

**City of Bethel  
Planning Commission**

**Regular Meeting of**

**I. CALL TO ORDER**

The meeting was convened at 7:30 PM, at the City Finance Conference Room, Bethel, Alaska, by Chairman Guinn.

**II. ROLL CALL**

Present: Guinn, Hamilton, Hickson, Metcalfe

Absent: Andrew, Warner, McComas

**III. APPROVAL OF MINUTES**

**motion** M/M by Hamilton, 2nd by Metcalfe, to approve the minutes of the April 19, 1995, regular Commission meeting as presented.

**IV. APPROVAL OF AGENDA**

Mr. Nolan indicated that there needed to be some changes in the agenda. Items C and E under New Business should be placed under Old Business as Items B and C. Item D under New Business would become C.

**motion** M/M by Metcalfe, 2nd by Hamilton to approve the agenda as amended. Voice vote. Motion carried unanimously.

**V. COMMUNICATIONS**

Mr. Nolan told the Commission that there had been numerous complaints filed with the Planning Department in the last few weeks. There had been several encroachment problems, complaints regarding the separation distances between buildings in the Turnkey III Subdivision, and other possible zoning violations. He indicated that he was looking into these complaints and responding as required by the City codes.

**VI. PLANNER'S REPORT**

Mr. Nolan attended the Alaska Coastal Management Conference in Juneau in April. He said that most government agencies, boroughs, and cities were or plan to update to some form of electronic information systems. He indicated the City's need for some type of geographic information system.

House Bill 154, the "takings" bill, is in the Judiciary committee and will not be addressed until the House begins its next session. This Bill, if passed, could have a dramatic effect on municipalities.

The Planning Commission was included in the selection process for the new Planning Manager position. All applicants job applications were included in the packets along with evaluation sheets for the commissioners.

The City Council public review of the 95-96FY budget is in progress. The Planning function budget was to be reviewed the same night as the Planning Commission meeting. Mr. Nolan felt that this was poor judgement on the part of the City Manager but had prepared a statement to be read.

**VII. PEOPLE TO BE HEARD**

Walter Larson had a encroachment complaint concerning 211 State Highway, a piece of property belonging to Emma Evon, and his property. Some time ago a small house was built between the two properties for Lela Johnson. The house was built without permission from either landowner. Mr. Larson asked if something could be done about removing the house.

Walter asked if anything had been done about the request to look into improving the cemetery. Mr. Nolan said that it was being addressed but that at this point there was a question about how many new plots could be made available. Mr. Larson said that the by moving the sewage line and the boardwalk you could get a lot more usable space. Mr. Nolan mentioned that there was also a need to find out who was responsible for the cemetery.

**VIII. OLD BUSINESS**

**ITEM A: PRELIMINARY PLAT FOR PROPOSED SUBDIVISION, TRACT N, TUNDRA RIDGE SUBDIVISION - CHRIS HAMRI**

The Planning Department has been asked by C2 Architects and Chris Hamri to review a preliminary plat of Tract N, Tundra Ridge. This plat was briefly discussed at the March 9th and April 13th meeting.

The plat was changed to give a good representation of the 10% recreation dedication. Instead of one large area the developers have selected two separate tracts which have good access. The tract that had previously been set aside and labeled commercial has had the commercial designation removed. This lot will now have to go through the conditional use permitting process if a commercial venture is desired.

The committee had voiced concern with the size of the lots. This area is zoned General Use and as such requires 7,000 square feet for each lot. Larger lots would be desirable but the lot sizes meet the City codes.

There is some thought that there will be a problem with drainage. If the drainage problem can be adequately addressed there is no reason this subdivision proposal should not be approved.

The Planning Department feels that the developer has listened to the concerns of the Department and has corrected the deficiencies found. The new design indicates that considerable thought has been given to the eventual residents, utilities, and the surrounding homeowners. It was also noted that a preliminary plat for this same tract had previously been approved with 45 lots in 1983. The Planning Department feels that this subdivision merits approval.

Mr. Larson thought that this plat would be creating the same problems that now plague the Turnkey project. He felt the lot sizes were too small and would leave little room for storage. Mr. Nolan said that the lots in this proposed plat were 3,000 square feet larger than those in Turnkey and that there would be a significant difference between the two subdivisions.

Chris Hamri was present to answer questions about the project. He insured the committee that there would be good drainage throughout the profile. Drainage and elevation survey work would be done by a qualified civil engineer.

Cliff Hickson asked if the City would wait for a period of time before accepting the roadways. Nolan said that he didn't know if the Public Works had a waiting period but that the City would not accept any roads until they had been inspected and approved by the Public Works Director.

Ms. Hamilton had concerns about the recreational areas. She wanted assurance that the recreation areas would be usable. She felt that the sites should be dry and usable. She also felt that the surrounding landowners were not being given proper notification of pending land use proposals.

Mr. Hamri said that it was his understanding that the preliminary plat process was his opportunity to be made aware of the City's concerns and requests and to then answer those concerns and meet the City's requirements. He made the committee aware of the need to have this project proceed as quickly as possible. Those members in attendance agreed that his plat had been postponed long enough and that a decision

should be made.

**motion**

M/M by Hickson 2nd by Metcalfe to approve the preliminary plat of Tract N, Tundra Ridge Subdivision with the following stipulations:

- 1) The developer provide proof of adequate drainage,
- 2) The developer provide an elevation map of the area,
- 3) The developer provide proof that the area dedicated for recreation be usable,
- 4) The Planning Manager will deliver, in person, adequate public notice to surrounding homeowners and post notification at the site.

**ITEM B: RECOMMENDATION TO THE CITY COUNCIL TO ADOPT RESOLUTION IMPOSING A FEE FOR REVIEW OF SITE PLAN PERMITS AFTER WORK HAS BEEN COMMENCED ON ANY IMPROVEMENT OR AFTER THERE HAS BEEN A CHANGE IN THE PRINCIPAL USE OF A PROPERTY**

The Planning Department continues to have problems with construction that is commenced without Site Plan Approval. The Planning Department feels this resolution would be an important tool in permit enforcement. The Planning Department does not have the staff available to effectively monitor the building activity in the City.

