Planning Commission Meeting Agenda
Regular Scheduled Meeting Thursday, August 13, 2020– 6:30PM
CITY HALL COUNCIL CHAMBERS 300 CHIEF EDDIE HOFFMAN HIGHWAY
Or by teleconference: 1-800-315-6338 pin: 13871

MEMBERS

Kathy Hanson
Chair
Term Expires 12/2021

Lorin Bradbury
Vice-Chair
Term Expires 12/2020

John Guinn
Commission Member
Term Expires 12/2021

Alex Wasierski
Commission Member
Term Expires 12/2021

Shadi Rabi
Commission Member
Term Expires 12/2021

Scott Campbell
Commission Member
Term Expires 12/2020

Stanley Hoffman Jr
Alternate Member
Term Expires 12/2021

Haley Hanson
Council Representative
Term Expires 10/2020

Ted Meyer
Ex-Officio Member

Pauline Boratko
Recorder

AGENDA

I. CALL TO ORDER:

II. ROLL CALL:

III. PEOPLE TO BE HEARD – (3 Minute Limit)

IV. APPROVAL OF THE AGENDA:

V. APPROVAL OF THE MINUTES:
   A. July 9, 2020—regular meeting.

VI. SPECIAL ORDER OF BUSINESS:

VII. NEW BUSINESS:
   A. PUBLIC HEARING: On June 22, 2020 and July 2, 2020 the City of Bethel Planning Office received an appeal and appeal refinement from Daniel & Dawn Hackney regarding a June 10, 2020 City notice to correct Bethel Municipal Code Violations. The property legal description is: Plat # 84-13, Block 1, Lot 11. The physical address is 175 Alex Hately.

VIII. UNFINISHED BUSINESS:

IX. PLANNER'S REPORT:

X. COMMISSIONER'S COMMENTS:

XI. ADJOURNMENT:

Posted at City Hall, Post Office, Bethel Native Corp. and Swanson's Grocery Store Bulletin Boards on August 7, 2020

City of Bethel, Alaska
Planning Commission

July 09, 2020 Regular Meeting Bethel, Alaska

I. CALL TO ORDER:

A regular meeting of the Planning Commission was held on July 09, 2020 at the Bethel City Hall, Council Chambers in Bethel, Alaska. The Chair of Commission, Kathy Hanson called the meeting to order at 6:32 PM.

II. ROLL CALL:

Compromising a quorum of the Commission, the following members were present for roll call: Kathy Hanson, Lorin Bradbury, John Guinn, Alex Wasierski, Shadi Rabi, Stanley Hoffman Jr., Scott Campbell, and Haley Hanson
Also Present: Ted Meyer, City Planner; Pauline Boratko, Recorder

III. PEOPLE TO BE HEARD:

IV. APPROVAL OF THE AGENDA:

MOVED:	Scott Campbell	Motion to approve the agenda
SECONDED:	Lorin Bradbury	
VOTE ON MOTION	unanimous	

I. APPROVAL OF THE MINUTES:

MOVED:	Lorin Bradbury	Motion to approve the meeting minutes from June 11, 2020
SECONDED:	Shadi Rabi	
VOTE ON MOTION	Unanimous	

II. SPECIAL ORDER OF BUSINESS:

III. NEW BUSINESS:

A. Hauled Utility Services for future Subdivision developments: commissioners discussed the concern for future hauled utility services for the new and upcoming subdivisions.

IV. UNFISHINSHED BUSINESS:

V. PLANNER'S REPORT: Ted Meyer gave his report.

VI. COMMISSIONER'S COMMENTS:

H. Hanson- no comment.
A. Wasierski- no comment.
J. Guinn- no comment.

S. Hoffman- no comment.
K. Hanson- no comment.
S. Rabi-no comment.
L. Bradbury- Figure out a way to get rid of junk cars, and abandoned houses.
H. Hanson-no comment.

X. ADJOURNMENT:

MOVED:	Shadi Rabi	Motion to adjourn the meeting.
SECONDED:	Lorin Bradbury	
VOTE ON MOTION	Unanimous	

With no further business the meeting adjourned at 7:33 pm

APPROVED THIS _____ DAY OF _____, 2020

_____
Kathy Hanson, Chair

_____
ATTEST: Pauline Boratko, Recorder

PLANNING COMMISSION
PUBLIC HEARING NOTICE
APPEAL TO 175 ALEX HATELY CODE VIOLATION

Notice is hereby given that on June 22, 2020 and July 2, 2020 the City of Bethel Planning Office received an appeal and appeal refinement from Daniel & Dawn Hackney regarding a June 10, 2020 City notice to correct Bethel Municipal Code Violations. The property legal description is: Plat # 84-13, Block 1, Lot 11. The physical address is 175 Alex Hately.

Property Owner: Daniel & Dawn Hackney P.O. Box 3288 Bethel, Alaska 99559

City of Bethel Contact: Ted Meyer, Planning Director, City of Bethel Planning Dept., phone 907-543-5603.

Time and Place: The regular meeting of the City of Bethel Planning Commission, 6:30 PM, August 13, 2020 at City Hall, located at 300 Chief Eddie Hoffman Highway in Council Chambers. If you wish to participate via teleconference the number is 1-800-315-6338 code:13871

Ted Meyer 8/7/20

Ted Meyer, Planning Director

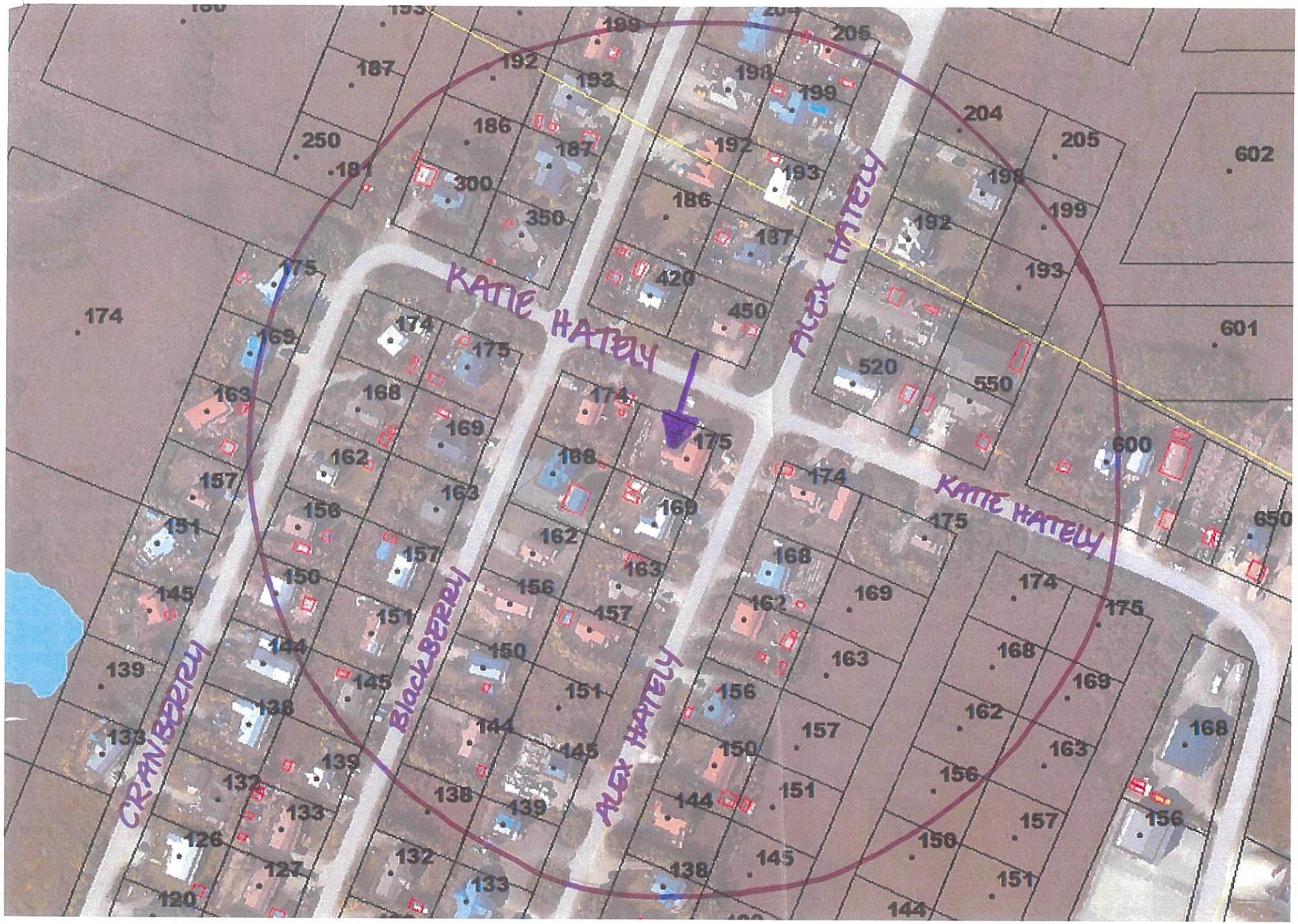
I hereby certify that this Notice of Hearing - Appeal to 175 Alex Hately Code Violation - has been posted at City Hall, the Post Office, Bethel Native Corp. and Swanson's Bulletin Boards on or before August 7, 2020. It is further certified that this Notice has been published in the Delta Discovery Newspaper on July 29, 2020 & August 5,2020 publications.

July 28, 2020

To whom this may concern: You are receiving this notice pursuant to Bethel Municipal Code 18.04.070 "Notice shall be mailed to the owners of each parcel of property any part of which is within six (600) feet of the exterior boundary that is the subject of the appeal" If you are not the owner please pass this along to them.

PLANNING COMMISSION PUBLIC HEARING NOTICE
APPEAL TO 175 ALEX HATELY
CODE VIOLATION

Notice is hereby given that on June 22, 2020 and July 2, 2020 the City of Bethel Planning Office received an appeal and appeal refinement from Daniel & Dawn Hackney regarding a June 10, 2020 City notice to correct Bethel Municipal Code Violations. The property legal description is: Plat # 84-13, Block 1, Lot 11. The physical address is 175 Alex Hately.
Property Owner: Daniel & Dawn Hackney P.O. Box 3288 Bethel, Alaska 99559
City of Bethel Contact: Ted Meyer, Planning Director, City of Bethel Planning Dept., phone 907-543-5603.
Time and Place: The regular meeting of the City of Bethel Planning Commission, 6:30 PM, August 13, 2020 at City Hall, located at 300 Chief Eddie Hoffman Highway in Council Chambers. If you wish to participate via teleconference the number is 1-800-315-6338 code:13871


KATIE HATELY
ALEX HATELY
KATIE HATELY
CRANBERRY
BLACKBERRY
ALEX HATELY

City of Bethel

Planning Department
P.O. Box 1388
Bethel, Alaska 99559
(907) 543-5306

TO: **City of Bethel Planning Commission**

FROM: **Ted Meyer, City Planner**

SUBJECT: **Summary and Findings for the August 13, 2020 Planning Commission Hearing Regarding:**

Dan and Dawn Hackneys' July 2, 2020 Appeal of the Planning Department's June 10, 2020 Notice to Correct Violations Letter and Denial of the June 4, 2020 Site Plan Permit Application.

DATE **August 7, 2020**

INTRODUCTION

Pursuant to **BMC 18.72.010(D)** the City of Bethel Planning Department submits the following summary of the Hackney Site Plan Permit application process and statement of findings that support the land use administrator's actions in issuing the Notice to Correct Violations to Daniel and Dawn Hackney dated June 10, 2020.

On June 4, 2020, the Planning Department received a Site Plan Permit Application from Dan and Dawn Hackney, owners of 175 Alex Hately, Block 1, Lot 11, Blueberry Field Subdivision, Bethel, Alaska Hackneys (dated November 24, 2019). The intended improvements on the application included, "to be used as a duplex." **(Exhibit #1).**

On June 8, 2020, the Planning Department received a written complaint from two Hackney neighbors stating the Hackneys were completing a building addition that links the existing single family house to the new, unapproved, two-story building without an approved Site Plan Permit. The complaint also stated the 2-story structure was being operated as a hotel with nightly rentals, which is not permitted. The Planning Department investigated the matter and confirmed the current construction. **(Exhibit #2).**

The Planning Department sent a Notice to Correct Violations to the Hackneys on June 10, 2020 that included the following main points:

- The Hackney's approved, July 24, 2018 Site Plan Development Permit for a 20-foot X 42-foot shop/garage/storage shed, and their approved January 29, 2019 addendum to the permit to increase the size of said structure to 24-feet X 64-feet, did not include approval

to build a second floor with transient lodging units, nor the arctic entryway that would connect the two, that they were currently constructing.

- The Hackneys had violated **BMC 15.12.070 (Site Plan Permit Modifications),** "Noncompliance with authorized improvements stated on the approved July 24, 2018 Site Plan permit and on the approved January 9, 2019 addendum."

- The Hackneys were ordered to discontinue construction leading to unlawful use of land and structure (authorized by **BMC 18.84.030(B) (Correction of Violation)** and **BMC 15.12.100 (Correction of Violations).** They were given three (3) days from the date of the letter to stop all construction activities, otherwise the City of Bethel would pursue any and all legal and equitable remedies available to it to ensure your compliance with City law.

- The Hackneys' Site Plan Permit Application submitted on June 4, 2020 was denied until their appeal to the Alaska Superior Court regarding the City of Bethel Board of Adjustment's February 6, 2020 decision has been resolved.

- The Hackneys were invited to meet with the Planning Department to discuss their construction project and permissible uses allowed by the Residential Zoning Code, as interpreted by the Superior Court or through any stipulated resolution of that matter. **(Exhibit #3).**

The Hackneys responded by submitting a written appeal on June 22, 2020 and July 2, 2020 to the Planning Commission disputing the planner's position that:

1. The Hackneys are prohibited from undertaking further improvements on their property that do not comply with the July 24, 2018 site plan, and
2. The Hackneys are also not currently permitted to submit an updated site plan because it is "premature" until their Superior Court appeal is resolved. **(Exhibit #4).**

The Hackneys did stop construction as requested by the Planning Department.

BACKGROUND

This property has a long history with the Planning Department, and the property is the subject of a separate appeal from the Board of Adjustment. The history of the prior appeal and the genesis of the current appeal are as follows:

1. Dan and Dawn Hackney, owners of 175 Alex Hately, Block 1, Lot 11, Blueberry Field Subdivision, Bethel, Alaska (hereafter "the property") submitted a Residential Site Plan Permit application to the Planning Department on July 20, 2018 for a 20-foot X 42-foot garage/storage/shop and mother-in-law unit. **(Exhibit #5).**

   Planning staff told Mr. Hackney that the mother-in-law unit, or two unattached dwelling units were not allowed on one property in the Residential Zone. The application was

approved on July 24, 2018 and a Site Plan Permit was issued to only allow for the construction of a 20-foot x 42-foot shop/garage/storage shed per the Site Plan Permit Application on file. **(Exhibit #6).**

2. On January 9, 2019, Mr. Hackney submitted a request to the Planning Department to amend the approved July 24 Site Plan Permit by increasing the structure dimensions to 24-feet x 64-feet and referring to the structure as an attached garage. The Planning Department issued an addendum to the permit, approving the attached garage with the increased dimensions to 24-feet X 64-feet. **(Exhibit #7).**

3. On February 19, 2019, Mr. Hackney dropped off a 2018 As-built drawing at the Planning Department. The As-built drawing showed the existing Single Family house connected by a planned, hand-drawn deck to the hand-drawn new structure that showed no indication of a second floor with transient lodging units. **(Exhibit #8).**

4. On June 7, 2019, the City of Bethel Planning Department received a written complaint from four neighborhood residents alleging violations of the City of Bethel Site Plan Permit 18-34, for Daniel and Dawn Hackney of 175 Alex Hately, lot 11, Blueberry Field Subdivision phase plat 84-13. The Complaint included allegations that the Hackneys had (1) failed to provide an accurate description of their building plans in their site plan application; and (2) had built apartments or a hotel in a residential area, with a residence already on the property. **(Exhibit #9).**

5. Pursuant to **BMC 15.12.090**, the Planning Department investigated the complaint and found it had merit. Part of the investigation included accepting an invitation from the Hackneys to tour the new building on their property. The second floor included four finished and furnished hotel-style rooms, each with enclosed bathroom, and a kitchen for the guests downstairs. A van full of guests was arriving as planning staff were departing.

6. The planning department sent the first Notice of Violations to the Hackneys on August 30, 2019, citing:
    - Non-compliance with Authorized Improvements, in violation of **BMC 15.12.070**; and
    - Non-Compliance with BMC Residential Zoning Code, in violation of **BMC 18.32.020 and 18.32.030.**

    The City gave the Hackneys 30 days to correct the violations and invited them to visit the Planning Department to discuss the construction project and permissible uses of the property under the Bethel Code. The City further notified the Hackneys of their right to appeal the Planning Department's determination to the City Planning Commission. It explained that "the written appeal must be submitted to the Planning Department and must specify the grounds for appeal and specify the actions and findings of the department that are being disputed." **(Exhibit #10).**

7. On September 9, 2019, the Hackneys appealed the City's August 30 Notice to Correct Violations. They stated their grounds for appeal were:

(1) All construction and use of 175 Katie Hately were authorized by the former Planning Director Betsy Jumper.
(2) All actions and findings of the planning department are disputed. **(Exhibit #11).**

8. On September 13, 2019, the parties and their respective attorneys met to discuss the August 30, 2019 Notice to Correct Violations. Based upon that meeting, the parties agreed to hold in abeyance the Hackney's September 9, 2019 appeal while a Corrective Action Plan was formulated between the parties. **(Exhibit #12).**

9. On September 26, 2019, the Planning Department issued the Corrective Action Plan to the Hackneys to bring the structure into code compliance. The plan included deadlines for submission by Mr. Hackney as follows:
   a. A detailed and scaled floor plan drawing of the constructed floor levels 1 and 2 of the new building
   b. A new Site Plan Permit application with a detailed and scaled site plan drawing with a type of use that is compliant with ***BMC 18.32.020, 18.32.030,*** and ***15.12***.
   c. Conversion of the second floor of the structure from transient lodging units to an approved BMC compliant use. **(Exhibit #13).**

10. On October 10, 2019 the Hackneys rejected the Corrective Action Plan and requested their appeal of the August 30 Notice to correct violations "move forward" **(Exhibit #14).**

11. November 14, 2019 Planning Commission Decision

On November 14, 2019 The Planning Commission voted 7-0 to deny the Hackney appeal of the August 30, 2019 Notice of Violations. The Commission adopted the findings and conclusion of the Planning Department and that the Hackneys had violated the following two code sections:

A. ***BMC 15.12.070 (Modifications)*** "Once the site plan permit is approved, no modifications to the approved plan may take place without the written consent of the land use administrator."

B. ***BMC 18.32.020 (Residential District)*** (B&B's, transient lodging or hotels) are not included as a permitted or principal use in the Residential Zone.

DECISION (Exhibit #15)

"On November 14, 2019, pursuant to Bethel Municipal Code ("BMC") Section ***18.72.010*** a hearing was held before the City of Bethel Planning Commission ("the Commission") on Dan and Dawn Hackney's ("the Hackneys" or "Appellants") appeal of the City of Bethel planning director's ("planning director," "planning department" or "land use administrator") August 30, 2019 Notice to Correct Violations. After considering all of the evidence submitted by the parties as required by ***BMC 18.72.010(D),*** the Commission confirmed the findings and conclusions of the planning department pursuant to ***BMC 18.72.010(E)*** by a unanimous vote of 7-0."

ORDER (Exhibit #15)

"The findings and conclusions of the planning department are hereby adopted as the findings and conclusions of the Commission. The decision of the planning director of August 30, 2019 which found that the Hackneys had violated the Bethel Municipal Code Sections ***15.12.070*** and ***18.32.020*** is affirmed. The Hackneys' appeal is therefore denied.

The Hackneys must come into compliance with the Bethel Municipal Code and must comply with the September 26, 2019 Corrective Action Plan sent to them by the Bethel City."

12. On December 18, 2019, Dan and Dawn Hackney appealed the November 14, 2019 decision by the Planning Commission to the City of Bethel Board of Adjustment. **(Exhibit #16).**

13. On January 13, 2020, city staff, engineer, and architect visited the new Hackney 2-story structure (by invitation). The ground floor consisted of a kitchen area that is located between a garage and workshop. The kitchen is accessed from an exterior deck, and in the rear of the kitchen is a stair that provides access to the second floor. The kitchen was an active construction area; the stair was also not complete and lacked a handrail and guardrail. On the second floor were a living room and a hallway that provided access to four numbered doors. The doors marked 1 and 2 were open and were noted to be guest units, each with private bath as indicated in Mr. Hackney's drawings. Inside the open unit doors were open suitcases, clothes, and toiletries. The doors marked 3 and 4 were closed and were not entered for observation, but it is assumed that they too are transient units. It appears, based on a quick observation and the general layout of the building, that the building is being operated to house transient guests. On the table in the Living Room was a laminated sheet of paper titled "Instructions to Guests", that included instructions regarding Wifi usage.

14. **February 4, 2020, Board of Adjustment Decision**

DECISION (Exhibit #17).

This serves as the written decision of the Board of Adjustment for the City of Bethel (BOA), for the appeal reference above (the "Appeal"). This Appeal is dated December 18, 2019, initiated by Dan and Dawn Hackney and relates to 175 Alex Hately, Bethel, Alaska. The Appeal relates to the Decision and Order of the City of Bethel Planning Commission, dated November 18, 2019. The BOA held a hearing on February 4, 2020 (the "Hearing"). Based upon the evidence presented on the record, the members of the BOA voted 5 to 0 to deny the appeal and confirm and adopt the findings and conclusions the Planning Commission issued November 18, 2019. The Board's decision is effective February 6, 2020.

15. On February 12, 2020, staff from the State Office of Children's Services (OCS) called the City Planner to say they heard about the recent decision of the Board of Adjustment denying the Hackney appeal. OCS followed by asking whether the decision would have an effect on their contract with the Hackneys to rent out the entire second floor on a

monthly basis to visiting OCS employees by the week, on a rotating basis. She added that because the building wasn't finished yet, that it would be in May before OCS employees would start the weekly rotations. The City Planner told OCS that transient lodging, including bunk-house arrangements like rotating social workers, was illegal in the Residential Zone

16. On June 4, 2020, the Planning Department received a Site Plan Permit Application from Dan and Dawn Hackney (dated November 24, 2019), for the same property in question at 175 Alex Hately, Block 1, Lot 11, Blueberry Field Subdivision, Bethel, Alaska. The intended improvements on page 2 of the application were:

    1st floor- attached garage with boiler/utility room, kitchen and bathroom (garage 3 cars)

    2nd floor- 4 bedrooms/bathrooms and a living area

    "To be used as a duplex." **(Exhibit #1).**

17. On June 8, 2020, the Planning Department received a written complaint from two Hackney neighbors stating the Hackneys were completing a building addition that links the existing single family house to the new, unapproved, two-story building without an approved Site Plan Permit. The complaint also stated the 2-story structure was being operated as a hotel with nightly rentals, which is not permitted. The Planning department investigated the matter and confirmed the current construction. **(Exhibit #2.)**

18. On June 10, 2020, the Planning Department sent a Notice to Correct Violations to the Hackneys. **(Exhibit #3).**

19. On June 22 and July 2, 2020 the Hackneys sent an appeal to the Planning Department of the June 10, 2020 letter, Notice to Correct Violations. **(Exhibit #4).**

STATEMENT OF FINDINGS OF THE LAND USE ADMINISTRATOR

1) The Hackney property is located in the Residential ("R") district. ***BMC 18.32.010*** states that it is the intent of the residential district to provide protection to residential areas from encroachment from nonresidential activities.

2) Pursuant to **BMC 18.32.020**, the following are permitted and principal uses and structures in the Residential District:
    A. Trails and boardwalks;
    B. Non-motorized public access areas to the Kuskokwim River or other areas that require public access.
    C. Single-family dwelling units;
    D. Duplex uses;
    E. Greenbelts and land reserves;
    F. Subsistence activities;

G. Any accessory use or use of structure associated with the principal use or structure on the lot.
H. The facilities of sewer, water and other utilities required to serve the lots in the district.
I. Home occupations, but not more than two (2) per dwelling unit.

3) Pursuant to ***BMC 18.36.020(K)(31)*** transient lodging units such as hotels, motels, hostels, bed and breakfasts, bunk houses and boarding houses are allowed only in the General Use Zoning District.

4) The Hackneys' July 2, 2020 appeal to the Planning Commission disputes the Planner's June 10 Notice of Violations and states: "Specifically, the Hackneys appeal Mr. Meyer's contradictory positions that: (1) the Hackneys are prohibited from undertaking further improvements on their property that do not comply with the July 24, 2018 site plan, and (2) the Hackneys are also not currently permitted to submit an updated site plan because it is "premature" until their Superior Court appeal is resolved."

However, the November 14, 2019 Planning Commission decision and the February 4, 2020 Board of Adjustment decision both affirmed the Planning Director's August 30, 2019 Notice of Violation and directives sent to the Hackneys: Their affirmations therefore support the Planner's directives:

(BMC 18.84.030(A)

- Discontinue unlawful uses of land or structures
- Discontinue construction leading to unlawful use of land and structure
- Bring the structure and its usage back into compliance with the Residential Zoning Code

These directives, affirmed by the Bethel Board of Adjustment and Planning Commission still hold true today.

5. In their current appeal to the Planning Commission, the Hackneys also argue that the City Planner should review and approve their latest Site Plan Permit Application (received June 4, 2020) which states (the structure) "is to be used as a duplex." Merely referring to the structure as a duplex without any conversion work to a functioning duplex, nor actually using the structure as a duplex (one family or household), does not bring the structure into compliance with the Residential Zoning Code. From two site visits that included City staff, engineer, and architect, the layout (four numbered accommodation units each with bathroom) of the structure was observed to be built for transient lodging, with evidence of multiple guests staying their during each visit.

6) **BMC 16.12.030** defines duplex as a structure or use on one lot involving two attached common wall dwelling units, with each unit designed for occupancy by one family. That same provision defines "family" as "one (1) or more persons occupying

premises and living as a single housekeeping unit, as distinguished from a group occupying a rooming house, club, fraternity house, or hostel." The layout of the second floor units, each with bathroom, and their continuous use by short time guests is not a duplex.

7) In their current appeal, the Hackneys again state that all construction and use of the property was authorized orally by the former Planning Director Betsy Jumper. Nothing in the Planning Department record supports the Hackneys' contention that Ms. Jumper permitted the construction which resulted in the code violations at issue. The initial site plan permit gave the Hackneys permission only to "construct a 20-foot x 42-foot shop/garage/storage shed" and the addendum to the permit only allowed for the construction of "a 24-foot x 64-foot garage." There is therefore no written consent or anything in the department record to support the argument that the construction of a B&B or other lodging units was ever permitted by the City.

   Consistent with best planning practices, the City of Bethel Planning Department relies on written documentation for approving permit applications. By denying the prior appeal, the Planning Commission and Board of Adjustment rejected the notion that former City Planner Betsy Jumper failed to follow standard planning procedure by verbally approving the Hackney's construction of transient lodging in the Residential Zone, and there is no evidence that she did so. Even if she had, which the City explicitly denies, best practices is once again to rely on written documentation in planning

8) The approved Site Plan Permit is a one-sheet document and is the only approval mechanism used by the Planning Department to convey a Notice to Proceed to the property owner/developer to begin construction. The purpose of posting the permit is to notify and certify to the public that the project plans comply with local standards for land use, zoning, and development.

   The Authorized Improvements listed on the permit are the only improvements that can be made by the property owner. Neither the July 20, 2018 permit, nor the January 9, 2019 addendum allowed the Hackneys to construct the second floor transient lodging units.

9) There is no merit to the Hackneys' current appeal and it should be denied in accordance with ***BMC 18.72.010(E).*** The June 10, 2020 decision of the Planning Director, which found that the Hackneys had violated ***BMC 15.12.070*** should therefore be affirmed. The Hackneys should come into compliance with the Bethel Municipal Code by agreeing to and implementing the September 26, 2019 Corrective Action Plan that was affirmed by both the Planning Commission and the Board of Adjustment.

Ted Meyer — 8/7/20

Ted Meyer, City Planner, MUP — Date

City of Bethel

Planning Department
P.O. Box 1388
Bethel, Alaska 99559
(907) 543-5306

August 13, 2020 Planning Commission Hearing Regarding Daniel and Dawn Hackney Appeal of Planning Department's June 10, 2020 Notice to Correct Violations

City Planner's List of Exhibits Regarding the Application Summary and Findings

LIST OF EXHIBITS

INTRODUCTION

Exhibit 1 — June 4, 2020 - Site Plan Permit Application from Dan Hackney (dated Nov. 24, 2019)

Exhibit 2 — June 8, 2020 - Complaint from Hackney neighbors regarding alleged Bethel Municipal Code (BMC) violations of the Hackney development.

Exhibit 3 — June 10, 2020 - Planning Department Notice to Hackneys to Correct Violations and Denial of June 4, 2020 Site Plan Permit Application

Exhibit 4 — July 2, 2020 Hackney Appeal by Dan and Dawn Hackney of the Planning Department's June 10, 2020 Notice to Correct Violations.

BACKGROUND

Exhibit 5 — July 20, 2018 - Dan Hackney's original Site Plan Permit Application.

Exhibit 6 — July 24, 2018 – Planning Department approves Hackney's Site Plan Permit for shop/garage/storage shed.

Exhibit 7 — January 9, 2019 – Planning Department approves the Hackney Site Plan Permit Addendum increasing structural dimensions of garage.

Exhibit 8 — February 19, 2019 – Dan Hackney delivers As-built drawing showing planned skywalk linkage between existing Single Family house and planned new garage structure.

Exhibit 9 — June 7, 2019 - Complaint from Hackney neighbors regarding alleged Bethel Municipal Code (BMC) violations of the Hackney development.

Exhibit 10 — August 30, 2019 - Planning Department Notice sent to the Hackneys to Correct Violations.

Exhibit 11	September 9, 2019 – The Hackneys appeal the Planning Department's Notice to Correct Violations.
Exhibit 12	September 13, 2019 - Stipulation signed by attorneys for both parties that includes an agreement to hold in abeyance the Hackney September 9, 2019 appeal of the Notice to Correct until a Corrective Action Plan is formulated between the parties.
Exhibit 13	September 26, 2019 - Planning Department issues Corrective Action Plan to the Hackneys to bring their development into compliance with the BMC.
Exhibit 14	October 10, 2019 - The Hackneys reject the Corrective Action Plan and request their September 9, 2019 appeal of the "Notice to Correct Violations" move forward.
Exhibit 15	November 14, 2019 Planning Commission Decision to deny the September 9, 2019 appeal by the Hackneys.
Exhibit 16	December 18, 2019 – The Hackneys appeal to the Bethel Board of Adjustment regarding the Planning Commission's Nov 14, 2019 decision to deny.
Exhibit 17	February 4, 2020 Bethel Board of Adjustment Decision confirming and adopting the Planning Commission's November 14, 2019 findings and conclusions.

Exhibit 18	City of Bethel Official Land Use Map
Exhibit 19	Construction Photos- June 4, 2020, May 20, 2020, August 19, 2019, March 23, 2019
Exhibit 20	<u>BMC Sections</u> BMC 15.12 Site Plan Permit BMC 16.12.010 Definitions BMC 18.32 Residential District BMC 18.36 General Use District BMC 18.72 Appeals
Exhibit 21	Hackney documents received on August 6, 2020 (Ashburn & Mason)

Exhibit #1

CITY OF BETHEL

P.O. BOX 1388
BETHEL, ALASKA 99559
http://www.cityofbethel.org
907-543-5306/5301
Email: planning@cityofbethel.net

RECEIVED
JUN 04 2020
CITY OF BETHEL
PLANNING DEPARTMENT

RESIDENTIAL SITE PLAN PERMIT APPLICATION

Title 18 of the Bethel Municipal Code requires the review of a Site Plan prior to the development of any improvement on real property within the city limits. Application for a Site Plan Review shall be filed with the City of Bethel Planning Department. Upon approval of the application, a permit will be issued and is required to be displayed on the property to be improved. By submitting this application you are authorizing public access to the displayed Site Plan Permit area. Approval of plans does not presume to give approval to oversights by the City of Bethel Planning Office nor grant authority to violate or cancel the provisions of any other federal, state or local laws regulating the use of development of this land.

Today's Date: 24 Nov. '19	**Legal Description Plat or Survey:** 84-13
Physical Address of Property: 175 Alex Hately	**Block** 1 **Lot** 11 **Tract**
Name of Property Owner: Dawn & Dan Hackney	**Name of Developer or Builder:** Dawn + Dan Hackney
Mailing Address: P.O. Box 3288	**Mailing Address:** P.O. Box 3288
City, State, Zip: Bethel, Ak. 99559	**City, State, Zip:** Bethel, Ak. 99559
Email: 3dhackney@gmail.com	**Email:** 3dhackney@gmail.com
Phone: 543-7951	**Phone:** 543-7951
Signature of Owner:	**Signature of Developer:**
☑Owner ☑Developer	☑Fill and Pilings ☐Building Construction Pad Post

Please Do Not Write Below This Line. To be filled out by Planning Department Staff

Zoning:	**Flood Hazard Zone:**
Authorized & Mandatory Improvements ONLY:	
Reviewed By:	**approved denied Date:**

Intended improvements: Describe residential improvements or site activity.

1st Floor - Attached garage w/ boiler/util. rm., kitchen & bathroom. (Garage - 3 car)

2nd floor - 4 bdrms w/ bathrms and a living area.

To be used as a duplex.

Lot Size: 12,000 Sq. ft. Proposed total number of Buildings: 1

Number of Bedrooms: 4

If placing fill indicate cubic yards or truckloads (if no fill is needed, indicate: 0):

Dimensions of Fill	Method of stabilizing sand pad slopes:
(Required) Max. Height of fill: Ø	☑ Seeding ☑ Sandbagging
(Required) Length of fill: Ø	
(Required) Width of fill: Ø	
(see also worksheet on page 4)	

If improvements include construction, renovation, or floor area addition to a residence, indicate the following:

Sewer service type: ☑ Hauled ☐ Piped

If **hauled** please indicate:
Hauled water tank size (gallons): 2,000 Hauled sewer tank size(gallons): 2350

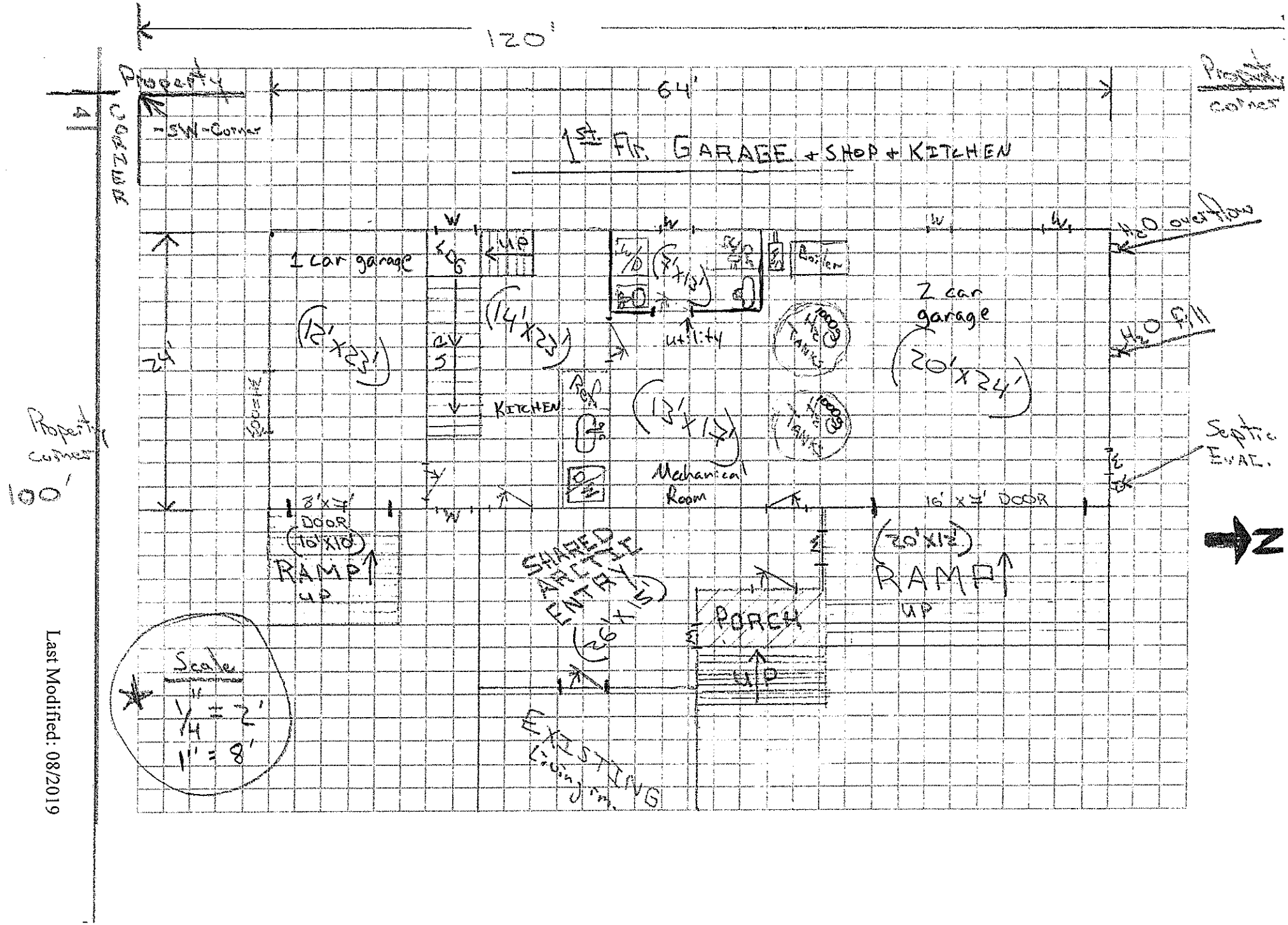
I attest that all information and measurements presented are correct.

Signature of applicant: Daniel Hadley

WHEN DO I HAVE TO OBTAIN A PERMIT(S)?

A permit must be obtained at least ten (10) calendar days before construction begins. The permit can be obtained from the City Planning Office which is located upstairs at 1155 Ridgecrest Drive and is open weekdays from 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. The Planning Department Office legally has ten (10) days to review the permit before approval, disapproval, or approving it with modifications. Remember, it is illegal to build, place fill, etc., without first obtaining a site plan permit.

