

# NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

Under AMC 21.30.030, an appeal to the Board of Adjustment must be perfected by (1) the applicant, (2) any governmental agency, or (3) any person adversely affected by a decision of the Planning and Zoning Commission, the Platting Board, or the Urban Design Commission no later than **20 days** after the date that the written *Findings of Fact and Decision* is approved, on the record, and becomes final. To perfect the appeal, the appellant must file a *Notice of Appeal to the Board of Adjustment* with the Municipal Clerk's Office and pay the appeal fee and post bond.

## General Identity of Action Being Appealed:

Resolution No. 2015-001

Planning Department File Number: 2014-183 Date of Action: FEB 2, 2015

Name of Project or Subdivision: SOUTH HIGH PARCEL 018-411-02

## Appellant's Information:

Last Name: SLIVKA First Name: ALEX

Address: 3531 EASTWIND DR City: ANCH State: AK Zip: 99516

Phone Number: 907-348-0243 E-mail: SLIVKA@GCI.NET

Relationship to Action:  Applicant  Agent of Applicant  Government Agency  Other Person Adversely Affected

## Applicant's Information: Same as Appellant

Last Name: Anchorage School District First Name:

Address: City: State: Zip:

**NOTE:** If you are not the applicant or his/her agent, you must give notice to the applicant by certified mail at his/her last known address within **three days** of filing this *Notice of Appeal to the Board of Adjustment*.

## Specifics of Appeal Certification

An appeal may be considered for the following three causes, singly or in combination:

- 1. Procedural Error** - If you allege procedural error, specify those patterns which constitute the error and the manner in which the alleged error resulted in prejudice to your interest.
- 2. Error in Application of Law** - If you allege legal error, specify the manner in which principles of law were incorrectly applied. Include reference to any ordinance, statute, or other codified law upon which the allegation of legal error is based.
- 3. Findings or Conclusions that were Not Supported by Evidence** - If you allege that findings or conclusions are not supported by the evidence that was presented, specify and explain those findings or conclusions which lacked evidentiary support at the time of the action.

An appeal, for any cause, must be explained; and a reason must be given for why the appeal should be granted. Explain what corrective decision is desired by this appeal. A written statement of cause and reason for granting the appeal must accompany this notice to be considered.

I (we) hereby certify that I am (we are) qualified to make this appeal and that my (our) statement of cause and reason is true and correct to the best of my (our) knowledge.

Signature: [Signature] Date: FEB 20, 2015

Statement Attached:  Appeal Fee (\$1080):  Cost Bond (\$50): \_\_\_\_\_ Preparation (\$1.70 per page): \_\_\_\_\_

Date: 2/23/15 Cash: \_\_\_\_\_ Check:  Credit Card: \_\_\_\_\_ Receipt: 491324 Total Paid: \$1130.00

M.O. 2015 FEB 23 11:39 AM  
CLERK'S OFFICE

## **I. Introduction**

In January 2015 the Planning and Zoning Commission (“P&Z”) approved an application by the Anchorage School District to amend the approved public facility site plan for South Anchorage High School to add grandstand seating for 1600, an electronic scoreboard, a public address system, sports field lighting, and other improvements related to sports stadiums.

Alex Slivka, Joan Eastlack, and Charlene Stanton (“appellants”) appeal the P&Z approval of the site plan amendment adding football stadium facilities to South Anchorage High School. The P&Z and staff committed extensive procedural, legal, and factual errors. This resolution should be vacated until; the Planning & Zoning Commission can conduct the public facility site selection process in accordance with the “new” Title 21 per AMC 21.03.140 and, ASD brings the site into compliance with existing special limitations as required by AMC 21.25.020.

## **II. Facts and Proceedings Below**

Much of the history on this site was previously brought to the Board of Adjustment in April 2012 where you exercised your independent judgment in dismissing the decision of the Urban Design Commission, overturning the opinions of planning department staff and directing further action be taken before the Planning & Zoning Commission.

A substantially similar application was brought before the Planning and Zoning Commission in February 2013. That application, again supported by Planning Department staff opinions, failed to address the outstanding lack of compliance with the special limitations place upon this property by the assembly in 2001. P&Z suspended action on the application pending receipt of a formal noise impact study by the applicant, along with a traffic study.

