



June 26, 2013

Final Investigative Report Concerning Ombudsman Complaint 2013-0007

COMPLAINT

An Eagle River resident contacted the Ombudsman regarding Project Management & Engineering Project Number 10-21, Old Eagle River Road Upgrade. The citizen believed that the Municipality was not following "A Strategy For Developing Context Sensitive Transportation Projects," a policy guide for transportation project development which was adopted by the Anchorage Assembly on October 14, 2008.

FINDINGS

This complaint against the Municipality of Anchorage, Project Management and Engineering is **PARTIALLY JUSTIFIED**

ANALYSIS AND CONCLUSIONS

The complainant contacted the Ombudsman with several concerns regarding PM&E Project Number 10-21, Old Eagle River Road Upgrade, Monte Road to Baranoff Avenue. The complainant believed that the project would turn an essentially rural road into a collector street, that the scope of the project exceeded what the neighborhood desired, and that it was more efficient for the City to place the storm drain system under the middle of the street, rather than under the west side. The complainant also alleged that the City was not following its policy guide for transportation projects development, "A Strategy For Developing Context Sensitive Transportation Projects," adopted by the Anchorage Assembly on October 14, 2008 (AR 2008-237).

The objectives of the project are to improve drainage in the corridor area, upgrade the roadway to collector street standards to address increased traffic volumes and circulation demands, and to improve the school driveway, while preserving as much mature vegetation as possible and minimizing impacts on private property. The street is currently owned and maintained by the State of Alaska. Ownership will be transferred to the Municipality of Anchorage as part of the project. The project is a Road Transfer Project (RTP) that is funded by the State and constructed by the Municipality, with the requirement that the street be upgraded to current Municipal collector street standards, including curb and gutter, pedestrian amenities, a drainage system and lighting.

During his investigation, the Ombudsman met with members of the project team, reviewed the project webpage, copies of all public outreach documents, the project executive summary, all comments submitted by stakeholders and the public, letters between the City and the complainant, the Municipality's Official Streets and Highways Plan, "A Strategy For Developing Context Sensitive Transportation Projects," (and AR 2008-237, which adopted the policy document), and the Final Design Study, dated July 2012. The Ombudsman also reviewed the Planning Division's Staff Report to the Planning & Zoning Commission (dated June 4, 2012), the minutes of the Commission's June 4, 2012

Public Hearing, and the Commission's resolution (No. 2012-024) regarding the project. The Ombudsman also made two site visits to the project area.

As to the complainant's concern that the project would turn the street into a collector; the street was designated as a collector in 1996 (AO 96-97-S) and is listed as a collector in the Municipality's Official Streets and Highways Plan. As to the complainant's claim that the project exceeds the scope desired by the neighborhood; the project is a priority for the Chugiak/Birchwood/Eagle River Rural Road Service Area Board (CBERRRSA) and the area's legislators, and it is supported by a large number of residents and property owners in the project area.

As to the complainant's concern regarding placement of the drainage system; placement under the center of the street requires more infrastructure and would require that a crew from Traffic close down sections of the street during the performance of routine and needed maintenance. Placement under the middle of the street would be more costly to install and maintain, and would generate safety concerns for maintenance personnel. The complainant believes that placing the drainage infrastructure under the middle of the street would result in a narrower project footprint. This is not the case; the width of the street is dictated by collector street standards, and placing the drainage infrastructure under the middle of the street would not affect the project's footprint.

The complainant's allegation that the City has not followed its own transportation projects policy document, "A Strategy For Developing Context Sensitive Transportation Projects," for this project rises above her other concerns, to the level of a formal citizen complaint against the Municipality of Anchorage's Project Management and Engineering Department, and is the primary focus of this report.

According to the Federal Highway Administration (FHWA), "Context Sensitive Solutions is a collaborative, interdisciplinary approach to project development, involving all stakeholders at the earliest phase, to ensure that transportation projects are in harmony with communities and preserve environmental, scenic, aesthetic, and historic resources while maintaining safety and mobility. It involves taking into consideration the land use and environment adjacent to the roadway when planning and designing a project so as to make the improvement blend in with the surrounding community."

