

MUNICIPALITY OF ANCHORAGE

ANCHORAGE ASSEMBLY

Minutes for Special Meeting of June 3, 1998

1. CALL TO ORDER:

The meeting was convened at 5:55 p.m. by Chair Fay Von Gemmingen in the Mayor's Conference Room, 632 West Sixth Avenue, Anchorage, Alaska.

2. ROLL CALL:

Present: Bob Bell, Ted Carlson (6:05 p.m.), George Wuerch, Melinda Taylor, Charles Wohlforth, Fay Von Gemmingen, Cheryl Clementson, Kevin Meyer, Pat Abney, Dan Kendall,
Absent: Joe Murdy (excused.)

3. BOARD OF ADJUSTMENT/ASSEMBLY APPEALS:

A. Appeal S-10180, Horizon Park Estates, Clerk's Office.

Chair Von Gemmingen gave the history of the appeal and noted three motions were pending.

Mr. Kendall moved, to substitute new subsidiary motions on the appeal for those
seconded by Mr. Bell, pending at adjournment of the May 19, 1998 special meeting.

Mr. Kendall said he wished to address the four divisions as proposed by Mr. Bell, but in reverse order, to consider the road connection last.

Ms. Clementson felt the connection issue should be considered first.

Question was called on Mr. Kendall's motion to substitute new motions and it passed:

AYES: Bell, Wuerch, Taylor, Von Gemmingen, Clementson, Meyer, Abney, Kendall.
NAYS: Wohlforth.

(Clerk's Note: Mr. Carlson had not arrived at the time of the vote.)

Mr. Bell moved, to divide the question into four portions:
seconded by Ms. Clementson, 1)variance of 600-foot restriction for
and it passed without cul-de-sacs, 2)road standards and storm drains,
objection, 3) lighting and 4) traffic impact analysis.

Mr. Bell moved, that there is not substantial evidence to
seconded by Ms. Abney, support the Platting Board's decision requiring an additional
traffic impact analysis.

Mr. Bell pointed out the Platting Board did not receive the traffic impact analysis (TIA) until the night of their meeting, and did not have adequate time to review the document.

Ms. Clementson supported an additional TIA, in light of the fact that a decision on the connection issue has not been made yet; a decision on the connection issue may affect the need for a TIA.

Mr. Wohlforth felt there was evidence an additional TIA was warranted, because staff and other traffic officials recommended one.

Mr. Meyer agreed. He noted there were conflicting opinions about the need for a TIA among the parties.

Mr. Kendall pointed out the Platting Board did not define specifications of the TIA.

Mr. Wuerch noted the record reflected Public Works staff recommended a pavement width of thirty-three feet. However, Municipal standards are for twenty-nine feet. He felt this situation was impossible for the petitioner, so he felt there was not substantial evidence.

Question was called on Mr. Kendall's motion to declare there was not substantial evidence to support the Platting Board's decision on a TIA and it passed:

AYES: Bell, Carlson, Wuerch, Taylor, Von Gemmingen, Abney, Kendall.
NAYS: Wohlforth, Clementson, Meyer.

Ron Baird, attorney for the Board of Adjustment, said this vote would result in the TIA requirement being removed from the plat.

Mr. Bell moved, to remand the lighting issue to the
seconded by Mr. Kendall, Platting Board.

Mr. Bell felt there was confusion about the lighting issue, and the Board did not understand the intention of the developer. The developer requested permission to use different lights than the standard, but at the same time wanted to use lower lighting intensity. He felt remand for clarification was reasonable.

Mr. Baird suggested the motion should direct the Platting Board to either clarify its decision on the existing evidence or to gather additional evidence.

Ms. Clementson moved,	to amend the motion to remand the lighting issue to
and it was accepted as	the Platting Board for a finding and conclusion on the
a friendly amendment,	variance request for lighting levels and fixture design.

Ms. Clementson said the Board could request more public testimony if desired.

Question was called on the motion to remand as amended and it passed:

AYES: Bell, Carlson, Wuerch, Taylor, Wohlforth, Von Gemmingen, Clementson, Meyer, Abney, Kendall.
NAYS: None.

Mr. Bell moved,	that there is not substantial evidence to support the
seconded by Ms. Abney,	Platting Board's decision to deny a variance on road
	standards and storm drainage.