The Planning Department has contacted the City attorney and received a positive enforcement for this resolution. It was concluded that this change is permissible under the City Code and under state law.

The first paragraph reads may instead of shall which gives the Planning Department the ability to cite only those major improvements (the placement of sand pads or fill material, conversion from secondary to primary use, changes in the principal use, etc.) instead of things like fences, smoke houses, and so on.

**motion**

M/M by Metcalfe 2nd by Hamilton to recommend that the City Council adopt a resolution imposing a fee for review of a site plan permit after work has been commenced on any improvement or after there has been a change in the principal use of a property. Voice vote. Motion passes unanimously.

**ITEM C: A RESOLUTION OF THE CITY COUNCIL REFERRING A PROPOSAL FOR THE ACQUISITION OF CITY PROPERTY BY THE BETHEL FUEL SALES TO THE PLANNING COMMISSION FOR ITS RECOMMENDATION**

The Planning Commission has been directed to consider the sale of property to Bethel Fuel Sales in the furtherance of the development of local trade or industry. Bethel Fuel Sales has asked to trade for a portion Tract 5C of the Bethel Seawall Expansion project instead of receiving monetary reimbursement.

The resolution has asked for input from land Field Services and Bethel Fuel Sales. A letter from Bethel Fuel Sales indicated that their intention was to move the buildings and operations that were displaced by the easement to this property.

**motion** M/M by Hamilton 2nd by Metcalfe to recommend that the City Council accept Bethel Fuel Sales proposal of acquisition. Voice vote. Motion passes unanimously.

**IX. NEW BUSINESS**

**ITEM A: REQUEST FOR VARIANCE LOT 48 BLOCK 3, TURNKEY III SUBDIVISION - MIKE GRANT**

Mike Grant asked to place a 16' x 20' storage building on lot 48 block 3, Turnkey III Subdivision. This called for a 5' setback from the property line of the neighboring lot and a 3' setback on the easement side. The structure would be 8' from the porch on the residence.

All of the commissioners agreed that there continues to be a problem with construction in the Turnkey project. Because of the number of variances that have been granted in the past the committee agreed that they could not deny this request without good justification.

**motion** M/M by Metcalfe 2nd by Hickson to approve the variance request for lot 48 block 3, Turnkey III Subdivision. Voice vote. Motion passes unanimously.

**ITEM B: RECOMMENDATION TO THE CITY COUNCIL REGARDING DISPOSAL OF CITY DOCK WAREHOUSE**

The City wants to enter into a lease agreement to the highest bidder for the City Dock Warehouse. The City is proposing to lease the building for \$14,400.00 for six months. This property was already approved for lease to D & G Express who decided to withdraw their proposal.

There was very little discussion with all members agreeing that the City should lease the dock warehouse for needed City revenue.

**motion** M/M by Hamilton 2nd by Metcalfe to recommend to the City Council disposal of the City dock warehouse. Voice vote. Motion passes unanimously.

**ITEM C: RECOMMENDATION TO CITY COUNCIL REGARDING DISPOSAL OF INTERESTS IN CITY LAND TO DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENT OF RIDGECREST DRIVE**

The DOT is getting ready to award a contract for the upgrading of Bethel's Ridgecrest Drive for the Fall of 1995. Construction is expected to begin and be completed by the summer of 1996. An Easement encompassing a portion of the City's property is needed to build the project.

The DOT wishes to purchase an easement, known as Parcel No. E-5, Tract B, Bethel Heights Addition No. 1, containing 4,044 sq. feet. A Fair Market Value for the property has been appraised at \$500.00 by a professional appraiser.

Mr. Nolan stated that Bob Wright, Right of Way Agent for the DOT, has informed him that this easement needs to be agreed upon by mid June to allow this project to begin this year.

There was some concern that there would be a problem with the existing sewer and water pipes located in this parcel. Mr. Nolan indicated that the pipes would not be disturbed and that the parcel was needed by the DOT for part of the roadway slope.

**motion** M/M by Hickson 2nd by Metcalfe to recommend the City Council accept DOT's disposal offer. Voice vote. Motion carries unanimously.

**X. ADJOURNMENT**

**motion** M/M by Metcalfe 2nd by Hamilton to adjourn the meeting. Voice vote. Motion carried unanimously.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 1995.

\_\_\_\_\_  
John Guinn, Chairman

ATTEST:

\_\_\_\_\_  
Richard Nolan, Acting Planning Manager

## V. COMMUNICATIONS

I received a request from Lenny Welch, acting on behalf of Bethel Utilities Corporation (BUC), and the Port Director to place two utility poles on lot 8, block 18, USS3230, a City owned lot. The poles were to be used to provide electrical power for a fish processor that was docked along the seawall. The processor was placed in this position by the Port Director with the promise that power could be provided. This lot is zoned industrial and is used by the Port.

After looking through the codes it was my understanding that BMC 14.02.030B(3) allows the Port Director to have these poles put in without an easement. An easement could have been requested by BUC at a later date. After consulting with the City Manager I was asked to refer this matter to the City attorney. The response from the attorney was that the placement of the poles would amount to granting of an easement and would require the City to pursue the disposal process.

It is my opinion that the City's attorney is being used to run the City on a day to day basis which is unjustified and expensive. This policy is costing the City large amounts of money and, as in this case, much needed revenue. I think that the codes, as written, need to be adjusted to provide adequate control over problems that could be handled by the appropriate departments without the need of Council approval.



# CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559  
907-543-2087  
FAX # 543-4171

## MEMORANDUM

TO: WILLIAM HUNTER, CITY MANAGER

FROM: RICHARD NOLAN, ACTING PLANNING MANAGER

DATE: MAY 26, 1995

RE: UTILITY POLE REQUEST

The Planning Department has received a request from BUC to place two utility poles on Lot 8, Block 18, USS3230 which is a City owned parcel. Fish processors docking in this area have requested they be provided with sufficient power to meet their operating needs. BUC has stated that this will necessitate running a primary transmission line to the site.