The Anchorage Assembly adopted the CSS policy document on October 14, 2008, via Assembly Resolution 2008-237, "***A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE ADOPTING THE STRATEGY FOR DEVELOPING CONTEXT SENSITIVE TRANSPORTATION PROJECTS.***" Section 1 of the resolution states "This Strategy for Context Sensitive Design of Transportation projects will be actively put to use by the Municipality of Anchorage."

The goals and intent of CSS are laudable; engage the public, give them an opportunity to comment and offer input into a project, with the end result being a project more in tune with the desires of the public and more aesthetically pleasing. While the CSS policy can make a positive difference in planning and implementing transportation projects in the Municipality, a careful review of the policy document itself reveals contradictory, confusing and misleading statements, which can undermine the process and lead to citizen complaints.

On page 2 of the CSS policy document, when talking about identifying "the problem" that a project should solve, the document talks about "reaching consensus with all stakeholders before the design process begins." The Oxford Dictionary defines consensus as "A fundamental agreement within a society, community, or group of basic values." The probability of attaining general agreement among all

stakeholders for any public transportation project is essentially zero. This statement gives stakeholders the impression that the CSS policy requires their agreement as to the definition of the problem to be solved by the proposed project. The reality is that a project can, and will move forward without general consensus among stakeholders.

Also on page 2 the document talks about “gaining consensus early,” and states that “Group decisions are generally better than individual decisions.” Multiple references to consensus and group decisions give stakeholders and the general public the impression that they have more influence over the design and construction of a project than they actually have. On page 3 of the policy document it states that “Context Sensitive Solutions IS: A result of collaborative processes, broad-based consultation, and compromise between community needs and individual interests.” How can a policy mandate consensus, and then state that the same policy “IS” about “compromise?” How can you tell stakeholders on the one hand that everyone must reach consensus, and then turn around and tell them that it is all about compromise?

On page 5 and 6 the policy document states that “The decision to proceed to a Design Study Report phase will depend on the 1) stakeholder agreement on the scope and nature of the problem, 2) the community acceptance of the problem and 3) the documented overwhelming stakeholder need to solve the problem.” Does stakeholder agreement mean consensus? Does this mean that all stakeholders must agree on the scope and nature of the problem? Again, the document’s language gives citizens the impression that they have more control over a project than they actually do have.

On page 3 the policy document states “There are times when government agencies choose to retain decision-making authority. There are times when the agency may share decision making, for example, to gain a higher level of public acceptance for a project. This strategy is about sharing the decision-making.” This language gives citizens the impression that decision making for projects developed using CSS is a collaborative process between the Municipality and the public. Is this statement an accurate reflection of reality? No, it is not. While there is a collaborative process which seeks stakeholder and citizen input the Municipality is the final decision maker when it comes to Municipal CSS projects.

On page 10 the policy document states in reference to the Planning and Zoning Commission that the Commission “Serves as the dispute resolution panel should the Municipality and stakeholders reach an impasse. For example, if there is a difference of opinion between the functional design and what the community wants the Commission would resolve the dispute.” This language gives the impression that the Commission would make the final determination regarding a dispute between the Municipality and stakeholders, yet AMC 21.15.015, “Public Site Plan Review”, under which the Commission reviews road projects, states that the Commission “shall review and make recommendations”. Can a policy document give additional powers and duties to a Municipal Commission that are not found in Municipal Code? No, the powers and duties of a commission can only be changed by ordinance.

