



FAIRBANKS CITY COUNCIL
AGENDA NO. 2014-08
REGULAR MEETING APRIL 21, 2014
FAIRBANKS CITY COUNCIL CHAMBERS
800 CUSHMAN STREET, FAIRBANKS, ALASKA

PRELIMINARY MEETING

5:30 P.M. WORK SESSION - Explore Fairbanks (FCVB) – Log Cabin Lease

REGULAR MEETING

7:00 P.M.

1. ROLL CALL
2. INVOCATION
3. FLAG SALUTATION
4. CITIZENS COMMENTS, oral communications to Council on any item not up for Public Hearing. Testimony is limited to five (5) minutes. Any person wishing to speak needs to complete the register located in the hallway. Normal standards of decorum and courtesy should be observed by all speakers. Remarks should be directed to the City Council as a body rather than to any particular Council Member or member of the staff. In consideration of others, kindly silence all cell phone, electronic and messaging devices.
5. APPROVAL OF AGENDA AND CONSENT AGENDA

(Approval of Consent Agenda passes all routine items indicated by an asterisk (*). Consent Agenda items are not considered separately unless a Council Member so requests. In the event of such a request, the item is returned to the General Agenda).
6. APPROVAL OF PREVIOUS MINUTES

7. SPECIAL ORDERS

- a) The Fairbanks City Council, Sitting as a Committee of the Whole, will hear interested citizens concerned with the following Appeal of Denied Application for new Chauffeur License. Public Testimony will be taken and limited to five (5) minutes.

Applicant: Elliot Cruikshank

- b) The Fairbanks City Council will convene as a Board of Adjustment in the matter of the below-stated administrative decision of the Fairbanks North Star Borough Planning Commission:

A request by Kal Kennedy for an additional lot size variance to the Multiple-Family Residential zone (MF) minimum lot size requirement of 90,000 square feet to allow for a 69,606 square foot lot on Lots 1A, 1B & 1C, Block 04 of Executive Park Subdivision.

NOTE: The board shall not hear arguments nor take additional testimony or other evidence. Only the material contained in the appeal packet shall be considered.

- c) The Fairbanks City Council, Sitting as a Committee of the Whole, will hear interested citizens concerned with the following Application for a New Liquor License. Public Testimony will be taken and limited to five (5) minutes.

Type: Beverage Dispensary – Duplicate
 DBA: The Attic
 Applicant: The Last Roundup, LLC
 Location: 2701 S Cushman Street (Upstairs)

- d) The Fairbanks City Council, Sitting as a Committee of the Whole, will hear interested citizens concerned with the following Liquor License Applications for renewal. Public Testimony will be taken and limited to five (5) minutes.

Lic #	Establishment Name	License Type	Premise Location	Owner Name
542	Geraldo's Restaurant	Beverage Dispensary	701 College Road	Garlic Lovers LLC
884	Pizza Hut #4	Restaurant/Eating Place	1990 Airport Way	Kurani Inc
1475	Pizza Hut #5	Restaurant/Eating Place	89 College Road	Kurani Inc
1920	Reflections	Beverage Dispensary	2406 S Cushman St	The Lighthouse Inc
2851	Shenanigan's	Beverage Dispensary	2406 S Cushman St	Tiffany Park West Inc
4168	Lower LA	Beverage Dispensary	636 28th Ave (downstairs)	Two Amigos, LLC
5169	HooDoo Brewing Company	Brewery	1951 Fox Avenue	Fairbanks Fermentation, LLC

8. MAYOR'S COMMENTS AND REPORT

9. UNFINISHED BUSINESS

- a) Ordinance No. 5943 – An Ordinance to Repeal Fairbanks General Code Chapter 14, Article III Transient Vendors and Reenact it as Article III Multi-Vendor Events. Introduced by Mayor Eberhart. SECOND READING AND PUBLIC HEARING.
- b) Ordinance No. 5944 – An Ordinance to Amend Fairbanks General Code Chapter 14, Article XIII Business Licensing. Introduced by Mayor Eberhart. SECOND READING AND PUBLIC HEARING.

10. NEW BUSINESS

- *a) Resolution No. 4621 – A Resolution in Support of Allowing Craft Distilleries in the Central Business District Zone. Introduced by Council Member Staley.
- *b) Resolution No. 4622 – A Resolution Amending the Schedule of Fees and Charges for Services by Adjusting the Multi-Vendor Event Permit Fees. Introduced by Mayor Eberhart.
- *c) Ordinance No. 5945 – An Ordinance Ratifying a Labor Agreement between the City of Fairbanks and the International Brotherhood of Electrical Workers Local 1547. Introduced by Mayor Eberhart.
- *d) Ordinance No. 5946 – An Ordinance Amending the 2014 Operating and Capital Budgets for the Second Time. Introduced by Mayor Eberhart.

11. DISCUSSION ITEMS (INFORMATION AND REPORT)

- a) Committee Reports

12. COMMUNICATIONS TO COUNCIL

- *a) Chena Riverfront Commission Meeting Minutes of February 12, 2014
- *b) Clay Street Cemetery Commission Meeting Minutes of March 5, 2014

13. COUNCIL MEMBERS' COMMENTS

14. CITY ATTORNEY'S REPORT

15. CITY CLERK'S REPORT

16. ADJOURNMENT

City of Fairbanks Clerk's Office

Janey Hovenden, City Clerk

Date: April 15, 2014
To: Mayor John Eberhart
City Council Members
From: Janey Hovenden, MMC, City Clerk
Re: Denial of Application for City of Fairbanks Chauffeur License
– Elliot M. Cruikshank

Attached is a copy of **Mr. Elliot Cruikshank's** application for a City of Fairbanks Chauffeur License. The City Clerk has denied this request for license pursuant to FGC Section 86-77(6)(d) (attached). Please refer to page two of Mr. Cruikshank's application for licensure where he responded affirmatively to having had a conviction of "burglary, felony larceny (felony theft), fraud, or embezzlement" within the past eight years. Please see the attached report of Mr. Cruikshank's criminal charge history which indicates that on August 02, 2013, Mr. Cruikshank was convicted of a Class C Felony Theft.

Although Mr. Cruikshank has had other minor offenses (moving violations) within the past eight years, the felony conviction is the only offenses that preclude Mr. Cruikshank from being issued a chauffeur license within the look-back period (see attached criminal charge history and minor offense cases).

Mr. Cruikshank was informed of the option to appeal the decision of the City Clerk to the City Council and requested to be placed on this agenda for your consideration.

If you have any questions, please call me at 459-6774.

Attachments: Chauffeur Application Packet
FGC Section 86-77(6)(d)
Criminal History Report
CourtView Report of cases against Mr. Cruikshank



City of Fairbanks

Office of the City Clerk

800 Cushman Street

Fairbanks, AK 99701

(907)459-6715
Fax (907)459-6710

REQUEST FOR APPEAL FORM

DATE:

04/14/2014

TO:

Janey Hovenden, City Clerk

FROM:

Elliot M. Cruikshank
(Please Print)

RE:

Request for Appeal Hearing (Chauffeur's License)

Please consider this document a request for an APPEAL HEARING before the Fairbanks City Council in regards to the denial of my Chauffeur's License Application. I understand that the City Council will not consider an appeal if the reason for the denial is a conviction for a sexual offense, for a felony drug offense, for driving while intoxicated, for refusal within the time indicated in Sec. 86-77, or if the applicant has more than one conviction for offenses listed in Sec. 86-77(6)(a)-(g) within the time indicated.

I can be present at the City Council Meeting scheduled for:

Monday, April 21st at 7:00 P.M.

(Meetings are held in the Council Chambers located at 800 Cushman Street, 2nd Floor)

By signing below, I understand that the information and supporting documentation contained in my Chauffeur's License Application will be copied and provided to the Fairbanks City Council. I understand that there will be a public hearing, on the above date, at which time the Council will discuss my appeal. I understand that the public hearing may be reproduced electronically, digitally, and/or transmitted over the air waves. I understand that I have no right to expect privacy of the records or information contained in my application, or of any discussions that may occur during the public hearing.

Acknowledgement by Applicant

Official Use Only:

Clerk's Initials:

TC

Date Received:

04/14/2014

Visit Us on the Web at www.fairbanksalaska.us

Sec. 86-77. Application for chauffeur's license.

- (a) All applications for issuance or renewal of a chauffeur's license shall be made upon forms provided for this purpose by the city clerk, and the applications shall be submitted to the city clerk for review. The requirements to be fulfilled prior to issuance of a chauffeur's license shall be as follows:
- (1) The applicant must be 21 years of age or older and furnish proof if requested.
 - (2) The applicant must be able to read, write and speak the English language.
 - (3) The applicant must be in possession of a current Alaska State Driver's License.
 - (4) The applicant must not have had a conviction within 24 months of:
 - a. A moving traffic violation which results in suspension or revocation of the applicant's driver's license pursuant to AS 28.15.221 through 28.15.261;
 - b. Reckless or negligent driving;
 - c. Driving while license is limited, suspended or revoked;
 - (5) The applicant must not have had his driver's license suspended or revoked within two years prior to the application date.
 - (6) Except as otherwise provided in this subsection, the applicant must not have had a felony conviction within eight years or a misdemeanor conviction within four years of:
 - a. Prostitution or promotion of prostitution;
 - b. Any offense under AS Title 11, Chapter 71 Controlled Substances.
 - c. Any felony or misdemeanor which includes as an element the use or threat of force upon a person;
 - d. Burglary, felony larceny, fraud or embezzlement;**
 - e. Any sexual offense;
 - f. Any homicide or assault involving operation of a motor vehicle;
 - g. Two separate felony convictions of any type;
 - h. Operation or driving a vehicle while intoxicated within five years or within eight years for a felony conviction;
 - i. Refusal to submit to a chemical test as defined in AS 28.35.032 within five years or within eight years for a felony conviction.
 - (7) The applicant must not be addicted to the use of intoxicants or narcotics.
 - (8) The applicant must be of good moral character and repute.
 - (9) The applicant must not be a sex offender or kidnapper subject to the registration requirements of AS Title 12, Chapter 63.
- (b) The city clerk's office shall procure an online criminal history report for each applicant, the cost of which will be included in the chauffeur license application fee in the city schedule of fees and charges for services.

(Code 1960, § 8.201(c)(1)—(6); Ord. No. 5484, § 1, 5-11-2002; Ord. No. 5562, § 1, 3-13-2004; Ord. No. 5853, § 1, 8-13-2011; Ord. No. 5875, § 1, 2-27-2012)



CITY OF FAIRBANKS

RECEIVED
APR 14 2014

CHAUFFEUR LICENSE APPLICATION CITY CLERKS OFFICE

Office of the City Clerk, 800 Cushman Street
Fairbanks, AK 99701, (907) 459-6702

TYPE OF LICENSE: NEW RENEWAL FEES DUE/COLLECTED: _____

Name: <u>Elliot Michael Cruikshank</u>		Other Name(s) Used:	Year of Name Change:
Physical Address: [REDACTED]		Home Phone:	
City, State, Zip: [REDACTED]		Work/Cell Phone: [REDACTED]	
Mailing Address: [REDACTED]		AK Driver's License No: [REDACTED]	
[REDACTED]		E-mail Address:	
Date of Birth: [REDACTED]	SSN: [REDACTED]	Place of Birth: [REDACTED]	

Application Requirements

\$75.00 Non-Refundable Application Fee for New Applications and Renewals
\$100.00 Biennial License Fee for New Applications and Renewals
Complete Application, including Authorization to Obtain Criminal History Record
Copy of Current State of Alaska Driver's License

Length of Residency

Length of Alaska Residency in Consecutive Years 2yr Length of FNSB Residency in Consecutive Years 9 mo

Previous Address(es)

Previous City and State of residence, other than Fairbanks, for the past 8 years:

[REDACTED]	From: [REDACTED]	To: [REDACTED]
[REDACTED]	From: [REDACTED]	To: [REDACTED]
[REDACTED]	From: [REDACTED]	To: [REDACTED]

Employment

Cab Company Applying for or Employed By: ECO TAXI

Address: _____

Date Employment Began or Will Begin: _____ Phone: _____

Previous Chauffeur License Held (City & State): NO

Record of Conviction(s)

PLEASE ANSWER YES OR NO TO THE FOLLOWING QUESTIONS:

Within the past **24 months**, have you had a conviction for any of the following:

- A moving violation which resulted in the suspension or revocation of your driver's license pursuant to AS 28.15.221 - AS 28.15.261?
- Reckless or negligent driving?
- Driving while license is limited, suspended, or revoked?

YES or NO

NO
NO
NO

Within the past **5 years** (or within the past 8 years if a felony conviction) have you received a conviction for either of the following:

- Operating or driving a vehicle while intoxicated?
- Refusing to submit to a chemical test as defined in AS 28.35.032?

NO
NO

Within the past **8 years** have you had a felony or within **4 years** a misdemeanor conviction for any of the following:

- Prostitution or promotion of prostitution?
- Any offense under AS Title 11, Chapter 71, Controlled Substances?
- Any crime which includes as an element of the offense, the use or threat of force upon a person?
- Burglary, felony larceny (felony theft), fraud, or embezzlement?
- Any sexual offense?
- Any homicide or assault involving operation of a motor vehicle?
- Two separate felony convictions of any type?

NO
No
NO
YES NO
NO YES
NO

Are you subject to the registration requirements of AS 12.63 (sex offender or kidnapper)?

An Answer of YES to any of the above questions regarding your criminal history and/or driving record is grounds for denial of a Chauffeur License. Please explain on a separate sheet of paper any convictions that meet the look-back criteria as noted above, including charges, places, dates, and sentences imposed. An Applicant may have the right to appeal a denial by the City Clerk after submission of a completed application and payment of the application fee. An Appeal Form can be obtained at the City Clerk's Office. See FGC Section 86-95 to determine if you are eligible for an appeal.

Citizenship Status

Are you a natural born or fully naturalized citizen of the United States? yes

If not, where did you obtain a permit or visa? _____

Date of entry into the United States: _____ Alien Registration No. _____

The Fairbanks General Code is attached to this application for your convenience; it is provided as a courtesy, but is the responsibility of the Applicant to understand the requirements and to be compliant. The Applicant, through signing of the above Oath, acknowledges having read the Code and certifies that he/she understands it. If the Applicant has any questions regarding those responsibilities, the questions should be asked prior to issuance of a license.

Please make all necessary copies for your records before submission of your application to the Clerk's Office. There will be a per page charge for any copying requested in accordance with FGC Sec. 2-775. Thank you in advance for your cooperation.

The City Clerk's Office may require 24 hours to process applications and does not accept licensing applications after 4:00 PM. Hours of operation are Monday through Friday, 8:00 AM to 5:00 PM. The City of Fairbanks observes national and state holidays.

**Applicant's Statement for Chauffeur License and
Authorization Statement for Criminal History Record Check**

I, Elliot M. Cruikshank, being first duly sworn, depose and state that I am the individual making application for license and that the answers to the foregoing questions and other statements contained herein are true and complete to the best of my knowledge and belief. I understand that any materially false statement on this application may be subject to revocation or denial of a license.

I certify that I am at least 21 years of age or older, that I can read, write, and speak the English language, that I am not addicted to the use of intoxicants or narcotics, that I am of good moral character and repute, that I have been a resident within the Fairbanks area for a minimum of 30 days immediately prior to this application, that I am not subject to the registration requirements of AS 12.63 (sex offender or kidnapper), that I have read and understand Fairbanks General Code Sections 86-76 thru 86-96, and that I understand the requirements for licensure.

Further, I hereby authorize the City of Fairbanks to obtain information pertaining to any charges and/or convictions I may have had for violation of municipal, county, state or federal laws. This information will include, but not be limited to, allegations regarding, and convictions for, crimes committed upon minors. I understand that this information will be gathered from any law enforcement agency of this state or any state or federal government, or from third-party providers of information originally obtained from law enforcement or court records.

As an applicant for a chauffeur license, I hereby attest to the truthfulness of the representations I have made. Except as I have disclosed, I have not been found guilty of, or entered a plea of nolo contendere or guilty to any offense.

I understand that I must be truthful and, if any statement I have made is found to be false, I will be denied the license for which I am making application.

Elliot M. Cruikshank

Signature of Applicant

April 14 2014

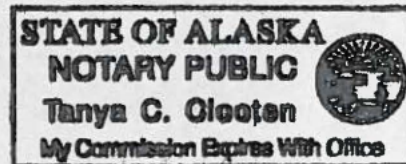
Date

Sworn to before me this 14th day of April, 2014

Tanya C. Clooten

Notary Public for the State of Alaska

My Commission Expires: with office



Administrative Use Only

Approved By:	Date:
Denied By: <u>Tanya Clooten</u>	Date: <u>4/14/14</u>
Reason for Denial: <u>Felony theft conviction 2013</u>	

For additional information and/or forms, please visit the City of Fairbanks web site at:
www.fairbanksalaska.us

Criminal Charge History

WARNING: This criminal history may not be complete due to limited information. These records are from State of Alaska courts only and include computerized records since 1992 only. Computerized case information prior to implementation of CourtView is very limited. Contact the trial court for detailed information about a case or for records prior to 1992.

Search Criteria:

Last Name: **Cruikshank**

First Name: **Elliot**

DOB: [REDACTED]

Print Date 4/14/2014

Case Number	Date	Defendant Action Code Disposition	DLN# APSIN#	Modifier	DV
4TO-13-00037CR					
		Cruikshank, Elliot Michael	DLN: [REDACTED] AK		
		AS11.46.130(a)(1): Theft 2-Value \$500-\$24,999	APSIN: [REDACTED]		
CHRG 1	06/23/2013	AS11.46.130(a)(1): Theft 2-Value \$500-\$24,999			
Disposition:	08/02/2013	Guilty Conviction After Guilty Plea			
CHRG 2	06/23/2013	AS11.46.484(a)(1): Crim Mischief 4-Prop Dam \$50-\$499			
Disposition:	08/02/2013	Dismissed by Prosecution (CrR43(a))			
CHRG 3	06/23/2013	AS11.46.330(a)(2): Crim Trespass 2- Vehicle			
Disposition:	08/02/2013	Dismissed by Prosecution (CrR43(a))			
CHRG 4	06/23/2013	PTRP Technical Violation - Filed in Fairbanks			
Disposition:	09/23/2013	PTRP: Probation Modified/Continued			
CHRG 5	06/23/2013	PTRP Technical Violation - Filed in Fairbanks			
Disposition:	03/27/2014	PTRP: Probation Modified/Continued			
4FA-06-02561CR					
		Cruikshank, Elliot M	APSIN:		
CHRG 1	07/11/2006	AS04.16.050(b): Minor Consuming Alcohol			
Disposition:	11/02/2006	Guilty Conviction After No Contest Plea			

End of Report

Displaying all 4 matches.