This could be considered a request by BUC for a temporary use permit but fishing and the support needed by the fishery are would be considered a permanent or ongoing activity. I recommend that the City allow BUC to place the poles on the property at this time due to a time constraint with an added recommendation that the City start the process to grant BUC a permanent utility easement.

This is City owned property and as such the Planning Department cannot approve the request without the approval of the either the City Manager or the City Council. I recommend the City Manager approve this request as a furtherance of local trade or industry.



# CITY OF BETHEL

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907-543-2087

FAX # 543-4171

## MEMORANDUM

TO: WILLIAM HUNTER, CITY MANAGER  
FROM: RICHARD NOLAN, ACTING PLANNING MANAGER  
DATE: JUNE 5, 1995  
RE: UTILITY POLE REQUEST

The Planning Department has researched the request from BUC to place two utility poles on Lot 8, Block 18, USS3230 which is a City owned parcel. BMC 17.24.170 Easements--Utility reads: "Utility easements shall be provided. Such easements shall extend at least ten feet on either side of the utility line...." It is my understanding that the City is required to give the Utility Company an easement. Tom Warner, member of the Planning Commission, stated that this would not require a variance or a conditional use permit from the Planning Commission.

The Port Director and myself have discussed this matter and concur placing utility poles on this City lot is in the best interest of Bethel. BMC 14.02.030B(3) mandates the Port Director to regulate and allocate the use of Port Facilities and therefore gives him the authority to have the poles placed. We feel it is still appropriate to have the City Managers approval.

**HICKS, BOYD, CHANDLER & FALCONER**

ATTORNEYS AT LAW  
SUITE 200  
825 WEST EIGHTH AVENUE  
ANCHORAGE, ALASKA 99501  
TELEPHONE: (907) 272-8401  
TELECOPIER: (907) 274-3698

June 5, 1995

VIA FACSIMILE

William Hunter  
City Manager  
City of Bethel  
P.O. Box 388  
Bethel, Alaska 99559

RE: Utility Pole Request

Dear Mr. Hunter:

I have received the questions you forwarded this afternoon regarding people's respective authority to allow Bethel Utilities Corp. to place two utility poles and associated transmission lines on a City owned parcel.

In my opinion, permitting BUC to place these poles and lines on City owned property would amount to the granting of an easement across that lot by the City. Only the City Council may grant an easement across City owned property by ordinance. See BMC 4.08.030(c). Easements are included in the interests in land that are subject to the City's land disposal ordinance. See BMC 4.80.060(b).

An easement to place the pole would qualify under the City's Land Disposal Ordinance as a disposal to an entity providing a necessary public service under BMC 4.08.030(b). The land disposal ordinance defines "necessary public service" so as to specifically include electric utilities. The City Council could, by ordinance, authorize the granting of an easement to BUC without seeking bids and for less than appraised value. The ordinance and easement document would need to specify that the property would revert to the City once the use of the easement for electric utility purposes ceased. However, BMC 4.08.040 would still require that notice of this proposed disposal be posted and published in accordance with its terms.

Mr. William Hunter  
June 5, 1995  
Page 2

I will be out of the office starting tomorrow morning; my wife is having a planned delivery of a baby. I will return next Monday. If in the interim you need an ordinance for the land disposal drafted, please contact attorney Krista Stearns.

Very truly yours,

HICKS, BOYD, CHANDLER & FALCONER



Jeffrey S. Moeller

JSM\lhf

## **VI. PLANNER'S REPORT**

The has been a considerable amount of building activity in Bethel this month. The Planning Department has issued 18 Site Plan Permits and is reviewing several others. The ability of the Planner to physically visit each site is severely restricted due to the staffing problem.

The annual budget process is coming to a close and the Planning Department is making some gains. We have received a new computer which will be capable of performing most functions in the future. I have also been advised by the City Manager and the Finance Director that money is being made available for a land records system in the new budget. I want to thank Mr. McComas for his work on the City Council to provide an increase in the Planning Department budget.

The new Planning Manager position should be filled by shortly. The City Manager was to begin the interview process on Tuesday the 6th of June. I should have some more information at our meeting. I have included the list of interview questions to be asked of each applicant.



# CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559

907-543-2087

FAX # 543-4171

## MEMORANDUM

TO: BUFORD McCOMAS

FROM: RICHARD NOLAN, ACTING PLANNING MANAGER

DATE: MAY 25, 1995

RE: DEPARTMENT NEEDS

The Planning Department has requested and received a computer capable of dealing with the future needs of the City. It has the performance capabilities for AutoCad, GIS systems, large databases and eventually networking.

We now need to begin developing detailed GIS data sets. This would involve geographic data (land parcels, zoning, utilities, etc.) in an AutoCad format. Parcel data would be coded to accommodate ownership, address, and zoning attribute data. Eventually maps would be digitized and coded to augment the existing data.

Most important is the need of a Land Records System. This would set up a plat and hard copy document system. This could then be put in GIS format for instant acquisition of detailed information concerning subdivisions, lots, zoning, addresses, ACMP concerns, utilities, and many other related areas.

An AutoCAD/GIS system could perform work functions for both the Planning Department and Public Works. The Planning Department needs a full time Planning Technician position which could be co-funded by both departments for work projects benefitting each.

I have put together a list of what I would consider essential tools for a Planning Department with minimal staffing. Minimal staff being a Planning Manager and a full time technician. I think that with these items the Department could function as designed.

