

MUNICIPALITY OF ANCHORAGE

ANCHORAGE ASSEMBLY

Minutes for Regular Meeting of February 2, 1999

1. CALL TO ORDER:

The meeting was convened at 5:20 p.m. by Assembly Chair Fay Von Gemmingen in the Assembly Chambers, 3600 Denali, Anchorage, Alaska.

2. ROLL CALL:

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

3. PLEDGE OF ALLEGIANCE:

Chair Von Gemmingen noted that today was Junior Achievement’s Groundhog Shadow Day, when young people “shadow” business men and women to learn about the business world. She invited the Assembly’s “shadow,” Ross St. John from Clark Middle School, to lead the pledge.

4. MINUTES OF PREVIOUS MEETING: None.

5. MAYOR'S REPORT:

Mayor Mystrom reported Anchorage Municipal Employees Association (AMEA) ratified the labor contract that was agreed upon between AMEA leadership and the administration. He said he was very pleased with the contract, and outlined some of the terms of the agreement. Secondly, the Mayor invited Assembly members to attend the annual Bridge Builder’s winter festival on February 6, 1999. He encouraged everyone to attend, as it is an exciting event. In response to Ms. Clementson, Mayor Mystrom added the Egan Center/Alaska Center for the Performing Arts Skybridge was dedicated earlier today. He felt the design of the bridge was beautiful, and the bridge will enhance the effectiveness of the Egan Center. It will also eliminate access flaws of the ACPA building. Passengers may now be delivered to the facility and exit vehicles safely on the sidewalk of the Egan Center, and cross the street to the ACPA via the bridge. He pointed out the bridge could also be used to house certain events of up to 100 people, and would be a good place for ACPA patrons to interact during performance intermissions. He thanked the Assembly for their support of the skybridge project.

6. ADDENDUM TO AGENDA:

Ms. Clementson moved, to amend the agenda to include the addendum items.
seconded by Mr. Meyer,

Chair Von Gemmingen read the addendum items.

Question was called on the motion to amend the agenda to include the addendum items and it passed without objection.

7. CONSENT AGENDA:

Ms. Clementson moved, to approve all items on the consent agenda as amended.
seconded by Ms. Taylor,

A. BID AWARDS:

- 1. Assembly Memorandum No. AM 102-99, recommendation of award to Wilder Construction Co., Inc. for the **Airport Water Project - Phase 1B Transmission Main** for the Municipality of Anchorage, Water and Wastewater Utility (ITB 98-C85), Purchasing.

Municipal Manager George Vakalis asked this item be considered under the Regular Agenda. See item 8.B.

B. ORDINANCES AND RESOLUTIONS FOR INTRODUCTION:

- 1. Ordinance No. AO 99-21, an ordinance of the Municipality of Anchorage Assembly **approving an underground telecommunications easement** along a portion of BLM Lots 51, 52, 53, 54 and Tract A, Eagle Bluff Subdivision, Section 14, Township 14 North, Range 2 East, Seward Meridian, known as a portion of Heritage Land Bank (HLB) Parcel 1-085 in Eagle River to Matanuska Telephone Association, Heritage Land Bank. public hearing 2-23-99.
 - a. Assembly Memorandum No. AM 94-99.
- 2. Ordinance No. AO 99-22, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of \$29,960,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of road, storm drainage and related capital improvements in the Anchorage Roads and Drainage Service Area** at an election in and for the

Municipality of Anchorage on April 20, 1999, Office of Management and Budget. public hearing 2-23-99.

- a. Assembly Memorandum No. AM 104-99.
- b. Information Memorandum No. AIM 12-99, April 1999 Municipal General Government Bond Proposition Fact Sheets, Office of Management and Budget.

Mr. Wohlforth asked this item be considered under the Regular Agenda. See item 8.C.

3. Ordinance No. AO 99-23, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of \$9,540,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of fire protection and related capital improvements in the Anchorage Fire Service Area** and the question of an increase in the Municipal Tax Cap to pay associated operation and maintenance costs at an election in and for the Municipality of Anchorage on April 20, 1999, Office of Management and Budget. public hearing 2-23-99.
 - a. Assembly Memorandum No. AM 105-99.
 - b. Information Memorandum No. AIM 12-99.
4. Ordinance No. AO 99-24, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of \$3,605,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of ambulances, emergency medical service data collection systems, Anchorage Cemetery, and related capital improvements in the Municipality of Anchorage** at an election in and for the Municipality of Anchorage on April 20, 1999, Office of Management and Budget. public hearing 2-23-99.
 - a. Assembly Memorandum No. AM 106-99.
 - b. Information Memorandum No. AIM 12-99.
5. Ordinance No. AO 99-25, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of \$5,995,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of parks and recreation and related capital improvements in the Anchorage Parks and Recreation Service Area** at an election in and for the Municipality of Anchorage on April 20, 1999, Office of Management and Budget. public hearing 2-23-99.
 - a. Assembly Memorandum No. AM 107-99.
 - b. Information Memorandum No. AIM 12-99.
6. Ordinance No. AO 99-26, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of \$325,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of administrative offices, a community meeting room and related capital improvements in the Girdwood Valley Service Area** at an election in and for the Municipality of Anchorage on April 20, 1999, Office of Management and Budget. public hearing 2-23-99.
 - a. Assembly Memorandum No. AM 108-99.
 - b. Information Memorandum No. AIM 12-99.

Mr. Bell asked this item be considered under the Regular Agenda. See item 8.C.

7. Resolution No. AR 99-26, a resolution of the Municipality of Anchorage accepting and appropriating \$500,000 from the Federal Emergency Management Agency (FEMA) to the Federal Categorical Grants Fund (0241) under the new Project Impact Program initiative; authorizing the contribution of \$80,000 from the Federal Categorical Grants Fund to the Areawide General CIP Fund (0401) for **additional retrofitting of the new Emergency Operations Center**; and authorizing the contribution of \$16,010 from the Anchorage Fire Department Areawide General Fund (0101) to the Federal Categorical Grants Fund (0241) to pay indirect administrative charges not funded by FEMA under the Project Impact Program initiative, Anchorage Fire Department. public hearing 2-23-99.
 - a. Assembly Memorandum No. AM 116-99.
8. Resolution No. AR 99-27, a resolution for **review and approval of the collective bargaining agreement between the Municipality of Anchorage and the Anchorage Municipal Employees Association (AMEA)** for the years January 1, 1999 thru 2000, Employee Relations Department. public hearing 2-23-99. (**addendum**)
 - a. Assembly Memorandum No. AM 121-99.
9. Ordinance No. AO 99-31, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of not to exceed \$171,150,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of educational capital improvements** in the Municipality of Anchorage and the question of an increase in the municipal tax cap limitation to pay associated operations and maintenance costs at an election in and for the Municipality of Anchorage on April 20, 1999, Assemblymember Wuerch. (**addendum**) **NOTE: THIS BOND REPRESENTS THE ANCHORAGE SCHOOL DISTRICT'S 1999 BOND PROPOSAL ONLY.**

Mr. Wuerch asked this item be considered under the Regular Agenda. See item 8.C.

C. RESOLUTIONS FOR ACTION:

1. Resolution No. AR 99-21, a resolution of the Municipality of Anchorage appropriating \$10,000 to the Miscellaneous Operational Grants Fund (0261) from Providence Health System/Alaska to be used to supplement the professional services contract with Patrick Consulting Service for the **Senior Study** being conducted under the auspices of the Senior Citizens Advisory Commission, Department of Health and Human Services.

- a. Assembly Memorandum No. AM 95-99.
2. Resolution No. AR 99-22, a resolution of the Municipality of Anchorage appropriating \$18,900 from the Anchorage Metropolitan Police Service Area (0151) Fund Balance to the Anchorage Police Department; \$10,500 from the Fire Service Area (0131) Fund Balance to the Anchorage Fire Department; and \$600 from the Areawide General (0101) Fund Balance to the Anchorage Fire Department to fund contract for **legal services to assist in the appeal of *Gallion v. AP&FRS*, Case No. 3AN-98-4563**, Legal Department.
 - a. Assembly Memorandum No. AM 109-99.
3. Resolution No. AR 99-23, a resolution of the Municipality of Anchorage appropriating \$23,022 to the State Categorical Grants Fund (0231) from the Department of Community and Regional Affairs for the **Job Training Partnership Act Program Incentive Program**.
 - a. Assembly Memorandum No. AM 110-99.
4. Resolution No. AR 99-24, a resolution appropriating \$5,000 from the fund balance of the Talus West Limited Road Service Area Fund (Fund 142) for **1998 winter snow removal and road maintenance expenditures** (1998 operating budget), Public Works Department.
 - a. Assembly Memorandum No. AM 111-99.
5. Resolution No. AR 99-25, a resolution appropriating \$10,000 from the fund balance of the Eagle River Street Lights Service Area Fund (Fund 129) for **1998 Eagle River street light maintenance and utility expenditures** (1998 operating budget), Public Works Department.
 - a. Assembly Memorandum No. AM 112-99.
6. Resolution No. AR 99-29, a resolution of the Anchorage Municipal Assembly supporting certain amendments to Alaska Statute 29.45.050(o) regarding **tax exemption and deferral for deteriorated property**, Assemblymember Wohlforth. (**addendum**)

D. NEW BUSINESS:

1. Assembly Memorandum No. AM 96-99, **Building Board appointments** (Randy Blei, Gary Klebs, Colin Maynard), Mayor's Office.
2. Assembly Memorandum No. AM 97-99, **Employee Relations Board reappointment** (Wilbur O'Brien), Mayor's Office.

Municipal Manager George Vakalis asked this item be considered under the Regular Agenda. See item 8.E.

