MUNICIPALITY OF ANCHORAGE

SPECIAL ANCHORAGE ASSEMBLY MEETING ON THE EAGLE CROSSING BOARD OF ADJUSTMENT APPEAL

Minutes for Special Meeting of July 24, 2001

1. CALL TO ORDER:

The meeting was convened at 1:15 p.m. in the Assembly Chambers, 3600 Denali, Anchorage, Alaska.

2. ROLL CALL:

Present: Anna Fairclough, Dan Sullivan, Fay Von Gemmingen, Melinda Taylor, Doug Van Etten, Dick Traini, Dan Kendall, Janice Shamberg, Dick Tremaine.
Absent: Allan Tesche (excused), Cheryl Clementson.

3. BOARD OF ADJUSTMENT/ASSEMBLY APPEALS

Appeal S-10625, **Eagle Crossing Subdivision, Clerk's Office.**
(POSTPONED FROM 4-24-01, 5-15-01, AND 5-22-01, CARRIED OVER FROM 6-5-01; 6-18-01 SPECIAL MEETING WAS RECESSED TO 6-19-01; NOT RECONVENED 6-19-01)

Mr. Kendall said any motions to postpone action should be considered before they spent time on the issue. There were no motions to postpone action.

ISSUE #5

Ms. Kucko said the Assembly had voted on whether or not finding of facts 64 and 66 were supported by the evidence. A decision has not been made on whether there was a procedural error or error in the application of law.

Chairman Traini said there was a motion on the floor that was moved by Mr. Kendall and seconded by Mr. Sullivan to remand item #5 to the Platting Board for a finding on the record regarding the minimum variance issue.

Mr. Kendall pointed out that "minimal" was not defined in the code. You can either grant a variance or not grant a variance. You can grant one or more variances, but you cannot grant half of a variance. In this instance the word minimal means you approve the variances that are necessary for the overall code of the plat. He felt the appellant was trying to make the case that the Platting Board did not look at any other variances. There were no other variances before the Platting Board and the Board of Adjustment can only consider what is before it. He felt the Platting Board made the necessary minimum action on the variance that was applied for.

In response to Ms. Von Gemmingen, Ms. Kucko said the issue currently before the Assembly was AMC 21.15.010.A, which provides that any variance should be the minimum variance that would make possible a reasonable use of the land equivalent to, but not exceeding, the use of similar land permitted generally in the same zoning district. The appellant states there was an error in the application of law or a procedural error, because the Platting Board did not make that finding. The Assembly needs to decide whether or not they need to make that finding. If they decide that finding was required then they need to determine if it was made either expressly or implicitly.

Question was called on the motion to remand to the Platting Board for a finding on the record regarding the minimum variance issue and it failed:

AYES: Fairclough.
NAYS: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Kendall, Shamberg, Tremaine.

ISSUE #6

Ms. Kucko said the first part to issue #6 was whether there was a procedural error or error in applications of law. The second part is the finding of fact was alleged to not be supported by the evidence. This deals with a preliminary plat approval without finding that the preliminary plat promotes public health, safety and welfare. The appellant's position is that there were no findings of loss less than 3,000 square feet to promote public health, safety and welfare and that if there was any such finding then there was no evidence in the record. She suggested discussing each issue separately. The finding of fact was whether there were any findings of loss with an area of less than 3,000 square feet to promote public health, safety and welfare. The procedural error, or error in application of law, is that there was no such finding made, even though AMC 21.75.010.A.2 provides that the planning authority may approve a preliminary or final plat only if it finds that the plat promotes the public health, safety and welfare. The Assembly needs to decide whether that type of finding is required. If it is required, the Assembly needs to determine if it was made. If it is not required to be explicit, the Assembly needs to determine if it was implicitly made.

Mr. Kendall moved, seconded by Mr. Sullivan, that the plat approval by the Platting Board, by their very nature, promotes public health, safety and welfare and they did not have procedural error and to approve the Platting Board's decision.

Mr. Kendall moved, seconded by Ms. Fairclough, to change his motion to remand to the Platting Board that they did not have substantial evidence to promote public health, safety and welfare.

Mr. Kendall said the Platting Board was charged with the concept that all plats and approvals should promote the general health and safety of the community. They conditioned the plat on multiple conditions that are listed on page 635-642. Their findings of facts in the previous pages enumerate their findings that it could be developed in a safe manner. They looked at all of the issues in this case. He felt they should affirm the Platting Board's decision and urged a no vote.

