

BOARD OF ADJUSTMENT HEARING  
MINUTES OF A SPECIAL MEETING  
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OCTOBER 11, 1993

CITY OF BETHEL

BOARD OF ADJUSTMENT HEARING  
with the  
Bethel City Council  
Constituting the  
Board of Adjustment

CALL TO ORDER

The meeting was convened at 7:30 p.m. by Mayor Feaster in the Log Cabin, Bethel, Alaska.

Mayor Feaster announced that the purpose of the meeting was to consider an appeal from the Planning Commission's decision regarding the issuance of a conditional use permit for construction and operation of the Bethel Receiving Home. Mayor Feaster advised the Board of its duties and that the procedures for conducting the meeting would be those procedures used to conduct City Council meetings. In addition, Mayor Feaster advised that the constitution of the Board consisted of seven members, and that all members were allowed to participate in the hearing proceedings. However, any members who had a conflict of interest or an administrative conflict must disqualify himself from voting.

motion M/M by Trantham, 2nd by Jones to request unanimous consent of the membership to select Mr. James Feaster to serve as Chairman of the Board of Adjustment. Voice vote. Motion carried unanimously.

Eligibility of the Board members to vote on the appeal was next reviewed. Mr. Tom Warner declared himself ineligible to vote as he had voted on the conditional use permit at the Planning Commission meeting of September 9, 1993. It was noted for the record, however, that Mr. Warner would be allowed to participate in the discussion.

Ms. Heidi Simmons had submitted a letter requesting a determination of Mr. Jake Metcalfe's eligibility to serve on the Board of Adjustment, pointing out that a possible conflict of interest existed as Mr. Metcalfe served on the board for Bethel Community Services. Mr. Metcalfe advised Council that no conflict existed as Bethel Community Services has no financial interest in the Bethel Receiving Home. Mr. Metcalfe was not disqualified.

Other Board members spoke on what they though may have considered possible conflict of interests. In each case, it was determined that a conflict did not exist.

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ROLL CALL

Present: Feaster, Jones, Metcalfe, Trantham, Vanasse,  
Warner, Wintersteen

REVIEW OF THE EVIDENCE

Chairman Feaster next advised the Board that it was charged with considering the evidence submitted in accordance with Chapter 18.72.020 of the Bethel Municipal Code, and after reviewing the evidence, the Board, by motion, would issue a statement of findings and conclusions.

For the record, Mr. Trantham pointed out that two separate packets of evidence had been distributed to board members: The first was distributed Friday evening, October 8, 1993, and the second, at approximately 5:30 PM, Monday, October 11, 1993.

motion M/M by Trantham, 2nd by Vanasse to enter into the record the following evidence received October 8, 1993: Exhibits A, B1, B2, B3, C, D, E, F1, F2, F3 and F4. Voice vote. Motion carried unanimously.

motion M/M by Trantham, 2nd by Wintersteen to enter into the record the following evidence received Monday, October 11, 1993, at approximately 5:30 PM: Exhibits C1, C2, F5, F6, F7, F8, F9, F10, F11, F12, F13, F14, F15, F16, F17 AND F18. Voice vote. Motion carried unanimously.

Each document marked Exhibit A through F18 submitted as evidence was then presented and subsequently reviewed by the Board.

motion M/M by Warner, 2nd by Jones to remove Exhibit F16, as an unsigned document, from the record. Poll vote. Motion carried. 5-yes (Feaster, Jones, Metcalfe, Trantham, Vanasse); 1-no (Wintersteen); 1-abstention (Warner).

FINDINGS, CONCLUSIONS AND MOTION

Following a review of the evidence submitted, the Board, by a show of hands, developed a written statement of findings and conclusions as follows:

Finding #1: Tract C, Block 4 of the Replat of the Plat of Turnkey III at 226 Ptarmigan Street, Bethel, Alaska, is zoned, and the official zoning map is residential.

Finding #2: A public hearing to consider the conditional use permit was held during the regularly scheduled meeting of the

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Planning Commission of September 9, 1993, and was properly noticed in accordance with Title 18.