Search Results

Case Number	Case Type	File Date	Party/Compan	Party Type	Date of Blrth	Case Status
4FA-12-08695MO	Minor Offenses (4FA)	11/05/2012	Cruikshank, Elliot	Defendant	02/22/1987	DJ Closed No Insurance
4FA-12-08696MO	Minor Offenses (4FA)	11/05/2012	Cruikshank, Elliot	Defendant	02/22/1987	DJ Closed Expired Registration
4FA-06-02561CR	Crim Dist Ct Misd (4FA)	07/11/2006	Cruikshank, Elliot M	Defendant	02/22/1987	GC Closed minor Consumin Alcohol
4TO-13-00037CR	Crim Superior Ct (4TO)	06/23/2013	Cruikshank, Elliot M	Defendant	02/22/1987	GC Closed Felony Theft


DJ = Default Judgment
 GC = Guilty Conviction

City of Fairbanks

**From the
Office of the City Attorney**

MEMORANDUM

TO: Mayor and Council Members

FROM: Paul Ewers, City Attorney 

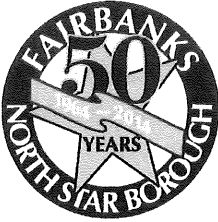
SUBJECT: Board of Adjustment Appeal (Kal Kennedy)
Scheduled for the 4/21/14 Council Meeting

DATE: April 14, 2014

Along with the Board of Adjustment Hearing Packet, you will also receive a memo from Borough Clerk Nanci Ashford-Bingham. Her memo contains important information on the appeal process. This Board of Adjustment appeal is an appeal “on the record.” The council decides the matter on the written material contained in the Hearing Packet. It does not hear arguments or take additional testimony or other evidence.

The council may affirm or reverse the decision of the Planning Commission in whole or in part. The decision must be based upon findings and conclusions adopted by the council. In the past, the council has adopted written findings and conclusions. Based upon the council’s deliberations at the hearing, I will prepare draft findings to be presented at the next council meeting for the council’s review and approval.

If you have any questions about the appeal process, please give me a call.



Fairbanks North Star Borough

Borough Clerk

809 Pioneer Road * PO Box 71267 * Fairbanks, Alaska 99707-1267 * (907)459-1401 FAX 459-1224

MEMORANDUM

TO: Board of Adjustment Members

FROM: Nanci Ashford-Bingham, MMC *Nab*
Borough Clerk

DATE: April 9, 2014

SUBJECT: BOARD OF ADJUSTMENT APPEAL REGARDING V2014-003

The Fairbanks City Council will sit as the Board of Adjustment for consideration of the following appeal on April 21, 2014 at 7:00 pm., City Council Chambers, 800 Cushman Street, Fairbanks, Alaska.

An appeal filed by Kal Kennedy on the following:

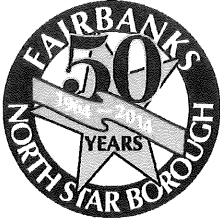
V2014-003 – A request by Kal Kennedy for an additional lot size variance to the Multiple-Family Residential zone (MF) minimum lot size requirement of 90,000 square feet to allow for a 69,606 square foot lot on Lots 1A, 1B & 1C, Block 04 of Executive Park Subdivision. This variance is for the addition of 3 new dwelling units requiring 2,000 square feet of lot area for each unit for a total of 6,000 square feet of lot area. (Located at 1503 Washington Drive, east of Washington Drive and north Adams Drive.)

Please be advised that ex parte contacts shall be prohibited. Board members shall be impartial in all appeal matters, both in fact and in appearance. *No board member shall receive or otherwise engage in ex parte contacts with the appellant, other parties adversely affected by the appeal, or members of the public concerning the appeal.*

Note: The board shall not hear arguments nor take additional testimony or other evidence. Only the material contained in the appeal packet shall be considered.

Attached is your hearing packet. Please bring to the above referenced hearing.

Cc: Janey Hovenden, MMC, City Clerk



Fairbanks North Star Borough

Borough Clerk

809 Pioneer Road * PO Box 71267 * Fairbanks, Alaska 99707-1267 * (907)459-1401 FAX 459-1224

MEMORANDUM

TO: Janey Hovenden, MMC
City of Fairbanks Clerk

FROM: Nanci Ashford-Bingham, MMC *NAB*
Borough Clerk

DATE: April 9, 2014

SUBJECT: BOARD OF ADJUSTMENT APPEAL REGARDING V2014-003

Following is additional information regarding the Board of Adjustment Appeal of VA2014-003 (Kal Kennedy).

On the afternoon of February 26, 2014, Nancy Durham with Community Planning, notified our office that the record did not contain the whole transcription for V2014-003. After further review, it appeared only Mr. Kennedy's public testimony was transcribed by the transcriber.

We contacted Mr. Kennedy on February 26, 2014 regarding the incomplete transcription. He was unaware that the transcription was incomplete. He contacted the transcriber for a whole transcription of the hearing. Mr. Kennedy received the whole transcription from the transcriber on March 6, 2014 and provided the original copy to our office on March 6, 2014 at 3:51 p.m.

Due to the incomplete transcription and additional time needed to obtain the whole transcription FNSB Department of Community Planning's deadline for their written reply to the appeal/brief was extended.

If you have any questions please contact me 459-1402.

BOARD OF ADJUSTMENT
Hearing Packet

APPEAL OF V2014-003
Filed by Kal Kennedy

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The original 5-3 zoning decision, appeared had several point of error and mis-information:.

Improper instructions: Given from the Planning Department to the Planning Commission. The Planning Department cited how I would receive a "financial benefit" from the variance. There is nothing wrong with receiving a financial benefit what so ever. Many Commissioners comment during deliberations as a reason to deny your variance because of the "financial benefit" received. The code says this cannot be granted "solely relieve you of a financial hardship". This variance would not do that. The answer was no.

Improper evidence: Introduced by the Commissioners themselves. When the issue was made by the neighbor about having access through your back yard, a Commissioner actually got on their i-pad, and pulled up my lot to show Commissioners that there was a access issue noted by and for the neighbor. Even though a member of the Planning Staff was able to show on his computer projection system that there was no neighbor access issue, damage was done from this false information.

Denied use common to area: There is building permit for this structure. I can put in bedrooms added to existing structure. The issue is can I have a kitchen? The occupancy will be raised the same no matter what. Kitchens give more value to the building. Note:

- Community need met - with no change in tenant count:
Simplified, I can turn a one bedroom dwelling into a two bedroom – and allow one more person in that space. My request adds the same one person to the same, but separate & private space. But current zoning stops it!

So in Fairbanks:

* It's ok to add a door & room to a dwelling. But,
same door, same space, private entrance is stopped?

* Family of 3 gets housing, but a single low income person, is rejected & on the street.

US marriage rates are at a Century low*. Today's renter is thinking smaller in terms of space and cost and the trend is micro apts in large cities**.

In cities, apartments are converting one or two bedroom dwellings into two efficiency style units. Such change fulfills the public's need to have personal & private space, rather than sharing a larger space. Thus, meeting economic, safety & social community needs.

There is a current down turn in the Fairbanks rental market. From my exposure, with multiple 1 & 2 bedroom units being vacant 2 to 4 months, **we are following this national trend.**

Fairbanks current zoning requirement of 2000 square feet of lot space per dwelling is a road block in understanding, planning for, and meeting, this community need and trend.

This situation request is a good example, with:

*NO change in the number or people served, nor the number of bedrooms in building!
It is only a small increase in more affordable **private space.***

This is a SMALL (7%) variance request - NOT a 42% request! It has **no negative impact on parking or foot print, and positive landscaping** possibilities.

I respectfully request this variance approval. Further, I ask that the zoning rules change to allow these common sense exceptions, officially or not. Meeting a public need for a person's private space in this manner, just could be a small part of solving a larger homeless community problem if you believe it exists.

*. (2013 edition of the U.S. Wedding Forecast ** Multifamily Executive publication



FAIRBANKS NORTH STAR BOROUGH

809 Pioneer Road ☆ P.O. Box 71267 ☆ Fairbanks, Alaska 99707-1267

(907) 459-1260 ☆ FAX (907) 459-1255

MEMORANDUM

TO: Nanci A. Ashford-Bingham, Borough Clerk

FROM: Bernardo Hernandez, Director
Department of Community Planning

DATE: December 13, 2013

SUBJECT: Findings of Fact

RE: **V2014-003** A request by Kal Kennedy for an additional lot size variance to the Multiple-Family Residential zone (MF) minimum lot size requirement of 90,000 square feet to allow for a 69,606 square foot lot on Lots 1A, 1B & 1C, Block 04 of Executive Park Subdivision. This variance is for the addition of 3 new dwelling units requiring 2,000 square feet of lot area for each unit for a total of 6,000 square feet of lot area. (Located at 1503 Washington Drive, east of Washington Drive and north of Adams Drive.)

On Tuesday, December 10, 2013, the Fairbanks North Star Borough Planning Commission voted three (3) in favor, five (5) opposed, resulting in the denial of V2014-003, and adopted the following Findings of Fact in support of its decision:

FINDINGS OF FACT:

1. The proposed variance does not conform to the intent and purpose of Title 18 and other Ordinances and State Statutes; specifically, there are no special conditions unique to the property that necessitates the granting of the variance.
2. Denial of the proposed variance will not deprive the applicant the use of his property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area. Current density is greater than typically permitted by zoning, although permitted by the 1995 variance.
3. The proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increased danger of fire because there does not appear to be any sight distance, snow removal, or road safety issues that are made worse due to the addition of the new dwelling units. They have more than the required parking and are on Golden Heart Utilities sewer and water.

If any additional information is needed or required, please let us know.

Appeal Due By 12/25/13 *Holiday*
By 12/20/13



FAIRBANKS NORTH STAR BOROUGH

809 Pioneer Road ☆ P.O. Box 71267 ☆ Fairbanks, Alaska 99707-1267

(907) 459-1260 ☆ FAX (907) 459-1255

MEMORANDUM

TO: Nanci Ashford-Bingham, MMC
Borough Clerk

THROUGH: Bernardo Hernandez, Director
Department of Community Planning

FROM: Nancy Durham, MURP, CFM, Planner III
Department of Community Planning

DATE: January 28, 2014

SUBJECT: Board of Adjustment Appeal of **V2014-003** (Kal Kennedy)

Bernardo Hernandez

Nancy Durham

2014 JAN 28 PM 3:21
FNSB DEPARTMENT OF COMMUNITY PLANNING
RECEIVED
ok

On December 10, 2013, the Planning Commission denied V2014-003 with the following Findings of Fact:

1. The proposed variance does not conform to the intent and purpose of Title 18 and other Ordinances and State Statutes; specifically, there are no special conditions unique to the property that necessitates the granting of the variance.
2. Denial of the proposed variance will not deprive the applicant the use of his property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area. Current density is greater than typically permitted by zoning, although permitted by the 1995 variance.
3. The proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increased danger of fire because there does not appear to be any sight distance, snow removal, or road safety issues that are made worse due to the addition of the new dwelling units. They have more than the required parking and are on Golden Heart Utilities sewer and water.

All documentary evidence, memoranda and exhibits, correspondence and other written material submitted to the Planning Commission for consideration of **V2014-003**, a request by Kal Kennedy for an additional lot size variance to the Multiple-Family Residential zone (MF) minimum lot size requirement of 95,000 square feet to allow for a 69,606 square foot lot on Lots 1A, 1B & 1C, Block 04 of Executive Park Subdivision, is attached as follows:

1. Action Letter dated December 11, 2013 (Exhibit A)
2. Findings of Fact memorandum dated December 13, 2013 (Exhibit B)
3. Correspondence (Exhibit C)
4. Planning Commission packet dated December 10, 2013 (Exhibit D)
5. Addendum (Exhibit E)
6. Planning Commission presentation given December 10, 2013 (Exhibit F)

Should you have any questions or require additional information, please contact me at 459-1260.

EXHIBIT A



FAIRBANKS NORTH STAR BOROUGH

809 Pioneer Road ☆ P.O. Box 71267 ☆ Fairbanks, Alaska 99707-1267

(907) 459-1260 ☆ FAX (907) 459-1255

December 11, 2013

Kal Kennedy
1503 Washington Drive
Fairbanks, Alaska 99709

RE: V2014-003

Dear Mr. Kennedy:

At its regular meeting of December 10, 2013, the Planning Commission of the Fairbanks North Star Borough considered your request for an additional lot size variance to the Multiple-Family Residential zone (MF) minimum lot size requirement of 90,000 square feet to allow for a 69,606 square foot lot on Lots 1A, 1B & 1C, Block 04 of Executive Park Subdivision. This variance is for the addition of 3 new dwelling units requiring 2,000 square feet of lot area for each unit for a total of 6,000 square feet of lot area. (Located at 1503 Washington Drive, east of Washington Drive and north of Adams Drive.)

The Commission voted three (3) in favor, five (5) opposed, resulting in the denial of your request.

This decision may be appealed within fifteen (15) days from the date of the decision to the Fairbanks North Star Borough Board of Adjustments.

Also, public notice signs must be returned within 10 days. Upon receipt, in good condition, we will promptly initiate a refund of the \$150.00 sign deposit.

If you have any questions regarding this matter, please feel free to contact the Department of Community Planning, Division of Planning and Zoning, 809 Pioneer Road, or call 459-1260.

Sincerely,

Nancy Durham, CFM
Planner III, Department of Community Planning

ND/meb

EXHIBIT B



FAIRBANKS NORTH STAR BOROUGH

809 Pioneer Road ☆ P O. Box 71267 ☆ Fairbanks, Alaska 99707-1267

(907) 459-1260 ☆ FAX (907) 459-1255

MEMORANDUM

TO: Nanci A. Ashford-Bingham, Borough Clerk

FROM: Bernardo Hernandez, Director
Department of Community Planning

DATE: December 13, 2013

SUBJECT: Findings of Fact

RE: **V2014-003** A request by Kal Kennedy for an additional lot size variance to the Multiple-Family Residential zone (MF) minimum lot size requirement of 90,000 square feet to allow for a 69,606 square foot lot on Lots 1A, 1B & 1C, Block 04 of Executive Park Subdivision. This variance is for the addition of 3 new dwelling units requiring 2,000 square feet of lot area for each unit for a total of 6,000 square feet of lot area. (Located at 1503 Washington Drive, east of Washington Drive and north of Adams Drive.)

On Tuesday, December 10, 2013, the Fairbanks North Star Borough Planning Commission voted three (3) in favor, five (5) opposed, resulting in the denial of V2014-003, and adopted the following Findings of Fact in support of its decision:

FINDINGS OF FACT:

1. The proposed variance does not conform to the intent and purpose of Title 18 and other Ordinances and State Statutes; specifically, there are no special conditions unique to the property that necessitates the granting of the variance.
2. Denial of the proposed variance will not deprive the applicant the use of his property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area. Current density is greater than typically permitted by zoning, although permitted by the 1995 variance.
3. The proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increased danger of fire because there does not appear to be any sight distance, snow removal, or road safety issues that are made worse due to the addition of the new dwelling units. They have more than the required parking and are on Golden Heart Utilities sewer and water.

If any additional information is needed or required, please let us know.

Appeal Due By _____

EXHIBIT C

Mary Bork

Subject: FNSB Planning Commission
Location: BAC Assembly Chambers

Start: Tue 12/10/2013 7:00 PM
End: Tue 12/10/2013 10:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Mary Bork
Required Attendees: David Pruhs; Gary Johnston; Gregory Bringham; Jerry McBeath; Joy Huntington; Marna Sanford; Tim Sovde; Bernardo Hernandez (Bhernandez@fnsb.us); Jae Hill

Hello,

This email is to serve as a reminder for next Tuesday's meeting of the Planning Commission. The packet is available on line at this time.