Ms. Fairclough said the Assembly should determine whether it needed to be implicit or explicit. If you feel it needs to be explicit, then you should follow Mr. Kendall's recommendation. If you feel it needs to be explicit, then you need to vote yes to remand. It was her opinion that the entire subdivision did not promote public health, let alone safety or welfare. Within the document the Planning Department tells us that the roads are too steep. We are approving lots that are smaller than sizes of mobile home park~~ing~~ lot standards. She believed it was referred to implicitly, but not explicitly. She encouraged a yes vote to remand.

Mr. Tremaine said there were certain aspects of this subdivision that he did not believe was up to the welfare standards for the public. Some of this was done implicitly and some explicitly. He agreed that the matter should be remanded.

Mr. Van Etten said he would vote no on the motion. He felt it was important to separate the implicit versus explicit expectation from the other issues. He agreed with Mr. Kendall's statement that the Platting Board was implicitly stating that the health and safety issues had been met by their approval.

The meeting recessed at 1:35 p.m. and reconvened at 1:40 p.m.

Question was called on the motion to remand to the Platting Board that they did not have substantial evidence to promote public health, safety and welfare and it failed:

AYES: Fairclough, Taylor, Shamberg, Tremaine.
NAYS: Sullivan, Von Gemmingen, Van Etten, Traini, Kendall.

Ms. Kucko said the decision was that there was no procedural error and there did not have to be an explicit finding made on this issue and it could be implicit. She felt the discussion made it confusing about the actual underlying finding. She felt there should be a motion dealing with whether or not the implicit finding of fact that lots within an area of less than 3,000 square feet promoted public health, safety and welfare as supported by evidence in the record.

Mr. Sullivan moved, seconded by Mr. Kendall, that the implicit finding of fact that lots in this subdivision promotes public health, safety and welfare was not supported by the evidence in the record.

In response to Ms. Fairclough, Ms. Kucko said a yes vote would remand it back to the Platting Board and a no vote would not remand it back to the Platting Board.

Mr. Sullivan said they were deciding if there was an error in the application of the law. The question was whether or not it has to be explicit or implicit. A reading of the code shows that there is no requirement for explicit findings and the approval of the plat alone was implicit in determining the health and welfare in the size of the lots. He felt a no vote was appropriate.

Mr. Kendall said that for cluster housing standards in AMC 21.50.200, you have to establish a minimum size for cluster developments. There was no magic numbers such as 3,000 square feet. That was an arbitrary number that the appellant used as their standard rather than the standard of the code.

In response to Mr. Tremaine, Ms. Kucko said they were judging whether they used the facts appropriately and it had nothing to do with whether it was implicit or explicit. This motion focuses on whether they agreed that the facts supported the decision.

Mr. Tremaine said they needed to consider all three aspects of public health, safety and welfare. Some of these are nebulous, some are qualitative and some are more easily discussed qualitatively than quantitatively. We are dealing in an area of steep terrain with small lots that are topographically challenged. There is a lot of good in this that promotes public health, safety and welfare. However, due to the topography of the area, there are inherent hazards. Those hazards focus on streets and lot sizes. There is danger for children, people, and people transited. He did not feel that the facts supported this and he felt it should be remanded.

Question was called on the motion that the implicit finding of fact that lots in this subdivision promotes public health, safety and welfare was not supported by the evidence in the record and it failed:

AYES: Fairclough, Shamberg, Tremaine.
NAYS: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Kendall.

ISSUE #7

Ms. Kucko said the alleged error was an error in application of law that had to do with the preliminary plats being approved without properly addressing transitioning. The allegation was that the plat proposed a corner of a 5,427 square foot lot above a five-acre single family home. The code requires that the planning authority may approve a preliminary or final plat only when the plats mitigates the effects of incompatibilities between the land uses or residential densities in the subdivision and land uses in residential densities in the surrounding neighborhood including, but not limited to, visual, noise, traffic and

environmental effects. The allegation of error is that there was an error in application of law because the Platting Board failed to make any findings on this issue.

Mr. Kendall moved, seconded by Mr. Sullivan, to remand to the Platting Board issue #7, preliminary plat approval without properly addressing transition.