## ***Department Needs With Minimum Staffing***

### **Software**

#### 2D Basic Drafting Tools

AutoCAD R12 for Windows

2D Icon TOOL

Spanner spreadsheet link

\$2,750.00

#### GIS

Arcview 2 from ERSI

\$995

ArcCAD 11.3

\$2,695

\$3,690.00

#### Surveying/Engineering

Coordinate Geometry

To be purchased at later date

Survey

"

"

### **Hardware**

#### Printer/Plotter

HP Designjet 600

600 dpi monochrome

8.5" x 11" to 36" x 600"

\$4,675.00

#### Scanner

Relisys Power Office

\$499

Scan and Type

\$ 69

\$ 568.00

### **Data/Records**

#### Land Records System

database reference material

(Land Field Service, Inc. estimation)

\$11,100.00

### **Training**

Production AutoCAD1

\$425

Production AutoCAD2

\$275

ArcCAD

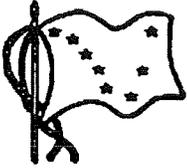
\$595

\$1,295.00

Total

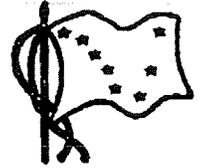
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\$24,510.00

**LAND FIELD SERVICES, INC.**

P.O. BOX 240147  
ANCHORAGE, ALASKA 99524  
248-6740

P.O. BOX 72510  
FAIRBANKS, ALASKA 99707  
452-1206



May 11, 1995

City of Bethel  
P.O. Box 388  
Bethel, Alaska 99559

Attention: Mr. William J. Hunter  
City Manager

Subject: Establishment of Land Records System  
City of Bethel

Dear William:

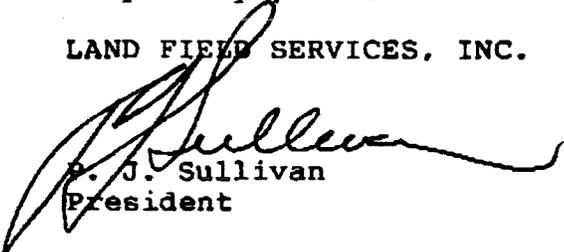
It is necessary that the City of Bethel establish a Land Records System in order to be able to maintain land records concerning the City of Bethel's assets.

Establishing such a Land Records System (which would be a marriage of plats, maps and hard copies of documents, which could then be established within a computer program for easy reference) would entail research of the Bethel Recording District records and the City of Bethel's inhouse sources and the setting up of the plat and hard copy document system.

We estimate that this effort would take ten man days and that fees and expenses would total approximately \$11,100.00.

Very truly yours,

LAND FIELD SERVICES, INC.

  
P. J. Sullivan  
President

PJS/ns

## INTERVIEW FOR PLANNING MANAGER

APPLICANT: \_\_\_\_\_

DATE: \_\_\_\_\_

Rating Score from 1 to 5 for each of the following:

1. What is your general understanding of rural planning and/or Alaska's planning needs?

2. What knowledge of the U.B.C.'s do you have and how can you help the City of Bethel create its own set of building codes and subdividing regulations? Score: \_\_\_\_\_

3. How would the City of Bethel benefit by hiring you as the Planning Director? Score: \_\_\_\_\_

4. What knowledge or experience will enable you to draft, revise and enforce municipal ordinances? Score: \_\_\_\_\_

5. What knowledge or experience do you have with resource management, particularly wetland management? Score: \_\_\_\_\_

6. What knowledge or experience do you have with Coastal Management Programs? Score: \_\_\_\_\_

7. What knowledge or experience do you have with land grants or State and Federal land patents? Score: \_\_\_\_\_

Score: \_\_\_\_\_

8. List any experiences you have had with subdivision planning or regulation.

Score: \_\_\_\_\_

9. What knowledge or experience do you have in administrating the site permitting process, wetland permitting, assigning house numbers and updating the City map, zoning and enforcement?

Score: \_\_\_\_\_

10. What knowledge or experience do you have in preparing grant proposals and managing grants?

Score: \_\_\_\_\_

**VIII. OLD BUSINESS**

**ITEM A: RECOMMENDATION TO THE CITY COUNCIL TO ADOPT ORDINANCE  
HOLDING CONTRACTORS LIABLE FOR WORK COMMENCED  
WITHOUT A SITE PLAN PERMIT - 18.84.040**

This ordinance has been referred back to the Planning Department for re-evaluation. I find nothing wrong with the way it was initially presented, except by the City Council, and have no plans of changing it. It is permissible under our existing codes and I feel it is justified due to the lack of concern for City Ordinances demonstrated by the local contractors.



# CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559  
907-543-2087  
FAX # 543-4171

Introduced by: City Manager Hunter  
Date: May 9, 1995  
Public Hearing: May 23, 1995  
Action: Referred to Planning Commission  
Vote: 7-Yes, 0-No

## ORDINANCE #95-13

### AN ORDINANCE OF THE BETHEL CITY COUNCIL AMENDING SECTION 18.84.040, ENTITLED PENALTIES AND REMEDIES, OF THE BETHEL MUNICIPAL CODE BY ADDING SUBSECTION C

**WHEREAS**, the Bethel City Council recognizes the need for development within its boundaries in accordance with the City's Land Use Ordinance and its Comprehensive Plan; and

**WHEREAS**, contractors performing work for property owners, or for the agents of property owners, are often in the best position to determine whether construction, improvements or changes made to property comply with the provisions of the Land Use Ordinance; and

**WHEREAS**, concerns for present and future health, safety and welfare of the citizens of the community dictate that the Land Use Ordinance be complied with by those effecting improvements, construction and other changes to property.

**NOW, THEREFORE, BE IT ENACTED BY THE BETHEL CITY COUNCIL AS FOLLOWS:**

**Section 1:** Title 18 of the Bethel Municipal Code is amended by adding Subsection 18.84.040(C).

**Section 2:** This ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing laws or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, or as waiving any right of the City under any section or provision existing at the time this ordinance is adopted, or as vacating or annulling any right obtained by any person, firm, or corporation, by lawful action of the City except as shall be expressly provided for in this title.

**Section 3:** If any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such

judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 4: Section 18.84.040 of the Bethel Municipal Code is hereby amended by adding a new subsection (C) to read as follows:

C. A contractor commencing or completing work on a building or structure may be held liable for any violation of this title resulting from work performed by the contractor, and is subject to the penalty and remedy provisions of this Chapter and to the general penalty provisions of section 1.08.010.

Section 5: This ordinance shall be effective upon adoption.

PASSED AND APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_, 1995.

