

**MUNICIPALITY OF ANCHORAGE BOARD OF ADJUSTMENT  
APPEAL FROM PLANNING & ZONING COMMISSION  
RESOLUTION 2015-001  
PLANNING & ZONING COMMISSION CASE 2014-0183  
SOUTH ANCHORAGE HIGH SCHOOL SPORTS FACILITY  
IMPROVEMENTS  
BOARD OF ADJUSTMENT APPEAL NO. 2015-1**

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**FINDINGS, CONCLUSIONS, AND DECISION**

WHEREAS, in 2001 the Anchorage Planning and Zoning Commission approved the site plan for the South Anchorage High School, which opened in 2004;

WHEREAS, the South Anchorage High School is the property subject to this appeal;

WHEREAS after due notice and public hearing on January 5, 2015, the Anchorage Planning and Zoning Commission issued Resolution No. 2015-001 on February 2, 2015, approving Anchorage School District's site plan amendment for the South Anchorage High School, subject to seven conditions;

WHEREAS three individuals, Alex Slivka, Joan Eastlack, and Charlene Stanton, collectively and timely appealed the Anchorage Planning and Zoning Commission Resolution No. 2015-001 to the Board of Adjustment, requesting the Board of Adjustment vacate Commission Resolution No. 2015-001, require the Anchorage School District to complete a public facility site selection process under AMC 21.03.140, and comply with the property's vegetative buffer requirement;

WHEREAS, the matter is being reviewed under the new Title 21;

WHEREAS the Board of Adjustment deliberated and decided the appeal at a meeting open to the public on July 9, 2015;

NOW, THEREFORE, BE IT RESOLVED, the Board of Adjustment adopts the following findings, conclusions, and decision:

### FINDINGS AND CONCLUSIONS

#### ***A. The proposed sports facility is not subject to the site selection process in AMC 21.03.140.***

1. As set forth in Anchorage Municipal Code (AMC) 21.03.140A, the purpose of AMC 21.03.140 is to “set[] forth a process by which the municipality shall review and decide upon selection of sites before certain public facilities may be authorized, or publicly owned land is designated as the site for certain public facilities.”

2. On February 13, 2001, the Anchorage Assembly approved the current site for the South Anchorage High School by issuing an ordinance changing the zoning district for the property to the public lands and institutional district, which in 2001 identified “educational institutions” as a permitted principal use and necessary or desirable accessory uses as permitted accessory uses.<sup>1</sup> The South Anchorage High School opened in its current location in 2004.<sup>2</sup>

3. AMC 21.03.140B.1 identifies principal uses—not accessory uses—subject to the site selection process.<sup>3</sup>

4. As a result, under AMC 21.03.140B.1.e, a “sports . . . center designed for more than 1,500 spectators” is subject to the site selection process if the sports center is the principal use proposed for the site.

5. AMC 21.05.040E classifies a “high school” as an “educational facility” and identifies “recreational and sports facilities” as accessory uses at educational facilities.

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<sup>1</sup> R.30-31; old Title 21, AMC 21.40.020.

<sup>2</sup> R.8.

<sup>3</sup> See AMC 21.14.040 (definition of “Use, principal” and “Use, accessory”).

6. Because Anchorage School District's (ASD's) site plan amendment addresses the educational facility's accessory use—a sports facility—the site plan amendment is not subject to AMC 21.03.140; rather it is properly reviewed under AMC 21.03.180F.

7. Moreover, the South Anchorage High School's sports facility improvements are exempt from the site selection process under AMC 21.03.140B.2.a(i), which exempts sites “[d]esignated for the subject use on a municipal plan adopted by the assembly,” as well as under AMC 21.03.140B.2.b, which exempts “[a]ny facility site selection reviewed by the [Planning and Zoning C]ommission or approved by the assembly before January 1, 2014.”

8. The Assembly adopted a plan to use the property at issue as a public school on February 13, 2001, by issuing Assembly Ordinance 2001-1, which changed the property's zoning to permit educational facilities.<sup>4</sup> The Anchorage Planning and Zoning Commission, on September 24, 2001, approved the site plan for the South Anchorage High School in Resolution 2001-088.<sup>5</sup> The site plan included “a full complement of outdoor sports fields including . . . soccer . . . and a practice football field and track.”<sup>6</sup>

9. Based on the above information, the Board of Adjustment unanimously finds ASD's site plan amendment regarding improvements to South Anchorage High School's sports facility is not subject to the site selection process in AMC 21.03.140.

