealing decision that it doesn't follow zoning codes and June 3rd he will be appealing.

B. Public Notice of Application for Permit

CITIZENS' COMMENTS

Megan Onders stated she was just here to listen.

Chuck Fagerstrom Welcome CM Smith. Enjoyed the economic development conference. Was very informative. Main reason for speaking was to discuss the area known as Gold Ave. Thought the city may have worked out a deal with one of the dredging companies allowing them to store their equipment on the west end adjacent to the waterway. Seeing all this equipment being stored there is disheartening. Hopes that the city will not allow this type of activity/storage.

CM stated that he had a meeting regarding this earlier in the day.

NEW BUSINESS

None at this time.

UNFINISHED BUSINESS

- A. May 13, 2025 Memo from Erin Reinders, City Planner to the Nome Planning Commission re: A Public Hearing on the Downtown Zoning Ordinance and Map Amendment, City Planner Reinders gave a brief overview, stating NPC is holding a hearing and voting to move it forward to common council for their actions. The ordinance as you know creates two new zoning districts that are less restrictive than what is currently zoned, most notably related to setbacks and land uses. Both have zero-foot setbacks from the right of way. Two of the land uses are now less restrictive.

C.Hughes entertained motion to enter into public hearing.

A motion was made by C.Ford and seconded by C.Odden to enter into public hearing. To hear public testimony. No discussion.

Time In 7:10pm Time Out 7:12pm

C.Hughes entertained motion to move this ordinance to common council.

A motion was made by C.Piscoya and seconded by C.Odden to move this ordinance to common council.

At Roll Call:

Aye: C.Hughes; C.Piscoya; C.Lust; C.Ford; C. Odden:

Nay:

Abstain:

THE MOTION CARRIED

STAFF REPORTS

Economic Development/PIO Onders on her agenda is to figure out investments' codes, how to attract investors and investments. Nothing else to add just wanted to put it out there.

CC Grimmer to address the application from Army Corp of Engineers. Concerned that it overlaps outside of resource development. Stated if any residents wanted to voice their concerns to contacts provided on application.

C.Hughes stated this could be an agenda item for the June 3rd NPC meeting.

CM Smith stated that we should do a better job at notifying residents with getting notices out.

COMMISSIONERS' COMMENTS

C.Lust – Welcomed CM Smith to his new role. Need to do a better job on putting things on the calendar so that we don't miss out on things like grant money that was available for the historic preservation commission.

C.Ford – Welcomed CM. Wanted to let everyone know that there are funds available through HFC for non-profits and profits. Must commit to housing. Amount up to \$350,000.

C.Piscoya – Also wanted to welcome CM and also PIO Onders. Good meeting.

C.Odden – Good to be back after all the traveling. Let's get moving.

C.Hughes – Before comments, wanted to let Mr. Fagerstrom speak. He was doing some traveling and was unable to attend a few meetings. But stated that he did watch the first BOE meeting regarding Mr. Potter's property disputing the zoning of said property. His memory that the three lots in question were supposed to be zoned as general, never came back to the NPC. Shocked that this was never changed. Hoping that we can check the records from meetings before Mr. Potter purchased this property. A lot of resourced land is being disposed of by their owners for non-resource related development. We don't have a good procedure at this time. Thinks this needs to be addressed.

SCHEDULE OF NEXT MEETING

A. Next Scheduled Meeting - 25-06-03

ADJOURNMENT Out 7:40pm

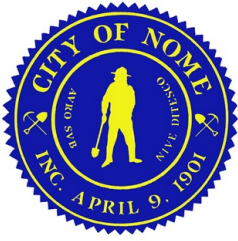
A motion was made by C.Piscoya and seconded by C.Odden to adjourn the meeting.

APPROVED and **SIGNED** this 3rd day of June, 2025.

KENNETH HUGHES III
Chairman

ATTEST:

BRAD SOSKE
Deputy Clerk



June 3, 2025

NOME PLANNING COMMISSION

RECORD OF CITY ACTION FOR JUNE 3, 2025 APPEAL

Appeal Requested by Joe Burnham

Re: Use of Tract A of Bench #2 Placer Claim, US Mineral Survey #691

This Record of City Action is prepared pursuant to NCO 18.160.020 (c).
It contains:

1. February 26, 2025 enforcement letter from Acting City Manager Grimmer.
2. March 21, 2025 E-mail from Mr. Burnham requesting appeal.
3. E-mail correspondence regarding appeal.
4. Photos of property, dated January 3, 2025.
5. Parcel viewer data.
6. Nome Zoning Map.