Mary Bork, Admin. Asst. I
FNSB Community Planning
459-1277

EXHIBIT D

PLANNING COMMISSION MEETING

PUBLIC MEETING

DECEMBER 10, 2013

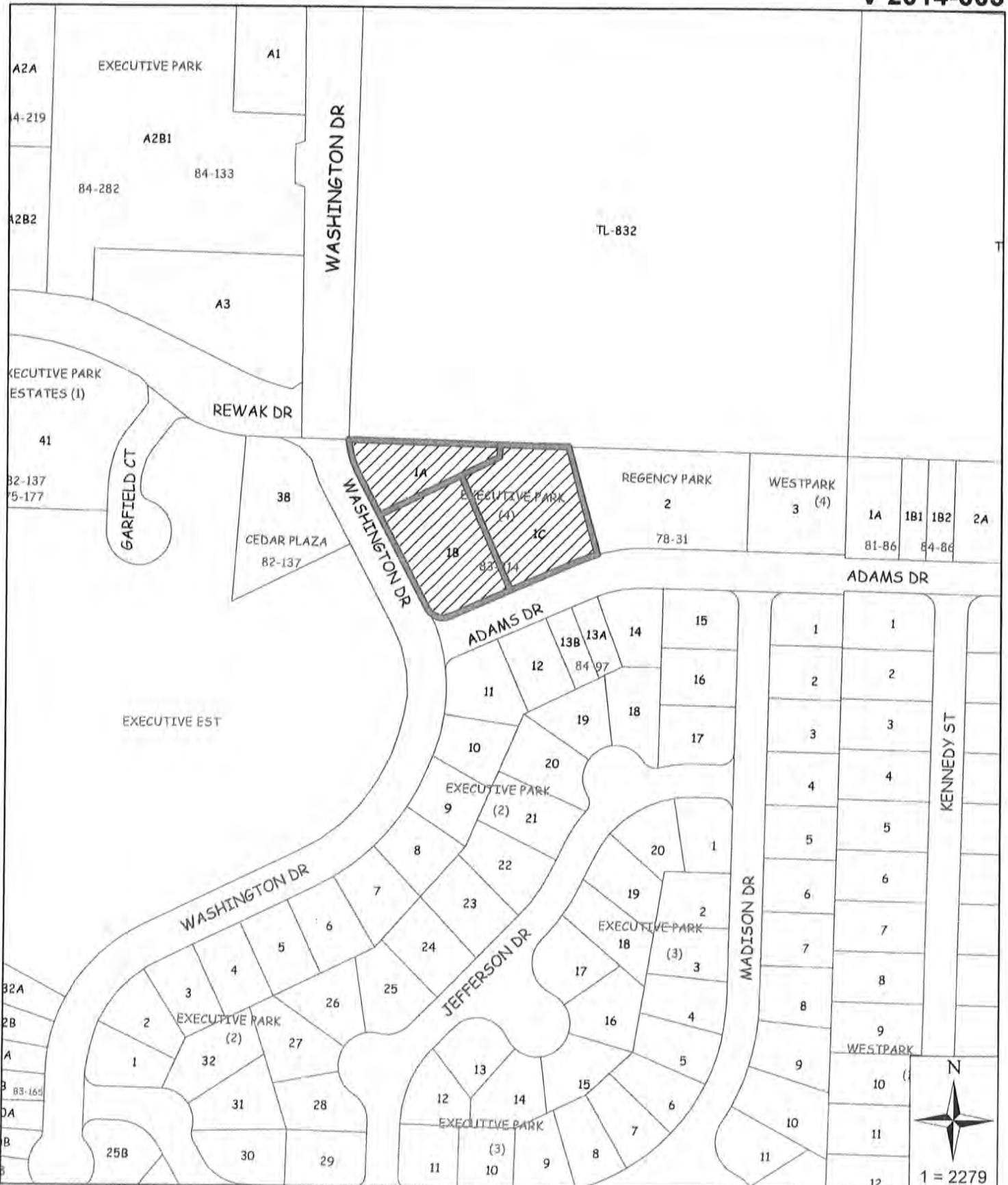
NANCY DURHAM
FNSB COMMUNITY PLANNING



FNSB Dept. Of Community Planning Planning Commission

Printed on: Nov 15, 2013

V 2014-003



DEPARTMENT OF COMMUNITY PLANNING
STAFF REPORT

V2014-003

TO: Fairbanks North Star Borough Planning Commission

RE: **V2014-003** A request by Kal Kennedy for an additional lot size variance to the Multiple-Family Residential zone (MF) minimum lot size requirement of 95,000 square feet to allow for a 69,606 square foot lot on Lots 1A, 1B & 1C, Block 04 of Executive Park Subdivision. This variance is for the addition of 3 new dwelling units requiring 6,000 square feet of lot area for each unit. **(Located at 1503 Washington Drive, east of Washington Drive and north of Adams Drive.)**

I. GENERAL INFORMATION

- A. Purpose To vary the Multiple-Family Residential (MF) lot size requirement of 2,000 square feet per dwelling unit.
- B. Location On the east side of Washington Drive, north of Adams Drive.
- C. Access Washington Drive
- D. Size/PAN
- | <u>Lot/TL</u> | <u>sq. ft.</u> | <u>PAN</u> |
|---------------|----------------|------------|
| 01A | 15,192 | 380954 |
| 01B | 24,666 | 516813 |
| 01C | <u>29,748</u> | 380971 |
| Total | 69,606 sq. ft. | |
- E. Existing Zone Multiple-Family Residential (MF)
- F. Existing Land Use Residential – Apartment Complex & Single-Family Home
- G. Surrounding Land Use/Zoning
- North: Commercial/General Commercial (GC)
- South: Residential/Two-Family Residential (TF), Single-Family Residential-10 (SF-10)
- East: Residential/MF, TF
- West: Residential/MF, GC
- H. Community Facilities
- Water/sewer: GHU
- Electricity: GVEA
- I. Code Violations None
- J. Flood Zone Flood Zone X500

III. ANALYSIS

A. Applicant's Request

The applicant is requesting an additional variance of 6,000 square feet to the Multiple-Family Residential (MF) lot size requirement of 2,000 square feet per dwelling unit. An earlier variance was granted to a previous owner to allow 18 dwelling units and a single-family home (V042-95). The applicant would like to add three, 235 square foot efficiency style apartments. The vertical units would be positioned between the two existing buildings and will meet all setbacks.

The applicant states, "these will be well built saving heat loss, by changing two exterior walls to interior walls, and replacing the third exterior wall with a well-insulated (36 R value) wall." Any existing landscaping will not be affected since the footprint of the building is not being expanded. There are 50 existing parking spaces, where 43 are currently required. The three new efficiency units will require three additional parking spaces, totaling 46 required parking spaces.

The 48 acre Executive Park Subdivision was platted as a Planned Unit Development (PUD) in 1975 with 14 acres for multi-family rental/condominium housing and a maximum density of 20 to 23 units per acre. Lots 01A, 01B & 01C have been made a zone lot through a zone lot affidavit in 1996. They consist of 69,606 square feet. A 24-unit apartment complex was constructed in 1977 under the Multiple Residential (R3-I) zone, where there was a maximum buildable area of 55%, but no minimum area per dwelling unit. The foundation for an additional 18 units was constructed as well but not further developed at that time. In 1988, the zoning changed to Multiple-Family Residential (MF), requiring 2,000 square feet per dwelling unit.

A variance (V042-95) of 19,394 square feet to the required 89,000 square feet for a total of a 42-unit complex and a single-family home/office was approved in 1995 citing the unusual condition existing on the property of a foundation being constructed prior to the zoning change. The 18-unit addition was constructed in 1995 on the existing foundation, and the single-family residence/office was constructed in 1997 for the apartment manager. There were four conditions for the variance:

1. *Development shall be in accordance with the approved site plan.*

The property was developed according to the site plan (**Exhibits 1 & 2**).

2. *The property owner shall sign and record a standard affidavit provided by the Planning Department which states the three properties are encumbered together as one for use as a zoning lot.*

The zone lot affidavit was signed on June 6th 1996 (**Exhibit 3**).

3. *The applicant shall apply D1 material to parking area prior to occupancy of proposed structures. Parking area shall be maintained annually by grading and compacting with water. The applicant shall pave parking area prior to June 1, 2000.*

According to the Assessor's office pictures of the property, the parking lot appears to be paved. These pictures are from 2001 and 2011 (**Exhibit 2**). The applicant stated the parking lot was paved prior to him purchasing the property in 2001. He added pavement around the egress and filled in potholes this year.

4. *The applicant shall complete a landscape plan, to include trees, grass and other plants with special attention given to the south, east and west sides of the zoning lot which front other residential properties. This plan shall be submitted to the Director of Community Planning for approval. Landscaping shall be complete prior to August 1, 1997 and maintained throughout the life of the complexes. All existing trees shall be retained.*

The landscape plan was approved on February 4, 1998 by Rex Nutter, Director of Community Planning (**Exhibits 4 & 5**). The landscape plans show approximately five to six trees along Adams Drive, approximately five to six trees along Washington Drive, approximately two trees along the east side of the property, and approximately three to five trees along the north side of the property. Landscaping was installed along Adams Drive, Washington Drive, and the east side of the property according to the 2012 Pictometry on GIS. Google Maps show some of the landscaping remaining and site pictures from November 20, 2013 show the majority of the landscaping was removed (**Exhibit 2**). The applicant stated several Cottonwood trees were cut down last year because they were damaged/dying and several were cut down this year. There are three trees grouped together along Adams Drive, one tree along the east property line and two trees in the parking lot remaining.

B. Surrounding Land Use and Zoning

The subject lots are zoned MF. The lots to the north are zoned General Commercial (GC). The lots to the south are zoned MF, Two-Family Residential (TF) & Single-Family Residential-10 (SF-10). The lots to the east are zoned MF and TF. The lots to the west are zoned MF and GC. The old K-Mart building and a retail building are to the north with multi-family buildings to the east and west, and duplexes and single-family homes to the south.

C. Title 18 Provisions

1. *18.04.020 Purpose. The purpose of this title is to implement the Fairbanks North Star Borough comprehensive plan. This title is intended to protect private property rights, to promote the public health, safety and general welfare of the residents of the borough, and safety from fire and to promote the efficient distribution of water, sewage, schools, parks and other public requirements; to provide safe traffic flow on the public streets; to promote economic development and the growth of private enterprise.*

Approval of the request will not jeopardize public health, safety or welfare. There does not appear to be any sight distance, snow removal, or road safety issues that are made worse due to the locations of the new dwelling units. They have more than the required parking and are served by Golden Heart Utilities sewer and water.

2. a. *Special conditions exist which are peculiar to the land involved and which are not applicable to other land in the same zoning district.*

There are no special conditions existing which are peculiar to the land involved and which are not applicable to other land in the same district.

- b. Strict interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance.*

Strict interpretation of the provisions of the zoning ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the immediate area. The applicant has 42 units and a single-family home/office already existing on the lot from an approved variance.

D. Title 29 Provisions

Section 29.40.040(b). A variance from a land use regulation may **not** be granted if:

1. *Special conditions that require the variance are caused by the person seeking the variance.*

There are no special conditions on the lot that requires a variance for lot size.

2. *The variance will permit a land use in a district in which that use is prohibited;*

Multiple-family residences are permitted uses in the MF zone.

3. *The variance is sought solely for pecuniary reasons.*

This variance is sought for fuel savings and heating costs.

IV. RECOMMENDATION

Based on the staff analysis, the Department of Community Planning recommends **DENIAL** of the request.

V. FINDINGS OF FACT

The Department of Community Planning further recommends adoption of the following findings of fact in support of denial:

1. The proposed variance does not conform to the intent and purpose of Title 18 and other Ordinances and State Statutes; specifically, there are no special conditions unique to the property that necessitate the granting of the variance.
2. Denial of the proposed variance will not deprive the applicant the use of his property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area. Current density is greater than typically permitted by zoning, although permitted by the 1995 variance.
3. The proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increased danger of fire because there does not appear to be any sight distance, snow removal, or road safety issues that are made worse due to the addition of the new dwelling units. They have more than the required parking and are on Golden Heart Utilities sewer and water.

Sincerely,



Nancy Durham, CFM, Planner III
Division of Planning and Zoning

for

Bernardo Hernandez, Director
Department of Community Planning

Attachment

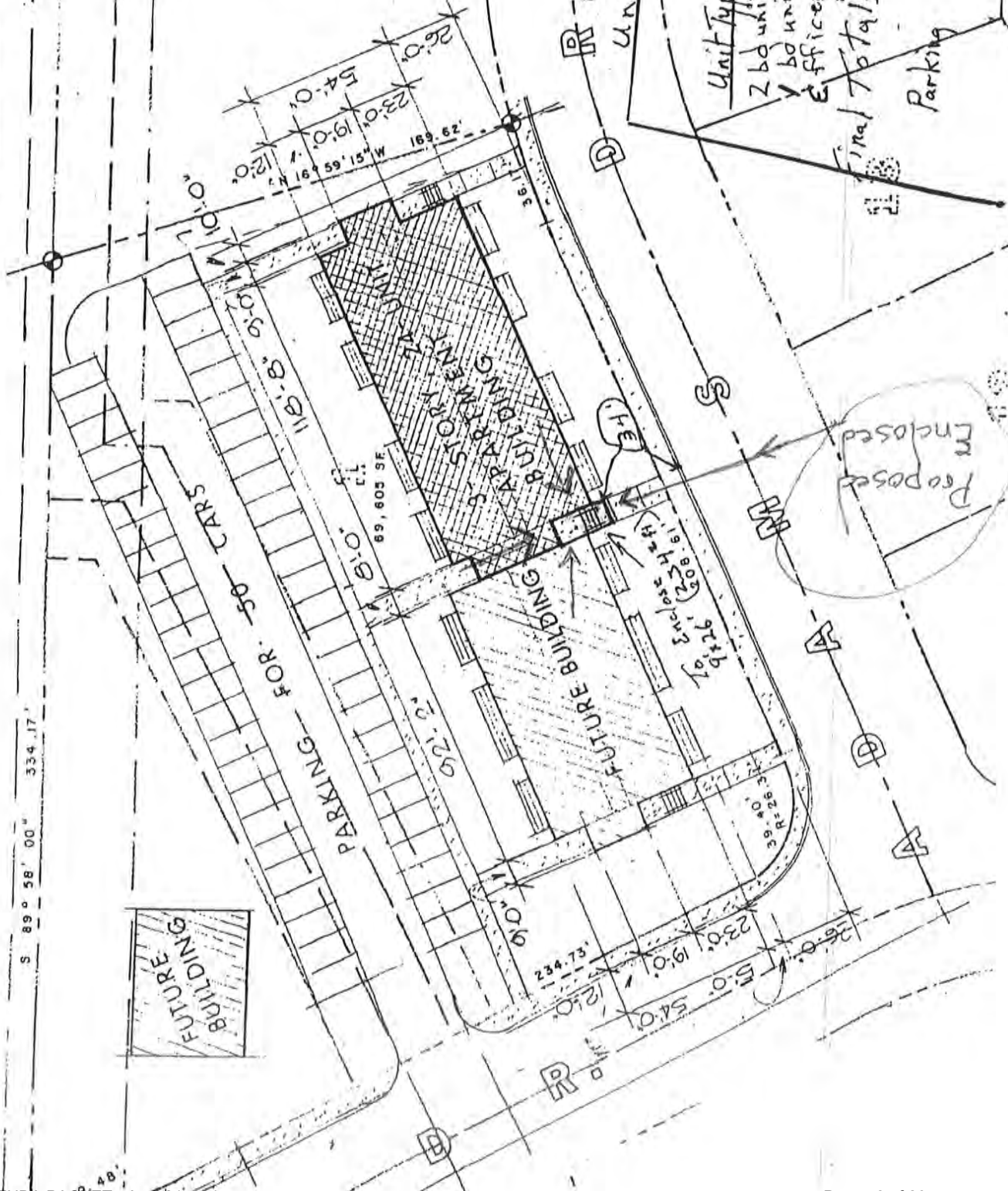
DPO's sent – 88

ND/meb

Plot Plan
 EXECUTIVE APPTS.
 1508 Washington Dr.
 Fairbanks, Alaska 99709

Exhibit 1
 Page 1 of 1

BLOCK 4



Unit breakdown:

Unit Type	# Existing	# Existing at Proposed
2 bd units	10	Same
1 bd units	28	Same
Offices	0	3
Final Totals	42	45
Parking	50	50 (No change)

Proposed Enclosed

V2014-003_Kennedy_Pictures



2012 Pictometry 04 in. showing the site layout

Parking appears to be asphalt paving.



2001 Assessor's picture of the single-family resident/office with parking.



2011 Assessor's picture of single-family resident/office with parking.



2013 Google Maps: Parking appears to be paved, but in bad shape.

Landscaping – 2013 Google Maps



There is a tree on the east side of the property and a tree was removed along Adams Drive.



There is a group of trees along the east side of the property by the parking area.



There were 5 trees along Adams Drive.



There are no trees along Washington Drive and a tree stump remains at the corner.



There are no trees along the north side of the property.

2012 Pictometry Viewer from GIS



There was landscaping along Adams Drive and Washington Drive in 2012.

November 20, 2013 Site Inspection Pictures



2 trees removed along Adams Drive and 1 tree removed from Washington Drive



2 trees removed along Adams Drive and 3 trees still standing



2 trees removed along Adams Drive



All trees removed along Washington Drive



Trees still along east property line and in parking lot area

7 0 6 0 1 1 3 0 0 0 6

Exhibit 3
Page 2 of 2

AFFIDAVIT OF DONALD C. SAUER, PAUL D. SAUER AND
SHERRY FUNK, fka SHERRY KROLL

Page 2

Paul D Sauer
(Paul D. Sauer, Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME on this 6th day of
June, 1998.

Sherry Funk
Notary Public in and for Alaska
Commission Expires: 4-11-97

(Sherry Funk, fka Sherry Kroll, Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of
_____, 1998.