Ms. Clementson moved,	to substitute a motion that the Platting Board did not have
seconded by Mr. Meyer,	substantial evidence for its decision on the cul-de-sac
	variance.

Ms. Clementson felt it was important to determine the road connection issue before the road standard and storm drainage issue.

Mr. Bell disagreed. He said the road standards and drainage issue affected the adjacent neighborhood whether or not there is a road connection.

Ms. Clementson pointed out many Assembly members do not have a background in engineering, and will make their decisions based on presentations in the record.

Mr. Kendall felt a variance should be granted for the road standards. The design is below Municipal standards, however, the developer planned the roads to match the existing surrounding development, with the addition of sidewalks.

Mr. Wuerch did not feel the design issue dictated the connection issue. He spoke against the substitution.

Ms. Clementson felt if the neighborhoods are connected, it would be foolish to have two different types of roads. Deciding the connection issue first would affect the road standard question.

Mr. Wohlforth felt it did not matter which issue was considered first.

Mr. Kendall added since there was no storm drain system for a new system to join with, it would be better to grant the variance.

Mr. Bell felt there was not substantial evidence; the record indicates the decision was based on Municipal policy rather than evidence.

Question was called on Ms. Clementson's motion to substitute and it passed without objection.

Ms. Clementson said the record indicates there was substantial evidence regarding the cul-de-sac issue. She stressed the Assembly should not confuse substantial evidence with whether or not they agree with the Platting Board.

Mr. Bell felt there was not substantial evidence. He reiterated the decision was based on policy, which he did not feel fit the definition of substantial evidence. Testimony from the Fire Chief was the only information he would consider evidence. The Chief's testimony indicated a break-away emergency access gate would be adequate, however, there was different information from the Fire Marshall and yet a differently-phrased letter from the Fire Chief. Mr. Bell felt this conflicting information confused the Board. Also, there was substantial evidence given by the petitioner in support of no connection, based on the quality of the roads and neighborhood.

Mr. Meyer felt a cul-de-sac four times longer than the Code allows should have two access points. He felt the Board's decision was correct.

Ms. Clementson clarified a finding that there was substantial evidence does not mean the Assembly cannot change the decision or that there is not evidence on the other side.

Mr. Baird recommended the Assembly first decide on the question of substantial evidence. Then the Assembly can proceed to substitute its own judgment, if desired. He discussed the definition of substantial evidence, and noted substantial evidence on one side did not necessarily mean lack of substantial evidence on the other side. The Municipal Code defines substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Mr. Baird explained this essentially admonishes the Assembly to exercise judicial restraint; members do not vote their preferences, they vote on whether the legal test was met. If it is determined there was substantial evidence to support the Platting Board, the Assembly may then substitute its own judgment.

Question was called on Ms. Clementson's motion that there was not substantial evidence for the cul-de-sac length question and it failed:

AYES: Bell, Carlson, Abney.

NAYS: Wuerch, Taylor, Wohlforth, Von Gemmingen, Clementson, Meyer, Kendall.

Mr. Bell moved, seconded by Ms. Abney,	to substitute the judgment of the Board of Adjustment regarding the cul-de-sac length, that the variance should be granted.
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Mr. Bell felt the four conditions for a variance had been met. There are special circumstances, as Zodiac Manor is a rural-type higher density subdivision that is surrounded on three sides by either parks or R-6 rural subdivisions. The streets are not capable of handling traffic that would result from a connection. He noted the Fire Marshall and the developer agreed that when Juniper is upgraded to full Municipal standards, the fire gate/barrier would become a thoroughfare street. Granting a variance would not be detrimental to the public welfare or injurious to other property in the area. Because the subdivision is isolated, no one will drive through it for any reason except to reach a home in the subdivision. The Comprehensive Plan would not be compromised with the variance. There would be a hardship on the residents and the developer if the variance was not granted.

In response to Mr. Meyer, Mr. Baird said the Code was unclear whether the hardship referred to a developer or residents.

Mr. Meyer pointed out having two access points to the subdivision was important. Although access via Meridian Drive would be circuitous and lengthy, a few people may choose to use it. He felt this access was important to the subdivision from a public safety standpoint, especially since two new schools and an R-1 subdivision in the area are being developed.

Mr. Carlson felt logic dictated that the hardship referred to the petitioners for a variance.

Mr. Bell clarified the petitioner applied for a variance on behalf of the residents, so all would be impacted.