February 26, 2025

Joe Burnham
Registered Agent/Member Kanosak, LLC
1120 East Huffman Rd. #453
Anchorage, AK 99515

Dear Mr. Burnham:

Kanosak, LLC, of which you are the only member, is the owner of land known as Parcel ID 190.1.040, also known as Tract A of Bench #2 Placer Claim, US Mineral Survey #691, according to Plat #81-1. It is zoned in the Commercial District, governed by Chapter 18.60 of the Nome Code of Ordinances. The property is currently being used for outdoor storage of various vehicles, implements, trailers and so on. Outdoor storage is only permitted as an accessory use to a permitted use in the Commercial District. NCO 18.60.020 (t). You do not have a city business license for any of the permitted uses in this zoning district and it does not appear the property is being used for any of the uses permitted under NCO 18.60.020. Thus, there is no permitted use to which the storage could be considered incidental.

If there is a permitted use, the storage still must meet the definition of an accessory use. NCO 18.20.010 defines an accessory use: "Accessory use or building" means a use or building customarily incidental and subordinate to, and located on the same lot with, the principal building. Storage is clearly the predominant use on the lot.

Private storage, including junk, requires a conditional use permit. NCO 18.60.030 (k). No conditional use permit has been applied for.

Please remove all vehicles, boats, storage trailers, tools and all other material from the property immediately. If the items are not removed by March 24, daily penalties will begin accruing at \$250 daily, per NCO 1.20.010 and NCO 18.10.110. If not removed by April 7, the daily penalty will increase to \$500. The city would ultimately seek to enforce those fines and obtain injunctive relief in court if this issue cannot be resolved.

If you are unable to move the items by those timeframes due, for example, to winter weather conditions, the city may enter into a compliance agreement with you. Likewise, if you choose to apply for a conditional use permit, the city may enter a compliance agreement with you. However, please be aware that for any such arrangement, the burden is on you to provide a plan and to communicate with the city. It should be abundantly clear that the code is being violated presently. Neither an application for a conditional permit, nor a compliance agreement would change that. The city is, however, willing to work you to achieve compliance provided you are actively and demonstrably working on a solution.



You may appeal this decision within 10 days. Please see NCO 18.160.020, Appeal application. Please note that an appeal would be limited to the interpretation and application of the Nome Code of Ordinances.

Dan Grimmer
Acting City Manager
City of Nome

From: [joe burnham](#)
To: [Sam Severin](#); [Dan Grimmer](#)
Subject: Re: Nome Zoning Matter
Date: Friday, March 21, 2025 10:37:06 AM
Attachments: [2.26.25 Kanosak Letter.pdf](#)

sam, dan ,

first off

please forgive the formatting as i am working off of an iphone

i am in a foreign country at a remote village location with no internet access except to climb to the top of a ridge line there there is enough signal for to ck text and make a call (some times) theres several hour time difference as well. it is several hours over a goat trail that serves as a road to reach enough signal to send or receive emails.

on march third i was sent a text by brad requesting my current email address (i will attcach a screen shot to this email) , which i thought a bit strange as it is the same email address i have had since there was “e mail “ and the city of nome has had it for at least a few years. in my response i asked what was up , i got no reply ?

i returned to my village project and thought no more of it until on a supply trip i was able to ck my email

and found this demand letter from dan, which was dated in february but not emailed to me until the 10th.

which i did not get access to open until two days ago. this is the first i have heard that there maybe an issue with zoning and the use of the kanosak llc property. yesterday sam i received your email.

we are on another supply run so i will take time to respond as best i can at this time.

needless to say i am surprised and somewhat perturbed, if there was/is an issue here why in the world was i not notified of it by a simple phone call and request to come in and discuss it. (i have made a couple of inquiry's) and it appears this has become an “issue” several months ago. its been mentioned at community counsel, been an article in the paper , and who knows what else? and i am just now hearing about it ? by a demand letter threat ting to levy the property and other legal action if the demand is not complied with by removing the inventory by march 24

2025, a mere 10 days following the demand letter , and in the dead of winter to boot , bear in mind this property was purchased in december of 2002 with some inventory already there and in intervening almost three years its taken a great deal of time and expense obtaining and placing inventory. how has this become a dire issue all of a sudden ? whos pushing the buttons ?