Notary Public in and for Alaska
Commission Expires: _____

7 0 6 0 1 1 3 0 0 0 3

Exhibit 4
Page 1 of 1

AGREEMENT TO CONDITIONS

VARIANCE: V042-95

OWNER/APPLICANT: Paul Sauer Gerald Timmons
 86 Steelhead PO Box 74520
 Fairbanks, AK 99701 Fairbanks, AK 99707

LEGAL DESCRIPTION OF PROPERTY: Lots 1A, 1B & 1C, Executive Park Estates

DATE APPROVED BY THE FAIRBANKS NORTH STAR BOROUGH PLANNING COMMISSION:

June 8, 1995

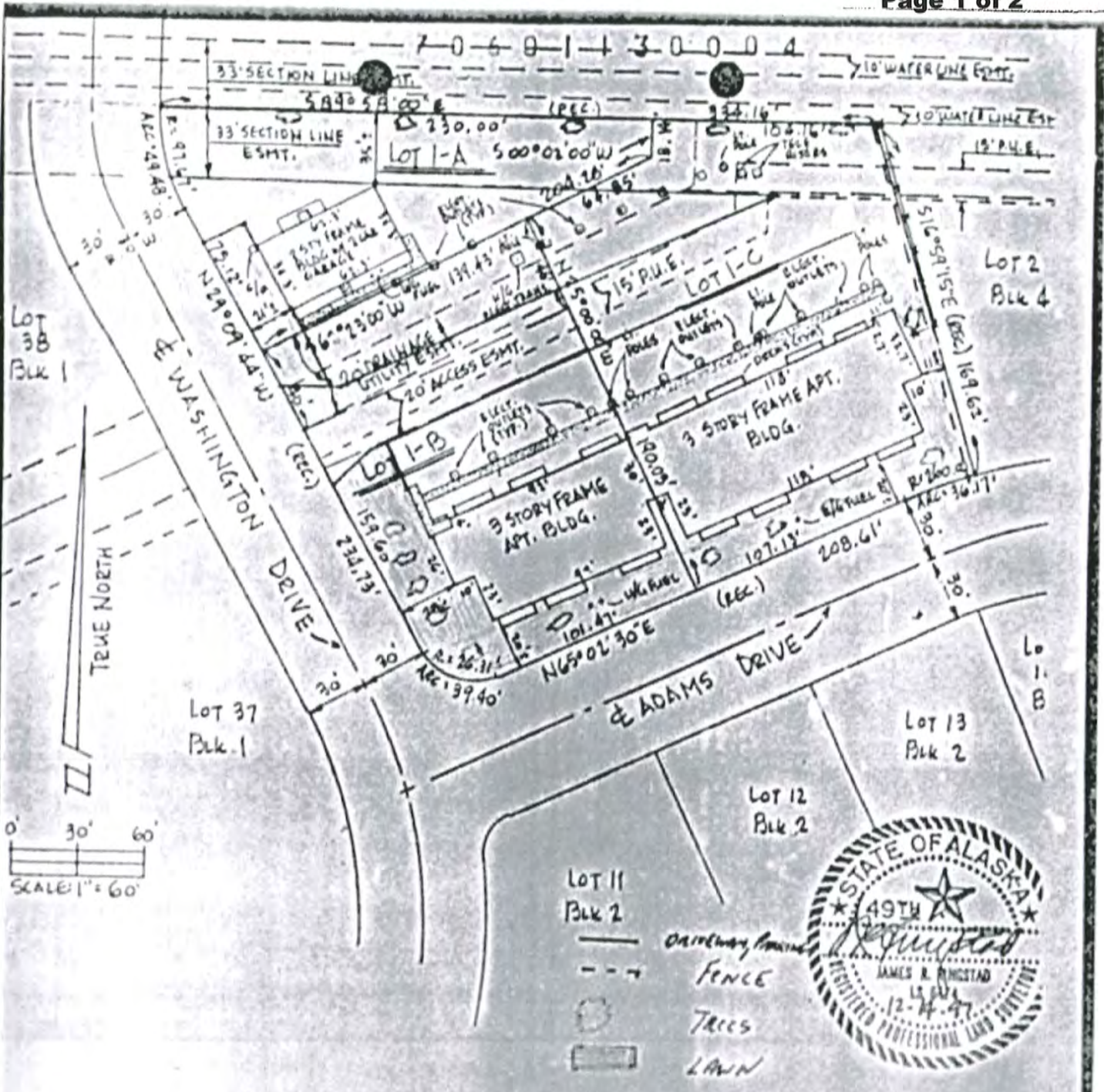
CONDITIONS OF APPROVAL:

1. Development shall be in accordance with the approved site plan.
2. The property owner shall sign and record a standard affidavit provided by the Planning Department which states the three properties are encumbered together as one for use as a zoning lot.
3. The applicant shall apply D1 material to parking area prior to occupancy of proposed structures. Parking area shall be maintained annually by grading and compacting with water. The applicant shall pave parking area prior to June 1, 2000.
4. The applicant shall complete a landscape plan, to include trees, grass and other plants with special attention given to the south, east and west sides of the zoning lot which front other residential properties. This plan shall be submitted to the Director of Community Planning for approval. Landscaping shall be complete prior to August 1, 1997 and maintained throughout the life of the complexes. All existing trees shall be retained.

Paul Sauer
 Signature of applicant acknowledging and agreeing to abide by the conditions listed above.

SE Plan Landscaping
Approve 2/4/98

Rex A. Nutter 2-4-98
 Rex A. Nutter, Director, Comm. Planning

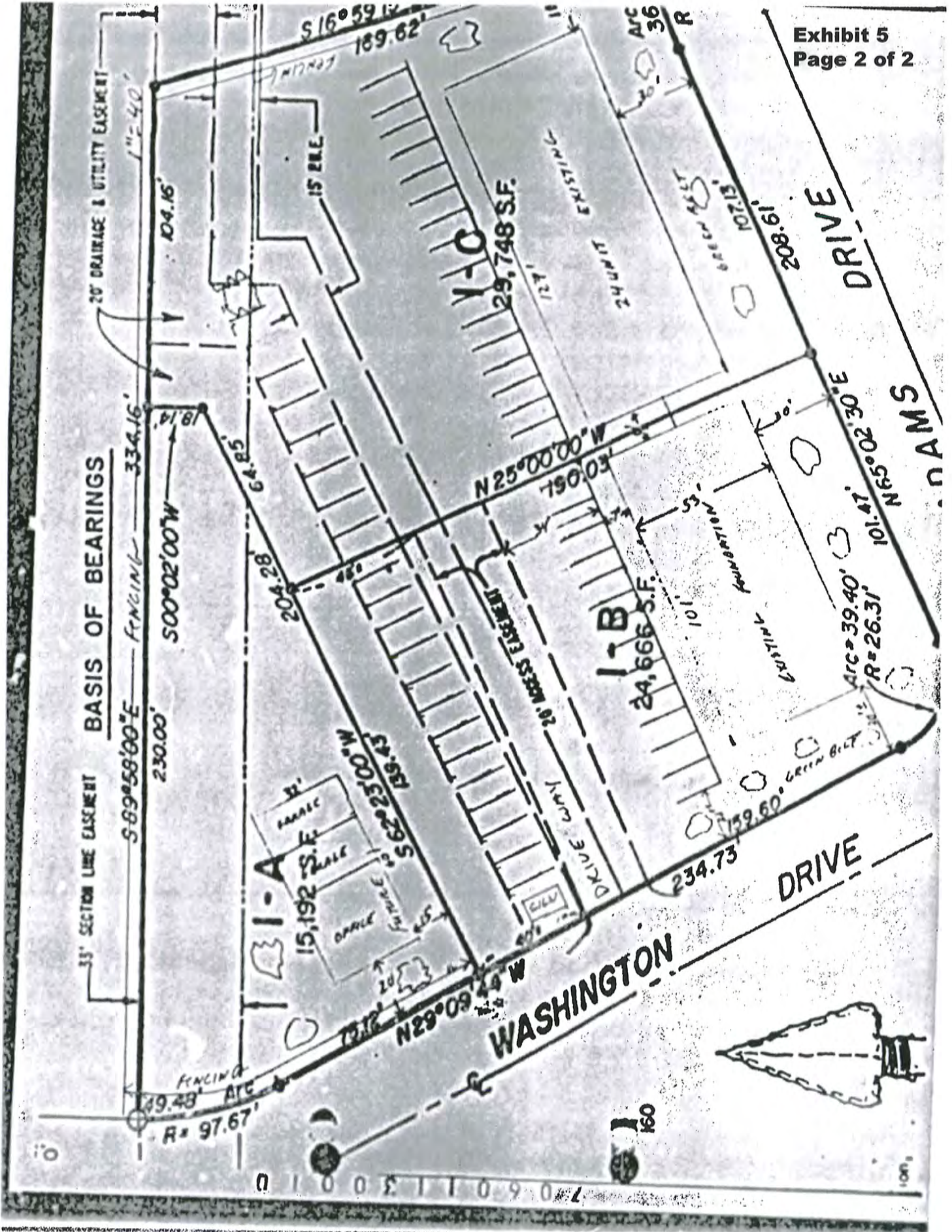


FOR TITLE INSURANCE PURPOSES ONLY

I, James R. Ringsstad, a Professional Land Surveyor registered in the State of Alaska, hereby certify that I am familiar with the improvements located within Lots 1-A, 1-B and 1-C, A Rental of Lot 1, Block 4, Executive Park Subdivision (FRD Plat No. 83-214) and that these improvements lie wholly within the property lines and do not overlap onto property adjacent thereto and that no improvements on the property adjacent thereto encroach upon the premises in question and that there are no roadways, transmission lines or any other visible easements, except as indicated hereon. Liability of the AS-BUILT PLOT PLAN is limited to the relationships of improvements to existing found monumentation and does not extend to the accuracy of said monumentation; nor is it intended to represent a Property Survey. Liability of this AS-BUILT PLOT PLAN is limited to the amount of the fee charged.

AS-BUILT PLOT PLAN

Ringsstad
James R. Ringsstad, L. S. 6474
12-14-97





Fairbanks North Star Borough
Department of Community Planning

P.O. Box 71267
Fairbanks, Alaska 99707-1267
(907) 459-1260 Fax: (907) 459-1255
planning@co.fairbanks.ak.us

Comm. Planning Dept
NOV 7 - 2013
RECEIVED

PUBLIC HEARING APPLICATION

File No. V2014-003

Application is for [] Rezone (\$400) [X] Variance (\$250) [] Conditional Use Approval (\$250)

Property Owner: Name: Kal Kennedy, Mailing Address: 1503 Washington Dr, Fairbanks, AK 99709, Phone: (907) 322-7955, E-mail: kkennedy2175@gmail.com
Owner's Representative (if any): Name: NA, Mailing Address: , Phone: , Fax: , E-mail:

Property Information: Legal Description: Executive Park, Block: 04 Lot 01B & Lot 01C, Lot 1A, Street Address: 3288 Adams Dr., Size: 69,606, Parcel Account Numbers (PAN): 0380954, 0380971, 0516813, Existing Zone: Multi Family, Existing Use: Multi Family, Existing Water/Wastewater Providers: Golden Heart Utilities, Proposed Zone: , For Conditional Uses: Requested Use:

I hereby certify that [] (I am) [] (I am authorized to act for) the owner of the property. I understand that payment of the application fee helps to cover the costs associated with processing this application, and that payment of the fee does not assure approval of the application.

APPLICANT SIGNATURE: [Signature], DATE: 6 Nov 13
OWNER SIGNATURE (if different): , DATE:

Received By: MS, Date: 11-7-13, Fee: \$250, Receipt No.: 483182, Proposed Meeting Date: 12-10-13, Sign Issued? Yes, Sign #: 0

File No. V2014-003

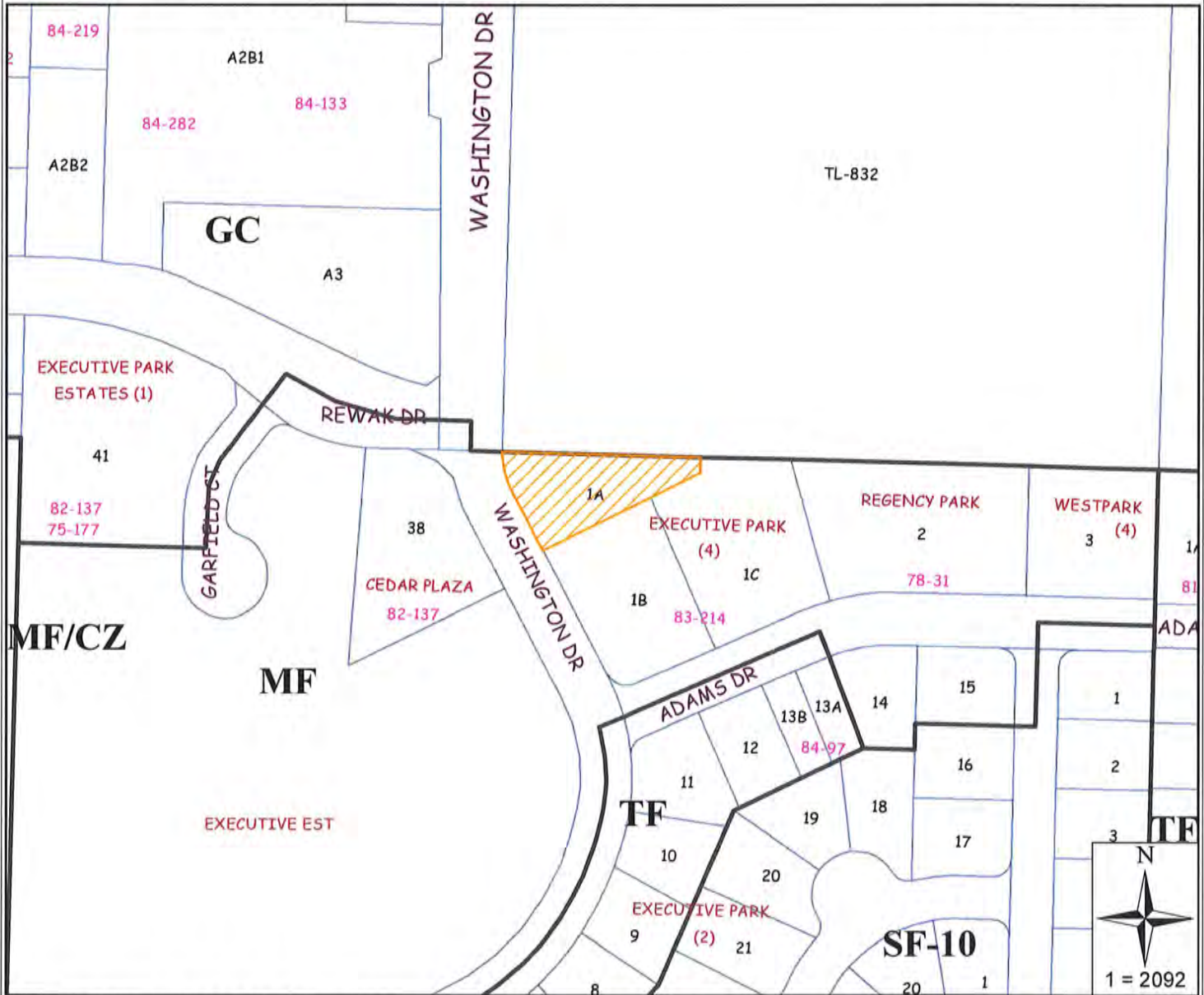
Fairbanks North Star Borough is subject to the Alaska Public Records Act, AS 40.25 et seq. and this document may be subject to public disclosure under state law. Revised 3/2013



Fairbanks North Star Borough

Zoning Report

PAN# 0380954
Printed on: 11/27/2013



Property Information for PAN#: 0380954

PROPERTY DESCRIPTION: EXECUTIVE PARK, BLOCK: 04, LOT: 01A
 OWNER: Kennedy Kal K
 BILLING ADDRESS: 2175 Broadmoor Ave Fairbanks, AK 99709
 SITUS ADDRESS: 1503 Washington Dr
 PARCEL SIZE: 15192 SF
 FLOOD ZONE: Zone X500 (100%)
 SPECIAL REG. AREAS: None
 ZONING: MF (100%)
 COMP PLAN: Urban Area (100%), Urban Boundary (100%)
 PLANNING DISTRICT: Fairbanks (100%)
 ROAD SERVICE AREA: City of Fairbanks (100%)
 FIRE SERVICE AREA: City of Fairbanks (100%)
 FIRE RESPONSE AGENCY: City of Fairbanks Fire Department (100%)
 STRUCTURES: Wood, Open Steel (3 Units)
 COMMUNITY PLANNING PERMITS:
 Variances: 19950042
 Variances: 20140003
 Zoning Permits: 16779
 Zoning Permits: 17031

Controlled Access Roads	FEMA Flood Hazard Areas - A Zones only (current effective)
ARTERIAL - CONTROLLED ACCESS	Floodway
Special Regulatory Areas	Zone A
CHENA RIVER CENTERLINE 200 FT BUFFER	Zone AE
LEVEE 250R BUFFER	Zone AO
SALCHAKET HEIGHTS EROSION CONTROL	

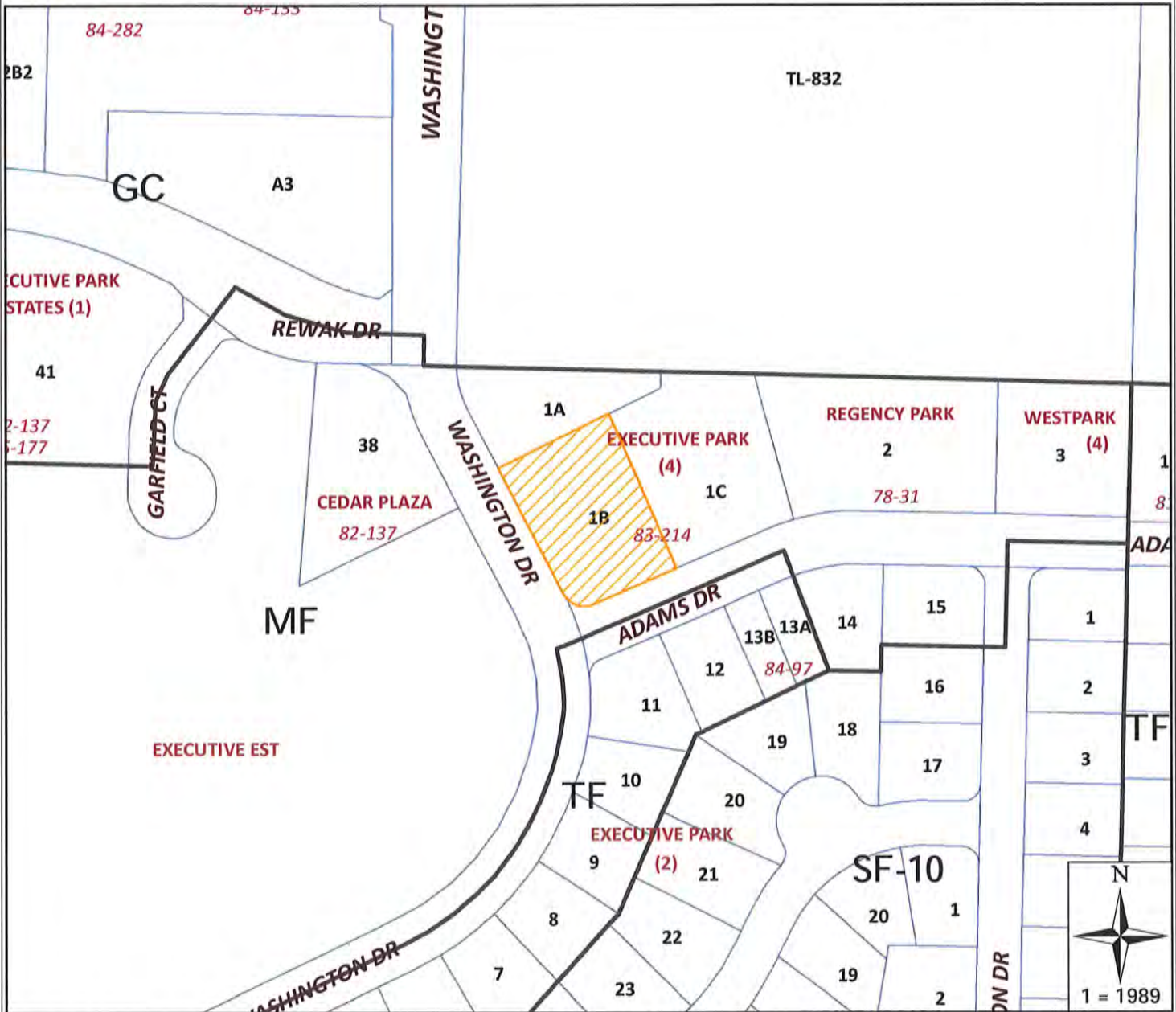
The Fairbanks North Star Borough does not warrant the accuracy of maps or data provided, nor their suitability for any particular application. There may be errors in the data.