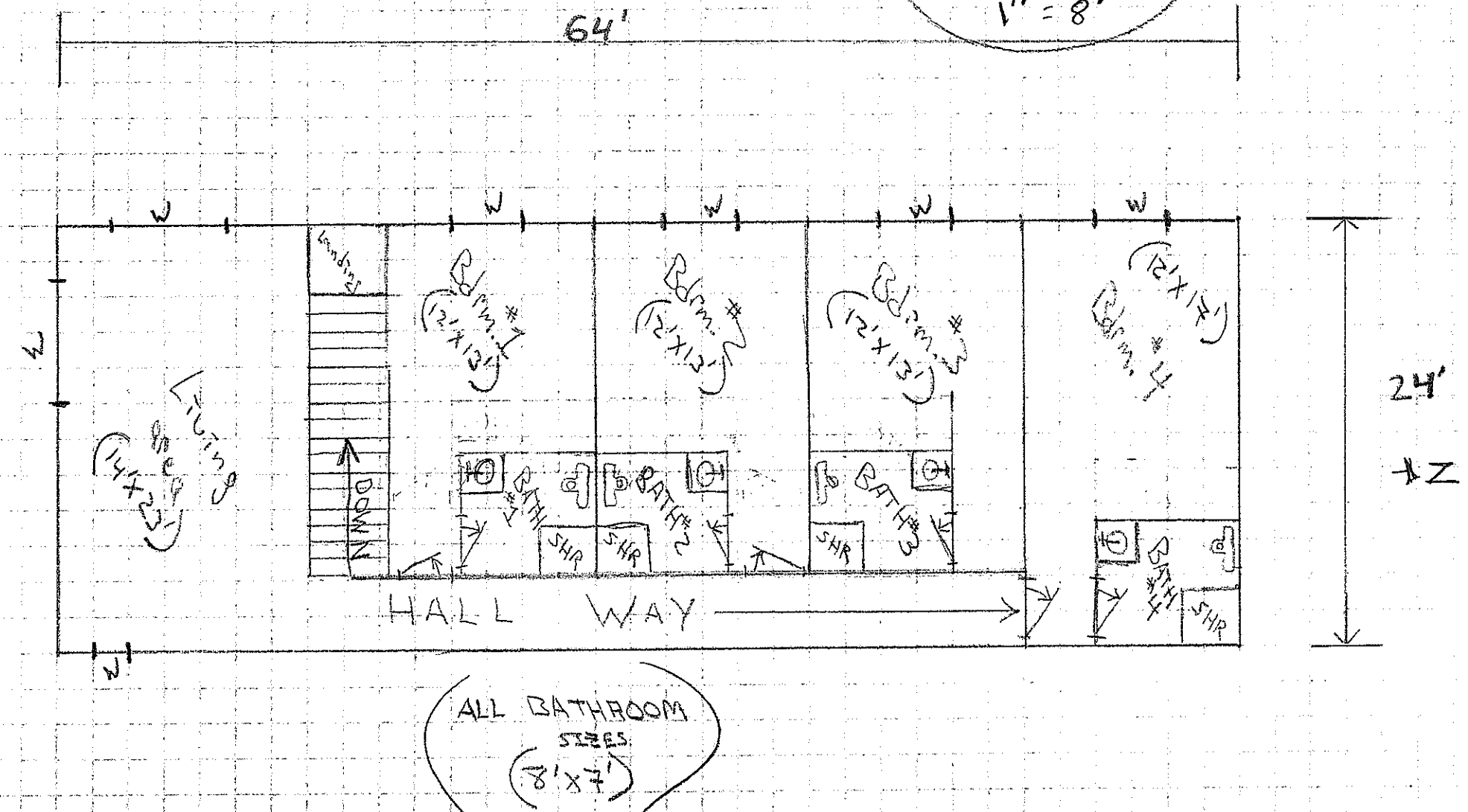
Individual permits are required for fill, construction, and floodplain development. There is a fee schedule which is downloadable from the website (http://www.cityofbethel.org) or can be obtained from the Planning Department.



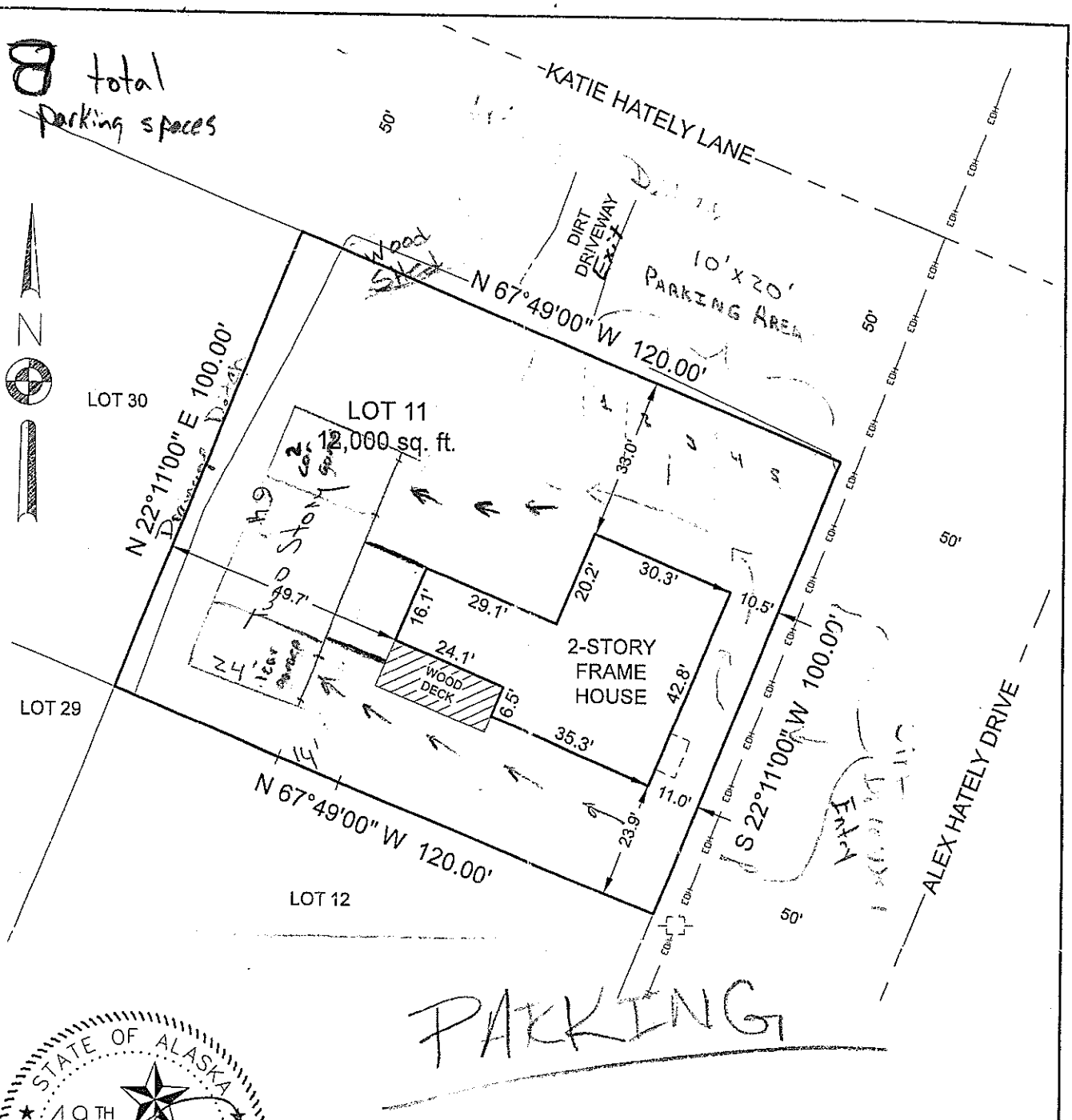
Last Modified: 08/2019

2nd Floor of Garage/ Duplex

Scale
★
1/4" = 2'
1" = 8'



ALL BATHROOM SIZES (8'x7')



STATE OF ALASKA
49TH
Buku Saliz
LS-14837
REGISTERED PROFESSIONAL LAND SURVEYOR

I HEREBY CERTIFY THAT I HAVE SURVEYED THE DESCRIBED PROPERTY AND THAT NO ENCROACHMENTS EXIST EXCEPT AS INDICATED. IT IS THE RESPONSIBILITY OF THE OWNER TO DETERMINE THE EXISTENCE OF ANY EASEMENTS, COVENANTS, OR RESTRICTIONS WHICH DO NOT APPEAR ON THE RECORDED SUBDIVISION PLAT. UNDER NO CIRCUMSTANCES SHOULD ANY OF THE DATA HEREON BE USED FOR CONSTRUCTION OF FENCES, OR FOR ESTABLISHING PROPERTY BOUNDARIES.

FIXED HEIGHT, LLC
Land Surveying Services
225 W 23rd Ave.
Anchorage, AK
907.290.8949
WWW.FIXEDHEIGHT.COM

AS-BUILT
LOT 11
BLUEBERRY FIELD SUBDIVISION PHASE I
(PER PLAT No. 84-13, BETHEL RECORDING DISTRICT)
LOCATED WITHIN SECTION 18, TOWNSHIP 8 NORTH, RANGE 71 WEST, SEWARD MERIDIAN, ALASKA

Legend
- EAVE
- UTILITY POLE
- OVERHEAD UTILITY LINE

NO CORNERS SET THIS DATE	SCALE: 1" = 30'	CHECKED/DRAWN BY: AP/BS	JOB NO.: 18024	DATE: 10/22/2018

KANE HATELY
ALEX HATELY
KANE HATELY
ALEX HATELY
BLACKBERRY
CRANBERRY

Exhibit #2

RECEIVED
JUN 08 2020
CITY OF BETHEL
PLANNING DEPARTMENT

RECEIVED
2020
CITY OF BETHEL
PLANNING DEPARTMENT

06/05/2020

TO: Ted Myers
Planning Department
City of Bethel

FROM: Steve Murat
P.O. Box 2744
420 Katie Hately Lane
Bethel, Alaska. 99559

MICHAEL SHANTZ
BOX 51
BETHEL AK 99559

RE: BMC Chapter 15,16 & 18
Section 15.12.090 Complaint
Section 18.84.090 Complaint
Section 18.32.020 Permitted & Principal use & Structure
Section 18.32.010 Intent
Section 15.12.030
Section 16.04.010 Purposes A#2 & A#6
Section 15.12.020 Permit Required B#6 & C

This is my/our second official complaint of violations of City of Bethel Site Plan Permit No. 18-34, for Daniel and Dawn Hackney of 175 Alex Hately, lot 11, Blueberry Field Subdivision phase plat 84-13.

Permittee continues to violate the following City of Bethel Municipality codes:

1. BMC 15.12.030: The site plan was incomplete. Permit did not give accurate description of what their real plans were, or the size and use of the structure and this huge 24' X 60' two story building is going to be used as a commercial business. Not a garage/storage building, as permittee wrote down. Permittee is currently operating a hotel with

RECEIVED
JUN 08 2020
CITY OF BETHEL
PLANNING DEPARTMENT

nightly rentals. Permittee is still adding on to the building structurally with a large connected covered entryway joining the two buildings.

2. BMC 189.32.020: Permittee is building and operating a hotel in a residential area, which is not permitted, only one residence per lot.

3. BMC 18.32.010. Intent: The intent of the residential district is to provide protection to residential areas from encroachment from non-residential activities.

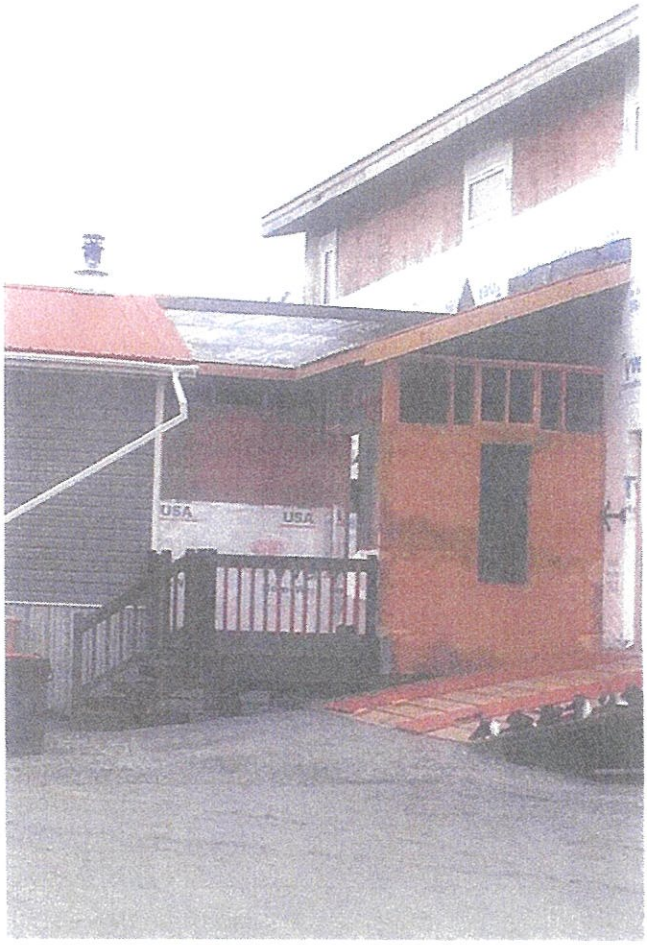
4. BMC Chapter 16.04.10 A#2 & A#6. This will negatively affect everyone's home appraisal that lives next to this atrocity. The City has an obligation to protect our property from things like this.

5. BMC 15.12.020 Permittee still has a 12' X 16' building on city easement, which still has to been moved. Had no City council approval , nor planning department permit to put it there.

6. Original complaint was turned in one year ago, since then, permittee continues to illegally operate a commercial business/hotel in a residential area and now receives weekly utility services from the City of Bethel , aiding permittee to operate their illegal hotel. The new covered addition joining the buildings does not have a new approved site plan. We continue to advocate for the City of Bethel planning department to act and have permittee cease illegal actions and move the building(s).

cc: Elizabeth "Libby" Bakalar , City of Bethel Attorney
Kathy Hanson, City of Bethel Planning Committee Chair

May 20, 2020



June 4, 2020

RECEIVED

JUN 08 2020

CITY OF BETHEL
PLANNING DEPARTMENT

City of Bethel
Planning Department
P.O. Box 1388
Bethel, Alaska 99559
(907) 543-5306

Daniel and Dawn Hackney
PO Box 3288
Bethel. AK. 99559

June 10, 2020

RE: Notice to Correct Violations & Denial of Site Plan Permit Application

Dear Mr. and Ms. Hackney,

The Planning Department has recently received complaints from five neighbors regarding your current construction activities at 175 Alex Hately. These complaints question your construction of an arctic entryway that connects your existing single family house to your new, non-permitted two-story structure, without an approved Site Plan Permit.

I would reiterate again, as I have stated in two previous letters, that your approved, July 24, 2018 Site Plan Development Permit for a 20-foot X 42-foot shop/garage/storage shed, and your approved January 29, 2019 addendum to the permit to increase the size of said structure to 24-feet X 64-feet, did not include approval to build a second floor with transient lodging units, nor the arctic entryway that would connect the two, that you are currently constructing.

Noncompliance with Authorized Improvements
Your noncompliance in following the Authorized and Mandatory Improvements as stated on your approved July 24, 2018 Site Plan Development Permit for a 20-foot X 42-foot shop/garage/storage shed, and your approved January 29, 2019 addendum to increase the size of said structure to 24-feet X 64-feet, violates ***BMC 15.12.070 (Site Plan Permit Modification).*** This section provides: "Once the site plan permit is approved, no modifications to the approved plan may take place without the written consent of the land use administrator." The Planning Department has not consented to these modifications.

Correction of Violations
As the City of Bethel Land Use Administrator, ***BMC 18.84.030(B) (Correction of Violation)*** as well as ***BMC15.12.100 (Correction of Violations)*** authorizes me to order you to discontinue construction leading to your unlawful use of land and structure. You are required within three (3) days of this letter to stop all construction activities, otherwise the City of Bethel shall pursue any and all legal and equitable remedies available to it to ensure your compliance with City law.

BMC-Compliant Site Plan Permit Application Required

Your current site plan permit is premature and is therefore denied. Once your current appeal to the Alaska Superior Court regarding the City of Bethel Board of Adjustment's February 6. 2020 decision has been resolved. I invite you to meet with the planning department to discuss your construction project and permissible uses allowed by the Residential Zoning Code. as interpreted by the superior court or through any stipulated resolution of that matter. We will need a new and accurate site development permit application from you with a scaled site plan drawing that shows all structures. both planned (new) and existing (the existing Single Family house on the lot). and any roads that abut your property. All structures must be labeled with their planned and existing uses. and show all building and setback dimensions. Please include your existing and planned water and sewer facilities and their exact locations. The code-required number of parking spaces (with 9' x 20' dimension) and the driveway that accesses all these parking spaces must be shown as well.

You must also certify in writing that you will **not** sublet the structure to an entity who would then use the structure for transient lodging. ***BMC 4.14.010(J)*** defines transient lodging as a stay by room occupant of less than 42 consecutive days. Anybody or any entity who attempts to rent out your second floor by the month and then rent out rooms for less than 42 days would be a willful violator and liable to an enforcement action as well.

Right to Appeal Stated Violations

Under ***BMC 15.12.065 (Appeal),*** you may appeal to the Planning Commission my determination that violations have occurred in your development and my orders to you to correct these violations. ***BMC 18.72.010 (Appeal of decision of planning department)*** states the written appeal must be submitted to the Planning Department and must specify the grounds for appeal and specify the actions and findings of the department that are being disputed. The appeal must be filed with the planning department within 10 calendar days from the date of this letter.

I look forward to working with you to bring your development project into compliance with the Bethel Municipal Code. Thank you.

Ted Meyer

Ted Meyer
Planner. City of Bethel

CC. Vinny Corazza, City Manager
Libby Bakalar City Attorney

Exhibit #4

ASHBURN & MASON P.C.

LAWYERS

LAURA C. DULIC • MATTHEW T. FINDLEY • EVA R. GARDNER • REBECCA E. LIPSON
DONALD W. MCCLINTOCK III • JEFFREY W. ROBINSON • ASHLEY K. SUNDQUIST • THOMAS V. WANG
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

July 2, 2020

City of Bethel
Planning Commission
Bethel, Alaska 99559
Via hand delivery

Re: Dan Hackney and Dawn Hackney Appeal from Notice to Correct Violations

To whom it concerns:

This letter is to perfect the appeal of Dan and Dawn Hackney to the findings of Ted Meyer's letter of June 10, 2020. We previously submitted a timely appeal to Mr. Meyer and the City Attorney and have been directed to refile with the Commission.

Specifically, the Hackneys appeal Mr. Meyer's contradictory positions that: (1) the Hackeys are prohibited from undertaking further improvements on their property that do not comply with the July 24, 2018 site plan, and (2) that the Hackeys are also not currently permitted to submit an updated site plan because it is "premature" until their Superior Court appeal is resolved. The Hackneys have, however, ceased their construction efforts per Mr. Meyer's direction.

The Hackeys are painfully aware that the structure on their property does not conform to the July 24, 2018 site plan. I will not reiterate the many reasons that is the case, which has generated their pending appeal to Superior Court. However, the pendency of the appeal does not stop time, and the Hackneys had hoped to work with the City to come into compliance and build a structure in accord with approved plans; it must be emphasized that Mr. Meyer himself indicated that the City would be open to receiving an application for duplex use including the connection between the two buildings.

The site plan they submitted may be informal in presentation but: (1) is to scale; (2) shows all proposed structures; (3) shows the abutting roads; (4) shows water and sewer facilities; (5) shows intended duplex use and (6) shows the location of parking spaces. Mr. Meyer has not offered any substantive reason for the denial of the application, which is substantially similar to other site plans routine processed and approved by the City. If there are substantive concerns, we would appreciate the opportunity to review them on the merits. Instead, Mr. Meyer has insisted, without explanation, that the application may not even be submitted until the appeal is resolved.

Mr. Meyer has also insisted that the Hackneys agree in advance to refrain from renting to institutional tenants that would house staff on-site, though the code provides no support for including such a requirement in a site plan application. We believe it is improper to ask the Hackneys to waive their rights, which are currently on appeal, in order to submit a new application.

As noted previously (1) the Hackneys relied on Betsy Jumper's oral approval of such a proposed use and designed the structure in anticipation of that use; (2) such uses and similar bed and breakfast uses are common just blocks away in the neighborhood, with no enforcement effort whatsoever by the City; (3) in fact, on information and belief, there are four currently operating bed and breakfasts in the neighborhood and the City itself houses individuals for short term stays in residential zoned neighborhoods, showing its lack of regard for its own purported rules, and has bed and breakfast establishments in residential areas on its list of recommended lodging facilities in Bethel; and (4) the "residential" restriction is being construed far too narrowly and inconsistently, a point we intend to present to the Court, as we have previously conveyed through counsel.

This is not happening in secret. Two of the Hackney's nearby neighbors are "Superhosts" on AirBNB. Three have state of Alaska business licenses that plainly indicate "bed and breakfast". The Cedar House[1] has enthusiastic comments from March, 2020 from the current City Manager Vinny Corrazza on Air BNB "Best deal in Bethel for AirBnB! Ernie actually has more than 1 room so don't be shy if you have a group. The common room is large with a kitchen and dining room table. You can also lounge in den with a wood stove that is very warm." And bed and breakfasts have opened and closed in the Hackney's neighborhood over the years, including Blackberry Bed and Breakfast, at

[1] https://www.airbnb.com/rooms/42154888

120 Blackberry and Tundra View Cottage at 247 Alex Hately. There are bed and breakfasts throughout other residential neighborhoods in Bethel as well. Even if and to the extent the City Code as written does not appear to permit bed and breakfasts in a residential area, which is debatable, given the vagueness of the code, it is plain that no regard is given to this rule, which has become a handy tool to punish the disfavored. The City is plainly singling out the Hackneys for arbitrary and capricious reasons that appear to have more to do with personal animus than any intention of neutral code enforcement.

The Hackneys' proposed structure and use will in no way be inconsistent with or detract from the neighborhood in which they live, nor will it actually impact any neighbor or the public interest. We would ask that a substantive review of the site plan permit be conducted and that the permit be approved.

Sincerely,

ASHBURN & MASON, P.C.

Thomas V. Wang

ASHBURN & MASON P.C.

LAWYERS

LAURA C. DULIC • MATTHEW T. FINDLEY • EVA R. GARDNER • REBECCA E. LIPSON
DONALD W. MCCLINTOCK III • JEFFREY W. ROBINSON • ASHLEY K. SUNDQUIST • THOMAS V. WANG
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

June 22, 2020

Ted Meyer, Planner
P.O. Box 1388
Bethel, Alaska 999559
Via e-mail

Re: Dan Hackney and Dawn Hackney Appeal from Notice to Correct Violations

Dear Mr. Meyer:

Dan and Dawn Hackney are appealing the findings in your letter of June 10, 2020. Specifically, you have taken the contradictory positions that: (1) the Hackeys are prohibited from undertaking further improvements on their property that do not comply with the July 24, 2018 site plan, and (2) that the Hackeys are also not currently permitted to submit an updated site plan because it is "premature" until their Superior Court appeal is resolved. The Hackneys have, however, ceased their construction efforts per your direction.

The Hackeys are painfully aware that the structure on their property does not conform to the July 24, 2018 site plan. I will not reiterate the many reasons that is the case, which, as you note, has generated their appeal to Superior Court. However, the pendency of the appeal does not stop time, and the Hackneys had hoped to work with the City to come into compliance and build a structure in accord with approved plans; may I remind you that you yourself indicated that the City would be open to receiving an application for duplex use including the connection between the two buildings.

The site plan they recently submitted may be informal in presentation but: (1) is to scale; (2) shows all proposed structures; (3) shows the abutting roads; (4) shows water and sewer facilities; (5) shows intended duplex use and (6) shows the location of parking

spaces. You have not offered any substantive reason for the denial of the application; if there are substantive concerns, we would appreciate the opportunity to review them with you. Instead, you have insisted, without explanation, that the application may not even be submitted until the appeal is resolved.

You have also insisted that the Hackneys agree in advance to refrain from renting to institutional tenants that would house staff on-site, though the code provides no support for including such a requirement in a site plan application. We believe it is improper to ask the Hackneys to waive their rights, which are currently on appeal, in order to submit a new application.

As noted previously (1) the Hackneys relied on Betsy Jumper's oral approval of such a proposed use and designed the structure in anticipation of that use; (2) such uses and similar bed and breakfast uses are common just blocks away in the neighborhood, with no enforcement effort whatsoever by the City; (3) in fact, on information and belief, the City itself houses individuals for short term stays in residential zoned neighborhoods, showing its lack of regard for its own purported rules; and (4) the "residential" restriction is being construed far too narrowly, a point we intend to present to the Court, as we have previously conveyed through counsel. The City is plainly singling out the Hackneys for arbitrary and capricious reasons that appear to have more to do with personal animus than any intention of neutral code enforcement.

The fact that neighbors may complain does not justify the City in its pattern of arbitrary enforcement of its rules. The Hackneys' proposed structure and use will in no way be inconsistent with or detract from the neighborhood in which they live, nor will it actually impact any neighbor or the public interest. We would ask that a substantive review of the site plan permit be conducted and that the permit be approved.

Sincerely,

ASHBURN & MASON, P.C.

Thomas V. Wang

Cc: City Attorney

Permit # 18-34

Exhibit #5

RECEIVED
JUL 20 2018
CITY OF BETHEL
PLANNING DEPARTMENT

CITY OF BETHEL

P.O. BOX 1388, BETHEL, ALASKA-99559 http://www.cityofbethel.org
907-543-5306
FAX# 907-543-4186

RESIDENTIAL SITE PLAN PERMIT APPLICATION

Title 18 of the Bethel Municipal Code requires the review of a Site Plan prior to the erection of any improvement on real property within the city limits. Application for a Site Plan Review shall be filed with the City of Bethel Planning Department. Upon approval of the application, a permit will be issued and is required to be displayed on the property to be improved. By submitting this application you are authorizing public access to the displayed Site Plan Permit area. Approval of plans does not presume to give approval to oversights by the City of Bethel Planning Office nor grant authority to violate or cancel the provisions of any other federal, state or local laws regulating the use of development of this land.

Today's Date: 20 July '18	**Legal Description Plat or Survey:** 84-13
Physical Address of Property: 175 Alex Hately	**Block** ____ **Tract** ____ **Lot** 11
Name of Property Owner: Daniel & Dawn Hackney	**Name of Developer or Builder:** Daniel Hackney
Mailing Address: P.O. Box 3288	**Mailing Address:** "
City, State, Zip: Bethel, Ak. 99559	**City, State, Zip:** "
Phone: 543-7951 Cell 545-1820	**Phone:** "
Signature of Owner:	**Signature of Developer:**
☐**Mail permit to:** ☐**Owner** ☐**Developer**	☐ **Fill and Pilings** ☐**Building Construction**

Please Do Not Write Below This Line. To be filled out by Planning Dept. Staff

Zoning: residential	**Flood Hazard Zone:** N/A
Authorized & Mandatory Improvements:	
constructs a 20' x 40' garage/shop	
City of Bethel Reviewed: **Date:** JUL 24 2018	**City of Bethel Approved:** **Date:** JUL 24 2018

Intended improvements: Describe residential improvements or site activity.	
Garage/Storage/Shop Mother-in-law (out law) 20'x42'. No infill needed. Existing infill, sandbagged & seeded w/ erosion control jute netting.	
Lot Size: 100' x 120' Sq. ft. Proposed total number of Buildings: 2 Number of Bedrooms:	
If placing fill indicate cubic yards or truckloads (if no fill is needed, indicate: 0):	
Dimensions of Fill (Required) Max. Height of fill: _____ (Required) Length of fill: _____ (Required) Width of fill: _____ (see also worksheet on page 4)	Method of stabilizing sand pad slopes: ☑ Seeding ☑ Sandbagging
If improvements include construction, renovation, or floor area addition to a residence, indicate the following:	
Sewer service type: □ Hauled □ Piped If **hauled** please indicate: Hauled water tank size (gallons): _____ Hauled sewer tank size(gallons): _____	
I attest that all information and measurements presented are correct. **Signature of applicant:** David Mabry	

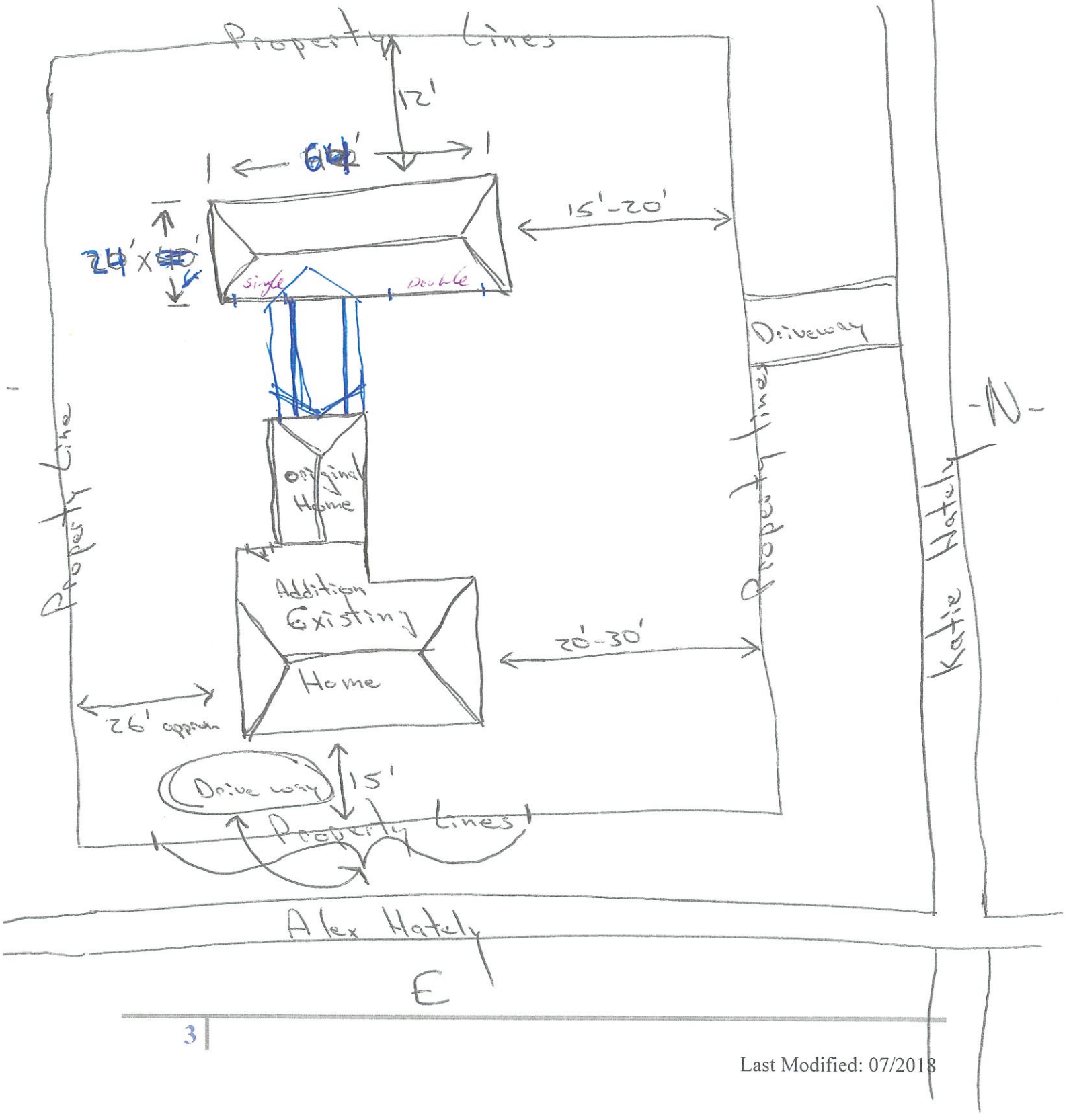
WHEN DO I HAVE TO OBTAIN A PERMIT(S)?

A permit must be obtained at least ten (10) calendar days before construction begins. The permit can be obtained from the City Planning Office which is located upstairs at 1155 Ridgecrest Drive and is open weekdays from 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. The Planning Department Office legally has ten (10) days to review the permit before approval, disapproval, or approving it with modifications. Remember, it is illegal to build, place fill, etc., without first obtaining a site plan permit.

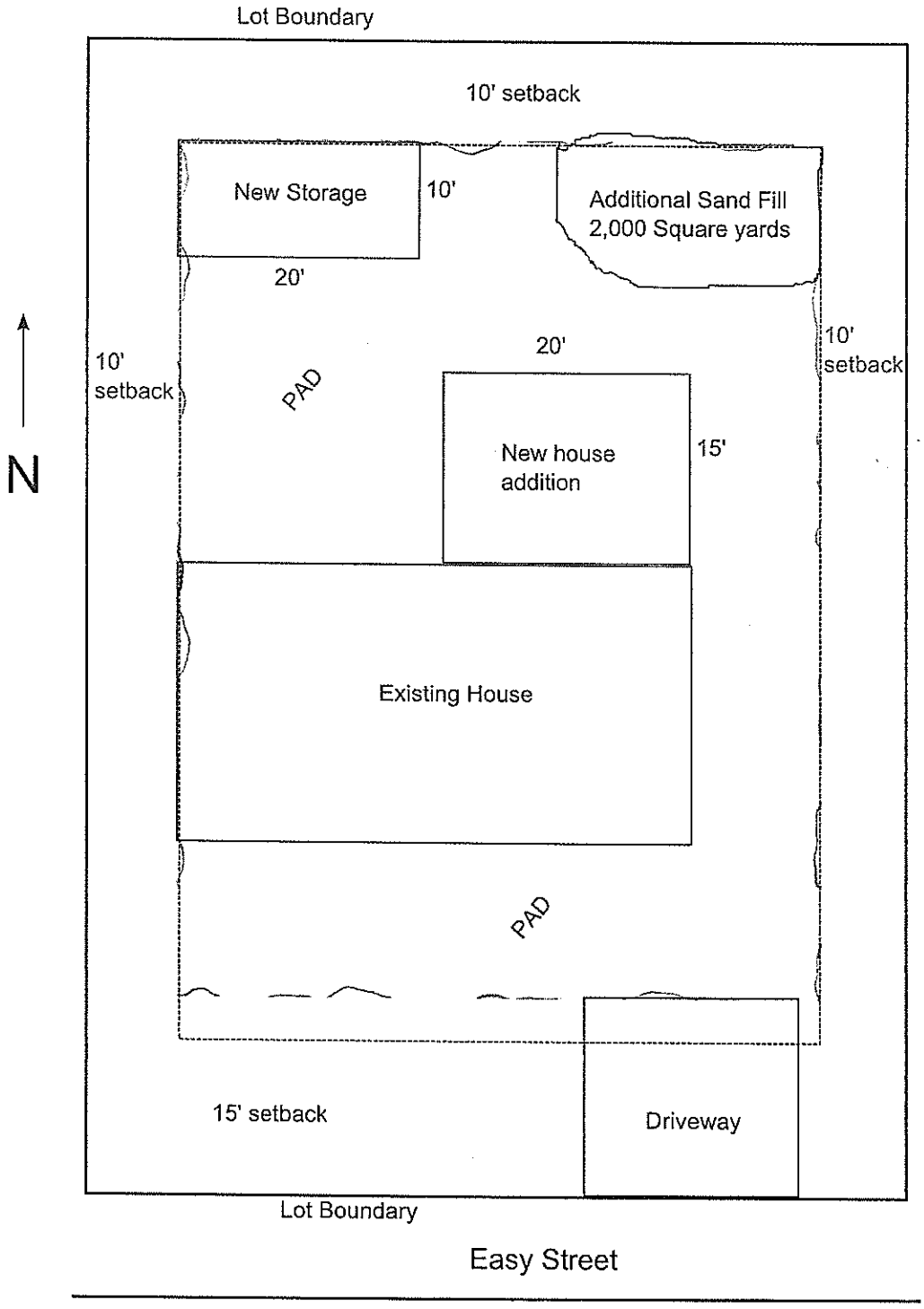
Individual permits are required for fill, construction, and floodplain development. There is a fee schedule which is downloadable from the website (http://www.cityofbethel.org) or can be obtained from the Planning Department.

Drawing of Site Improvements

Provide a rough drawing of the site, the buildings, the parking, the access, and the proposed improvements. (Note: if your project is in a floodplain or USACE wetlands area, please fill out the worksheet for fill dimensions on page 5. If you are going to need a culvert fill out the culvert form on page 6.)

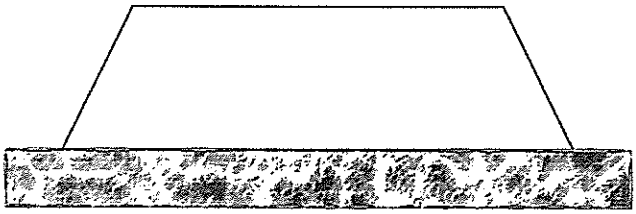


(Sample Drawing)



Worksheet for Fill Dimensions

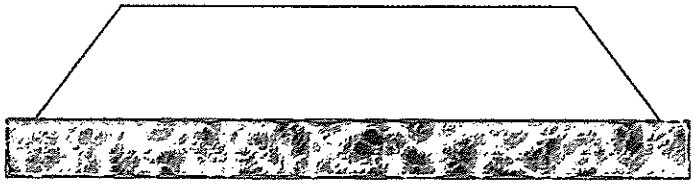
Give us an idea about how much fill is going in.



Driveway

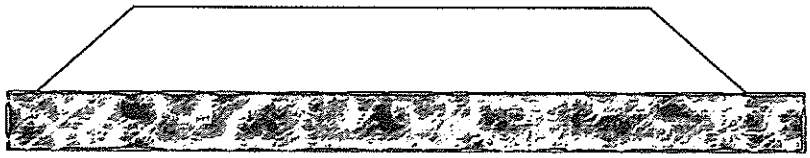
H =
W =
L =

Parking Area



H =
W =
L =

Main Sand Pad



H =
W =
L =

Turn this form in with your Site Plan Permit Application.

City of Bethel Public Works Department

Culvert Installation Inspection Form

Name: Dan & Dawn Hankney
Property Location: 175 Alex Hately
Mailing Address: P.O. Box 3288
Contact Phone: 543-7951
Request Date: 20 July '18
Site Plan Number: _____

Pre-Installation Approval

APPROVED: _____ Date: _____ DENIED: _____

Signed By: _____

Brief Explanation: If denied:

_____
_____
_____
_____
_____

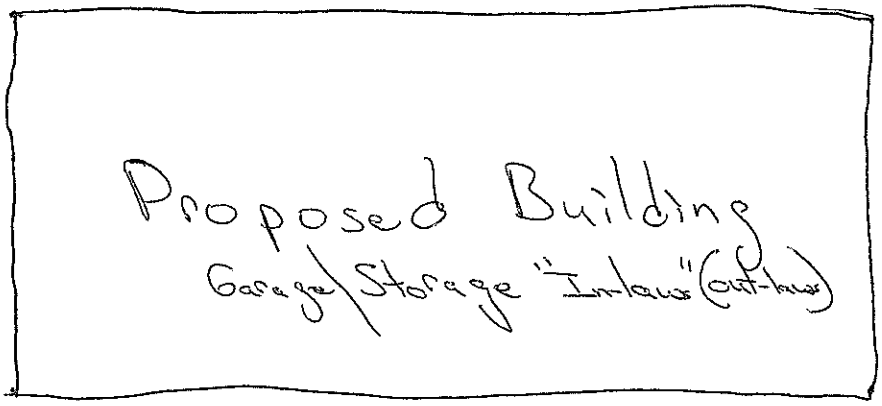
Installation Inspection

Inspected By: _____

Comments:

_____
_____
_____
_____
_____

The Property Owner is responsible for culvert installation as needed, and abatement of any run-off resulting from development.