this demand can not be complied with at this time

quite frankly i find it absurd

1. its simply not physically possible to move that much inventory in the time allooyed.
- 2 its the dead of winter
3. i am out of the country

no disrespect intended its just i will not be there. while i will be returning to alaska other commitments

will prevent me from returning to nome till the end of april.

therefore 1 . appeal this decision , 2. if the appeal is denied i request a stay of your actions till

we can discuss the issues upon my return.

i do not think kanosak llc is in violation of your zoning ordinance , however if it turns out there is a violation we will take the necessary action to come into compliance if required.

thank you for your time and attention , you know a simple phone call bringing this to my attention “when” the issue came up would have likely resolved the issue when it came up and more than likely saved the city of nome a few thousand dollars in attorney fees and not got the community all in an uproar.

i have devoted all the time ii can to this at the moment, my compatriots await we must return to the project at hand where the villagers appreciate the work we do to improve their community

joe burnham

again for give the lack of formatting

Sent from my iPhone

On Mar 20, 2025, at 11:43 AM, Sam Severin <SSeverin@mcsalaska.com> wrote:

Mr. Burnham – My office represents the City of Nome. The city has sent you the attached letter. Mr. Grimmer is pretty tied up this week working as both clerk and manager, and I offered to reach out and discuss this issue with you. Of course, compliance is the goal in any situation like this. However, we are nearing the deadline for daily penalties to be imposed, and the city will consider action for injunctive relief and fines if need be. Again, hopefully that can be avoided. My office number is 272-8401.

Sam

From: Dan Grimmer <DGrimmer@nomealaska.org>
Sent: Tuesday, May 13, 2025 1:49 PM
To: Sam Severin
Subject: FW: External Email appeal

From: joe burnham <burnham_joe@yahoo.com>
Sent: Thursday, April 17, 2025 11:59 AM
To: Dan Grimmer <DGrimmer@nomealaska.org>
Subject: Re: External Email appeal

yes that june meeting will give me plenty of time , however i asked for a stay on fines pending this appeal.
 i do not think i am out of compliance once i have my records and do a bit of research i think i will be able to show that. i appreciate you working with me on this , joe

Sent from my iPhone

On Apr 15, 2025, at 7:53 PM, Dan Grimmer <DGrimmer@nomealaska.org> wrote:

Joe, I've given this a lot of thought on the best way to address this. Here are the options:

1. The appeal hearing will be set for June 3rd at 7pm to be heard before the planning commission. This should give you sufficient time to appeal before the first week of May. Daily fines can continue to accrue through that June meeting.
2. Another option that I would suggest is for you to come up with a plan to remove items that are not permitted by Zoning Ordinance. I recall that you had mentioned that you had property outside city limits which I had suggested that you use to store this equipment; instead of the site that you chose. If the property could be cleaned up before the appeal hearing then there may not be a need for further action. I picked the June meeting for the appeal hearing so that if you choose to remove the equipment/items it would be less likely to have snow as an obstacle.

Dan Grimmer
 City Clerk
 City of Nome
DGrimmer@nomealaska.org
 (907)443-6611
 PO Box 281, Nome, AK 99762
 Website: www.nomealaska.org

<image001.jpg>

DISCLAIMER: If you are not an intended recipient of this eMail message, please notify the sender, delete it and do not read, act upon, print, disclose, copy, retain or redistribute it. Please note that eMail is susceptible to interference.

From: joe burnham <burnham_joe@yahoo.com>
Sent: Friday, April 4, 2025 4:13 PM
To: Dan Grimmer <DGrimmer@nomealaska.org>
Subject: Re: External Email appeal

i can not prepare the appeal documents by april 11 th my documents and records for this property are in nome , to which i will return to around the 30 th of april
 i again request you stay any action until i return and can make a formal appeal of the decision letter ,
 i think once we are able to hash this out it will resolve its self quickly.
 you might also let them know that thank you this demand letter went out by email on the tenth and i did not receive it till several days later, on the 6 th i got a text from brad asking for a current email address to which i replied its the same as its always been , whats up ? i did not get a response to that text had i been told what to be expecting and why i would have made a point of looking for it on a supply run and would have been able to respond in a timely manner.
 your demand letter stated that i had to begin moving equipment out by the 24 a mere ten days in the dead of winter which i think anyone can see is unreasonable , that being said kanosak will do whatever is necessary to comply with applicable zoning regulations , thank you
 Sent from my iPhone

On Apr 1, 2025, at 7:11 PM, Dan Grimmer <DGrimmer@nomealaska.org> wrote:

Mr. Burnham: The City will consider this e-mail a formal request for an appeal to the Planning Commission. It was not submitted within the 10 days required by code. The Planning Commission may deem in late-filed, but I will process the appeal and allow the commission to make that decision.