Ms. Fairclough felt that there was error in application of the law. She agreed with Eagle Crossing's position that there was no legal error or requirement that buffering was mandatory, because Collector Status (ph) Road is planned to go through there. There is a road that runs adjacent to the five-acre tract and a buffering should have been allowed with the topography. The road easement crosses a stream and runs contiguously along the section line. The R-1 residence is a single-family five-acre tract that should have had something at least addressed in the public testimony. She did not feel there was an actual procedure error, but she felt there was an application error in law. The developer was not required by Municipal code under an R-1-A to provide a buffer, but it would have been to his benefit as well as the single-family residence.

Mr. Kendall said the Hillside transition buffer did not apply in this case. The Hillside transition buffer was meant for the R-6, R-7 and more urban subdivision. This is zoned R-3 and the five-acre tract in question is zoned R-1-A, which are both urban improvement areas. He felt there was no error in application of the law.

Mr. Tremaine said he agreed with Ms. Fairclough's argument, but not her conclusion. He felt the privacy of the people who owned the five-acre tract would be violated. We have transition zones on the Hillside, but it is not applicable in Eagle River. R-1 and R-3, which is the zonings for these parcels, do not require buffering other than under special circumstances. He felt this was unfortunate, but not an error in the application of the law. He would be voting no on the motion.

Ms. Fairclough said it was fine to classify R-1 and R-3 as urban, but five-acre tracts are not urban. When the developer is going in beside a five-acre parcel, she felt the Platting Board should have made an effort to shelter the landowner. The five-acre parcel is a large rural parcel. It is not urban whether the zoning says it is or not. She would be voting yes on the motion.

In response to Ms. Shamberg, Chairman Traini cautioned them to only consider what was in the record.

In response to Ms. Shamberg, Ms. Fairclough said if you were standing in the subdivision, the elementary school would be to the right. This is the only five-acre tract that is adjacent to this particular section. There are other parcels adjacent to the entire subdivision, but not where this road is going.

Question was called on the motion to remand to the Platting Board concerning issue #7, preliminary plat approval without properly addressing transition and it failed:

AYES: None.
NAYS: Fairclough, Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Kendall, Shamberg, Tremaine.

ISSUE #8

Ms. Kucko said the alleged errors in error in application of the law AMC 21.05.080.D.2.D provides that subdivisions shall conform to the generalized residential intensity maps except where the approving authority finds that a lesser residential intensity would provide a clear and overriding benefit to the surrounding neighborhood. The allegation is that the Platting Board erred by assuming that the residential density map contained in the Chugiak/Eagle River Comprehensive Plan did not allow a plat at a lower density. The allegation is that the board assumed it was required to accept a plat that achieved close to maximum density and that the board erred in concluding that 3.47 line units per acre was well below the 20 dwelling units per acre allowed under cluster housing development standards.

Mr. Kendall moved, seconded by Mr. Sullivan, to remand to the Platting Board for error of application of law related to item #8 regarding density.

Mr. Kendall referenced page 523, the third paragraph. One of the concerns for this plat was density. This property is environmentally challenged. It has significant wetlands and slopes. Fifty-three percent of this site is being preserved as open space in tracts T-1 through T-12, as well as the unnamed tract. The proposed 733 dwelling spaces yields a gross average density of 3.47 dwellings per acre, which is within the limitations established by the underlying zoning. It is also within the recommended density of the Chugiak/Eagle River Comprehensive Plan. It is also well under the density that is allowed under the cluster housing development standards. It is within the limitations established by the straight R-3 zoning. The Platting Board also addressed this on page 625 where they added a condition that would limit the average density to four dwelling units per acre within the clustering of the units permitted. They have addressed the density issues. As stated on page 523 it is within the limitations of the Comprehensive Plan and the zoning restrictions.

Question was called on the motion to remand to the Platting Board for error of application of laws related to item #8 regarding density and it failed:

AYES: None.
NAYS: Fairclough, Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Kendall, Shamberg, Tremaine.

ISSUE #9

Chairman Traini said item #9 was a multi-phased approval. ERVCC did not identify this is one of its issues on appeal; however, it was addressed in the briefing. Presumably this alleged error would be an error in application of law.

Ms. Fairclough said the Assembly should discuss whether it would be appropriate for them to look at this issue. Our attorneys advised us that we could. The Eagle Crossing position is that it was not defined by the appellant and we should not

consider it. She felt they should vote on whether this issue should be brought before the Assembly since it was not a question on the initial appeal.