3. Assembly Memorandum No. AM 89-99, **As Is Cafe** - New Restaurant/Eating Place Liquor License and Restaurant Designation Permit (Downtown/South Addition/Fairview Community Councils), Clerk's Office.
4. Assembly Memorandum No. AM 90-99, **Long Branch Saloon** - Transfer of Ownership of a Beverage Dispensary Liquor License and Restaurant Designation Permit (Abbott Loop Community Council), Clerk's Office.
5. Assembly Memorandum No. AM 91-99, **1999-2000 Liquor License Renewals**: Black Angus Steakhouse #2, Holiday Inn/Lucy's, King's X Lounge, Oriental Gardens, Stuart Anderson's Cattle Co., The Voyager Lounge (Tour) (Beverage Dispensary); Kulis ANG-NCO Club, VFW Post #10252 (Club); Oaken Keg #52 (Package Store); Yamatoya Restaurant (Restaurant/Eating Place), Clerk's Office.
6. Assembly Memorandum No. AM 98-99, change order No. 1 to purchase order 82660 to exercise the first option period with Deloitte & Touche LLP for providing professional **pension benefits consulting services** to the Municipality of Anchorage, Employee Relations Department/Purchasing.
7. Assembly Memorandum No. AM 99-99, change order No. 2 to purchase order 82227 to exercise the first option period with William M. Mercer, Inc. for providing professional **employee benefits consulting services** to the Municipality of Anchorage, Employee Relations Department/Purchasing.
8. Assembly Memorandum No. AM 100-99, recommendation of award to HDR Alaska, Inc. for providing professional **design/engineering services for 97th Avenue Storm Drain Phase IV** for the Municipality of Anchorage, Department of Public Works (RFP 38-98), Purchasing.
9. Assembly Memorandum No. AM 101-99, recommendation of award to Comtec Enterprises, Ltd. for providing **leased space for the Anchorage Police Department substation** to the Municipality of Anchorage, Department of Property and Facility Management (RFP 50-98), Purchasing.

Mr. Wohlforth asked this item be considered under the Regular Agenda. See item 8.E.

10. Assembly Memorandum No. AM 103-99, amendment No. 2 to the professional services contract with Unwin Scheben Korynta Huettle, Inc. (USKH) for the **Ship Creek Trail Project (Coastal Trail North Extension)**, Cultural and Recreational Services.

Mr. Wohlforth asked this item be considered under the Regular Agenda. See item 8.E.

11. Assembly Memorandum No. AM 113-99, change order No. 5 to purchase order 72999 with Robert D. Klausner, P.A. for providing **legal services related to pension law issues** for the Municipality of Anchorage, Police and Fire Retirement System (P&FRS), Purchasing.
12. Assembly Memorandum No. AM 114-99, **refunding of Alaska Energy Authority Power Revenue Bonds, First Series** (Bradley Lake Hydroelectric Project), Finance.
13. Assembly Memorandum No. AM 117-99, **Retention of Legal Counsel** - Goldenview Gate Appeal to Board of Adjustment S-10209, Municipal Clerk. (**addendum**)

E. INFORMATION AND REPORTS:

1. Appeal S-10236, East Addition to the Townsite of Anchorage Subdivision has been scheduled for hearing before the Board of Adjustment on April 6, 1999, Clerk's Office.
2. Information Memorandum No. AIM 11-99, report of Public Work's construction contract amendments, Public Works.

Question was called on the motion to approve the remaining items on the consent agenda as amended and it passed:

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

8. **REGULAR AGENDA:**

- A. TIME CRITICAL ITEMS: None.
- B. BID AWARDS:

1. Assembly Memorandum No. AM 102-99, recommendation of award to Wilder Construction Co., Inc. for the **Airport Water Project - Phase 1B Transmission Main** for the Municipality of Anchorage, Water and Wastewater Utility (ITB 98-C85), Purchasing.

Municipal Manager George Vakalis asked this item be postponed. The administration will be prepared to proceed next week.

Ms. Clementson moved, to approve AM 102-99.
seconded by Mr. Kendall,

Mr. Wohlforth moved, to postpone action on AM 102-99 until February 9, 1999.
seconded by Ms. Taylor,
and it passed without
objection,

(Clerk's Note: This item was postponed indefinitely by a motion passed later in the meeting. See after item 8.E.1.)

C. **ORDINANCES AND RESOLUTIONS FOR INTRODUCTION:**

1. Ordinance No. AO 99-22, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of \$29,960,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of road, storm drainage and related capital improvements in the Anchorage Roads and Drainage Service Area** at an election in and for the Municipality of Anchorage on April 20, 1999, Office of Management and Budget. public hearing 2-23-99.
 - a. Assembly Memorandum No. AM 104-99.
 - b. Information Memorandum No. AIM 12-99, April 1999 Municipal General Government Bond Proposition Fact Sheets, Office of Management and Budget.

Mr. Wohlforth, Ms. Taylor and Ms. Clementson joined in introducing AO 99-22. The public hearing was scheduled for February 23, 1999.

In response to Mr. Wohlforth, Dan Moore of the Office of Management and Budget confirmed that all proposed bond packages reflected the same projects which were in the capital budget approved by the Assembly. No projects were added or deleted. The amount of two of the bonds was rounded slightly, because of the need to work in \$5,000 increments.

2. Ordinance No. AO 99-26, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of \$325,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of administrative offices, a community meeting room and related capital improvements in the Girdwood Valley Service Area** at an election in and for the Municipality of Anchorage on April 20, 1999, Office of Management and Budget. public hearing 2-23-99.
 - a. Assembly Memorandum No. AM 108-99.
 - b. Information Memorandum No. AIM 12-99.

Mr. Bell, Mr. Wuerch and Mr. Wohlforth joined in introducing AO 99-26. The public hearing was scheduled for February 23, 1999.

In response to Mr. Bell, Dan Moore of the Office of Management and Budget explained the community room will be built on Municipally-owned land. There is no intent or need to purchase land to proceed with the project. The term "design" is included in the bond to provide latitude to update the design if necessary prior to construction. The full design has been completed, however, it is about four years old. If passed, the bond funds will be used to match money from other sources to build the project.

3. Ordinance No. AO 99-31, an ordinance providing for the submission to the qualified voters of Anchorage, Alaska, the question of the issuance of not to exceed \$171,150,000 of General Obligation Bonds of the Municipality of Anchorage to pay the **costs of educational capital improvements** in the Municipality of Anchorage and the question of an increase in the municipal tax cap limitation to pay associated operations and maintenance costs at an election in and for the Municipality of Anchorage on April 20, 1999, Assemblymember Wuerch. (**addendum**)

Mr. Wuerch, Ms. Clementson and Mr. Wohlforth joined in introducing AO 99-31. The public hearing was scheduled for February 23, 1999.

Mr. Wuerch explained the proposed ordinance would set forth a bond question for the first year only of the Anchorage School District's four year bond proposal. He added none of the District's priorities would change under his proposal.

Mr. Wohlforth asked whether the District's four-year bond proposal could be amended to reduce the amount and the number of years.

Deputy Municipal Attorney Bill Greene said he would research that question and return with an answer at a later date.

D. RESOLUTIONS FOR ACTION: None.

E. NEW BUSINESS:

1. Assembly Memorandum No. AM 97-99, **Employee Relations Board reappointment** (Wilbur O'Brien), Mayor's Office.

Employee Relations Director Tom Tierney explained appointments to this Board require a public hearing, and he asked the Assembly schedule a public hearing.

Mr. Wohlforth moved, seconded by Ms. Clementson, and it passed without objection,	to schedule a public hearing for AM 97-99 on February 9, 1999.
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Municipal Manager George Vakalis requested the Assembly revisit item 8.B.1, regarding an award to Wilder Construction for the Airport Water Project. He asked the item be postponed indefinitely, and the administration to return with a new item.

Ms. Clementson moved, seconded by Mr. Wuerch, and it passed without objection,	to postpone action on AM 102-99 indefinitely.
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2. Assembly Memorandum No. AM 101-99, recommendation of award to Comtec Enterprises, Ltd. for providing **leased space for the Anchorage Police Department substation** to the Municipality of Anchorage, Department of Property and Facility Management (RFP 50-98), Purchasing.

Mr. Wohlforth moved, seconded by Mr. Meyer,	to approve AM 101-99.
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In response to Mr. Wohlforth, Municipal Manager George Vakalis explained there was a typographical error in the memorandum. The correct address for the substation is 611 E. 12th Avenue.

Mr. Wohlforth moved, seconded by Mr. Kendall, and it passed without objection,	to amend AM 101-99 to reflect the correct address for the substation, 611 East 12 th Avenue.
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In response to Mr. Meyer, Mr. Vakalis said the administration intends to address the policy and procedures for funding of various police substations.

Question was called on the motion to approve AM 101-99 as amended and it passed without objection.

3. Assembly Memorandum No. AM 103-99, amendment No. 2 to the professional services contract with Unwin Scheben Korynta Huettle, Inc. (USKH) for the **Ship Creek Trail Project (Coastal Trail North Extension)**, Cultural and Recreational Services.

Mr. Wohlforth moved, seconded by Ms. Clementson,	to approve AM 103-99.
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In response to Mr. Wohlforth, Cultural and Recreational Services Director Kathy Kingston said an official Assembly Request would be appreciated when members have a question which will require a lot of research. For questions that can be answered quickly, an informal exchange between the member and administration staff would be acceptable. Quick questions would best be directed to Rachel Rourke-Sunnell, the landscape architect and project manager.

Mayor Mystrom explained the value of the Assembly Request was that all staff working on a project would be aware of questions and the communications about a project. He said there was no problem in asking a quick question of individual staff such as the project engineer, however, also informing the Department Director of the question would be greatly appreciated, so all staff are aware of various communications.

In response to Mr. Wohlforth, Ms. Rourke-Sunnell clarified an amendment to the Transportation Improvement Program (TIP) added funding of \$200,000 for trail construction, but that money did not provide for design or construction of a C Street pedestrian bridge. At the time, it was mistakenly thought the pedestrian bridge would be funded by other means. Now

that more accurate funding data is available, funding for the bridge has been placed into the 2001 TIP as part of the scope of the whole project.

Mr. Wohlforth moved, seconded by Ms. Abney, and it passed without objection,	to postpone action on AM 103-99 until February 9, 1999 and request a written description of the funding changes, and invite Lance Wilber of Community Planning and Development to the meeting to discuss the administration's level of certainty about receiving the funding.
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F. INFORMATION AND REPORTS: None.

9. OLD BUSINESS AND UNFINISHED ACTION ON PUBLIC HEARING ITEMS :

- A. **NOTICE OF RECONSIDERATION:** Resolution No. AR 98-409, a resolution of the Anchorage Municipal Assembly providing for a **revision to the 1999 General Government Operating Budget**, Assemblymember Bell.
1. Assembly Memorandum No. AM 50-99.
 2. Resolution No. AR 98-409(S), a resolution of the Anchorage Municipal Assembly providing for a revision to the 1999 General Government Operating Budget, Assemblymember Bell. (**addendum**) (AR 98-409 FAILED 1-26-99; RECONSIDERATION WAS SPREAD ON THE MINUTES 1-26-99)

Chair Von Gemmingen gave the history of the resolution and noted the question of whether to reconsider action was on the floor.