The appeal will be heard at the May 6 meeting. Please see NCO 18.160 regarding appeals. If you wish to submit a more formal written statement of your appeal for the record, please do so by April 11.

Dan Grimmer
 City Clerk/Acting City Manager
 City of Nome
DGrimmer@nomealaska.org
 (907)443-6611
 PO Box 281, Nome, AK 99762
 Website: www.nomealaska.org

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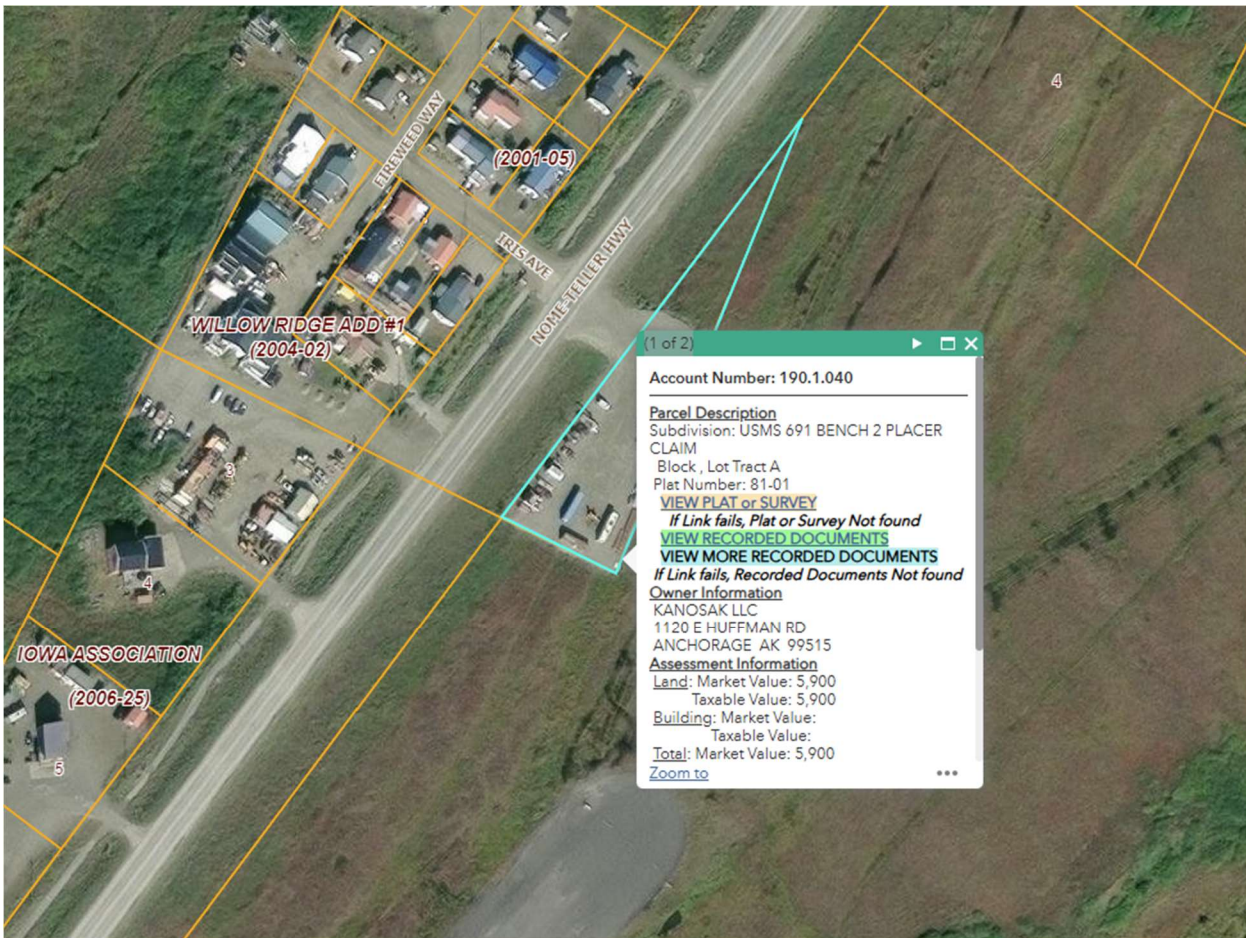
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