Ms. Kucko felt the Assembly should address whether or not they wanted to take it up on appeal, because it was not identified as an issue on appeal, but it was addressed in the briefing.

Mr. Sullivan moved, that the Board decline consideration of item #9 as an issue.
seconded by Mr. Kendall,

Ms. Fairclough felt this would set a precedence where they would be challenged on future cases by talking about a situation that was not specifically listed in an appeal. On future appeals they would need to discuss every aspect and determine if there were any sub-issues. She did not feel they should address the issue, because it was not listed in the appeal. She would have supported it, because 60 months is a long time to leave a plat hanging out there with an open window. However, since there was not an item number on there, she felt they were setting a precedence for any future appeals to broaden the scope of what they would have to address.

Mr. Sullivan agreed with Ms. Fairclough. They were dealing with appeals very specific to those items that were formally appealed within the proper time frame and the proper format. If we start veering from that issue, we will find ourselves in more difficulty. These are difficult enough without straying from the direct appeal points.

Ms. Fairclough praised Ms. Kucko, because this was the best laid out appeal that she has ever encountered in the Assembly.

Chairman Traini pointed out that a yes vote would support the motion and the Assembly would not take up the issue.

Question was called on the motion that the Board decline consideration of item #9 as an issue and it passed:

AYES: Fairclough, Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Kendall, Shamberg, Tremaine.
NAYS: None.

Mr. Kendall pointed out that they voted on issue #2 without making any findings on the record. He questioned if they could go back and reconsider the vote.

Chairman Traini said Ms. Fairclough made a motion to remand issue #2 and it passed 8 to 2.

Ms. Fairclough said under the normal parliamentary procedures of Robert's Rules of Order, if an Assemblymember is on the prevailing side of a motion in a regular session then they can choose to reconsider it at a future date whether that night or within 24 hours. She did not think Mr. Kendall nor Mr. Sullivan could move to reconsider, because they were not on the prevailing side.

Mr. Kendall said previous attorneys had advised them that any member could reconsider any motion at any time. We can discuss it, re-discuss it and make contradictory motions before we make the proof of findings and fact, which closes the issue.

The meeting recessed at 2:00 p.m. and reconvened at 2:05 p.m.

Ms. Kucko referenced AMC 21.30.171.C, which talks about reconsidering decisions of the Board of Adjustments and provides certain guidelines. It appears to be talking about reconsidering a final decision that has been adopted where the findings of fact and conclusions of law have been issued. As a judicial board, she felt it was all right to reconsider any issue that had been looked at. The Assembly can change their minds as often as needed until adopting the findings of facts and conclusions of law. She would not call it a reconsideration, because that implies that there was been a decision that had been adopted with findings. It was more of an examination of what had been done and deciding if anything should be changed. The new decision would supercede the prior decision.

Ms. Von Gemmingen moved, to reconsider issue #2, which is preliminary plat approval
seconded by Mr. Kendall, without preliminary drainage analysis being submitted with preliminary plat application.

Mr. Kendall said the appellant alleges that in submitting the preliminary plat application the subdivider filed the following items with the Department of Planning and Zoning at least 30 days prior to the regular meeting of the platting authority at which the plat was being considered. He referenced page 130 of the packet, which was a letter from Professional Technical Services, Inc. dated August 7, 2000. Item #7 states a full copy of the drainage plan, which was received August 7. The Platting Board heard this issue in November.

Mr. Kendall referenced page 20, the second paragraph from the bottom, which talks about the Chugiak/Eagle River rural service area. Under return comments it says Chugiak/Birchwood/Eagle River rural road service area stated that the drain swells must be sufficient to accommodate snow storage and additional snow storage areas along the right-of-ways should be required. They looked at the drainage plan presented at their meeting, which was prior to the Platting Board meeting. Staff comments are addressed on page 21. Surface drainage flows in a north/south direction. Drainage will be handled through a combination of storm pipes and grass line drainage swells. The application states that this will have a two-fold benefit, the first being the water quality on the downstream side. Secondly, the water velocity and quantity will be reduced significantly at the storm water treatment centers along the southside of this development. In areas of high ground water, a sub-drain system within the roadway and around each building site will be required. Provisions of this have been made in our conceptual storm drain plans. These sub-drain systems are planned to supplement, and not replace, the roadside ditches. That was dated 9-6-2000. It was addressed and the staff received the plan at the meeting. As part of the staff presentation on page 525, it says as mentioned before the drain is supposed to be handled by a combination of storm pipes and drainage swells. Street maintenance has expressed concerns that the drainage swells need to be adequate to accommodate snow storage, because there is no snow removal. Street maintenance is also concerned about the slope of the drainage swells, that