***B. Substantial evidence supports the Planning and Zoning Commission's factual finding that the South Anchorage High School property is compliant with the vegetative buffer requirement.***

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<sup>4</sup> R.30-31.

<sup>5</sup> R.238-45.

<sup>6</sup> R.252-53.

10. The 2001 Assembly Ordinance approving the zoning change for the South Anchorage High School property subjected the property to special limitations, including requiring the property boundary to contain undisturbed vegetative buffers.<sup>7</sup>

11. The record on appeal includes substantial evidence the vegetative buffer is compliant.

12. Planning staff's December 8, 2014 report stated: "No trees have been disturbed in the vegetative buffers and the buffers are in compliance with the special limitations."<sup>8</sup>

13. ASD's site plan amendment application noted that to "augment the buffer" the school district planted 135 evergreens during the previous three years.<sup>9</sup>

14. ASD noted that the enforcement office reviewed the vegetative buffer requirement and "has made a determination that the buffer meets the requirements."<sup>10</sup>

15. Sharon Ferguson, a municipal senior planner, testified during the January 5, 2015, public hearing that code enforcement found the vegetative buffer to be compliant, and her staff found ASD had "gone above and beyond to add more landscaping than they were ever required to do."<sup>11</sup> Ms. Ferguson also noted that in 2008 the land use enforcement officer investigated the property, confirming verbally and in writing that no violation existed.<sup>12</sup>

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<sup>7</sup> R.30.

<sup>8</sup> R.11.

<sup>9</sup> R.43.

<sup>10</sup> R.40.

<sup>11</sup> T.14-15.

<sup>12</sup> T.174.

16. Commissioner Spring noted the “buffer is very substantial . . . when you look directly south, there is more than 75 percent blockage from the neighbors.”<sup>13</sup>

17. The record contains no formal finding by the Municipal enforcement officers that the vegetative buffer is out of compliance with the special limitation.

18. Based on the above information the Board of Adjustment unanimously finds substantial evidence supports the Planning and Zoning Commission’s factual finding that the South Anchorage High School property is compliant with the vegetative buffer requirement.

***C. Municipality of Anchorage employees did not prejudice the Planning and Zoning Commission’s review of ASD’s application for a site plan amendment.***

19. Lori Schanche drafted the original 2011 application submitted to the Planning and Zoning Commission for the sports facility improvements. She drafted the application as a member of the South Football Booster Foundation, but had no involvement in drafting the staff report issued by the Community Development Department.<sup>14</sup>

20. While Ms. Schanche has worked for the Department of Public Works since 2000, she has not worked for the Community Development Department.<sup>15</sup>

21. Municipal employees are permitted to exercise their right to participate in a public process.<sup>16</sup>

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<sup>13</sup> T.183-84.

<sup>14</sup> Schanche Brief at 3-4.

<sup>15</sup> Schanche Brief at 3.

<sup>16</sup> The Municipal Code of Ethics governs restrictions on municipal employees. See AMC Chapter 1.15.

22. Sharon Ferguson, a municipal senior planner, reviewed ASD's site plan amendment in compliance with her position's duties, which include providing a recommendation to the Planning and Zoning Commission regarding approval of the site plan amendment.

23. The appeal record lacks evidence demonstrating Ms. Schanche or Ms. Ferguson acted inappropriately or prejudiced the Planning and Zoning Commission's review of, or decision on, ASD's site plan amendment.

24. Based on the above information the Board of Adjustment unanimously finds Municipality of Anchorage employees did not prejudice the Planning and Zoning Commission's review of ASD's application for a site plan amendment.

***D. Substantial evidence supports the Planning and Zoning Commission's factual finding that ASD's site plan amendment complies with all applicable development and design standards in title 21.***

25. Under AMC 21.03.180F the Planning and Zoning Commission must approve an application being reviewed as a major site plan if the plan meets the following four criteria: (1) the site plan is consistent with previously approved plans or land use approval; (2) the site plan complies with all development and design standards in title 21; (3) "[t]he site plan addresses any significant adverse impacts that can reasonably be anticipated to result from the use, by mitigating or offsetting those impacts to the maximum extent feasible;" and (4) the site plan development is consistent with the goals, objectives, and policies of the comprehensive plan.