Proposed Building
Garage/Storage "In-law" (out-law)

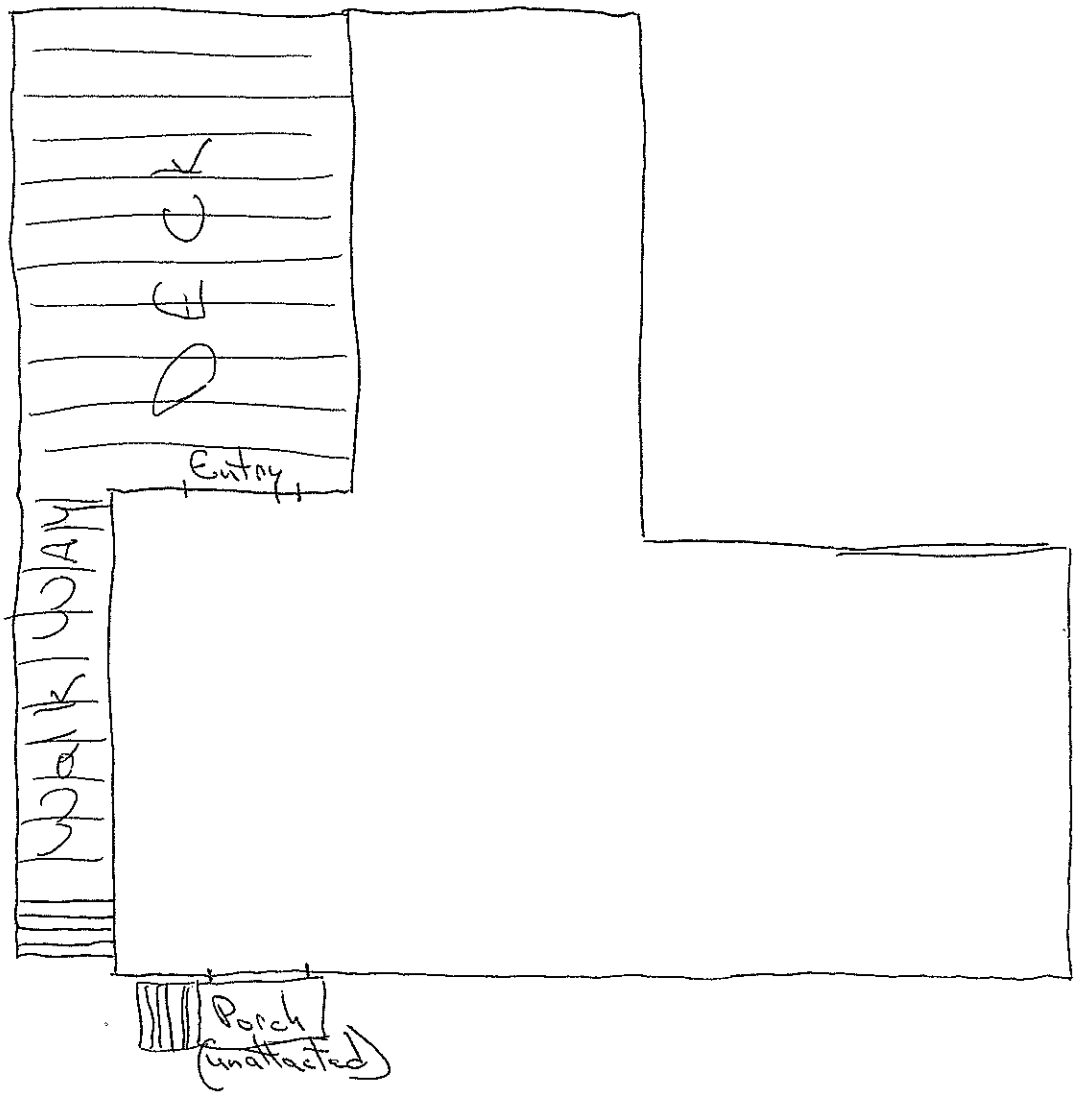

Entry
Porch
(unattached)

Exhibit #6

SITE PLAN PERMIT

No. 18--34 DATE: 7/24/2018

PERMITEE: **Daniel and Dawn Hackney**		Address: 175 Alex Hately		
Lot: 11	Block:	Subdivision: Blueberry Fields Subd. Phase	Plat No.: 84--13	R./T./Sec.: R71W, T8N, S7, SM

Authorized and mandatory Improvements:

1. Construct a 20'x42' Shop/garage/storage shed.
2. Take all construction debris to the city landfill, do not fill residential trash bins.
3. Abide by all set back requirements.

PER SITE PLAN PERMIT APPLICATION ON FILE.

The Property Owner is responsible for culvert installation as needed, and abatement of any run-off resulting from development.

PLANNING DEPARTMENT: Pauline Boratko

Pauline Boratkó, Planning Assistant

Intended Use: Residential

This permit has hereby been posted on the above property this __day of __, _____

By_____.

Your Signature

Exhibit #7

SITE PLAN PERMIT

No. 18--34 DATE 7/24/18

PERMITEE: **Daniel and Dawn Hackney** Address 175 Alex Hately

Lot	Block	Subdivision	Plat No.	R /T /Sec
11		Blueberry Fields Subd Phase	84--13	R71W T8N, S7 SM

Authorized and mandatory Improvements

1. Construct a 20'x42' Shop/garage/storage shed
2. Take all construction debris to the city landfill, do not fill residential trash bins
3. Abide by all set back requirements.

PER SITE PLAN PERMIT APPLICATION ON FILE

The Property Owner is responsible for culvert installation as needed, and abatement of any run-off resulting from development.

*******ADDENDUM********01-09-2019*******

1. Construct a 24'x64' attached garage.
2. Take all construction debris to the city landfill, do not fill residential trash bins
3. Abide by all set back requirements.

PLANNING DEPARTMENT: Pauline Boratko

Pauline Boratko, Planning Assistant

Intended Use: Residential

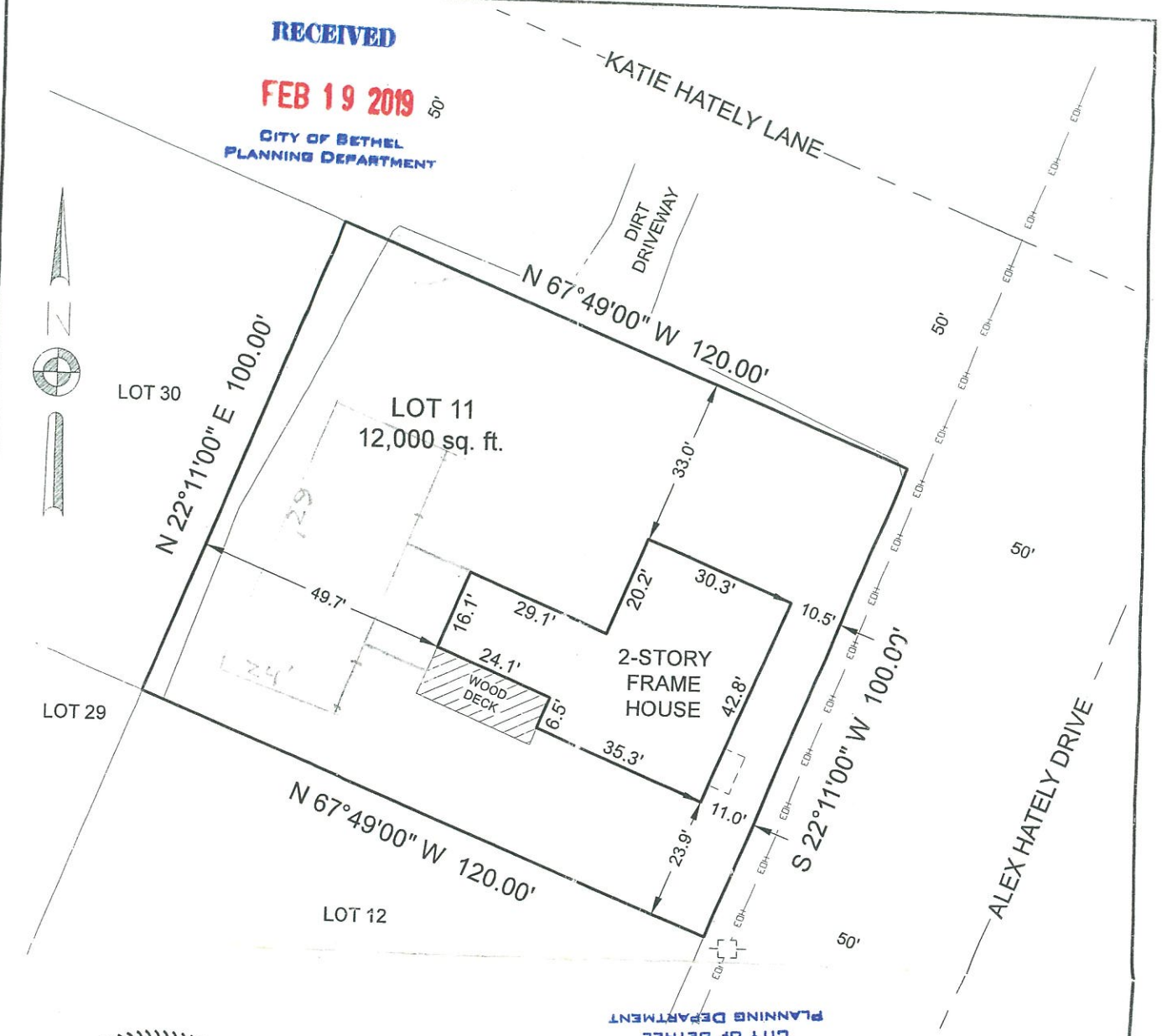
This permit has hereby been posted on the above property this __day of ____

By _____

Your Signature

Exhibit #8

RECEIVED
FEB 19 2019
CITY OF BETHEL
PLANNING DEPARTMENT



PLANNING DEPARTMENT
CITY OF BETHEL
FEB 19 2019
RECEIVED

STATE OF ALASKA
49TH
Buku Salz
LS-14837
REGISTERED PROFESSIONAL LAND SURVEYOR

I HEREBY CERTIFY THAT I HAVE SURVEYED THE DESCRIBED PROPERTY AND THAT NO ENCROACHMENTS EXIST EXCEPT AS INDICATED. IT IS THE RESPONSIBILITY OF THE OWNER TO DETERMINE THE EXISTENCE OF ANY EASEMENTS, COVENANTS, OR RESTRICTIONS WHICH DO NOT APPEAR ON THE RECORDED SUBDIVISION PLAT. UNDER NO CIRCUMSTANCES SHOULD ANY OF THE DATA HEREON BE USED FOR CONSTRUCTION OF FENCES, OR FOR ESTABLISHING PROPERTY BOUNDARIES.

FIXED HEIGHT, LLC Land Surveying Services 225 W 23rd Ave. Anchorage, AK 907.290.8949 WWW.FIXEDHEIGHT.COM	AS-BUILT LOT 11 BLUEBERRY FIELD SUBDIVISION PHASE I (PER PLAT No. 84-13, BETHEL RECORDING DISTRICT) LOCATED WITHIN SECTION 18, TOWNSHIP 8 NORTH, RANGE 71 WEST, SEWARD MERIDIAN, ALASKA	Legend EAVE UTILITY POLE OVERHEAD UTILITY LINE

NO CORNERS SET THIS DATE	SCALE: 1" = 30'	CHECKED/DRAWN BY: AP/BS	JOB NO: 18024	DATE: 10/22/2018

Exhibit #9

Steve Sorg
P.O. Box 2117
Bethel, AK 99559
545-3662

06/07/19

To: Betsy Jumper
Planning Department
City of Bethel

From: Steve Murat
P.O. Box 2744
420 Katie Hately Lane
Bethel, Alaska 99559

Todd Frederks
P.O. Box 3343
Bethel, AK 99559
545-4142

RE: BMC Chapter 15, 16 & 18
Section 15.12.090 Complaint
Section 18.84.020 Complaint
Section 18.32 020 Permitted & Principal use & Structures
Section 18.32.010 Intent
Section 15.12.030
Section 15.12.060 F.4 Planning needs to ask more questions
Section 16.04.010 Purposes A#2 & A#6
Section 15.12.020 Permit Required B#6 & C

Mike Shultz
Box 57
Bethel
99559

This is an official complaint of violations of City of Bethel Site Plan Permit No. 18-34, for Daniel and Dawn Hackney of 175 Alex Hately, lot 11, Blueberry Field Subdivision phase plat 84-13.

Permitee has violated the following City of Bethel Municipality codes:

1. BMC 15.12.030 The site plan permit was incomplete. Permitee did not give accurate description of what their real plans were, or the size and use of the structure and this huge 24' X 60' two story building is going to be used as a commercial business. Not a garage/storage building, as permitee wrote down.
2. BMC 189.32.020 Permitee is building apartments or a hotel in a residential area, which is not permitted. Only one residence per lot.
3. BMC 18.32.010 Intent: The intent of the residential district is to provide protection to residential areas from encroachment from non-residential activities.
4. Permitee has a fence on the edge of the roads, Alex Hately road and Katie Hately Lane. Fence on city easement, should be on permitee's property line.
5. BMC Chapter 16.04 Section 16.04.10 A#2 & A#6. This will negatively affect everyone's home appraisal that lives next to this atrocity. The city has an obligation to protect our property from things like this. The City of Bethel should have stopped this project/construction months ago after being told about the actual scope of construction vs site plan.
6. BMC 15.12.020 Permittee moved a 12' X16' building onto city easement, along Katie Hately Lane, with no permit, it is illegal and needs to be moved.
7. The City should have been inspecting the project. Permittee has installed two 1000 gallon water tanks and a 2400 gallon sewer tank for a garage/storage. No. To run a commercial business with a second residence on their lot. Building must be moved.

cc: Patricia Burley, City of Bethel Attorney
Kathy Hansen, City of Bethel Planning Committee

City of Bethel
Planning Department
P.O. Box 1388
Bethel, Alaska 99559
(907) 543-5306

Daniel and Dawn Hackney
PO Box 3288
Bethel, AK. 99559

August 30, 2019

RE: Notice to Correct Violations

Dear Mr. and Ms. Hackney,

The second floor of the structure in your current construction project at 175 Alex Hately is not compliant with the Bethel Municipal Code. Your approved, July 24, 2018 Site Plan Development Permit for a 20-foot X 42-foot shop/garage/storage shed, and your approved January 29, 2019 addendum to the permit to increase the size of the structure to 24-feet X 64-feet, did not include approval to build a second floor with a B&B or other lodging units.

Noncompliance with Authorized Improvements
Your noncompliance in following the Authorized and Mandatory Improvements as stated on your approved development permit violates ***BMC 15.12.070 (Site Plan Permit Modification).*** This section states, "Once the site plan permit is approved, no modifications to the approved plan may take place without the written consent of the land use administrator".

Noncompliance with Residential Zoning Code
Although your description of intended improvements on the July 24, 2018 application included a mother-in-law unit, planning staff told you this particular unit is illegal because it is not identified as either a principal or accessory use in ***BMC 18.32.020 (Residential District-Permitted and Principal Uses and structures)***, nor as a conditional use in ***BMC 18.32.030 (Conditional uses)***. The definition of accessory structure stated in ***BMC 16.12.030 (Definitions)*** does not identify a mother-in-law unit as an accessory unit. This mother-in-law unit was subsequently not included by planning staff as an "Authorized and Mandatory Improvement" on your July 24, 2018 approved permit, nor the January 29, 2019 addendum to the permit.

I accepted your invitation to visit the second floor of your new building on Thursday, August 15. I observed four finished hotel-style rooms running the length of the building, each with an enclosed bathroom, and a guest kitchen below, on the first level. A van-full of guests were entering as I was leaving. From the design of your building and your acquisition of a May 9, 2019 business license, it appears that you intend to use the structure as a Bed & Breakfast. Again, this type of use violates ***BMC 18.32.020 and 18.32.030 (Residential Zoning District)***, because a B&B is not identified as a principal, conditional, or accessory use in the residential

zone. Incidentally, a B&B is only allowed as a principal and permitted use in the General Use District and as a conditional use in the Preservation District.

Correction of Violations
As the City of Bethel Land Use Administrator, ***BMC 18.84.030B (Correction of Violation)*** authorizes me to order you to discontinue unlawful uses of land or structures. It also authorizes me to order you to discontinue construction leading to your unlawful use of land and structure.

Your compliance is required within 30 days of the date of this notice to bring your structure and its usage back into compliance with the Residential Zoning Code ***(BMC 18.84.030A Correction of violations)***, otherwise the City of Bethel may pursue any and all legal and equitable remedies available to it. Additionally, failure to bring the structure and use back into compliance within this time frame can lead to fines imposed on you of up to $1,000 for each violation per day ***(BMC 16.04.050 Enforcement, Violation, and Penalties).*** The City reserves the right to assert additional violations of the BMC as it continues its investigation of the matter.

BMC Compliant Site Plan Permit Application Required
I invite you to come down to the planning department to discuss your construction project in terms of permissible uses allowed in the Residential Zoning Code. Ultimately and quickly, we need a new and accurate site development permit application from you with a scaled site plan drawing that shows all structures, both planned (new) and existing (the existing Single Family house on the lot), and any roads that abut your property. All structures need to be labeled with their planned and existing uses, and show all building and setback dimensions. Include existing and planned water and sewer facilities and their exact locations. The code-required number of parking spaces (with 9' x 20' dimension) and the driveway that access all these spaces must be shown as well.

Right to Appeal Stated Violations
According to ***BMC 15.12.065 (Appeal)*** you may appeal to the Planning Commission my determination that violations have occurred in your development and my orders to you to correct these violations. ***BMC 18.72.010 A&B (Appeal of decision of planning department)*** states the written appeal must be submitted to the Planning Department and must specify the grounds for appeal and specify the actions and findings of the department that are being disputed. The appeal must be filed with the planning department within 10 calendar days from the date of this letter.

I look forward to working with you to bring your development project into compliance with the Bethel Municipal Code. Please contact me as soon as possible. Thank you.

Ted Meyer
Planner, City of Bethel

CC. Bill Howell, Acting City Manager
Bo Foley, I.T. Director
Michael Gatti, City Attorney

Exhibit #11

VALCARCE LAW OFFICE

A LIMITED LIABILITY COMPANY

900 THIRD AVENUE
P.O. BOX 409
BETHEL, ALASKA 99559
TELEPHONE: (907) 543-2744 OR (907) 543-HELP
TOLL FREE (888) 610-2744
TELEFAX 907 543-2746
EMAIL: *jared@bushlawyers.com*

JARED KARR, ESQ
HEATHER SIA, ESQ
JIM VALCARCE, ESQ

Bush Lawyers Serving Bush Alaska

September 9, 2019

City of Bethel
Planning Department
PO Box 1388
Bethel, AK 99559

Re: Appeal of decision by planning department in regards to 175 Katie Hately, Dan and Down Hackney

In compliance with BMC 18.72.010, Dan and Dawn hackney hereby provide notice to the City of Bethel that it appeals the decision of the planning department and the letter sent by the planning department on August 30, 2019.

Grounds for Appeal: All construction and use of 175 Katie Hately were authorized by former Planning Director Betsy Jumper.

Actions and findings of the planning department that are disputed in the August 30, 3019 letter: all.

Jared Karr
Attorney for Dan and Dawn Hackney

On August 30, 2019, the City of Bethel, Planning Department, issued a Notice to Correct Violations to Daniel and Dawn Hackney, providing information as to the Noncompliance with Authorized Improvements; Noncompliance with Residential Zoning Code; Correction of Violations; BMC Compliant Site Plan Permit Application Required; and Right to Appeal Stated Violations information.

On September 9, 2019, Daniel and Dawn Hackney filed an appeal with the Planning Department.

On September 13, 2019, the parties, and their respective attorneys, met to discuss the August 30, 2019 Notice. Based upon that meeting, the parties agreed to hold in abeyance the September 9, 2019 appeal while a corrective plan is formulated between the parties. Upon execution of the Corrective Action Plan, the parties will file a stipulation for dismissal of the appeal with prejudice. Otherwise the appeal will proceed in accordance with BMC 18.72.010.

VALCARCE LAW OFFICE
Attorneys for Daniel and Dawn Hackney

DATED: 9/18/19

By: _____
Jared Karr

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for the City of Bethel

DATED: 9/20/19

By: _____
Michael R. Gatti

City of Bethel
Planning Department
P.O. Box 1388
Bethel, Alaska 99559
(907) 543-5306

Daniel and Dawn Hackney
PO Box 3288
Bethel, AK. 99559

September 26, 2019

RE: Corrective Action Plan for Bethel Municipal Code Violations

Dear Mr. and Mrs. Hackney,
The second floor of the structure in your current construction project at 175 Alex Hately is not compliant with the Bethel Municipal Code (BMC). Your approved, July 24, 2018 Site Plan Development Permit (# 2018-34) for a 20-foot x 42-foot shop/garage/storage shed, and your approved January 29, 2019 addendum to the permit to increase the size of the structure to 24-feet x 64-feet, did not include approval to build a second floor with a B&B or other lodging units.

During a September 13, 2019 meeting, parties and respective attorneys agreed the City would develop a Corrective Action Plan for the Hackneys to follow in order bring their structure back into BMC compliance.

1st Violation
Noncompliance with Authorized Improvements on Approved Site Plan Permit

BMC 15.12.070 (Site Plan Permit Modification) states, "Once the Site Plan Permit is approved, no modifications to the approved plan may take place without the written consent of the land use administrator". Your construction of a second floor with rental units without authorization violates the approved Site Plan Permit # 2018-34.

Phase 1 Corrective Action

1. Submit a detailed, scaled floor plan of what was actually constructed on both 1st and 2nd floors of the new 24-foot x 64-foot structure.
2. Provide written permission for city staff to inspect 1st and 2nd floors of the 24-foot x 64-foot structure. Staff will inspect the building once the floor plan of the existing layout has been received.
3. Provide written permission for City surveyors to do an as-built survey on property.

Due Date: October 10, 2019

2nd Violation
Noncompliance with BMC Residential Zoning Code

BMC 18.32.020 and 18.32.030 (Residential Zoning District) does not list a B&B and/or other transient lodging as a permitted, principal, conditional, or accessory use in the residential zone. Currently, there are four finished hotel-style rooms running the length of your new building's second floor, each with an enclosed bathroom. There is a guest kitchen below, on the first level. Vans full of guests have been reported by neighbors as continuously entering and leaving the property. From the design of your building and your acquisition of a May

9, 2019 business license, it appears you are using the structure as a Bed & Breakfast and/or other transient lodging. This type of use violates the City's Residential Zone standards.

Phase 2 Corrective Action

Whether you choose second floor conversion or demolition, the Planning Department needs to know your intentions in bringing the building into compliance with the BMC. Please submit a new 2019 Residential Site Plan Permit application and a detailed site plan drawing with a type of use that is compliant with ***BMC 18.32.020 and 18.32.030 (Residential Zoning District)***. Please contact the Planning Department if you would like to discuss. Include the following on the drawing:

1. Scaled site plan drawing that shows all structures, both planned (new) and existing (the existing Single Family house on the lot, wood shed, etc.)
2. Existing and planned water and sewer facilities and their exact locations.
3. The code-required number of parking spaces ***(BMC 18.48.160)*** (with 9' x 20' dimensions)
4. Driveway that access all parking spaces ***(see BMC 18-48-200 for standards)***
5. All structures/facilities need to be labeled with their planned and existing uses, and show all building setback dimensions.
6. Roads that abut your property
7. New floorplan layout drawing of code compliant use on both 1st and 2nd floors.

Due Date: October 24, 2019

Once your new September 2019 Site Plan Permit Application is received by the Planning Department, BMC timelines for City action will be adhered to. Staff will review your application for compliance to the ***BMC 18.32.020 and 18.32.030 (Residential Zoning District)*** and to ***BMC15.12 (Site Plan Permits).*** Staff will notify you if any additional information and/or permits are required based on the type of intended use indicated on your application. Additional permits may extend the conversion deadline. Please contact planning department staff at 543-5306 if you have any questions.

Conversion to BMC Code Compliant Use and Verification:

Phase 3 Corrective Action

Using appropriate reconstruction, convert the second floor of building from current transient rental units to approved BMC compliant use. After conversion of the structure is complete, planning staff will inspect, approve, and sign a Certificate of Occupancy for project completion.

Due Date: November 24, 2019

Penalties

Regarding the August 30, 2019 letter I sent which gave you 30 days to bring your structure and its usage back into BMC compliance ***(BMC 18.84.030A),*** this is to notify you the City shall fine you $500 per day for each violation ***(BMC 16.04.050)*** from September 29, 2019 onward, until the Planning Department signs off on your completed Corrective Action Plan. Your compliance with this Corrective Action Plan may result in suspension of any levied fines for violations, provided you execute a confession of judgement in a specified amount. The City reserves the right to assert any legal and equitable remedies for violations of the BMC. Please respond in a timely manner. Thank you.

Ted Meyer, Planner, City of Bethel

CC. Bo Foley, Acting City Manager
Pauline Boratko, Planner Assistant
Michael Gatti, Attorney

Exhibit #14

VALCARCE LAW OFFICE

A LIMITED LIABILITY COMPANY

900 THIRD AVENUE
P.O. BOX 409
BETHEL, ALASKA 99559
TELEPHONE: (907) 543-2744 OR (907) 543-HELP
TOLL FREE (888) 610-2744
TELEFAX 907 543-2746
EMAIL: *jared@bushlawyers.com*

JARED KARR, ESQ
HEATHER SIA, ESQ
JIM VALCARCE, ESQ

Bush Lawyers Serving Bush Alaska

October 10, 2019

City of Bethel
Planning Department and
Panning Commission
PO Box 1388
Bethel, AK 99559

Re: Appeal of decision by planning department in regards to 175 Alex/Katie Hately, Dan and Dawn Hackney

The appeal of the Planning Department's August 30, 2019, "Notice to Correct Violations," is being requested to move forward. The City's September 26, 2019, "Corrective Action Plan for Bethel Municipal Code Violations" is rejected. The Hackney's request an appeal hearing before the Planning Commission in compliance with BMC 18.72.010.

Jared Karr
Attorney for Dan and Dawn Hackney

City of Bethel
Planning Commission

DANIEL AND DAWN HACKNEY
Appellants,

vs.

CITY OF BETHEL,
Appellee.

Case No. 2019-1

~~[PROPOSED]~~ DECISION AND ORDER OF THE CITY OF BETHEL PLANNING COMMISSION

INTRODUCTION

On November 14, 2019, pursuant to Bethel Municipal Code ("BMC") Section 18.72.010, a hearing was held before the City of Bethel Planning Commission ("the Commission") on Dan and Dawn Hackney's ("the Hackneys" or "Appellants") appeal of the City of Bethel planning director's ("planning director," "planning department" or "land use administrator") August 30, 2019 Notice to Correct Violations. After considering all of the evidence submitted by the parties as required by BMC 18.72.010(D), the Commission confirmed the findings and conclusions of the planning department pursuant to BMC 18.72.010(E) by a unanimous vote of 7-0.

FINDINGS OF FACT

1) On July 20, 2018, Dan and Dawn Hackney, owners of 175 Alex Hately, Block 1, Lot 11, Blueberry Field Subdivision, Bethel, Alaska, submitted a Residential Site Plan Permit application to the Planning Department for a 20-foot X 42-foot garage/storage/shop and mother-in-law unit.

2) The planning staff assistant testified at the hearing that she and the former planning director, Betsy Jumper, told Mr. Hackney that the mother-in-law unit or two unattached dwelling units were not allowed on one property in the Residential Zone. The application was approved on July 24, 2018 and a Site Plan Permit was issued to only allow for the construction of a 20-foot x 42-foot shop/garage/storage shed.

3)On January 9, 2019, Mr. Hackney submitted a request to the Planning Department to amend the approved July 24 Site Plan Permit by increasing the structure dimensions to 24-feet x 64-feet and referring to the structure as an attached garage. The Planning Department issued an addendum to the permit, approving the attached garage with the increased dimensions to 24-feet X 64-feet.

4) On February 19 2019, Mr. Hackney dropped off a 2018 As-built drawing at the planning department. The As-built drawing showed the existing Single Family house connected by a planned, hand-drawn deck to the hand-drawn new structure.

5) On June 7, 2019, the City of Bethel Planning Department, received an official complaint from four neighborhood residents alleging violations of the City of Bethel Site Plan Permit 18-34, for Daniel and Dawn Hackney of 175 Alex Hately, lot 11, Blueberry Field Subdivision phase plat 84-13. The Complaint included allegations the Hackneys had (1) failed to provide an accurate description of their building plans in their site plan application and (2) built apartments or a hotel in a residential area, with a residence already on the property.

6) Ted Meyer became the planning director in August 2018. Pursuant to ***BMC 15.12.090***, Mr. Meyer investigated the complaint and found it had merit. Part of the investigation included accepting an invitation from the Hackneys to tour the new building on their property. The second floor included four finished and furnished hotel-style rooms, each with enclosed bathroom, and a kitchen for the guests downstairs. A van full of guests was arriving as planning staff were departing.

7) On August 19, 2019, the planning department staff took photos of the Hackney property. The three photos and an additional Google Earth aerial photo show:

1. Existing Single Family house side by side with the new structure, with a connecting deck in between.
2. Existing Single Family house with the new structure in background.
3. A rear view of the new structure.

8) On August 30, 2019, the City Planning Department issued the Hackneys a Notice to Correct Violations stating that they had violated the Bethel Municipal Code since they had not received approval to build a second floor with a bed and breakfast (B & B) or other lodging units. The City determined that the Hackneys had committed the following violations:

(1) Non-compliance with Authorized Improvements, in violation of ***BMC 15.12.070***; and

(2) Non-Compliance with BMC Residential Zoning Code, in violation of ***BMC 18.32.020 and 18.32.030.***

9) The City planning department properly determined that the Hackneys violated the Bethel Municipal Code. The evidence presented at the hearing overwhelmingly established that

the Hackneys had constructed a B & B or other lodging unit on their property, in violation of their site permit and in violation of the Bethel Municipal Code restrictions on Residential Zones.

10) The City gave the Hackneys 30 days to correct the violations and invited them to visit the planning department to discuss the construction project and permissible uses of the property under the Bethel Code. The City further notified the Hackneys of their right to appeal the Planning Department's determination to the City Planning Commission. It explained that "the written appeal must be submitted to the Planning Department and must specify the grounds for appeal and specify the actions and findings of the department that are being disputed."

11) On September 9, 2019, the Hackneys appealed the City's August 30 Notice to correct violations. They stated their grounds for appeal were:

(1) All construction and use of 175 Katie Hately were authorized by the former Planning Director Betsy Jumper.
(2) All actions and findings of the planning department are disputed.

12) On September 13, 2019, the parties and their respective attorneys met to discuss the August 30, 2019 Notice to Correct Violations. Based upon that meeting, the parties agreed to hold in abeyance the Hackney's September 9, 2019 appeal while a corrective action plan was formulated between the parties.

13) On September 26, 2019 the planning department issued the Corrective Action Plan to the Hackneys to bring the structure into code compliance. The plan included deadlines for submission by Mr. Hackney as follows:

a. A detailed and scaled floor plan drawing of the constructed floor levels 1 and 2 of the new building
b. A new Site Plan Permit application with a detailed and scaled site plan drawing with a type of use that is compliant with BMC 18.32.020, 18.32.030, and 15.12.
c. A plan for the conversion of the second floor of the structure from transient lodging units to an approved BMC compliant use.

14) On October 10, 2019 the Hackneys rejected the Corrective Action Plan and requested their appeal of the August 30 Notice to correct violations "move forward."

15)On October 28, 2019, the Bethel Planning Department sent a notification to the Hackneys that their letter of appeal did not provide an adequate explanation for the appeal, as required in BMC 18.72.010A.

16) On October 28, 2019 the Hackneys notified the planning department that they were appealing the planning department's October 28 letter regarding the inadequate appeal.

17) On October 29, 2019, the planning department notified the Hackneys of the November 14, 2019 Planning Commission hearing for the Hackney appeal.

18) On November 14, 2019, the Planning Commission held a public hearing of the Hackneys' appeal from the Planning Department's Notice to Correct. As required by ***BMC 18.72.010D,*** the

planning department submitted a summary of the application process and statement of findings to support its actions in issuing a Notice to Correct Violations to the Hackneys.

19) The Commission heard the sworn testimony and arguments of both parties. It also heard the sworn testimony of members of the public. It considered the permit application, correspondence, materials received from the parties, the letter of appeal, the planning department summary of the application and statement of findings supporting the action of the land use administrator, the verbal testimony taken under oath, and arguments of the parties to the appeal. After considering all of the evidence, the Commission denied the appeal and confirmed the planning director's findings, ordering the Hackneys to come into compliance with the Bethel Municipal Code.

CONCLUSIONS OF LAW

1) The Hackney property is located in the Residential ("R") district. ***BMC 18.32.010*** states that it is the intent of the residential district to provide protection to residential areas from encroachment from nonresidential activities.

2) Pursuant to ***BMC 18.32.020***, the following are permitted and principal uses and structures in the Residential District:
   A. Trails and boardwalks;
   B. Non-motorized public access areas to the Kuskokwim River or other areas that require public access.
   C. Single-family dwelling units;
   D. Duplex uses;
   E. Greenbelts and land reserves;
   F. Subsistence activities;
   G. Any accessory use or use of structure associated with the principal use or structure on the lot.
   H. The facilities of sewer, water and other utilities required to serve the lots in the district.
   I. Home occupations, but not more than two (2) per dwelling unit

3) ***BMC 18.36.020(K)(31)*** allows hotels, motels, hostels, bed and breakfasts, bunk houses, and boarding houses in the Bethel General Use District. Bethel residents therefore have the option to build bed and breakfasts in the Bethel General Use District. The Hackneys had the option of building their bed and breakfast in the General Use District but chose not to.

4) Pursuant to ***BMC 18.32.020G (Residential Zoning District Permitted and Principal Use and Structures***), any accessory use or structure associated with the principal use or structure on the lot are permitted in the Residential District. However, an accessory is defined in ***BMC 16.12.030*** as being customarily accessory and clearly subordinate and incidental to the principal use or structure on the lot. The Hackneys' additional 4-unit Bed & Breakfast or other lodging unit on the property is clearly not subordinate and

incidental to the already existing Single Family dwelling unit, which is the principal use on the property. The structure at issue is consequently clearly not allowed by ***BMC 18.32.020.***

5) The Hackneys state that their grounds for appeal are that all construction and use of the property were authorized by the former planning director Betsy Jumper. However, the initial site plan permit only gave the Hackneys permission to "construct a 20-foot x 42-foot shop/garage/storage shed" and the addendum to the permit only allowed for the construction of "a 24-foot x 64-foot garage." The city planning department never gave the Hackneys written consent to build the structure at issue.

6) The approved Site Plan Permit is a one-sheet document and is the only approval mechanism used by planning departments to convey a Notice to Proceed to the developer to begin construction. The purpose of posting the permit is to notify the public that the project plans comply with local standards for land use, zoning, and development. The Authorized Improvements listed on the permit sheet are the only improvements that can be made by the property owner. Neither the July 20, 2018 permit, nor the January 9, 2019 addendum, allowed the Hackneys to construct the second floor lodging units.

7) The Hackneys are in violation of BMC Section 15.12.070 (Modifications) since they failed to obtain the written consent of the land use administrator (planning director) when they modified the approved plan.

8) The Hackneys are also in violation of BMC 18.36.020 (Residential District) since B & B's and transient lodging are not permitted in the Residential Zone. (The Hackneys reside in the residential zone.)

9) There is no merit to the Hackneys' appeal and it should be dismissed. The planning director's August 30, 2019 decision which found that the Hackneys had violated the Bethel Municipal Code Sections 15.12.070 and 18.32.020 and required them to come into compliance with the Code should be affirmed.

ORDER

The findings and conclusions of the planning department are hereby adopted as the findings and conclusions of the Commission. The decision of the planning director of August 30, 2019 which found that the Hackneys had violated the Bethel Municipal Code Sections 15.12.070 and 18.32.020 is **affirmed**. The Hackneys' appeal is therefore denied.

The Hackneys must come into compliance with the Bethel Municipal Code and must comply with the September 26, 2019 Corrective Action Plan sent to them by the Bethel City

Planning Department. This order will become effective **ten (10) days** after the date this decision is rendered unless a timely appeal is filed.

RIGHT TO APPEAL

Pursuant to BMC 18.72.020(A)(B) and (C) (Appeal of Decision by Planning Commission), the Hackneys may appeal the decision of the Planning Commission to the City of Bethel Board of Adjustment. The appeal shall be filed with the Board of Adjustment by submitting a written statement of appeal to the City Clerk with a copy sent to the Planning Department. The written statement of appeal shall specify the order, findings or conclusions of the Planning Commission that are being disputed and the grounds for appeal. The appeal must be filed within ten (10) calendar days from the date of the decision of this decision.

Lorin Bradbury
Planning Commission Vice Chair

11/18/19
Date

CERTIFICATE OF SERVICE:

This is to certify that a true and
Correct copy of the foregoing was
Served by (✓) mail ( ) hand ( ) fax
On November 18, 2019 to:

Jared Karr
Valcarce Law Office
900 Third Avenue
P.O. Box 409
Bethel, Alaska 99559

Mary B. Pinkel
Jermain Dunnagan & Owens
3000 A Street, Suite 300
Anchorage, Alaska 99503

Michael Gatti
Jermain Dunnagan & Owens
3000 A Street, Suite 300
Anchorage, Alaska 99503

Ted Meyer 11/18/19

Pauline Boratko/Ted Meyer

Exhibit #16

VALCARCE LAW OFFICE

A LIMITED LIABILITY COMPANY

900 THIRD AVENUE
P.O. BOX 409
BETHEL, ALASKA 99559
TELEPHONE: (907) 543-2744 OR (907) 543-HELP
TOLL FREE (888) 610-2744
TELEFAX 907 543-2746
EMAIL: *jared@bushlawyers.com*

JARED KARR, ESQ.
HEATHER SIA, ESQ.
JIM VALCARCE, ESQ.

Bush Lawyers Serving Bush Alaska

December 18, 2019

City of Bethel
Board of Adjustment
PO Box 1388
Bethel, AK 99559

Re: Appeal of decision by Planning Commission, dated November 18, 2019, in regards to 175 Katie Hately, Dan and Dawn Hackney

In compliance with BMC 18.72.020, Dan and Dawn Hackney hereby provide notice to the City of Bethel Board of Adjustment that it appeals the decision of the Planning Commission, "Decision and Order of the City of Bethel Planning Commission, dated November 18, 2019, in regards to 175 Alex Hately.

Grounds for Appeal: All construction and use of 175 Alex Hately were authorized by former Planning Director Betsy Jumper; former City Attorney Patty Burley reviewed the complaints against the Hackney's and informed the Hackney's that they were fine in what they were doing and assured them that they were allowed to 1) build the second story of their addition, and 2) use it as a B&B or transient rentals; the Planning Commission's Order detailing "Conclusions of Law" is riddled with findings that can only be determined by the finder of fact and includes argument by the City Planner; and the actions of the City of Bethel and the Planning Commission are in violation of established Alaska state and case law.

Actions and findings of the Planning Commission that are disputed in the November 18, 2019 Order: All matters involving the authorization of the City of Bethel for the Hackney's to build and use their property as a two-story addition that houses transient lodgers; that planning staff did not authorize such construction and use; that written authorization by planning staff is the only

mechanism to bind the City of Bethel; that the Hackney's violated Bethel Municipal Code; that the Hackney's must comply with the September 26, 2019 Corrective Action Plan; and that there is a "kitchen for the guests downstairs."

We wish to draw the City's attention to the holding of the Alaska Supreme Court in Municipality of Anchorage v. Schneider, 685 P.2d 94 (1984), a copy of which is enclosed. In that case, the Court specifically rejected the position taken by the City in this matter, and permitted a citizen to enjoy the benefits of a permit authorization even though it was made in violation of the relevant zoning ordinance. The Court began its analysis with the correct observation that "[t]he average citizen simply cannot know the extent of authority of every public official with which he must deal, and it is outrageous to deny him justice when he has been misled to his detriment by the acts and statements of public officials within the contours of their responsibilities." The Court then cited with approval the proposition that "a good faith permitee who in reasonable reliance makes a substantial change of position should be entitled to the protection of the doctrine of estoppel.... Increasingly, courts are recognizing the justice of applying estoppel where substantial work has been done in reliance upon municipal permits that were issued illegally or impermissibly."

The Court then observed that the Schneiders had relied on the Municipality's action, that their reliance as foreseeable and reasonable, and that their expenditure of $24,000 in reliance on the permit was significant. In weighing whether or not to uphold the erroneously issued permit, the court held:

> Finally, we conclude that enforcement of the settlement agreement is necessary in the interest of justice. Of primary importance to this determination is the fact that any public injury which may arise from applying the doctrine of estoppel to the Municipality in this case is quite limited. The proposed structure will not violate health or safety codes.... Finally, the record contains no evidence that the Schneiders' proposed construction will be seriously out of character with the present structures in the neighborhood.

Similarly here, the Hackneys have invested significant funds in reliance on information received from a public official acting within the scope of their authority. Their structure does not present any risk to the community, nor will it be out of character with any neighboring uses. We would ask that the City reverse this decision to avoid a miscarriage of justice.

Jared Karr
Attorney for Dan and Dawn Hackney

KeyCite Yellow Flag - Negative Treatment
Distinguished by Alaska Trademark Shellfish, LLC v. State, Alaska, April 16, 2004

685 P.2d 94
Supreme Court of Alaska.

MUNICIPALITY OF ANCHORAGE, Appellant,
v.
Richard J. SCHNEIDER and
Mary M. Schneider, Appellees.

No. S–63.
|
July 6, 1984.

Synopsis
Property owners moved to enforce settlement agreement with municipality which had been entered in municipality's action against the property owners for zoning violation. The Superior Court, Third Judicial District, Anchorage, Milton M. Souter, J., determined that municipality could not revoke building permit issued to property owners even though the permit was issued in violation of a zoning ordinance. Municipality appealed. The Supreme Court, Matthews, J., held that municipality was equitably estopped from revoking the building permit, even though it was issued in violation of zoning ordinance.

Affirmed.

West Headnotes (5)

[1] **Municipal Corporations**
⇐ Powers of officers or boards

Public Contracts
⇐ Authority and capacity of particular governmental bodies to contract

Person dealing with a municipality is bound to take notice of legal limits of its powers and those of its agents.

