

# MUNICIPALITY OF ANCHORAGE

## ANCHORAGE ASSEMBLY

Minutes for Special Meeting of June 18, 2001

### 1. CALL TO ORDER:

The meeting was convened at 1:20 p.m. by Assembly Chairman Dick Traini in the Mayor's Conference Room, 632 West 6th Avenue, 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, Cheryl Clementson (both excused).

### 3. BOARD OF ADJUSTMENT/ASSEMBLY APPEALS:

A. 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)

Chairman Traini advised Ms. Clementson's motion to affirm the Platting Board's decision on issue number five, variance of the slope chart, was on the floor.

Mr. Kendall felt the Platting Board's finding of fact at page 633, number 64, together with the staff report at page 179, number five, clearly showed the Platting Board addressed the slope chart issue with adequate findings.

In response to Chair Traini, special counsel Sally Kucko, suggested the pending motion be clarified because there are two allegations that findings of fact numbers 64 and 66 are not supported by evidence. Additionally, the appellant alleges that no specific finding was made that the variance approved was the minimum variance required to make reasonable use of the land possible. The appellant alleges that omission constitutes procedural error or error in application of law. She recommended the matters be split or the motion clarified if the Board of Adjustment wished to act on them together.

Mr. Tremaine moved, a substitute motion to find the Platting Board's decision on finding of fact number 64 is supported by the evidence.  
seconded by Mr. Van Etten,

Ms. Fairclough noted the record showed the Assembly intended to leave the issue of road alignment in this subdivision to the Platting Board. However, she believed Exhibit B, the basis of the slope variance, was misinterpreted and the Board's finding should not be upheld.

Mr. Kendall pointed out the issue was whether the Platting Board's decision was supported by evidence in the record. He noted the approved variance will permit preservation of a wetland, equal to 53% of the parcel, as open space. Without the variance, it will be more difficult to create an adequate cluster plat on the property. The property could be platted into large lots so that each lot encompassed part of the steep slopes and wetlands.

In reply to Mr. Tremaine, Ms. Kucko explained the code states that any variance shall be the minimum variance. A sub-issue of number five, is the allegation that the Platting Board did not make a finding that the variance it approved was the minimum variance thereby making an error either procedurally or in application of the law. The question to the Board of Adjustment is whether the Platting Board needs to make such a finding explicitly or whether the finding was made implicitly. However, finding 64, indicates the approved variance would not nullify the intended purpose of subdivision regulations or comprehensive plan. The appellant alleges while the finding was made, there was no evidence to support it.

Question was called on Mr. Tremaine's substitute motion and it passed:

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

Ms. Von Gemmingen moved, to affirm that finding of fact number 66 was supported by the evidence.  
seconded by Mr. Sullivan,

Mr. Kendall pointed out references in the record which indicated preservation of open space in areas with marginal soils and steep slopes, and reduced disturbance of the natural ground cover as major benefits of cluster development. He felt the references supported the Platting Board's finding.

Mr. Tremaine commented a plat with fewer lots could also reduce disturbance of natural ground cover but that option was not discussed.

Question was called on Ms. Von Gemmingen's motion and it failed:

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

Ms. Fairclough moved,  
seconded by Mr. Tremaine,

to remand finding number 66 to the  
Platting Board to look for the minimum  
variance requirement to use the cluster  
housing technique and apply the slope chart.

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

Special counsel Kucko advised the failure of the motion to remand finding number 66 to the Platting Board meant that finding was affirmed.

Ms. Kucko stated the last issue was whether there was procedural error or error in application of law relative to whether the finding was adequate to satisfy Anchorage Municipal Code 21.15.010 A. Two questions are presented to the Board of Adjustment: 1) Must the finding be explicit and if so, was one made? 2) Can the finding be implicit and if so, was it implicit in the record?

Mr. Kendall moved,  
seconded by Mr. Sullivan,

to remand the issue to the Platting Board for  
lack of findings on the record.

Ms. Fairclough contended the record did not demonstrate the variance approved was minimal and supported remand.

Mr. Kendall pointed out the Platting Board used the same standard in approving several other variances in this case but those variances were not appealed. He felt AMC 21.15.010 A was so routinely applied by the Platting Board that when a variance was approved the finding of conformance was implicit.

Ms. Fairclough moved,  
seconded by Mr. Tremaine,  
and it was withdrawn,

to postpone further action to a Tuesday in  
August when all Board of Adjustment  
members can attend the meeting.

Ms. Fairclough moved,  
seconded by Mr. Tremaine,

to recess the meeting until after the  
close of the June 19 Regular Assembly  
Meeting but no earlier than 9:00 p.m.

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

(Clerk's Note: The Assembly did not have sufficient time to reconvene this meeting on June 19, 2001. Another special meeting was set for July 24, 2001 to complete action on the appeal.)

**5. ADJOURNMENT:**

The meeting recessed at 2:10 p.m. and was never reconvened.

\_\_\_\_\_  
Chairman

ATTEST:

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Municipal Clerk

Date Minutes Approved: \_\_\_\_\_, 2001

LF/lf