Nome Zoning Map

**City Council
Approved Version 6,
Dated October 9, 2017**

LEGEND

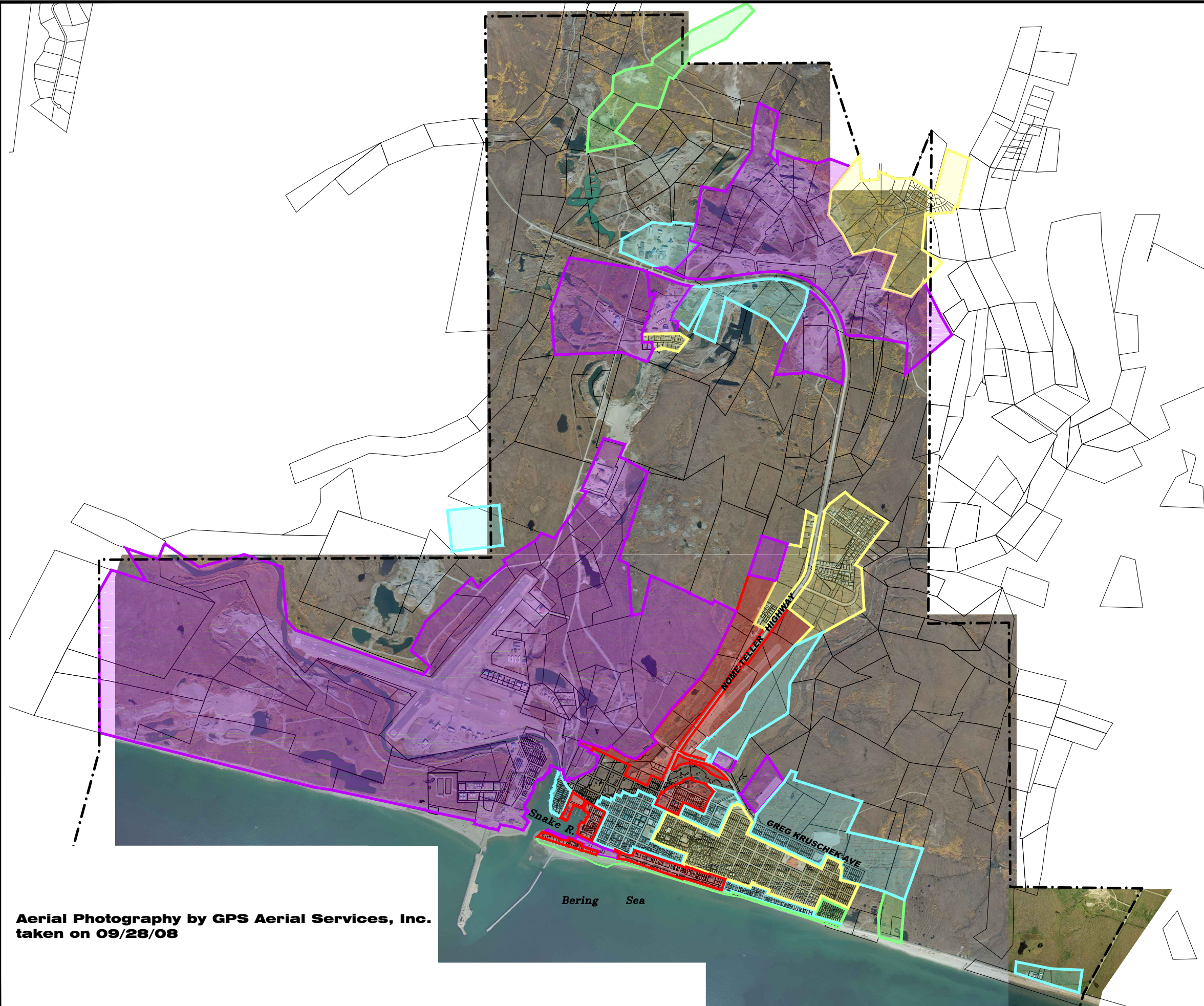
-  **Corporation Boundary**
-  **Open Space/ Recreation**
-  **Commercial**
-  **Industrial**
-  **Residential**
-  **General Use**
-  **Resource Development**
-  **100 Year Storm Boundary**