1 Cases that cite this headnote

[2] **Estoppel**
⇐ Essential elements

General elements of equitable estoppel are assertion of position by conduct or word, reasonable reliance thereon, and resulting prejudice; a fourth element, most often explicitly stated in promissory estoppel cases, is that the estoppel will be enforced only to extent that justice requires.

35 Cases that cite this headnote

[3] **Estoppel**
⇐ Municipal corporations in general

Rule that estoppel will be enforced only to extent that justice requires should play an important role when considering estoppel against a municipality.

15 Cases that cite this headnote

[4] **Estoppel**
⇐ Municipal corporations in general

Municipality was equitably estopped from revoking building permit issued to property owners where, in September 1982, pursuant to a settlement agreement arising from municipality's action against the property owners for zoning violation, property owners were issued construction permit, but at time of the settlement, none of the parties knew that the issued permit was in violation of new zoning requirements, and where the municipality did not discover its error until February 1983, when the property owners had spent approximately $24,000 in reasonable reliance on the permit.

22 Cases that cite this headnote

[5] **Compromise and Settlement**
⇐ Subject-matter

There is strong public policy in favor of settlement of disputes.

3 Cases that cite this headnote

Attorneys and Law Firms

*95 Thomas F. Klinkner, Asst. Municipal Atty., Jerry Wertzbaugher, Municipal Atty., Anchorage, for appellant.

Karl L. Walter, Jr., Anchorage, for appellees.

Before BURKE, C.J., and RABINOWITZ, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

MATTHEWS, Justice.

The Municipality of Anchorage appeals the trial court's determination that the Municipality cannot revoke a building permit issued to appellees even though the permit was issued in violation of a zoning ordinance. Judge Souter held that Richard and Mary Schneider, the appellees, had reasonably relied on the permit and therefore the Municipality was estopped from revoking it. We affirm.

I.

The Schneiders own a lot in the Fire Lake Subdivision in Eagle River which was zoned R–2 by the Municipality until August 20, 1982. This zoning classification allows construction of up to eight dwelling units per lot, provided the units are incorporated into a single structure. On July 7, 1982 the Municipality brought an action against the Schneiders for maintaining two detached dwelling units on their lot, a violation of Anchorage Municipal Code (AMC) 21.40.040. [1]

In September, 1982, consistent with an agreement reached at a settlement conference *96 attended by Richard Schneider, his attorney, and representatives of the Municipality, the Schneiders were issued a permit to construct an additional three units on their lot in order to connect the two existing detached dwelling units. Both the settlement agreement and the issuance of the permit, however, occurred after the Schneiders' lot and the surrounding property had been rezoned R–2A. In an R–2A zoning district, a lot may not contain more than two dwelling units. [2] None of the parties at the settlement meeting knew that the area in question had been rezoned.

On February 28, 1983, having discovered its error, the Municipality revoked the Schneiders' building permit. The Schneiders then filed a motion in superior court to enforce their settlement agreement with the Municipality. The court found that, although construction had not yet begun, the Schneiders had spent approximately $24,000 in reasonable reliance on the Municipality's representations embodied in the settlement agreement. The court concluded that the Municipality was estopped from revoking the building permit it had issued and that it was bound by the settlement agreement to allow the Schneiders to complete three additional dwelling units on their lot.

II.

[1] The traditional rule is that estoppel may not be invoked against a municipality which has erroneously issued a building permit in violation of its zoning ordinances. 9 E. McQuillan, The Law of Municipal Corporations § 26.213, at 545 (3d ed. rev. 1978); 3 A. Rathkopf, The Law of Zoning & Planning § 45.05 [3][a] (4th ed. 1983). This rule is based on the proposition that a person dealing with a municipality is bound to take notice of the legal limits of its powers and those of its agents. 10 E. McQuillan, *supra*, § 29.04, at 207–08; *see also King v. Alaska State Housing Authority*, 512 P.2d 887, 891 (Alaska 1973) ("all persons dealing with a public corporation ... are deemed to know its limitations."). [3]

At least one commentator, and a growing number of courts, have questioned this rule on the ground that its application often produces inequitable results. 2 C. Antieau, Municipal Corporation Law § 16A.05, at 16A–12 (1984). [4] Antieau points out that

> [t]he average citizen simply cannot know the extent of authority of every **public official** with which he must deal, and it is outrageous to deny him justice when he has been misled to his detriment by the acts and statements of **public officials** within the contours of their responsibilities.

Id. In the particular context of zoning permits, Antieau states:

> [I]t is suggested that there should be no general rule denying **estoppel** solely because *97 a permit issued by a municipal officer turns out

> to have been issued illegally or without authority ... [A] good faith permitee who in reasonable reliance makes a substantial change of position should be entitled to the protection of the doctrine of **estoppel**.... Increasingly, courts are recognizing the justice of applying **estoppel** where substantial work has been done in reliance upon municipal permits that were issued illegally or impermissibly.

Id., § 16A.10, at 16A–22–23 (footnotes omitted).

The policy on which the rule of estoppel is founded is that a municipality acts for the good of its citizens rather than a narrow proprietary interest. Thus, the argument goes, it would be unjust to the public to enforce estoppel against a municipality.[5] While we recognize the general validity of this policy, we believe it can be adequately served within the doctrine of estoppel.

[2] [3] The general elements of equitable estoppel are (1) assertion of a position by conduct or word, (2) reasonable reliance thereon, and (3) resulting prejudice. *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d 97, 102 (Alaska 1978). A fourth element, most often explicitly stated in promissory estoppel cases, is that the estoppel will be enforced only to the extent that justice so requires. *Glover v. Sager*, 667 P.2d 1198, 1202 (Alaska 1983). We believe that this factor should play an important role when considering estoppel against a municipality.[6] Often, even where reliance has been foreseeable, reasonable, and substantial, the interest of justice may not be served by the application of estoppel because the public interest would be significantly prejudiced. However, this is not true in every case. When the public will not be significantly prejudiced, and the other elements of the theory are present, the majority rule which forecloses the use of estoppel causes arbitrary and unjust results.

We have recently indicated that estoppel is a defense against a public agency. In *Fields v. Kodiak City Council*, 628 P.2d 927, 931 (Alaska 1981), we stated:

> The defense [of estoppel] typically applies where a property owner receives a permit that was beyond the power of an administrative officer to grant, the owner detrimentally relies on the validity of the permit, and the local government attempts to revoke the permit and then enforce the ordinance.

While we rejected Fields' estoppel claim as irrelevant to the issue presented on appeal of whether the board of adjustment's denial of the requested variance was supported by substantial evidence, we noted:

> We do not mean to imply, however, that Fields is not entitled to estop the city or borough from actually enforcing the zoning ordinance against his nonconforming use. Indeed, on the limited record before us it appears that Fields may have a strong claim for estoppel. That claim, however, should be raised as a defense to an enforcement action or as a claim for declaratory relief. Our disposition of this case is without prejudice to *98 Fields' right to raise estoppel in an appropriate proceeding.

Id. at 931 n. 3.

[4] We now turn to the facts of the present case. First, we believe that the Schneiders' reliance was both reasonable and foreseeable. The settlement agreement and the resulting permit gave the Schneiders clear authorization to take the steps they did. Second, the $24,000.00 which the Schneiders spent for building materials based upon their reliance on the settlement agreement is substantial.

Finally, we conclude that enforcement of the settlement agreement is necessary in the interest of justice. Of primary importance to this determination is the fact that any public injury which may arise from applying the doctrine of estoppel to the Municipality in this case is quite limited. The proposed structure will not violate health or safety codes. Further, the proposed structure would have satisfied the terms of the zoning ordinance then in effect had the settlement been

reached a month earlier.[7] Finally, the record contains no evidence that the Schneiders' proposed construction will be seriously out of character with the present structures in the area.

[5] Also of significance in this case is the fact that the Schneiders' reliance arose from a settlement agreement. There is a strong public policy in favor of the settlement of disputes. *See, e.g., Godfrey v. Hemenway*, 617 P.2d 3, 8 (Alaska 1980). Failure to apply an estoppel theory in this case would only serve to re-open a lawsuit that both parties believed was settled. Indeed, although actually reached after the property in question had been rezoned R–2A, the settlement agreement arose out of a lawsuit filed in July 1982, when the property was zoned R–2. Thus, given the equitable context of this case, the settlement agreement could be characterized as relating back to the situation existing when the suit was initiated.

In conclusion, we believe this case raises a situation in which the doctrine of estoppel should be applied against the Municipality to avoid injustice. Thus, the decision of the superior court is AFFIRMED.

All Citations

685 P.2d 94

Footnotes

1 AMC 21.40.040 provides in part:

> A. The R–2 use district is intended to be a low-density urban and suburban multiple-family residential district, allowing up to 8 dwelling units.... The R–2A and R–2D use districts are intended as low-density urban and suburban two-family residential areas. Except for the greater number of dwelling units per lot permitted in the R–2 use district, the R–2, R–2A and R–2D use regulations are identical....
>
> B. Permitted principal uses and structures:
>
> 1. single-family dwellings ...;
>
> 2. two-family dwellings (only a single principal structure may be allowed on any lot or tract);
>
> 3. multiple-family dwellings containing up to eight dwelling units in R–2 district only, provided, however, that only a single principal structure may be allowed on any lot or tract;

2 AMC 21.40.040B(2). See note 1, *supra*.

3 Courts have allowed **estoppel** against **municipalities** when the **public** officer has performed in an irregular manner, but has not acted *ultra vires* or outside his legal authority. *See Rogers v. First Sewerage Dist. of City of Lake Charles*, 171 So.2d 820 (La.App.1965); *Parker v. Township of West Bloomfield*, 60 Mich.App. 583, 231 N.W.2d 424, 428 (1975); *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 257 S.E.2d 716 (1979); *Pasadena Police Officers Ass'n. v. City of Pasadena*, 497 S.W.2d 388, 394 (Tex.Civ.App.1973); 2 C. Antieau, Municipal Corporation Law § 16A.04 (1984); *see also City of Kenai v. Filler*, 566 P.2d 670, 675–76 (Alaska 1977) (noting the distinction between an illegal, *ab initio* action not giving rise to **estoppel** and a technical or procedural irregularity which does give rise to the theory).

4 *See also City & County of Denver v. Stackhouse*, 135 Colo. 289, 310 P.2d 296 (1957); *Miller v. Board of Trustees of Town of Palmer Lake*, 36 Colo.App. 85, 534 P.2d 1232 (1975); *State ex rel. Barker v. Town of Stevensville*, 164 Mont. 375, 523 P.2d 1388 (1974); *Murrell v. Wolff*, 408 S.W.2d 842 (Mo.1966); *Tillberg v. Township of Kearny*, 103 N.J.Super. 324, 247 A.2d 161, 166 (1968).

5 The Wisconsin Supreme Court has stated this policy as follows:

> Zoning ordinances are enacted for the benefit and welfare of the citizens of a municipality. Issuance of an occupancy or building permit which violates such an ordinance not only is illegal *per se*, but is injurious to the interests of property owners and residents of the neighborhood adversely affected by the violation. Thus when the city acts to revoke such an illegal permit it is exercising its police power to enforce the zoning ordinance for the protection of all citizens who are being injured by the violation, and not to protect some proprietary interest of the city. These citizens have a right to rely upon city officials not having acted in violation of the ordinance, and, when such officials do so act, their acts should not afford a basis for estopping the city from later enforcing the ordinance.

Milwaukee v. Leavitt, 31 Wis.2d 72, 142 N.W.2d 169, 172–73 (1966).

6 *See* 2 Antieau, *supra*, § 16A.06, at 16A–15 ("courts should be encouraged to weigh in every case the gravity of the injustice to the citizen if the doctrine is not applied against the injury to the commonweal if the doctrine is applied...."); *see also State ex rel. Barker v. Town of Stevensville*, 164 Mont. 375, 523 P.2d 1388, 1391 (1974).

7 Thus the case at hand does not present a situation where a building permit has been issued in violation of a long-standing zoning ordinance, for example, where a builder obtains a permit to construct a high-rise apartment or factory in an otherwise residential neighborhood. In such a case, the balance of the equities might be struck differently.

End of Document

© 2019 Thomson Reuters No claim to original U.S. Government Works.

Exhibit #17

CITY OF BETHEL, ALASKA
BOARD OF ADJUSTMENT

Appeal of Planning Commission
Hearing NO. 2020-01

DECISION

This service as the written decision of the Board of Adjustment for the City of Bethel (BOA), for the appeal reference above (the "Appeal"). This Appeal is dated December 18, 2019, initiated by Dan and Dawn Hackney and relates to 175 Alex Hately, Bethel, Alaska. The Appeal relates to the Decision and Order of the City of Bethel Planning Commission, dated November 18, 2019. The BOA held a hearing on February 4, 2020 (the "Hearing"). Based upon the evidence presented on the record, the members of the BOA voted 5 to 0 to deny the appeal and confirm and adopt the findings and conclusions the Planning Commission issued November 18, 2019. The Board's decision is effective February 6, 2020.

NOTICE OF FINAL DECISION AND RIGHT TO APPEAL
The City of Bethel Board of Adjustment adopts this decision as final. Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Part 600 of the Alaska Rules of Appellate Procedure within 30 days after the date of distribution of this decision.

DATED this 6 day of February, 2020.

BACKGROUND

On November 14, 2019, pursuant to Bethel Municipal Code ("BMC") Section 18.72.010, a hearing was held before the City of Bethel Planning Commission ("the Commission") on Dan and Dawn Hackney's ("the Hackneys" or "Appellants") appeal of the City of Bethel planning director's ("planning director," "planning department" or "land use administrator") August 30, 2019 Notice to Correct Violations. After considering all of the evidence submitted by the parties as required by BMC 18.72.010(D), the Commission confirmed the findings and conclusions of the planning department pursuant to BMC 18.72.010(E) by a unanimous vote of 7-0.

FINDINGS OF FACT

1) On July 20, 2018, Dan and Dawn Hackney, owners of 175 Alex Hately, Block 1, Lot 11, Blueberry Field Subdivision, Bethel, Alaska, submitted a Residential Site Plan Permit

application to the Planning Department for a 20-foot X 42-foot garage/storage/shop and mother-in-law unit.

2) The planning staff assistant testified at the hearing that she and the former planning director, Betsy Jumper, told Mr. Hackney that the mother-in-law unit or two unattached dwelling units were not allowed on one property in the Residential Zone. The application was approved on July 24, 2018 and a Site Plan Permit was issued to only allow for the construction of a 20-foot x 42-foot shop/garage/storage shed.

3) 3)On January 9, 2019, Mr. Hackney submitted a request to the Planning Department to amend the approved July 24 Site Plan Permit by increasing the structure dimensions to 24-feet x 64-feet and referring to the structure as an attached garage. The Planning Department issued an addendum to the permit, approving the attached garage with the increased dimensions to 24-feet X 64-feet.

4) On February 19 2019, Mr. Hackney dropped off a 2018 As-built drawing at the planning department. The As-built drawing showed the existing Single Family house connected by a planned, hand-drawn deck to the hand-drawn new structure.

5) On June 7, 2019, the City of Bethel Planning Department, received an official complaint from four neighborhood residents alleging violations of the City of Bethel Site Plan Permit 18-34, for Daniel and Dawn Hackney of 175 Alex Hately, lot 11, Blueberry Field Subdivision phase plat 84-13. The Complaint included allegations the Hackneys had (1) failed to provide an accurate description of their building plans in their site plan application and (2) built apartments or a hotel in a residential area, with a residence already on the property.

6) Ted Meyer became the planning director in August 2018. Pursuant to BMC 15.12.090, Mr. Meyer, investigated the complaint and found it had merit. Part of the investigation included accepting an invitation from the Hackneys to tour the new building on their property. The second floor included four finished and furnished hotel-style rooms, each with enclosed bathroom, and a kitchen for the guests downstairs. A van full of guests was arriving as planning staff were departing.

7) On August 19, 2019, the planning department staff took photos of the Hackney property. The three photos and an additional Google Earth aerial photo show:

    a. Existing Single Family house side by side with the new structure, with a connecting deck in between.
    b. Existing Single Family house with the new structure in background.
    c. A rear view of the new structure.

8) On August 30, 2019, the City Planning Department issued the Hackneys a Notice to Correct Violations stating that they had violated the Bethel Municipal Code since they had not received approval to build a second floor with a bed and breakfast (B & B) or other lodging units. The City determined that the Hackneys had committed the following violations:

a. Non-compliance with Authorized Improvements, in violation of BMC 15.12.070; and
b. Non-Compliance with BMC Residential Zoning Code, in violation of BMC 18.32.020 and 18.32.030.

9) The City planning department properly determined that the Hackneys violated the Bethel Municipal Code. The evidence presented at the hearing overwhelmingly established that the Hackneys had constructed a B & B or other lodging unit on their property, in violation of their site permit and in violation of the Bethel Municipal Code restrictions on Residential Zones.

10) The City gave the Hackneys 30 days to correct the violations and invited them to visit the planning department to discuss the construction project and permissible uses of the property under the Bethel Code. The City further notified the Hackneys of their right to appeal the Planning Department's determination to the City Planning Commission. It explained that "the written appeal must be submitted to the Planning Department and must specify the grounds for appeal and specify the actions and findings of the department that are being disputed."

11) On September 9, 2019, the Hackneys appealed the City's August 30 Notice to correct violations. They stated their grounds for appeal were:
a. All construction and use of 175 Katie Hately were authorized by the former Planning Director Betsy Jumper.
b. All actions and findings of the planning department are disputed.

12) On September 13, 2019, the parties and their respective attorneys met to discuss the August 30, 2019 Notice to Correct Violations. Based upon that meeting, the parties agreed to hold in abeyance the Hackney's September 9, 2019 appeal while a corrective action plan was formulated between the parties.

13) On September 26, 2019 the planning department issued the Corrective Action Plan to the Hackneys to bring the structure into code compliance. The plan included deadlines for submission by Mr. Hackney as follows:
a. A detailed and scaled floor plan drawing of the constructed floor levels 1 and 2 of the new building1
b. A new Site Plan Permit application with a detailed and scaled site plan drawing with a type of use that is compliant with BMC 18.32.020, 18.32.030, and 15.12.
c. A plan for the conversion of the second floor of the structure from transient lodging units to an approved BMC compliant use.

14) On October 10, 2019 the Hackneys rejected the Corrective Action Plan and requested their appeal of the August 30 Notice to correct violations "move forward."

15) On October 28, 2019, the Bethel Planning Department sent a notification to the Hackneys that their letter of appeal did not provide an adequate explanation for the appeal, as required in BMC 18.72.010A.

16) On October 28, 2019 the Hackneys notified the planning department that they were appealing the planning department's October 28 letter regarding the inadequate appeal.

17) On October 29, 2019, the planning department notified the Hackneys of the November 14, 2019 Planning Commission hearing for the Hackney appeal.

18) On November 14, 2019, the Planning Commission held a public hearing of the Hackneys' appeal from the Planning Department's Notice to Correct. As required by BMC 18.72.010D, the planning department submitted a summary of the application process and statement of findings to support its actions in issuing a Notice to Correct Violations to the Hackneys.

19) The Commission heard the sworn testimony and arguments of both parties. It also heard the sworn testimony of members of the public. It considered the permit application, correspondence, materials received from the parties, the letter of appeal, the planning department summary of the application and statement of findings supporting the action of the land use administrator, the verbal testimony taken under oath, and arguments of the parties to the appeal. After considering all of the evidence, the Commission denied the appeal and confirmed the planning director's findings, ordering the Hackneys to come into compliance with the Bethel Municipal Code.

CONCLUSIONS OF LAW

1) The Hackney property is located in the Residential ("R") district. ***BMC 18.32.010*** states that it is the intent of the residential district to provide protection to residential areas from encroachment from nonresidential activities.

2) Pursuant to ***BMC 18.32.020***, the following are permitted and principal uses and structures in the Residential District:
    a. Trails and boardwalks;
    b. Non-motorized public access areas to the Kuskokwim River or other areas that require public access;
    c. Single-family dwelling units;
    d. Duplex uses;
    e. Greenbelts and land reserves;
    f. Subsistence activities;
    g. Any accessory use or use of structure associated with the principal use or structure on the lot;
    h. The facilities of sewer, water and other utilities required to serve the lots in the district;
    I. Home occupations, but not more than two (2) per dwelling unit;

3) ***BMC 18.36.020(K)(31***) allows hotels, motels, hostels, bed and breakfasts, bunk houses, and boarding houses in the Bethel General Use District. Bethel residents therefore have the option to build bed and breakfasts in the Bethel General Use District. The Hackneys had the option of building their bed and breakfast in the General Use District but chose not to.

4) Pursuant to ***BMC 18.32.020G (Residential Zoning District Permitted and Principal Use and Structures***), any accessory use or structure associated with the principal use or structure on the lot are permitted in the Residential District. However, an accessory is defined in ***BMC 16.12.030*** as being customarily accessory and clearly subordinate and incidental to the principal use or structure on the lot. The Hackneys' additional 4-unit Bed & Breakfast or other lodging unit on the property is clearly not subordinate and incidental to the already existing Single Family dwelling unit, which is the principal use on the property. The structure at issue is consequently clearly not allowed by ***BMC 18.32.020.***

5) The Hackneys state that their grounds for appeal are that all construction and use of the property were authorized by the former planning director Betsy Jumper. However, the initial site plan permit only gave the Hackneys permission to "construct a 20-foot x 42-foot shop/garage/storage shed" and the addendum to the permit only allowed for the construction of "a 24-foot x 64-foot garage." The city planning department never gave the Hackneys written consent to build the structure at issue.

6) The approved Site Plan Permit is a one-sheet document and is the only approval mechanism used by planning departments to convey a Notice to Proceed to the developer to begin construction. The purpose of posting the permit is to notify the public that the project plans comply with local standards for land use, zoning, and development. The Authorized Improvements listed on the permit sheet are the only improvements that can be made by the property owner. Neither the July 20, 2018 permit, nor the January 9, 2019 addendum, allowed the Hackneys to construct the second floor lodging units.

7) The Hackneys are in violation of BMC Section 15.12.070 (Modifications) since they failed to obtain the written consent of the land use administrator (planning director) when they modified the approved plan.

8) The Hackneys are also in violation of BMC 18.36.020 (Residential District) since B & B's and transient lodging are not permitted in the Residential Zone. (The Hackneys reside in the residential zone.)

9) There is no merit to the Hackneys' appeal and it should be dismissed. The planning director's August 30, 2019 decision which found that the Hackneys had violated the Bethel Municipal Code Sections 15.12.070 and 18.32.020 and required them to come into compliance with the Code should be affirmed.

Board Chair, Mark Springer

2/6/2020
Dated

Exhibit #18

CITY OF BETHEL OFFICIAL LAND USE MAP

Legend

- Open Space
- PublicLands and Institutions
- Residential
- Industrial
- General Use
- Preservation

0 0.25 0.5 Miles

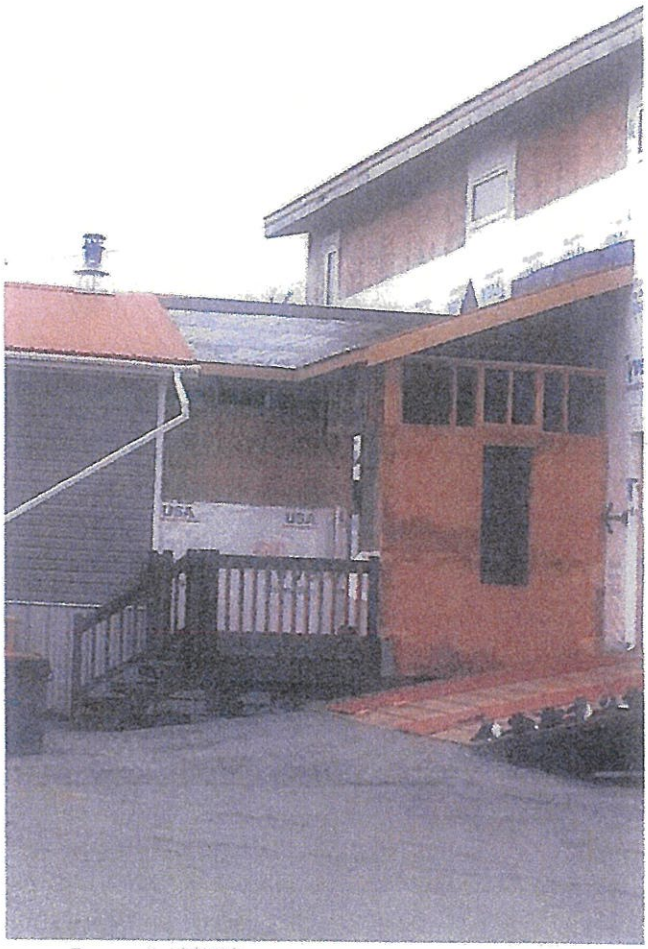
Adopted July 10, 1990

Avaginar Dr
Nenggerraria Dr
Makqalria Rd
Kangiik Rd
Inkoplik St
Nanuraq St
Qug Yuk St
Ptarmigan St
Manignaq St
Mallard Ln
Public Works Building
Ridgecrest Dr
Gladys Jung Elementary School
M.E. Elementary School
Bethel Regional High School
Senior Center
Water Plant
Hangar Lake
Hangar Lake Rd
H-Marker Lake
Tundra Ridge Rd
H-Marker Rd
Tunralik-Rd
A J Way
M L Rd
Sonny's Way
B I A Rd
Seventh St
Sixth Ave
Fifth Ave
Fourth Ave
Third Ave
Second Ave
First Ave
Main St
Willow St
Osage Ave
Pinky's Park
Akiachak Ave
Teen Center
Cemetery
Mission Dr
Napakiak Dr
Akiak Dr
Dull Lake
City Water Treatment Plant
KYUK
UAF
City Office Complex
Fire Station
KUC Cultural Center
Mission Lake Rd
Main St
Small Boat Harbor
City Dock
Kuskokwim River
Chief Eddie Hoffman Hwy
Cranberry St
Blackberry St
Alex Hattey Ln
Salmonberry St
AVEC Power Plant
US Fish and Wildlife Service
YK Delta Regional Hospital
Youth Correctional Facility
YK Correctional Center
Post Office
Standard Oil Rd
Hoffman Rd
North Ave
Aurora Blvd
Winter Trail
Bethel Airport
Tower Rd
National Guard
Noel Feddy Blvd

User: lmeyer WHPacific Inc. Date: 7/10/2017 Coordinate System: NAD 1983 StatePlane Alaska 7 FIPS 5007 Feet Datum: North American 1983 Units: Foot US

Exhibit #19

May 20, 2020



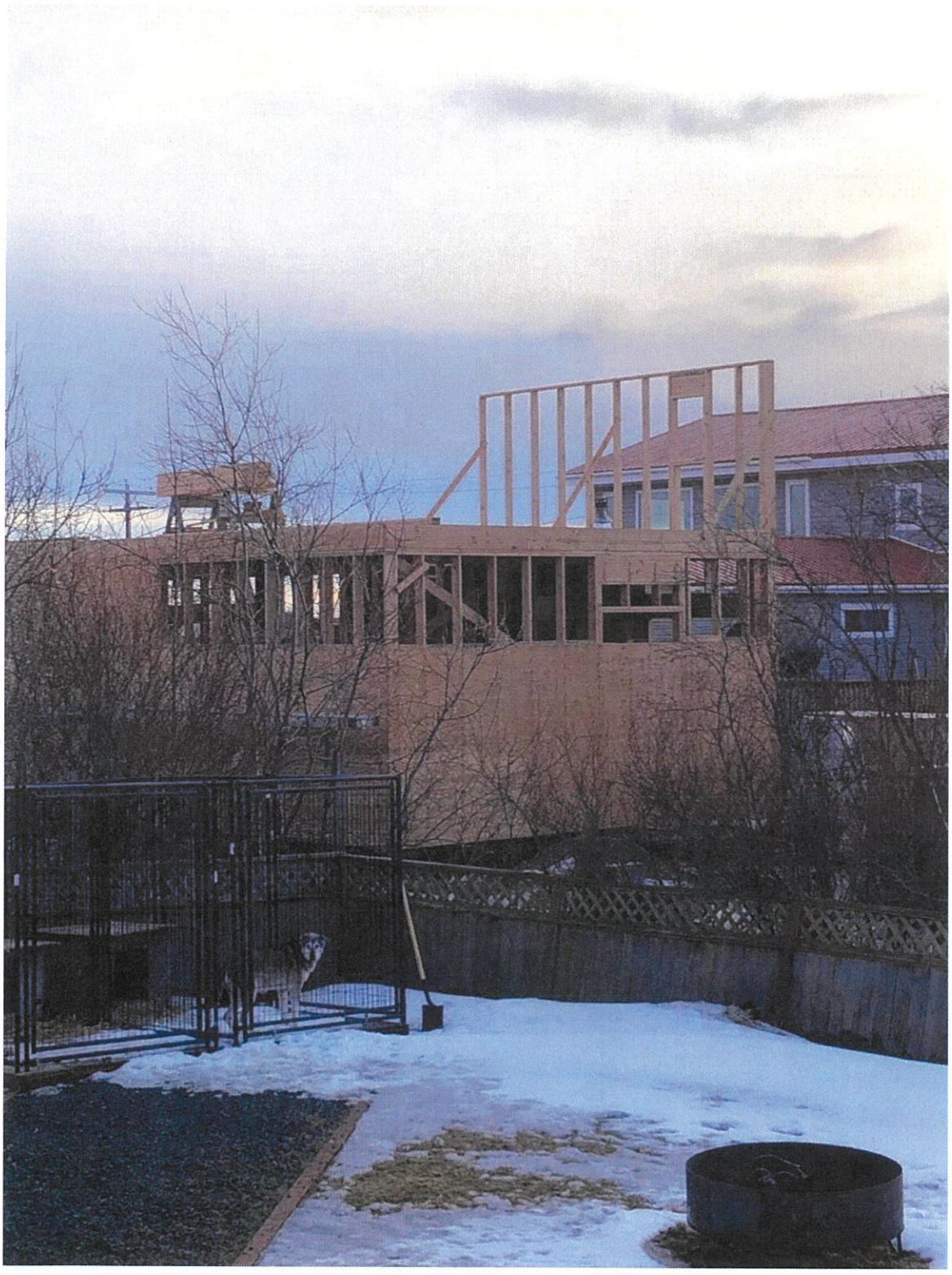
June 4, 2020

RECEIVED

JUN 08 2020

CITY OF BETHEL
PLANNING DEPARTMENT

August 19, 2019



Chapter 18.72
APPEALS

Exhibit #20

Sections:

18.72.010 Appeal of decision of planning department.
18.72.020 Appeal of decision of planning commission.

18.72.010 Appeal of decision of planning department.

A. An appeal from any action or decision of the planning department or the land use administrator may be filed by a property owner affected by said action or decision. An appeal may also be filed by any property owner affected by the decision. The appeal shall be filed with the planning commission by submitting a written statement to the planning department. The written appeal must specify the grounds for the appeal and specify the action and findings of the department that are being disputed. All appeals must be accompanied by an appeal fee as determined by resolution passed by the city council.

B. Any appeal filed by the applicant for the permit shall be filed within ten (10) calendar days from the date of the action or decision of the planning department or land use administrator. Any appeal filed by any other person shall be filed within ten (10) calendar days from the date of the action or decision of the planning department or land use administrator; provided, if the appeal relates to a site development or change in use subject to a site plan permit issued under BMC Title 15, the appeal must be filed no later than the tenth (10th) day that the site plan permit has been continuously displayed on the property that is subject to the permit in accordance with BMC 15.12.130 if the appellant is a person other than the permit applicant. If the deadline date falls on a weekend or holiday, the deadline shall be extended to the next city business day. If any appeal to the planning commission is not filed within the time specified in this subsection, the action or decision is final and is not subject to appeal or challenge in another forum.

C. Notice of public hearing on the appeal shall be provided as set out in BMC 18.04.070. The notice shall include a brief description of the appeal. Written notice and a copy of the appeal shall be provided immediately to the person who owns the property that is the subject of the permit or action being appealed.

D. The land use administrator shall schedule the public hearing at a planning commission meeting no sooner than twenty (20) calendar days and no later than fifty (50) calendar days from the date the appeal is filed. The planning department shall prepare a written summary of the original application and a statement of findings supporting the action of the land use administrator or planning department. The planning commission shall only consider the following evidence when considering the appeal:

1. The permit application or other application or action that is the subject of the appeal;

2. The correspondence, permit issued and other materials sent from the land use administrator to the permit holder and to any other party to the appeal;

3. The correspondence and materials received from any source regarding the application or actions;

4. The letter or request submitting the appeal to the planning commission;

5. The planning department summary of the application and the statement of findings supporting the action of the land use administrator;

6. Written comments received prior to the appeal hearing;

7. Verbal testimony taken under oath at the appeal hearing; and

8. Arguments of parties to the appeal.

E. The planning commission may deny or grant the appeal in the form of a motion. A statement of findings and conclusions based on the evidence presented shall be included in the motion. If the commission denies the appeal, it may confirm or modify the findings and conclusions of the planning department or the land use administrator. If the commission grants the appeal, the commission's decision will take effect ten (10) calendar days after the commission renders its decision unless a timely appeal is filed to the board of adjustment.

F. Within two (2) business days after the date of the commission decision, the planning department shall produce a written decision containing the statement of the commission's findings, conclusions and order. The decision shall be signed by the member of the commission who presided at the hearing or a commission member who voted on the prevailing side if the presiding member is not available and shall be mailed immediately to the appellant and any other interested parties. A statement of the date by which an appeal to the board of adjustment must be filed with the city clerk shall be included along with a statement of the amount of the appeal fee that must be paid upon filing the statement of appeal.

G. The filing of an appeal shall stay all proceedings in the matter until ten (10) calendar days after the decision has been rendered by the planning commission unless the land use administrator determines that the public health, safety or welfare would be threatened if the action appealed were stayed. Any action taken by the planning department or land use administrator shall remain in effect and any land use in violation of such action continues to be a violation and subject to the penalties described in Chapter 18.84 BMC until the violation ceases or the planning commission grants the appeal. [Ord. 01-05 § 8.]

18.72.020 Appeal of decision of planning commission.

A. An appeal from any action or decision of the planning commission, except the grant or denial of an application for a land use code text amendment or an official map amendment, may be filed by the applicant for the action, the manager, the land use administrator, or any property owner affected by the action or decision. The appeal shall be filled with the board of adjustment by submitting a written statement of appeal to the city clerk with a copy sent to the land use administrator. The written statement of appeal shall specify the order, findings or conclusions of the commission that are being disputed, and the grounds for the appeal.

B. The filing of an appeal to the board of adjustment shall stay all enforcement proceedings in the matter until after the decision of the board of adjustment has been rendered, unless the board or a court issues an enforcement order based on imminent peril to life or property.

C. The appeal must be filed within ten (10) calendar days from the date of the decision of the planning commission. If the deadline day falls on a weekend or holiday, the deadline is extended to the end of the next working day. If an appeal is not filed within ten (10) calendar days of the decision of the planning commission then the decision of the planning commission is final.

D. Notice of the board of adjustment hearing on the appeal shall be mailed to the applicant, the land use administrator and to each person who appeared and gave evidence in the proceedings before the planning commission and shall be published once a week for at least two (2) consecutive weeks in a newspaper of general circulation within the city, with the last publication occurring at least three (3) days before the hearing. The notice shall also be read on a local radio station once a day for five (5) days beginning at least ten (10) days prior to the date of the scheduled hearing. The notice shall contain the time and place of the hearing, a brief description of the appeal, and shall invite written arguments on the appeal from persons who appeared in or provided written or oral evidence or statements in the proceeding before the planning commission. Written arguments must be received by the clerk's office at least seven (7) days before the hearing.

E. The city clerk shall schedule the board of adjustment hearing no sooner than the later of fifteen (15) days after the completion of the record on appeal or twenty (20) calendar days from the date the appeal is filed and no later than fifty (50) calendar days after the appeal is filed. The planning department shall prepare the record on appeal which shall consist of all documents, maps, plans, applications, correspondence and other material that was before the planning commission in the course of its consideration of the matter appealed, minutes of the commission, meetings at which the matter was before the commission, a copy of the decision appealed and a verbatim transcript of the proceeding before the commission.

F. The board of adjustment shall deny, grant, or deny in part and grant in part the appeal based on the evidence in the record and shall provide a written decision that contains a statement of its findings and conclusions as determined by a majority of its membership. In an appropriate case, the board may remand the matter to the planning commission for further proceedings. If the board denies the appeal, it may confirm or modify the findings and conclusions of the planning commission. The board's decision will be effective upon the date the mayor or the person presiding at the board hearing signs the findings and conclusions. The date signed shall be set out on the decision. Appeals of a decision made by the board of adjustment shall be filed in the Superior Court of the state of Alaska in accordance with the applicable appellate rules of court. The decision shall contain a statement required by the appellate rules of court of the rights and limitations of a person to appeal the decision. [Ord. 01-05 § 8.]

The Bethel Municipal Code is current through Ordinance 20-22, passed July 14, 2020.

Disclaimer: The city clerk's office has the official version of the Bethel Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: www.cityofbethel.org
Code Publishing Company

Chapter 15.12
SITE PLAN PERMITS

Sections:

15.12.010 Administration.
15.12.020 Permit required.
15.12.030 Application.
15.12.040 Evaluation of application.
15.12.050 Required permit conditions.
15.12.060 Action on an application.
15.12.065 Appeal.
15.12.070 Modifications.
15.12.080 Lapse of permit.
15.12.090 Complaint.
15.12.100 Correction of violations.
15.12.110 Suspension of permits.
15.12.120 Permit runs with land.
15.12.130 Display of site plan permit required.
15.12.140 Enforcement.

15.12.010 Administration.

The city planning department shall administer and enforce the site plan permit procedure under this chapter. [Ord. 10-15 § 3.]

15.12.020 Permit required.

A. A person shall not make an improvement to land or a structure, initiate a new use or change the use of land or a structure unless a site plan permit has first (1st) been issued for the improvement or use.

B. For purposes of this chapter, an improvement requiring a site plan permit includes activities that:

1. Involve a land disturbance through grading, excavation, or paving on lands with slopes in excess of ten (10) percent;

2. Involve a land disturbance through grading, excavation, or paving of an area that might reasonably be expected to impact drainages, significant wetlands, or nonsignificant wetlands;

3. Involve a proposal that will create impervious surfaces of such extent that might reasonably be expected to impact drainages, significant wetlands, or nonsignificant wetlands;

4. Involve land subject to local ponding due to soil or topographic conditions;

5. Involve land located in an area with a history of flooding, or that may be subject to flooding;

6. Involve the placement or relocation of a nontemporary structure or change to the dimensions of a nontemporary structure that increases or decreases the ground footprint of the structure.

C. For purposes of this chapter, a change of use includes the expansion of the area occupied by a use, the relocation of a use, as well as a change in the nature or type of use.

D. For purposes of this chapter, an improvement to a structure does not include changes which do not affect the location of the structure or any of its outside dimensions if the structure is not located within a flood hazard area of the city.

E. If any work on a structure or land within a flood hazard area requires a floodplain land use permit under Chapter 15.08 BMC and a site plan permit under this chapter, the application for the floodplain land use permit and the site plan permit may be combined for purposes of the information required to be submitted.

F. Any person proposing to dredge or to place or move fill within an area designated as a significant wetland by the Army Corps of Engineers shall obtain an individual permit from the Corps of Engineers prior to final approval by the city of a site plan permit unless the Corps of Engineers has waived the requirement for an individual permit for the proposed development. [Ord. 10-15 § 3.]