Fairbanks North Star Borough

Zoning Report

PAN# 0516813
Printed on: 11/27/2013



Property Information for PAN#: 0516813

PROPERTY DESCRIPTION: EXECUTIVE PARK, BLOCK: 04, LOT: 01B
 OWNER: Kennedy Kal K
 BILLING ADDRESS: 2175 Broadmoor Ave Fairbanks, AK 99709
 SITUS ADDRESS: 3288 Adams Dr
 PARCEL SIZE: 24666 SF
 FLOOD ZONE: Zone X500 (100%)
 SPECIAL REG. AREAS: None
 ZONING: MF (100%)
 COMP PLAN: Urban Area (100%), Urban Boundary (100%)
 PLANNING DISTRICT: Fairbanks (100%)
 ROAD SERVICE AREA: City of Fairbanks (100%)
 FIRE SERVICE AREA: City of Fairbanks (100%)
 FIRE RESPONSE AGENCY: City of Fairbanks Fire Department (100%)
 STRUCTURES: N/A
 COMMUNITY PLANNING PERMITS:
 Variances: 20140003
 Zoning Permits: 17031

Controlled Access Roads	FEMA Flood Hazard Areas - A Zones only (current effective)
ARTERIAL - CONTROLLED ACCESS	Floodway
Special Regulatory Areas	Zone A
CHENA RIVER CENTERLINE 200 R BUFFER	Zone AE
LEVEE 250R BUFFER	Zone AO
SALCHAKET HEIGHTS EROSION CONTROL	

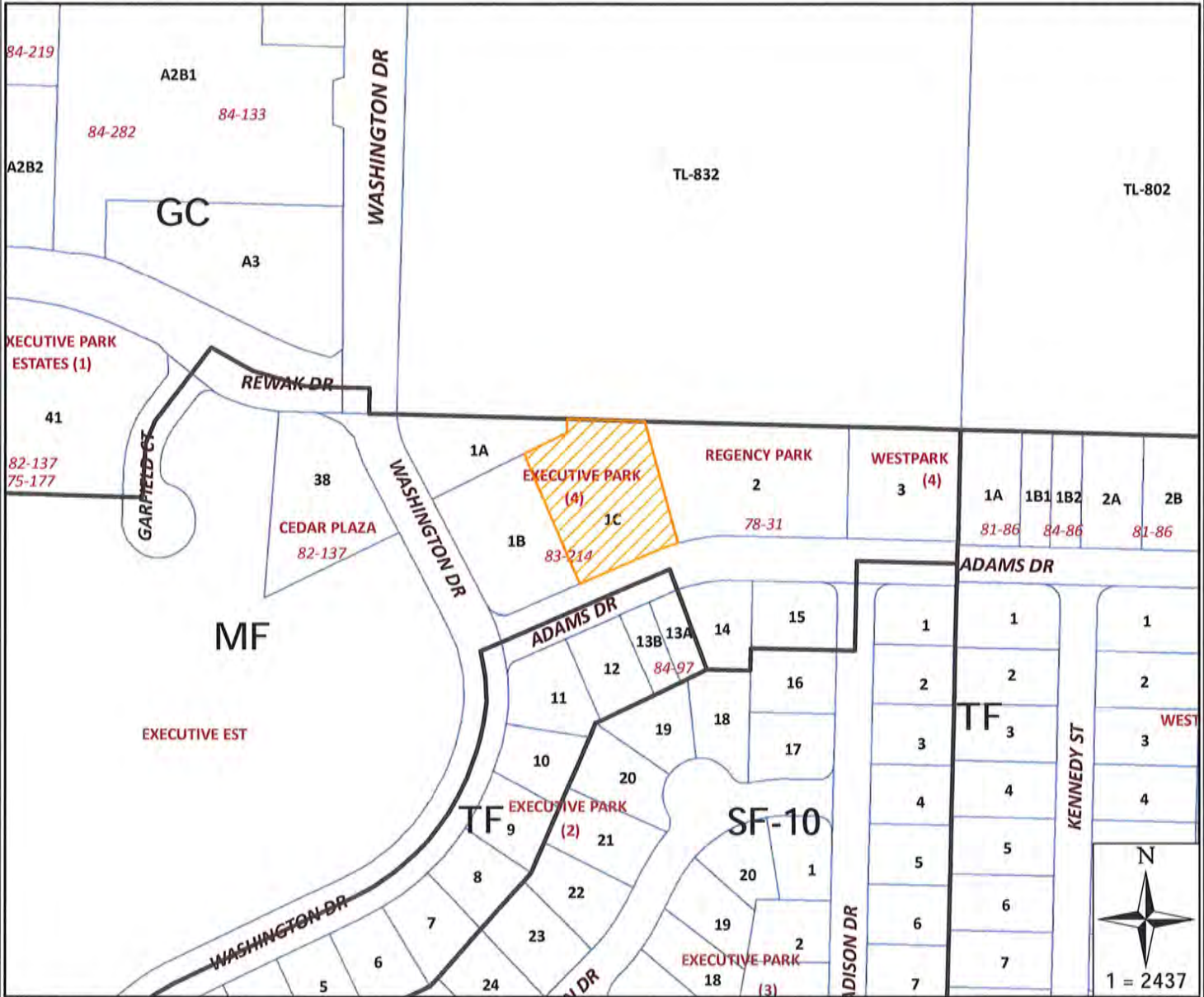
The Fairbanks North Star Borough does not warrant the accuracy of maps or data provided, nor their suitability for any particular application. There may be errors in the data.



Fairbanks North Star Borough

Zoning Report

PAN# 0380971
 Printed on: 11/27/2013



Property Information for PAN#: 0380971

PROPERTY DESCRIPTION: EXECUTIVE PARK, BLOCK: 04, LOT: 01C
 OWNER: Kennedy Kal K
 BILLING ADDRESS: 2175 Broadmoor Ave Fairbanks, AK 99709
 SITUS ADDRESS: 3282 Adams Dr
 PARCEL SIZE: 29748 SF
 FLOOD ZONE: Zone X500 (100%)
 SPECIAL REG. AREAS: None
 ZONING: MF (100%)
 COMP PLAN: Urban Area (100%), Urban Boundary (100%)
 PLANNING DISTRICT: Fairbanks (100%)
 ROAD SERVICE AREA: City of Fairbanks (100%)
 FIRE SERVICE AREA: City of Fairbanks (100%)
 FIRE RESPONSE AGENCY: City of Fairbanks Fire Department (100%)
 STRUCTURES: N/A
 COMMUNITY PLANNING PERMITS:
 Variances: 19950042
 Variances: 20140003
 Zoning Permits: 16779
 Zoning Permits: 17031

Controlled Access Roads	FEMA Flood Hazard Areas - A Zones only (current effective)
ARTERIAL - CONTROLLED ACCESS	Floodway
Special Regulatory Areas	Zone A
CHENA RIVER CENTERLINE 200 R BUFFER	Zone AE
LEVEE 250R BUFFER	Zone AO
SALCHAKET HEIGHTS EROSION CONTROL	

The Fairbanks North Star Borough does not warrant the accuracy of maps or data provided, nor their suitability for any particular application. There may be errors in the data.

Clarkson & Executive Apartments

1503 Washington Dr

Fairbanks AK 99709

(907) 479 - 4675

www.executiveapts.net

7 Nov 2013

TO: Fairbanks North Star Borough
Department of Community Planning
PO Box 71267
Fairbanks, AK 99707-1267

Re: Zoning Variance request for: 3288 Adams Drive.

In 1995 the Borough granted the previous owner, a variance from the 2000 sq ft per living unit rule, by allowing an addition of 18 full size apartments to the existing 24, totaling 42 units.

Scope:

I would like to now add, three 235 sq. ft. efficiency style apartments. These vertical units would be positioned between the two existing buildings and well within existing set back minimums. Each unit would be complete with kitchen and a ¾ bath arrangement. A 3' wide entry (with only one other door) makes the ground floor unit pleasantly convenient for a person of limited mobility.

Fuel Savings:

These will be well built saving heat loss, by changing two exterior walls to interior walls, and replacing the 3rd exterior wall with a well-insulated (36 R value) wall. This will give a small and welcomed improvement in square foot heating costs.

I have little control over heating costs. But this is a small change that will contribute to improving heating efficiency, and help keep the overall operation viable. In Fairbanks, this is a must in sustaining a profitable business and a healthy community.

Unique Setting:

This improvement is unique. Since it is between existing buildings, there is no crowding nor loss of landscape buffers. Indeed, it changes a dark, void, and shadowy space between buildings to an esthetically pleasant improvement that reduces building heat loss.

These units help provide quality lower priced community living without a government program!


Parking:

There is no change in the existing 50 parking spaces. It will adequately accommodate the potential 3 additional vehicles. Note however these units being on a bus line are ideal for a working person not owning a vehicle.

Request:

Therefore, I am requesting the **minimum variance change** from this 2000 sq. foot per unit ordinance requirement, to accommodate this 7% increase from 42 to 45 living units.

Sincerely,

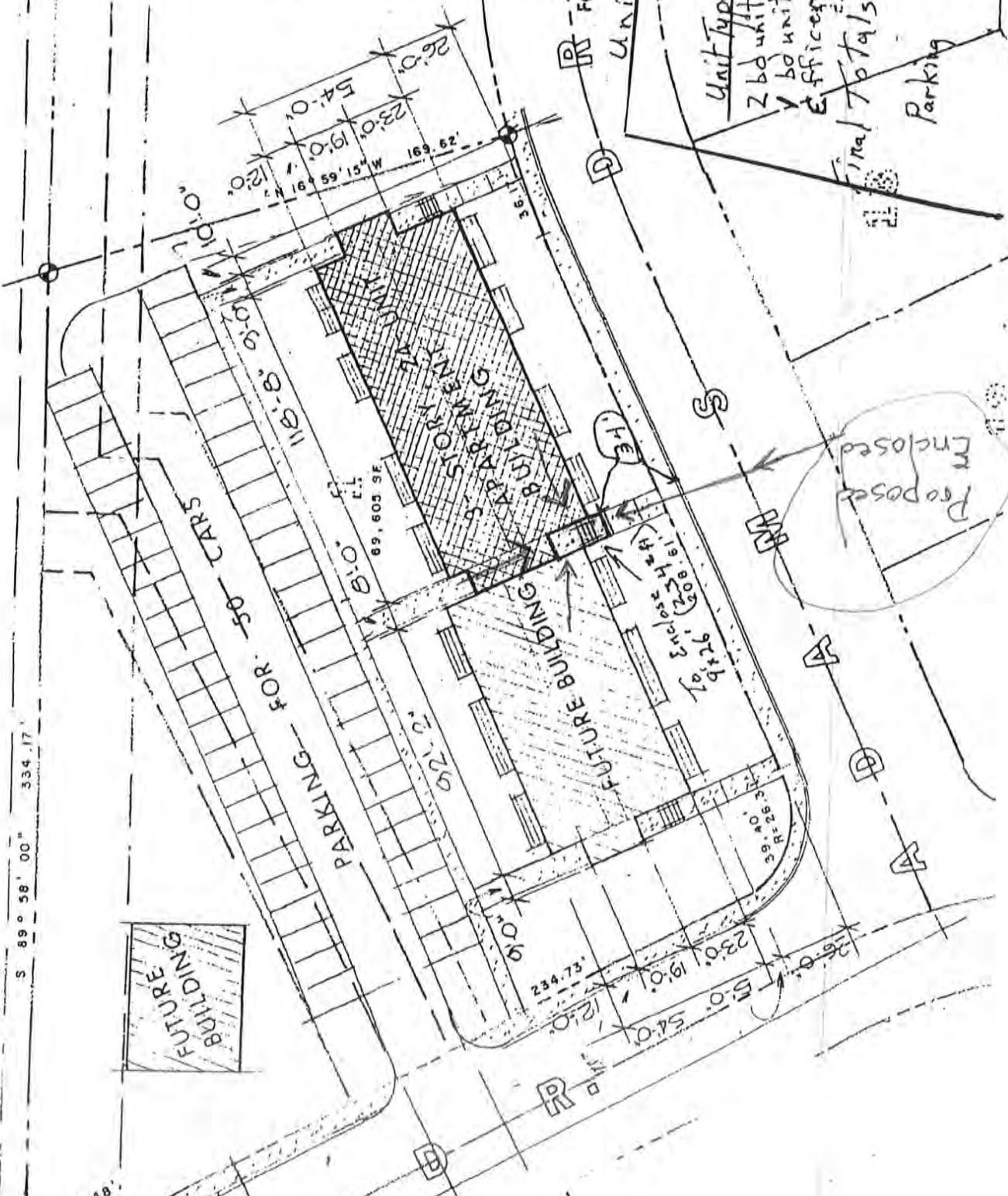

Kal Kennedy, mgr
Attached

EXECUTIVE ARTS
1508 Washington Dr.
Fairbanks, Alaska 99709

Plot Plan

BLOCK 4

S 89° 58' 00" 334.17'

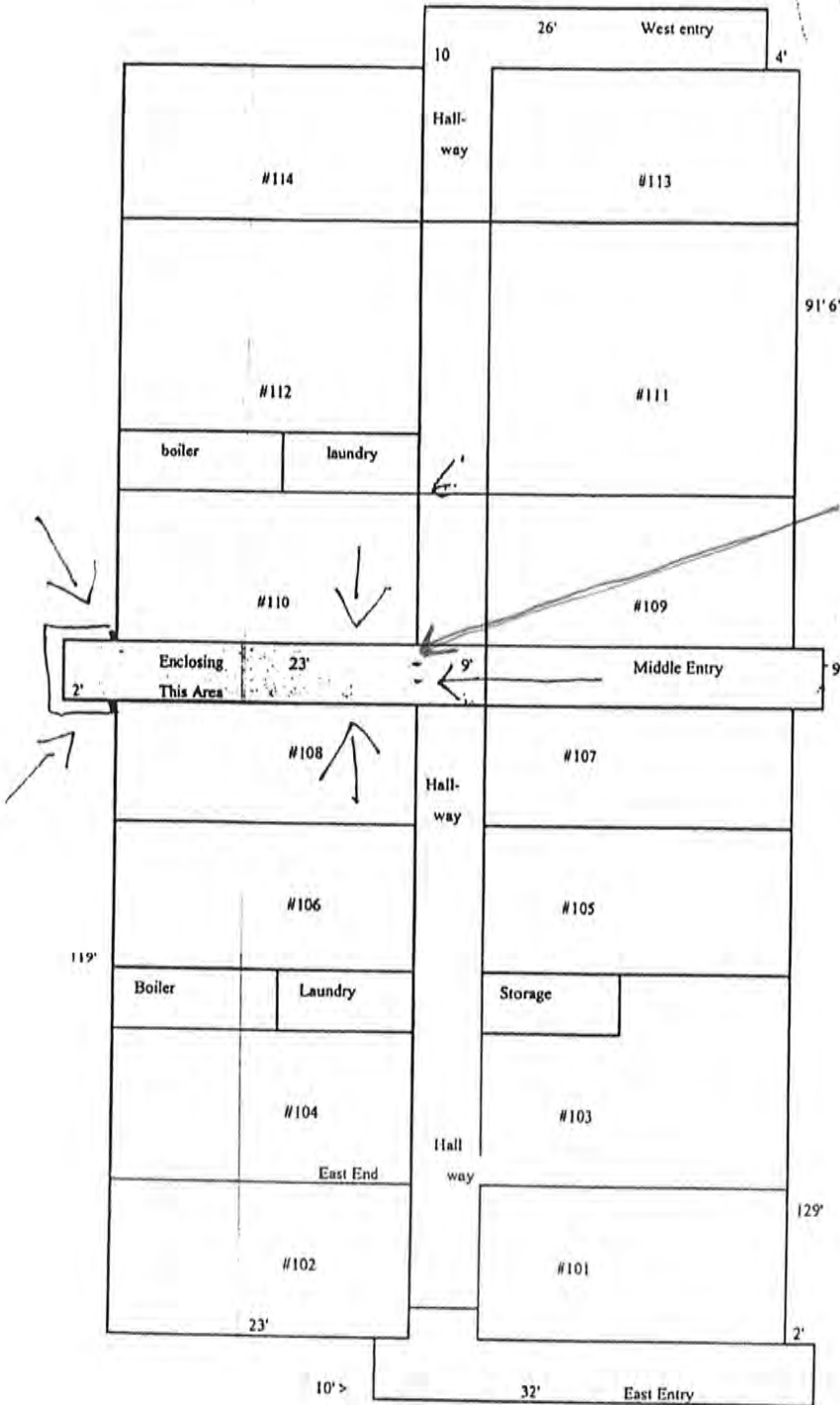


EXECUTIVE ARTS
1508 Washington Dr.
Fairbanks, Alaska 99709

Unit breakdown:

Unit Type	# Existing	# Existing at Proposed
2 bd units	10	Same
1 bd units	28	Same
Offices	0	3
Final Totals	42	45
Parking	50	50 (No change)

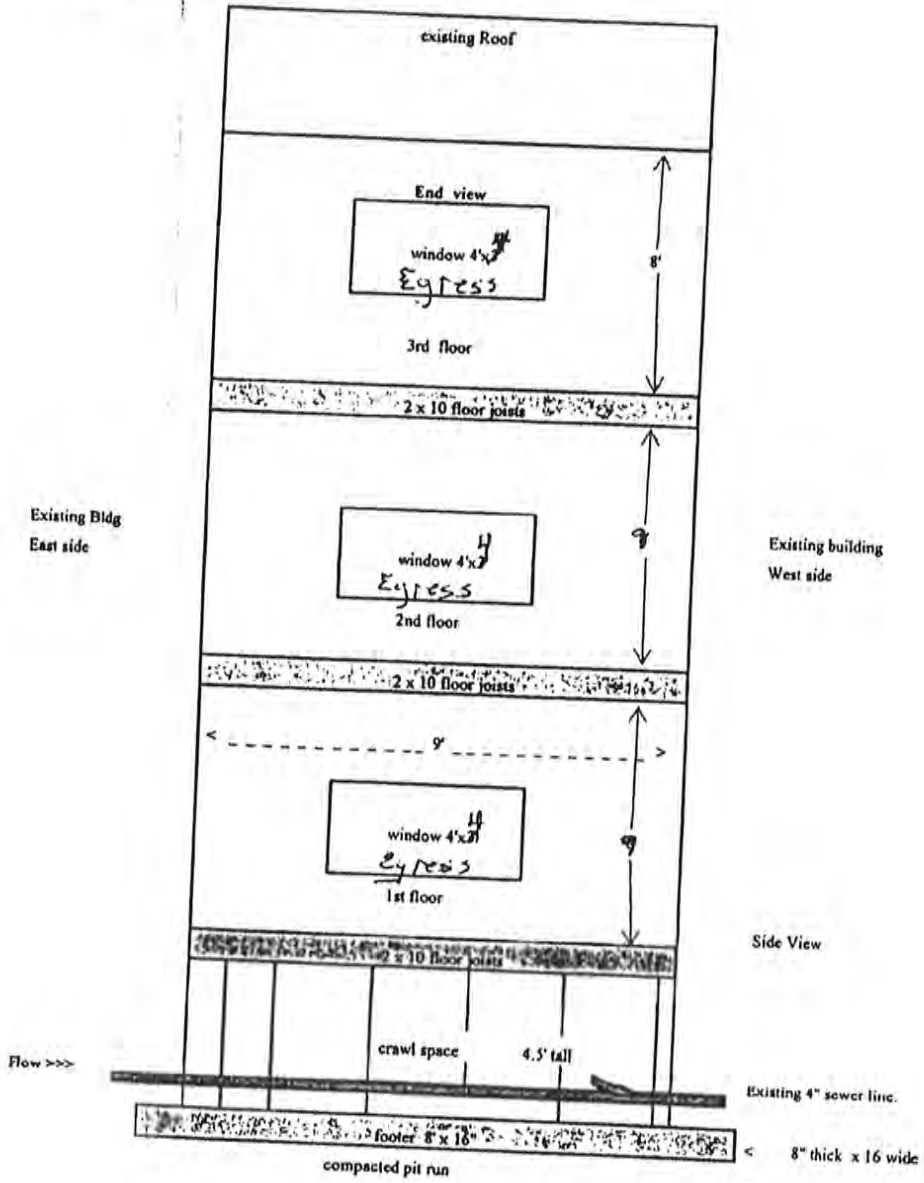
EXECUTIVE APTS.
 1503 Washington Dr.
 Fairbanks, Alaska 99709



Proposed Area being enclosed

Top View

Executive Apts
 Project: Enclosing Opening between Bldgs

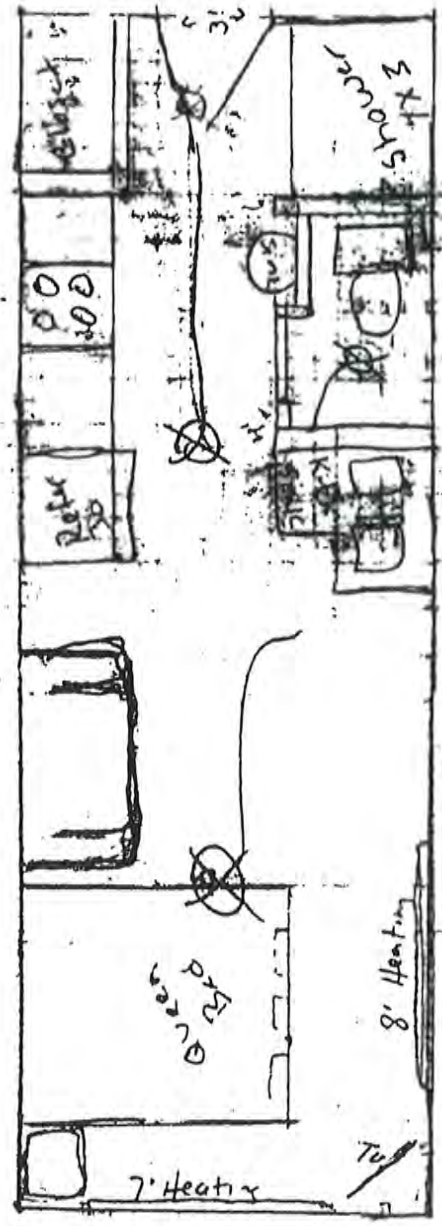


South Side View
 (Adams Street Side)
 EXECUTIVE APTS.
 1503 Washington Dr.
 PRINCETON, ALASKA 99709

6

Proposed
Efficiency
Unit Floor Plan

EXECUTIVE APTS.
1503 Washington Dr.
Fairbanks, Alaska 99709



21 20 14 17 8 4 0

Executive Apts
3288 Adams Change
Efficiency APT Enclosure
Plan Change



Fairbanks North Star Borough Department of Community Planning

P.O. Box 71267
Fairbanks, Alaska 99707-1267

Phone (907) 459-1260

Fax (907) 459-1255

planning@co.fairbanks.ak.us

Zoning Permit Number: **17031**

This permit is issued based on the lot dimensions and zone applicable to the lot on the date of issuance. If prior to construction the zone or the lot dimensions change, this permit will no longer be valid and a new permit must be obtained.

General Information

Date: 11/1/2013

Name/Company: KENNEDY KAL

Telephone 907-322-7955

Mailing Address: 2175 BROADMOOR AVE, FAIRBANKS AK 99709

Cell Phone

Email kkennedy2175@gmail.com

Property Description: 0380954 LOT 1A BLOCK 4 EXECUTIVE PARK
0380971 2002 T/R ASSEMBLED NOW KNOWN
0516813 2002 T/R ASSEMBLED NOW KNOWN

Site Address: 3288 ADAMS DR
3282 ADAMS DR
1503 WASHINGTON DR

Existing Use: Residential

Structure: Multiple residences : 42 existing units (1 & 2-bedroom units)

Proposed Use: Residential

Structure: Multiple residences : 3 new efficiency units

Dwelling Units: 45

New: 3

Existing: 42

Building Height (stories): 3

Total Area of Structure: 12,402 SF

New: 702 SF

Existing: 11,700 SF

Lot Size: 69,606 SF

Est. Construction Cost: \$30,000

Note: 50 existing parking spaces. MF requires 2,000 sq. ft. per dwelling unit. Lot 1B & 1C total 54,414 sq. ft. There are 42 existing units, which require 84,000 sq. ft. 3 new units would require an additional 6,000 sq. ft. for a total of 90,000 sq. ft. of land. This property does not meet the required lot size for the number of dwelling units. Lots 1A, 1B, & 1C were combined to create a Zone Lot of 69,606 sq. ft. The lot size variance of 19,394 sq. ft. to construct an 18 unit apartment complex and single family resident with existing 24 unit apartment complex was approved by V042-95.

↳ requires 5000 sq ft

69,606 include S.B

V2014-003_Kennedy_Pictures



Sign posted on November 13th



Single-family residence/office for apartment manager



Parking lot side of 42-unit building



Adams Drive side of 42-unit building



Apartments along the east property line



Room to Grow Preschool across Adams Drive to the south



Single-family & two-family homes across Adams Drive to the south



Executive State apartments across Washington Drive to the west



Retail center to the north west



The old K-Mart & Sears to the north

Mary Bork

From: Jeffrey Bushke <jhbushke@hotmail.com>
Sent: Sunday, December 01, 2013 12:21 PM
To: Webmail Planning
Subject: V2014-003

Planning Commission,

As a property owner in Executive Estates I recommend the variance NOT BE GRANTED.

The property has not been well kept. Basic yard work is neglected. Trash abounds on the property. There appears to be a "perpetual" yard sale going on.

I do not think that additional units will benefit anyone other than the property owner. Children in the neighborhood will be at more risk due to increased traffic. The intersection of Washington and Rewak has been a problem since the closing of K-Mart. The STOP signs are mere suggestions to drivers, sometimes they don't even slow down. This puts pedestrians in peril on a daily basis.

I believe there are enough occupants located on the site. Adding more will only compound the situation.

Granting a variance is NOT beneficial for the residents of the area.

Jeffrey H Bushke
<http://www.alaskagg.com>

EXHIBIT E

ADDENDUM

V2014-003

Mary Bork

From: Kal Kennedy <kkennedy2175@gmail.com>
Sent: Saturday, December 07, 2013 4:44 PM
To: Webmail Planning
Subject: V2014-003 Kal Kennedy variance request

Re letter to local Property Owners

Note the new requirement is "2000" square feet per unit, not 6000 square feet per unit as stated in your 2nd paragraph.

:) Kal K

Comm. Planning Dept.

0923
RECEIVED



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED
STATES

BUSINESS REPLY LABEL

POSTAGE WILL BE PAID BY ADDRESSEE
DEPARTMENT OF COMMUNITY PLANNING
FAIRBANKS NORTH STAR BOROUGH
P.O. BOX 71267
FAIRBANKS, AK 99707-9990



FOLD ON THIS LINE

RE: **V2014-003**

Dear Property Owner:

The Fairbanks North Star Borough Planning Commission will hold a public hearing Tuesday, **December 10, 2013**, at 7:00 pm. or after in the Borough Administrative Center, Assembly Chambers, 809 Pioneer Road, Fairbanks, Alaska on the following item:

V2014-003 A request by Kal Kennedy for an additional lot size variance to the Multiple-Family Residential zone (MF) minimum lot size requirement of 90,000 square feet to allow for a 69,606 square foot lot on Lots 1A, 1B & 1C, Block 04 of Executive Park Subdivision. This variance is for the addition of 3 new dwelling units requiring 6,000 square feet of lot area for each unit. **(Located at 1503 Washington Drive, east of Washington Drive and north of Adams Drive.)**

You are encouraged to speak at this public hearing and/or submit written comments. Testimony is limited to three minutes per person at the public hearing. Written comments should be submitted prior to the meeting using the space below, or email your comments to planning@fnsb.us referring to request **V2014-003**. Contact Nancy Durham at 459-1260 if you have questions. The staff recommendation on this request can be found at www.fnsb.us/meetings/planningcommission five days before the hearing.

FOLD ON THIS LINE

B Hernandez
Bernardo Hernandez, Director
Department of Community Planning

Property Owner: *Chelsea Strangis*

Legal description of property owned:
Lot, Block and Subdivision: *Unit A301 Regency Park Woods (out of lot 2, block 1) Executive*

Comments: *I approve the variance*

10 December 2013

To – Dept of Community Planning Commission

My name is Ruth L'Hommedieu. I am the On-Site Regency Park Condo Assn Board of Directors Representative/Manager, a Board of Director's member, and a condo owner. I live at 3282 Adams Drive, in one of the Condo Assn buildings.

In reference to Mr Kennedy's request for variance to his multiple-family bldgs, as noted in the mailings property owners received, on behalf of Regency Park Condo Assn I would like to make the following requests and comments.

In the back yard of the condo assn property we have a chain link fence that runs along Mr Kennedy's parking lot, which has a gate that the Condo Assn is required to have. The purpose of this gate is required by the City Fire Dept for them to use to get access to the back side of the two condo buildings should there be a fire on that side of the bldgs.

1. The Condo Assn requests that should Mr Kennedy get the variance he is requesting, that it be stipulated that he have enough parking spaces for all the renters in his building.
2. Further requesting that it be stipulated that Mr Kennedy not have any of his parking spots blocking our back gate. Also request that Mr Kennedy notify all his renters not to block our back gate.

The back gate being blocked has happen several before and one time a renter of his would take off our chain and lock we kept the gate closed with and replace it with another chain and lock put on by this man, but we were not given the keys. This happen several times. Also, this individual kept removing the "Do Not Block" signs we put on our back gate facing into his parking lot. We requests that these things not happen again.

3. We would also like to request that Mr Kennedy make sure all his renters do NOT come on the private property of the Condo Assn and use our dumpster. This has happen so many many times I have lost count.

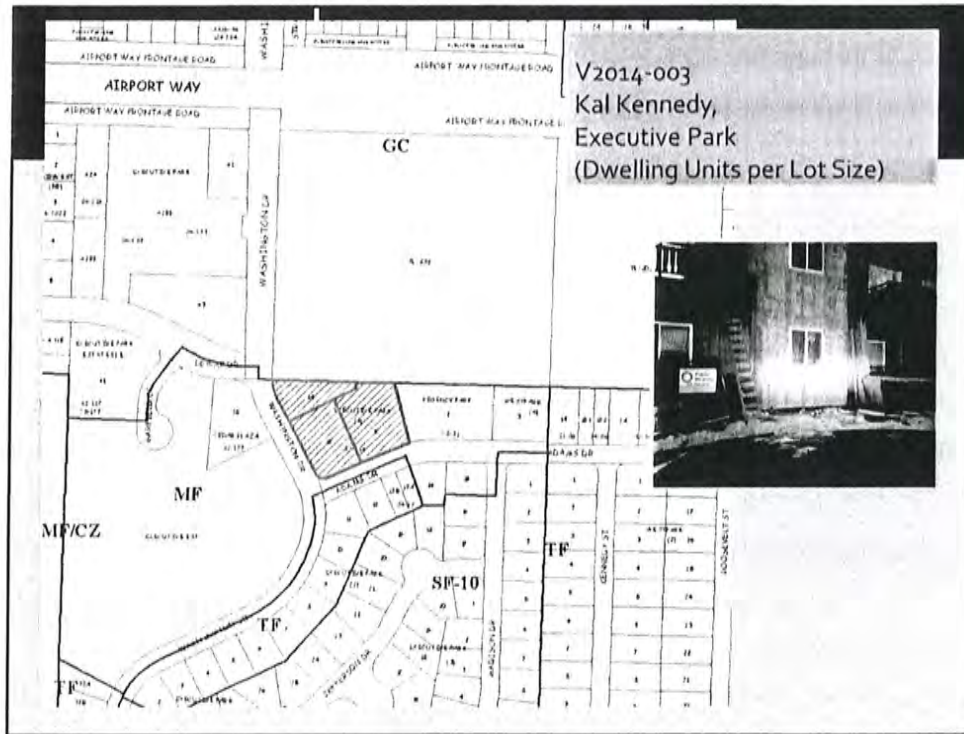
Recently when work was being done to make these units the workers were seen bringing wheel barrels of building material and things over to dump into our dumpster, including hunk of broken up concrete.

These items, and furniture his renters have been seen putting in our dumpster are all against the rules of the Trash company the Condo Assn uses, and we could lose this company doing out trash pick up if things like this continue from his renters, or workers.

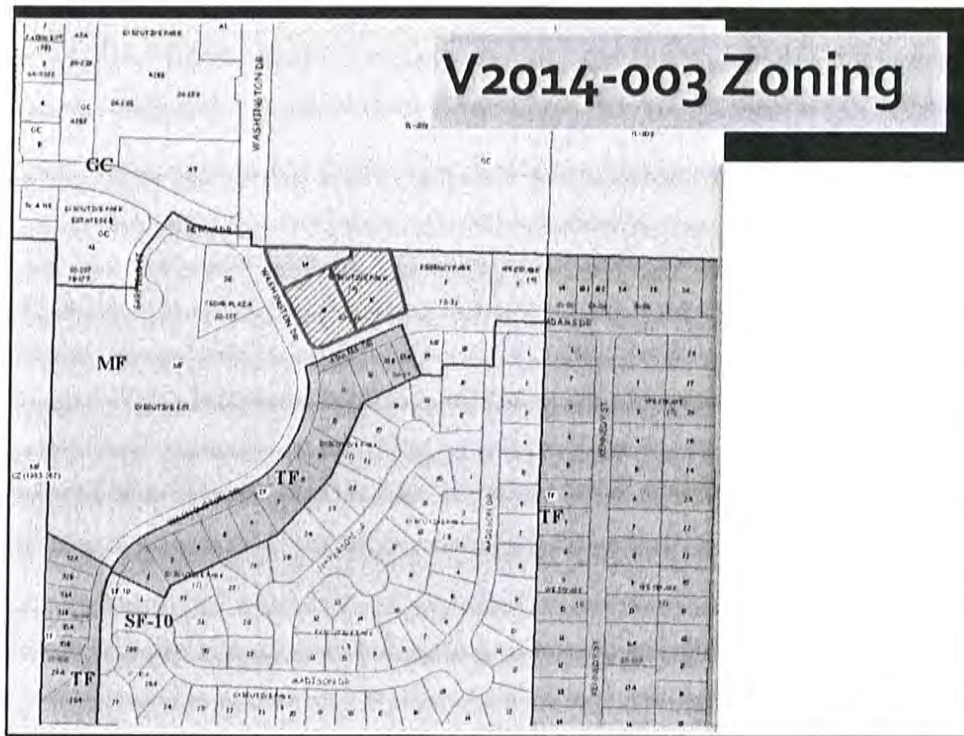
EXHIBIT F

V2014-003
Washington Drive

Planning Commission
10 December 2013



This is a request for adding three, 235 sq. ft. efficiency units in between the existing buildings.