Bristol

ENGINEERING
SERVICES CORPORATION

**Aerial Photography by GPS Aerial Services, Inc.
taken on 09/28/08**



PLANNING MEMO

TO: Planning Commission
 FROM: Erin Reinders, AICP, CPM
 RE: Joe Burnham Appeal of February 26, 2025 Enforcement Notice
 DATE: June 3, 2025

SUMMARY: This memo serves as the City Administration's written response to Mr. Burnham's appeal. It summarizes the issue presented on appeal, provides guidance from the Comprehensive Plan and relevant zoning ordinances, and explains the City's position in defense of its decision.

BACKGROUND: In response to complaints received from members of the community, the City investigated the use of the property in question. The property is owned by Kanosak, LLC, of which Mr. Burnham is the only member.

City staff determined the current use is not a permitted use in the Commercial Zoning district and issued an enforcement letter. Staff's determination is now being appealed by Mr. Burnham. The sole issue for the commission to decide is whether the city erred in its interpretation of NCO 18.60.020 (t) as it applies to Mr. Burnham's use of his lot for outdoor storage.

Included in your packet is the Record of City Action for this appeal by Mr. Joe Burnham. This record contains:

1. February 26, 2025 enforcement letter from Acting City Manager Grimmer.
2. March 21, 2025 E-mail from Mr. Burnham requesting appeal.
3. E-mail correspondence regarding appeal.
4. Photos of property, dated January 3, 2025.
5. Parcel viewer data.
6. Nome Zoning Map.

The enforcement letter mentioned that if Mr. Burnham sought a conditional use permit, the City might consider the application sufficient cause to delay fines or other enforcement efforts. He has inquired with city staff about such a permit. The City's inclusion of that option was to suggest that applying for a conditional use permit would at least be a recognition of the City's zoning code and an effort to come into compliance. It should be made clear, however, that a conditional use permit would not provide a clear path to compliance in this situation. The only relevant potential conditional use appears to be NCO 18.60.030 (k) which allows for "Private storage, including junk, or small warehouse associated with residential use/home occupations." However, there are no residential uses currently located on this property, which would be necessary for such storage to be conditionally allowed.

The enforcement letter stated that daily fines would be assessed. Mr. Burnham requested that any fines be stayed pending appeal. The City's position is that filing this appeal does not automatically prohibit daily fines from the time of the enforcement letter to the time of a decision on appeal. However, the City will not seek imposition of daily fines during that time period. As a practical matter, it would have been challenging to comply with the City's request due to winter and spring weather conditions.

Fines are an enforcement function within the purview of city administration and are not part of the decision on appeal. The City mentions fines here to ensure that the parties and the Commission do not spend additional and unnecessary time on discussing that issue. Again, the sole issue for the commission to decide is whether the city erred in its interpretation of NCO 18.60.020 (t) as it applies to Mr. Burnham's use of his lot. The City's ultimate goal is compliance, and it would consider an agreement which allows for milestones and suspension of any fines to motivate timely compliance.

PLAN GUIDANCE: The Nome Comprehensive Plan is a tool for guiding the future growth and development of the City of Nome. Sections V and VII of the Comprehensive Plan provides guidance relevant to this situation, which are highlighted below.

Land Use Plan. The Land Use Plan is addressed in Section V of the Nome Comprehensive Plan 2020. Of note of the following Land Use Districts Definitions, where only the industrial district focuses on stand alone outdoor storage and not the commercial district.

Commercial Districts. The Commercial Districts are intended to provide for a mixture of commercial uses that will strengthen and expand the core community.

Industrial Districts. The Industrial Districts are intended to provide a location for a variety of employment opportunities such as manufacturing, warehousing and distributing, indoor and outdoor storage, and a wide range of primarily industrial operations. Locations for the industrial zone require access to major arterial streets and adequate water, sewer, and power.

Framework for the Future. Section VII of the Nome Comprehensive Plan 2020 provides a framework for the future and outlines Goals, Objectives and Strategies. One Land Use goal is related to Economic Viability and as an associated Objective related to this situation.