26. Planning and Zoning Commission Resolution No. 2015-001, specifically findings A1-4, demonstrates the Commission implicitly found ASD's

site plan amendment complied with all development and design standards in title 21.<sup>17</sup>

27. A traffic analysis was completed in 1999 and ASD completed a traffic and parking analysis for the property on August 30, 2013.<sup>18</sup> Analysis concluded that the South Anchorage High School has adequate parking to accommodate the sports facility and traffic delays will be minimal.<sup>19</sup>

28. To address neighborhood protection, specifically limitations on noise and lighting, ASD's site plan amendment: orients the illuminated scoreboard away from residences; lowers light fixtures' height; includes smaller public address speakers focused on bleachers; builds home-team bleachers into the hillside to absorb sound; and encloses visiting-team bleachers underneath and extends a back above those bleachers to contain noise.<sup>20</sup>

29. The Planning and Zoning Commission limited the use of the lights and sound system to ten events per year and required all football and soccer games to end by 10 p.m.<sup>21</sup>

30. ASD's site amendment plan included an eight-foot high wood screen fence to further buffer the sports facility from the nearby residents.<sup>22</sup>

31. Based on the above information the Board of Adjustment unanimously finds substantial evidence supports the Planning and Zoning Commission's factual finding that ASD's site plan amendment complies with all applicable development and design standards in title 21.

***E. Substantial evidence supports the Planning and Zoning Commission's factual finding that ASD's site plan amendment addresses significant***

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<sup>17</sup> R.460-61.

<sup>18</sup> R.44, 370-74

<sup>19</sup> R.374.

<sup>20</sup> R.45.

<sup>21</sup> R. 462.

<sup>22</sup> R.47

***adverse impacts, which can reasonably be anticipated, by mitigating or offsetting those impacts to the maximum extent feasible.***

32. AMC 21.03.180F does not impose a zero adverse impact standard; rather, for the Planning and Zoning Commission to approve a site plan an applicant must mitigate adverse impacts to the maximum extent possible.

33. The main mitigation issues associated with ASD's site plan amendment concern noise, lighting, and traffic.

34. To address the concerns, ASD included several mitigation steps in its site plan amendment, including designing the lighting for the sports facility to ensure "zero light trespass" onto neighboring property; using a public address system that employs several smaller speakers with a focused direction; building the home-team bleachers into the hillside, farthest away from nearby neighbors; enclosing the visiting bleachers with a wall to prevent noise from being directed to the neighborhood; treating bleacher treads with a noise deadening coating; and building a eight-foot high wood screen fence.<sup>23</sup>

35. While ASD considered the noise consultant's suggestion of relocating the home-team bleachers to the sports facility's southwest side, ASD determined to place the home-team bleachers closer to the high school's parking lot to mitigate off-site parking concerns and the Planning and Zoning Commission agreed with that determination.<sup>24</sup>

36. The Planning and Zoning Commission imposed six conditions on ASD to mitigate anticipated adverse impacts due to noise, lighting, and hours of use. In addition to the mitigation measures proposed by ASD, the mitigation measures imposed by the Planning and Zoning Commission include: obtaining "noise permits as needed to place restrictions on the number, duration, and time of day for major events"; requiring soccer and football games to end by 10 p.m.; limiting the number of events using the sound and lighting system to ten

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<sup>23</sup> R.46-47.

<sup>24</sup> T. 44-45,185-86, 204-07.



annually; and requiring ASD to secure the south parking lot from 11 p.m. to 6 a.m. during the school year.

37. Based on the above information the Board of Adjustment unanimously finds substantial evidence supports the Planning and Zoning Commission's factual finding that ASD's site plan amendment addresses significant adverse impacts, which can reasonably be anticipated, by mitigating or offsetting those impacts to the maximum extent feasible.

### DECISION

38. The Board of Adjustment affirms, in its entirety, Anchorage Planning and Zoning Commission Resolution No. 2015-001.

39. These FINDINGS, CONCLUSIONS, AND DECISION are a final decision of the Board of Adjustment with respect to all issues involved in this case. The parties have 30 days from the date of mailing or other distribution of this FINDINGS, CONCLUSIONS, AND DECISION to file an appeal to the Superior Court.

ADOPTED by the Board of Adjustment this 15<sup>th</sup> day of July 2015.



Bernd Guetschow, Chair  
on his own behalf and on behalf  
of Board of Adjustment Members  
Robert Stewart and John Haxby