Mr. Bell said he received a letter from the Anchorage Chamber of Commerce requesting a postponement to allow them more time to review the proposal. He encouraged reconsideration and postponement until February 9, 1999.

Mr. Wohlforth opposed reconsideration. He felt the proposed budget revision was untimely, and it would be a waste of Chamber members' time to spend a lot of time in review. He said the first quarter budget revision process was the appropriate vehicle to review potential adjustments to the budget. Lastly, Mr. Wohlforth pointed out the economy and the State budget are very uncertain at this time, and it would be wise to wait until it is known how much revenue sharing Anchorage will receive. He felt it would be poor planning to approve a document which would indicate to the State Legislature that Anchorage has \$2 million in excess funds, as the Legislature considers how much to cut from Municipal assistance and revenue sharing.

Mayor Mystrom pointed out correspondence from the Chamber essentially said they were not prepared to make a recommendation on the resolution. He felt that could be interpreted as a request to postpone for a week or a request to postpone until the appropriate time. Mayor Mystrom said in April, at the time of first quarter budget revisions, more will be known about Anchorage's budget situation, including State revenue sharing, labor costs and the Anchorage Telephone Utility sale. He felt this would be the appropriate time to consider a proposal such as Mr. Bell's. He encouraged the Assembly to vote "no" on reconsideration.

Mr. Wuerch felt there was a question of whether the Municipality's reserve accounts are growing to a level that would warrant a rebate to taxpayers. He asked whether the administration would be willing to reexamine the reserve issue, and perform a comparative analysis with other communities in the United States.

Mayor Mystrom agreed that such an analysis would be performed.

Mr. Wuerch said in light of the Mayor's commitment, he would oppose reconsideration.

Mr. Bell reiterated his arguments in support of his proposal. He said the proposal would reduce the property tax burden for Anchorage citizens \$13.91 per \$100,000 of valuation, yet not reduce spending. He felt it was important to know the opinion of the Chamber of Commerce, because it represents the business community.

Ms. Clementson felt it would be better to wait until after first quarter budget revisions, to have a clearer picture of the economy.

Question was called on the motion to reconsider action on AR 98-409 and it failed:

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

- B. Assembly Memorandum No. AM 39-99, recommendation of award to Rise Alaska, LLC for providing professional **project management services for the Anchorage 6th Avenue Jail Replacement** for the Municipality of Anchorage, Department of Property and Facility Management (RFP 56-98), Purchasing.
1. Assembly Memorandum No. AM 87-99, RFP 56-98 for project management of Anchorage 6th Avenue Jail replacement. Response to request for clarification from MOA Assembly on January 12, 1999, Property and Facility Management.
(AM 39-99 POSTPONED FROM 1-5-99, 1-12-99 AND 1-26-99)

Chair Von Gemmingen gave the history of the memorandum and noted a motion to approve was on the floor.

In response to Mr. Wuerch, Don Simmons of Property and Facility Management explained originally, independent peer review was offered in the Rise proposal. During initial negotiations, the administration chose not to exercise that option, however, it has reconsidered. Rise has agreed to do the independent peer review within the existing contract amount. Secondly, the administration has obtained a list of professional affiliations from Rise, and it is believed that these

professional affiliations will provide a strong team that can address contract dispute resolution and some design issues that may cause problems during construction. Also, Rise has agreed to abide by a cost reimbursable type of contract.

In response to Mr. Bell, Mr. Simmons said he had not had time to fully research and verify the jail construction experience of the affiliated firms.

Question was called on the motion to approve AM 39-99 and it passed:

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

- C. Ordinance No. AO 98-141(S), an ordinance of the Municipality of Anchorage **creating a Board of Adjustment panel separate from the Assembly**, retaining the Assembly as a Board of Adjustment panel with limited jurisdiction and delineating the respective duties, responsibilities, powers and jurisdiction with respect to appeals to the Board of Adjustment, Assemblymember Clementson.
1. Ordinance No. AO 98-141(S-1), an ordinance of the Municipality of Anchorage creating a Board of Adjustment panel separate from the Assembly, retaining the Assembly as a Board of Adjustment panel with limited jurisdiction and delineating the respective duties, responsibilities, powers and jurisdiction with respect to appeals to the Board of Adjustment, Assemblymember Wohlforth.
 2. Assembly Memorandum No. AM 64-99.
(AO 98-141(S) FAILED 12-8-98; MR. WOHLFORTH GAVE NOTICE OF RECONSIDERATION ON 12-9-98; POSTPONED FROM 12-15-98; AO 98-141(S) WAS RECONSIDERED 1-12-99; CARRIED OVER FROM 1-12-99 AND 1-26-99)

Chair Von Gemmingen gave the history of the ordinance and noted a motion to adopt AO 98-141(S) was on the floor.

Mr. Wohlforth moved, to postpone action on AO 98-141(S) until February 9, 1999.
seconded by Ms. Clementson,
and it passed without
objection,

The Assembly then considered a Special Order.

Ordinance No. AO 99-32, an ordinance amending Anchorage Municipal Code Chapter 25.25, **School Site Selection and Acquisition**, by amending Sections 25.25.040 (Conditions of Assembly Site Approval), 25.25.050 (School Site Selection Procedures in General) and 25.25.080 (General School Site Selection Criteria); enacting a new Section 25.25.085 to establish standards, procedures and requirements for Assembly site approval of expansions, reductions or other changes in size and use of approved school sites; and amending other sections to provide for and implement such changes, Assemblymember Clementson.
(LAID ON THE TABLE)

Ms. Clementson, Mr. Wohlforth, and Mr. Bell joined in introducing AO 99-32. The public hearing was scheduled for February 23, 1999.

Ms. Clementson noted this ordinance had been provided to the Anchorage School District administration.

The meeting recessed at 6:23 p.m. and reconvened at 7:00 p.m.

10. **APPEARANCE REQUESTS:** None.

11. **CONTINUED PUBLIC HEARINGS:**

- A. Resolution No. AR 99-14, a resolution determining whether to protest the transfer of ownership of the beverage dispensary license of Debco, Inc. (Debbie Chen/George King) d/b/a **The Irish Setter**, located at 1911 East Fifth Avenue, Anchorage, Alaska to Debco, Inc. (Kathy & Carol Hartman/Jack Griffin), Assemblymember Wohlforth.
1. Assembly Memorandum No. AM 4-99, Irish Setter - Transfer of Ownership of a Beverage Dispensary Liquor License (Fairview/Mt. View Community Councils), Clerk's Office.
(AR 99-14 WAS POSTPONED FROM 1-26-99; AM 4-99 WAS POSTPONED FROM 1-5-99; CARRIED OVER FROM 1-12-99 AND 1-26-99)

Chair Von Gemmingen opened the public hearing and asked if anyone wished to speak. There was no one, and she closed the public hearing.

Ms. Clementson moved, to approve AR 99-14.
seconded by Mr. Wohlforth,

Ms. Clementson moved, to amend AR 99-14 on line 33 to read: "...Assembly hereby
seconded by Mr. Wohlforth, waives protest of the transfer of ownership...1911 East 5th
Avenue, Anchorage, Alaska provided the following conditions
are made permanent conditions of the license and the
operation of the license: CONDITIONS: 1. The licensee shall
apply for and obtain an amendment to its apparent conditional
use permit to reflect the change in use of the premises."

Ms. Clementson explained the official deadline for Assembly comment to the State Alcoholic Beverage Control Board passed on February 1, 1999. However, at the last Assembly meeting the licensee and their attorney agreed to this condition.

In response to Ms. Clementson, Deputy Municipal Attorney Bill Greene confirmed the Irish Setter began operation in 1968, one year prior to establishment of the requirement for a conditional use permit to sell alcohol. Therefore, the establishment has a de facto conditional use permit.

In response to Ms. Abney, Ms. Clementson explained the de facto conditional use permit was for a bar on the entire property. Now, the situation has changed and a bar does not occupy the entire property. She felt the conditional use permit should reflect the actual usage of the property.

In response to Mr. Meyer, Dan Coffey spoke representing the licensee. He explained although he was not at the meeting last week, he has spoken with Mr. Keenan and his client and felt he was aware of what transpired at the meeting. He noted about 2/3 of the premises is now unlicensed and no alcohol is sold in that portion of the premises. He questioned the use of the word “apparent” in the proposed amendment, and what the result would be if the conditional use were applied for yet not obtained.

In response to Mr. Kendall, Mr. Greene pointed out the Assembly considers many issues including traffic impact and impact on surrounding neighborhoods when considering a conditional use permit. He explained the word “apparent” was included because there is no official record of a conditional use for this property; there is no official record because the use predates the zoning requirements. He felt the term “de facto” could be used in place of “apparent.”

In response to Mr. Kendall, Don Alspach of Community Planning and Development said whether a new conditional use should be applied for depends on whether the Assembly feels that the change is major or minor. He said in some cases when a use is reduced, a conditional use permit is amended to reflect the change.

Mr. Wohlforth spoke in support of the resolution. He felt the proposed change was significant enough to require an amendment to the conditional use via the entire process.

Mr. Bell questioned what the outcome would be if the amendment were approved, and the applicant does not comply with the conditions.

Ms. Clementson replied the applicant had agreed, on the record at last week’s Assembly meeting.

Mr. Coffey objected to the phrase “and obtain” in the amendment. He also pointed out the proposed resolution had no legal significance, because the official deadline for Assembly comment to the State Alcoholic Beverage Control (ABC) Board has expired.

In response to Mr. Wuerch, Mr. Coffey said it was his understanding that a conditional use permit was not required for the half of the business that will not serve alcohol.

In response to Ms. Clementson, Mr. Greene said any modification to the conditional use would likely come before the Assembly, for a determination of whether the change to the conditional use is material. He suggested deleting the words “and obtain” would alleviate concerns by the applicant, and leave the Assembly room to make further determinations if necessary in the future.

Ms. Abney expressed concern about approving this document after the deadline for Assembly comment on the license.

Mr. Wohlforth questioned the purpose of approval, since the applicant feels the resolution is meaningless, and it seems the application for a new conditional use is already required.

Mr. Wuerch felt since the Assembly failed to act within its time frame on this license, it was appropriate that its position not be forwarded to the ABC Board. He said the Assembly should abide by the same standards that citizens are held to regarding time frames. He pointed out last week, the Assembly had the opportunity to ensure a position was submitted on time, but chose to disregard that opportunity.