Land Use Goal.

Economic Viability: A built environment based on standards that sustain long-term economic viability and growth and that promote affordable residential, commercial, and industrial development.

Objective 24: Aggressively abate junk vehicles and abandoned structures.

ZONING CODE ANALYSIS: Chapter 18 of the Nome Code of Ordinances serves as the Zoning Ordinance for the City of Nome and provides regulatory guidance. Below are the relevant sections of code, particularly as they relate to definitions, the commercial zoning district, nonconforming uses, and the appeals process.

Definitions. Though not every use or term is defined in the Zoning Ordinance, the following definitions are listed in NCO 18.20 and are relevant to this situation.

"Accessory use or building" means a use or building customarily incidental and subordinate to, and located on the same lot with, the principal building.

"Outdoor storage" means the keeping, in an unroofed area, of any goods, material, merchandise, or vehicles for more than twenty-four hours.

"Junk" means any worn out, wrecked, scrapped, partially or fully dismantled, discarded, tangible material, combination of materials or items, stored on a lot but not including a commercial operation and not constituting a public safety, nuisance or hazard concern.

"Nonconforming use" means a use which was lawfully established in compliance with all applicable ordinances and regulations, but which no longer conforms to all applicable ordinances or regulations because of the application of a subsequent city ordinance or regulation.

“Warehouse” means a building used primarily for the storage and distribution of goods, products, materials, supplies, and equipment.

Commercial District. The site in question is in the Commercial district. Permitted uses in the commercial district are listed at NCO 18.60.020 and .030, respectively. Three types of storage are permitted, and one type of storage is permitted conditionally:

18.60.020 Permitted uses and structures.

The following uses and their accessory uses are permitted in commercial districts:...

- (h) Incidental, small-scale manufacturing, processing, and storage of goods for wholesale or retail sale on the premises....
- (t) Outdoor storage, including junk, as an accessory use to any permitted or conditional use...
- (y) Warehousing and storage...

Mr. Burnham is using the lot to store various vehicles and machinery. There is no other lawful use occurring. There is no evidence of manufacturing or wholesale or retail sales, nor is there a warehouse. This is simply outdoor storage, which is only permitted as an accessory use. To have outdoor storage of this type would require that the storage be “incidental and subordinate to” another permitted or conditional use on the property.

Nonconforming Use. Mr. Burnham’s appeal did not mention non-conforming status. However, he has raised “grandfather” rights verbally in conversations with the City. Normally, failure to state such a point in the appeal request would result in abandonment of that argument. Nonetheless, the City addresses the applicability of the code here briefly. Nonconforming uses are addressed in NCO Chapter 18.130. To have nonconforming status under the Nome Code of Ordinances, the landowner must have proven the use was lawfully in existence in 2008.¹ An application must have been submitted by October 2018, and there is no evidence that this occurred.²

Appeals. This appeal was requested pursuant to 18.160.010 and .020 which allow for an appeal to the commission from the decision of an administrative official. NCO 18.160.020 Appeal application provides: Any aggrieved person of interest may appeal a denial of a building or other development permit, or any order, requirement, decision, interpretation or determination made by an administrative official or the commission charged with the enforcement of this title.

NCO Chapter 18.160 is attached to this memo as Appendix A for the commission’s convenience to provide a reference on the procedure and standards governing an appeal. The City does wish to highlight two important considerations. First, public testimony is permitted.³ Second, the appellant (Mr. Burnham) has the burden of proof to establish the necessary facts to warrant favorable action of the commission or council.⁴

¹ NCO § 18.130.010; NCO §18.130.030.

² NCO § 18.130; NCO §18.130.040 (specifically (d): Failure to apply by the deadline established in this section shall mean the use or structure does not qualify as a nonconforming use.)

³ NCO § 18.160.040 (specifically (b): Members of the public shall be allowed to testify.)

⁴ NCO § 18.160.040 (specifically (d): The appellant has the burden of proof to establish the necessary facts to warrant favorable action of the commission or council.)