\_\_\_\_\_  
Allan Wintersteen, Mayor

ATTEST:

\_\_\_\_\_  
Connie Tucker, City Clerk

**ITEM B: DISPOSAL OF CITY PROPERTY KNOWN AS PARCEL C-1, SECTION 13, T8N, R72W - FAA**

The FAA land sales agreement, which first came before the Commission in March of 1994, was to be completed this week but we found a few problems.. Although the process has gone through all phases of the disposal process apparently no one thought to have the subdivision plat recorded. I think there was a problem with communication because the Planning Department has had copies of the plat for months.

The original plat needs to be signed by the Committee chair and then recorded to complete this disposal.

## **IX. NEW BUSINESS**

### **ITEM A: RECOMMENDATION TO CITY COUNCIL ON PROPOSED LEASE OF TRACT A-1 AND A-2, TURNKEY III SUBDIVISION - OMNI ENTERPRISES, INC.**

Omni Enterprises, Inc. has requested an extension of their lease on tract A1, Turnkey III. The current building on tract A1 is encroaching on lot A2. To alleviate the encroachment problem Omni has asked to lease lot A2 also. This is the current site of the QFC #1 convenience store.

The property appraisal completed by Stan Dunigan of Affiliated Appraisers of Alaska indicates that the property is valued at \$18,548.00 and after completing a market rent analysis concluded that \$1,500.00 per annum for 5 years would be a fair annual market rent. The City Manager and Finance Director have decided that the City will offer Omni the property for \$1,900.00 per annum over a ten year period.

The Planning Department advocates recommendation of this lease proposal to the City Council.

# Omni

ENTERPRISES, INC.

2825 ROSE STREET SUITE 202

ANCHORAGE, ALASKA 99508

TELEPHONE (907)333-8802 FAX (907) 333-8358

May 9, 1995

William J. Hunter  
City Manager  
Bethel, AK 99559

Dear William:

Acting on behalf of Omni Enterprises, I would like to extend our lease of tract A1, Turkey III Housing Development, Bethel, Alaska.

As shown on the plat, it appears we are encroached on lot A2. To solve this problem, we would like to lease lot A2 also.

The appraisal suggests the zoning on the two lots was changed to residential a few years ago. Since we are currently operating a convenience store and are "grandfathered" we would like this conditional light commercial use written in the new lease (only those things associated with a convenience store).

We have recently invested in a remodel and are committed to a long-term relationship with the City. We will continue to upgrade our facilities and offer our customers pleasant, friendly and convenient place to shop.

The appraisal suggests an annual lease of \$1,500 for the two lots. This is acceptable to Omni.

I'm looking forward to working with you.

Sincerely,



Norm R. Billsborough

NRB:mw

**ITEM B: RECOMMENDATION TO CITY COUNCIL TO ADOPT ORDINANCE  
REQUIRING TELEPHONE AND CATV CABLES TO BE BURIED - 15.12**

I have drafted codes specifying the burial of telephone and CATV lines as directed in the April meeting.. I have enclosed the new codes for you to preview before our meeting.

I expected a written response from Prime Cable. I talked with one of there local technicians who did not think that this was a feasible plan due to the problems they have encountered previously with buried lines. I asked him to respond by mail with his concerns. He explained that the response would have to come from Anchorage but that he would advise them of the pending ordinance. I will try to have some form of communication at the meeting.

Chapter 15.12  
UTILITY LINES

15.12.010 Definitions

- A. "CATV" means a utility that operates nonbroadcast facilities that distribute to subscribers the signals of one or more television broadcast stations.
- B. "Utility distribution line" means all or any part of a conductor and supports owned or operated by a utility and used to transmit messages, impressions, pictures or signals by means of electricity or electromagnetic between a distribution substation or central office and the lot line of a customer's premises; excluding auxiliary equipment such as aboveground transformers, switching devices, pad-mounted distribution facilities and CATV power supplies.

15.12.020 Telephone and CATV Facilities

- A. All new telephone and CATV lines shall be installed in accordance with the specifications of the City and the utility providing the service.
- B. All new telephone and CATV utility distribution lines as defined in Section 15.12.010 shall be placed underground as required by Section 15.12.030.

15.12.030 Underground placement of utility distribution lines.

- A. Except as provided in B and C of this section, all newly installed or relocated utility distribution lines shall be placed underground.
- B. A new utility distribution line may be placed overhead when necessary immediately to restore service interrupted by accident or damage by flood, fire, earthquake or weather; provided that the utility distribution line shall be replaced by a utility distribution line conforming to this chapter within 12 months of its placement.
- C. A utility distribution line or service connection may be placed on the surface of frozen ground, provided that it be placed underground within 12 months thereafter.
- D. Nothing in this section restricts the maintenance, repair or reinforcement of existing overhead utility distribution lines.
- E. A temporary utility distribution line may be placed overhead in connection with new construction if the utility's tariff approved by the Alaska Public Utilities Commission expressly provides for the removal of that line by a date, certain not to exceed twelve (12) months.

#### 15.12.040 Variances

- A. The Planning Commission may grant a variance from subsection 15.12.030A when the Commission finds any of the following:
1. placing a utility distribution line underground would cause an excessive adverse environmental impact;
  2. placing a utility distribution line underground would threaten public health and safety, because the placement cannot be shown to meet acceptable technical standards for safety; or
  3. placing a utility distribution line underground in an environmentally sound and safe manner would cost more than three times the cost of placing the line overhead where the applicant demonstrates the relative cost to the satisfaction of the Commission.
- B. The director of the Planning Department may grant a variance from subsection 15.12.030A when he finds that the utility distribution line is being placed overhead temporarily for one of the reasons listed in this subsection:
1. to provide service when weather conditions do not allow excavation for underground placement;
  2. a permanent location for underground placement is not available because of construction in progress; or
  3. to provide service to a temporary use or structure.

A variance issued under this subsection shall expire within two years of its issuance.

#### 15.12.050 Enforcement

- A. Violations of this chapter are subject to all of the penalties and remedies for this title as set forth in Chapter 1.08.
- B. In addition to the penalties and remedies provided for violations in subsection A of this section, no permit may be issued to install a utility distribution line on City property or in a City easement or right-of-way in violation of this chapter.