the slopes be such that it would preserve the integrity of those drainage swells and that they would continue to function over time. Public Works has also stated that rock line drainage swells may be required in some places to slow the velocity of the water. The actual location of drafts versus rock line would need to be determined in the final plans. Developments of plans are submitted for land use permits. It is also addressed page 569 in a question and answer session between Boardmember Deek (ph) and Mr. Palmer. Mr. Kendall said the Board looked at an extensive plan and the drainage is indicated on the provided maps. The drainage system is an integral part of the road system. There is a stamped letter from the developer saying he did provide a drainage plan. He felt there had been no error in the application of law. He urged a yes vote for reconsideration.

Mr. Sullivan said they were dealing with reconsideration and he did not believe it required a vote. The reconsideration merely puts it back on the table for discussion and it would lend itself to a motion to either remand or not remand. He did not believe they needed to vote on reconsideration.

Ms. Kucko said there was a motion to reconsider on the table and she felt that should be voted on.

Ms. Fairclough said the concern was that due to the limited number of Assemblymembers present, Mr. Kendall could get a five-four split and then the motion would be not to reconsider at that point. Mr. Sullivan's argument was that he did not need a vote to reconsider, because it had already been remanded.

Mr. Kendall said his understanding of what was said previously was that they did not have to reconsider something and they could just make a motion that would automatically countermand the previous motion.

Ms. Kucko said as a judicial body that decides to change its mind, it will show up in the vote on the underlying issue. Her advice was they did not need to reconsider it first. She felt it would be easier to go right to the heart of the motion and move to remand issue #2.

Ms. Von Gemmingen said she would take her motion off the floor.

Ms. Fairclough objected because when this was discussed in the May meeting they had a full body and now they do not.

Ms. Kucko said Ms. Fairclough could bring the issue up again at the next meeting and alter the newest decision.

Ms. Fairclough said once they voted then it was no longer quasi-judicial and they could talk to people about it. Once they voted and either remand or did not remand, the appeal was no longer in front of them.

Ms. Kucko said the appeal was before them until they have adopted findings of fact and conclusions of law. Until the final step has been made, everything is subject to change.

Mr. Tremaine did not like the concept of revisiting motions and overstepping them with new motions. We need to have some rules that we follow. Rules are very complicated and comprehensive. He would prefer to follow the House of Commons and Parliament.

In response to Mr. Sullivan, Ms. Kucko said what had been done in the past was she adopted findings of fact and conclusions of law, which then comes back before the Assembly to be revisited one more time before the final findings of facts and conclusions of laws was approved.

Chairman Traini ruled that they would follow legal counsel's advice. We use Robert's Rules of Order when we are in an Assembly format, but we are in a different format for this case. We are not acting as the Assembly, but as a quasi-judicial board. He ruled that they did not need a reconsideration motion. When the attorney brings the findings of facts and applications of law before the full Assembly, we can go back and address these issues.

In response to Mr. Tremaine, Chairman Traini said no other points of Robert's Rules of Order had been thrown out. Only this issue had been changed on advice of legal counsel.

Mr. Sullivan moved, to remand item #2 back to the Platting Board.
seconded by Mr. Kendall,