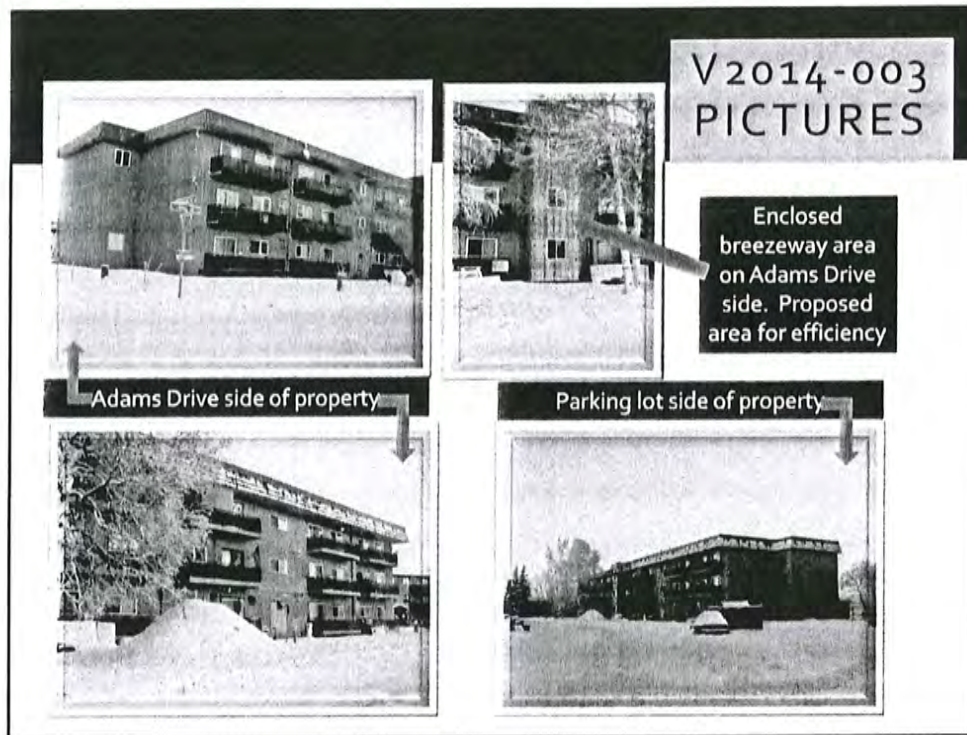
The subject property is zoned Multiple-Family Residential (MF). This area was zoned Restricted Residential 1 (R1-1) on September 10, 1970 via Ord. No. 70-33. It became Multiple Residential I (R3-1) on November 14, 1975 via Plat Number 75-177 & Conditional Use for Planned Unit Development (PUD). The zoning designation was changed to MF on April 19, 1988 via Ord. No. 1988-010.

The surrounding zoning is General Commercial (GC) to the north, MF & Two-Family Residential (TF) to the east, TF & Single-Family Residential-10 (SF-10) to the south, and MF to the west.



V2014-003 Land Use

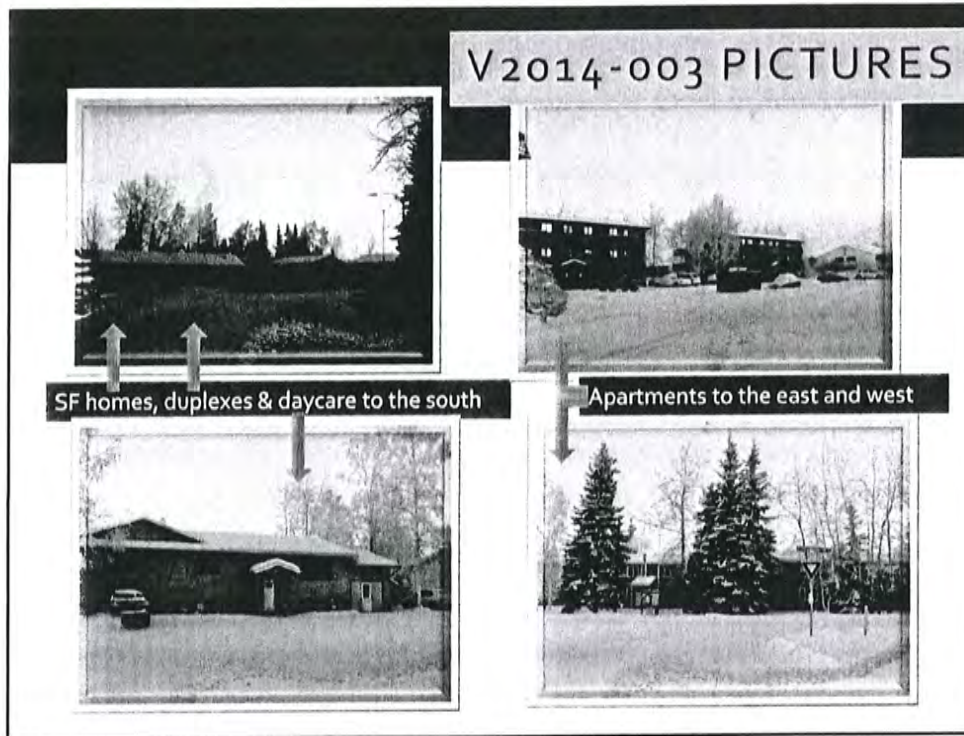
Here is an aerial view of the surrounding land use.



These pictures show the 42-unit apartment complex. The area in pink is where the new efficiency units would go.



These pictures show the 42-unit building on the parking lot side, the parking area, and the single-family residence and office for the apartment manager.



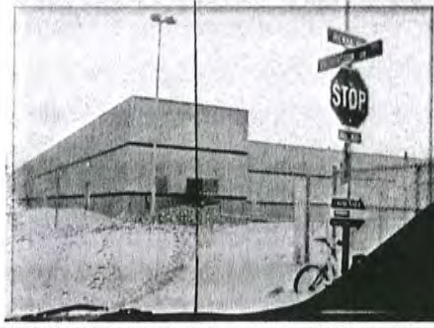
The surrounding area to the east, south, and west are a mix of apartment complexes, single-family homes, duplexes, and a daycare.

V2014-003
PICTURES

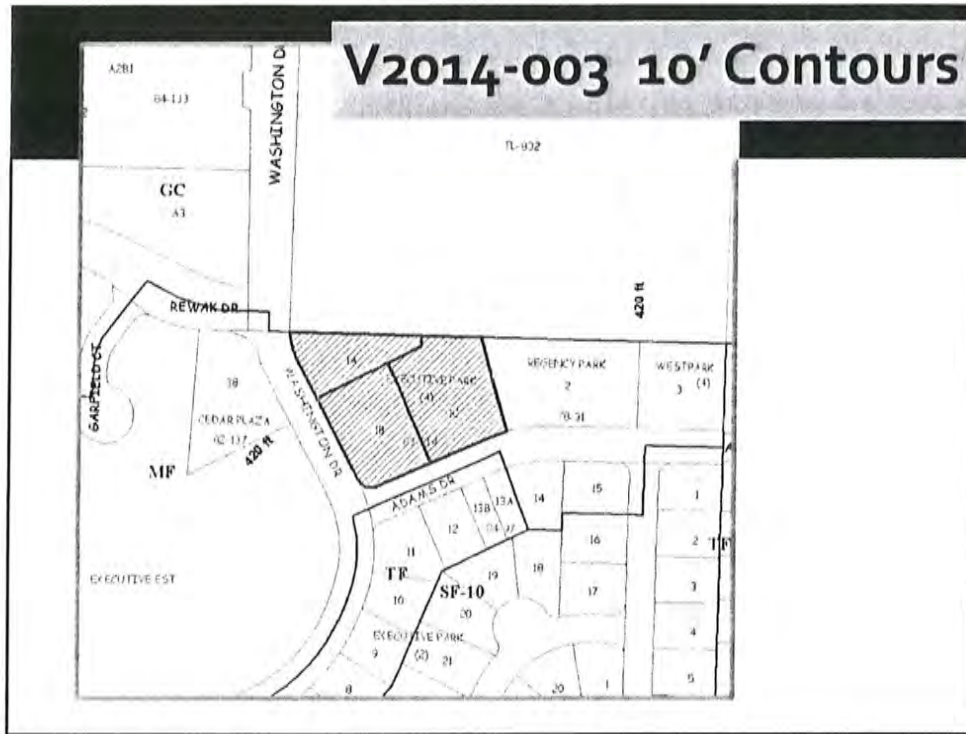


Retail shopping center to northwest

Old K-Mart building to north



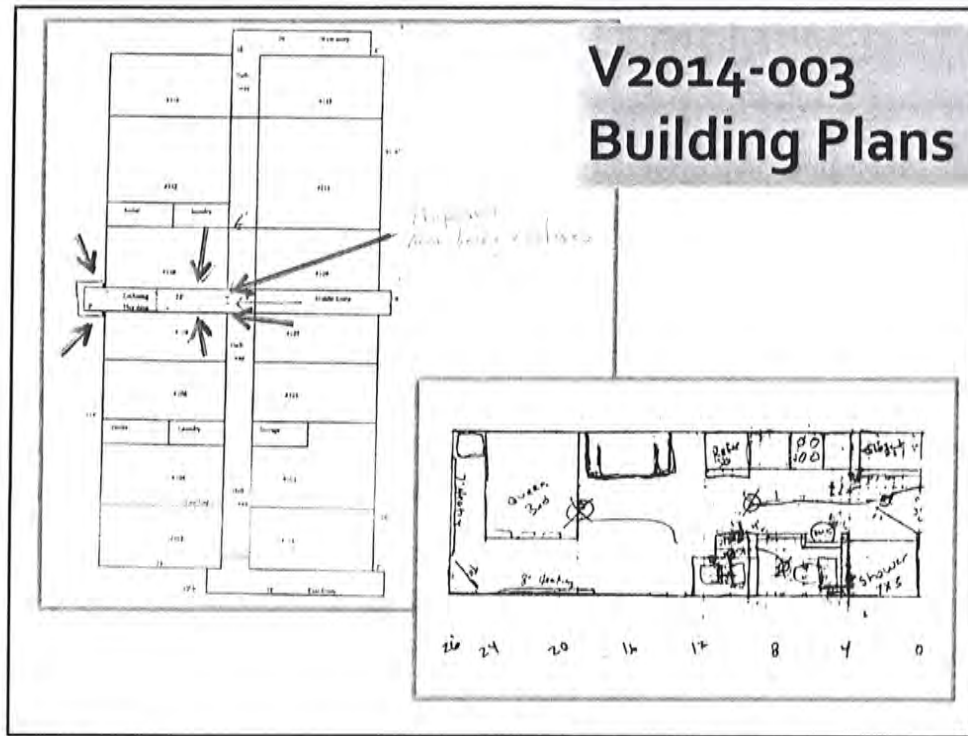
These pictures show the commercial properties to the north along each side of Washington Drive.



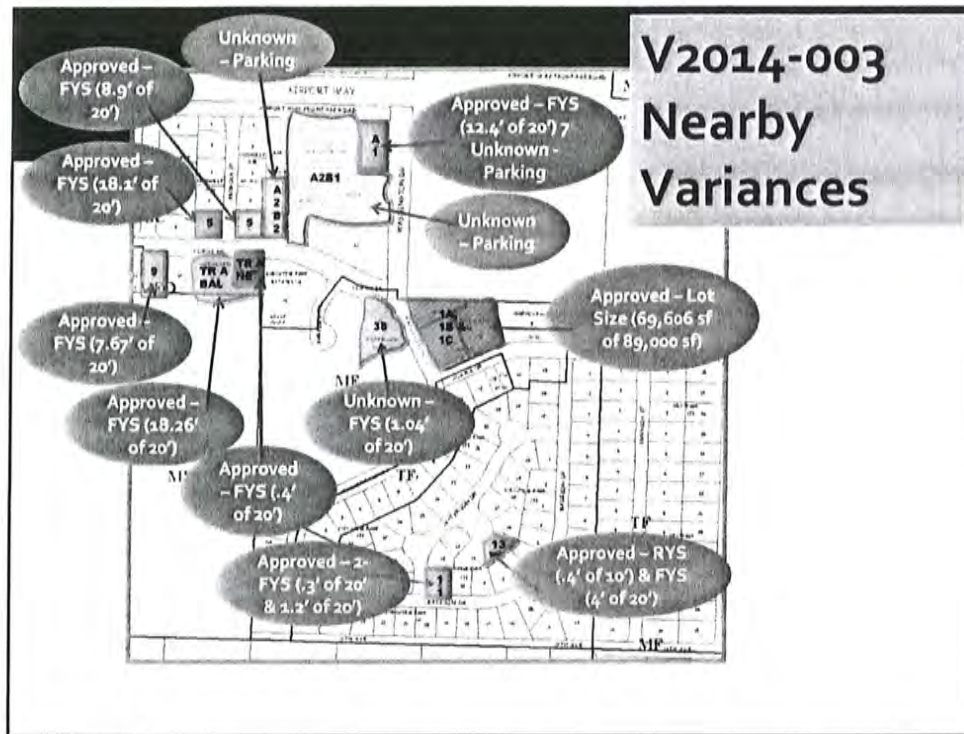
There is no change in ground elevation.





This Site Plan shows the single-family residence/office for the apartment manager and the 42-unit apartment complex. There are 50 parking spaces on site, but the zoning only requires 43; by adding 3 additional units, the parking requirements would rise to 46 spaces and the property is still in compliance.



These plans show where the units will be located in the building as well as the layout of the efficiency units.




The subject properties are in red. There have been twelve variance requests in the immediate area with nine approved and four unknown. The variances in blue are for ADOT and are only for the existing buildings on the property. There are no variances in the area for lot size other than the previous approved variance on the subject properties.

V2014-003
V042-95
CONDITIONS

- 1) Development shall be in accordance with the approved site plan.
 - The property was developed according to the site plan.
- 2) The property owner shall sign and record a standard affidavit provided by the Planning Department which states the three properties are encumbered together as one for use as a zoning lot.
 - Signed on June 6, 1996.



A variance (V042-95) of 19,394 sq. ft. to the required 89,000 sq. ft. for a total of a 42-unit complex and a single-family home/office was approved in 1995 citing the unusual condition existing on the property of a foundation being constructed prior to the zoning change. There were four required conditions. The property meets the first 2 conditions.




V2014-003
V042-95
CONDITIONS

3) The applicant shall apply D1 material to parking area prior to occupancy of proposed structures. Parking area shall be maintained annually by grading and compacting with water. The applicant shall pave parking area prior to June 1, 2000.

- According to the Assessor's office pictures of the property, the parking lot appears to be paved. These pictures are from 2001 and 2011. The applicant stated the parking lot was paved prior to him purchasing the property in 2001. He added pavement around the egress and filled in potholes this year.




The 3rd condition concerning the parking lot, appears to be paved according to recent pictures and a statement from the current owner.



V2014-003
V042-95
CONDITIONS

The applicant shall complete a landscape plan, to include trees, grass and other plants with special attention given to the south, east and west sides of the zoning lot which front other residential properties. This plan shall be submitted to the Director of Community Planning for approval. Landscaping shall be complete prior to August 1, 1997 and maintained throughout the life of the complexes. All existing trees shall be retained.

- The landscape plan was approved on February 4, 1998 by Rex Nutter, Director of Community Planning. The landscape plans show approximately five to six trees along Adams Drive, approximately five to six trees along Washington Drive, approximately two trees along the east side of the property, and approximately three to five trees along the north side of the property. Landscaping was installed along Adams Drive, Washington Drive, and the east side of the property according to the 2012 Pictometry on GIS. Google Maps show some of the landscaping remaining and site pictures from November 20, 2013 show the majority of the landscaping was removed (Exhibit 2). The applicant stated several Cottonwood trees were cut down last year because they were damaged/dying and several were cut down this year. There are three trees grouped together along Adams Drive, one tree along the east property line and two trees in the parking lot remaining.



The 4th condition was met, but is now no longer compliant. The previous variance conditions were signed. The landscape plan was approved and landscaping was installed. However, the majority of the landscaping has been removed within the last two years and has not been replaced.

TITLE 18 PROVISIONS

- 2a. *Special conditions exist which are peculiar to the land involved and which are not applicable to other land in the same zoning district;*
 - There are no special conditions existing which are peculiar to the land involved and which are not applicable to other land in the same district.
- 2b. *Strict interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance.*
 - Strict interpretation of the provisions of the zoning ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the immediate area. The applicant has 42 units and a single-family home/office already existing on the lot from an approved variance.

TITLE 29 PROVISIONS

A variance cannot be granted if:

1. *Special conditions that require the variance are caused by the person seeking the variance;*
 - There are no special conditions on the lot that requires a variance for lot size.
2. *The variance will permit a land use in a district in which that use is prohibited;*
 - Multiple-family residences are permitted uses in the MF zone.
3. *The variance is sought solely to relieve pecuniary hardship or inconvenience;*
 - The variance is sought for fuel savings and heating costs.

RECOMMENDATIONS

Based on the staff analysis, the Department of Community Planning recommends ***Denial*** of the request.