15.12.030 Application.

Application for a site plan permit shall be filed with the planning department by the property owner or an agent who is authorized in writing by the owner to file the application and to accept and agree to the terms of the permit. The application shall include the following except such matters required under subsection F of this section that the land use administrator determines are not necessary for review of a particular proposed improvement use or change of use:

A. Name, address, and phone number of the owner and applicant;

B. Address and legal description of the property;

C. Signature of the owner and the signature of the applicant if other than the owner;

D. The land use district(s) in which the property is located and the flood hazard zone status;

E. A brief description of the proposed improvements and the principal use, including information required to evaluate the application according to the standards described in BMC 15.12.040;

F. A site plan, drawn to scale and dimensioned as required, showing the following:

1. The date, scale, north point, title, name of owner and name of the person preparing the site plan;

2. The location and dimensions of boundary lines, easements, and required yards and setbacks;

3. The location, height and intended use of existing and proposed buildings on the site, and the approximate location on abutting parcels of existing buildings and improvements within fifty (50) feet of the property line;

4. The location and dimensions of existing and proposed site improvements including parking and loading areas, pedestrian and vehicular access, drainage, landscaped areas, utility or service areas including water and sewer tanks, fencing and screening, signs, and lighting;

5. The location of water areas, watercourses and drainage features and, if any part of the site is within a flood hazard area, the information required under Chapter 15.08 BMC;

6. A plan showing existing and proposed drainage and topography and, if using fill, a cross-section of the fill;

7. If an activity described in BMC 15.12.020(B) will occur, a drainage plan containing the following shall be included:

   a. Flow lines of surface waters onto and off the site;

   b. Existing and proposed contours at two- (2-) foot intervals;

   c. Location and amount of cuts, fills, or contouring;

   d. Existing and proposed drainages, wetlands, and water bodies;

   e. Building corner and street elevations for existing and proposed improvements;

   f. Existing and proposed retaining walls;

   g. The location and design of facilities for storage or conveyance of surface water runoff;

   h. Estimates of existing and proposed runoff from and to adjacent properties and existing and proposed drainages, wetlands, and water bodies; and

8. Location of the city- or state-maintained street that will access the property either directly or via a privately maintained driveway or access lane;

G. An elevation certificate if required under Chapter 15.08 BMC;

H. Fees as determined by resolution of the city council. [Ord. 10-15 § 3.]

15.12.040 Evaluation of application.

A. The application shall be reviewed by the planning department for conformance with the applicable regulations and standards of BMC Titles 15, 16, 17 and 18, minimum water and sewage holding tank requirements and other applicable regulations.

B. Drainage plans required under BMC 15.12.030(F)(6) shall be reviewed by the city engineer, who shall recommend appropriate measures to the land use administrator. Drainageways shall meet the requirements of this subsection.

1. Drainages that have been designated as significant wetlands by the Bethel Wetlands Study are subject to the standards listed in subsection (B)(2) of this section and to such additional standards as are required under the National Flood Insurance Program;

2. Drainages that have been designated as significant wetlands by the Bethel Wetlands Study and those drainages that are not designated as significant wetlands in the Bethel Wetlands Study but are determined by the land use administrator to be active drainages must be maintained or accommodated as follows:

a. In order to be considered maintained, a drainage shall have a channel preserved on the natural drainage with a width at every point of at least twenty (20) feet plus the width of the surface water drainage at that point during periods of high water with the twenty (20) feet allocated to each side of the drainage as approved by the land use administrator;

b. In order to be considered accommodated, a drainage channel shall be preserved with a width of at least twenty (20) feet plus the width of the surface water drainage during periods of high water as required in subsection (B)(2)(a) of this section, except that the location of the channel may be altered. If the location of the channel is altered, it must be designed and constructed so as to allow for unobstructed downhill flow of drainage and the location and design must be approved by the city engineer;

3. All road and driveway crossings of a drainage shall be properly culverted with a culvert at least twenty-four (24) inches in diameter to accommodate any drainage, unless the land use administrator determines that a lesser diameter would be adequate or that a greater diameter is required. The culvert or other drainage facility shall in each case be large enough to accommodate potential runoff from its entire upstream drainage area;

4. The land use administrator may require the installation or construction of certain improvements as required to prevent adverse runoff, and maintain appropriate drainage to protect property and the life, health, and safety of Bethel residents. The applicant may be required to carry away by pipe or open ditch any spring or surface water that may exist previously to or as a result of the development. Such drainage facilities shall be located in a street right-of-way where feasible, or in a perpetual, unobstructed easement of appropriate width, and shall be constructed in accordance with the construction standards and specifications of the city;

5. The land use administrator shall not approve any development that does not make adequate provision for stormwater or floodwater runoff. The stormwater drainage system shall be separate and independent of any sanitary sewer system;

6. Where it is anticipated that the additional runoff incident to the development may overload an existing downstream drainage facility, the land use administrator may not approve the development until provision has been made for the elimination of the potentially adverse downstream effects.

C. If design or construction standards, including standards for structural, fire, electrical, plumbing, heating, ventilation and similar matters, have been approved as a part of this chapter, the site plan permit application shall include such design drawings and information as necessary or reasonably required by the city engineer to evaluate the proposed improvement, use or change of use. [Ord. 10-15 § 3.]

15.12.050 Required permit conditions.

A. The following are mandatory conditions of a permit and must be included as part of the approved site plan permit:

1. All fill and excavation activity shall be protected in such a manner as to reduce any and all forms of erosion to the maximum extent practicable. The adequacy of the protection shall be determined by the land use administrator;

2. A sewage holding tank of adequate size shall be installed where piped sewage collection is not available;

3. A water storage tank of adequate size shall be installed where piped water supply is not available;

4. No sewage or gray water shall be discharged other than to a sewage holding tank or piped sewage collection system;

5. Setbacks and yards as required by BMC Title 18;

6. Off-street parking area as required by BMC Title 18;

7. Drainageway improvement and maintenance required under BMC 15.12.040(B) or by BMC Titles 17 and 18;

8. Height, noise, density and other requirements of BMC Title 18;

9. All facilities for the supply of water and the disposal of waste, whether individual on-lot or serving more than one (1) lot, including hookups to the city system or to existing community systems, are subject to city ordinances and state standards. All such facilities must receive approval of a sanitarian prior to construction, installation and/or operation;

10. No permanent structure may be placed within the area designated on the plat of a lot as a sewer, water, utility or similar easement. No permanent structure may be placed within an area of a lot that has been designated for the installation of a public sewer or water system on a sewer or water master plan, engineering

plans or in the specifications for a sewer or water construction project that has been approved by the appropriate city authority;

11. Thaw pipes meeting city specifications shall be installed in all culverts that are forty (40) feet or longer. Upon the recommendation of the director of public works, the land use administrator may require the installation of thaw pipes in other culverts. Prior to the installation of each culvert required or authorized under the permit, the director of public works must inspect and approve the ditch and compacted bed excavated and prepared for the culvert. Failure to obtain the inspection and approval is a violation of the site permit;

12. Any other improvement or condition required by this code or which the land use administrator deems necessary to protect the health, safety, or welfare of persons on surrounding property or the safety and integrity of abutting or affected land.

B. The improvements and uses shall meet the applicable requirements of the general permit, and BMC Titles 15, 16, 17 and 18. Failure to include a required condition or other requirement on a site plan permit does not waive or lessen the applicability of the condition or requirement. [Ord. 10-15 § 3.]

15.12.060 Action on an application.

A. Unless state or federal approval is required, the planning department has ten (10) working days upon receipt of a complete application to review an application. If the application is subject to city engineer review, an additional seven (7) working days shall be permitted for review of the application. Plans approved and conditions required by the city engineer become a part of the site plan permit. An application may be approved; approved subject to modifications; approved subject to receipt of required city engineer approval; approved subject to receipt of state or federal approval; or disapproved.

B. If approved subject to modification, the applicant shall be notified in writing of the modifications required. The permit will be issued after the applicant has agreed, in writing, to the modifications. If the applicant refuses to agree to a required modification, condition or other requirement, the application shall be denied.

C. If approved subject to receipt of required state or federal approval, the applicant shall be notified in writing that the site permit will be issued upon receipt by the land use administrator of proof that specified state or federal approval has been given. State and federal agencies that may require approval of improvements or uses include, but are not limited to, U.S. Army Corps of Engineers, the Alaska Department of Environmental Conservation, and the State Fire Marshal. If state or federal approval required modifications to plans, structures, improvements or uses, the land use administrator shall review the modifications to determine whether the improvement, structure or use, as modified, still meets the requirements of this code.

D. If the application is denied, the applicant shall be notified in writing of the denial and the reasons therefor.

E. If the application is approved, the applicant shall be mailed or hand-delivered a site plan permit dated and signed by the land use administrator and a site plan drawing revised to show changes required by the land use

administrator and city engineer. The land use administrator may require the applicant to provide the revised drawing before issuance of the permit.

F. The site plan permit shall include:

1. The address and legal description of the property;

2. A description of the improvements approved and required by the site plan permit;

3. The approved use of the site and improvements;

4. Any other information, including diagrams, drawings, specifications and standards the land use administrator believes are necessary to inform the public and the applicant of the exact nature of the approved uses and the nature and location of the improvements;

5. Conditions of the permit required by the land use administrator and city engineer; and

6. A signature block with spaces for the date and time the site plan permit was posted and the signature of the person who posted the permit.

G. A summary of the times within which an appeal of the land use administrator's decision on the permit may be filed shall be set out on the permit. If the permit is denied, the summary shall be stated in the written notice to the applicant of the denial. [Ord. 20-14, 2020; Ord. 10-15 § 3.]

15.12.065 Appeal.

The grant or denial of a site plan permit may be appealed to the planning commission under the procedures in Chapter 18.72 BMC by the applicant or any person adversely affected by the improvement or use authorized under the permit. The time within which a member of the public may file an appeal of the permit issuance is the later of the time permitted under Chapter 18.72 BMC and until the close of business on the fifteenth (15th) consecutive day following the first (1st) day of the ten (10) consecutive days the permit is continuously displayed in conformance to the requirements of BMC 15.12.130. The applicant may appeal to the planning commission a determination by the land use administrator under BMC 15.12.100 that a violation has occurred, an order to correct a violation, or a suspension of a permit under BMC 15.12.110. [Ord. 10-15 § 3.]

15.12.070 Modifications.

Once the site plan permit is approved, no modifications to the approved plan may take place without the written consent of the land use administrator. The applicant may submit a request for modification of the approved site plan permit. Minor modifications may be approved by the land use administrator if it is determined that the circumstances or conditions applicable at the time of original approval remain valid, and the modifications would not affect the required conditions prescribed under BMC 15.12.050. If the modification requested is not granted

under this section, a full application must be filed and processed as provided in BMC 15.12.030 through 15.12.060. [Ord. 10-15 § 3.]

15.12.080 Lapse of permit.

A. If not exercised within one (1) year from the date of issuance, the site plan permit shall expire, unless otherwise stated as a condition of the approval. A permit shall be considered "exercised" upon completion of fifty (50) percent or more of the authorized improvements, as measured by cost; provided, if the site plan permit is issued solely for a change of use, it is exercised when the authorized use commences.

B. A site plan permit subject to lapse may be renewed by the land use administrator for an additional period of up to one (1) year; provided, that thirty (30) days prior to the expiration date, a written request for renewal is filed with the planning department and the applicant shows good cause for failure to timely exercise the permit. [Ord. 10-15 § 3.]

15.12.090 Complaint.

A. Any person aggrieved by a violation or apparent violation of the provisions of this chapter may file a written complaint with the land use administrator, who shall immediately investigate such complaint and take appropriate action to have violations found corrected.

B. The land use administrator may also investigate violations or apparent violations of the provisions of this chapter or a site plan permit on his/her own initiative. [Ord. 10-15 § 3.]

15.12.100 Correction of violations.

A. When the land use administrator finds a violation of any of the provisions of this chapter or a site plan permit, he shall notify in writing the person responsible for correcting the violation and shall order the necessary correction be accomplished within a reasonable period specified in the order, not exceeding ninety (90) days, and may suspend the permit pursuant to BMC 15.12.110. If there is an immediate and significant danger to life, limb or property, the land use administrator may order immediate remedial action.

B. The owner and the person to whom the order is directed, if other than the owner, shall comply with the order and each such person is liable for failure to comply. Failure to comply is a violation of this section. [Ord. 10-15 § 3.]

15.12.110 Suspension of permits.

A. The site plan permit may be suspended by the land use administrator upon violation of any applicable provision of BMC Title 15, 16, 17 or 18, or a condition, provision or requirement of the permit. Suspension shall take effect upon written notification to the owner or the owner's authorized agent. The land use administrator

may post a notice of the suspension on the posted site plan permit or at some other place where the notice can be seen from the nearest public right-of-way; provided, the failure to post the notice of suspension does not affect the validity or effectiveness of the written notification provided to the owner or the owner's agents personally, by mail, or by facsimile.

B. Upon the issuance and posting of the suspension or receipt of the notice of suspension by the owner or other person to whom directed, no construction or other activity covered by the permit may occur except as provided in subsection D of this section.

C. The applicant may appeal the decision to suspend the site plan permit to the planning commission under the procedures in Chapter 18.72 BMC.

D. Suspension of the site plan permit shall remain in effect during the appeals process; provided, with the written approval of the land use administrator, the appellant may make such changes or improvements as are specifically approved by the land use administrator that are necessary to protect the land or improvement or other property. A person shall not make any other improvements or changes in the use while a suspension is in effect. [Ord. 10-15 § 3.]

15.12.120 Permit runs with land.

A. The issuance of a site plan permit pursuant to this chapter shall run with the land and shall continue to be valid upon a change of ownership of the land or structure which was the subject of the application.

B. Required improvements shall be maintained in a good state of repair and shall be in a condition to ensure that the required improvement functions as intended when the site plan permit was issued.

C. It is the duty of the owner of the land and of any person who has management authority over the land, including a lessee, to ensure that the land, improvements and uses of the land meet the requirements and conditions of BMC Titles 15, 16, 17 and 18, all conditions and requirements of the site plan permit, and other applicable requirements of this code, and state and federal laws and regulations. This duty falls jointly and severally on the present owner and the persons with management authority without regard to when the use, land or improvement first (1st) failed to meet requirements or conditions. [Ord. 10-15 § 3.]

15.12.130 Display of site plan permit required.

A. Within three (3) days of receipt of a site plan permit or at the time construction starts, whichever is sooner, the site plan permit and site plan shall be posted for display on the property to be improved or that is subject to a change of use in a manner so as to be plainly visible from the nearest public access or right-of-way that provides the primary actual access to the property. The person who posts the site plan permit shall enter on the permit the date and time of posting of the permit and site plan and shall sign the notice of the date and time of posting, verifying its accuracy.

B. The permit holder shall allow public access to and on the property to be developed in order to permit the public to read the site plan permit and inspect the site plan.

C. The site plan permit shall initially be displayed for a minimum of ten (10) consecutive days following the start of construction.

D. The site plan and the permit shall also be displayed during the construction of the project until such time as the project is fifty (50) percent completed, but in no case for less than ten (10) consecutive days after the start of the construction or change in use. [Ord. 10-15 § 3.]

15.12.140 Enforcement.

In addition to enforcement under the provisions of this chapter, civil and criminal actions may be taken as provided in BMC 16.04.050 for violations, threatened violations, and enforcement of this chapter. [Ord. 10-15 § 3.]

The Bethel Municipal Code is current through Ordinance 20-22, passed July 14, 2020.

Disclaimer: The city clerk's office has the official version of the Bethel Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: www.cityofbethel.org
Code Publishing Company

Chapter 18.84
ENFORCEMENT, PENALTIES AND REMEDIES

Sections:

18.84.010 Enforcement officer.
18.84.020 Complaint.
18.84.030 Correction of violations.
18.84.040 Enforcement, violations and penalties.

18.84.010 Enforcement officer.

This title shall be administered and enforced by the land use administrator. [Ord. 01-05 § 8.]

18.84.020 Complaint.

A. Any person aggrieved by a violation or apparent violation of the provisions of this title may file a written complaint with the land use administrator who shall immediately investigate the complaint and take action to have the violation corrected if such a violation is found to exist.

B. The land use administrator may also investigate violations or apparent violations of the provisions of this title on his/her own initiative. [Ord. 01-05 § 8.]

18.84.030 Correction of violations.

A. Upon the land use administrator finding a violation of any of the provisions of this title, the land use administrator shall notify the owner, manager or lessee of the property, or person responsible for the violation in writing and shall order the necessary correction within a period of ninety (90) days or such earlier time as may be reasonable. The land use administrator may order remedial action immediately upon a determination by the public works director, the police chief or the fire chief that there is an immediate and significant danger to life, limb or property. The owner and the person to whom the order is directed, if other than the owner, shall comply with the order and each such person is liable for failure to comply. Failure to comply is a violation of this section. The issuance of an order of correction does not suspend, reduce or eliminate the violation that is the subject of the order. Such violation continues until corrected.

B. The land use administrator may order:

1. The discontinuation of unlawful uses of land or structures;

2. The removal or abatement of unlawful structures or any unlawful additions or alterations thereto;

3. The discontinuation of construction or other preparatory activity leading to an unlawful structure or an unlawful use of a land or structure;

4. When appropriate to ensure compliance with this title, the suspension or revocation of site plan permits, conditional use permits, variances or other city land use entitlements. [Ord. 01-05 § 8.]

18.84.040 Enforcement, violations and penalties.

In addition to enforcement under the provisions of this chapter, civil and criminal actions may be taken as provided in BMC 16.04.050 for violations, threatened violations, and enforcement of this title. [Ord. 01-05 § 8.]

The Bethel Municipal Code is current through Ordinance 20-22, passed July 14, 2020.

Disclaimer: The city clerk's office has the official version of the Bethel Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: www.cityofbethel.org
Code Publishing Company

Chapter 18.32
RESIDENTIAL DISTRICT – R DISTRICT

Sections:

18.32.010 Intent.
18.32.020 Permitted and principal uses and structures.
18.32.030 Conditional uses.
18.32.040 Minimum lot size.
18.32.050 Minimum setback requirements.
18.32.060 Maximum height of structures.
18.32.080 Noise.

18.32.010 Intent.

The intent of the residential district is to provide protection to residential areas from encroachment from nonresidential activities. [Ord. 01-05 § 8.]

18.32.020 Permitted and principal uses and structures.

The following are permitted and principal uses and structures in the R district:

A. Trails and boardwalks.

B. Nonmotorized public access areas to the Kuskokwim River or other areas that require public access.

C. Single-family dwelling units.

D. Duplex uses.

E. Greenbelts and land reserves.

F. Subsistence activities.

G. Any accessory use or structure associated with the principal use or structure on the lot. The use of a freezer van for any purpose is specifically prohibited; except, during the construction or substantial improvement of the primary structure on a lot, a freezer van used solely for storage of construction materials and equipment may be located on the lot for a period not to exceed twelve (12) months unless, for good cause shown, the time is extended in writing by the land use administrator.

H. The facilities of sewer, water and other utilities required to serve the lots in the district.

I. Home occupations, but not more than two (2) per dwelling unit. [Ord. 01-05 § 8.]

18.32.030 Conditional uses.

The following uses and structures are permitted in the R district under the terms of a conditional use permit.

A. Triplex and residential apartment buildings.

B. Planned unit developments.

C. Professional offices.

D. Parks, playfields, and playgrounds.

E. Churches and synagogues, along with the customary accessory uses, including administrative offices, parsonages, day nurseries, kindergartens and meeting rooms.

F. Headquarters or administrative offices for charitable organizations and similar quasi-public organizations of a noncommercial nature.

G. Radio and television transmission towers and antennas, not including amateur radio and citizen band radio antennas that are accessory to a residential use.

H. Food and beverage sales.

I. Personal services.

J. The facilities of sewer, water and other utilities required to serve lots outside the district. [Ord. 01-05 § 8.]

18.32.040 Minimum lot size.

The minimum lot size in the R district is nine thousand (9,000) square feet; provided, the minimum lot size for an apartment is ten thousand (10,000) square feet for the first (1st) four (4) units and an additional one thousand (1,000) square feet for each additional unit. [Ord. 01-05 § 8.]

18.32.050 Minimum setback requirements.

Structures, other than minor structures, in the R district shall be set back from property lines to provide yards as follows:

A. Front yard: Fifteen (15) feet.

B. Side yard: Ten (10) feet; provided, for lots that were lawfully platted prior to 1985 with less than seven thousand (7,000) square feet, seven (7) feet shall be provided for side yards.

C. Rear yard: Ten (10) feet; provided, for lots that were lawfully platted prior to 1985 with less than seven thousand (7,000) square feet, seven (7) feet shall be provided for rear yards.

D. Twenty-five (25) feet from the mean high water mark of any drainage or lake. [Ord. 01-05 § 8.]

18.32.060 Maximum height of structures.

The height of structures in the R district is not restricted except as may be limited under the airport height restrictions under BMC 18.48.250 through 18.48.270. [Ord. 01-05 § 8.]

18.32.080 Noise.

No loud noise, whether of public or private origin, shall be permitted within this land use district during the hours from 11:00 p.m. to 6:00 a.m. "Loud noise" is defined as a decibel level that exceeds eighty (80) dBA max at the property line of the parcel within the R district that is receiving the noise. Specific examples of loud noise include a person or persons speaking loudly or yelling, operating a garbage disposal, or honking a vehicle horn within twenty (20) feet. This provision applies to all noise sources, whether generated inside or outside the R district, but does not apply to noise associated with aircraft arriving at or departing from the airport or emergency equipment or signals operated by a government agency. [Ord. 01-05 § 8.]

The Bethel Municipal Code is current through Ordinance 20-22, passed July 14, 2020.

Disclaimer: The city clerk's office has the official version of the Bethel Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: www.cityofbethel.org
Code Publishing Company

Chapter 16.12
DEFINITIONS

Sections:

16.12.010 Titles applicable.
16.12.020 General rules of interpretation.
16.12.030 Definitions.

16.12.010 Titles applicable.

The definitions of words, terms and phrases set out in this chapter apply to such words and phrases when used in BMC Titles 15, 16, 17 and 18, unless specifically defined in the title where used, and except where the context clearly indicates a different meaning was intended. [Ord. 10-15 § 6.]

16.12.020 General rules of interpretation.

For the purpose of BMC Titles 15, 16, 17 and 18, unless otherwise indicated by the context, words, terms and phrases used in such titles shall be interpreted as follows:

A. Words used in the present tense include the future tense;

B. The singular number includes the plural, and the plural includes the singular;

C. Words of any gender may, when the sense so indicates, refer to any other gender;

D. The word "person" includes a corporation and any other entity or form of association as well as an individual;

E. The words "must" and "shall" are always mandatory and the terms "must not," "shall not" and "may not" are prohibitory;

F. The word "used" or "occupied," as applied to any land or structure, shall be construed to include the phrase "intended, arranged or designed to be used or occupied." [Ord. 10-15 § 6.]

16.12.030 Definitions.

The following words, terms and phrases shall have the meanings ascribed to them in this section:

"Abbreviated plat" means a representation of a subdivision in which the subdivision does not create more than four (4) lots; each lot created has legal and physical access to a public highway or street; the subdivision does not involve or require a dedication of a street, right-of-way, or other area; and the subdivision does not require a

vacation of a public dedication of land or a variance from the requirements of any ordinance, including, but not limited to, requirements related to subdivision, land use, and building and construction, including flood hazard and drainage regulations.

"Access" means a means of vehicular or pedestrian approach, entry to or exit from property.

"Accessory building, structure or use" means uses and structures customarily accessory and clearly subordinate and incidental to the principal use or structure on a lot. This may include a structure or use for storage, coverage or similar use incidental to the principal use which contributes to the comfort, convenience, or necessity of occupants of the principal structure or use and is located on the same lot as the principal structure or use.

"Addition" means a parcel of land which is platted adjacent to an existing subdivision and which has the same name.

"Adequate" means sufficient in terms of actual or anticipated capacity or demand, satisfactory in terms of public safety requirements or as may be required by this code or other laws, regulations, or standards.

"Adjacent lot" means a lot or parcel of land which shares all or part of a common property line with another lot or parcel of land.

"Aliquot part" means the division of a surveyed section of land, described without reference to bearing or distance, into square or rectilinear parcels, the area of each parcel comprising a fractional portion of the total area of the section and of the parcel from which it is being divided.

"Alley" means a public right-of-way shown on a plat which provides only a secondary means of access to a lot, block, tract or other parcel of land.

"Alteration" means any change, addition or modification in the construction, location or use of a structure or lot.

"Apartment" means any building or portion thereof which is used, designed, built, rented or leased which contains dwelling units for four (4) or more families living independently of each other.

"Appeal" means a request to a higher body for a review of the decision of an administrative officer, the planning commission or the city council.

"Arterial" means a street used to carry high volumes of traffic to and from major traffic generators or into or out of the community.

"As-built plans" means construction plans that have been revised in accordance with all field changes reflecting the improvements on the site as they actually exist.

"Automotive repair" means replacement of parts, tune-up, lubrication, and washing and polishing of passenger trucks and cars.

"Base flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year; also referred to as the one-hundred- (100-) year flood. Areas subject to the base flood are special flood hazard areas and the designation of these areas on the FIRM always includes the letter A or V.

"Basement" means any area of a building having its floor subgrade (below ground level) on all sides.

"Bedroom" means a room marketed or designed to function primarily for sleeping.

"Block" means an area of land within a subdivision that is entirely bounded by rights-of-way, physical barriers, and exterior boundaries of the subdivision, except alleys, and which is usually divided into lots.

"Block length" means the distance between intersections of through streets, such distance being measured along the longest street bounding the block and from the right-of-way line of the two (2) intersecting streets.

"Building" means a structure of more or less permanent construction, having a roof and intended to be used for sheltering people, animals, property, or business activity. Temporary structures such as tents, fish-drying racks, dog houses, and shipping vans placed on a lot only for the reasonable duration of construction are not buildings for purposes of street and yard setbacks. Permanent structures such as houses, stores, mobile homes, manufactured homes, garages, storage sheds, shops, steambaths, and smokehouses are buildings. For setback purposes, a building includes such extended structures as arctic entries, balconies, carports, decks, exterior stairways, garages, porches, wannigans, water, sewage, and oil tanks, and windows. Where independent buildings with separate entrances are not joined by a common wall and/or ceiling or floor, each building is a separate building.

"Bunk house" means a building consisting of individual sleeping rooms for one (1) or more individuals working for the same employer, provided the rooms are not for rent or lease to persons other than employees of the same employer.

"Certificate to plat" means a certificate prepared by a title company authorized by the laws of the state to write the same, showing the names of all persons having any record title interest in the land to be platted together with the nature of their respective interests therein.

"Certified mobile home" means a transportable structure constructed to be towed on its own chassis, larger than three hundred twenty (320) square feet, designed to be used as a year-round residential dwelling, built after June fifteenth (15th), 1976, and bearing a seal certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards (42 USC Section 5401 et seq.) (see also "mobile home").

"Child care facility" means a home or structure used and maintained to provide, for compensation, care for five (5) or more children unrelated to the care provider.

"City" means the city of Bethel.

"Collector street" means a street that carries traffic between local streets and other collectors and arterials.

"Commercial use" means a retail or wholesale business enterprise.

"Comprehensive plan" means a document of text, charts, graphics and maps, or any combination, designed to portray general, long-range proposals for the arrangement of land uses which is intended primarily to guide government policy towards achieving orderly and coordinated development of the entire community.

"Conditional use" means a use not permitted as a principal use within a district but which may be permitted if approved by the planning commission subject to conditions imposed by the planning commission that eliminate or substantially reduce the adverse effects the use would have on principal uses in the neighborhood and district and as may be necessary to preserve the integrity and character of the district and neighborhood in which the use is conditionally permitted.

"Construction" means and includes design, engineering, contract administration and work, labor and materials furnished for an improvement.

"Control valve" means the shut-off valve required by the city water utility to be placed on the water extension line on the customer's property.

"Corner lot" means a lot located at the intersection of two (2) or more streets where the angle of intersection of the lot lines abutting those streets does not exceed one hundred thirty-five (135) degrees.

"Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste.

"Cul-de-sac" means a road having one (1) end open to traffic and being terminated at the other end by a vehicular turnaround.

"Dedication" means the intentional appropriation of land by the owners to public use.

"Development" means any manmade change to improved or unimproved land, including but not limited to buildings or other structures; the excavation or relocation of material or depositing of fill on a parcel of land; mining, dredging, filling, grading, paving, or drilling operations; construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; for purposes of Chapter 15.08 BMC, it also includes any storage of equipment or materials; for purposes of BMC Title 18, it also includes any use or change in use of any structure or land.

"Development phasing district" means an area shown on Figure 11 as corrected under BMC 16.08.040(A), entitled "Development Phasing" in the 1997 Comprehensive Plan of the city of Bethel. Each district is identified by a number and letter as, for example, 3B. The district designations are used separately or in combinations to identify specific areas in which certain infrastructure requirements exist with respect to subdivision or other development activities.

"District" means a land use district established by BMC Title 18.

"Driveway" means a driving surface that connects the parking area of a property to a city, state, or privately maintained road (also see "Interior access lane").

"Duplex" means a structure or use on one (1) lot involving two (2) attached common wall dwelling units, each unit designed for occupancy by one (1) family.

"Dwelling" means a building designed or used as the living quarters for one (1) or more families.

"Dwelling unit" means a room or group of rooms constituting all or part of a dwelling which is arranged, designed and used or intended for use exclusively as living quarters for one (1) family which may include washing, sleeping, and eating facilities, but no more than one (1) kitchen.

"Easement" means an interest in land owned by another that entitles the easement holder to a specified limited use, right or enjoyment. A public easement is an area legally reserved by plat or conveyed or reserved by deed for the purpose of allowing use by vehicles, pedestrians, utilities, drainage or for other purposes.

"Egress" means an area where a vehicle may leave a parcel and enter the public right-of-way or alley.

"Elevated building" means, for flood insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns.

"Engineer" means a registered professional civil engineer authorized to practice engineering in the state.

"Excessive" means a degree of use causing effects exceeding those generated by uses permitted in the district in their customary manner of operation, or to a degree injurious to the public health, safety, welfare or convenience.

"Family" means one (1) or more persons occupying premises and living as a single housekeeping unit, as distinguished from a group occupying a roominghouse, club, fraternity house or hotel.

"Federal Insurance Administration (FIA)" means the division of the Federal Emergency Management Agency which is responsible for administration of the National Flood Insurance Program as set out in 44 CFR Part 2.

"Federal Insurance Administrator" means the administrator of the FIA as established in 42 USC Section 4129.

"Fence" means an artificially structured barrier of any material or combination of materials erected to enclose or screen areas of land.

"Final acceptance" means acceptance by the city, at the completion of construction and upon the posting of all required warranties, of a public improvement constructed as a condition of approval of a subdivision plat or other development permit.

"Final plat" means the final map, drawing, or chart on which the subdivision or resubdivision of land is presented to the planning commission or platting officer for approval, and which, when approved as meeting all preliminary plat conditions, will be submitted to the district recorder for recording.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters;

2. The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood insurance rate map" or "FIRM" means the official map of the city on which the Federal Insurance Administration has delineated both the special flood hazard areas and the risk premium zones applicable to the city.

"Floodplain" or "flood-prone area" means any area of land susceptible to being inundated by water from any source. See definition of "flooding."

"Food and beverage sales" means retail sales of groceries, beverages, and household items. Typical uses include grocery stores, convenience stores and bakeries.

"Food and beverage services" means establishments or places of business primarily engaged in the sale of prepared food and beverages for on-premises consumption. Typical uses include restaurants, cafes, fast food outlets, including drive-through or drive-in establishments, and taverns.

"Freezer van" means a containerized shipping van usually about eight (8) feet wide by eight (8) feet high and either twenty (20) or forty (40) feet long and which have sometimes been converted to dwellings or storage and other nonshipping uses.

"Front lot line" means that boundary of a lot measured along the edge of the right-of-way of a dedicated street, private street or public road easement but not an alley, which abuts that line. In the case of a corner lot, either line which meets this description may be designated by the land use administrator as the "front lot line" and the other shall be treated as a side lot line.

"Front yard" means the distance between the front lot line and the part of the permanent structure nearest the front lot line. It also includes that portion of a yard between the front lot line and the required front yard setback line extended to the two (2) side lot lines, the depth of which is the least distance between the front lot line and the nearest permanent structure. In the case of a corner lot, the front lot line is the lot line so designated by the land use administrator.

"General permit" means general permit No. 83-4, as amended, extended or reauthorized, and issued by the Corps of Engineers, which places conditions on land development.

"Greenbelt or buffer park" means a strip or parcel of land privately restricted or publicly dedicated as open space for the purpose of protecting and enhancing the environment.

"Gross usable area" means the area within a lot or parcel of land that can be developed after subtracting areas of drainages, water areas, significant wetlands, setbacks, easements and areas that cannot be developed as a practical matter because of topography, soil or other physical conditions.

"Group home" means a facility located in a residential structure, the principal use of which is to serve as a place for persons seeking rehabilitation or recovery from any physical, mental, or emotional infirmity in a family setting as part of a group rehabilitation or recovery program involving counseling, self-help or other treatment or assistance.

"Home occupation" means an occupation carried on by the occupants of a dwelling as an accessory use in connection with which there is no exterior display of the activity except as noted in this definition, no persons are employed and no trucks or mechanical equipment are used or stored except trucks that are normally associated with a single-family residence. Home occupations include knitting, making of clothing, basketmaking, skinsewing, jewelrymaking, fish smoking, dance or music instructions in classes of five (5) pupils or less, and child care involving three (3) or fewer children who are not members of the household. Home occupation does not include use by an electrician, plumber, doctor, dentist, repair or fix-it shop.

"Improvement" means any construction incident to servicing or furnishing facilities for a subdivision such as grading, street surfacing, construction of driveway approaches, sidewalks, street signs, street lights, water lines, sanitary sewers and treatment systems, storm sewers, culverts, bridges, utilities, waterways, lakes and other items; the construction of any building or permanent structure or any external addition to a structure that constitutes a betterment of real property. The relocation of a structure within a lot or the relocation of a structure to another lot, the addition or relocation of fill or native material, the addition of a floor or room that changes the exterior dimensions of the building and the change to or addition to the sewer or water system serving the building are improvements; painting, siding, reroofing or other cosmetic changes are not considered to be improvements.

"Industrial use" means the use of a building or land where a primary use or activity is the warehousing, storage, movement, shipment or sale of cargo, petroleum products, gravel, sand, lumber, timber, fish, fish or material processing, port activities, or use of heavy equipment. The manufacturing of goods that emits obnoxious noise or fumes, requires the use of chemicals or materials that present a threat to the public health or safety, or requires the use of heavy equipment on the premises is an industrial use.

"Ingress" means the area where a vehicle may enter a private lot from the public right-of-way or public or private easement or other way.

"Institutional" means a structure where the primary use is for educational, governmental, or hospital activities.

"Interceptors" means all trunk, main and lateral sewer lines of every kind which are connected to and used for the collection of sewage from the customer service lines and its delivery to the sewage treatment plant.

"Interior access lane" means a nondedicated small vehicular way that is totally within the boundaries of a lot and provides direct access to parking spaces and/or provides interior circulation on the lot (see "Driveway").

"Land use administrator" means the manager of the city planning department or such other person as the city manager appoints to administer BMC Titles 15, 16 and 18.

"Legal access" means the right of access to an abutting public, dedicated street, highway or road which is connected to and a part of the public system of streets of the city.

"Local street" means a street, generally within a subdivision, designed primarily to provide direct access to individual abutting properties.

"Lot" means the smallest portion of a subdivision being a measured portion of a parcel of land which is described, identified by a lot number, and fixed on an approved plat filed for record; also, when used in a more general sense, including parcel, tract, plat and property.

"Lot depth" means the distance between straight lines connecting side lot lines, measured between the midpoint of such lines except that such measurement shall not extend outside the lot lines of the lot being measured.

"Lot frontage" means the length of the front lot line.

"Lot improvement" means any building, structure, water or sewer facility, work of art or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment.

"Lot line" means a fixed boundary of a lot described by survey located on an approved plat filed for record.

"Lot width" means the distance between straight lines connecting front and rear lot lines at each side of the lot, measured between the midpoints of such lines except that such measurement shall not extend outside the lot lines of the lot being measured.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure usable solely for parking of vehicles, building access or limited storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation requirements of BMC 15.08.100.

"Manufactured home" means a structure, including a mobile home, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; it also includes any structure which meets all the above requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the U.S. Secretary of Housing and Urban Development and complies with the standards established under 42 USC Sections 5401 through 5426; and except that such term shall not include any self-propelled recreational vehicle.

"Marginal street access" means a frontage road which separates properties from arterials and collectors and eliminates the need for unlimited access to such streets.

"Minor structure" means, for purposes of yard setback requirements, a structure such as a doghouse, small storage box or other small structure, not exceeding three (3) feet in height and not occupying more than twenty-five (25) square feet; except, a fence that does not exceed six (6) feet in height is treated as a minor structure.

"Mobile home" means a transportable structure constructed to be towed on its own chassis and designed to be used as a year-round residential dwelling (see also "certified mobile home").

"Mobile home park" means any parcel of land, including separate parcels under common ownership, which is occupied by four (4) or more mobile homes but not including a mobile home sales lot if none of the mobile homes are used as dwellings.

"Nonconforming use, lot, or structure" means lots, structures, buildings, or uses of land that were lawful prior to the effective date of a provision of BMC Title 15, 16, 17 or 18, an amendment thereto, the removal of federal or state protections on land, or the annexation of land into the city, but which fail by reason of such new or revised provision, removal of government restriction, or annexation to conform to the present requirements of the provision.

"Nonconformity" means a nonconforming lot, structure, or use of land or structures.

"Nuisance" means an activity which arises from unreasonable, unwarranted or unlawful use by a person of property, which interferes with, obstructs or injures the right of another, or the public, in the use or enjoyment of property, endangers personal health or safety or produces material annoyance, inconvenience and discomfort.

"Official map" or "official land use map" means the map adopted by ordinance showing the boundaries of the land use districts to which the regulations of this code apply.

One-Hundred- (100-) Year Flood. See "Base flood."

One-Hundred- (100-) Year Floodplain. See "Special flood hazard area."

"Ordinance" means any legislative action of the city council which has the force of law, including any amendment or repeal of any ordinance or Bethel Municipal Code provision.

"Owner" means any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient property interest in a parcel that is subject to the provisions of BMC Title 15, 16, 17 or 18.

"Parcel" means an area of land, legally created and described, not containing any smaller legally created area of land. A lot, tract, outlot, and area of land described by aliquot parts may be referred to as a "parcel."

"Parking space" means a driveable surface of gravel, sand, concrete or asphalt that is accessible from a street, interior access lane or aisle.

"Party wall" means a wall shared as a common support between two (2) contiguous structures, buildings, or dwelling units under different ownerships.

Person. The word "person" includes corporations and other entities and forms of association as well as individuals.

"Personal services" means commercial establishments primarily engaged in the provision of support services to other business, or services of a personal, professional or nonprofessional nature. Business activity may be conducted on the premises or off premises. Typical uses include barber and beauty shops, shoe repair, office maintenance services, health fitness studios, photographers, film processing shops, funeral and mortuary services, travel agencies, laundry and dry cleaning establishments, pharmacy, veterinary services, and secretarial services (see also "Professional office").

"Plan" means the city comprehensive plan.

"Planned development" means a form of development usually characterized by a unified site design for a number of housing units, clustering buildings and providing common open space, density increases, and a mix of building types and land uses. It permits the planning of a project and the calculation of densities over the entire development rather than on an individual lot-by-lot basis. It also refers to a process, mainly revolving around site plan review, in which public officials have considerable involvement and discretion in determining the nature and arrangement of and special restrictions on the development.

"Planning commission" means the city of Bethel planning commission.

"Plat" means a map or representation on paper of a parcel of land. A "preliminary plat" is a map showing the salient features of a proposed subdivision of land submitted to the planning commission for purposes of preliminary consideration and approval. A "final plat" is a map of a subdivision of land made up in final form ready for approval and filing.

"Platting authority" means the planning commission.

"Platting officer" means the manager of the city of Bethel planning department or such other person as the city manager appoints to administer BMC Title 17.

"Preliminary consultation" means a voluntary meeting between the subdivider or developer and the land use administrator or platting officer for the purpose of informing the subdivider or developer of subdivision and development procedures and standards as prescribed by BMC Titles 15 through 18.

"Preliminary plat" means the conceptual maps, drawing or chart indicating the proposed layout of the subdivision to be submitted to the planning commission.

"Principal structure" means a building within which a principal use takes place, such as a residence or a business. Principal structure is a concept similar to principal use, except that it is specific to the use of a building.

"Principal use" means the major or predominant use of land or a structure, as distinguished from a secondary or accessory use.

"Professional office" means an office for the conduct of any one (1) of the following uses: accountant, advertising agency, architect, attorney, chiropractor, civil engineer or surveyor's drafting office, photographer, private detective, real estate office, social work, doctor, dentist, insurance sales or similar use, but not including barber shop, beauty parlor, contractor, pest control, pharmacy, veterinary. (Also see "Personal services.")

"Property line" means the perimeter of the lot.