Mr. Fairclough said previously on an 8 to 2 vote this was supported as being remanded. She urged a yes vote to remand. Mr. Kendall cited a letter in the packet on page 121 where Mr. Brown said there was a full copy of the drainage plan enclosed. When the Platting Board took up this case there was no drainage plan in front of the public or the Platting Board at the time of that discussion. Previous drainage problems are listed on pages A-12 and B-15. On page 574 in Mr. Penney's testimony he tells us that the developer tried to tell us about drainage plans. On page 463 it is addressed again. In no place is there an explicit drainage plan in front of the pubic for the public to comment on. The purpose of having the drainage plan in the preliminary stage is so the community can review it and point out specific problems that the developer might not be aware of that might be encountered. The letter dated August 7 has no meaning, because it was not in front of the body. All the facts indicate that there was no drainage plan in front of the Platting Board. The board members acknowledge that through their testimony. Even Margaret O'Brien acknowledges that it appears that these problems are being addressed. The community's problem was that there was no opportunity for them to give informed comments. The reason the community actually filed the appeal was that this particular parcel was challenged topographically. It has lots of wetlands. Because of the variances and other things involved in this application, they were very concerned with the drainage. The Assembly agreed, with two no votes, that it was not addressed and it was not before them. None of that has changed. It might appear convenient not to find facts for this particular issue, because they have not found them on anything else. The drainage plan was not in front of the public and the public needs to be given the opportunity to comment. This would allow the developer to go forward with a sound development that consists of a drainage plan that would promote the public safety, health and welfare of that community.

Ms. Von Gemmingen agreed with Ms. Fairclough on this issue. She felt it needed to be remanded. The information indicates that this was not attached to the plat so people could review it and comment on it. She felt this was a critical issue to the entire subdivision. If an adequate drainage plan was not included then we have a serious omission and it needs to be remanded.

Mr. Tremaine referenced the May 4 letter from the attorney. The summary statement said the Board of Adjustment could find that the omission was a harmless error or it could remand the matter. By advice of our own attorney, there was an error. He said he would stand with their previous recommendation to remand.

Ms. Fairclough moved, seconded by Ms. Von Gemmingen, to substitute motion to remand to the Platting Board the issue of preliminary plat approval without preliminary drainage analysis being submitted with the preliminary plat and reopen public testimony on the drainage plan only.

Ms. Fairclough said it was her understanding that public testimony was not necessarily reopened just because something was remanded back to the Platting Board. The intention of the appeal was that the public in this development wanted an opportunity to tell where there was water flow problems.

Ms. Shamberg spoke in favor of the motion to substitute. South Anchorage deals with a lot of the same type of topographical issues and drainage problems. People who live in the area are more aware of, and can speak to, problems that can lead to serious health issues in the future.

Mr. Sullivan moved, seconded by Mr. Kendall, and it passed without objections, to accept the substitution motion as a friendly amendment to the motion.

Chairman Traini pointed out that the issue they were now dealing with was to remand this back to the Platting Board and explicitly require them to conduct public testimony on the drainage plan.

Mr. Kendall said the concern was whether or not the drainage plan was in the public record for the public to review. He referenced a letter on page 281 from Chris Ingmanson in care of the Chugiak/Birchwood/Eagle River Road Service Area Board of Supervisors dated August 7, 2000. The board would have had to meet prior to this date in order to have the chairman address the issue. Item 2 says both lower and upper roadside ditches should be adequate for snow storage and runoff. Item 3 says snow removal of driveway culvert clearing responsibility was to be addressed within the homeowner association agreement. It appears from this letter that the Road Service Area Board of Supervisors addressed it at one of their meetings prior to August 7. The drainage plan certainly was in the public record as far as the road service area is concerned, which includes the Eagle Crossing subdivision as proposed. This indicates that it was in the public record prior to the public hearing date before the Platting Board.

Ms. Fairclough asked everyone to review 281, which does not say anything about drainage.

Ms. Shamberg felt in this situation, given all the other topographical factors, drainage is too important to overlook. It is a very critical factor and required public input to insure the health and safety of the people who would ultimately be living there and the people below them.

Mr. Tremaine reiterated that the attorney has advised them that there was an error made and he saw nothing to contradict that.

Mr. Kendall referenced the Board's findings on page 628. The Board found that drainage swales were proposed on both sides of the roadways. On page 629, the Board found that drainage would be handled through a combination of storm pipes and grass line drainage swales. On page 631, the Board found that the Public Works had encouraged the public to propose designs of the drainage system as a viable way to treat storm water runoff. On page 636 addresses the need for drainage easements and drainage improvements to adequately analyze impacts. He felt the Platting Board put adequate conditions on this and he felt the Board had adequately covered it. He did not feel they should remand it.

Ms. Fairclough said all of Mr. Kendall's quotes were from comments made by the developer and to support the document, but the drainage plan was not in front of the Platting Board or the public.