Ms. Clementson moved,
seconded by Mr. Wohlforth,
and it passed without
objection,

to amend the amendment to delete the words “and obtain” and
change the word “apparent” to “de facto.”

Ms. Clementson moved,
and it was accepted as a
friendly amendment,

to amend AR 99-14 on lines 16 through 22 to insert the
following WHEREAS clauses from AR 99-13: “Whereas, the
licensed premises described above in the capital/title of this
resolution has received permission from the Alcoholic
Beverage Control Board to reduce the size of its licensed
premises; and WHEREAS, it appears the Irish Setter may
have been first licensed for the retail sale of alcoholic
beverages in 1968, one year prior to the existence of zoning
regulations requiring a conditional use permit for said activity,
whereby it may now operate as a legal, non-conforming use in
its zoning district under Anchorage Municipal Code chapter
21.55; and WHEREAS, the portion of the above-described
premises which no longer constitutes a part of the premises
licensed for the sale of alcoholic beverages is now being used
or is proposed to be used for a different purpose than the retail

sale of alcoholic beverages and such may constitute a material change in the nature and scope of the conditional use for the licensed premises requiring an application to modify or amend its conditional use permit and/or the loss of such non-conforming rights; and WHEREAS, the licensed premises appears to be immediately adjacent and visible to, and accessible from an entertainment enterprise permitting the presence of persons under the legal age for the consumption or possession of alcoholic beverages.” and to delete Section 1 (1st alternative) and on page 2, to delete lines 1 through 19, including Section 1 (3rd alternative.)

Question was called on Ms. Clementson’s motion to amend as amended and it failed:

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

Mr. Bell opposed the resolution. He was concerned that the changes at the establishment circumvented the intent of the community, but he felt the proposed resolution was inappropriate. He suggested the Municipal Code be revised to keep this situation from occurring again.

Mr. Wohlforth also spoke against the resolution which, without Ms. Clementson’s amendment, was not complete. He felt it was unfortunate that the Assembly chose not to take a position on the license before the deadline.

Ms. Clementson also urged a “no” vote. However, she pointed out the resolution was a record of the owner’s verbal agreement at last week’s Assembly meeting, and would at least put some position before the ABC Board.

Question was called on the motion to approve AR 99-14 and it failed:

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

- B. Resolution No. AR 98-248, a resolution of the Anchorage Municipal Assembly providing for a **revision to the Anchorage School District Budget for FY 1998-99**, Assemblymember Bell.
1. Resolution No. AR 98-248(S), a resolution of the Anchorage Municipal Assembly providing for a revision to the Anchorage School District Budget for FY 1998-99, Assemblymember Bell.
 2. Assembly Memorandum No. AM 823-98.
- (CONTINUED FROM 12-8-98)

Chair Von Gemmingen opened the public hearing and asked if anyone wished to speak. There was no one, and she closed the public hearing.

Mr. Bell moved, to postpone action on AR 98-248 indefinitely.
seconded by Mr. Wohlforth,

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

(Clerk’s Note: Mr. Kendall was out of the room at the time of the vote.)

12. **NEW PUBLIC HEARINGS :**

- A. Ordinance No. AO 99-1, an ordinance of the Municipality of Anchorage creating **Alley Paving Special Assessment District 2P98 - East 15th Avenue/East 15th Terrace Alley from East 15th Terrace to its west end** and determining to proceed with proposed improvements therein, Public Works.
1. Assembly Memorandum No. AM 43-99.

Chair Von Gemmingen opened the public hearing and asked if anyone wished to speak.

VICKIE MADSON, owner of Lot 12A on 15th Terrace, spoke in opposition to the paving district. She said traffic from the Sullivan Arena has increased in speed since 15th Terrace was paved. She was concerned about the same result if the alley is paved. She also objected because hers was one of the few remaining single-family homes on the street. Most of the other homes have been replaced with large apartment buildings, which have been built to the legal limit, without room for yards. The children of families in these buildings typically play in the alley. The Salvation Army McKinnell Family Shelter, whose clients include children, is also nearby. They are there on a temporary basis and are not familiar with the neighborhood. She has attempted unsuccessfully to get a “slow- children at play” sign erected. Ms. Madson pointed out her assessment would be \$50 per month, the same as the nine-plex next door, and felt this was unfair. Lastly, she noted the first ballot for the district included the assessment amount, and was turned down by property owners. After the failure, the time for owners to reply was extended, and a new ballot was distributed without the assessment amount. After the second ballot, property owners approved the district. She felt this also was unfair. In response to Mr. Meyer, Ms. Madson said the alley is dusty at times in the summer. However, she felt oiling the alley would be cheaper and as effective as paving, and would simultaneously slow traffic.

REED BLUNT, also a resident adjacent to the alley, said she was the apartment manager at her complex. The owner of the complex voted against the paving district. She confirmed speeding traffic in the alley is a problem. There is high traffic volume in the area, and there are frequently children playing in the alley because the apartments have no yards. She felt

paving the alley seemed to be a convenience for pedestrians traveling to Sullivan Arena events. Ms. Blunt pointed out last year, the stairway leading from Eagle Street down the hill to 15th Terrace was removed by the property owner. All the pedestrians who traditionally used that stairway to access the Sullivan now use their alley and trample residents' yards as they pass through the area. She said dust is a problem, which can easily be controlled by oiling. She pointed out many paved roads are in dire need of repair. If this alley is paved, she feared maintenance would be scarce.

Chair Von Gemmingen asked if anyone else wished to speak. There was no one, and she closed the public hearing.

Mr. Wohlforth moved, to adopt AO 99-1.
seconded by Ms. Taylor,

Mr. Wohlforth said he sympathized with the concerns about increased traffic. However, the district was supported by 55 percent of the property owners. He receives constant complaints about dust pollution in the area, which has been a long-time problem. He suggested that Traffic Engineering evaluate the traffic flow and possible speeding mitigation solutions.

Ms. Clementson moved, to postpone action on AO 99-1 until February 9, 1999 pending
seconded by Ms. Taylor, information on how many ballots were issued and what
information was published with each ballot.

Mr. Meyer requested the administration provide its policy on placement of "children at play" signs.

Question was called on the motion to postpone action on AO 99-1 until February 9, 1999 and it passed without objection.

- B. Resolution No. AR 99-20, a resolution of the Anchorage Municipal Assembly approving a conditional use for sales of alcoholic beverages (Beverage Dispensary Tourism License and Two Beverage Dispensary Tourism Duplicate Licenses) located on Anchorage Original Townsite, Block 95, generally located between West 8th and West 9th Avenues and between "L" and "M" Streets (John Blomfield d.b.a. **Benihana & Hawthorne Suites**) (Case 99-019), Community Planning and Development.
1. Assembly Memorandum No. AM 92-99.

Mr. Bell disclosed that his company is the engineering firm for the Hawthorne Suites and the Benihana Restaurant. He said he has no ownership interest in either business or the liquor license.

Mr. Meyer moved, the question "does Mr. Bell have a substantial financial
seconded by Mr. Wohlforth interest in the matter before the Assembly?"

In response to Mr. Wuerch, Mr. Bell said the Assembly's vote on this liquor license would not impact the contract he has with the owner.

Mr. Wohlforth felt one could interpret "substantial interest" very narrowly, and ensure no conflicts arise. However, the average person might think that if an Assemblymember was involved in a project, that member should not vote on related issues.

Ms. Clementson noted in recent conversations with Legal Department staff, she understood that the question traditionally moved, does the member have a substantial financial interest in an issue, is not the only grounds for conflict of interest. There is a broader range other than money.

In response, Deputy Municipal Attorney Bill Greene noted the Supreme Court has stated the question of material financial interest as, "could a person of average capacity and intelligence in the circumstances be affected in their decision by their interest in the matter?"

Ms. Clementson moved, to substitute a question to ask "could a person of average
seconded by Ms. Taylor, capacity and intelligence reasonably be influenced by their
and it was withdrawn, interest in this matter?"

Mr. Greene pointed out the previous motion was language from the Municipal Code. He said Ms. Clementson's question may be asked also, but the Code requires the first question be asked.

Ms. Clementson withdrew her motion.

Question was called on question of whether Mr. Bell had a substantial financial interest and it failed:

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

(Clerk's Note: Mr. Kendall was out of the room at the time of the vote.)

Ms. Clementson moved, the question "could the interest of Mr. Bell influence a
seconded by Ms. Taylor, person of average capacity and intelligence in his decision on
the matter before the Assembly?"

In response to Mr. Wuerch, Mr. Bell described the scope and status of his contract. He said his firm is providing electrical, mechanical, civil and structural engineering and surveying services on this project, including design and construction administration. The project has not been built yet. Mr. Bell estimated his work is about 90 percent complete.

Ms. Clementson said she had no personal issue with Mr. Bell, however she felt the services his firm is providing are vital to the facility. The liquor license is also vital to this facility. She felt it would be a conflict of interest for a member of the Assembly who has a financial interest in the project to be involved in making decisions on another aspect of the project.

Question was called on the motion of whether the interest of Mr. Bell could influence his decision on the matter before the Assembly and it failed:

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

(Clerk's Note: Mr. Kendall was out of the room at the time of the vote.)

Chair Von Gemmingen declared Mr. Bell did not have a conflict.

Chair Von Gemmingen opened the public hearing and asked if anyone wished to speak.

JOHN BLOMFIELD, the developer of the Hawthorne Suites and Benihana, said he would prefer if Mr. Bell abstained on this issue, because of their business relationship on this project and other projects. Mr. Blomfield also declared that he and Mr. Murdy have extensive business relationships. If Mr. Murdy were present, he would ask that Mr. Murdy abstain also. Mr. Blomfield noted he met with the South Addition Community Council twice, and the license was not opposed. He also met with the Downtown Community Council, and they do not oppose the license. In response to Ms. Clementson, Mr. Blomfield said there are about 100 parking spaces planned for the building. He hoped to lease space on some adjoining lots for additional parking of about ninety spaces.

Chair Von Gemmingen asked if anyone else wished to speak. There was no one, and she closed the public hearing.