15.12.060 Nonconforming utility distribution lines

Existing overhead utility distribution lines are nonconforming utility distribution lines and are subject to Section 15.12.060 thru 15.12.70.

15.12.070 Placing nonconforming utility distribution lines underground

- A. A utility owning or operating nonconforming utility distribution lines shall place those lines underground within ten years provided that a utility need not expend, except by special agreement, during any fiscal year of the utility, more than 4% of its gross revenue derived from service connections within the City during its preceding fiscal year to comply with this subsection.
- B. New service connections shall be placed underground provided that service connections may be installed overhead from October through May, if placed underground within one year of installation.

15.12.080 Nonconforming utility distribution lines in municipal right-of-way

- A. The Department of Public Works shall furnish to a utility owning or operating utility distribution lines all planning documents for municipal road construction which will require the relocation of those utility distribution lines.
- B. Upon adoption of Chapter 15.20 a utility installing a utility distribution line underground in material compliance with a right-of-way permit issued by the Department of Public Works, and in accordance with this Chapter, the City shall reimburse the cost of any subsequent relocation of the utility distribution line required by the City road construction.
- C. If City road construction requires the relocation of a nonconforming utility distribution line, the City, as part of the road construction project cost, shall reimburse the cost of the relocation. Reimbursable costs under this subsection include engineering and design, inspection, construction and general overhead costs. Plant betterment costs are the costs of providing utility distribution line capacity or quality beyond what current industry standards require for the capacity or level of service existing before the relocation.

15.12.090 Conversion of service connections

A utility that places a nonconforming utility distribution line underground as required by Section 15.12.070 shall bear the cost of placing underground any related service connection or utility facilities on a customer's premises, in accordance with the utility's applicable tariff or rules or regulations of operation.

**ITEM C: WAIVER REQUEST FOR ABBREVIATED PLAT OF TRACT 5A1,  
USS4000 - 17.04.050B**

The Yukon Kuskokwim Health Corporation (YKHC) has submitted a waiver request to the Planning Commission for an abbreviated plat of tract 5A1, USS4000. Section 17.04.050B states that the transaction not fall within the intent of AS 29.33.150--240 and AS 41.15. The latter has been removed from the Alaska Statutes and I have provided copies of AS 41.15.

We must determine if the plat request falls outside of the general intent of AS 41.15 before we waive the preparation, submission for approval and recording of this plat. I am still undecided as to whether or not this is the case.

The Planning Department would still like to have the abbreviated plat recorded since the plat has already been prepared. The approval of the commission would not be necessary.



"Fostering Native Self-Determination in Primary Care, Prevention and Health Promotion"

# YUKON-KUSKOKWIM HEALTH CORPORATION

June 5, 1995

Bethel Planning Commission  
% City of Bethel  
P.O. Box 388  
Bethel, Alaska 99559

Dear Planning Commission:

The Yukon-Kuskokwim Health Corporation has submitted an abbreviated plat to the City Planning Office for the YKHC Subdivision. This identifies Lot 1 and Lot 2 of 400A. We have a building permit for the Supportive Living building that will be constructed on Lot 1.

In accordance with the City Ordinances, YKHC is asking for a waiver for the preparation, submission for approval and recording, since this is a short plat, does not fall within the general intent of AS 29.33.150--40 and AS 40.15, is not in connection with a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required. (Section 17.04.050 Exceptions, B., page 208 of the City Ordinances.)

Thank you for your consideration.

Sincerely,

Gene Peltola, President/CEO  
YUKON-KUSKOKWIM HEALTH CORPORATION

cc:

Claudia Placios

**Sec. 40.05.030. Duplicate copies required.** A recorder may require persons recording instruments concerning title or possession of mining properties to furnish a correct duplicate copy of the instrument. The recorder may forward the copy to the Department of Natural Resources. (§ 3 ch 95 SLA 1953; am § 3 ch 72 SLA 1961)

**Chapter 10. Uniform Foreign Acknowledgment Act.**

*[Repealed, § 6 ch 37 SLA 1981. For current law, see AS 09.63.050 — 09.63.100.]*

**Chapter 15. Subdivisions and Dedications.**

**Article**

- 1. Recording of Plats (§§ 40.15.010 — 40.15.060)
- 2. Control of Plats, Subdivisions and Dedications (§§ 40.15.070 — 40.15.130)
- 3. General Provisions (§§ 40.15.190 — 40.15.290)

**Article 1. Recording of Plats.**

**Section**

- 10. Approval, filing, and recording of subdivisions
- 20. Plats to be acknowledged and contain certificate that taxes and assessments are paid

**Section**

- 30. Dedication of streets, alleys and thoroughfares
- 40. Certified copy of plat as evidence
- 50. Plats legalized
- 60. Missing plats

**Collateral references.** — Failure of vendor to comply with statute or ordinances requiring approval or recording of plat prior to conveyance of property as

rendering sale void or voidable. 77 ALR3d 1058.  
Construction and effect of "marketable title" statutes. 31 ALR4th 11.

**Sec. 40.15.010. Approval, filing, and recording of subdivisions.** Before the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be submitted for approval to the authority having jurisdiction, as prescribed in this chapter. The regular approval of the authority shall be shown on it or attached to it and the subdivision or dedication shall be filed and recorded in the office of the recorder. The recorder may not accept a subdivision or dedication for filing and recording unless it shows this approval. If no platting authority exists as provided in AS 40.15.070 and 40.15.075, land may be sold without approval. (§ 1 (ch I) ch 115 SLA 1953; am § 1 ch 95 SLA 1955; am § 67 ch 69 SLA 1970; am § 30 ch 161 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, inserted "filing" in the catchline and "and recording" in the third sentence, and sub-

stituted "and recorded" for "for record" in the second sentence and "may" for "shall" in the third sentence.

**NOTES TO DECISIONS**

**Approval by department of environmental conservation.** — Department of environmental conservation can validly require its approval of potential subdivision plans as a prerequisite to the recording and sale of any lots in the subdivision. *State v. Anderson*, Sup. Ct. Op. No. 3267 (File No. S-1824), P.2d (1988).