Mr. Wuerch felt denying the variance would cause an undue hardship to the developer. He recommended granting the variance, while employing break-away emergency access at Abbott Road and Meridian Drive.

Ms. Clementson noted the developer and the residents were in agreement, which was unusual. She said although the policy followed by the Platting Board was sound, their decision was undesirable. Additional traffic would be detrimental to the condition of the roads and for safety reasons.

Ms. Clementson moved, seconded by Mr. Wuerch,	to amend the motion to substitute the Assembly's judgment to add a requirement to follow the Fire Chief's recommendation #4 from his memorandum of December 3: "a twenty-four foot wide paved emergency vehicle access not gated, shall be provided from Horizon Circle to Meridian Drive. This access shall be maintained year-round with the capability to support eighty thousand pounds. When Zodiac Manor Subdivision streets are upgraded and paved, the emergency access will then become a throughway."
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Mr. Wohlforth moved, seconded by Ms. Abney, and it passed without objection,	to amend the amendment to add a sentence to read: "The emergency access shall permit escape for residents of the street as well as ingress by Fire trucks."
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Question was called on Ms. Clementson's motion to amend as amended and it passed without objection.

Question was called on Mr. Bell's motion to substitute the Assembly's judgment as amended and it passed:

AYES: Bell, Carlson, Wuerch, Taylor, Wohlforth, Von Gemmingen, Clementson, Abney, Kendall.

NAYS: Meyer.

Mr. Bell moved, seconded by Mr. Wuerch,	that there is not substantial evidence to support the Platting Board's decision to deny a variance on road standards and storm drainage.
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AYES: Bell, Carlson, Wuerch, Abney.

NAYS: Taylor, Wohlforth, Von Gemmingen, Clementson, Meyer, Kendall.

Mr. Bell moved, seconded by Ms. Abney,	to substitute the judgment of the Board of Adjustment regarding the road standards and storm drainage by granting a variance for both.
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Mr. Bell felt the four conditions for a variance had been met. There is no existing storm drain system to connect to, so the drainage would have to be piped to the nearby wetland area. Surface drainage would allow the water to drain much as it does now, so there would be seepage into the ground and evaporation rather than direct delivery of all water to the wetland. He added maintenance of the storm drain system would be quite expensive.

Mr. Wuerch agreed that there are benefits to allowing water to flow over vegetated terrain rather than concentrating the discharge into one area.

Mr. Kendall pointed out normally when a storm drainage system is installed, there is an existing system to connect to. In this case, the drainage would be deposited in the wetland.

Mr. Wohlforth felt there were not special circumstances in this case to warrant a variance. If the surface drainage system is actually better, he felt it would be more appropriate to change the Code to allow all developers to build drainage systems of their choice. There must be equality in applying the law.

Mr. Wuerch pointed out not every piece of land is adaptive to surface drainage and natural runoff, so storm drains must be used. However, where terrain and density permits it, it is a very desirable system which helps protect the environment.

Ms. Abney moved,

seconded by Mr. Wohlforth,

to call the previous question.

Mr. Baird pointed out the Assembly had not yet addressed the last of four points required for a variance.

Mr. Bell said there would be undue hardship on residents of Zodiac Manor to the west of the discharge area, because of the increased possibility of flooding.

Mr. Wuerch added point discharge of large volumes of water to the wetland area would diminish the quality of those wetlands.

Question was called on the motion to call the previous question and it passed without objection.

Question was called on Mr. Bell's motion to substitute the Assembly's judgment regarding road standards and storm drainage and it passed:

AYES: Bell, Carlson, Wuerch, Taylor, Von Gemmingen, Clementson, Meyer, Abney, Kendall.

NAYS: Wohlforth.

In response to Mr. Kendall, Mr. Baird recommended the Assembly direct the Platting Board to consider the conditions it made in light of the variances that have been granted.

Mr. Wohlforth and Mr. Meyer were excused and left the meeting at 8:10 p.m.

Ms. Abney moved,

seconded by Mr. Wuerch,

and it passed without objection,

to direct Mr. Baird to resolve the conditions of the plat and return with findings by June 9, 1998.

4. ADJOURNMENT:

The meeting adjourned at 8:15 p.m.

Chair

ATTEST:

Municipal Clerk

Date Minutes Approved: August 25, 1998

VC/db