This application, along with the requested supplemental evidence provided by ASD that the proposed project could not comply with Anchorage Municipal Noise Ordinance, was again before the P&Z in Feb 2014. The application was denied (Resolution 2014-006), citing the very same evidence that the noise impact would be permanent and substantial, and that no reasonable mechanism was in place to assure the surrounding neighborhood that the Municipal Noise Ordinance could be effectively enforced. This resolution further noted under finding A.7. “A special limitation on the zoning AO 2001-1 states “buffer yards shall be undisturbed vegetative buffers along the boundary of Tract B-1 or the existing utility easement adjoining the boundary. In the event that the existing vegetation in the designated buffer area is disturbed or removed, the affected area shall be replanted to provide with a reasonable time for growth, approximately 75% visual absorption of structures under winter conditions from the perspective of persons off of the property on neighboring lands and streets.”....There is agreement that the buffer zone does not seem adequate to visually screen the surrounding area from the intended use.”

The ASD again made application before the P&Z in December 2014, this time choosing to file under the “new” Title 21. This hearing was postponed to January 2015 where the P&Z approved the above referenced application. The Board of Adjustment has jurisdiction over this appeal pursuant to AMC 21.30.010.

### III. Standard of Review

The Board of Adjustment exercises its independent judgment on legal issues raised by the appellants (AMC 21.30.090.B). Legal issues include “those matters that relate to the interpretation or construction of ordinances or other provisions of law” (AMC 21.30.090.B).

The Board of Adjustment generally defers to the judgment of the lower administrative body regarding disputed issues or findings of fact (AMC 21.30.090.C). Factual decisions by the lower administrative body “may be considered as true if they are supported in the record by substantial evidence” (AMC 21.30.090.C). Substantial evidence is “such related evidence as a reasonable mind might accept as adequate to support a conclusion.” (AMC 21.30.090.C.)

The Board of Adjustment may, by an affirmative vote of two-thirds of the fully constituted board, choose to substitute its independent judgment for that of the lower administrative body on any disputed issues or findings of fact (AMC 21.30.090.D.). The Board may make such an independent judgment if it is “supported on the record by substantial evidence” (AMC 21.30.090.D.). Although not repetitively argued for each of the substantial evidence arguments below, appellant invites this Board to substitute its independent judgment on the disputed findings based on the record.

### IV. Argument

#### A. Procedural Errors

At the most fundamental level, the P&Z Commission does not have jurisdiction to consider the proposed changes to the South High site plan until the site selection process mandated under the “new” Title 21 is completed. 21.03.140 B.1.g states that a public facility site selection process for review and selection shall be completed for “any sports, entertainment, or civic center designed for more than 1,500 spectators.” This requirement was brought to the attention of the P&Z Commission both in formal briefing and in oral comments delivered at the January 5, 2015 hearing by Rebecca Windt. It is unclear why both the P&Z Commission and the planning department staff failed to question this observation and chose to ignore this law.

Additionally AMC 21.25.020 prohibits P&Z from granting new land use entitlements to any party that is out of compliance with the provisions of the municipal zoning ordinance or with requirements imposed by previously-granted entitlements. As was noted above, the P&Z Commission found in Feb 2014 that the special limitations were not being met.

## **B. Errors in the Application of the Law**

- 1. The P&Z erred in approving a site plan amendment allowing a project which will have a permanent negative impact substantially greater than that anticipated from permitted development.**

**The Anchorage Municipal Code dictates that a board or commission reviewing a site plan shall only approve the site plan if it will “not have permanent negative impact on [the follow factors] substantially greater than that anticipated from permitted development: (1) Pedestrian and vehicular traffic circulation and safety; (2) The demand for and availability of public services and facilities; (3) Noise, air, water or other forms of environmental pollution; and (4) The maintenance of compatible and efficient development patterns and land use intensities.”**

**South High is embedded in an indisputable residential area. The area north and east of the school is zoned R-6, Suburban Residential (Large Lot), the area to the south is a combination of R-6 and R-1 zoning, and the area to the west is zoned R-1 with special limitations. The property is accessible by Elmore Road, a Class I collector, but is otherwise encircled by small residential streets. The distance between the school property and the yards, decks, and windows of neighboring residents is mere feet. Moreover, as discussed in greater depth below, South High is located on the Hillside, a residential area specifically reserved for more rural-style development.**

**The football stadium proposed for South High will bring a venue designed to seat 1,600 spectators, complete with overhead lighting, sound system, and scoreboard, to a small-scale residential neighborhood without any corresponding improvements in parking, traffic circulation, pedestrian safety, or noise buffering. This, as expanded further below, is compounded by the fact that the visual buffering originally contemplated by the 2001 ordinance is still not yet in place.**

**A 1,600 person stadium with lighting and a PA system will have a permanent negative impact substantially greater than the residential development otherwise permitted in this area, and vastly exceeding the impact of the practice fields and modest outdoor seating currently in place at South High. The evidence that ASD supplied in the form of a noise study reaffirms their testimony before P&Z in February 2014 (by Mike Abbott, ASD Deputy Superintendent) that “this stadium cannot operate and comply with the Municipal Noise Ordinance”. This fact was also observed by the Department of Health and Human Services whose independent review of the identically constructed West High Football Stadium in September 2014 found that it violated the Municipal Noise Ordinance during normal operations. The record contains no evidence that the proposed stadium can comply with the Municipal Noise Ordinance during normal operation.**