Mr. Sullivan said there were numerous instances where the Board, in reviewing the documentation put forth by the developer, found sufficient planning regarding drainage and they felt they could approve the preliminary plat. He felt this was a fairly common practice that if you submitted enough information then you could put conditions on getting a final plat. Part of those conditions is that you flush out your original plan and your preliminary plan, which is what they have done in this case. There are four or five pages in the findings of facts that shows that the Board considered the drainage very seriously. As a condition of getting the final plat, the concerns have to be satisfied. It is standard procedure for the Platting Board to grant a conditional plat. Once those conditions are satisfied, they issue a final plat. The burden has been placed on the developer to follow through on some of the concerns that they had. This shows that they gave it great consideration throughout the record.

Chairman Traini said the problem he saw with this was that it was not mandatorily submitted.

Mr. Kendall said the letter he read regarding the timely submittal of the drainage plan was dated within more than 30 days of the public hearing and it should not be an issue because it was filed in a timely manner. We have a letter that was submitted and stamped by staff as received.

Ms. Fairclough said it could have been clear if they saw the preliminary drainage plan, which was not there because there was not one.

Question was called on the motion to remand issue #2 to the Platting Board and conduct a public hearing on the drainage plan and it passed:

AYES: Fairclough, Von Gemmingen, Taylor, Van Etten, Traini, Shamberg, Tremaine.
NAYS: Sullivan, Kendall.

In response to Mr. Kendall, Ms. Kucko said they were still not permitted to talk about this publicly until they do their findings of facts.

Mr. Tremaine moved, to remand item #1 to the Platting Board.
seconded by Ms. Fairclough,

Mr. Tremaine referenced the summary on page 5 of the May 4 memo from the attorney. We can decide whether this was a harmless error or remand. The attorney's opinion, and the facts support, that the homeowners association documents were not submitted. On page 3 of that memo is the applicable code provision. He quoted AMC 21.15.110.B.4.D. He felt it was clear that it was mandatory language and it was not followed. He felt it should be remanded.

Ms. Von Gemmingen did not agree with Mr. Tremaine. She felt it was a harmless error. The homeowners' association documents are not enforceable in any way by the municipality. She did not see where that would be an absolute requirement. She agreed that the wording said it "shall" be done, but she felt it was a harmless error. She would not support the motion.

Mr. Sullivan said the Board of Adjustment could remand if there was substantial procedural error. This was not a substantial procedural error. It was a harmless error. There are degrees of error and in this case this is a very minor degree of error as opposed to a substantial procedural error. The language that guides us in remanding says substantial procedural error, which he did not feel was the case in item #1.

Mr. Tremaine said one could initially think of this as a harmless error. The municipality does not enforce homeowners' covenants, but they are enforced by civil law, who are the ones that provide protection for the homeowners within the community and for those surrounding the community. There are sub-development homeowners' association documents that talk about buffer zones and those documents are important to the neighborhood and the surrounding neighborhood and they should be part of the plat application process. These covenants protect the integrity of our neighborhoods. Without having a chance to look at them, we cannot judge whether they are sufficient or not. It is the city's practice, on the part of the Board, not to require what is mandated. We made the law; therefore, it is not harmless and it becomes a very bad practice. He supported a remand of item #1.

Mr. Sullivan said an establishment of a homeowners association was one of the conditions. It was considered by the Board and made a condition of the final plat. Page 640, under items 19 and 20 in the findings of facts, addresses this issue and they make it very clear that this has to be submitted.

Ms. Fairclough said the whole opportunity of offering a public hearing is to get the benefit of those that are having to live under those laws an opportunity to comment. When a homeowners association, which is required by law, shall be submitted and was not, it is in direct violation of the law. You can choose to believe that it is a minor infraction or that it is a large infraction. She felt it was a large infraction in the previous vote. This is an enormous amount of acreage that the homeowners association is being charged with the responsibility for. If those people in charge and responsible for it do not even know how they exist as a homeowners association; there is a partially functioning homeowners association. Because of the trauma that this subdivision has been through on previous issues, they are a functioning homeowners association. The existing homeowners association does not know how it interacts with the future homeowners association, because it is developed in phases. When the people testified in front of the Platting Board, they said they did not know what the developer has going. There is a functioning homeowners association functioning inside of a specific boundary. Sara Wright, who was on the Board of the Eagle Crossing Homeowners Association, said she was not aware of how the two would interact between each other, which was a concern of the homeowners association.

