

MUNICIPALITY OF ANCHORAGE

ANCHORAGE ASSEMBLY

Minutes for Special Meeting of May 22, 2001

1. CALL TO ORDER:

The meeting was convened at 4:00 p.m. by Assembly Chair Traini in the Assembly Chambers, 3600 Denali, Anchorage, Alaska.

2. ROLL CALL:

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

Absent: None.

3. BOARD OF ADJUSTMENT/ASSEMBLY APPEALS:

- A. Appeal S-10625, Eagle Crossing Subdivision, Clerk's Office.
(POSTPONED FROM 4-24-01 AND 5-15-01)

Mr. Tesche declared a conflict of interest in this matter.

Mr. Tremaine moved, that Mr. Tesche had a conflict of interest.
seconded by Ms. Taylor

Mr. Tesche explained that for two to three years he had assisted separate counsel for the group known as the Concerned Citizens of Eagle River Valley in connection with a separate lawsuit, which was a civil action pending before the trial courts and the Supreme Court of the State of Alaska. That lawsuit had nothing to do with the subject matter of case S-10625. He did, however, remain co-counsel in the trial court proceeding in the other matter. After consultation with Municipal Attorney Bill Greene, he wished to advise the Assembly of this conflict. He indicated that he and Mr. Greene agree he should not participate in this matter because it is a quasi-judicial proceeding. Assistant Municipal Attorney Dennis Wheeler expressed concurrence in this opinion.

In response to a question from Mr. Kendall, Assembly counsel Sally Kucko indicated AMC 21.30.170 specifically addresses conflict of interest in relation to Board of Adjustment members; she read this into the record.

Question was called on the motion that Mr. Tesche had a conflict of interest and it passed:

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

NAYS: None.

ABSTAIN: Tesche

(Clerk's Note: Mr. Tesche was excused from the proceedings. Ms. Clementson had not arrived at the time of the vote.)

Ms. Fairclough indicated Ms. Clementson had contacted her with a list of questions she intended to put on the record in these proceedings regarding a potential conflict of interest on the part of Ms. Fairclough. She believed Ms. Clementson's concern was Ms. Fairclough's active participation in a re-write of the cluster housing ordinance and that, since this is a cluster housing document, her judgment might be encumbered. Ms. Fairclough indicated she received the document on Thursday of the previous week and had not discussed the appeal with anyone. She stated she received a call on Friday from Craig Campbell indicating Bruce Brown and Chuck Spinelli had come to him regarding the potential for a short plat on the subject property. She contacted Ms. Campbell out of concern that those individuals may have thought she had a conflict of interest and informed him she could not discuss this appeal.

Ms. Von Gemmingen asked whether Ms. Fairclough encouraged the Eagle River Valley Community Council or Concerned Citizens of Eagle River Valley to file this appeal. Ms. Fairclough responded in the negative. She stated she attended three Eagle River Valley Community Council meetings earlier this year when this item was on the agenda, however, she was not present for those discussions or any votes.

Ms. Clementson arrived at 4:10 p.m.

Mr. Tremaine moved, that Ms. Fairclough had a conflict of interest.
seconded by Ms. Von Gemmingen

Ms. Fairclough acquainted Ms. Clementson with remarks she had made prior to Ms. Clementson's arrival. Ms. Clementson asked whether, in various meetings Ms. Fairclough had held with various developers during development of the cluster housing ordinance recently before the Commission, there had been any discussion about how that ordinance would affect this phase of Eagle Crossing. Ms. Fairclough responded there was no discussion of the appeal. She indicated a tour was taken with the Urban Land Institute and Eagle Crossing was on that tour; neither Mr. Brown nor Mr. Spinelli attended. She indicated Mr.

Spinelli had been at a work group earlier in the year at which open spaces were discussed in general, but nothing specific on this property.

Question was called on the motion to that Ms. Fairclough had a conflict of interest and it failed:

AYES: None

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

ABSTAIN: Fairclough

The meeting recessed at 4:15 p.m. and reconvened at 4:20 p.m.