"Public improvement" means any drainage ditch, roadway, park, pedestrian way, street, off-street parking area, lot improvement, street light, sewer, water or other facility for which the city may ultimately assume the responsibility of maintenance and operation, or which may affect an improvement for which city responsibility is established.

"Public improvement guarantee" means a performance bond, deposit in escrow, letter of credit or a note from the applicant secured by a first (1st) deed of trust upon land given to the city to secure the timely performance of the applicant in the construction of required improvements.

"Public open space" means land dedicated or reserved for the use by the general public, including, but not limited to, parks, parkways, recreation areas, and school sites.

"Public utility" means all persons, firms, corporations, or municipal or public authorities which are certified as public utilities by the state and which provide gas, electricity, water, telephone, cable, storm sewers, sanitary sewers or other services of a similar nature.

"Rear lot line" means that boundary of a lot which is most parallel to the front lot line and does not intersect the front lot line. In the case of a triangular lot, "rear lot line" means a line twenty (20) feet in length within the lot parallel to and at the maximum distance from the front lot line.

"Rear yard" means the distance between the property line that parallels or generally parallels the rear lot line and the part of a structure, other than a minor structure, nearest the rear lot line.

"Recreational vehicle" means a vehicle which is: built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory flood" means the one-hundred- (100-) year flood. The water surface elevation of the regulatory flood is the water surface elevation delineated on the flood insurance rate map.

"Replat" means an alteration to an original recorded plat; a resubdivision.

"Reserve strip" means land reserved adjacent to a proposed street for the purpose of denying access from adjacent property to such street.

"Residential" means a structure where the primary use is for human habitation.

"Residential structure" means a single structure used primarily as a residence which may have one (1) or more dwelling units.

"Residential unit" means a common living area designed or advertised to house one (1) family.

"Resubdivision" means the redelineation of an existing lot, block, or tract of a previously recorded subdivision involving the change of property lines after vacation, the altering of dedicated streets, easements or public areas.

"Right-of-way" means land reserved, used or to be used for the use of supporting city services.

"Road" means a way for vehicular traffic, dedicated to public use.

"Setback" means the minimum distance required between a lot line and structures other than minor structures.

"Sewer facilities" means all interceptors, pressure pumps, valves, sumps, heating and electrical facilities, manholes, guards and other features required for an operating, piped sewage collection system.

"Shopping center" means a group of commercial establishments planned, constructed, developed, and managed as a unit with off-street parking provided on site.

"Side lot line" means that boundary of a lot which is neither a front nor rear lot line and which is perpendicular or generally perpendicular to the front lot property line.

"Side yard" means the distance between the side lot line and the part of a structure, other than a minor structure, nearest the side lot line.

"Significant wetlands" means (1) those areas of the floodplain that have not been developed; rivers, lakes, streams, sloughs, drainages, and ponds at least one-half (1/2) acre in size; and (2) a twenty-five- (25-) foot-wide area upland from the mean high water mark of major drainageways, lakes and ponds.

"Single-family dwelling" means a site-built dwelling unit designed for occupancy by one (1) family for individual ownership, lease, or rental.

"Site plan" means a plan, drawn to scale, which depicts and describes uses and structures proposed for a parcel of land as required by the regulations in BMC Title 15. It includes lot lines, streets, building sites, reserved open space, buildings, major landscape and drainage features, proposed fill activity, plans for accommodating drainage, access location and dimensions and plans for the water and sewer system.

"Special flood hazard area" and "area of special flood hazard" mean the area within the city subject to the one-hundred- (100-) year flood as delineated on the flood insurance rate map for Bethel published by the Federal Insurance Administration. Designation of an area on the FIRM will always include the letter A or V.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State" means the state of Alaska.

"Street" means a right-of-way which provides for vehicular and pedestrian travel access to abutting properties and includes arterials, collectors, roads, avenues, highways, ways and other rights-of-way for transportation, and other street uses such as placement of utilities.

"Street right-of-way width" means the distance between property lines measured at right angles to the centerline of the street.

"Street width" means the shortest distance between the lines delineating the right-of-way of the street.

"Structural alteration" means any addition to or subtraction from parts of a building, including walls, columns, beams, girders, foundations, doors and windows.

"Structure" means anything constructed or erected on the ground or attached to something located on the ground. Structures include walled or roofed buildings, radio and TV towers, storage vans, sheds, water tanks, sewage tanks, oil tanks, gas or liquid storage tanks that are principally above ground, fences and signs. Operable vehicles, sidewalks and boardwalks, and pavement are not considered structures for yard setback purposes (see also "minor structure" and "temporary structure"). For floodplain management purposes, a "structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

"Stub street" means a dead-end local street which provides for eventual expansion of the street onto unplatted land.

"Subdivider," "owner" or "developer" means a person, firm, association, partnership, corporation, governmental unit or combination of any of these which may hold any legal or equitable ownership interest in land being subdivided. The terms shall also include heirs, assigns, or successors in interest, or representatives of the subdivider, owner, proprietor or developer.

"Subdivision" means the division of a tract or parcel of land into two (2) or more lots, sites or other divisions by the landowner for the purpose, whether immediate or future, of sale, lease, conveyance or building development, or by the creation of public access other than common carrier and public utility access, including any resubdivision, and when appropriate to the context, the process of subdividing the land subdivided.

"Substandard lot" means a lot that was lawfully created and met all conditions of the applicable provisions of law and ordinance at the time the plat was approved by the platting authority, or at the time it was filed if platting authority approval was not required by state law at the time it was filed, but does not conform to one (1) or more of the applicable standards of BMC Title 17 or 18.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

"Substantial improvement" means, as applied to an existing structure, any remodeling, repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the fair market value of the structure either: (1) as such value exists before the improvement is started; or (2) if the structure has been damaged and is being restored, as such value existed before the damage occurred. Substantial improvement commences when the first (1st) alteration of any wall, ceiling, floor, or other structural part of a structure begins, whether or not that alteration affects the external dimensions of the structure. The term does not include either a project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the appropriate code enforcement official and which are the minimum necessary to assure safe living conditions or to any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

"Surveyor" means a land surveyor who is registered in the state.

"Temporary structure" means a structure that can easily be dismantled by one (1) person in one (1) day, or could be moved with human labor without the aid of mechanical lifting equipment. Examples of temporary structures are tents, fish-drying racks, dog houses, and small storage boxes.

"Through or double-frontage lot" means a lot other than a corner lot with frontage on more than one (1) street.

"Topographic map" means a map showing the land form by the use of contour lines.

"Tract" means an area within a subdivision that has been identified as a tract, but which is not a lot located within a numbered or lettered block and is not identified as a block.

"Triplex" means a structure involving three (3) attached common wall dwelling units, each unit designed for occupancy by one (1) family, for ownership, lease or rental.

"Use" means the purpose for which any land, structure, or building is arranged, designed, intended, occupied, or maintained.

"Used" or "occupied" as applied to any land or structure shall be construed to include the phrase "intended, arranged or designed to be used or occupied."

"Vacation" means the act of making legally void the public interest or rights in a dedicated right-of-way, easement, public area or other dedicated public interest.

"Variance" means permission to depart from the literal standards or requirements of certain provisions of BMC Titles 15 through 18 granted pursuant to Chapter 18.64 BMC or, when applicable, BMC 15.08.260.

"Vehicle" means any mechanical device for carrying passengers, goods or equipment, usually moving on wheels or runners, such as a car, bicycle, sled or snow machine.

"Walkway" means a right-of-way, dedicated to public use, which crosses within a block to facilitate pedestrian access to adjacent streets and properties.

"Warranty" means a guarantee by the subdivider that the completed public improvement, accepted by the city, is free of defects in materials and workmanship and shall remain in good condition during the warranty period.

"Water area" means an area that is regularly or always occupied by water, whether standing, flowing or frozen.

"Water connection" means that part of the water distribution system connecting a water main with the lot line of the property to be furnished water service.

"Water-dependent" means a use or structure for commerce or industry that is dependent on the water by reason of the intrinsic nature of its operations and which cannot exist in any other locations.

"Water facilities" means all water mains, water connections, pumps, valves, fire hydrants, heating and electrical facilities, storage tanks and other parts of the city or a community water system.

"Water main" means that part of the water distribution system intended to directly or indirectly serve more than one (1) water connection.

"Zero lot line" means a development approach in which a building is sited on one (1) or more lot lines with no yard on at least one (1) side. [Ord. 10-15 § 6.]

The Bethel Municipal Code is current through Ordinance 20-22, passed July 14, 2020.

Disclaimer: The city clerk's office has the official version of the Bethel Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: www.cityofbethel.org
Code Publishing Company

City of Bethel

Ted Meyer <tmeyer@cityofbethel.net>

Planning Commission Hearing (August 13)

1 message

Thomas V. Wang <thomas@anchorlaw.com> Thu, Aug 6, 2020 at 4:52 PM
To: Libby Bakalar <lbakalar@cityofbethel.net>, Lori Strickler <lstrickler@cityofbethel.net>, Ted Meyer <tmeyer@cityofbethel.net>
Cc: Heidi Wyckoff <heidi@anchorlaw.com>

Exhibit #21
Hackney Documents received on August 6, 2020 (Ashburn & Mason)

All,

In anticipation of the hearing set for next week, this email and its attachments are for distribution to the Planning Commission. (I recognize the notice of violation and site plan application likely are already included but submit them just in case that is not correct.) There are three primary areas of concern that we would like to address to the Planning Commission.

1. As set forth in the attachments, the Hackeys have appealed to the Superior Court a prior denial of their site pan application and proposed use as a bed and breakfast. In short this appeal makes the argument that the City's land use map, designation of the Hackney's neighborhood as a purely "residential" area, and land use restrictions in that District, are all in plain violation of the City's Comprehensive Plan and, we believe, state law, rendering them unenforceable. These arguments and considerations are also at play in the present appeal to the Planning Commission, because the City continues to stringently apply residential area land use restrictions to the Hackney's property.

2. Even if the residential zoning code is still in force and effect, the City continues to err in narrowly interpreting the definition of residential use as being for nuclear families. The city code does not define a family as including or requiring any form of relationship – the only requirement is that the person in residence occupy the premises as a "single housekeeping unit." The concept of "single housekeeping unit" has been extensively litigated in other jurisdictions. It is widely, though not unanimously, agreed that the term "family" does not carry a special meaning as a term of art and that the "housekeeping unit" is an expansive concept, including unrelated persons, employees, etc, to occupy premises together. This seems particularly just here where the City clearly does not enforce its code in a uniform manner and, on information and belief, actually itself lodges persons in bed and breakfast facilities in a residential zoning district. As noted in Rathkopf's treatise on zoning, "[i]n the past, courts have interpreted [the phrase 'single housekeeping unit'] in a rather elastic way, generally ruling that any living arrangement which makes use of unified house-keeping facilities satisfies such an ordinance." 3 EDWARD H. ZIEGLER, JR. ET AL., RATHKOPF'S THE LAW OF ZONING AND PLANNING 23–33 (Thompson Reuters 2009). Ms. Hackney can provide information to the commission about the occupants she has permitted and we intend to present evidence that they do not impose any improper burden on the neighborhood.

3. Mr. Meyer's rejection of the Hackneys' site plan contains a list of requirements that we believe the Hackneys' site plan actually satisfies. We will review the rejected site plan with the Commission in light of those claimed requirements and the standard that the City has applied to other, similar site plan applications.

Thank you,

Thomas

Thomas V. Wang

Ashburn & Mason, P.C.

1227 West 9th Ave., Suite 200

Anchorage, AK 99501

(907) 276-4331 (main office)

(907) 865-9207 (direct)

(907) 277-8235 (fax)

www.ashburnandmason.com

This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution or copying of this information is strictly prohibited. If you have received this transmission in error, please notify us immediately by return e-mail and delete this message and destroy any printed copies. This communication is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. Your cooperation is appreciated.

4 attachments

Brief of Appellants (00642775xB615B).pdf
1710K

Exhibit A (00642180xB615B).pdf
2110K

061020 Hackney Notice of Violation.pdf
631K

20200430082202.pdf
5545K

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

DAN HACKNEY AND DAWN HACKNEY, Appellants, v. CITY OF BETHEL, ALASKA BOARD OF ADJUSTMENT, Appellee.	**Case No.: 4BE-20-00080 Civil** Appeal of Board of Adjustment Decision Hearing No. 2020-01 I certify that the typeface used in this document is Times New Roman 13 point

BRIEF OF APPELLANTS DAN HACKNEY AND DAWN HACKNEY

APPEAL FROM CITY OF BETHEL, ALASKA BOARD OF ADJUSTMENT

ASHBURN & MASON, P.C.
1227 West Ninth Avenue, Suite 200
Anchorage, Alaska 99501
(907) 276-4331
Attorneys for Appellants

Filed in the Superior Court for the State of Alaska, Fourth Judicial District at Bethel this_____ day of _____, 2020.

By:_____
Clerk of Court

By:_____
Thomas V. Wang
Alaska Bar No. 9806035

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

TABLE OF CONTENTS

STATEMENT OF ISSUES PRESENTED FOR REVIEW 1
STATEMENT OF THE CASE 2
STANDARD OF REVIEW 7
ARGUMENT 8
A. The Bethel Land Map and Zoning Code, as applied to the Hackneys' project, are invalid because they violate, and cannot be reconciled with, the Bethel Comprehensive Plan. 9
1. Under Alaska law, city zoning codes are invalid if they do not "rationally comply" with the terms of an approved Comprehensive Plan. 9
2. The Bethel Municipal Land Map and Residential Zoning Code do not rationally comply with the requirements of the 2011 Comprehensive Plan. 10
B. Even if the land use plan map and zoning code were valid, which they are not, the City applied incorrect legal standards to the Hackneys' arguments that the municipal Planning Director approved their proposed use, and failed to admit or consider evidence that would have been relevant to consideration of the correct legal standards for estoppel against a municipality. 15
CONCLUSION 18

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 - FAX 907.277.8235

TABLE OF AUTHORITIES

Cases

Jackson v. Kenai Peninsula Borough,
733, P.2d 1038, 104-1041 (Alaska 1987) 4, 17

Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd.,
904 P.2d 373, 377-78 (Alaska 1995) 9, 10

Municipality of Anchorage v. Schneider, 685 P.2d 94 (1984) 15, 16

Price v. Dahl, 912 P.2d 541 (1996).....7

S. Anchorage Concerned Coal, Inc. v. Coffey
862 P.2d 168, 173 (Alaska 1993) 7

Statutes

AS 29.40.040 .....8, 14

AS 29.35.260 (c) 9

AS 29.35.180(a) (b) 9

Municipal Codes

BMC 18.32.020. 13

BMC 18.32.030 13

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

TEXT OF RELEVANT AUTHORITIES

PROVISIONS OF ALASKA STATUTES

AS § 29.40.030

(a) The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

(1) statements of policies, goals, and standards;
(2) a land use plan;
(3) a community facilities plan;
(4) a transportation plan; and
(5) recommendations for implementation of the comprehensive plan.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.

AS § 29.40.040

(a) In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,

(1) zoning regulations restricting the use of land and improvements by geographic districts;
(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;
(3) measures to further the goals and objectives of the comprehensive plan…

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

AS § 29.35.260

(a) A city outside a borough may exercise a power not otherwise prohibited by law. A provision that is incorporated by reference to laws governing boroughs applies to home rule cities outside boroughs only if the provision is made applicable to home rule boroughs…
(c) A home rule city outside a borough shall provide for planning, platting, and land use regulation as provided by AS 29.35.180(b) for home rule boroughs. A first class city outside a borough shall, and a second class city outside a borough may, provide for planning, platting, and land use regulation as provided by AS 29.35.180(a) for first and second class boroughs.
(d) This section applies to home rule and general law cities.

AS § 29.35.180

(a) A first or second class borough shall provide for planning, platting, and land use regulation in accordance with AS 29.40.
(b) A home rule borough shall provide for planning, platting, and land use regulation.

AS § 29.40.060

(a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of a hearing officer, board of adjustment, or other body to the superior court.
(b) An appeal to the superior court under this section is an administrative appeal heard solely on the record established by the hearing officer, board of adjustment, or other body.

PROVISIONS OF BETHEL MUNICIPAL CODE

BMC 18.04.020

The provisions of this title are for the purpose of implementing the comprehensive plan and promoting the public health, safety, and welfare of the present and future inhabitants of the city. [Ord. 01-05 § 8.]

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

BMC 18.04.040

The provisions of the city land use code and the official map are adopted pursuant to the authority granted under AS 29.35.260(c). [Ord. 01-05 § 8.]

The following land use districts are established within the city:

Preservation	P district
Public lands and institution	PLI district
Open space	OS district
Residential	R district
Neighborhood commercial	NC district
Downtown commercial	DC district
General use	GU district
Industrial	I district

These districts shall be bounded and defined as shown on the official land use map on file in the city planning office. [Ord. 01-05 § 8.]

BMC 18.08.020

A. There is adopted the city official land use map dated July 10, 1990. The official map shows the boundaries of the land use districts governed by this title.

B. The official map may be amended by ordinance and each amendment shall be shown on the map with notations identifying the ordinance and the effective date of the ordinance amending the map.

C. Prior to making each change to the official map, a copy of the map shall be made and preserved for historical purposes. The date the copy is made shall be written in hand upon the copy and signed by the land use administrator.

D. The official map, together with all relevant ordinances, legal descriptions, maps and explanatory materials shall be kept on file in the city planning office.

E. The official land use map, adopted under this section, as amended, and required to be located in the city planning office, is the final authority as to the land use district within which any land, water area or structure lies. [Ord. 01-05 § 8.]

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 · FAX 907.277.8235

BMC 16.08.010

The comprehensive plan is a guide for the systematic and organized physical, social and economic development, both public and private, of the city and serves as a long-range policy guide for the development of the city as a whole. The comprehensive plan shall be implemented through the application of existing and the adoption and application of future land use regulations, including zoning, platting, site development and other land use and related regulations. [Ord. 11-15 § 2; Ord. 10-15 § 5.]

BMC 16.08.040

The comprehensive plan for the city of Bethel consists of the following plans, reports, policies, recommendations, goals, standards, maps, and documents:

A. "City of Bethel Comprehensive Plan 2035," dated August 2011, prepared by AGNEW::BECK Consulting, Inc.;

B. "Orutsararmiut Native Council & City of Bethel Long Range Transportation Plan (LRTP)," dated March 2010, by WHPacific Incorporated;

C. "Port of Bethel Expansion Feasibility Study," dated January 2010, prepared by PND Engineers, Inc., and Northern Economics;

D. "City of Bethel Sewer and Water Facilities Master Plan," dated April 2005, prepared by CRW Engineering Group, LLS;

E. "Flood Insurance Study for the City of Bethel," dated December 8, 2008, by State of Alaska NFIP Floodplain Management Program. [Ord. 11-15 § 2; Ord. 10-15 § 5.]

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The City of Bethel adopted a comprehensive plan in 2011 that contained a new land map, and new zoning districts. Do the city zoning code and land use map, which predate the implementation of the comprehensive plan, and have never been updated, "rationally comply" with the specific terms and general policy objectives of the comprehensive plan, as required by Alaska law?

2. The City Planning Commission and Board of Adjustment conducted proceedings to consider the Hackney's claim that their site plan permit application and proposed use as a bed and breakfast should be approved because they had previously been approved by the Planning Director, and were consistent with local land use patterns. Did the City of Bethel Planning Commission and Board of Adjustment commit legal error in (a) failing to correctly apply the law regarding estoppel against municipalities, (b) failing to properly weigh the evidence that was submitted regarding estoppel and (c) in refusing to hear key evidence regarding the City's prior approval, actions of its former employees, and prevailing land use patterns?

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

STATEMENT OF THE CASE

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from Dan and Dawn Hackney's application for approval of a site plan for their newly built structure at 175 Alex Hately, which was denied by the Municipality. The Hackneys also appeal the denial of their proposed use of the structure as a bed and breakfast, which the Municipality has deemed to be a violation of Bethel Municipal Code applicable to "residential" districts. These decisions were initially memorialized in an August 30, 2019 "Notice to Correct Violations" issued by Ted Meyers, the newly appointed Director of the Planning Department.[1] The Hackneys filed a timely appeal to the Planning Commission, claiming that their structure and proposed use had been previously approved by then-Planning Director Betsey Jumper, and challenging the Planning Department's August 30, 2019 Notice in its entirety. The Planning Commission conducted an evidentiary hearing on November 14, 2019, which was recorded but has not been transcribed into the City's record. A recording of the evidentiary hearing is provided on a thumb drive being mailed to accompany this appeal brief. At the close of the hearing, the Planning Commission affirmed the decision of the Planning Department and issued written findings on November 18, 2019.[2]

---

[1] Record, p.2.

[2] Record, p. 19.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

At the Planning Commission hearing, Dawn Hackney testified that: she verbally communicated all of the plans for 175 Alex Hately to Planning Director Betsey Jumper, including the proposed use as a bed and breakfast; that Jumper indicated there was no concern with or objection to the plan; that the Hackneys were told should simply submit an as-built drawing of the structure after completion; and that Betsey Jumper had followed a similar procedure in earlier approving improvements by the Hackneys next door at 174 Alex Hately.[3] Ms. Hackney testified that she had managed a bed and breakfast known as "Cranberry Cottage" just two streets away in the same neighborhood, lending credence to her understanding that both the structure and use were permitted in the neighborhood.[4] Public testimony at the Planning Commission hearing affirmed that "mother in law" and bed and breakfast uses were common in the Hackney's neighborhood[5], which is also confirmed by information about bed and breakfast listings in the record.[6] Ms. Hackney testified that she applied for all required business licenses and municipal tax documents showing the intended use of the structure as a bed and breakfast.[7] Based on the verbal confirmation from Ms. Jumper and Ms. Hackney's experience with other bed and breakfasts in the neighborhood, the

[3] Dawn Hackney testimony beginning at approximately minute 23 of Planning Commission Hearing.

[4] Dawn Hackney testimony beginning at approximately minute 38 of Planning Commission Hearing.

[5] Public testimony at approximately 1:57:00 of Planning Commission Hearing.

[6] Record pp. 163-165.

[7] Dawn Hackney testimony at approximately minute 46 of Planning Commission Hearing.

ASHBURN & MASON P.C.
LAWYERS
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
Tel 907.276.4331 - Fax 907.277.8235

Hackneys invested over $365,000.00 in improvements in the form of a second structure on their lot, which the City now deems non-compliant, demanding costly alterations and changes in use that would substantially impair the value of the premises.

Later during the Planning Commission hearing, Patty Burley,[8] who previously served as City Attorney, testified that she had been assigned the duties of City Planner after Ms. Jumper's employment with the City ended. The Hackney's attorney asked Ms. Burley if there was a "history" of Betsey Jumper verbally modifying site plan permits but the testimony was precluded, improperly, on the claimed basis of relevance and privilege.[9] The Hackneys' attorney was stymied in his efforts to elicit further information about Ms. Jumper, who does not have a college degree and has no formal training in Municipal Planning, and who the Hackneys suspected had been terminated from her position.[10]

The City Attorney objected to the attempt to elicit testimony regarding Ms. Jumper's possible history of granting oral approvals, arguing that even if the City Planner had granted an oral approval, it could never bind the City, incorrectly citing City of Jackson vs. Kenai for the proposition that a history of waiver could not relevant to the question of whether the City Planner had approved the Hackneys' application;

---

[8] Ms. Burley's testimony began at minute 47 of the Planning Commission hearing.

[9] Planning Commission Hearing at minutes 55-57.

[10] Planning Commission Hearing, testimony of Betsy Jumper, beginning at approximately 1:30:00.

ASHBURN & MASON P.C.
LAWYERS
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
Tel 907.276.4331 • Fax 907.277.8235

thus, testimony regarding the past practices of the City and oral authorizations by Ms. Jumper was precluded, as was testimony regarding the termination of Ms. Jumper's employment as City Planner.[11] Ms. Burley testified that in her role as acting City Planner she did not believe that the Hackney's proposed construction was improper, based on the information available to her. The City Attorney objected to Ms. Burley's possible testimony regarding her knowledge of Ms. Jumper's actions as City Planner, claiming, incorrectly, that any such knowledge was subject to attorney client privilege.

The City's written findings (from both the Planning Commission and Board of Adjustment) state that Betsey Jumper "testified" that she "told Ms. Hackney that the mother-in-law unit or two unattached dwelling units were not allowed on one property in the Residential zone.[12] Yet under cross-examination, the Hackney's attorney had asked: "Could you have told Mr. Hackney that it was OK to build a second story," and Ms. Jumper replied: "I could have."[13] The City attorney then objected to the testimony on the basis of relevance, contending that the issue before the Planning Commission was only whether Jumper had given written consent, again a legal error under Alaska's law of estoppel. The Planning Commission then prevented the Hackneys' attorney from further inquiring about Ms. Jumper's admission that she "could have" approved the structure, again, improperly limiting testimony that would be relevant to a claim of

[11] Planning Commission Hearing at minutes 59:00-1:01.

[12] Record, p. 2.

[13] Planning Commission Hearing at 1:40:10.

ASHBURN & MASON P.C.
LAWYERS
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
Tel 907.276.4331 • Fax 907.277.8235

estoppel.

In his testimony, the City Planner, Ted Meyers, repeated this incorrect line of reasoning, stating that "it does not matter what people said verbally" and repeating several times during the hearing his opinion that oral approvals could never bind the City, concluding that "it has to be on the permit." [14]

The Planning Commission issued a written Decision and Order on November 18, 2018.[15] Remarkably, the Planning Commission's Decision and Order was completely unchanged from the "[Proposed]" decision that had been prepared prior to the hearing. Thus, the Planning Commission's written findings plainly gave no consideration to the evidence offered at the hearing.[16] On appeal to the Board of Adjustment, the City simply cut and pasted the prior Decision and Order and had the Board of Adjustment adopt it.[17] The City's findings do not address the legal standard for estoppel, do not address the potentially binding effect of oral statements by an official acting within the course and scope of their duties, and completely ignore the admission by Ms. Jumper that she could have granted the approval.

---

[14] Planning Commission Hearing at 1:16:00; 1:25:45.

[15] Record, pp. 19-25.

[16] Record, p. 19. The Decision and Order simply struck the word "proposed" from its text and was otherwise unchanged from the draft prepared prior to the hearing.

[17] Compare the Board of Adjustment decision to the Planning Commission decision, which are virtually identical to one another.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

STANDARD OF REVIEW

When reviewing a Municipality's application of zoning code to the facts of a particular case after a hearing, the Alaska Supreme Court has observed that "it is generally true that appeals of this type shall be heard solely on the record established before the municipal bodies' and the zoning body's decision shall not be reversed if, in the light of the whole record, they are supported by substantial evidence. The majority rule, and the one we adopt, is that judicial review of zoning board decisions is narrow and that a presumption of validity is accorded those decisions."[18] However, the legal question regarding the City's duty to implement its comprehensive plan, and the consistency of City zoning code with the comprehensive plan, is a pure question of law that the Alaska Supreme Court has reviewed, and this court should review, its independent judgment.[19] Similarly, the legal question of whether the municipality violated due process during the course of the hearing is a question for independent review.

[18] S. Anchorage Concerned Coal., Inc. v. Coffey, 862 P.2d 168, 173 (Alaska 1993)(Internal citations omitted).

[19] *See, e.g.* Price v. Dahl, 912 P.2d 541 (1996) (not specifying standard of review but applying independent judgment to question of consistency between comprehensive plan and municipal zoning ordinances.)

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

ARGUMENT

The proceedings before the Planning Commission and Board of Adjustment devoted significant attention to the question of whether Municipal Planning Director Betsy Jumper had orally approved the Hackney's planned development and use, and whether such approval could be reversed by her successor after it had been relied upon. As discussed later in this brief, Appellants contend that the City's process before the Planning Commission was fundamentally flawed because the City applied an improper legal standard to the key question of municipal estoppel, erroneously precluded evidence that would have been relevant to the issue, and improperly failed to weigh the limited evidence on the topic that was allowed into the record.

However, the issue of estoppel is secondary to the fundamental question of whether the City's zoning code and land use map meet the minimum requirements of Alaska statutes setting minimum requirements for local land use regulation. As set forth below, the entire foundation of the City's enforcement action is fatally flawed because the City's zoning code cannot be rationally reconciled with its Comprehensive Plan and, as such, fails muster under AS 29.40.040. And, even if the zoning code applied to the Hackneys were valid, which it is not, the City failed to properly weigh the Hackney's claims that the City should be estopped by the actions of its prior Planning Director, applying an improper legal standard and prohibiting the introduction of relevant information.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

A. The Bethel Land Map and Zoning Code, as applied to the Hackneys' project, are invalid because they violate, and cannot be reconciled with, the Bethel Comprehensive Plan.

1. Under Alaska law, city zoning codes are invalid if they do not "rationally comply" with the terms of an approved Comprehensive Plan.

As a second class city in the unorganized Borough, the City of Bethel has authority to implement zoning regulations only if it has implemented a comprehensive plan. [20] The Alaska Supreme Court has described the statutory scheme requiring the adoption of a comprehensive plan as a precondition to municipal zoning authority:

> The planning and zoning process as enacted by the Alaska Legislature is typical of most state zoning statutes. It envisions a hierarchical process in which the comprehensive plan serves as a "long-range policy guide for development of the [municipality] as a whole." The plan is then implemented through zoning decisions. Additionally, the existence of a comprehensive plan helps to "guard against prejudice, arbitrary decision making, and improper motives" by providing substantive standards against which to measure individual zoning decisions....[21]
>
> These requirements are not merely advisory or descriptive. They are mandatory and the failure to conform zoning code to a comprehensive plan gives rise to a remedy for affected residents:

---

[20] AS § 29.35.260(c) ("A home rule city outside a borough shall provide for planning, platting, and land use regulation as provided by AS 29.35.180(b) for home rule boroughs. A first class city outside a borough shall, and a second class city outside a borough may, provide for planning, platting, and land use regulation as provided by AS 29.35.180(a) for first and second class boroughs; AS § 29.35.180 (a) A first or second class borough shall provide for planning, platting, and land use regulation in accordance with AS 29.40

[21] Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd., 904 P.2d 373, 377-78 (Alaska 1995)

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

> We therefore hold: (1) that the plain language of AS 29.40.030(b) is mandatory and requires that the municipality adopt a comprehensive plan (2) that AS 29.40.040 requires that the plan be adopted prior to zoning regulations; and (3) where zoning is enacted prior to the adoption of a comprehensive plan, these statutory sections require that a legal remedy be imposed.[22]

Notably, the court in Lazy Mountain specifically addressed the question of whether an existing zoning code provision could survive the subsequent implementation of a comprehensive plan. The court agreed that it could, but only if the zoning code "rationally complies" with the provision of the Plan.[23] So, the question is whether Bethel's zoning ordinance and land use map rationally comply with the City's Comprehensive Plan. As set forth below, they do not.

2. The Bethel Municipal Land Map and Residential Zoning Code do not rationally comply with the requirements of the 2011 Comprehensive Plan.

In compliance with its statutory mandate, the City of Bethel adopted a Comprehensive Plan in 2011. The 2011 Comprehensive Plan was prepared with the

---

[22] Id. at 378-79.

[23] Id. at n.22 (We do not hold that all zoning decisions made in the past that were made prior to the adoption of a comprehensive plan are invalid. For example, where the municipality has subsequently adopted a comprehensive plan, and the preexisting zoning ordinance rationally complies with that plan, the landowner is not prejudiced and any defect is cured. However, where a municipality attempts to enact zoning regulations presently in the absence of a validly enacted comprehensive plan, the action is unlawful. We need not reach the question of what remedy or remedies might be appropriate in such a case.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

assistance of outside consultants and was the product of six public hearings.[24] Excerpts of the Comprehensive Plan are attached as Exhibit A to this Brief, and the entire Plan is presently available for review on the City website.[25] The 2011 Comprehensive Plan is key to this appeal because: (1) it identifies discrepancies between the zoning code and actual patterns of land use[26]; (2) it proposes the implementation of a new land use map reflecting the reality of development in Bethel[27] and; (3) it plainly provides that the Hackney's neighborhood is, and should be zoned as, a mixed residential use area, not an exclusively residential district. It is unclear why the land use map of the Comprehensive Plan has not been implemented or why the required zoning code amendments were never prepared. Notably, the Residential use code relied on by the City dates from 2005 and the land use map dates from 1990.[28] All of the ordinances that the City of Bethel relies on predate the implementation of the Comprehensive Plan, never were updated to reflect the Comprehensive Plan, and do not rationally comply with the directives of the Plan.

To begin, the Plan provides instructive commentary regarding patterns of land use in Bethel and the goals that the zoning code must implement:

---

[24] See Exhibit A, at pp. 10, 27.

[25] https://www.cityofbethel.org/vertical/sites/%7B86032ACB-92B0-4505-919A-3F45B84FECD9%7D/uploads/Bethel_Comprehensive_Plan_-_2011.pdf

[26] See Exhibit A, at pp. 12, 13, 16.

[27] See Exhibit A, at p. 12-15.

[28] See Record p. 71 (reliance on "Official Land Use Map" Adopted July 10, 1990)

ASHBURN & MASON P.C.
LAWYERS
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
Tel 907.276.4331 • Fax 907.277.8235

> A starting assumption for revising the zoning code is acceptance that land uses are mixed in much of Bethel. As a result, it is not practical to impose a complex zoning code or one that attempts to separate most uses by category, as is done in most U.S. towns (e.g., establishing areas that are purely residential, purely commercial). Instead the code should generally allow for a continuation of mixed use development in much of the community, but set standards so that serious incompatibility can be avoided (for example, a noisy industrial use or auto repair shop in a predominately residential neighborhood).[29]

This Plan goes well beyond generalities or aspirational goals. It also provides a report and assessment about existing, actual, land uses. Map 4.1 shows boundaries of the City and a categorization of actual, existing land uses; the Hackney's property is plainly in an area designated as being developed in a "mixed use – residential" fashion.[30] Amplifying this mixed use designation, the Comprehensive Plan goes on to "indicate areas of town, that are predominantly (but not exclusively) residential. Included in this area are a set of residential subdivision and scattered commercial, institution, or industrial uses."[31] The Comprehensive Plan then goes further, acknowledging the discrepancies between existing zoning codes, and identifying a need to "examine existing Bethel code and existing land uses; [and] revise and simplify land use designations to better fit the reality of Bethel's mixed land use patterns."[32] The Comprehensive Plan even contains a proposed new land use plan map which plainly

[29] See Exhibit A, at p. 16 (emphasis added).

[30] See Exhibit A, at p. 12 (arrow pointing to Hackney property inserted by counsel).

[31] See Exhibit A, at p. 13 (emphasis added).

[32] See Exhibit A, p. 15.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

identifies the Hackney's neighborhood as a "mixed use residential" area, rather than an exclusively "residential" area.[33]

In sum, the 2011 Plan – which is the official statement of City policy regarding the regulation of land use – acknowledges that the 2005 zoning code does not reflect reality, acknowledges that the 1990 land use map does not reflect reality, and proposes, as official City policy, that both the Map and the Code need to be amended to reflect reality. Again, this is not just a general observation, but has specific application to the Hackneys' property, which undisputedly is in an area of actual, current, mixed use, according to the City's own Comprehensive Plan. Despite this, the City has insisted on enforcing a land use map from 1990 and residential zoning rules that are restrictive and narrow in their definition of residential uses, and which, again, are inconsistent with the City's own assessment of actual patterns of current and future land use. In making its decision to restrict the Hackneys' use of their property the City applied the restrictive standards of BMC 18.32.20 and BMC 18.32.030[34] when the 2011 Comprehensive Plan plainly calls more less restrictive use standards in a "mixed use residential" district,[35] which should permit a variety of non-industrial uses, including bed and breakfast operations, such as those permitted in the General Use District defined in BMC

[33] See Exhibit A, p. 14.

[34] Record pp. 72-73

[35] See Exhibit A, p. 15-16.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

18.36.020.[36]

What the Hackneys have proposed is plainly consistent with the intent of Comprehensive Plan. They are proposing a residentially compatible use, not a noisy or disruptive industrial use, in an area that actually, currently, is a mixed use area, and should have been rezoned long ago. This is a fatal flaw for the City's current land use map and mode of regulation, as applied to the Hackneys. State law requires that local regulations be implemented in accordance with a comprehensive plan, and interpretive Alaska Supreme Court case law provides that zoning provisions in effect at the time a Comprehensive Plan is implemented can only survive the implementation of the Plan if they "rationally comply" with the Plan. Here, it cannot be argued that the outdated existing land use map and residential zoning restrictions applied to the Hackneys are consistent in any way with the provisions of the Comprehensive Plan, which, itself, identifies that lack of consistency and the need to be updated. Put another way, the Comprehensive Plan itself states in plain language that the land use map and residential zoning restrictions are not consistent with current land use patterns or the terms of the Plan. The enforcement of land use provisions that violate a City's comprehensive plan is not permitted under 29.40.040, and it is shocking that the City could pursue this action against the Hackneys without giving even a moment of consideration to its own Comprehensive Plan.

---

[36] Record pp 75-76.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

B. Even if the land use plan map and zoning code were valid, which they are not, the City applied incorrect legal standards to the Hackneys' arguments that the municipal Planning Director approved their proposed use, and failed to admit or consider evidence that would have been relevant to consideration of the correct legal standards for estoppel against a municipality.

As set forth in their appeals to the Planning Commission and the Board of Adjustment, the Hackneys contended that they had consulted with then-Planning Director Betsy Jumper, who orally approved the scope and use of their project, and directed them to submit as-built drawings for approval when the project was done. In reliance on this authorization, the Hackneys spent over $300,000.00 in improvements to their property, only to have their application and proposed use denied by Ted Meyers, the successor to Ms. Jumper, who took the position that an approval could only be made in writing and dismissed the Hackneys' claims out of hand. In their notice of appeal from the decision of the Planning Commission, the Hackneys' counsel articulated the law applicable to claims of estoppel against municipalities. As set forth on page 12 of the record, the Hackneys framed the issue as follows:

> We wish to draw the City's attention to the holding of the Alaska Supreme Court in Municipality of Anchorage v. Schneider, 685 P.2d 94 (1984), a copy of which is enclosed. In that case, the Court specifically rejected the position taken by the City in this matter, and permitted a citizen to enjoy the benefits of a permit authorization even though it was made in violation of the relevant zoning ordinance. The Court began its analysis with the correct observation that "[t]he average citizen simply cannot know the extent of authority of every public official with which he must deal, and it is outrageous to deny him justice when he has been misled to his detriment by the acts and statements of public officials within the contours of their responsibilities." The Court then cited with approval the proposition that "a

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

good faith permittee who in reasonable reliance makes a substantial change of position should be entitled to the protection of the doctrine of estoppel.... Increasingly, courts are recognizing the justice of applying estoppel where substantial work has been done in reliance upon municipal permits that were issued illegally or impermissibly."

The Court then observed that the Schneiders had relied on the Municipality's action, that their reliance as foreseeable and reasonable, and that their expenditure of $24,000 in reliance on the permit was significant. In weighing whether or not to uphold the erroneously issued permit, the court held:

> Finally, we conclude that enforcement of the settlement agreement is necessary in the interest of justice. Of primary importance to this determination is the fact that any public injury which may arise from applying the doctrine of estoppel to the Municipality in this case is quite limited. The proposed structure will not violate health or safety codes.... Finally, the record contains no evidence that the Schneiders' proposed construction will be seriously out of character with the present structures in the neighborhood.

Similarly here, the Hackneys have invested significant funds in reliance on information received from a public official acting within the scope of their authority. Their structure does not present any risk to the community, nor will it be out of character with any neighboring uses. We would ask that the City reverse this decision to avoid a miscarriage of justice.