Assembly Resolution Number 2008-237, which adopted the CSS policy document, states in Section 4 “The Planning and Zoning Commission will serve as the adjudicating body in cases where there are irreconcilable difference between the public and the administration.” Can the powers and duties of a Municipal Commission be expanded through an Assembly Resolution? No, the powers and duties of a commission can only be expanded by ordinance. The references in the policy document and AR 2008-237 to the Planning and Zoning Commission acting as the “dispute resolution panel” and adjudicating body” regarding disputes between the public and Municipality are contradicted by the powers and duties of the Commission as outlined in Municipal Code, and mislead citizens as to the actual role of the

Commission in relation to CSS projects. These contradictions are even confusing to Municipal Staff, who are unable to provide a definitive answer to the Ombudsman or the public regarding the Commission's role and powers when it comes to CSS projects.

While there are contradictory and confusing statements in the CSS policy document, the CSS goal of engaging stakeholders and the public early in the process is laudable, and effective to the extent possible given statutory and regulatory constraints. Wende Wilber, CRW Engineering Public Outreach Specialist for this project, is experienced and has a good grasp of the CSS policy and its benefits and limitations, as well as an understanding of the confusion generated by some of the document's contradictory and confusing language. Ms. Wilber led a very credible public outreach effort for the project. A synopsis of the outreach is attached to this report. The project team has followed the CSS policy document to the best of their abilities, considering the confusing and contradictory language in the document, which in some cases calls for unattainable goals, and attributes powers to the Planning and Zoning Commission that are not articulated in Municipal Code.

Anchorage's Title 21 Rewrite which takes effect January 1, 2014 states "All MOA transportation projects are required to follow "A Strategy for Developing Context Sensitive Transportation Projects." New construction or reconstruction of street and intersection projects of collector classification or greater are required to go to the Planning and Zoning Commission and the Urban Design Commission" (AMC 21.01.03.190). It is imperative that the CSS policy document be reviewed and revised as necessary to match Municipal Code and real world practices and to clarify the roles, responsibilities and powers of the Planning and Zoning Commission and Urban Design Commission regarding CSS transportation projects. On April 10, 2013 the Ombudsman met with Project Management and Engineering Public Outreach Coordinator Teri Albrecht, other PM&E staff and private sector outreach coordinators to discuss the confusing and contradictory language in the CSS policy document. The group consensus was that the document needs to be revised before the new Title 21 takes effect.

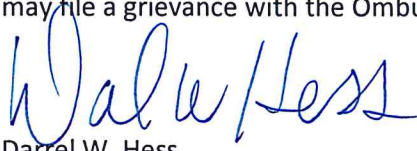
Because all Municipal transportation projects are mandated to follow the CSS policy document, and because the policy document contains confusing and contradictory statements regarding the policy's implementation and the parameters of citizen input and guidance, the Municipal Ombudsman finds the complaint that the Municipality of Anchorage, Project Management and Engineering Department is not following the CSS policy document for PM&E Project Number 10-21, Old Eagle River Road Upgrade, Monte Road to Baranoff Avenue to be PARTIALLY JUSTIFIED. A preliminary report regarding this matter was provided to the Project Management and Engineering Department. **Based on the investigation of this case, the Municipal Ombudsman recommends the following:**

(1) that the Municipality revise the Context Sensitive Solutions policy document to clarify the roles and responsibilities of the Municipality, stakeholders and citizens under the policy, and to correct confusing and contradictory language in the document. The document should reflect the "real world" reality that the Municipality is the final decision maker. *The Department is working on revising the document to address these issues.*

(2) that the CSS policy document be revised to accurately reflect the powers, duties and role of the Planning and Zoning Commission regarding Municipal transportation projects developed using the Context Sensitive Solutions policy. *The Department is working on revising the document to address this issue.*

Based on this finding, and these recommendations, this case is closed.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.

A handwritten signature in blue ink that reads "Darrel W. Hess". The signature is written in a cursive style with a large initial "D".