Chair Traini clarified that the Board of Adjustment must act on the record only and that no additional testimony could be received.

Ms. Von Gemmingen asked counsel to clarify the question of what constitutes a majority. Ms. Kucko explained that 21.30.090 provides that the fully constituted board does not include members who do not participate because of a conflict. With the ruling regarding Mr. Tesche's conflict, the fully constituted board would be ten members and an affirmative vote of seven members would be required for a two-thirds majority.

Chair Traini explained the first issue before the Board was preliminary plat approval without homeowner association documents being submitted with preliminary plat application. The type of error alleged was procedural error and error in application of law.

Mr. Sullivan moved, to affirm the decision of the Platting Board
seconded by Ms. Clementson

Mr. Sullivan felt this matter was adequately explained in the document. Mr. Tremaine stated 21.15.110.B.4.d requires that the item in question be submitted with a preliminary plat application, therefore, the law was not followed. Ms. Clementson understood it was typical that a condition be placed on a plat requiring submission of homeowners documents at a later date; it was not necessary for the Platting Board to approve the details of those documents, given that they are not under the jurisdiction of the Municipality.

Ms. Fairclough referenced page 539 of Volume 2, a comment from Mr. Gamel "We envision to have one homeowners association for the entire site with separate standards for each." She believed it was not possible for the Platting Board or any other party to know the intent of the homeowners association. She indicated Mr. Gamel further stated the association had been created and was called the Eagle Crossing East Master Association. She noted pages 542 and 544 refer to the responsibilities of this particular homeowners association. She remarked that various individuals also testified regarding the responsibilities of the homeowners association and the importance of being able to review the homeowners association documents so that the community affected would have the opportunity to know what was being expected of them.

Mr. Tremaine felt the question before the Board was whether there was procedural error or an error in application of the law and it was clear there had been an error in application of the law.

Mr. Kendall indicated the homeowners association was addressed by the Platting Board and the platting officer accepted the application as complete. He noted page 597 contains wording added by the Platting Board outlining who would be responsible for various aspects of maintenance.

Ms. Fairclough noted page 537 lists items for the Municipality shall not be responsible, not the items for which the homeowners association would be responsible.

Ms. Clementson remarked that, if an item is on municipal property, it is the responsibility of the Municipality to maintain it. She reiterated that homeowners association documents are not enforced by the Municipality.

Ms. Fairclough asked whether an existing homeowners association in a subdivision should have the right to know the developer's intentions in homeowners association documents that apply to that existing development and to subsequent development in that subdivision.

In response to Ms. Clementson, Chair Traini indicated the Board had been instructed by its attorney to only act upon the record before it. Ms. Kucko confirmed this opinion.

Mr. Sullivan felt the question posed by Ms. Fairclough was adequately answered by the staff statement that code sections dealing with cluster housing site plans do not expressly require submittal of homeowners association documents prior to preliminary plat approval and those sections supersede the citation given in the protest when a cluster housing site plan is involved.

Ms. Fairclough indicated the documentation before the Board contains testimony from Tom Jennings, president of the current Eagle Crossing Homeowners Association, and Sarah Wright, who serves on that board, regarding a current functioning homeowners association in the Eagle Crossing subdivision.

Ms. Fairclough moved, a substitute motion to remand this issue back to the Platting Board to
seconded by Mr. Van Etten provide the necessary documents and to follow the law as quoted in the document.

Question was called on the substitute motion to remand this issue and it passed:

AYES: Fairclough, Taylor, Van Etten, Shamberg, Tremaine.

NAYS: Sullivan, Von Gemmingen, Traini, Kendall, Clementson.

Question was called on the motion to affirm the decision of the Platting Board.

AYES: Sullivan, Von Gemmingen, Traini, Kendall, Clementson.

NAYS: Fairclough, Taylor, Van Etten, Shamberg, Tremaine.

In response to inquiries from Ms. Fairclough and Mr. Kendall as to the ramifications of 5:5 votes on the matters before the Board, a recess was called in order for Ms. Kucko to research.