During the Planning Commission proceedings, the City Attorney and City Planner each took the position that an oral approval by a municipal official could not bind the City by estoppel or otherwise. In the case of the City Planner, he reached this conclusion based on the requirement that municipal approvals be by written permit. In the case of the City Attorney, it was argued to the Commission that

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

Jackson vs. City of Kenai[37] precluded a finding of estoppel against the Municipality based upon an oral approval. Based on these incorrect legal standards, the Planning Commission cut off testimony about prior oral approvals and prevailing land use practices in the neighborhood, which would have been relevant to the question of credibility, the Hackneys' reasonable reliance on Ms. Jumper, and the lack of public injury given other land use patterns, as contemplated in Schneider.[38]

The City's prior outside counsel provided bad advice to the Planning Commission regarding City of Kenai, when she incorrectly claimed that it precluded claims of estoppel based on oral approvals. Specifically, the court in City of Kenai recognized that:

> The general elements of equitable estoppel are (1) assertion of a position by conduct or word, (2) reasonable reliance thereon, and (3) resulting prejudice. A fourth element, most often explicitly stated in promissory estoppel cases, is that the estoppel will be enforced only to the extent that justice so requires.[39]

Thus, City of Kenai stands for the proposition that affirmative acts by a municipal official, whether in writing or orally, can estop a municipality. While City of Kenai also precludes claims of estoppel based on merely "passive" acts or a failure to enforce a rule, that type of claim is not at issue here. What is at issue here is a

---

[37] Jackson v. Kenai Peninsula Borough, 733 P.2d 1038 (Alaska 1987)

[38] In that regard the Comprehensive Plan makes it clear that there would be no detriment to the public in permitting a bed and breakfast in an area designated as having mixed use.

[39] Jackson v. Kenai Peninsula Borough, 733 P.2d 1038, 1040-41 (Alaska 1987)

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 - FAX 907.277.8235

claim of an affirmative grant of approval by Betsy Jumper, the City Planner, that the Hackneys reasonably, relied on, expending substantial sums on their development project, and that permitting their use would not be inconsistent with prevailing land use patterns. And, importantly, Ms. Jumper acknowledged on appeal that she "could have" told the Hackneys that they could build the second story of their proposed development project, but the testimony was stopped short and, apparently, not even considered in the Planning Commission's findings. The Planning Commission acted improperly in curtailing testimony about Ms. Jumper's conduct, her and the existence of similar bed and breakfast structures in the neighborhood, both of which would be relevant to a claim of estoppel. The Planning Commission's ruling is flawed in that it failed to acknowledge the existence of conflicting testimony on the issue and failing entirely to acknowledge or consider the implications of Ms. Jumper's admission on cross examination that she "could have" granted an oral approval. And the Planning Commission's ruling (and Board of Adjustment affirmation) are both flawed in failing to articulate any legal standard for measuring a claim of estoppel against a Municipality, much less grappling with the arguments made by the Hackneys and their counsel.

CONCLUSION

The arbitrary application of government power has become a point of intense public debate and scrutiny in a highly troubled calendar year 2020. The application of

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

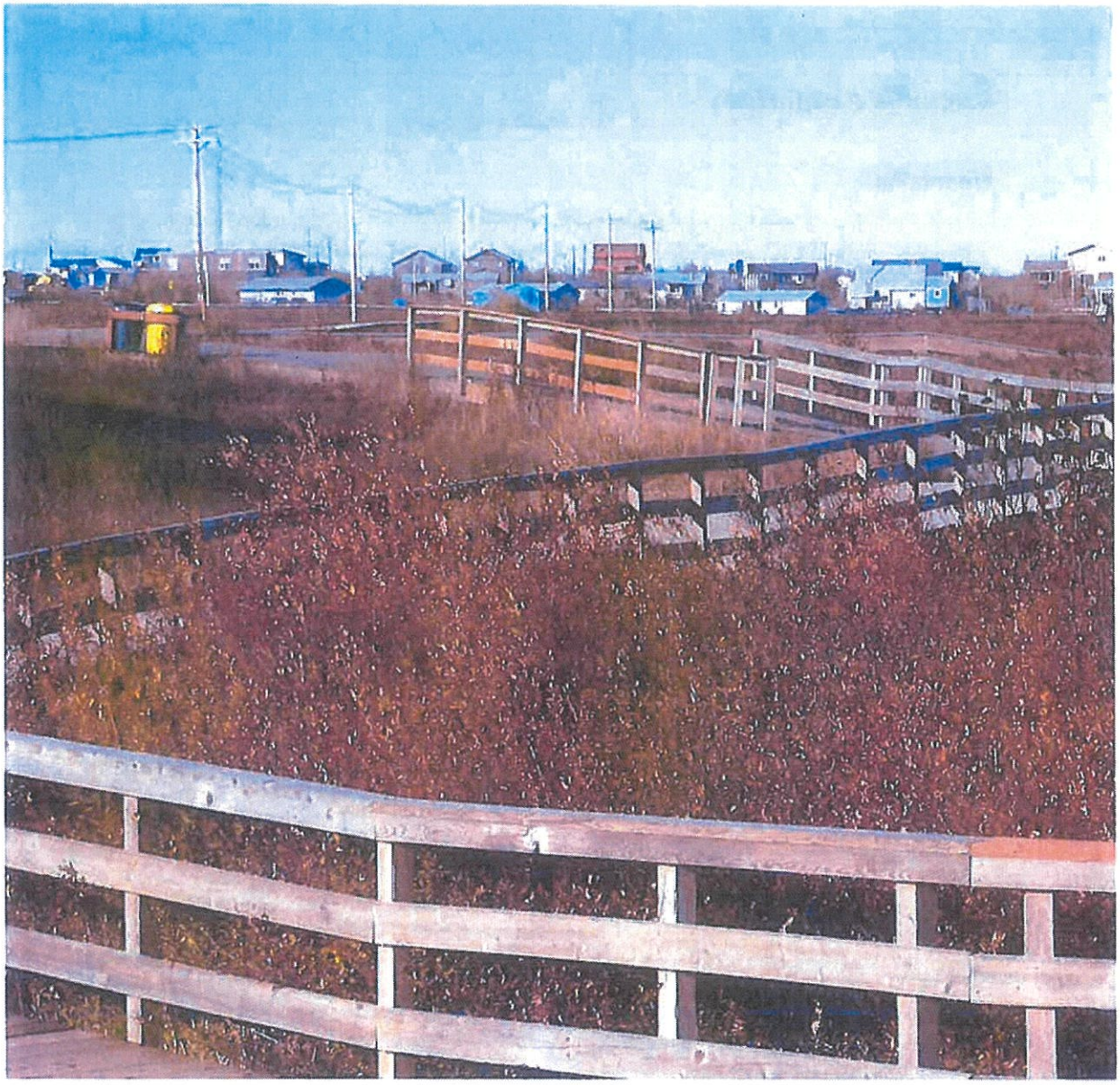
municipal zoning codes may not seem to rise to the same level of importance, being a mundane question of land use unlike questions of abuse of power at the highest levels of the federal government or law enforcement. And yet, the City's conduct in this case is appalling in the scope of its incompetence and in its disregard for the Hackneys' interests. The City commissioned a costly and elaborate Comprehensive Plan document in 2011 – as it was legally required to do -- and then put it on the shelf, totally ignored and unimplemented. The 2011 Comprehensive Plan itself specifically acknowledges that the City's land use map (dating from 1990) and residential zoning codes (dating from 2005) do not reflect reality, and need to be improved as a priority implementation item. And testimony from Ms. Hackney and members of the public at the hearing echoed the Comprehensive Plan's findings, namely, that the purported residential restrictions in the zoning code have not been uniformly applied in the Hackneys' own neighborhood. How can the City enforce rules that the City itself admits do not have a basis in reality and are in need of modification?

The Hackneys had hoped to elicit testimony that would have shed light on Ms. Jumper's pattern and practices for permit approvals as City Planner (a position for which she was, apparently, wholly unqualified). Yet the City suppressed those inconvenient facts, applying improper legal standards for the issue of municipal estoppel, and ignoring the admission of Ms. Jumper that, in fact, she "could have" approved the Hackneys' proposal, just as Ms. Hackney testified. In light of the above,

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

justice requires a remedy, and the only meaningful remedy in this case would be to require the City to approve the Hackney's site plan permit for their structure, as constructed, and to approve their intended use as a bed and breakfast. Such a remedy would be appropriate and flow naturally from a reasonable interpretation of the 2011 Comprehensive Plan and, further, would be warranted by the Hackney's claims of estoppel, which they proved with sufficient evidence before the Planning Commission, and could have proved even more emphatically had all their proffered evidence been admitted.

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 - FAX 907.277.8235



BETHEL

COMPREHENSIVE PLAN

2035

SEPTEMBER 2011

prepared by AGNEW::BECK Consulting
for the City of Bethel, Alaska

ourselves and our children. We will work to develop a healthy, more diverse economy, capitalizing on Bethel's current role as a regional hub for transportation, healthcare, education, government services and trade, but also building a stronger base of enduring, locally based economic activities. We will invest in more stable and affordable energy supplies, and strive to guide development to reduce energy and infrastructure costs. We will promote better access within town by vehicle, public transit, dog sled and four-wheeler, and walking. We envision a community where all residents lead safe and healthy lives, and have access to water and sewer service, fire protection, and affordable housing. We hope to make Bethel a place that takes pride in its appearance, so the town comes closer to matching the beauty of our natural setting, with parks, trails, and accessible natural open space. And we will work together as one important part of the regional partnership needed to sustain our lives in this unique, vibrant land.

Land Use, Housing and Environment (Chapter 4)

Land use in Bethel reflects an ongoing response to human pressures for growth and change as shaped by the challenges of the western Alaska physical environment. The location of development in Bethel is dominated by the need to use the relatively few areas where soils offer few physical building constraints, and where road access is available. The result has been a community with a small central "downtown" with a gridded road system and relatively concentrated, mixed use development. Extending for miles west from the center are several major roads, which provide access to low density, mostly residential subdivisions, irregularly spaced commercial and public uses, and the airport.

Another factor influencing the location of development is the limited supply of private land. Bethel is embedded in the Yukon Delta National Wildlife Refuge. In addition, much of the private land that does exist is Native allotments, which present unique development challenges. The advantage of this land ownership pattern is that almost all the land surrounding Bethel is undeveloped public property, which supports the subsistence activities that are an essential part of Bethel residents' way of life.

Map 4.3

City of Bethel Priorities for Future Community Uses

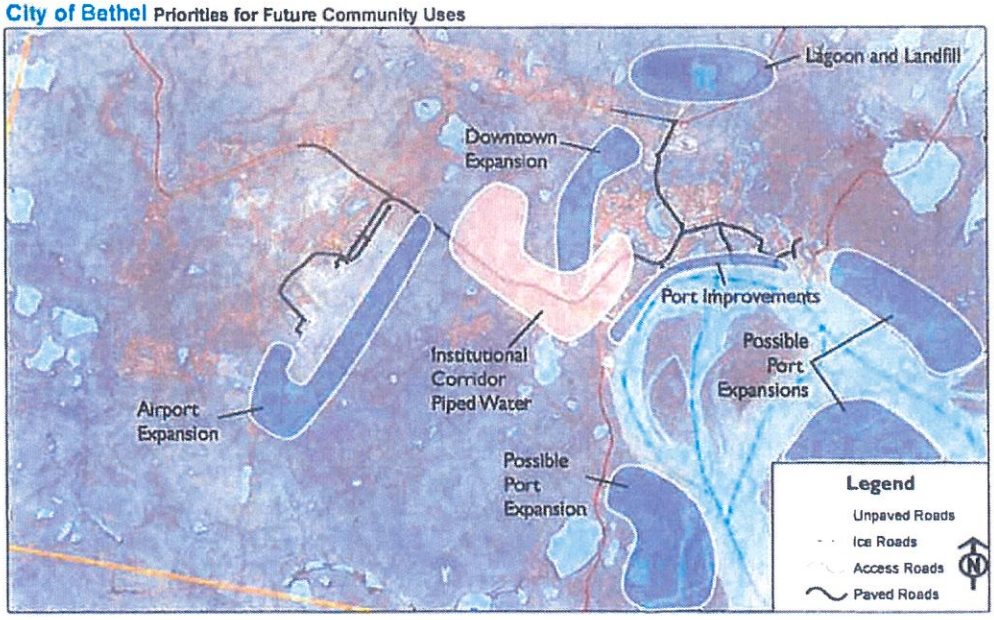


Table of Contents

Executive Summary 1
Table of Contents i
Acknowledgements v
Resolutions from Governing Entities vii

1. About the Plan
Purpose of the Plan 1-1
Support in State Statutes 1-2
Relevant Planning Efforts 1-3
Process to Prepare the Plan 1-3

2. Regional Context
Introduction 2-1
Climate, Environment and Natural Resources 2-1
History and Culture 2-2
Population 2-3
Land Ownership 2-5
Transportation 2-6
Economy 2-7
Public Services and Facilities 2-8

3. Vision and Goals
Values and Vision Statement 3-1
Goals 3-1

4. Land Use, Housing and Environment
Introduction 4-1
Goals and Strategies 4-5
General Land Planning (Goal 1) 4-5
Growth Patterns (Goal 2) 4-8
Land Use Compatibility (Goal 3) 4-11
Housing (Goal 4) 4-13
Safe, High Quality Neighborhoods (Goal 5) 4-13
Environmental Conservation (Goal 6) 4-14
Natural Disaster and Hazards (Goal 7) 4-15
Land Records System (Goal 8) 4-16
City Land Management (Goal 9) 4-16

City Council

Erik Middlebrook, Mayor

Heather Pike, Council Member

Rick Robb, Council Member

Terry Perry, Council Member

Jennifer Schiedler, Council Member

Stanley "Tundy" Rodgers, Council Member

R. Thor Williams, Vice-Mayor

Planning and Zoning Commission

John Guinn

Mike Walter

Joy Shantz

Abe Palacios

Arthur Freitas

Thanks also to all those community members who shared their valuable insight during interviews, public meetings and through written comments.

The **comprehensive plan** is the community's statement of what it wants to be in the future. It provides a framework for orderly development and guidance for the City Council in its decisions. Elders, youth, business owners, employers, property owners, civic leaders and all community residents are encouraged to share their perspectives and ideas.

Support in State Statutes

The State of Alaska defines the Comprehensive Plan as "a compilation of policy statements, goals, standards, and maps for the guiding the physical, social, and economic development, both private and public" of the city (AS 29.40.030). This plan includes an overall vision statement, goals, strategies, implementation actions and general policies.

A Comprehensive Plan is
• A general statement of community goals • Long-term; looks ahead 10, 20, 30 years • A means to gain local control over changes affecting community life • A means to acquire resources to carry out community priorities (e.g., a reference for grant applications) • The foundation for a range of implementation actions: roads, trails, public facilities, land use policies.
A Comprehensive Plan is not
• A zoning ordinance • An application for incorporation • A method for taxation

The **vision statement** expresses the general picture of what the Bethel community aims to be or achieve in the future. **Goals** are more specific statements about how the City and community of Bethel can realize this vision. For each goal, the plan presents **strategies** to provide direction on how the goals can be achieved.

The Implementation chapter contains a table of specific **implementation actions** with timeframes, responsibilities, and some indication of cost assigned to them. These help the City and other responsible parties prioritize what they will accomplish, obtain funding for projects and programs, coordinate with other agencies and organizations, and track the community's progress toward achieving the goals and vision in the plan.

The plan also includes policies, which are statements intended to guide decision-making by the City. For example, the plan includes a Land Use Plan Map, which shows (in a generalized way) the desired mix and distribution of future land uses for the City. This map is a policy that provides guidance for the City Planning Department and Planning Commission when they are

4. Land Use, Housing and Environment

Introduction

Land use in Bethel reflects an ongoing response to human pressures for growth and change as shaped by the challenges of the western Alaska physical environment. The community is located on the Kuskokwim River, which has long served as the primary route for moving people and goods into and within the region. Bethel's specific location is based on its strategic location at a point that can generally be reached by larger oceangoing vessels, and that also serves as a jumping off place to interior villages.

The river has been both the stimulus for settlement and a hazard to development. The original townsite was on the south side of the river, opposite from where it is located today. Because of flooding and erosion, the city moved to its present location. Even at its present location, over the last fifty years the city has had to shift roads and buildings to adjust to the changing forces of the river. As is discussed in the transportation chapter, this critical transportation corridor continues to change course, potentially reducing or even ending water access to the current Bethel port.

Bethel, like much of the Yukon Kuskokwim Delta, is a mosaic of wet and dry tundra, small lakes and streams, where conditions for development range from challenging to very challenging. Almost all the land is underlain by permafrost, and much of the area is poorly drained. Soils are not well suited for on-site septic systems, and many sites do not have the potential for wells. Map 4.2 gives a general picture of the relative degree of physical constraints in different parts of Bethel.

The location of development in Bethel is dominated by the need to use the relatively few areas where soils offer few physical building constraints, and where road access is available. The result has been a community with a small central "downtown" with a gridded road system and relatively concentrated, mixed use development. Extending for miles west from the center are several major roads, which provide access to low density, mostly residential subdivisions, irregularly spaced commercial and public uses, and the airport

Another factor influencing the location of development is the limited supply of private land. Bethel is embedded in the Yukon Delta National Wildlife Refuge. As a result, in contrast to many Lower 48 communities, private land is quite limited. In addition, much of the private land that does exist is Native allotments, which present unique development challenges. The advantage of this land ownership pattern is that almost all the land surrounding Bethel is undeveloped public property, which supports the subsistence activities that are an essential part of Bethel residents' way of life.

Map 4.1 gives a very generalized picture of the patterns of land use in Bethel. The yellow areas indicate areas of town that are predominantly (but not exclusively) residential. Included in this area are a set of residential subdivisions and scattered commercial, institutional or industrial uses. The red areas indicate portions of town that are mostly commercial, institutional and/or industrial uses, but include some residential development.

Map 4.2 is a physical suitability map from the 1997 Comprehensive Plan. It indicates the relative physical constraints for land development in Bethel, considering limitations due to hydrology, soils, wetlands, riparian areas, floodplains, elevation, and drainage. As noted previously, all of this land is relatively challenging to develop. The map identifies areas as fair to moderate where these constraints are less extreme. Though not labeled in the map's legend, the white area in the map generally has poor development suitability.

Map 4.2 helps explain the city's development patterns. The original settlement focused near the river (regardless of poor physical development suitability). The remaining, more recently developed areas spread out along major roadways and near the airport, largely in areas where the land is higher, drier, and more stable.

Land Use Compatibility

GOAL 3: Provide for compatibility among adjoining land uses, so future development maintains or improves the quality of life or land values of surrounding uses.
Strategy 1: Review and revise Bethel land use regulations.
Action 1a: Examine existing Bethel code and existing land uses; revise and simplify land use designations to better fit the reality of Bethel's mixed use land use patterns. *A first suggestion for these uses includes the following categories:* • *Low density residential areas* • *Mixed use - residential primary (residential and limited, residential-compatible uses)* • *Mixed use (mix of commercial & residential, fewer constraints on size and character of commercial).* • *Industrial/heavy commercial zone,* • *Public Use* • *Airport and related uses*
Action 1b: Use the generalized future land use designations in the Land Use Plan Map (Map 4.4), which broadly identifies areas intended for various uses, as the starting point for revising the zoning code in BMC Title 18 (Bethel zoning code). *For example,* • *Low density residential areas. This zone takes in several specific subdivisions, e.g., Tundra Ridge, Larson and Blueberry. In these areas uses should be generally limited to residential uses. Exceptions would be for small home-based businesses with minimal off-site impacts, or perhaps neighborhood serving commercial, such as a small grocery store.* • *Mixed use. This use is intended to be the most common land use zone, made up of residential and residential-compatible uses. Examples of residential compatible uses include schools and other community serving, non-industrial facilities, and churches, office and professional services uses (e.g. health facilities), and neighborhood-serving commercial* • *Industrial/Heavy Commercial. This zone is intended for uses that are generally incompatible with residential, and consequently need to be located where they do not disrupt adjoining residential or residential-compatible uses. This zone includes such uses as warehousing, storage, construction-related industries, marine and aviation-related industries. Key industrial locations include the tank farm, the port, the airport and portions of the waterfront between Second Avenue and the waterfront and the airport.*
Action 1c: Modify code to require a conditional use review process for large- scale uses or any other use likely to have significant off-site impacts. *Examples of such projects include a large scale public building, or a private use such as car repair.*

Housing

GOAL 4: Encourage a range of housing opportunities for current and future Bethel residents, including more housing within the purchasing or rental capabilities of young families, single people, school teachers and other workers.
Strategy 1: Improve existing housing stock, as needed.
Action 1a: Adopt standards for basic level of housing quality.
Action 1b: Create a fund to help property owners upgrade housing to meet minimum standards.
Strategy 2: Encourage cooperative programs to provide additional housing.
Action 2a: Document housing needs.
Action 2b: Identify and, through zoning and infrastructure provision, encourage new housing development in appropriate areas *(Land Use Goal 1)*.

Background

Bethel would benefit from upgrades in the quality and availability of housing. Several specific neighborhoods are in particularly poor condition. A suggestion was made during one of the public workshops to redevelop the BIA hospital, potentially as a rental housing development.

Safe, High Quality Neighborhoods

GOAL 5: Create safe, livable neighborhoods centered around community facilities such as schools, parks, the teen center, and the senior center.
Strategy 1: Encourage neighborhood revitalization and development.
Action 1a: Craft a cooperative strategy to upgrade select neighborhoods (among the City and Bethel-based regional organizations; e.g. AVCP, ONC).
Action 1b: Form a revitalization task force (working with residents and landowners) to identify and prioritize most important revitalization needs. *Take an integrated approach, tackling crime, underdeveloped infrastructure, high energy costs, inadequate housing, lack of parks and open space.*
Action 1c: Work with the City and regional organizations to find funding or other needed resources for carrying out priority projects and programs.
Strategy 2: Establish better neighborhood public safety programs.
Action 2a: Establish a neighborhood watch/citizen patrol program. *Bethel does not currently have a neighborhood watch program.*
Action 2b: Establish a "safe routes to schools" program.
Action 2c: Establish a "Kids don't float" program to educate and distribute flotation devices and coats for kids; keep people from drowning.
Policy 2d: Locate and design community facilities in central areas with high visibility.

- Develop a city-wide, Geographic Information System (GIS) land records system; update as lands are subdivided or developed, and make data available for use by City staff and the general public. (GOAL 8, Action 1a, p9-9)

Transportation

- Establish an agreement between ONC and the City to allow transfer of maintenance funds from the IRR Transportation Program. (GOAL 2, Action 1c, p9-10)
- Install streetlights throughout the city, especially on Ridgecrest Drive, near the schools. (GOAL 2, Action 2c, p9-11)
- Create a Loop Road, either following the existing Tundra Ridge Road route or on a different but comparable alignment. (GOAL 2, Action 4c, p9-12)
- Include site development requirements in the zoning or subdivision code to specify ingress and egress (driveways), lighting, parking, and loading and offloading. (GOAL 2, Action 7a, p9-13)
- Conduct a navigation study of the changing Kuskokwim River along the Bethel waterfront to evaluate design alternatives that would reduce deposition and dredging and improve flow conditions for navigations through the channel crossing. (GOAL 5, Action 1a, p9-15)
- Based on navigation study results, determine the best long-term location for the Port; determine if dredging is needed along the Bethel waterfront. (GOAL 5, Action 1b, p9-15)

Economic Development

- Support development of the community swimming and recreation center (i.e., the BATH Center project; see Public Facilities and Services Objective G, Action 1b). (GOAL 4, Action 1a, p9-18)
- Identify key issues (e.g., energy and freight delivery). Use work on these issues to improve relations and build capacity to take on other important projects. (GOAL 6, Action 2a, p9-21)
- Develop a regional response to the opportunities and challenges posed by the Donlin Creek Mine (e.g., environmental protection, port location, options for regional energy solutions, employment and training). (GOAL 6, Action 2b, p9-21)
- Coordinate lobbying among local and regional institutions to explain the value and impact of programs (e.g., Power Cost Equalization or PCE program). (GOAL 6, Action 3a, p9-21)

Energy

- Establish education and support services for local residents and builders so that existing homes can be made more energy efficient, and to support energy efficient design and construction for new homes. (GOAL 1, Action 1b, p9-23)

- Establish an alternative treatment system to replace existing lagoon. Identify and secure a site for new wastewater treatment system. (GOAL 1, Objective A, Action 4a, p9-28)
- Conduct a cost analysis and rate study for the 2010 Institutional Corridor Feasibility Study, and complete the institutional corridor piped water improvements. (GOAL 1, Objective B, Action 2b, p9-28)
- Identify possible site(s) for a new landfill (to eventually replace existing landfill). (GOAL 1, Objective C, Action 1a, p9-28)
- Consider options for compacting waste (e.g., dynamic compaction). (GOAL 1, Objective C, Action 2a, p9-28)
- Develop and implement a business plan for the Bethel recycling center. (GOAL 1, Objective C, Action 3a, p9-29)
- Market/provide accurate, up-to-date information about what waste management, recycling, composting, and resale services, programs and facilities are available in Bethel. (GOAL 1, Objective C, Action 4e, p9-30)
- Secure new facilities for Bethel Police headquarters. (GOAL 1, Objective F, Action 1a, p9-31)
- Upgrade the Bethel 4-H Youth Center. (GOAL 1, Objective G, Action 1a, p9-31)
- Develop a community swimming pool complex. (GOAL 1, Objective G, Action 1b, p9-31)
- Explore the use of shared facilities and the coordination of services provided by ONC. (GOAL 2, Action 4a, p9-32)

	Priority	Lead	Partners	Cost	Funding Source(s)
Strategy 1: Explore policies (including infill and redevelopment) that could be used to encourage development of lands within or adjoining existing developed areas that have the potential to accommodate new growth.					
Action 1a: Identify and map areas within or adjoining existing developed areas that have the potential to accommodate new growth; these include vacant or underutilized lands served by roads, with good access to public services and employment.	■	City of Bethel	Bethel community, landowners	$ (staff time)	City funds
Action 1b: Review and work to remove barriers that discourage infill and redevelopment (e.g., lack of access to properties, excessive restrictions in the BUC).	◆	City of Bethel	n/a	$ (staff time)	City funds
Action 1c: Create appropriate incentives for individual landowners to redevelop property and/or carry out infill projects that would otherwise not be feasible.	◆	City of Bethel	Bethel community, landowners	$ (staff time)	City funds
Action 1d: Plan for and develop expanded infrastructure, as needed, to support priority uses.	◆	City of Bethel	ADOT&PF, landowners	$$$$	City funds, other
Strategy 2: Remove regulatory hurdles and/or create incentives for more concentrated development.					
Action 2a: Review and revise (as necessary) Bethel's existing parking requirements; where possible, reduce parking requirements and encourage shared parking or access for alternative transportation modes (e.g., pedestrian facilities, transit).	◆	City of Bethel	Bethel community, landowners	$ (staff time)	City funds
GOAL 3: Provide for compatibility among adjoining land uses, so future development maintains or improves the quality of life or land values of surrounding uses.					
Strategy 1: Review and revise Bethel land use regulations.					
Action 1a: Examine existing Bethel code and existing land uses; revise and simplify land use designations to better fit the reality of Bethel's mixed use land use patterns.	■	City of Bethel	Bethel community, landowners	$ (staff time)	City funds
Action 1b: Use the generalized future land use designations in the Land Use Plan Map (Map 4.4), which broadly identifies areas intended for various uses, as the starting point for revising the zoning code in BMC Title 18 (Bethel zoning code).	■	City of Bethel	n/a	$ (staff time)	City funds

	Priority	Lead	Partners	Cost	Funding Source(s)
Action 2a: Establish a neighborhood watch/citizen patrol program.	♦	City of Bethel	Bethel community	$-$$	City funds, other
Action 2b: Establish a "safe routes to schools" program.	■	City of Bethel	Bethel community	$-$$	City funds, other
Action 2c: Establish a "Kids don't float" program to educate and distribute flotation devices and coats for kids; keep people from drowning.	♦	City of Bethel	Bethel community	$-$$	City funds, other
GOAL 6: Maintain and protect the quality of the water, land, and biological resources within the City; encourage the sustainable use of those resources for current and future generations.					
Strategy 1: Conserve and protect natural resources and features that serve valuable functions in the community.					
Action 1a: Identify (and record in the City's land use records) natural resources and features, open spaces, cultural and historic sites that should be protected from development through the City's land use regulatory mechanisms.	■	City of Bethel	Bethel community, landowners	$ (staff time)	City funds
Action 1b: Set standards in Bethel Municipal Code to protect these natural resources and features.	■	City of Bethel	Bethel community	$ (staff time)	City funds
Action 1c: As funding allows, acquire suitable land for open space preservation.	•	City of Bethel	n/a	$-$$$$	City funds, other
Action 1d: Identify and clean up brownfields (contaminated lands) within the City of Bethel.	♦	City of Bethel	state and federal agencies	$-$$$$	City funds, other
Strategy 2: Engage in regional efforts to protect the integrity of natural resources.					
Action 2a: Coordinate with other villages in the region, state and federal agencies to monitor and address any Kuskokwim River water quality problems.	♦	City of Bethel	Regional villages, state and federal agencies	$ (staff time)	City funds
GOAL 7: Protect life and property from natural disasters and hazards.					
Strategy 1: Discourage development in areas more susceptible to natural disasters.					
Action 1a: Investigate alternative ways to reduce the flood hazard within Bethel City Limits.	•	City of Bethel	n/a	$ (staff time)	City funds
GOAL 8: Improve the City's ability to provide quick access to current and accurate information on land status, easements and rights of way, and zoning and other land use regulations.					

Appendix A: Public Comments

Introduction

Appendix A includes a record of public input and feedback on the Comprehensive Plan. It includes:

1. Issue Response
2. Comments Submitted from Kathy Hanson
3. Comments Submitted from the Bethel Sportsman Club
4. Notes from November 2010 Public Workshop
5. Notes from April 2011 Public Workshop
6. Notes from January 2011 Citizen Advisory Committee Meeting
7. Notes from February 2011 Citizen Advisory Committee Meeting
8. Notes from March 2011 Citizen Advisory Committee Meeting
9. Notes from June 2011 Citizen Advisory Committee Meeting

Issue Response

General

- Issue: Plan should say "ONC" instead of "Tribe."
    - Response: Correction has been made.
- Issue: Plan should mention Energy Committee among other committees. The Energy Committee, previously the Alternative Energy Committee, has been around for years and is not mentioned. The Energy Committee has put together 2 Energy Fairs held at the Cultural Center.
    - Response: Correction has been made.

Transportation

- Issue: Planning for trails through Bethel in the future is important. Some trails have been disrupted in the past by the overland water pipes. Although landowners do not want to be told how to use their land for trails, that is why a plan is important so they have good input in how the trails may be used and conserved.
- Issue: Reserving trails is not a priority; Bethel is not an urban enough area.
    - Response: Provisions for future trails are included in the Transportation chapter, at a medium priority level.

- Suggestion: Allow/build small water wells located between (and shared by) two houses; a utility company could service these.
  - Response: Would the homeowners also pay to treat the water coming out of the shared well? Unlike private wells, public wells are required by the Alaska Department of Environmental Conservation (ADEC) and the US Environmental Protection Agency (EPA) to have a water treatment plant at the well. Building water treatment plants is expensive, and if required to service additional residential wells, could increase costs to the Public Works Department. If the City takes on additional wells, it would probably first consider existing wells, such as the FAA subdivision well or the Kasayulie subdivision well.

Solid Waste

- Issue: Recycling, although not very popular activity, should be a very high priority for our town a) to save space in the landfill and b) to improve the environment and c) to conserve natural resources.
  - Response: Recycling
- Issue: Dumpster fees are stated to be $15 and that isn't correct
  - Response: Correction has been made.

Other Public Facilities and Services

- Issue: Build City Laundromat and shower
  - Response: Fuel and electricity costs are prohibitive. If private business hasn't made it work, the City would have to choose to subsidize with public tax dollars. If it chooses to that, it must balance this against other expenditures.
- Issue: We need something in the plan that recognizes the need for safe and available day care.
  - The importance of daycare, childcare and youth afterschool programs is mentioned in the Parks and Recreation section of Public Facilities and Services chapter and in the Economic Development chapter.

To: Vinny Corazza, City Manager

From: Ted Meyer, Planner

Subject: July Manager's Report

Date: July 27, 2020

SUBDIVISIONS

ONC Ciullkulek Subdivision

Construction of the Ciullkulek Subdivision access road started in mid-May. Recent road inspections indicated the project is proceeding as planned.

Blue Sky Estates Subdivision

The Subdivision Agreement was signed on June 26. The Site Plan Permit was approved on the same day, and the Notice to Proceed given. Construction was scheduled for July, but has been pushed back to late August/early September due to the busy fill season.

Tanqik Subdivision

DOWL is currently reviewing plans. In addition, the proposed subdivision agreement is currently being reviewed by DOWL and City staff. Once negotiated and agreed upon, the agreement will be presented to the Planning Commission for recommendation to the City Council.

Tract N Subdivision (at the west end of Tundra Ridge)

Staff is working on a proposal to ensure compliance with BMC road constructions standards.

SITE PLAN PERMITS

Five applications were approved in July, with seven pending.

CODE ENFORCEMENT

Staff continues to work with the City Attorney on a code enforcement issue.

MAPPING

Staff still awaits an update from DOWL of the City Zoning Map. They are adding 78 Blue Sky Estate Subdivision property and two zoning designations recently recommended by the Planning Commission and approved by the City Council. Staff also awaits mapping of all piped water lines, hydrants, and lift stations.

PLANNED DOT&PF ROAD CONSTRUCTION PROJECT

DOT&PF continues to finalize ROW issues regarding the planned road access project that would include connecting Tundra Ridge with BIA Road. Survey Firms started preliminary work in July.

BUSINESS LICENSE APPLICATIONS AND ZONING CHECKS

The Finance Dept. and Planning Dept. have coordinated to set up a process for ensuring that business license applications and renewals are consistent with the Zoning Code.

BETHEL EMERGENCY OPERATIONS CENTER BUSINESS

Planning staff, in their role as EOC Logistics, continue to order Personal Protective Equipment and sanitary supplies from the State EOC and from commercial vendors as well. Staff also purchases meals and delivers to air travelers with overnight stays whose connecting flights out of Bethel are not the same day.

RFP REVIEW & SCORING

Reviewed and scored RFP for 5-year auditing services. Met with review team on July 17 to discuss.

CITY OF BETHEL
Office of the City Manager

Vincenzo S. Corazza
P.O. Box 1388, Bethel, Alaska 99559
Phone: (907)-543-1373
Fax: (907)-543-1388
citymanager@cityofbethel.net

Celebrating 50 Years of Service

DATE: August 4, 2020

TO: Bethel City Council

FROM: Vincenzo S. Corazza, City Manager

SUBJECT: City Manager July 2020 Monthly Report for August 11, 2020 Regular City Council Meeting

The July monthly administration report on city finances and operations is as follows:

Finances Highlights

City finances are on track and under budget with 100% of the fiscal year having elapsed (Expenditure Reports run a month or so behind). Departments operating spending percentages in the General Fund appear below:

Administration	70%
Finance Dept.	100%
Planning Dept.	69%
IT Dept.	87%
Fire Dept.	98%
Police Dept.	86%
PW - Admin	85%
PW - Streets & Roads	79%
PW - Property Maintenance	38%

Note Property Maintenance's budget includes capital expenditures and $1.6 million is unspent and rolls over into this year's, FY21 budget. This explains their low percentage.

Departments operating spending percentages in the Enterprise Funds appear below:

Hauled Refuse	64%
Landfill Operations	62%
Utility Billing	54%
Hauled Water	61%
Piped Water	89%
Bethel Hts Treatment Plant	72%
City Sub Treatment Plant	88%
Hauled Sewer	75%
Piped Sewer	73%
Sewer Lagoon	74%
Municipal Dock	59%
Small Boat Harbor	73%
Bethel Transit	85%
Vehicle & Equipment	79%

See attached Year-To-Date Report printed on 7/31/2020 that covers the Year To Date for the 12 months ending June 30 2020 for detailed financial information.

Operation Highlights

During the month of July 2020, City facilities remained partially opened to the public with limited hours and mitigating measures in place due to the ongoing Coronavirus (COVID-19) emergency. Mask requirements have been in effect since the day city facilities were reopened after Memorial Day.

Fin: Cheryl Bartlett with Carmon Jackson, CPA LLC returned again in July to train Finance Team members, straightened the utility billing as well as sales accounts, and conducted investigations into utility billings and sales tax accounts. She has unearthed hundreds of thousands (if not millions) in missed revenue opportunities.

Fin: City Council has authorized the City to sign a new 5-year contract with a new CPA firm to audit the city's finances. Carmon Jackson will assist the city with audit prep and the new Auditor will begin their work sometime in winter 2020.

PW: Hauled Utilities is down to 11 of 18 drivers. 9 drivers is the minimum number that were identified through Covid-19 discussion as the system failure amount.

PW: Utility Maintenance repaired 16 residential lift stations and fixed a water main that broke in the ASHA/Bethel Heights neighborhood.

PW: Property Maintenance is finishing up the Americans with Disabilities Act (ADA) compliant ramp for the Public Works building. See photo of progress.

PW: Transit provided one of their extra busses as an EOC Transport to ferry Layover Passengers from the Airport to and from their non-congregate shelter/hotel.

PD: Patrol has four vacancies – 3 Peace Officers and 1 Dispatcher.

PD: The approximately 1,370 calls, especially intoxicated pedestrians and DUI for in July, an increase from June, was possibly attributed to the early issuance of the Permanent Fund Dividend (PFD) checks on July first.

FD: Chief Bill Howell retired on July 31, 2020.

FD: The Fire Department responded to 137 EMS and 17 Fire calls during July.

POB: Port Office conducted maintenance along the seawall adding rip rap (armor rock) along the rock wall as well as ripping out trees near Lower Access and Beach 2. Clearing vegetation allows the "trail" to be visible from the waterside and increased attractiveness to be used as a recreational trail (left side of embedded photo).

Plan: Five site plan applications were approved in July with seven pending.

Plan: ADOT&PF continues to finalize ROW issues regarding the planned road access project that would include connecting Tundra Ridge with BIA Road. Survey Firms started preliminary work in July.

IT: Began work on installing surveillance systems at city facilities – City Hall, Public Works and Fire Department.

HR: For the month of July, the total number of personnel vacancies was 14. Four Permanent hires were conducted.

EOC: CARES Act Budget and Spending Plan was approved thru Council on 7/14/2020

EOC: Rolled out two projects: YKHC Covid Testing Support at Airport Program and Lodging Transit Personnel/Covid-19 Layover Lodging Program.

Department Reports

Detailed reports from the following departments are attached (after Financial YTD Report):

1) Finance Department
2) Public Works Department
3) Police Department
4) Fire Department
5) Port of Bethel
6) Planning Department
7) Information & Technology Department
8) Human Resource Department
9) Emergency Operations Center

Memorandum

To: Bethel City Council

From: John Sargent, Acting Finance Director

Subject: Acting Finance Director's Report for August 11, 2020 City Council Meeting

Date: August 2, 2020

Carmen Jackson, CPA LLC

The City of Bethel signed a contact with Carmen Jackson, CPA LLC that allows the firm to provide a host of accounting services to the City until December 31, 2021 and audit preparation services for two fiscal years, ending March 31, 2022.

Trainer Cheryl Bartlett has been to Bethel twice in the last six weeks for two weeks each time. Cheryl conducts investigations into utility billing and sales tax accounts to find errors in data entry, cash receipting, document ties, and billing. Cheryl's mantra to Finance Department staff is to "work the aging report." Cheryl is devising a three-month schedule for her future visits.

Contract for Audit Services

The City Manager and I must complete background check forms and other documentation before CPA firm BDO will sign a contact with the City to complete the FY 2020 audit and financial statements. BDO is the firm that formerly completed five years of City audits prior to the five-year series recently completed by Altman, Rogers & Co.

Personnel Changes

I submitted a request to the City Manager to allow me to hire someone to fill a sixth Accounting Specialist position. Currently, there are five Accounting Specialist I positions in the FY 2021 Budget: two specializing in utility billing, two specializing in sales taxes, and one specializing in accounts payable/payroll. One utility billing Specialist occupies the office in the Public Works building in order to accept utility bills and work closely with the hauled utility foreman.

One Accounting Specialist specializing in sales taxes submitted her two-week resignation on July 31, 2020. Another Accounting Specialist specializing in sales taxes accepted a transfer to the Hauled Utility Division to serve as Administrative Assistant. The individual serving the Department in a temporary position at the front desk is leaving Bethel for 7-10 days. Another Accounting Specialist in utility billing is on leave and due back August 10th.

I plan to freshen up the vacancy announcement for the Assistant Finance Director and then have the HR Director add the position to the executive search firm hired by the City to find a Finance Director. The hope is that both positions can be hired about the same time.

Bed and Breakfasts, Air B&Bs, and Other Lodging Businesses

The Finance Department continues to work with the Planning Department to determine the location and legitimacy of various lodging businesses in Bethel. Some of the lodging businesses do not have business licenses and others with business licenses are inappropriately located in residential zones.

