



CITY OF WASILLA

290 E. HERNING AVE.

WASILLA, ALASKA 99654-7091

PHONE: (907) 373-9050

FAX: (907) 373-9085

COUNCIL MEMORANDUM

NO. 97-80

FROM: Clerk's Office

DATE: October 23, 1997

SUBJECT: Appeal of Planning Commission Decision

On October 16, 1997, the Clerk's Office received an appeal by the Southview Extension Homeowners' Association regarding the re-zone of the south 1/2 tract A6, Section 13, T17N, R1W, Seward Meridian from RR-Rural Residential to C-Commercial, a tract of land generally located south of the Parks Highway and West of Carson Street. I have notified Mr. Shiesl, president of the Southview Extension Homeowners' Association, that a \$200.00 appeal fee is required for the appeal to go forward to Council and have given Mr. Shiesl until Monday to pay that fee.

The Planning Department has copied the file for your information. Also attached is 16.43.322 (B), Appeals to the Council for your information.

Council needs to do one of the following:

1. accept the appeal; or
2. refuse to accept the appeal.

If Council chooses to accept the appeal, the City Clerk will refer the hearing to the first hearing officer who can hear the appeal expeditiously.

If Council chooses not to accept the appeal, Ordinance Serial No. 97-66 should be introduced and scheduled for public hearing.

Marjorie D. Harris, CMC
City Clerk

*Council did not
consider the appeal
10/27/97
M. Harris*

16.43.322 Appeals to the Council. An appeal to the Council of a Commission decision shall be by serving written notice of appeal on the City Clerk within five (5) days of the decision. Notice of an appeal is considered served when actually received or when properly mailed. Approved uses may proceed during the appeal process unless specifically ordered by the Planner to cease.

A. The appeal must contain a clear description of the decision or decisions being appealed, the date of the decision, the error claimed and an explanation of the error. Upon receipt of a timely filed appeal and the required fee, the City Clerk shall calendar the appeal for the next Council meeting for which the agenda has not closed. The Planner shall forward to the City Clerk and Council a copy of any permit application, the Planners' analysis and decision, the Commission's decision and findings and any other relevant material.

B. At the meeting at which the Council receives the appeal, it shall determine whether to accept the appeal. The failure of the Council to accept the appeal constitutes a refusal by the City to hear the appeal. If the Council determines to hear the appeal, it shall refer the appeal to a hearing officer for hearing and decision. The City Clerk shall refer the hearing to the first hearing officer who can hear the appeal expeditiously.

C. Public notice, comment period and the hearing format of the appeal shall be conducted in front of the hearing officer following the procedures for a conditional use in section 16.43.506.

D. The burden of proof is on the party challenging the Commission decision. The hearing officer may hear and decide an appeal based solely on the record or may open the record. Only persons who have submitted written argument on appeal or testified before the Commission, or submitted written comments to the Commission may present oral argument. Any party to an appeal from a Commission decision may cause the appeal record to include a verbatim transcript of the proceedings before the Commission by filing a request therefor, accompanied by a cash deposit in the amount of the estimated cost of preparing the transcript. Within five days of notice of completion of the transcript the person requesting it shall pay the actual cost thereof, or the deposit shall be forfeited to the City. A request by the City for a transcript is not subject to the deposit or refund provisions of this subsection.

E. After hearing the appeal, the hearing officer may confirm the decision, reverse the decision and may add conditions or may change conditions placed on the approval. The hearing officer's decision must set forth the fact found and the reasons for the decision. The date of the decision is the date the findings and the reasons are set out in writing and signed by the hearing officer. The City Clerk shall, by certified mail, serve a copy of the hearing officers decision and appeal record on the applicant. A copy of the appeal record shall be available for public inspection at the City Clerks office.

F. The decision of the hearing officer is the decision of the Council and is final for the City. The decision of the hearing officer and the refusal of the Council to hear an appeal may be appealed to the superior court as provided under the applicable rules of court.

G. An aggrieved party may seek an appeal before the appropriate State of Alaska court only after final exhaustion of all administrative remedies and appeals. All such judicial

(CW 09/97)

Donald W. Shiesl
3050 Danny's Avenue
Wasilla, AK 99654
(907) 376-1462

October 15, 1997

City Clerk
City of Wasilla
290 E. Herning Avenue
Wasilla, AK 99654

Re: R97-58

Madam:

On behalf of the Southview Extension Homeowners' Association, I am protesting the vote of Planning Commissioner Harold Newcomb on Resolution 97-33.

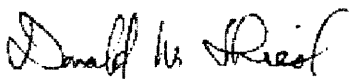
Mr. Newcomb is married to Mr. James Carson's sister. Mr. Carson is the owner of the property in question. One concern that we have is that there may have been discussions between Mr. Newcomb, his wife, and Mr. Carson regarding this issue to which the rest of the Planning Commission was not privy.

At the very least, Mr. Newcomb should have disclosed his relationship to Carson at the meeting and let the Commission decide whether this is a conflict of interest or falls under the State Open Meeting Law in which an "appearance of fairness" is expected of board members.

