

**BEFORE THE MUNICIPALITY OF ANCHORAGE
BOARD OF ADJUSTMENT**

In Re:)
Canyon View Estates Subdivision, Lots 1)
thru 27, & Tracts A, B, & C)
)
)
)
)
) **Platting Board Case No. S12545**
_____)

FINDINGS AND DECISION
REGARDING REQUESTS TO RELAX RULES

I. Background

On July 20, 2021, the Municipal Clerk’s Office notified various parties from prior appeals related to Platting Board Case No. S12545 that, due to missed deadlines, there was no active appeal of the case before the Board of Adjustment.

The Platting Board’s decision in S12545 could have been appealed by an interested party if the party filed a Notice of Appeal by June 8, 2021. AMC 21.03.050A.4.d.iv. Parties Kuijper, Burke, and Priestly (“Priestly”) did not file Notices of Appeal by the deadline.

As part of preparing the appeal record, an appellant must have a transcript of the Platting Board’s hearing prepared and filed with the Municipal Clerk within 30 days after the appellant files their notice of appeal. AMC 21.03.050A.6.a. While Domagalski timely filed a Notice of Appeal on May 28, 2021, and was the only party to do so, he did not file the transcript of the Platting Board’s hearing of February 3, 2021, by the deadline of June 28, 2021.

The parties filed requests to relax the rules, pursuant to Anchorage Municipal Code 21.03.050A.9. Having considered their filings and the response from Hultquist Homes, the applicant in the subject case, we deny the requests.

II. Findings

A. Timely Filing of a Notice of Appeal.

With respect to the request filed by Priestly, the Board finds it may not have authority to grant relief from the requirement to timely file a Notice of Appeal since filing the Notice is a prerequisite to perfecting the appeal, which places the matter before the Board. On this basis alone the Board would deny the request.

However, even if the Board could grant the relief requested, the Board further finds the request was not timely, coming over two months after the deadline for filing a Notice of Appeal and over three weeks from the time of the Clerk’s letter of July 20, 2021. Priestly did not convince this Board that Priestly acted diligently in filing the request.

The Board further finds that Priestly has not demonstrated good cause. The request is premised on Priestly's misconception of tolling and asks for relief not present in the applicable Title 21 of the Code or regulations thereunder. Priestly presumes tolling applies due to a filing of a Motion for Reconsideration in Appeals 2020-2 and 2020-3, drawn from some general "understanding", to quote from the request. The presumption is not based on anything in Title 21 of the Code, or its regulations, or a prior decision of this Board. Priestly does not cite to any authority for the understanding. This Board has no Code authority or precedent of its own under which to apply tolling.

For purposes of finding good cause, Priestly asks this Board to apply Alaska court decisions to this matter, citing a number of cases where courts granted permission for late filings. The Board's takeaway from these cases is that a party has to act in good faith, there is no prejudice to the other side, and there is only a short delay. The Board does not find that it must apply the courts' decisions to its own interpretation of our Code regarding what is "good cause." Nevertheless, viewing the cited decisions as informative, the Board does find that Priestly's actions are not so similar to those of the parties in the cases cited that Priestly deserves a relaxation of the rules. While not an attorney, Priestly's filings throughout the history of Case S12545 show a strong familiarity of adjudicatory processes and an ability to research legal standards. Choosing to assume tolling applied without an effort to confirm this or not, is not good cause. Further, while the Municipal Clerk's Office was not required to notify Priestly that there was no appeal, Priestly did not act expeditiously once in receipt of the Municipal Clerk's letter, waiting three weeks more before requesting relief, all the while knowing that in order to get said relief Priestly must be timely. Finally, the Board finds the extended delay is prejudicial to appellee Hultquist Homes. The purpose of platting is often to allow the property owner to economically benefit from developing or selling the resulting parcels. Delay can diminish the economic benefit. Hultquist Homes has asserted the delay causes it "economic losses". Priestly has not denied this possibility and we find Hultquist Homes is prejudiced by the undue delay.

B. Timely Filing of the Transcript

With respect to the request filed by Domagalski, the request was also not timely, coming a month and a half after the transcript was due. In addition, by his own admission, Domagalski made the strategic decision not to provide the required transcript. His failure to be timely was not due to any misunderstanding of what the Code requires, but rather a deliberate decision on his part. He states in his Motion, "Nothing new was said during the February 3, 2021 meeting, so I thought there was no need to include any transcript from that meeting." The Board finds unconvincing his suggestion that he did not submit the transcript from the February 3, 2021 hearing because of a misunderstanding. The Board finds that Domagalski has not met his burden to show good cause.

While Domagalski tries to shift the burden to the Municipal Clerk's Office to notify him of deficiencies prior to the expiration of deadlines, the Municipal Clerk's Office is neither charged with that obligation by Code nor routinely engages in such a service such that now all appellants should be deemed entitled to it. Domagalski's statement that he "thought the Municipal Clerk's Office routinely sends a notice of deficiency, with instructions on how to

correct the deficiency” has no support in the record, or in any Code, policy, practice, or rule. For example, while the Municipal Clerk’s Office did notify Domagalski that the image quality of his Notice of Appeal and Opposition to Motion for Reconsideration was poor, this was a courtesy and not a notice of deficiency or done to fulfill some required obligation. Domagalski mistakenly seeks to rely on this single communication to set a standard or requirement that does not exist.

Domagalski also suggests that if the transcript is important, the appellee Hultquist Homes could file it. This would shift the cost and requirement of preparing the transcript to the appellee, directly in contradiction to the Code’s requirement that appellants are responsible. We cannot shift the burden in contravention of the Code.

Further, given the Code’s requirement that the Municipal Clerk shall dismiss the appeal upon the failure to timely file the transcript, this Board does not find it has the authority pursuant to AMC 21.03.050A.9 to relax the requirement, even if it could find that Domagalski was both timely and had good cause.

III. Decision

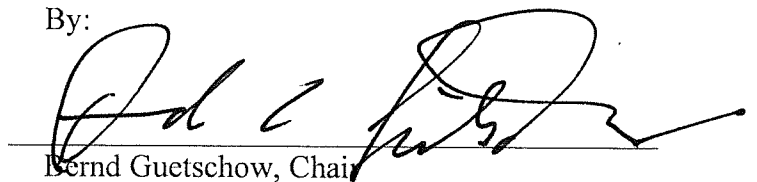
For the reasons stated in its Findings, the Board denies Priestly’s and Domagalski’s request to relax certain rules of the Code that, if granted, would allow them to appeal Platting Board Case No. S12545. Therefore, there is no appeal of Platting Board Case No. S12545 pending before this Board.

This is a final decision with respect to all issues involved in the case, and the parties have 30 days from the date of service of this decision to appeal to the superior court.

IT IS SO ORDERED.

Dated this 31st day of August, 2021 at Anchorage, Alaska.

By:



Bernd Guetschow, Chair
Board of Adjustment
Municipality of Anchorage

Certificate of Service:

I hereby certify that on the 31 day of August, 2021 a true and correct copy of the foregoing document was served by electronic mail upon each of the following:

Petitioners:

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Greg Kuijper
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Joan Priestly
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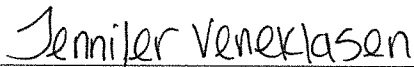
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Respondent:

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Planning Dept:

Shawn O'Dell, Current Planning Division, Senior Planner
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Jennifer Veneklasen, Deputy Municipal Clerk
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