Finding #3: Five Commissioners were present at the public hearing, all of whom were duly-appointed Commissioners of the Planning Commission.

Finding #4: At the public hearing eight different members of the public gave testimony: One spoke in favor of granting the conditional use permit; seven spoke in opposition to granting the conditional use permit.

Finding #5: The Planning Department staff recommended for approval the conditional use permit on the condition that the building be connected to the piped water and sewer system, that the site have sufficient vehicular access off of Ptarmigan Street and that the children of the facility be inside by a reasonable hour at night to reduce the amount of noise generated.

Finding #6: That the following chapters from the Bethel Municipal Code be entered into the record: Chapters 18.12.020 entitled *Definition of terms*; 18.32.010 entitled *Intent*; 18.32.020 entitled *Permitted principal uses and structures*; and 18.32.030 entitled *Conditional uses*. (Copies of these chapters extracted from the Bethel Municipal Code are attached as part of the official minutes).

Finding #7: The Bethel Receiving Home does not fall under *Permitted principal uses and structures* as stated in Chapter 18.32.020 of the Bethel Municipal Code.

Finding #8: The Bethel Receiving Home does not fall under *Conditional uses* as stated in Chapter 18.32.030 of the Bethel Municipal Code.

Conclusion: The Board of Adjustment has concluded that the Bethel Receiving Home does not meet the conditions required as set forth under Chapter 18.32.020 entitled *Permitted principal uses and structures* or Chapter 18.32.030 entitled *Conditional uses*.

motion M/M by Wintersteen, 2nd by Jones that the Board of Adjustment deny the appeal of the denial of a conditional use permit by the City of Bethel Planning Commission for the Bethel Children's Receiving Home based on the eight findings and the conclusion determined from the evidence presented to and heard by the Board of Adjustment. Poll vote. Motion carried. 5-yes (Feaster, Jones, Trantham, Vanasse, Wintersteen); 1-no (Metcalfe); 1-abstention (Warner).

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Mr. Metcalfe spoke against the motion, and stated for the record that he felt the decision made by the Board was wrong, that it went against the advice received by the Planning Department and the City's attorney. In addition, Mr. Metcalfe stated that it was an arbitrary decision because it was not based on the advice or the evidence that was before the Board of Adjustment. Mr. Metcalfe also stated that the decision did not follow the code of ordinances, specifically the definition of *conditional uses*, as the application presented conformed to the ordinance. By denying the conditional use permit, Mr. Metcalfe stated "it was an easy decision to make, but that easy decision is not the right decision."

Mr. Jones pointed out that the Board of Adjustment was tasked with making a determination as to whether the Planning Commission was correct in their denial of the conditional use, and that the Board was not responsible for determining whether or not the City of Bethel should have a new Children's Receiving Home, or whether it was a good cause.

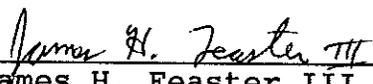
Mr. Metcalfe responded by stating for the record that the issue did not have anything to do whether the receiving home was a good idea or a bad idea, but whether or not their application met the definition and requirements of the conditional use permit, and that whether the receiving home was a good idea or a bad idea should not be part of anyone's decision.

Mr. Wintersteen stated that he felt the decision regarding the conditional use permit needed to be made in a dispassionate atmosphere which was the reason he voted in favor of the City of Bethel appealing the Planning Commission's decision on behalf of the State of Alaska. In this way, he felt the Board of Adjustment could look at the evidence presented and make a decision based upon that evidence. Mr. Wintersteen stated that he felt the Board had accomplished that task, even though it was an extremely difficult task for all involved.

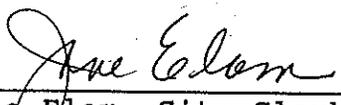
ADJOURNMENT

motion M/M by Jones, 2nd by Metcalfe to adjourn the meeting at 9:50 PM. Voice vote. Motion carried unanimously.

PASSED AND APPROVED THIS 12<sup>th</sup> DAY OF October, 1993.

  
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James H. Feaster III, Chairman  
Board of Adjustment

ATTEST:

  
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Jane Elam, City Clerk