Ms. Clementson moved, to approve AR 99-20.
seconded by Mr. Carlson,

Ms. Clementson commended Mr. Blomfield for his hard work to gain the support of the South Addition Community Council, and for his work on the parking issue. She did not oppose this conditional use permit. However, she gave notice that she strongly objected to another tourism license for sale of alcohol. She felt the tourism license circumvented the intent of State law, which sets out the appropriate number of licenses for any given community. There are already more licenses in Anchorage than are allowed by the State's per capita formula.

Question was called on the motion to approve AR 99-20 and it passed:

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

(Clerk's Note: Mr. Kendall was out of the room at the time of the vote.)

- C. Ordinance No. AO 99-8, an ordinance of the Anchorage Municipal Assembly amending Anchorage Municipal Code Chapter 4.60, Program Advisory Boards, to **establish an Anchorage Trails Commission**, Assemblymembers Abney and Taylor.
1. Assembly Memorandum No. AM 115-99, Anchorage Trails Commission, Community Planning and Development.

Chair Von Gemmingen opened the public hearing and asked if anyone wished to speak.

DAN ROSENBERG, of behalf of the Nordic Ski Club, said the Club encourages the development of well-planned trails in Anchorage. Also, they encourage and support the timely adoption of the Areawide Trails Plan, and the objectives of the proposed Commission. However, before endorsing the ordinance, they believe additional trail user groups should be included as representatives on the Commission, such as skijorers and runners. He also questioned the role of the proposed Commission, and that of the Parks and Recreation Commission. The two appear to have similar advisory roles, and the group would like more information on how the two Commissions will interface in trails planning and development.

Chair Von Gemmingen asked if anyone else wished to speak. There was no one.

Ms. Abney moved, to continue the public hearing for AO 99-8 until
seconded by Ms. Taylor, March 2, 1999.
and it passed without
objection,

The meeting recessed at 8:25 p.m. and reconvened at 8:40 p.m.

13. **BOARD OF ADJUSTMENT/ASSEMBLY APPEALS:**

- A. Appeal S-10110, Eagle Crossing Subdivision, Clerk's Office.
(CARRIED OVER FROM 1-26-99)

Mr. Wohlforth moved,
seconded by Ms. Clementson,

to suspend the rules to allow the Assembly's counsel
to lead the Assembly through the various issues, prior to
individual motions.

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

(Clerk's Note: Mr. Meyer was out of the room at the time of the vote.)

Sally Kucko, attorney for the Assembly acting as the Board of Adjustment (BOA) on this case, presented the issues in order. She explained the **first issue**, the challenge to the variance granted by the Platting Board from the street standards, has four factors because there are four factors necessary for granting a variance. The first question is, *are there special circumstances or conditions affecting the property such that strict application of the provisions of the subdivision regulations would clearly be impractical, unreasonable or undesirable to the general public?* Ms. Kucko recommended the Assembly first decide whether there is substantial evidence in the record to support this finding, and identify that evidence if any.

Ms. Clementson moved,
seconded by Mr. Wuerch,

to affirm the finding of the Platting Board that there was
substantial evidence to support the first factor as described by
Ms. Kucko.

Ms. Clementson noted the existing Driftwood Bay Road is built to these standards, and the standard that is proposed is the same standard that already exists on the other portion of the road. From the record, it seems it would be best to continue the rural standard throughout the project, and it would be a problem to change the standard in the middle of the road.

Mr. Wuerch felt the use of biofiltration swales serve to minimize environmental impact was appropriate evidence to support the motion.

Mr. Kendall noted the subject area is near the Eagle River waterway, and the Platting Board asked for State Department of Environmental Conservation (DEC) approval of the plat, to address concerns about effects on the river. The road design, as proposed, will have a better drainage system and be part of the biofiltration system mentioned by Mr. Wuerch. The enabling ordinance required mitigation to preserve existing vegetation and revegetation where necessary.

Question was called on Ms. Clementson's motion to affirm the finding of the Platting Board in the first factor of the street standards and it passed:

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

Ms. Kucko said the second question with regard to the variance of street standards was *will the granting of the variance be detrimental to the public welfare or injurious to other property in the area in which the property is situated?*

Ms. Clementson moved,
seconded by Mr. Meyer,

to affirm the decision of the Platting Board with respect
to this finding.

Mr. Kendall noted on page 99 of the report, Eagle River Crossing's Finding of Fact, paragraph 16 addressed this topic and says "granting of the variance will not be injurious to the public welfare and that the proposed method for road construction will serve to minimize the adverse impact on an environmentally sensitive area. A detached sidewalk and bikepath is being planned along Driftwood Bay for safe pedestrian movement."

Ms. Clementson expressed concern whether curbs would be constructed at driveway intersections. She noted the record reflected an agreement between the Eagle River Valley Community Council members and the applicant to construct these curbs to prevent erosion.

Mr. Kendall noted in item #4, the Platting Board addressed that issue. They did not require them, but they required the developer to resolve it with the Public Works Department.

Ms. Clementson felt residents made a good case for concern about erosion. She felt an agreement with Public Works was not the same as a requirement for sidewalks. She felt sidewalks should have been required.

Mr. Wuerch pointed out on page 101, the locations are specified: "Driftwood Bay Drive and the private access driveways will be provided curbs..." and in condition #9, "...footing drain and footing drain stubouts are to be provided..." Mr. Wuerch added the record shows the issue was considered, and "...any change to this standard affecting future extension would create increased maintenance problems." He felt the issue was examined, and statements in the record show that the absence of curbs may cause maintenance problems.

Mr. Wohlforth agreed the word "resolved" is ambiguous.

Mr. Kendall explained the Platting Board, as a common practice, uses the word "resolve" in various issues relating to a particular department. The Board would make a direct command in cases where there is an overwhelming issue they feel cannot be resolved at the department level. However, it is common to instruct parties to resolve the issue with the Municipal department. Mr. Kendall added the Board added conditions 5, 6 and 7, which call for a site drainage and grading plan, a detailed drainage impact analysis, and submittal of an erosion and sediment control plan.

Ms. Kucko commented the Assembly should decide whether or not, based on the record, there is substantial evidence to support the Platting Board's finding. The Platting Board has found that this condition was met. The Assembly may also impose its own interpretation of the record.

Ms. Clementson pointed out the record showed, Mr. Isham spoke about a suggestion to the developer to put curbs and gutters at intersections, which would solve concerns by the road board about the breakdown of the radius at intersections. Ms. Clementson noted concerns by the road board were different from Public Works. She felt the concern was documented, and it seemed the Platting Board did not go far enough to make sure the issue was addressed.

Mr. Bell felt it was a suggestion, rather than a demand. Resolving the issue with Public Works would allow their professionals to find the best solution to meet the concerns, rather than carrying out a specific instruction by the Platting Board which may or may not be appropriate.

Mr. Wohlforth said these are good points, but do not fall under the question before the body, *will the granting of the variance be detrimental to the public welfare or injurious to other property in the area in which the property is situated?* He felt changing the curb issue might be more appropriately addressed under #5, *is the variance a minimum necessary that makes possible a reasonable use of the land?* He felt there was substantial evidence that the variance would not be detrimental to the public welfare or injurious to other property, because of using the drainage swales.

Question was called on Ms. Clementson’s motion to affirm the finding of the Platting Board in the second factor of the public welfare and it passed:

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

Ms. Kucko said the third factor with regard to the variance of street standards was *will the variance have the effect of nullifying the intent and purpose of the subdivision regulations or the Comprehensive Plan of the Municipality?*

Ms. Clementson moved, to affirm the decision of the Platting Board with respect
seconded by Mr. Meyer, to this finding.

Mr. Wuerch noted a letter on page 388 of the record speaks to the fact that this has been thoroughly reviewed by Municipal staff. Experience with the existing section of road was described, and quotes a position from the Municipal Engineer “...it is our position that any changes to this standard ... would create increased maintenance problems that would diminish the aesthetic qualities of the planned community.” He felt the letter helped establish that the variances are fulfilling the broader purposes of creating a functional, aesthetic and environmentally-sensitive design.

Question was called on Ms. Clementson’s motion to affirm the Platting Board’s decision in the third factor of subdivision regulations and it passed:

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

Ms. Kucko said the fourth factor with regard to the variance of street standards was *would undue hardship result from strict compliance with specific provisions or requirements of the subdivision regulations?*

Mr. Wohlforth moved, to remand to the Platting Board for them to make a
and it died for lack of specific factual finding and conclusion with regard to the
a second, undue hardship issue.

Ms. Clementson moved, to affirm the decision of the Platting Board with respect
seconded by Mr. Meyer, to this finding.

Ms. Clementson said although the Platting Board did not specifically address this, she felt it was implied, by findings on the natural topography and physical characteristics of the site. The development proposed was an attempt to provide circulation systems to minimize adverse impacts. She felt it was consistent with the part of the road already constructed, and was good planning.

Mr. Wohlforth felt the appellant made a good case that if the process is to be successful, the Platting Board needs to take into account each of the standards and make explicit findings on each, as required by Code. The Board did not do that in this case. He felt a remand would be appropriate. In response to Ms. Clementson, he said he did not dispute whether there was substantial evidence, but felt a specific finding should have been made.

Ms. Kucko clarified a finding can be made explicitly or implicitly, but either way there must be substantial evidence to make that finding. She said it could be divided into two questions, of whether there was substantial evidence for the finding, and whether the finding was made by implication.

Ms. Clementson felt there was sufficient evidence before the Board that the standard was met, but the Board failed to clarify it in the findings.

Mr. Wuerch noted on page 119, in Municipal staff’s review, it states “...the subdivision design will allow the development of the subdivision while achieving protection of the environment... development is in keeping with that which previously occurred at Eagle Crossing for which the Platting Board granted the same variance referenced above.” Mr. Wuerch mentioned another comment on the previous page “...the variances are a trade-off.” He felt the implicit conclusion was that the presented design is a trade-off and to take a different trade-off would incur some disadvantages and may be a hardship to either the environment or efficient development of the subdivision.

Question was called on Ms. Clementson's motion to affirm the Platting Board's decision in the fourth factor of undue hardship and it passed:

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

Ms. Kucko explained another item for consideration was not one of the variance standards, but a requirement that all variances must meet: *is the variance the minimum necessary that makes possible a reasonable use of the land equivalent to but not exceeding the use of similar land permitted generally in the same zoning district?* She felt the Assembly should address this issue also.