Quoted in *Kenai Peninsula Borough v. Kenai Peninsula Bd. of Realtors, Inc.*, Sup. Ct. Op. No. 2576 (File No. 6374), 652 P.2d 471 (1982).

Stated in *State v. Weidner*, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), 684 P.2d 103 (1984).

**Collateral references.** — 12 Am. Jur. 2d, *Boundaries*, §§ 6 to 9; 23 Am. Jur. 2d, *Dedication*, §§ 29-33.

26 C.J.S. *Dedication* §§ 22-24, 26-29; 62 C.J.S. *Municipal Corporations* §§ 83, 84. Defective or incomplete statutory dedi-

cation as common-law dedication where accepted by public. 63 ALR 670.

Power of municipal corporation to exchange its real property as affected by restrictive dedication. 60 ALR2d 231.

**Sec. 40.15.020. Plats to be acknowledged and contain certificate that taxes and assessments are paid.** Every plat shall be acknowledged before an officer authorized to take acknowledgment of deeds. A certificate of acknowledgment shall be endorsed on or annexed to the plat and recorded with it. A person filing and recording a plat, map, subdivision, or replat of property, or vacating the whole or any portion of an existing plat, map, subdivision, or replat shall file and record with it a certificate from the tax-collecting official or officials of the area in which the land is located that all taxes levied against the property at that date are paid. (§ 2 (ch I) ch 115 SLA 1953; am § 31 ch 161 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, in the third sentence, inserted "and recording" and substituted "shall file and

record" for "shall, at the time of filing it for record or filing the petition to vacate, file."

**Sec. 40.15.030. Dedication of streets, alleys and thoroughfares.** When an area is subdivided and a plat of the subdivision is approved, filed, and recorded, all streets, alleys, thoroughfares, parks and other public areas shown on the plat are considered to be dedicated to public use. (§ 3 (ch I) ch 115 SLA 1953; am § 6 ch 5 SLA 1966; am § 32 ch 161 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, inserted "filed" and substituted "considered to be" for "deemed to have been."

**Opinions of attorney general.** — A subdivision street which has been dedicated is deemed open to the public. 1965 Op. Att'y Gen. No. 10.

## NOTES TO DECISIONS

**Common-law dedication** takes place when an offer to dedicate is accepted. *State v. Fairbanks Lodge No. 1392*, Sup. Ct. Op. No. 2422 (File No. 5294), 633 P.2d 1378 (1981).

**Acceptance of an offer to dedicate** may occur through a formal official action or by public use consistent with the offer of dedication or by substantial reliance on the offer of dedication that would create an estoppel. *State v. Fairbanks Lodge No. 1392*, Sup. Ct. Op. No. 2422 (File No. 5294), 633 P.2d 1378 (1981).

**A plat's failure to dedicate the lands marked as streets for public use** is not a defect in form that could be cured by AS 34.25.030(a). *State v. Fairbanks Lodge No. 1392*, Sup. Ct. Op. No. 2422 (File No. 5294), 633 P.2d 1378 (1981).

**"Other public areas"**. — The words "other public area" (now "other public areas"), as used in this section, and "other open spaces," as used in a certificate of ownership and dedication, will be con-

strued as referring to things which by their nature are subject to being used by the public at large, and not merely by a particular segment of the public. *Chugach Elec. Ass'n v. Calais Co.*, Sup. Ct. Op. No. 323 (File No. 601), 410 P.2d 508 (1966).

**Utility easement held not to be a public area.** — See *Chugach Elec. Ass'n v. Calais Co.*, Sup. Ct. Op. No. 323 (File No. 601), 410 P.2d 508 (1966).

**Municipality's failure to assert rights in dedicated street not basis for equitable estoppel.** — The failure of municipal and other governmental officers to affirmatively assert governmental rights where the dedicated but as yet unused street was being occupied by landowner and his predecessors cannot serve as a basis for equitable estoppel. *State v. Simpson*, Sup. Ct. Op. No. 264 (File No. 424), 397 P.2d 288 (1964).

**Quoted in Laughlin v. Everhart**, Sup. Ct. Op. No. 2786 (File Nos. 7360, 7453), 678 P.2d 926 (1984).

**Collateral references.** — Implied or constructive dedication of land between street line and building. 7 ALR 727.

Uses to which land dedicated for park may be devoted. 18 ALR 1247; 63 ALR 484; 144 ALR 486.

Sale of lots with reference to plat as conferring, in absence of effective dedication to public, rights upon others than lot

owners in respect to streets shown by plat. 172 ALR 167.

Conveyance of lot with reference to map or plat as giving purchaser rights in indicated streets, alleys or areas not abutting on his lot. 7 ALR2d 607.

Construction of regulations as to subdivision maps or plats with respect to question of dedication of portion of land to public use. 11 ALR2d 546.

**Sec. 40.15.040. Certified copy of plat as evidence.** A copy of a plat certified by the recorder of the recording district in which it is filed or recorded as a true and complete copy of the original filed or recorded in the recording office for the district is admissible in evidence in all courts in the state with the same effect as the original. (§ 4 (ch I) ch 115 SLA 1953; am § 33 ch 161 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, substituted "as" for "is" in the catchline, and "is filed or recorded" for "is recorded"

and "filed or recorded in the recording office for the district" for "on file in his office" in the body of the section.

**Sec. 40.15.050. Plats legalized.** All plats filed or recorded with the recorder before March 30, 1953, whether executed and acknowledged in accordance with this chapter or not, are validated and all streets, alleys or public thoroughfares shown on these plats are considered to be dedicated to public use. The last plat of the area of record on March 30, 1953, is the official plat of the area as of that date, and the streets, alleys, or thoroughfares shown on it are considered to be dedicated to public use. The streets, alleys or thoroughfares shown on an earlier plat of the same area or any part of it which is in conflict with those shown on the official plat are considered to be abandoned and vacated. (§ 5 (ch I) ch 115 SLA 1953; am § 34 ch 161 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, deleted "Recorded" at the beginning of the catchline, deleted the former second sentence, which read "This section does not prohibit the abandonment of a plat recorded before March 30, 1953, if a subsequent plat is filed indicating abandonment," substituted "filed or recorded with

the recorder" for "recorded" and "to be" for "as having been" in the first sentence, "considered to be" for "deemed to be the streets, alleys or thoroughfares" in the second sentence, and "are considered to be" for "is deemed to have been" in the third sentence, and inserted "as of that date" in the second sentence.