The meeting recessed at 4:40 p.m. and reconvened at 4:42 p.m.

Ms. Kucko stated AMC 21.30.095 states a majority vote is required to reverse or modify the decision, so if there is not a majority vote of the fully constituted vote, which in this case would be six, a vote of 5:5 would affirm the decision of the Platting Board. She suggested the wording of the motion should be either to reverse or remand as opposed to affirm, as affirming is the necessary consequence of not reversing or remanding. **She indicated the vote taken on the matter just considered would result in the Platting Board's action being affirmed.**

Chair Traini explained the second issue before the Board was preliminary plat approval without preliminary drainage analysis being submitted with the preliminary plat application.

Ms. Fairclough moved,
seconded by Mr. Van Etten

to remand back to the Platting Board issue #2, preliminary plat approval without preliminary drainage analysis being submitted with the preliminary plat application.

Ms. Fairclough read AMC 21.15.110.B.4.i into the record, a listing of items that shall be submitted to the Department of Community Planning for preliminary plats. She referred to her comments page 463 of the appeal documents regarding failure to repair a failed drainage system and the resultant erosion, as well as the marginal designation of the land in the Eagle River Comprehensive Plan.

Question was called on the motion to remand to the Platting Board and it passed:

AYES: Fairclough, Von Gemmingen, Taylor, Van Etten, Traini, Shamberg, Tremaine, Clementson.

NAYS: Sullivan, Kendall.

Ms. Fairclough cited pages A-12, B-15, 574, and 463 as guidance to the Platting Board regarding drainage.

Chair Traini explained the third issue before the Board was site plan approval without required findings being made.

Mr. Tremaine moved,
seconded by Ms. Clementson

to remand to the Platting Board.

Ms. Clementson did not believe it was necessary to remand this matter back to the Platting Board, noting that the record itself constitutes findings.

Mr. Kendall indicated a site plan was required for cluster housing and he believed the developer's submittal was a site plan.

Ms. Fairclough felt the site plan was fatally flawed. She cited page 530, a statement by Margaret O'Brien referencing Exhibit B, which was before the Assembly in the rezoning of this property, and indicating that exhibit shows road alignments and utility alignments only and that the lot configuration shown thereon was informational only and that the Assembly was not approving lot configuration.

Ms. Clementson felt the issue before the Board was whether or not there were adequate findings to support the conclusions of the Platting Board; she felt there were adequate findings.

Mr. Kendall noted page 531 contains statements by Ms. O'Brien regarding further refinement of the site plan.

Ms. Fairclough read Ms. O'Brien's comments from page 535, which indicate there were things not shown on the site plan that needed to be shown and indicating that approval of a site plan by the Platting Board would require submittal of an amended site plan to the Department of Community Planning for review.

Ms. Clementson understood Ms. O'Brien had been responding to a question from Board Member Barrier regarding details of the site plan, specifically a driveway location.

Mr. Kendall stated the normal procedure before the Platting Board would be to review the site plan and condition it, as needed, which is the action the Platting Board took.

Ms. Fairclough agreed there was mention of a site plan, but the concerns of Mr. Barrier were also with regard to revegetation, play areas, and trails. She understood Mr. Barrier had questioned whether the Platting Board had the necessary information upon which to base a decision on the site plan.

Question was called on the motion to remand to the Platting Board and it failed:

AYES: Fairclough, Taylor, Van Etten, Shamberg.

NAYS: Sullivan, Von Gemmingen, Traini, Kendall, Tremaine, Clementson.

Ms. Fairclough moved, to continue this Special Meeting to June 5, 2001 at 4:00 p.m.
seconded by Mr. Tremaine

Question was called on the motion to continue the meeting and it passed:

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

NAYS: Clementson.

5. ADJOURNMENT:

The meeting adjourned at 5:00 p.m.

Chairman Dick Traini

ATTEST:

Municipal Clerk

Date Minutes Approved: October 23, 2001

VMC/kds