Mr. Wohlforth moved, seconded by Ms. Clementson,	to remand to the Platting Board on the grounds the variance was not clearly the minimum necessary because there was no requirement for the curbs to be installed at the intersections, they were simply a suggestion that occurred.
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Mr. Wohlforth said if there had been a requirement for curbs, it would have reduced the magnitude of the variance and would have been closer to a minimum possible for reasonable use.

Ms. Clementson agreed using the word "resolve" leaves some latitude. However, Public Works will not "resolve" the issue based on the minimum variance required, they will resolve it on different grounds. Because of comments she quoted from Mr. Isham previously, there is clearly a lesser variance that could have been granted. They could have required a specific outcome of the curbs instead of directing a resolution at another agency.

Mr. Bell felt interpretation was the key. He pointed out if placing curbs resulted in a hazardous situation or harm to the road, then the variance would be greater.

Mr. Wuerch referred to page 45 of the record. He said Mr. Brown, in his testimony on behalf of the developer, speaks regarding Mr. Isham's remarks "...why don't we put curbs just in those spots to address erosion? I thought it was a very very good idea. It was a compromise that I think works well. We allow the storm water on the main street to run off into the biofiltration ditches or swales, and a curb is only located in the areas where there are maintenance problems... That's certainly something we can implement without much effort I believe, but I haven't checked with Public Works." Mr. Wuerch felt it was clear the developer concurs with the use of the curbs as the minimum appropriate response to questions raised by residents.

Mr. Wohlforth clarified the motion to remand asks the Board to reexamine the issue and make sure the requirement for the curbs is not a better way of achieving the minimum variance. He felt the requests by residents and agreements by the developer were not truly reflected in the findings.

Mr. Kendall pointed out the enabling zoning ordinance, AO 84-101, reflected the importance of drainage for the project and preserving natural vegetation. In addition, the Platting Board specifically addressed several conditions regarding drainage. After granting the variance to sub-urban standards, they added back a slight increase in the standards, by the condition to resolve the need for curbs at the intersections.

Mr. Wuerch spoke against a remand. He felt the intent of the Board was clear. A remand would ask the Board to be more definitive and precise in specifying engineering issues. He was unsure he wanted the Platting Board to engineer designs, just as he would not want the Assembly to engineer designs. Public Works is the appropriate place to engineer such details.

Ms. Clementson pointed out any agreement made by a developer during testimony is moot if the issue is not reflected in the adopted findings. She questioned how the BOA could adopt a finding which says the variance is a minimum, when the Platting Board did not decide whether it was a minimum. A remand to the Platting Board would ensure input from the Community Planning and Development Department, which is appropriate because the minimum variance issue is a requirement in the planning code, rather than that of Public Works. Public Works may comment, as well as Planning staff, but the Platting Board should clarify their findings.

Question was called on Mr. Wohlforth's motion to remand and it failed:

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

Ms. Clementson moved, seconded by Mr. Meyer,	to affirm the decision of the Platting Board with respect to the variance being the minimum necessary.
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In response to Mr. Wuerch, Ms. Kucko said restating arguments was not necessary, as long as they are referenced.

Mr. Wuerch asked his previous comments on the remand issue be referenced here.

Ms. Clementson reiterated she felt it was impossible to affirm the decision, because there was no finding made and the intent of the Board is not clear in the record.

Question was called on Ms. Clementson's motion to affirm the decision of the Platting Board and it passed:

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

Ms. Kucko explained the **second issue** on appeal was the variances granted regarding lot depth, AMC 21.80.300, and slope, AMC 21.80.360. She said the issues were grouped by the appellant, the appellee and in the staff analysis, so she felt it was appropriate the BOA consider them as a group. The variance from 21.80.300 allows lots with a depth of less than 100 feet, and from 21.80.360 allows narrow lot widths on lots with an average slope exceeding 15 percent. She reiterated the four variance standards should be addressed separately. The first variance standard is *are there special circumstances or conditions affecting the property such that strict application of the provisions of the subdivision regulations would clearly be impractical, unreasonable or undesirable to the general public?*

Ms. Clementson felt there might be two questions which should be considered separately. The slope chart would require wider lots, and one of the arguments of the appellant is that the whole slope chart was disregarded. The variance was not only from the depth, but from width, allowing shorter and narrower lots, thereby allowing more lots in the subdivision. To accommodate this, the developer will have to regrade and change the slope.

Ms. Clementson moved, seconded by Ms. Abney, and it was withdrawn,	to affirm the finding of the Platting Board with respect to the first variance standard, regarding the variance for lot depth.
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Ms. Clementson said there was a good case made, and the Platting Board made findings that the variance would save space and preserve the natural drainage courses. So there is clearly a benefit, because of the topography and drainage of the land.

Mr. Wuerch spoke to the issue of special circumstances, and referred to a quote by Ms. O'Brien of staff on page 11 of the record. "Yes, these standards could be met, but that would involve total re-grading of the area, a lot more cut and fill, and found by trying to preserve the natural vegetation to preserve intact some of the existing drainage ways, use biofiltration, etcetera..." Mr. Wuerch noted Ms. O'Brien went on to support that it is a trade-off that gives the best answer. He felt there were special circumstances as summarized in the testimony of the staff. He encouraged approval of the motion.

Mr. Wohlforth quoted from page A8 of the appellant's brief: "No less baffling is the Platting Board's finding that drainage ways are being protected by tracting them out for preservation as undisturbed open space. Not only is there no support for that fact on the record, but the grading, drainage, landscaping plan, sheet 3 of the full size drawings, shows that it's plainly false. Yes, one drainage way south of Driftwood Bay Drive is to be tracted out, but the natural drainage ways north of Driftwood Bay Drive, apparent on the top of graphic drawings submitted before the plat was revised, are destroyed." Mr. Wohlforth continued reading from the footnote: "...the revised plat submittals do not even include a depiction of the topography before proposed regrading. Condition 4 of the site plan approval requires revision of sheet three to show the original topography and cross sections to fill and cut areas, thus any finding relating to the natural topography is without support in this record." Mr. Wohlforth felt if the topography was not depicted, the Platting Board could not have determined whether the drainage ways would be protected.

Ms. Clementson agreed with Mr. Wohlforth, saying she had forgotten this part of the record. She read from page A9, "in fact, one strip tracted out north of Driftwood Bay Drive is not a drainage way, but high ground that will be turned into a water-shedding ridge if the proposed regrading is permitted....sheet 3 of the plan submitted by the developer requires some careful study in light of the fact that the elevation contour lines are not labeled as to elevation and even the stated scale of one inch to one hundred feet is wrong. The true scale appears to be one inch equals fifty feet." Ms. Clementson said the Board caught the first of those errors, and required the developer to label the lines. However, it is impossible to tell what the Board thought about the scale, because the error was never identified. She agreed the Board could not have made a finding about the natural drainage ways, if the information was not submitted. If the drainage way is unnatural and created by the developer, the standard should be different, because the tracting out is to create something rather than preserve something. She withdrew her motion.

Ms. Abney concurred.

Ms. Clementson moved, seconded by Mr. Wohlforth,	to remand to the Platting Board to get corrected drawings and to make specific findings of fact regarding all natural drainage ways and all tracted-out areas, to obtain a specific finding that the drainage ways that are being created are the natural drainage ways, and will not be disturbed in any way, even during regrading.
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Ms. Clementson felt if the Platting Board could view the original topography information, it could make a determination as to whether the proposed drainage ways are natural, and whether it would *clearly be impractical, unreasonable or undesirable to the general public* to approve the variance. In response to Mr. Kendall, Ms. Clementson said it appears the Platting Board addressed both tracted-out areas as one item, and the appellant makes the point that the Board was discussing only one area, and the other area is quite different in character.

Mr. Carlson pointed out on page 449, it indicates Public Works required a site grading and drainage plan, and a detailed drainage impact analysis be submitted for approval.

Mr. Wuerch felt the concerns of the appellant should be considered, but also weighed against the preponderance of information in the record and repeated references that the natural drainage and vegetation would be preserved. He pointed out the one topographic map in the record shows the two vegetated strips do migrate down the slope toward the road, and the drainage could then go into the swales. There is only one statement in the record that the drainage plan was based on faulty original topographic data, and there is a preponderance of evidence from multiple sources that the design is appropriate for the site.

Mr. Wohlforth disagreed. He noted the appellant's point is that the Platting Board did not have a topographical map in the record, did not review a topographic map before making this decision, and the map that was in the record was not labeled in such a way to provide adequate information. If the Board did not have a topographical map to determine the original

drainage ways, it could not make an educated decision. He recalled the issue was “was the variance necessary in order to protect the drainage ways”? Without knowledge of the location of the natural drainage ways, he could not see how the Board of Adjustment or the Platting Board could make, or could have made, that decision. He felt the Platting Board should be asked to go back and show where the evidence is that the variance was necessary.

Mr. Kendall felt it was important that the question was “natural vegetation and drainage ways.” He noted sheet 3 of 4 depicts how the development will preserve the natural trees, and locations of re-seeding after construction. It also shows areas greater than 30 percent, and distinguishes between existing ground contours and finished ground contours. Although it was questionable whether the area between the cul-de-sacs is specifically a drainage way, the tract between the two cul-de-sacs certainly protects the natural vegetation. He felt the tracting-out in this case protects the natural trees. Lots backed up to the 30 percent or greater slope require depth variances. The conclusion of the Platting Board was to make the lots shorter to preserve the natural vegetation and stay away from the 30 percent-or-greater slopes.

Mr. Wohlforth pointed out from the map in the record, there is no way of telling where the natural vegetation is located. It’s also not possible to see what the existing topography is, because existing ground contours are not shown. It’s equally possible that either the appellant or the appellee is correct, so the evidence is inadequate and the issue should be remanded.

Ms. Clementson felt it was significant that the contour interval was not labeled on the map. She pointed only one contour is labeled on the map.

Mr. Wuerch noted the most important part of the biofiltration system design was that just before the runoff enters Eagle River. That part of the design was south of the road, not to the north, which is the area of concern to the community council. He pointed out the northern area receives runoff from an existing development further north. Eagle Crossing will catch all this runoff and route it through a biofiltration swale before it enters Eagle River. Absent the ability to do that, the situation will be undesirable.

Mr. Kendall added the final drainage plan will have to meet requirements and be reviewed by Public Works, so the scale of the map is not the main issue.

Mr. Wohlforth noted the variance is requested for a particular purpose, and the issue before the Assembly was *are there special circumstances or conditions affecting the property such that strict application of the provisions of the subdivision regulations would clearly be impractical, unreasonable or undesirable to the general public?* He felt there was inadequate evidence in the record to answer that question.