Expected FY 2021 Budget Modifications

The FY 2021 Budget will need to be amended to reflect continued FY 2020 expenditures in the Finance Department that were not adequately compensated for in the FY 2021 Budget. Late spring 2020 costs not caputured in the FY 2021 Budget include the use of Caselle staff to perform some utility billing functions at $2,000+ per month, the training cost provided by Carmen Jackson, CPA LLC ($15,000 for each 2-week visit), and the cost of the temporary Administrative Assistant position filled in early June 2020 to cover the front desk. A recent unanticipated cost incurred was the addition of six new Caselle accounting system site licenses so that all department heads, foremen, and administrative assistants can access the program simultaneously.

William Arnold, Public Works Director
1155 Ridgecrest Drive
PO Box 1388 Bethel, AK 99559
P: (907) 543-3110
F: (907) 543-2046
warnold@cityofbethel.net

MEMORANDUM
DATE: 07.31.2020
TO: Vincenzo S. Corazza, City Manager
FROM: Bill Arnold, Public Works Director
SUBJECT: Manager's Report – Public Works Department

Programs/Divisions

Hauled Utilities:

Workforce has grown a little this month; we still have several positons to fill and will need to do our best to fill them before winter comes. The new fleet continues to prove its worth, as mechanical failures are few. V&E has been very quick to fix any mechanical issues we have had. As a result of a new fleet and V&E we have consistently completed our routes reliably. I feel like the Satellite Utility Billing office is a great asset when it is staffed, but becomes a stressor/problem when it is not staffed. This month has been stressful for account-holders and myself because of the confusion.

Utility Maintenance: 16 alarms on residential lift stations were responded to. Multiple issues with grinder pumps and float systems.

- Monthly meter reading and service connections were completed
- Clean up and organization of shops and vehicles.
- 16 residential lift station repairs
- Line flushing and leveling activities on low-flow and plugged sewer lines. Non-compliance reports were filled out per DEC requirements.
- Daily safety meeting
- Main water line broke up in ASHA and has been repaired and we are continue to monitor it.
- The water line to the courthouse broke and has been repaired and we continue to monitor it.
- Been working with to Fire Dep. On getting hydro testing done.
- We been cutting brush by the PD line getting ready to install new sewer line
- All three Utility Maint. Trucks are having issues that require repairs. Several of these are major safety issues. Continue to work with V&E to repair them, but some issues are arising due to two of the vehicles are more than 10 years old

Property Maintenance: Progress on Public Works ADA Compliant Ramp

Road Maintenance:

Streets and Roads have hauled all the salt sand that we will need this winter from the city sand pit to the salt sand pile on the shop's north side. We hauled 550 dump-truck loads to this sand pile to be mixed with salt when we get it on the last barge of the year.

Streets and Roads has been pushing up sand at the city sand pit for the last two weeks, with the D-8N, for the dump trucks. We pushed up five piles, two road sand piles, two landfill piles and one pile for the salt sand this winter.

In July, Streets and Roads hauled two barge-loads of D-1 gavel from Knik's yard to the gravel pile on the south side of the City shop. This was a total of 3,600 hundred tons of D-1 gravel.

Streets and Roads has been hauling cover to the Landfill's winter cover pile for this winter to be used for cover. We also will have the salt to mix with this pile on the last barge of the year.

Street and Roads dug a seawall culvert pipe across 9300 road by 9330 Tundra Ridge and reset it. It has been sinking for the last 4 years and was below ground level, becoming a problem to thaw with our steamer in the spring.

Gravel pile so far.

Landfill / Recycle Center:

The Landfill has been actively using our new dump truck along with the road crew to haul cover material, road sand and/or sand for our winter salt sand pile. It's hard to believe how we did it before without a dump truck for so many years.
We have had a couple of temporary workers who cleaned up green up duties, picked up bulky items and cleaned around dumpsters. They have helped a lot with the draining of vehicles and doing some of the busy work that frees up our operators to do the real work that needs to be done every day.
The Kuskokwim Art Guild painted all 18 new dumpsters and now they are ready for use.

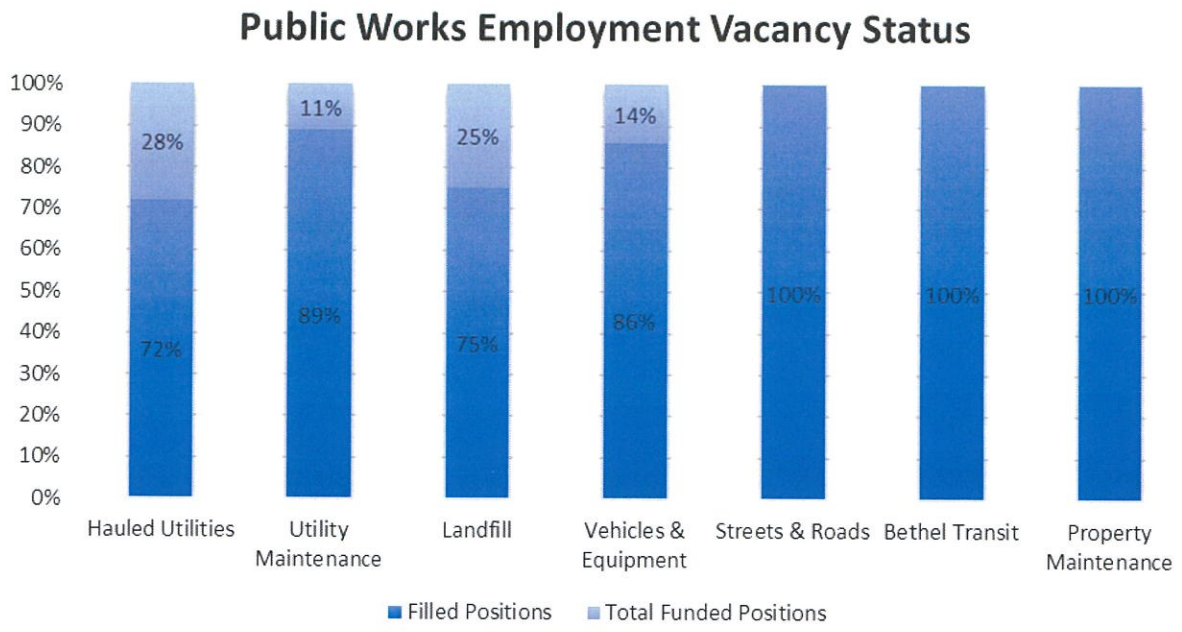
Water Plant Operations:

- Bethel Heights Water plant
    - Standard daily rounding with nothing significant to note.

- City Sub Water Plant
    - Daily rounds to building for boiler checks and heat output.
    - We send it 20 Lead and Cooper samples SGS lab for testing.
    - Lost elect power 4 hours 7/29 blown fuse at transformer.

Staffing Issues/Concerns/Training:

Chart Updated: 07/31/2020



Department	Hauled Utilities	Utility Maintenance	Landfill	Vehicles & Equipment	Streets & Roads	Bethel Transit	Property Maintenance
Filled Positions	13	8	3	6	5	3	5
Total Funded Positions	18	9	4	7	5	3	5

Bethel Transit System
PO Box 1388
370A 4th AVE
Bethel, AK 99559-1388
www.cityofbethel.net
(907)543-3039

July Transit Report

Good morning, the July report for Transit is still fairly limited. There were (0) no accidents/incidents to report. I have been working on trying to streamline the daily input requirements in order to ease the needs for AKDOT/BlackCAT.

Martin Prince Jr. was hired 6/30 as the new part time bus driver, and has slid into his role relatively seamlessly as he has been a commercial driver/bus driver most of his adult life.

Bus 438 was removed from the register mid-month and taken to the Fire Department by Mr. Arnold (Public Works Director) and Mr. Thompson from V & E. Bus 439 remains on the register and is awaiting a Plexiglas shield to meet the requirements of the City of Bethel for driver/passenger safety. There also continues to be issues with the right rear dually lug nuts working loose on Bus 439. This is a safety issue and will need continual monitoring. Bus 440 is the only active bus and recently went into the shop for regularly scheduled maintenance.

Both Bus 439 and 440 were in the July 4th parade at the request of Mr. Corazza (City Manager) and Mr. Arnold, and accrued 31.0 miles advertising the Bethel Transit System along with the Fire and Police department vehicles.

Mandatory training was attended by both drivers 7/30/2020 and I will be in the same training today.

Beginning, August 1st, there will once again be the regular Green Line route starting at 930am and concluding at 230pm. A request was made via email to Ms. Dan to place advertising of this via various social media at the beginning of this week. Both drivers were reminded to place word of mouth advertising during their regular runs through town, and updated schedules were printed and placed in the bus for the passengers to view.

Attached in the graph below are the various statistics current as of today for ridership and maintenance requirements:

	Week 1	Week 2	Week 3	Week 4	Week5	Week 6
Total Ridership	106	216	173	249	As of Thu - 221	UNAVAILABLE
Disabled Pax	11	32	35	39	As of Thu - 43	UNAVAILABLE
$3 - Adult	18	34	29	53	As of Thu - 25	UNAVAILABLE
$2 - Youth	5	4	9	12	As of Thu - 2	UNAVAILABLE
$1 - Senior	13	14	15	11	As of Thu - 21	UNAVAILABLE
Para-rider	0	0	0	0	As of Thu - 0	UNAVAILABLE
Monthly Pass	$60 Adult - 1	$30 Youth - 0	$25 Senior - 0			
Fuel Total (Gal)	49.609	91.729	94.18	85.684	As of Thu - 73.905	UNAVAILABLE
Revenue Miles	337.3	705.3	696.1	694.2	As of Thu - 566.4	UNAVAILABLE
Service Date	7/18/2020	Mileage Done	20,533.00			
ONC Passes Sold	$25 Senior - 47	$60 Chap - 14				
TWC Passes Sold	$5 Day - NONE	$3 ATP - NONE	$2 YTP - NONE			
OCS Passes Sold	$60 Adult - 1					

UNAVAILBLE - Due report due date

ATP - Adult Trip Pass
YTP - Youth Trip Pass
Chap - Adult Chaperone

James Ferguson
Bethel Transit Manager

CITY OF BETHEL
POLICE DEPARTMENT

July 2020 Monthly Report

Personnel:

Current Staffing			
Position	Allocated	Staffed	Vacant
Community Safety Patrol	3	3	
Community Service Officer	2	2	
Administrative Assistant	2	2	
Dispatcher	4	3	1
Dispatch Supervisor	1	1	
Peace Officers	16	13	3

Current peace officer vacant positions are the newly grant funded school resource officer, one patrol officer, and one police lieutenant. Officer Todd Herring will be starting next rotation, which took use from 4 to 3 sworn vacancies. Dispatcher Randall Kennedy left at the end of July, and CSP Mullai has submitted his notice to leave mid-August. Investigator Pavil continues to serve well as acting lieutenant.

Operations:

Operations				
	July 2020	June 2020	July 2019	2020 Total
Calls	1370	1129	1538	7510
Reports	107	95	132	691
Intoxicated Pedestrian	262	197	374	1157
Driving Under Influence	18	3	20	78
Domestic Violence Reports	28	37	40	202
Animal Call	41	32	37	300
Animal Bite	4	1	2	18
Death Investigation	0	2	2	14

The uptick in overall calls, especially intoxicated pedestrians and DUI, was possibly due to the early issuance of the PFD checks on July first. PD support of EOC operations continues as needed by way of staffing a liaison officer, assisting with transport of airline passengers, and encouraging voluntary compliance of citizens through our everyday contacts.

CITY OF BETHEL
Fire Department

William F. Howell, III, Fire Chief
P.O. Box 1388, Bethel, Alaska 99559
Phone: (907)-543-2131
Fax: (907)-543-2702
bhowell@cityofbethel.net

Celebrating 50 Years of Service

DATE: July 31, 2020

TO: Vinny Corazza, City Manager

FROM: Daron Solesbee, Fire Captain

SUBJECT: Management Report, July 2020

Current Events

- Chief Howell has decided to retire after almost 28 years of honorable service with the Bethel Fire Department. His last day was Friday, July, 31, 2020. Good luck with your future endeavors and enjoy retirement!
- The Department has completed its annual NFPA ground ladder and fire hose testing. Annual NFPA testing of the Department's fire pumps and City of Bethel's fire hydrants have been started. Staff is working with Underwriter's Laboratories, Inc. to schedule fire pump testing.
- Medic-5 has been stocked with equipment and personnel are conducting Driver/Operator training. This ambulance will be placed fully in service as soon as this is completed.
- The 2020 Cama-i Dance Festival has been postponed until Fall 2020 due to concerns regarding the Novel Coronavirus (COVID-19).

Community Planning/Preparedness

- The department is working as part of the City of Bethel COVID-19 Task Force under the Operations Section of the Emergency Operations Center. Captain Solesbee is currently serving as the Operations Section Chief and FF/EMT Haviland is the EMS Branch Supervisor. Currently, staff are trained in precautions and PPE is used on all EMS incidents.
- Bethel Fire Department has been selected as a test site for the new Medicaid Supplemental Emergency Medical Transport (SEMT) program. The City of

Bethel will receive training from AP Triton in the coming months for program implementation and management.

- Fire department staff members are conducting pre-incident planning inspections for various commercial and assembly occupancies. This information will be crucial, should an emergency incident occur at these locations.

Training

- On 07/02/2020 at 11:00 a.m., a Staff Meeting was held at the fire station. Staff reviewed current department events, training, and project assignments.

- On 07/07/2020 at 7:00 p.m., an EMT Meeting was held at the fire station. Responders reviewed intravenous resuscitation and conducted drills.

- On 07/09/2020 at 7:00 p.m., a Fire Meeting was held at the fire station. Responders reviewed ground and aerial ladder operations and conducted drills.

- On 07/21/2020 at 7:00 p.m., an EMT Meeting was held at the fire station. Responders reviewed emergency medication use and conducted drills.

- On 07/23/2020 at 7:00 p.m., a Fire Meeting was held at the fire station. Responders conducted an overview of the use and maintenance of the Trimax 30 Mini-CAFS units.

Responses

- Between 07/01/2020 and 07/31/2020, the Bethel Fire Department responded to 137 EMS and 17 Fire incidents.

- On 07/05/2020 at 5:00 p.m., Medics responded for a person coming from a village by boat with a broken leg. The patient was assessed and transported to the hospital.

- On 07/21/2020 at 10:00 p.m., Firefighters responded to Main Street for the report of smoke showing from the old Prematernal Home building. Firefighters observed smoke emitting from the building and requested fire tones for additional personnel and resources. Firefighters extinguished the fire and returned to quarters. The fire cause is under investigation.

- On 07/22/2020 at 1:30 a.m., Firefighters responded to Main Street for the report of multiple cars on fire at Nicholson's Auto. Firefighters observed three vehicles on fire. The fires were extinguished and Firefighters returned to quarters. The fire cause is under investigation.

- On 07/30/2020 at 3:11 a.m., Firefighters responded to Napakiak Drive for the report of a fire in a boiler room. Firefighters observed smoke upon arrival and extinguished the fire. The fire was caused by a boiler malfunction.

Budget/Financial

- The department is operating within budget.

Grants

- The Department was awarded $5,141.00 from the Department of Homeland Security for a new Thermal Imaging Camera (TIC). One MSA Evolution 6000+ thermal imaging camera was received and was mounted on Truck-1.

- The Department has submitted an invoice to YKHC Injury Control & EMS for the Phase 18 Code Blue Grant reimbursement of $45,000 for the remount of Medic-5 to a new chassis. **This request is still pending.**

Staffing/Recruitment

- The Department will soon start the recruitment process for a new Fire Chief.

- Shanna Mendenhall was hired to fill the Firefighter Intern position. Shanna was a former Firefighter Intern in Summer 2019 and recently returned from U.S. Army basic training at Fort Sill, OK and Advanced Individual Training (A.I.T.) in San Antonio, TX as a 68W Combat Medic. She is certified as a State of Alaska EMT-1 and NREMT. Welcome back to our team, Shanna!

Vehicles & Equipment

- We have received the parts for the Class-A Foam system for Engine-4. Staff determined that a 1" valve was required, upon finding the ¾" valve shipped was too small for the current foam system plumbing.

- Fire pump testing is upcoming August 2020. Staff will perform vacuum and leak tests to ensure they will pass when tested by Underwriter's Laboratories, Inc.

FIRE DEPARTMENT VEHICLE STATUS			
Vehicle	**Type**	**Year**	**Status**
Medic 4	Ambulance	1999	*(Backup ambulance)In service.*
Medic 5	Ambulance	2019	Received in Bethel via the second Alaska Marine Lines barge. V&E conducted a mechanical inspection and BFD staff are currently outfitting this ambulance and conducting Driver/Operator training before being placed into service.

Medic 6	Ambulance	2017	*(Frontline Ambulance) In service.* Driver's side rear Liquid Spring Suspension strut was replaced by FF Wenger. Back-Up camera is not functioning (wiring/connection issue). Rear heat in patient compartment is intermittent. Paint defects. Staff is requesting a technician from Braun Northwest to troubleshoot and repair these issues.
Engine 4	Pumper	2013	*(Frontline pumper)* In service, Seat belt sensor silenced but still needing repair by V&E. Generator is experiencing frequent 20A fuse blowouts. Pump packing rings need to be tightened and/or replaced.
Engine 3	Pumper	1986	*Being outfitted as a tender and water supply unit. 3000 feet of LDH (future).* (Poor overall condition needs replacement). Generator was remounted. Pump packing rings need to be tightened and/or replaced.
Truck 1	Ladder Truck	2017	Outfitting, in service. See 2019 UL Pump and Aerial reports. DEF sensor malfunction was repaired by V&E. The aerial desiccant plugs and hydraulic pump to be repaired by V&E or Hughes Fire Equipment technician.
Com 1	Pickup	2014	In service. Mirror adjustment button inoperable. Replacement ordered.
Com 2	Pickup	2004	In service.

`PORT OF BETHEL

Post Office Box 1388
Bethel, Alaska 99559
Voice: 907-543-2310
Fax: 907-543-2311

TO: Vinny Corazza, City Manager

FROM: Allen Wold, Port Director

SUBJECT: July 2020 Managers Report

- **Small Boat Harbor**
  -Picking up drift, cutting grass/trees, and picking up around dumpsters.
  -Taking boats out of Storage off the pipes still.
  -Tagging vehicles with impound signs that seem to have been abandoned.
  -Bilging boats out and calling owners to take care of their own boats. Customers complaining that we don't bail their boat out enough. We bail/bilge boats out of courtesy.

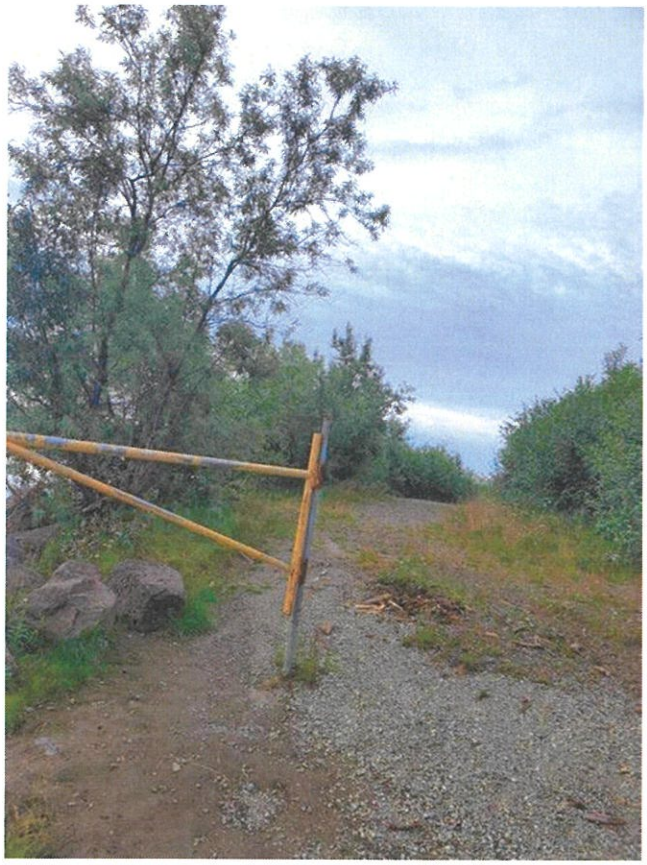
- **City Dock/Beach 1/Petro Port**
  -3 mainline barges (AK Logistics and AML) AML had to lighterage one their tug/barge down river on to a smaller barge.
  -Repairing weather port and our office connex.
  -Teaching one of my guys to use the Grader.
  -Tugs/barges (M/V Chena and M/V Warhorse) pulled up to Beach 1 to be repaired.

- **Port Office**
  -Property Maintenance checking on building daily.
  -Finally got our VHF and camera antenna.
  -Cleaning office daily with disinfectant.

- **Admin**
  -Monthly storage/wharfage/moorage billing for customers.
  -Safety meetings with crew. Meetings with the Directors and City Council Meetings.
  -Met with Coast Guard. Just a meeting about the climate and residents.

- **Seawall**
  -Daily checks along seawall, consistent clean up replacing life rings and line that go missing.
  -Welded and tightened cable fencing in front of 1st National and the East Addition.
  -Adding more rip rap (armor rock) along rock wall.
  -Ripping out trees along rock seawall on Lower Access and Beach 2.

- **Misc.**
  -Inventory of tools, cleaning supplies, etc. in office and shops.
  -V&E working on our pickups.
  -Streets and Roads using our heavy equipment.
  -We had a summer hire intern for a month.
  -Ordered and new truck and skid steer. Waiting on quotes for hydroseeder.



Memorandum

Date: August 1, 2020
To: Vinny Corazza, City Manager
From: Bo Foley, IT Director
Subject: IT Director's Report

July 2020 Current Events

July has been an exceptionally busy month. Below are some of the current event highlights that took place. Items are organized into a ***purchasing agent*** section and an ***IT director*** section.

Purchasing Agent

- **Request for Bids (RFB) Business:**
  The following RFBs have closed –
  1) Sewage Lagoon Pump – Closed on 6/29/20, being presented for Council approval on the last meeting of July. Winning bidder – DXP/Alaska Pump & Supply.
  2) Sewage Lagoon Boat and Trailer – Closed on 7/21/20, being presented for Council approval on the last meeting of July. Winning bidder – JC Enterprises.

- **Request for Proposals (RFP) Business:**
  The following RFPs have closed –
  1) Financial Auditing Services – Closed on 7/6/20, scored on 7/17/20, being presented for Council approval on the last meeting of July. Winning proposer cannot be disclosed until the contract agreement is signed and finalized.

- **Vehicle Purchase:**
  The Port approached me and requested I look into the possibility of procuring them a Ford Ranger for use in their Port operations. The costs for this had rolled over from the previous fiscal year. I found a state contract that the City would be able to leverage to reach out to Kendall Ford of Anchorage for the purposes of finding a vehicle that would work. Fortunately for the City, Kendall did have one left in stock. I sent the purchase orders to them and hopefully they will be able to have the vehicle sent out to us before the final barge of the season.

- **Sole Source Justification:**
  I have been in talks with our V&E and Streets and Roads supervisors about justifying NC Machinery out of Anchorage as a sole source vendor for CAT-brand equipment. The City currently uses all CAT equipment for its gravel road maintenance and is very pleased with the quality of the product they use. Naming NC Machinery (the only reseller of CAT parts and equipment in Alaska) a sole source vendor will allow them to expedite the procurement of repair parts and new equipment for gravel road maintenance. The decision will be placed before Council by month's end.

Memorandum

Date: August 1, 2020
To: Vinny Corazza, City Manager
From: Bo Foley, IT Director
Subject: IT Director's Report

- **Surplus Auction:**
  I have been in communications with Public Works regarding an upcoming vehicle surplus auction they are organizing. My role in the event is to be a single point of contact for those submitting bids for vehicles. After the auction closes in August, I will handle the bid management. The bidding window closes on August 6th.

IT Director

- **Surveillance Systems Installed:**
  Some months back, City Manager Corazza directed me to purchase a security camera system for City Hall, Public Works, and the Fire Dept. With some assistance from the City's contracted electrician, VanGo, we were able to complete the installation for all three systems this month. Cameras were placed indoors at most if not all points of entry for each building so to help protect the cameras from the extremes of Alaska's winters. Due to time constraints, the electrician will help us install a second batch of cameras towards the beginning of the upcoming month.

- **Reorganized P-drive:**
  The City has a collaborative network drive that is accessible to everyone with network credentials called the "Public drive" or "P-drive". Over the many years this resource has been in place, a lot of different files have been stored on this network drive with no rhyme or reason to its organization. Those that feel this chaos the most are employees that have joined the City's family recently and cannot find anything within that drive.

  To alleviate this issue, City Manager Corazza directed me to try and put into place an organization method where all files that are added into that drive are organized into department-specific folders that are logical to both long-time employees as well as new. Security rules have been set up so this organization cannot be disrupted, which should keep the file structure at least somewhat sensible going forward.

- **Emergency Operations Center Equipment:**
  With the birth of the City's C.A.R.E.S. Act budget, the City is now free to start making COVID-related purchases without the apprehension of obliterating each department's operational fund. City Manager Corazza had me get with the Fire Chief to discuss purchases needed to renovate the Fire Dept classroom into a workable Emergency Operations Center (EOC). Up until this point, we have been setting up a makeshift EOC within City Hall's Council chambers. Purchases include EOC-dedicated equipment, additional power, network wiring, as well as launching a project to hook KYUK up to our backup power generator so that, in the event of a loss of power, they can remain operational to help us get important information out to the public.

- **ArcGIS Licensing for Fire Dept:**
  The Fire Dept expressed an interest to be able to view and develop maps similar to what the Planning Dept uses in its day-to-day operation. I purchased additional licenses and installed the ArcGIS Desktop software at the Fire Dept. With it, they should not only be able to view some of our existing map data, but should also be able to work with our Engineering firm, DOWL, to develop new maps specific to the Fire Dept such as accurately-marked locations of all City fire hydrants.

- **SQL Upgraded for Finance:**
  SQL Studio is a software we use for database management. The database is the heart of our financial management program, Caselle. Up until recently, our SQL software was so old that Caselle placed a hold on our updates. According to Caselle, updating while on the SQL version we had would have completely broken the system and crippled our Finance dept.

  We managed to get SQL upgraded this month and Caselle unlocked our updates. We were then able to bring our version of Caselle up to the most recent release, version 2020.5.171. When our new servers are installed in September (hopefully), our version of SQL will be updated further to the most recent which should prevent this issue from coming up again for the near future.

Future Plans

- **Server Refresh:**
  The timetables for the City's server refresh project have been updated. Arctic IT is looking to have resources join me in Bethel to begin the installation and data migration in September. Currently, we are in a holding pattern until all ordered equipment either arrives onsite in Bethel or arrives to Arctic IT and they will bring it with them.

- **Phone System Swap:**
  Alaska Communications is currently engineering this project for me. The project itself is fairly complex because our network has many points that must be considered such as how our phone system ties into the Vesta E911 equipment. Once the engineering of the project is completed, they will get me the figures for costs and we can progress to getting equipment ordered.

30 July 2020

CITY OF BETHEL

Post Office Box 1388
Bethel, Alaska 99559
Phone: 907-543-2047

TO: City Manager
FROM: Human Resources
SUBJECT: July 2020 Managers Report

DATE: 30 July 2020

Position	Number of Vacancies	Number of New Applications	Number Hired During Period	Number of Vacancies Remaining	Applicants in Review
Finance Director	1	0	0	1	0
Asst Fin Dir	1	3	0	1	2
Police Lieut.	1	0	0	1	0
Police Ofc	1	1	0	1	1
Public Safety Dispatcher	1	0	1	1	0
PW Admin Asst (FY 21)	1	1	0	1	3
Driver Hauled	6	1	1	6	1
Mechanic	1	0	1	1	0
Water Operator	1	0	0	1	0
TOTALS	**14**	6	2	14	7

Applications and Hiring:

HR received a total of 5 **Applications** in July

From those 3 Applicants:

1 Dispatcher was hired
1 Police Officer was hired
1 Transit manager was hired
1 Hauled Utility Driver was hired
1 internal promotion was conducted (dispatch supervisor)

We currently have 9 job positions with a total of 14 openings, with 7 applications under review.

BEACON Programs:

1 random test was conducted with all selectees successfully tested

Reports of Injury:

There were no reports of injury

Administrative Actions:

Multiple routine PAR actions were executed.

Multiple yearly performance evaluations were submitted and processed.

Employee related announcements:

None

Training, Conferences and Seminars:

HR conducted annual Prevention of Sexual Harassment training 30/31 July. Training continues into August. Goal is 100% workforce trained

James P. Harris
Human Resources Manager

CITY OF BETHEL, ALASKA
EMERGENCY OPERATIONS CENTER

DATE: August 4, 2020

TO: Vincenzo S. Corazza, City Manager

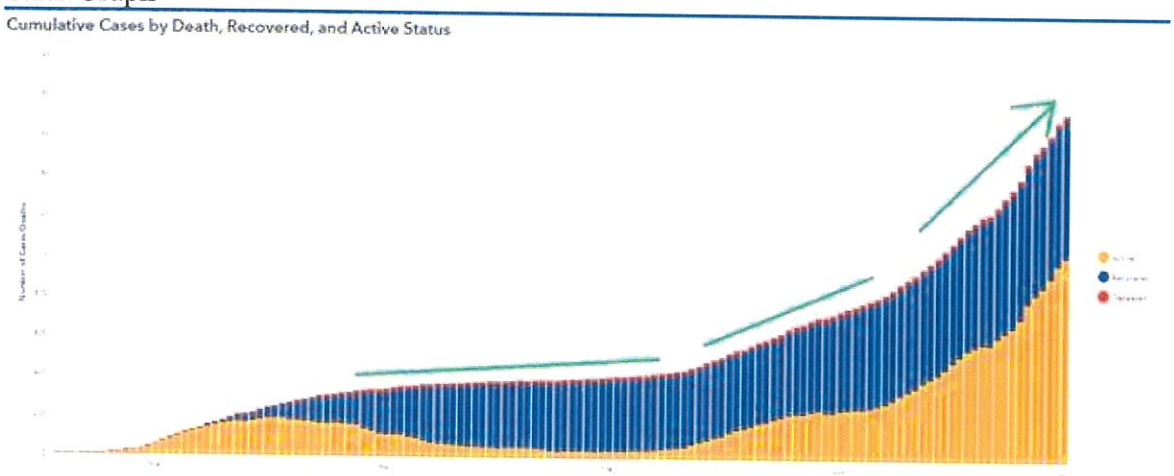
FROM: Vincenzo S. Corazza, Emergency Operations Center director

SUBJECT: Emergency Operations Center July 2020 Report

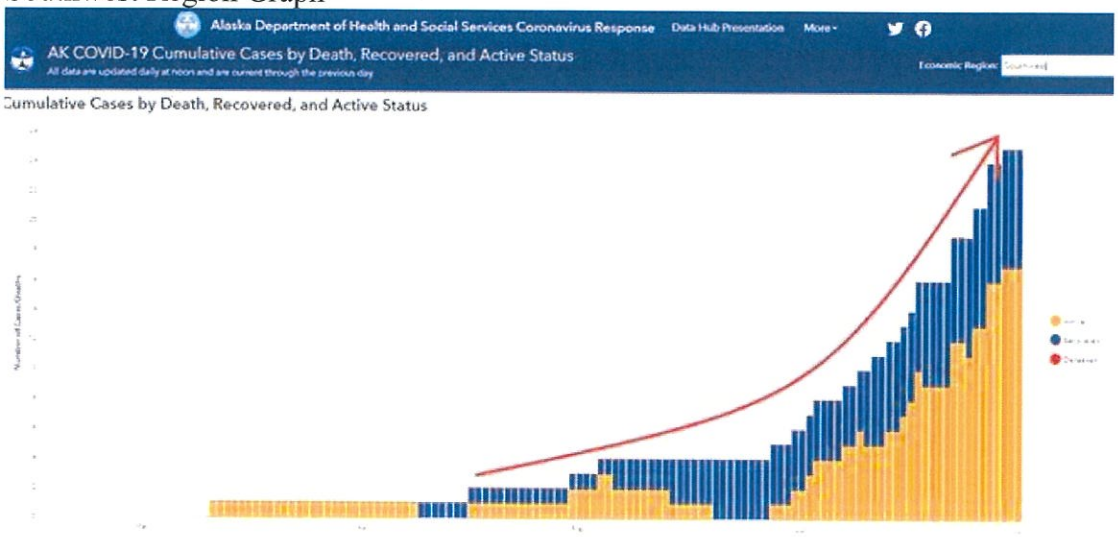
Operations Highlights

Starting July 22, the Emergency Operations Center (EOC) was elevated to Level 3 for every Wednesdays due to the uptrend in State Covid cases as well as the Southwest region (see embedded graphics).

State Graph



Southwest Region Graph



YKHC COVID Testing Support at Airport

As approved in the CARES Act Budget and Spending Plan, the EOC is using some of its CARES Act funds to implement an incentive program to encourage airplane passengers who arrive in Bethel from Anchorage (the Alaska "hot zone") to get a COVID-19 test at the Yukon Kuskokwim Health Corporation's (YKHC) airport test site.

Three City-paid personnel staffed a booth at the airport for demonstration weekend July 25-26, 2020 and gave out 55 gift cards on Saturday and 69 gift cards on Sunday. Program was well-received by incoming passengers.

The City received full cooperation from Alaska Airlines Station Manager for tent placement and staff work inside terminal. YKHC allowed the City to share their table inside the terminal and cooperated with City-paid staff outside at the City tent.

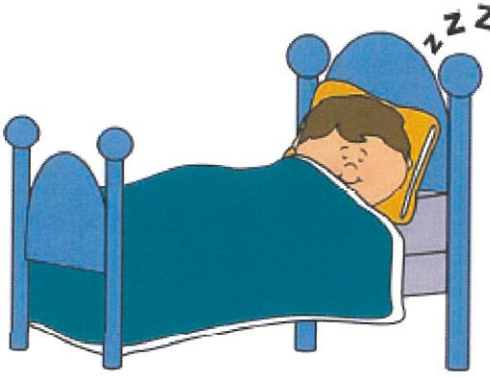
Lodging Transit Personnel (COVID-19 Layover Lodging Program)

Also approved in the CARES Act Budget and Spending Plan, the EOC rolled out the Lodging Transit Personnel program, also known as the Layover Lodging Program. The intent of the Layover Lodging Program is to use CARES Act funds to cover the cost of lodging, and meals on a contingency basis, for those airline passengers from Anchorage who are unable to make a connecting flight the same day to a neighboring village. The purpose of the program is to keep Anchorage through-passengers isolated in a hotel and not interact with the Bethel community or have hotel visitors. Program participants must submit to a COVID-19 test and have a scheduled flight out of Bethel.

See embedded Flyer promoting the program.

Laying over in Bethel?

COVID-19 Lodging



The Bethel Emergency Operations Center can help you get layover lodging! Just call 907-543-2083 to check for availability!

Need lodging while waiting for your flight connection?

NO Cost to you!! **We will provide food and transportation!!**

What you need to do:

1. Test for COVID-19
2. Don't leave your room (isolate)
3. Have no visitors
4. Follow the rules of your hotel

Call us at 543-2083!!

Finances Highlights

On 7/14/2020, the City Council passed the CARES Act Budget and Spending Plan, authorizing the EOC to start spending the first disbursement of the $8.4 million ($4,193,478.70) that was received and deposited on 6/29/2020.

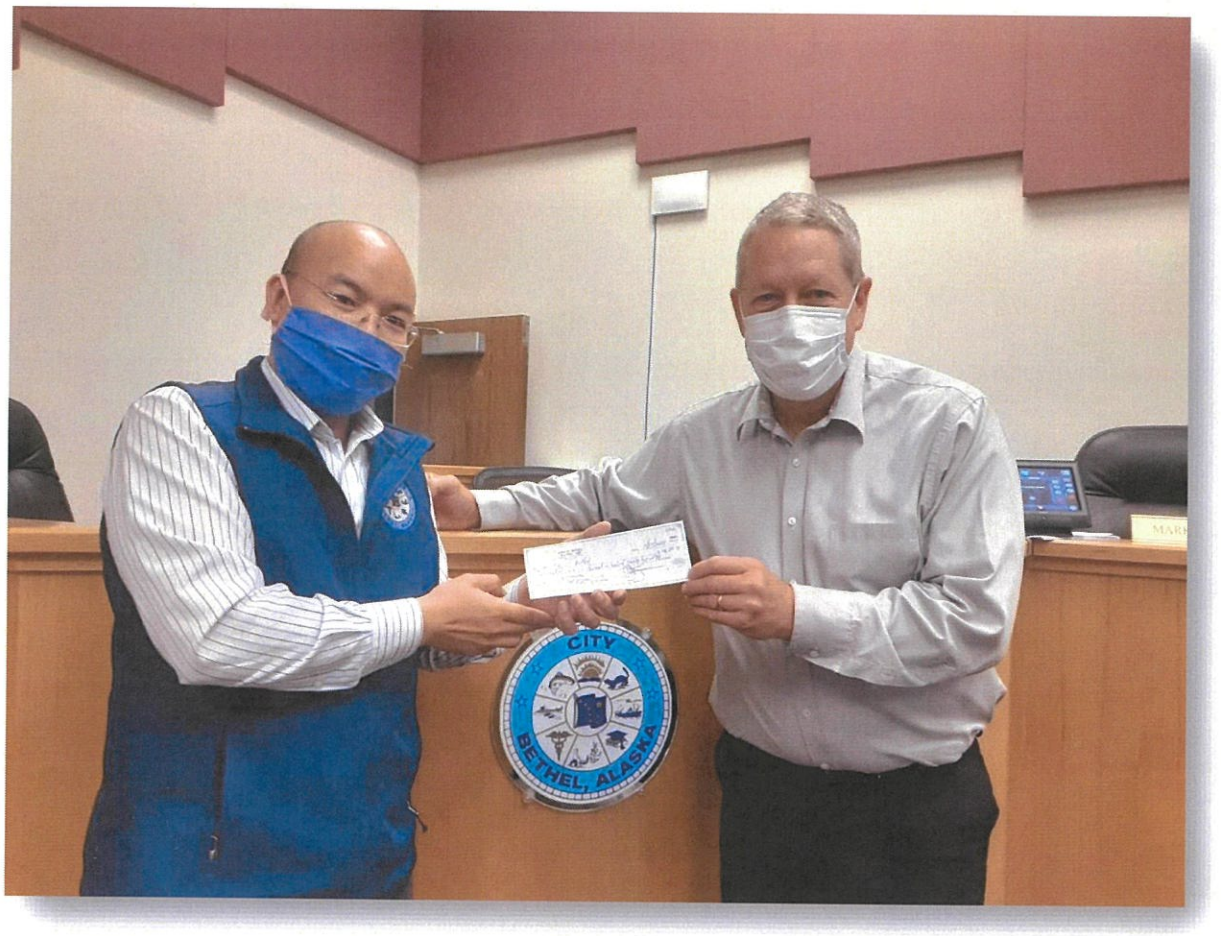
State of Alaska requires 80% of the first disbursement (50% of total $8.4 million) to be spent before the second disbursement of 25% of $8.4 million is released and then consequently 80% of that total to get the third and final disbursement.

As of July 31, 2020, the EOC has expended $2,088,139.63 or 49.8% of the first CARES Act disbursement. The EOC plans on requesting the State of Alaska immediately send the second disbursement upon filing the July CARES Act report to the State of Alaska Office of Management and Budget.

The $2,088,139.63 includes the following expenditure categories:

Medical	$6,897.68
Public Health	$3,315.45
Payroll	$796,675.91
Compliance	$0
Economic Support	$1,120,000
Other	$161,250.59

Of note is the $797K for Payroll. This is the City's reimbursement for Public Safety personnel during the month of March 1, 2020 thru June 30, 2020. See attached write-up.



7/29/2020 Vinny Corazza, in his capacity as Emergency Operations Director, issues a Public Safety Personnel Payroll Reimbursement CARES Act Check in the amount of $796,675.91 for the months of March 1 thru June 30, 2020 to John Sargent, in capacity as Acting Finance Director for the City of Bethel.

The reimbursement is eligible as highlighted in the US Department of Treasury guidance, https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf

The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. How does a government determine whether payroll expenses for a given employee satisfy the "substantially dedicated" condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.