**Sec. 40.15.060. Missing plats.** When a filed or recorded plat is missing and a present record is not available except by reference to the missing plat, a counterpart copy, approved by the platting authority, may be filed and recorded as of the original date of the missing plat and after filing and recording has the same legal effect and notice as the original missing plat. (§ 6 (ch I) ch 115 SLA 1953; am § 35 ch 161 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, substituted "When a filed or" for "Where

a" and "filing and recording" for "recording," and inserted "filed and."

**Article 2. Control of Plats, Subdivisions and Dedications.**

**Section**

70. Platting authority

**Section**

75. Authority in the unorganized borough and third class boroughs

**Sec. 40.15.070. Platting authority.** If land proposed to be subdivided or dedicated is situated within a first or second class borough, the proposed subdivision or dedication shall be submitted to the borough planning commission for approval. If the land is situated within a city in the unorganized borough or the third class borough, the proposed subdivision or dedication shall be submitted to the city planning commission for approval. The borough planning commission is the platting authority for the first or second class borough, the city planning commission is the platting authority for the city, and the

Department of Natural Resources is the platting authority in the remaining areas of the state and third class borough for the change or vacation of existing plats or a portion of such plats, as provided in AS 40.15.075. If the borough or the city does not have a planning commission, the borough assembly or the city governing body, respectively, is the platting authority and the proposed subdivision or dedication shall be submitted to it. A subdivision may not be filed and recorded until it is approved by the platting authority. (§ 1 (ch II) ch 115 SLA 1953; am § 68 ch 69 SLA 1970; am § 2 ch 112 SLA 1971; am § 36 ch 161 SLA 1988)

**Cross references.** — For planning, platting, and zoning by municipalities, see AS 29.40.

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, made a series of minor punctuation changes in the first two sentences, substi-

tuted "Department of Natural Resources" for "Division of Lands" in the third sentence, and rewrote the last sentence, which read "No subdivision may be filed for record until it is approved by the platting authority."

#### NOTES TO DECISIONS

**Approval by department of environmental conservation.** — Department of environmental conservation can validly require its approval of potential subdivision plans as a prerequisite to the recording and sale of any lots in the subdivision. State v. Anderson, Sup. Ct. Op. No. 3267 (File No. S-1824), P.2d (1988).

Stated in State v. Weidner, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), 684 P.2d 103 (1984).

Cited in Kenai Peninsula Borough v. Kenai Peninsula Bd. of Realtors, Inc., Sup. Ct. Op. No. 2576 (File No. 6374), 652 P.2d 471 (1982).

**Sec. 40.15.075. Authority in the unorganized borough and third class boroughs.** The Department of Natural Resources is the platting authority in the area outside organized boroughs and outside cities in the unorganized borough and in the third class borough for only the purposes of hearing and acting on petitions for the change or vacation of plats and shall execute this function substantially in conformity with the provisions of AS 29.40.130 — 29.40.160. Costs of publication and mailing authorized in AS 29.40.130 shall be paid to the Department of Natural Resources by the petitioner. The Department of Natural Resources shall adopt reasonable regulations governing the exercise of the authority conferred by this section. (§ 1 ch 112 SLA 1971; am § 7 ch 118 SLA 1972; am § 64 ch 74 SLA 1985; am § 37 ch 161 SLA 1988)

**Effect of amendments.** — The 1985 amendment substituted "AS 29.40.130 — 29.40.160" for "AS 29.33.210 — 29.33.240" at the end of the first sentence and in the second sentence deleted "as well as other costs" following "mailing" and substituted "AS 29.40.130" for "AS 29.33.210."

The 1988 amendment, effective January 1, 1989, substituted "Department of Natural Resources" for "Division of Lands" in the first sentence and for "division" in the second sentence, and deleted "upon the Division of Lands" at the end of the third sentence.

*Secs. 40.15.080, 40.15.090. Procedure on plats; waiver. [Repealed, § 69 ch 69 SLA 1970.]*

*Secs. 40.15.100 — 40.15.180. Information required; penalties; vacation and change of plats and streets. [Repealed, § 1 ch 118 SLA 1972.]*

### Article 3. General Provisions.

*Sec. 40.15.190. [Renumbered as AS 40.15.290.]*

**Sec. 40.15.200. Application to state and political subdivisions.** All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter and AS 29.40.070 — 29.40.160, or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter and AS 29.40.070 — 29.40.160 or former AS 29.33.150 — 29.33.240, or under home rule authority, in the same manner and to the same extent as subdivisions made by other landowners. (§ 2 ch 89 SLA 1972; am § 4 ch 118 SLA 1972; am § 2 ch 63 SLA 1974; am § 65 ch 74 SLA 1985)

**Effect of amendments.** — The 1985 29.33.240" and inserted "AS 29.40.070 — amendment substituted "AS 29.40.070 — 29.40.160 or former." 29.40.160" for "AS 29.33.150 —

### NOTES TO DECISIONS

Quoted in State v. Weidner, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), 684 P.2d 103 (1984).

**Sec. 40.15.290. Definitions.** In this chapter

(1) "street" includes streets, avenues, boulevards, roads, lanes, alleys, and other ways;

(2) "subdivision"

(A) means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale or building development, and includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or areas subdivided;

(B) does not include cadastral plats, cadastral control plats, open-to-entry plats, or remote parcel plats created by or on behalf of the state regardless of whether these plats include easements or other public dedications. (§ 7 (ch II) ch 115 SLA 1953; am § 3 ch 95 SLA 1955; am § 41 ch 113 SLA 1981)