In response to Mr. Wohlforth, Ms. Clementson clarified her motion was with regard to lot depths only.

Question was called on Ms. Clementson’s motion to remand to the Platting Board and it failed:

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

Mr. Meyer moved, seconded by Mr. Carlson,	to affirm the finding of the Platting Board with respect to the first standard of the variance, <i>are there special circumstances or conditions affecting the property such that strict application of the provisions of the subdivision regulations would clearly be impractical, unreasonable or undesirable to the general public?</i>
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Ms. Kucko recommended the Assembly decide whether to address the issues of slope and lot depth separately or together. She reiterated the fact that the two have been linked by the appellant, the appellee and in the staff analysis.

Ms. Clementson moved, seconded by Mr. Wohlforth,	to divide the entire question between the lot slope and depth issues.
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Ms. Clementson said there was plenty of evidence in the record regarding one issue, lot depth, but not a lot regarding the slope issue.

Mr. Wohlforth added there may be a reason to have shallow lots, to preserve the natural drainage ways. However, he felt the argument about lot width was more difficult.

Ms. Abney thanked Mr. St. John for attending the Assembly meeting, and acting as the Assembly’s shadow. She wished him well in the future.

Mr. Meyer argued against dividing the question. He felt the two issues were similar enough to be discussed together.

Mr. Wuerch agreed. He felt based on the discussion so far, the two issues were closely intertwined, and it would be difficult to separate the question. He noted the question could be divided at some future point if necessary.

Ms. Clementson said there were arguments she could make on the slope issue that she would not use on the depth issue. She felt it would confuse the Assembly’s findings to tie the issues together. Also, it would be more clear if some issues were remanded back to the Platting Board.

Ms. Abney also argued in support of dividing the question, to ensure the record is clear.

Question was called on Ms. Clementson’s motion to divide the question and it failed:

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

Ms. Clementson noted the record states denial of the variance would result in more clear cutting and re-grading than that proposed under the current submittal. While there may be an argument for that regarding lot depth, she felt the same argument could not be made regarding the slope chart. The variance from the slope chart allows narrower lots, therefore more lots and more clearing. She felt granting the variance for the slope chart would leave less area covered by structures or pavement.

Mr. Wohlforth agreed. He could not determine from the record why the narrow lots are necessary.

Mr. Wuerch felt the Board’s decision could be affirmed, because of various evidence in the record, including testimony by Ms. O’Brien of staff. Also, the Planning Staff analysis characterizes the area as “steep slopes, with some natural drainage ways and wetlands....difficult to develop....the petitioner has attempted to minimize the adverse effects on these environmentally-sensitive areas....natural drainage is being protected.” He felt the evidence was in the record to support both questions of depth and slope. In response to Ms. Clementson, Mr. Wuerch clarified the slope chart on page 37 showed the resulting slopes after grading.

Ms. Clementson said without comparing the design results requiring the developer to meet the slope chart without a variance, there was not enough information to support a slope variance.

Mr. Wohlforth said a reason stated in the record for the variance, before page 137, was to enable development to its highest and best use. He felt that meant the greatest return for the developer, smaller lots and more houses. He felt this was not an adequate reason for granting a variance.

Ms. Clementson added the area is very steep, virtually alpine. There is a different standard for alpine development. The majority of the proposed lots are less than 4,000 square feet. She pointed out that is a size rarely used in modern developments. That size is one issue on flat land, but quite another in such a steep environment. She could not find any evidence in the record that the effect on the developer would be so negative as to justify deviation from the slope chart.

Mr. Kendall pointed out staff’s position in the record was the variance from the slope chart would preserve natural vegetation. Preserving that natural vegetation was also the goal of the enabling zoning ordinance for this land.

Mr. Meyer pointed out the application for the variance included several reasons, one of which was “allows the development of the highest quality homesites that would conform to the natural topography and impact the surrounding environment as little as possible.”

Ms. Clementson moved, to divide the question on Mr. Meyer’s motion with respect to
seconded by Mr. Wohlforth, the first standard of the variance, between lot depth and lot
slope.

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

Ms. Clementson said there was a lot of evidence in the record that natural vegetation would be saved, and a benefit to the community in general regarding the lot depth variance. However, there was not adequate evidence regarding the slope chart.

Mr. Kendall agreed there is not a preponderance of evidence with regard to the slope chart. There is concern about what the chart means. However, since there is not decisive evidence in the record, he felt the Assembly should defer to the judgment of the Platting Board and accept its findings for this variance.

Ms. Taylor moved, to reconsider Ms. Clementson’s motion to divide the question
seconded by Ms. Clementson, with respect to the first standard of the variance.

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

Ms. Clementson disagreed with Mr. Kendall. She felt since the record is silent on this issue, it would be impossible for the Assembly to affirm the Platting Board’s decision. Ms. Kucko has advised the Assembly to clarify its findings, which has not been done. She felt it was obvious there are no findings in this regard, and the proper action would be to remand it to the Platting Board with the request they make specific findings regarding the slope chart and how the variance meets this standard.

Mr. Wuerch argued there is evidence in the record, which he discussed earlier, on pages 10, 11, 14, 115, 118, 119 and 137 regarding the slope chart variance.

Question was called on Mr. Meyer’s motion to affirm the finding of the Platting Board with respect to the first standard of the variances on lot depth and slope and it passed:

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

Ms. Kucko said the second variance standard for lot depth and slope was *will the granting of the variance be detrimental to the public welfare or injurious to other property in the area in which the property is situated?*

Mr. Meyer moved,
seconded by Mr. Carlson,

to affirm the finding of the Platting Board with respect to the second standard of the variances, *will the granting of the variance be detrimental to the public welfare or injurious to other property in the area in which the property is situated?*

Mr. Wuerch recalled staff member Ms. O'Brien's testimony on pages 11, 12 and 14. He felt her testimony in summary said trying to preserve the natural vegetation and some of the existing drainage ways, and using biofiltration to treat overland runoff would produce a better subdivision from an aesthetic point of view, and from a water quality point of view. It is a trade-off between applying the subdivision standards to the letter, or preserving the natural environment and providing an aesthetic environment for future homeowners. He noted staff analysis on pages 115 and 118 speaks about "Tract E2 remaining an undisturbed natural vegetated buffer between the cul-de-sacs" and "natural drainage ways are protected by retaining them as undisturbed open spaces." He added the Assembly did experience uncertainty about above-the-road slopes, and whether they were as important as slopes below the road. He felt these citations support the motion to affirm.

Mr. Kendall read from page 99, under the Board's findings of fact: "denial of the variances would result in more extensive clear cutting and re-grading than that which is proposed under the current submittal."

Mr. Wohlforth pointed out there was no topographic map in the record, and no way to determine if the public welfare is being injured by the variance. He felt the question should be remanded so the Board can determine if the drainage swales are indeed being protected, or if they are being destroyed. There is no evidence that the public welfare is being protected by creating narrow lots.

Ms. Clementson noted on page 54, Board member Cannelos reminded the Board "they cannot approve the plat unless they are convinced it promotes the public health, safety and welfare." She did not feel that condition was met in this case, regarding the slope chart.

Question was called on Mr. Meyer's motion to affirm the finding of the Platting Board with respect to the second standard of variances for lot depth and slope and it passed:

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

NAYS: Taylor, Wohlforth, Clementson.

Ms. Kucko said the third variance standard for lot depth and slope was *will the variance have the effect of nullifying the intent and purpose of the subdivision regulations or the Comprehensive Plan of the Municipality?*

Mr. Carlson moved,
seconded by Mr. Wuerch,

to affirm the finding of the Platting Board with respect to the third standard of the variance, *will the variance have the effect of nullifying the intent and purpose of the subdivision regulations or the Comprehensive Plan of the Municipality?*

Mr. Kendall noted AO 84-101 addressed preservation of the natural vegetation in the area. Also, the proposed development meets the density requirements of that ordinance.

In response to Ms. Clementson, Ms. Kucko said it was acceptable to consider AO 84-101 in determining whether the standard has been met.

Ms. Clementson said Section 7, item 2 of AO 84-101 stated "development within areas of, or greater than, 30 percent slope shall be prohibited." She felt the ordinance as a whole attempted to address the condition of the site prior to construction, not after construction. By doing substantial re-grading, it impacts which areas are 30 percent or greater slope. She felt it does nullify and change it, and the Platting Board made that finding.

Mr. Kendall quoted Ms. O'Brien from page 15 of the record: "the plat doesn't include any 30 percent slope. The petitioner may provide to the Planning and Zoning Commission at a later date what does fall within the 30 percent slope."

Ms. Clementson said she interpreted that part of the record to mean the slope was 30 percent or greater before development, but not after. She felt the enabling ordinance restricted development in areas of 30 percent or greater slope in order to protect the sensitive area on slopes. She felt the 30 percent slope referred to the land prior to development, rather than after.

Mr. Wohlforth agreed the ordinance was written to protect the natural qualities of the land. He felt it would be absurd to say the developer has abided by the ordinance because the land is not steep, because the developer was the one to change the steep characteristics of the land.

Mr. Kendall read again from page 15: "in the current plat, it kept getting reduced because all areas of 30 percent or greater slope were eliminated. So those areas that are being re-graded are not 30 percent or greater slope. I believe you're referring to conditions number 20, that is prior to submission of further plats, because we know at this point that we will be entering into areas or plats that would be including areas that are 30 percent slope. It is a condition on further plans. Future plans. But it's a condition that they must go to the Commission and the Assembly to get an answer, rather than the Platting Board... But this plat doesn't include 30 percent slopes." Mr. Kendall felt in the beginning, Ms. O'Brien's was referring to the entire area, that does have some question of where the 30 percent slopes are, and then she says "this one doesn't."

Question was called on Mr. Carlson’s motion to affirm the Platting Board’s finding with respect to the third standard for variances of lot depth and slope and it passed:

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

Ms. Kucko said the fourth variance standard for lot depth and slope was *would undue hardship result from strict compliance with specific provisions or requirements of the subdivision regulations?*

Mr. Carlson moved, to affirm the finding of the Platting Board with respect to the
seconded by Mr. Meyer, fourth standard for the variances of lot depth and slope.

Mr. Carlson referred to Mr. O’Brien’s testimony on page 11. She says the standards could be met, but it would involve total re-grading and cut and fill. He added pages 14 and 118 also allude to this.