At the direction of the Planning Commission, the Association entered into good faith negotiations with Mr. Carson to try and resolve some of the issues of concern to us. We agreed to support the rezoning only if our concerns were addressed and negotiated by Mr. Carson and accepted by the Planning Commission. Because this did not happen, the Association no longer supports this rezone at this time.

The Southview Homeowners' Association requests that Mr. Newcomb's vote on Resolution 97-33 be nullified, that the Resolution be reconsidered by the Commission, and that the rest of the Commission decide whether Mr. Newcomb can vote on this issue.

Sincerely,



Donald W. Shiesl, President
Southview Extension Homeowners' Association

cc: Mayor Palin
City Council Members

Sherry A. Shiesl
3050 Danny's Avenue
Wasilla, AK 99654
(907) 376-1462

October 15, 1997

City Council Members
City of Wasilla
290 E. Herning Avenue
Wasilla, AK 99654

Re: Zoning Request R97-58, Petition of James Carson

This letter is in protest of the decision made by the Wasilla Planning Commission to approve the subject rezoning request. This was a request to rezone 20 acres from Rural Residential to Commercial.

The matter was originally set for public hearing at the Commission on June 17. Property owners were given the opportunity to provide written comments in advance of the hearing. Of the ten written comments included in the Commission packet for the meeting of the 17th, 9 were in opposition to the requested rezone, and 1 was neutral. In addition, a petition in opposition was submitted which was signed by 20 property owners of Southview Extension (some of these individuals also submitted separate written comments).

At the conclusion of the public hearing, during which the testimony was largely in opposition to this rezone except that of Mr. Carson's agent and family members, the Commission determined that this was a complex issue with no clear resolution. They instructed the homeowners to "work it out" with the petitioner and postponed their action on the matter pending our negotiations.

This item was rescheduled for action, and subsequently postponed, several times. Throughout this time, the homeowners met as a group, conducted discussions with Mr. Carson's agent, and made every effort to reach an agreement which would be acceptable to the parties. On August 5 we received verbal agreement from Steve Gallagher (Mr. Carson's agent) to several important items which were confirmed by the homeowners in a letter to Mr. Gallagher dated August 7. We continued to try to get a written agreement from Mr. Carson, but such a document was never received. Believing that the Planning Commission intended to attach conditions to the re-zone based on our agreement, we spent many, many hours on this matter.

October 15, 1997

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Lacking a written confirmation from Mr. Carson, we once again circulated a petition of opposition among the homeowners. This petition was submitted to the Planning Commission at the meeting of October 14. It was signed by 23 individuals. This is a strong sign of the feelings of our neighbors. According to the memo from the City Planner dated June 13, "Due deference has been given to the neighborhood plan or comments and recommendations from a neighborhood with an approved neighborhood plan." Although we have no "neighborhood plan," the memo goes on to say "the Planning Commission traditionally gives full consideration to all citizen comments received..." Since no resident of the neighborhood spoke in favor of this rezone, it cannot be demonstrated that this in fact happened.

At the meeting of October 14, in which the rezone request was ultimately approved, nearly every individual present took the opportunity to speak to this issue. Mr. Newcomb was very argumentative with several of the homeowners. I would suggest that Mr. Newcomb should have declared a conflict of interest in this matter due to his relationship to Mr. Carson, and should have abstained from voting.

Our group has acted in good faith to attempt a satisfactory resolution, as directed by the Commission. In fact, Mr. Gallagher submitted a written request to the Commission that certain conditions be incorporated. The Commission, however, voted approval and determined that it was inappropriate to attach conditions to the rezone.

In addition to the concerns detailed in our written comments to the Planning Commission, I would like to raise the issue of a large commercial development being located so close to our neighborhood and the potential impact on our water supply. I would hope that the City would consider extending City Water and Sewer service to any new development there as I fear a negative impact to the water table serving the wells of the residents.

I request that you carefully review the entire history of this request when it is brought before you for action. I respectfully request that you do not approve this rezone.

Sincerely,



Sherry A. Shiesl

cc: Mayor Palin

Please note: The original of this letter will follow by mail. I would like to ensure its distribution prior to Council action on this matter. Thanks!

October 27, 1997

To: Wasilla City Council

Re: Conflict of Interest Complaint

While it is true that I am married to the sister of James Carson, he and I are virtually estranged. We seldom communicate in any way. I have never discussed the subject issue with him.

I am a licensed Real Estate Broker in the State of Alaska. You will note that he has listed his land for sale with several other Brokers, but never with me. I hold no interest of any sort in the Carson Property now or contemplated. I can think of no way in which I might profit one way or the other in question of the Rezone of the Carson Land.

I stand ready to answer any questions by the Commission on this issue.

The Commission has probably made an error in allowing Development Issues to enter into a zoning question.

In my opinion zoning and development are two distinct and separate issues. The conditions placed on the rezone by adjacent property owners should properly be heard in the Development Process.

I certify that I have not discussed the subject of Rezone with Mr. Carson or his Broker after the meeting of October 14, 1997

Sincerely,



Harold S. Newcomb

**Copies to: Mayor
Planning Commission**