Ms Fairclough continued by quoting from page 539: there are comments made about envisioning and the developer talked about how he envisioned the homeowners associations to interact together. Envisioning does not help people in the current homeowners associations lobby for rights into how it is going to interact into the entire homeowners association. On page 542, no hauling, playground equipment, picnic tables and barbecues are addressed. The homeowners association would be responsible for it, but the community has no way within the envisioning process to know how they should testify in the preliminary plat level or to the developer on how they would want to modify the homeowners association so that they could actually help the developer form something that would work since they are actually working through the process themselves. One page 544, the homeowners association is responsible for the upkeep on mounding, berming and parking. The developer said they are committed to building the amenities, but they cannot provide the homeowners association or the people that are in front of them testifying as to who would maintain those benefits and how they would be responsible for them.

Ms. Fairclough continues, on page 463 in the yellow volume 1, it says a certain number of trees would be purchased on the property. The common driveway access on page 537 discusses that the homeowners association and not the Municipality of Anchorage would provide snow removal. What is envisioned or how it would all work together, it is not laid out. She felt the purpose of a homeowners association being required as part of the preliminary plat process is that if there is a problem in how the homeowners association is going to function then the public would be given the opportunity to address those problems with the developer and the Platting Board so that when it came to final plat there would not be a confrontation and it could be approved. What we are giving the public now is when we get preliminary plats is when they are expected to fight for their homeowners association and how it will work. She did not believe that was not the proper sequence of events. You have a developer that has an enormous resource invested into the project and a few homeowners saying this is not function yet. Because the developer has waited so long, the Platting Board is going to lend a higher regard to the developer.

Ms. Fairclough asked everyone to consider whether they would hold up the process to work out a homeowners' association deal or would they think it was a civil matter that could be worked out between the homeowners, the association and the

developer. She did not believe that was the right process. The process was that they had an opportunity to comment at the preliminary plat. She felt the Platting Board had procedurally made an error in not applying a law that is mandated that a homeowners association document be provided to the public at the preliminary point so that discussion could transpire between the two entities to develop a document that would be successful for both the developer and the subdivision.

Mr. Kendall referenced a discussion on page 539 between Board member Penny and Mr. Gamble. Mr. Gamble stated on the record that there was a homeowners association present. As a part of the Board's conditions on page 640, it required that there be a homeowners association. He felt the homeowners association was a boilerplate type of issue. A homeowners association is required and the Board addressed it. He did not feel it was an error that should be remanded.

Mr. Sullivan said Mr. Gamble stated that they had created a homeowners association and he felt Mr. Gamble would have supplied that document to anyone that wanted to see it. It was also required as a condition in the findings of fact. He did not feel this was a substantial procedural error.

Ms. Fairclough pointed out that when the developer said they created a homeowners association, right before that they said they envisioned a homeowners association. This is what tells us specifically that a mandatory item has not been followed. He said "we envision to have" and there is nothing for the public to comment on a vision. She believed the Platting Board has erred specific to this case in that they are setting aside their responsibility to require the documents up front and leaving it to be dealt with at the end, which is not the law. She urged everyone to vote yes on the motion.

Mr. Tremaine said they were being asked to believe in the assurances that there will be a homeowners association. There will be a homeowners association, because the Platting Board will require one. The question before the Assembly is whether or not they were filed 30 days ahead of time and they were not. The only question is whether or not it was harmless. He felt it was not harmless and a yes vote on the motion would be required.

Ms. Fairclough moved, seconded by Mr. Tremaine, and it was accepted by the maker of the motion. a friendly amendment to add a public hearing process if the motion should pass so that the community has an opportunity to comment on the homeowners association.

Question was called on the motion to remand item #1 to the Platting Board and schedule a public hearing and it failed:

AYES: Fairclough, Taylor, Van Etten, Shamberg, Tremaine.
NAYS: Sullivan, Von Gemmingen, Traini, Kendall.

In response to Chairman Traini, Ms. Kucko said there was nothing else the Assembly needed to do today. She would write up the findings and provide them to the Assembly by August 14, 2001.

4. ADJOURNMENT:

Chairman Traini adjourned the meeting at 3:00 p.m.

_____
Chairman

ATTEST:

_____
Municipal Clerk

Date Minutes Approved: December 18, 2001

VMC/gkron