Question was called on Mr. Carlson’s motion to affirm the finding of the Platting Board with respect to the fourth standard for variances of lot depth and slope and it passed:

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

Ms. Kucko explained another item for consideration was not one of the variance standards, but a requirement that all variances must meet: *is the variance the minimum necessary that makes possible a reasonable use of the land equivalent to but not exceeding the use of similar land permitted generally in the same zoning district?*

Ms. Clementson moved, to remand to the Platting Board on the grounds there was no
seconded by Mr. Wohlforth, finding that this was the minimum variance possible.

Ms. Clementson noted the appellant stated the effect of a lesser variance would have been to reduce the number of lots, which is what the slope chart was intended for in a steeply sloped area.

Question was called on Ms. Clementson’s motion to remand to the Platting Board and it failed:

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

Mr. Carlson moved, to affirm the Platting Board’s finding with respect to the
seconded by Mr. Meyer, variance being the minimum necessary.

Mr. Carlson noted on page 118 there was evidence to support this finding. The lot depth variance affects nine lots and the slope chart variance affects only twenty-two lots, which he felt was the minimum to protect the natural vegetation.

Ms. Clementson argued twenty-two lots was almost the number of lots in the entire development. If they had required fewer lots, it would be closer to what was in the slope chart. She reminded her colleagues these lots are less than 4,000 square feet.

There was discussion on the actual number of lots in the development.

Mr. Bell noted the staff analysis was that the developer could meet the requirements if they graded differently. He argued they could have meet the requirements, but the grading required would destroy more of the vegetation. Therefore, the variance is justified in order to save the vegetation.

Mr. Wuerch supported the motion. He pointed out Tract E1 at the steepest part of the land acts as a buffer for runoff water from above. Another critical element is using biofiltration and keeping 1.7 acres in Tract E4 as undisturbed natural vegetation. He felt the developer has submitted a prudent plan in light of environmental issues. Therefore, the variance is the minimum to make the land use equivalent to the surrounding area.

Question was called on Mr. Carlson’s motion to affirm the finding of the Platting Board with respect to the minimum variance and it passed:

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

Ms. Abney moved, to extend the meeting to complete this item.
seconded by Mr. Kendall,
and it passed without
objection,

Ms. Kucko explained the **last issue** on appeal, raised by Eagle River Valley Community Council, was a challenge to the Platting Board’s findings regarding the traffic study. The challenge was that the Platting Board’s findings about the traffic impact analysis approved by Traffic Engineering in 1993 and submitted with the plat application were inconsistent with its findings numbers 9 and 18 that the plat which it approved would not adversely affect the proposed traffic study of a second access to Eagle River Loop Road. She advised the Assembly to address that issue, by deciding whether the findings are in conflict, or whether the 1993 traffic study met the zoning limitation requirements.

Mr. Meyer moved, to affirm the findings of the Platting Board regarding the
seconded by Mr. Carlson, traffic study.

Mr. Kendall pointed out the 1993 traffic study was completed as a result of the enabling ordinance, AO 84-101, which required a traffic impact analysis. He said this was the middle phase of the project, and the decision of where and when to place the second access is not addressed by this plat. It will be addressed by subsequent plats, where the traffic impact analysis will come into play. This plat is not germane to the location of the second access.

In response to Mr. Wohlforth, Ms. Kucko said it was her understanding that an in camera session, such as that held with the Assembly earlier today regarding this issue, was the same as an executive session in that discussions that take place in the session are not allowed to be disclosed.

Mr. Wohlforth asked if an Assembly member made a disclosure during the session which indicated that member's vote on an appeal might be improper, whether that information may be made public on the record.

Mr. Meyer asked if all or part of the appeal may be reconsidered by an Assembly member, within the 24-hour period for reconsideration of other Assembly actions.

Mr. Kendall noted the traffic impact analysis is addressed on pages 152, 157 through 213 and 162.

Chair Von Gemmingen read from the Municipal Code Title 21: "Decisions of the Board of Adjustment and the Zoning Board of Examiners and Appeals may be brought up for reconsideration or rehearing only if 1) there was substantial procedural error in the original proceeding, 2) the Board acted without jurisdiction in the original proceeding, or 3) the original decision was based upon fraud or misrepresentation. Any person seeking reconsideration or rehearing must file a request with the Municipal Clerk for a decision of the Board of Adjustment, or the secretary of the Board for the Zoning Board of Examiners and Appeals, together with materials supporting one or more of the grounds stated, within 15 days of the original decision. The Board, by majority vote, may schedule a rehearing only if it finds the allegations to be correct. A rehearing shall be conducted in the same manner as the original proceedings before the Board."

Mr. Wuerch thanked Ms. Kucko and Mr. Wohlforth for leading the Assembly through this tedious but orderly process. He felt the process was working well because of the in camera sessions with the Assembly's counsel. He recommended everyone destroy or return attorney-client privileged documents to Ms. Kucko.

Deputy Municipal Attorney Bill Greene said he spoke with Ms. Kucko regarding Mr. Wohlforth's question. He advised Ms. Kucko of standard past practice, although it is her responsibility to advise the Assembly in this case, because he was not present at the in camera session.

Ms. Kucko confirmed Mr. Greene's comments. Based on the information he relayed, she advised the Assembly they could either retire to another in camera session, or Mr. Wohlforth may halt pursuit of the matter. Mr. Wohlforth has elected to halt pursuit of the matter. She continued by addressing Mr. Meyer's question. The Assembly, when acting as the Board of Adjustment, is sitting as a judicial body in an appellate proceeding. Therefore, its actions may be reconsidered, but the 24-hour limit does not apply. As long as the reconsideration is timely and before any other actions on the case, it is allowed.

In response to Chair Von Gemmingen, Ms. Kucko confirmed another party may pursue reconsideration of the Assembly's action within 15 days as read from the Code earlier. She recommended Mr. Meyer amend the language of his motion to clarify that the Platting Board made two findings, and the position of the Assembly on the question of a conflict between these two findings. Alternately, the Assembly may choose to affirm the two studies separately.

Mr. Meyer moved, to amend his motion to state that the findings of the Platting
and it was accepted as a Board #9 and #18 regarding the traffic study are not in
friendly amendment conflict.

Question was called on Mr. Meyer's motion, as amended, to find the Platting Board findings #9 and #18 regarding the traffic study are not in conflict and it passed:

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

Mr. Meyer moved, immediate reconsideration of the Board of Adjustment's
seconded by Mr. Wuerch, actions on appeal S-10110, Eagle Crossing Subdivision.
and it was withdrawn,

Mr. Meyer said he wanted to avoid the possibility of a reconsideration in the near future on this item, to allow the developer to proceed without further delay. Since the issue has been before the Assembly for many months, he felt it had been examined carefully. He said ex parte rules might be inadvertently broken if the matter is pending.

Ms. Clementson explained reconsideration was used in one way by a legislative body and in a completely different way by a judge or adjudicative body. She pointed out after the last appeal considered by the Assembly, they learned they must keep ex parte rules in effect for 30 days after the action, because the losing party may appeal to Superior Court for 30 days. She felt the motion was improper.

Mr. Wohlforth felt the motion was out of order, because there were multiple votes on various points of the appeal.

Ms. Kucko felt the motion was improper, because the Assembly as a judicial body may change its decision at any time before another action on the appeal. She added the findings and conclusions for this appeal have not yet been compiled or approved.

Mr. Meyer withdrew his motion. Mr. Wuerch concurred.

14. **SPECIAL ORDERS:** See after item 9.C.
15. **ASSEMBLY COMMENTS:** None.
16. **UNFINISHED AGENDA:** None.
17. **AUDIENCE PARTICIPATION:** None.
18. **EXECUTIVE SESSIONS:** None.
19. **ADJOURNMENT:**

The meeting adjourned at 11:20 p.m.

Chairman

ATTEST:

Municipal Clerk

Date Minutes Approved: August 10, 1999

LF/db

INDEX

<i>Subject</i>	<i>Page</i>
97th Avenue Storm Drain.....	3
Airport Water Project.....	1, 4, 5
Alaska Energy Authority Power Revenue Bonds.....	3
Alley Paving Special Assessment District.....	9
Ambulances, Emergency Medical Service Data Collection Systems, Anchorage Cemetery, And Related Capital Improvements	2
Anchorage Municipal Employees Association Bargaining Agreement.....	2
Anchorage School District Budget	9
Anchorage Trails Commission.....	11
Appeal S-10110, Eagle Crossing Subdivision.....	11
Appeal S-10209 Goldenview Gate Subdivision.....	3
Appeal S-10236, East Addition To The Townsite Of Anchorage Subdivision	4
Ballot Proposition	1, 2, 4
Ballot Proposition	1, 2, 4
Board Of Adjustment Panel Separate From The Assembly	7
Bond Issuance	2, 4
Building Board	3
Coastal Trail.....	3, 5
Conditional Use For Sales Of Alcoholic Beverages	10
Conditional Use For Sales Of Alcoholic Beverages	10
Conflict Of Interest.....	10
Construction Contract Amendments	4
Design/Engineering Services	3
Eagle River Street Light Maintenance And Utility	3
Educational Capital Improvements.....	2, 4
Educational Capital Improvements.....	2, 4
Egan Center/Alaska Center For The Performing Arts Skybridge	1
Emergency Operations Center.....	2
Employee Benefits Consulting Services	3
Employee Relations Board	3, 5
Fire Department.....	2, 3
Fire Protection And Related Capital Improvements	2
General Government Operating Budget	6
Girdwood Valley Service Area Capital Improvements.....	2, 4
Heritage Land Bank.....	1
Jail Replacement	6
Job Training Partnership Act.....	3
Leased Space	3, 5
Legal Counsel - Board Of Adjustment.....	3
Legal Services Related To Pension Law Issues	3
Liquor License Protest.....	7
Liquor Licenses.....	3, 7
Litigation	
Gallion V. AP&FRS.....	3
Parks And Recreation And Related Capital Improvements	2
Pension Benefits Consulting Services	3
Police Department.....	3, 5
Road, Storm Drainage And Related Capital Improvements	1, 4
School Site Selection And Acquisition.....	7
Senior Citizens Advisory Commission.....	2
Senior Study	2
Ship Creek Trail Project.....	3, 5
Snow Removal And Road Maintenance Expenditures	3
Tax Exemption And Deferral For Deteriorated Property	3
Telecommunications Easement.....	1