2. This error is further compounded by the multiple conflicts of interest with planning department staff who worked on the initial application in 2011, and the fact that these conflicts were permitted to persist throughout the review process. The planning department staff in 2011 clearly accepted an application drafted and submitted by Lori Schanche, a member of planning department staff, and not authorized by the property owner (ASD). This and all subsequent applications have been guided through the review process by a second staff member, Sharon Ferguson, who engaged in what became a consistent pattern of misstatements and omissions which cannot be excused as anything other than clear advocacy for the football stadium project. The behavior of both staff members served to advance the ASD's application through the review process at the expense of full and fair public review and to distort the information provided to the UDC and the P&Z.

This can be most clearly seen in relation to the special limitations cited above regarding the vegetative buffer. Even if you agree with the strictest interpretation that only vegetation that was removed should be replanted, it remains a fact that only ASD has removed vegetation from this site since 2000, and it was their initial design and installation that resulted in the lack of compliance we see today. The record also reflects that appellants have repeatedly asked planning department staff (through code violation submissions) to enforce these requirements. The true failure of the planning department can be seen in their very unique lack of enforcement despite repeated requests to act.

#### V. Conclusion

Resolution 2015-001, approving a complete football stadium facility at South Anchorage High School was reviewed and passed by the Planning and Zoning Commission in violation of applicable procedural and substantive law and without appropriate factual support. From the outset, planning and zoning staff and the P&Z Commission have misrepresented facts, glossed over community concerns, and even refused to correct patent errors in their analysis of this application. As a result, South High's neighbors are poised to face the construction of an enormous stadium facility literally in their backyards, without adequate provision for the safety and nuisance concerns which will invariably ensue. The appellants respectfully request that the Board of Adjustment vacate the resolution until such time as the correct site selection process is completed and the site comes into compliance with existing special limitations.

BEFORE THE MUNICIPALITY OF ANCHORAGE

BOARD OF ADJUSTMENT

In Re: )  
 Resolution 2015-001 Related Case 2014-183 )  
 An amendment to public facility Site Plan review )  
 for South Anchorage High School. Turnagain )  
 View East Subdivision, Tract B-1 )  
 )  
 )  
 ALEX SLIVKA, JOAN EASTLACK, and )  
 CHARLENE STANTON )  
 Appellants. )  
 \_\_\_\_\_ )

) Planning and Zoning Resolution 2015-001 and  
 ) related Case No. 2014-183; Parcel ID No.

) 018-411-75

M.O.A.  
 2015 FEB 23 AM 10:46  
 CLEANING OFFICE

APPEAL FROM PLANNING AND ZONING COMMISSION ("P&Z")

RESOLUTION 2015-001

BRIEF OF APPELLANTS ALEX SLIVKA, JOAN EASTLACK, AND CHARLENE STANTON

3531 Eastwind Drive

Anchorage, AK 99516

907-348-0243

Dated: FEB 21, 2015

By: Alex Slivka

Alex Slivka, pro se

Dated: Feb 21, 2015

By: Joan Eastlack

Joan Eastlack, pro se

Dated: 2/21/15

By: Ch Stanton

Charlene Stanton, pro se

# CASH RECEIPT

## 491324

Municipality of Anchorage  
 P.O. Box 196650 • Anchorage, AK 99519-6650



### FINANCE DEPARTMENT

Date of Payment (MMDDYY)

02/23/15

Received from Alexander H. Slivka

Receiving Department Remarks Appeal Filing Fee + Cost J Bond

Amount of Payment

\$ 1130.00

- ACH <sup>9790</sup>     MLP     AWWU  
 Cash/Check     Credit Card     Debit Card     Other

Payment type (select only one)

Employee ID 62947    Coll. Dept ID 1020    Deposit ID

### ACCOUNTING INFORMATION

LN#	\$ AMOUNT	FUND	ACCOUNT	DEPT ID	PROGRAM	CLASS	BDGT PERIOD	PROJECT/GRANT
	ACTIVITY ID		RES TYPE	RES CAT	OPEN ITEM		DESCRIPTION	
1	1080.00	101	9794	1020	0000	000	2015	102000 Appeal Filing Fee
2	50.00	101	<del>9794</del> 9499	1020	0000	000	2015	Cost Bond
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## RECEIPT 491324

Prepared by (please print): Sierra

Date prepared: 2/23/15    Phone no: 343-4505