Darrel W. Hess
Municipal Ombudsman

Public Involvement Process, Old Eagle River Road

<u>Activity</u>	<u>Brief Description</u>	<u>Date</u>
Web Page Established	www.oldeagleriverroad.com	May 2011 to present
Direct Mailing and & Electronic Distribution of Newsletter #1	Project announcement and Invitation to a community Site Walk and Open House	May 2011
Eagle River Community Council Presentation	Project Introduction	May 12, 2011
Staked the public right-of-way limits, held Site Walk and Open House	No design presented. Purpose was to identify problems to be solved and community concerns prior to beginning alternative development.	May 18, 2011
Electronic (E-) Newsletter Updates #2, 3, 4	Project Updates, Geotechnical Investigation Notification	May 26, 2011
E-newsletter Update #5	Announced that comment summary was available on the web page	June 6, 2011
Agency Scoping Meeting	Solicited feedback from Agencies	June 14, 2011
E-newsletter Update #6	Comment Summary Updated	June 16, 2011
E-newsletter Update #7	Comment Summary Updated	July 15, 2011
E-newsletter Update # 9 (note there was no Update #8)	Announced that surveyors would be working in project corridor	August 25, 2011
CBERRRSA Presentation	Project Overview	September 26, 2011
Anchorage School District Scoping Meeting	Inform and coordinate with ASD	August 8, 2011
Site Walk	Presented project to Assembly Representatives Starr and Ossiander	October 7, 2011
E-newsletter Update # 10	Announced Draft Concept Report has been posted on web page for Review	October 25, 2011
E-newsletter Update # 11	Announced Draft Concept Report submitted to Planning & Zoning Commission	November 15, 2011
Planning and Zoning Commission	Draft Concept Report Informational Presentation	December 5, 2011
E-newsletter Update #12	Announced that Final Concept Report was available on the web page.	January 31, 2012
Eagle River Community Council Presentation	Presentation on Design Alternatives and announced Open House	February 8, 2012
Mailed Postcard for Open House #2	Invite to Open House #2	February 9, 2012
E-newsletter Update #13	Open House #2 Invitation	February 15, 2012
E-newsletter Update #14	Open House #2 reminder	February 22, 2012
Open House #2	Design Study Phase, 3 Alternatives presented	February 23, 2012
CBERRRSA Presentation	3 Design Alternatives presented – 35% design	February 27, 2012
E-newsletter Update #15	Announced Draft Design Study Report available for review on the web page.	March 14, 2012
E-newsletter Update #16	Updated Draft Design Study Report on website	March 22, 2012
Planning and Zoning Commission	Non-public hearing; Commission postponed decision to June 4, 2012 to hold a public hearing. Links to staff comments and MOA web page provided in E-newsletters and on project web page.	May 7, 2012
E-Newsletter Update #17	Announced Planning and Zoning Commission Public Hearing Date	May 22, 2012
Planning and Zoning Commission	Public Hearing on Draft Design Study Report and approval of Alternative 2	June 4, 2012
E-newsletter Update #18	Announced the approval of Alternative 2 for Design.	July 10, 2012
Mailed Postcard to Open House #3	Open House #3 Invitation	October 2, 2012
E-Newsletter Update #19	Open House #3 Notice Preliminary Design review- 65% design graphic posted on web page	October 2, 2012
Mailed Parcel Maps	Draft Easement/permit information mailed to affected property owners	October 5, 2012
Eagle River Community Council Presentation	Preliminary Design and Open House Invite	October 11, 2012
Open House #3	Presented Preliminary Design- 65% design	October 18, 2012

Direct mailings went to over 1,000 public and agency stakeholders. 78 stakeholders signed up for e-newsletter updates. Open House #1 - 16 signed in (10 lived adjacent to the project), plus Representative Fairclough. Open House #2 - 11 signed in (4 lived adjacent to the project) plus Representative Fairclough, Assembly Member Ossiander, John Rodda - MOA Parks, and a CBERRRSA representative. Open House #3 - 15 signed in (5 lived adjacent to the project) plus Representative Fairclough, Senator Dyson and two representatives from ASD School Bus Transportation. All comments received by the project team were included in the Concept Report, Draft Design Study Report, and submitted to the Planning and Zoning Commission for consideration before making a recommendation.