PROPOSED FINDINGS:

1. The sole issue for the commission to decide is whether the city erred in its interpretation of NCO 18.60.020 (t) as it applies to Mr. Burnham's use of his lot.
2. The Nome Comprehensive Plan associates stand alone outdoor storage with Industrial Districts, and not Commercial Districts (Section V) and supports the abatement processes (Section VII).
3. The site is being used for outdoor storage and is zoned Commercial. The outdoor storage is not as an accessory use to any permitted or conditional use, nor is it related to onsite wholesale or retail sale or with a home occupation. This type of outdoor storage is not permitted by right, or as a conditional use in a Commercial District (NCO 18.60.020 and .030).
4. To have a valid nonconforming use would require compliance with NCO 18.130.040; there is no evidence that this process was followed. Therefore, this use is not considered a nonconforming use.

CONCLUSION: The City administration believes the appeal should not be granted and the land use determination should be upheld. If the Planning Commission supports Staff's actions, then we will proceed with our efforts in working with Mr. Burnham to reach a solution. If the parties are unable to reach an agreement, the City will pursue enforcement, including fines, injunctive relief and/or abatement.

Possible solutions include the development of a compliance agreement that includes one of the following as well as an associated timeline:

- a. relocate items to a location where the zoning allows for outdoor storage;
- b. construct a warehouse to store items inside.

Chapter 18.160 APPEALS

Sections:

[18.160.010 Purpose.](#)

[18.160.020 Appeal application.](#)

[18.160.030 Set public hearing.](#)

[18.160.040 Public hearing and action.](#)

[18.160.050 Appeal criteria for approval.](#)

18.160.010 Purpose.

The planning commission (commission) shall hear and decide appeals from any order, requirement, decision, or determination made by any administrative official charged with the enforcement of this title.

The common council (council) shall hear and decide appeals from any order, requirement, decision, or determination made by the commission in enforcement of this title. (Ord. O-08-09-01 § 2 (part), 2008)

18.160.020 Appeal application.

Any aggrieved person of interest may appeal a denial of a building or other development permit, or any order, requirement, decision, interpretation or determination made by an administrative official or the commission charged with the enforcement of this title.

(a) An appeal to the commission or council shall be made within ten days after denial of a building permit or other development permit, or receipt of a written notice of an order, requirement, decision, interpretation or determination by an administrative official of the city or by the commission. Failure to make a timely appeal shall be considered a waiver of the right to appeal.

(b) The person appealing shall file a written notice of appeal on a form approved by the commission with the city clerk and pay the fee set by the current fee schedule.

(c) The city clerk shall forward a copy of the notice of appeal to the planning staff or other appropriate administrative officer, who shall prepare a record of the city action that is being appealed for consideration by the commission or council. (Ord. O-08-09-01 § 2 (part), 2008)

18.160.030 Set public hearing.

The city clerk shall publish notice in a newspaper of general circulation of the time and place of the public hearing at least seven days in advance of the hearing. (Ord. O-08-09-01 § 2 (part), 2008)

18.160.040 Public hearing and action.

The commission or council shall make the decision on an appeal.

- (a) At the hearing, the parties to the appeal may present witnesses and information even if the information presented was not previously submitted to the city.
- (b) Members of the public shall be allowed to testify.
- (c) The commission or council may adopt rules governing the procedures to be followed at appeal hearings including reasonable time limits for presentations and public testimony.
- (d) The appellant has the burden of proof to establish the necessary facts to warrant favorable action of the commission or council.
- (e) The commission or council may in whole or in part affirm, reverse, remand for additional consideration or amend the decisions of the applicable city administrative official or the commission.
- (f) The commission or council may impose reasonable conditions in its order on appeal to be complied with by the appellant.
- (g) Any decision of the commission may be appealed to the council and any decision of the council may be appealed to the superior court as provided by law. Appeals to superior court must be made no later than thirty days following the date of the final action taken by the council. (Ord. O-08-09-01 § 2 (part), 2008)

18.160.050 Appeal criteria for approval.

The commission or council, in hearing an appeal from an interpretation of or application of this title, shall consider all relevant factors, including, but not limited to:

- (a) The technical meaning of the provision being appealed;
- (b) Evidence of the manner in which the provision has been interpreted or applied in the past;
- (c) The positive or negative impact of the requested appeal on the achievement of stated city development goals and objectives;
- (d) The intent of the provision in implementing the comprehensive plan;
- (e) Whether the decision appealed from was made based on incorrect or incomplete facts; and
- (f) Whether the decision appealed from was based on an incorrect conclusion regarding this title or other applicable law.

(g) The commission or council shall provide a written record of its findings of fact and conclusions of law on all appeals. (Ord. O-08-09-01 § 2 (part), 2008)