FINDINGS OF FACT

The Department of Community Planning further recommends adoption of the following Findings of Fact in support of denial:

- 1) The proposed variance does not conform to the intent and purpose of Title 18 and other Ordinances and State Statutes; specifically, there are no special conditions unique to the property that necessitates the granting of the variance.
- 2) Denial of the proposed variance will not deprive the applicant the use of his property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area. Current density is greater than typically permitted by zoning, although permitted by the 1995 variance.
- 3) The proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increased danger of fire because there does not appear to be sight distance, snow removal, or road safety issues that are made worse due to the addition of the new dwelling units. They have more than the required parking and are on Golden Heart Utilities sewer and water.

CONCLUSION

- Dear Property Owner Letters sent - 88
- Returned DPOs – 1 (1 in favor, 0 against)
- Emails – 2 (0 in favor, 1 against, 1 clarification)
- Phone calls – 2 (1 inquiring, 0 in favor, 1 against)

- The owner has not been in to review the file.

- Questions?

There were 88 Dear Property Owner letters sent out with one email reply against the variance. There has been two phone calls, with one against this variance and one inquiring about the case. There was one returned DPO in favor of the variance. There were two emails, one against it and the other from the owner clarifying 2,000 sq. ft. per unit not 6,000 sq. ft. per unit, but 6,000 sq. ft. total. The owner has not been in to review the file.

This concludes staff's presentation.

FAIRBANKS NORTH STAR BOROUGH THE STATE OF ALASKA

PLANNING COMMISSION MEETING

PUBLIC MEETING

DECEMBER 10, 2013

TRANSCRIPT OF PROCEEDINGS (EXCERPT)

2014 MAR -6 PM 3:51
FNSB CLERKS OFFICE
RECEIVED
ad

ORIGINAL

P R O C E E D I N G S

(Meeting adjourned 7:00 p.m.)

(This portion not requested)

(Group oath administered)

V2014-003.

MS. DURHAM: I'd like to make a correction first off to the intro to this case. It's 6,000 square feet of lot area total for the three units, not per unit. It's 2,000 square feet per unit. So that was a misprint in the legal.

The subject property is a Multiple Family Residential. This area was zoned Restricted Residential 1 on September 10, 1970 via Ordinance No. 7033. It became Multiple Residential 1 on November 14th, 1975 via Plat No. 75-177 and conditional use for a planned unit development. The zoning designation was changed to Multiple Family on April 19th, 1988 via Ordinance No. 1988-010. The surrounding zoning is general commercial to the north, multiple-family, and two-family residential to the east, two-family and single-family residential 10 to the south, and multiple-family residential to the west.

Here is an aerial of the surrounding land use and this is the subject property. These pictures show the 42-unit apartment complex. The area in pink is where the new

1 efficiency units are going to go. So he enclosed this
2 wall here, but they would go behind that area. These
3 pictures show the 42-unit building on the parking lot
4 side, the parking area, and the single-family
5 residence/office for the apartment manager.

6 The surrounding area to the east, south, and west
7 are a mix of apartment complexes, single-family homes,
8 duplexes, and a day-care. These pictures show the
9 commercial properties to the north along each side of
10 Washington Drive, and that's the old Kmart building on
11 Airport Way. There is no change in the ground elevation.
12 The site plan shows the single-family resident office for
13 the apartment manager, the 42-unit apartment complex,
14 there are 50 parking spaces on site, but the zoning only
15 requires 43. By adding three additional units, the
16 parking requirements would rise to 46 spaces and the
17 property is still in compliance.

18 These plans show where the units will be located
19 in the building as well as the layout of the efficiency
20 unit. So here is the original building and then this was
21 a breezeway in between, so this is where the efficiency
22 units would go on each floor and this is the layout of the
23 unit.

24 The subject properties are located right here in
25 the middle. There have been 12 variance requests in the

1 immediate area with nine approved and four "a no." The
2 variances in blue are for Alaska Department of
3 Transportation and are only for the existing buildings on
4 the property. There are no variances in the area for lot
5 size other than the previous approved variance on the
6 subject properties.

7 A variance V042-95 of 19,394 square feet to the
8 required 89,000 square feet for a total of a 42-unit
9 complex and a single-family home and office was approved
10 in 1995, citing the unusual condition existing on the
11 property of a foundation being constructed prior to the
12 zoning change. There were four required conditions. The
13 property meets the first two of those conditions. The
14 third condition concerning the parking lot appears to be
15 paved according to recent pictures and a statement from
16 the current owner. The fourth condition was met, but is
17 no longer compliant. The previous variance conditions
18 were signed. The landscape plan was approved and
19 landscaping was installed; however, the majority of the
20 landscaping has been removed within the last two years and
21 has not been replaced and all existing trees and
22 landscaping was required to be maintained for the life of
23 the complex.

24 Title 18 Provisions: Special conditions exist
25 which are peculiar to the land involved and which are not

1 applicable to the other land in the same zoning district.
2 There are no special conditions existing which are
3 peculiar to the land involved and which are not applicable
4 to other land in the same district. Strict interpretation
5 of the provisions of the zoning ordinance would deprive
6 the applicant of rights commonly enjoyed by other
7 properties in the same district under the terms of the
8 zoning ordinance.

9 Strict interpretation of the provisions of the
10 zoning ordinance would not deprive the applicant of rights
11 commonly enjoyed by other properties in the immediate
12 area. The applicant has 42 units and a single-family home
13 office already existing on the lot from an approved
14 variance.

15 Title 29 provisions: A variance cannot be granted
16 to have special conditions that required the variance are
17 caused by the person seeking the variance. There are no
18 special conditions on the lot that requires a variance for
19 lot size. The variance will permit a land use in the
20 district in which that use is prohibited. Multiple-family
21 residences are permitted uses in the multiple-family zone.
22 The variance is sought solely to relieve pecuniary
23 hardship or inconvenience. The variance is sought for
24 fuel savings and heating costs.

25 Based on the staff's analysis, the Department of

1 Community Planning recommends denial of this request. The
2 Department of Community Planning further recommends
3 adoption of the following Findings of Facts in support of
4 denial: The proposed variance does not conform to the
5 intent and purpose of Title 18 and other ordinances and
6 state statutes. Specifically, there are no special
7 conditions unique to the property that necessitates the
8 granting of the variance. Denial of the proposed variance
9 will not deprive the applicant's use of his property in a
10 manner equivalent to the use permitted to be made by
11 owners of property in the immediate area.

12 Current density is greater than typically
13 permitted by zoning, although permitted by the 1995
14 variance. The proposed variance will not jeopardize
15 public health, safety, or welfare, traffic or parking
16 conditions, or increase danger of fire because there does
17 not appear to be sight distance, snow removal, or road
18 safety issues that are made worse due to the addition of
19 the new dwelling units. They have more than required
20 parking and are on conditional [sic] Heart Utilities sewer
21 and water.

22 CHAIRPERSON: Thank you.

23 MS. DURHAM: May I finish the last one?

24 CHAIRPERSON: Sure.

25 MS. DURHAM: There were 88 Dear Property Owner

1 letters sent out with one e-mail reply against the
2 variance. There were two phone calls with one against the
3 variance and one just inquiring about the case. There was
4 one returned DPO in favor of the variance. There were two
5 e-mails, one against it and the other from the owner
6 clarifying the 2,000 square feet instead of the 6,000
7 square feet, and the owner has not been in to review the
8 file. And this concludes staff's presentation.

9 CHAIRPERSON: Thank you. Questions for staff?
10 Mr. McBeath, Mr. Lanning.

11 MR. McBEATH: I've got a couple questions,
12 Ms. Durham. The -- you indicate that the density of the
13 area is higher than the neighborhood should probably
14 allow, but was permitted under an earlier variance?

15 MS. DURHAM: Yes. The 1995 variance. Because
16 when they initially built the first 18 -- first 24 units
17 of the building, they also built the foundation for the
18 additional 18 units, but they never constructed that
19 building, that part of -- that side of the building. So
20 the variance was to construct that side of the building
21 and then add the single-family home/office for the
22 apartment manager. And they allowed it because the
23 foundation was there prior to the zoning change and it was
24 the intent, the original intent of the property.

25 MR. McBEATH: You mentioned that one of the

1 conditions of an earlier variance request was that foliage
2 be -- or landscaping be done and foliage be maintained,
3 and this was not the case. Was this a major factor
4 entering into your consideration to deny the request?

5 MS. DURHAM: That was one of them, yes, sir.

6 MR. McBEATH: What were some others?

7 MS. DURHAM: The other was because the lot size,
8 it already exceeds the 2,000 square feet per multi-family
9 unit, the 5,000 square feet per single-family unit, and
10 the office parking requirements and square footage allowed
11 on the existing lot. The existing lot is only 69,606
12 square feet and that would require like 90,000, Let's
13 see, 95,000 square feet total. So they're increasing the
14 19,000 by 6,000 more square feet of lot size.

15 MR. McBEATH: You mentioned that there were nine
16 variances approved and four were denied. Of the variances
17 that were approved in that general area, were any
18 analogous to the request of the applicant?

19 MS. DURHAM: To the request of the -- to -- I'm
20 sorry.

21 MR. McBEATH: Shall I repeat that? Of the nine
22 variances that were approved in that general area and four
23 denied, were any approved variance requests that were
24 analogous to the request of the applicant?

25 MS. DURHAM: No, these were all for set-backs

1 because DOT went in and increased the roads through here.
2 It looks like the right-of-ways. So it messed up all the
3 set-backs, so that's all the ones that were approved in
4 that area and it was four a "no," not denied.

5 MR. McBEATH: Okay. And one final question. I'm
6 having a difficult time understanding exactly what would
7 happen if the variance requests were approved. You
8 pointed out a section in pink. If you could return to
9 that.

10 So that's a -- that's a breezeway; that's just a
11 false front and it would be removed and there would be
12 units built in that area?

13 MS. DURHAM: No. That's newly done. I don't know
14 how old that is, but that's newer. This was a breezeway
15 from previous plans. He enclosed this to try and cut
16 down, to my knowledge from what I understood, the wind and
17 the cold going in there. And then so he wants to, behind
18 this wall, build the efficiency units in that space to
19 give it.....

20 MR. McBEATH: Okay. So right now the space behind
21 that wall.....

22 MS. DURHAM: Is open.

23 MR. McBEATH:is open, it's empty?

24 MS. DURHAM: It's open.

25 MR. McBEATH: There's nothing there.

1 MS. DURHAM: Not to my knowledge. I did not go
2 into the building to look.

3 MR. McBEATH: Thank you.

4 CHAIRPERSON: Mr. Lanning.

5 MR. LANNING: Is this within the City of Fairbanks
6 or outside the city?

7 MS. DURHAM: Within the City of Fairbanks.

8 MR. LANNING: So these building plans would have
9 to be -- go through the city's building permit process?

10 MS. DURHAM: Yes, sir, after the zoning permit
11 would be approved for it.

12 MR. LANNING: Let me ask you another question to
13 follow up on Mr. McBeath's. When you say there's nothing
14 in there, it looks to me like it might be an exitway with
15 a sidewalk going through there. Does a sidewalk go
16 through there? Is it part of an exit.....

17 MS. DURHAM: No, this goes all the way to the
18 ground, so there's no exit through here.

19 MR. LANNING: Was there an exit through there
20 previous, do you know?

21 MS. DURHAM: Previously, that wall was not there.
22 I don't know what year it was built, but previously it was
23 open.

24 CHAIRPERSON: Mr. Lanning, we might have some
25 other questions for the.....

1 MR. KENNEDY: Could I interject on that to help
2 him?

3 CHAIRPERSON: Not -- not yet, but we can -- we can
4 reiterate the questions after. Any further --
5 Mr. Johnston? Oh, sorry, and I forgot, Mr. Pruhs and then
6 Mr. Johnston.

7 MR. PRUHS: Ms. Durham, so if he constructed this,
8 the exterior footprint of the building would not change.

9 MS. DURHAM: Correct.

10 MR. PRUHS: Thank you.

11 CHAIRPERSON: Mr. Johnston?

12 MR. JOHNSTON: Yes. I was wondering if there --
13 when they construct this, if there's going to be any
14 egress issues with exiting the building on both sides or
15 that area?

16 MS. DURHAM: I would defer that to the
17 applicant.....

18 MR. JOHNSTON: Okay.

19 MS. DURHAM:at his point of talking.

20 CHAIRPERSON: Any further questions? I don't see
21 any. Mr. Kennedy, would you like to ask any questions to
22 Ms. Durham?

23 MR. KENNEDY: Probably not a question, but a
24 comment. You had three reasons to.....

25 CHAIRPERSON: Oh, sorry, no comments at this time.

1

2

MR. KENNEDY: Okay. Okay.

3

4

CHAIRPERSON: Yeah, we don't even let these guys have comments right now, so.....

5

MR. KENNEDY: Nothing further then. Thanks.

6

7

CHAIRPERSON: And you'll actually get 7 minutes and 30 seconds on the clock here for your comments,

8

actually.....

9

10

THE CLERK: Let me round to 7:30. I can only put it in whole numbers.

11

12

CHAIRPERSON: Okay. So we'll just go ahead and put eight, and we're going to give you an additional 30 seconds because Ms. Durham went.....

14

MS. DURHAM: Sorry.

15

16

CHAIRPERSON:over 30. No, it's okay. Feel free to start when you're ready, Mr. Kennedy.

17

18

MR. KENNEDY: Thank you very much for this opportunity. I first want to know if in your package you have my letter that talks about this. It is addressed to the Planning Department.

21

22

CHAIRPERSON: Executive (indiscernible - simultaneous speech) yep.

23

24

MR. KENNEDY: That's the one. I must say that's well done and it says everything there, other than to emphasize a couple points that are on here. One, the

25

1 space that we're talking about as was shown with the pink
2 front, that's insulation, that was just a void in between
3 the buildings and then on the inside of that was a hallway
4 that connected the two buildings.

5 And so what you had in there was a lot of it --
6 outside exposed space there. But it was also a negative
7 to the environment there, to the area. In other words, it
8 was a place for kids to hide or play or cause problems and
9 it was just a void there that really needed to be
10 getting -- to eliminate. By doing that, I have eliminated
11 that negative in the area and then there are all these
12 other pluses that go along with it: the improved
13 insulation and fuel use.

14 And that's the key thing that I think that's
15 important for the board to know. It's economic, yes,
16 that's a very important part, but it's also an improvement
17 to the neighborhood, and that can't be underestimated or
18 understated. I have four points, but the one -- there
19 were three points that were reasons for denial of the
20 request, but the one -- the third point on there, as far
21 as I'm concerned, was a reason to allow the variance. It
22 was in my favor, but they have it as a point against my
23 proposal.

24 So the findings of facts are -- to me, it only
25 looked like they had two points rather than the third one

1 was in support of mine. I have four points to make here.
2 Vibrant communities with ivory towers and spacious
3 locations and even these facilities that we have here
4 today, that we are, you know, fortunate enough to have and
5 to meet in, they are all byproducts of a profitable
6 enterprise. And that is very important. Profitable
7 enterprise is very important for the health of a community
8 and for it to be vibrant.

9 Two, if you eliminate the pecuniary reasons, and
10 it's in that Title 29, the third reason there, but if --
11 as you eliminate the pecuniary reasons or the profit
12 reasons, you have a declining tax base and declining
13 communities. And so I sort of take exception to that one
14 point.

15 The third point is that my operation here has ever
16 so slim profit margins. In fact, the operation was turned
17 over to the bank several years ago and has since gone
18 through a couple owners, and me being the last one. So
19 that can't be understated either. The things that people
20 do to improve a profit margin is very important to
21 maintaining a nice environment and a nice neighborhood.
22 When you eliminate that, what do you have? Then you have,
23 you know, a declining neighborhood and a declining tax
24 base. And I think that's important to point out here.

25 And then last, I already pointed out how this

1 eliminates a negative aspect to that -- to this area and
2 the neighborhood. And then in my letter, I just have to
3 emphasize also that this is a -- let me see here, I'm
4 trying to build these units and make it a profitable -- a
5 more profitable operation. I'm doing this and it will be
6 an improvement to the community and an improvement to that
7 area. And I want to emphasize that it is done without a
8 government grant.

9 So with that, I would entertain questions from the
10 board.

11 CHAIRPERSON: Questions for Mr. Kennedy?
12 Mr. Johnston?

13 MR. JOHNSTON: Mr. Kennedy, I've got two
14 questions. One is back to the egress issue. When you've
15 designed this, have you looked at the egress between the
16 apartment buildings and what it does when it cuts off that
17 area in the center? I assume that's an exit area?

18 MR. KENNEDY: Egress was not an issue or never has
19 been in that area. That was a dead zone in between the
20 two existing.....

21 MR. JOHNSTON: That wasn't an exit area
22 previously?

23 MR. KENNEDY: I didn't quite hear you, sir?

24 MR. JOHNSTON: That was not an exit area
25 previously?

1 MR. KENNEDY: No, it was not.

2 MR. JOHNSTON: Okay. The second question is, you
3 talk about improving the area, but you did not address the
4 landscape issue that was brought up in a couple of cases
5 by staff. Do you plan on relandscaping this area as part
6 of this project?

7 MR. KENNEDY: Well, the relandscaping is not
8 really related to this project because the project is
9 strictly in between the buildings and there was no
10 landscaping per se there. It was just, you know, a place
11 where grass didn't grow and.....

12 MR. JOHNSTON: Understood, but that was one of the
13 denials that you did not address.

14 MR. KENNEDY: I didn't address the -- you know,
15 they talk about trees being cut down and that stuff. I
16 really didn't address that because it didn't relate to
17 this project. I would be glad to address that just real
18 quickly.

19 And that is that the trees that were cut down --
20 you know, a tree only lasts for so long. The trees that
21 were cut down were cottonwoods and a cottonwood's life is,
22 you know, pretty limited and there's a point where it
23 becomes a hazard. Now, with this last wind storm that we
24 had, all the trees that came down were, you know,
25 basically, evergreens and whatnot and there weren't too

1 many of the other trees, you know, your birch and whatnot
2 that went down. But the cottonwoods are a danger to the
3 area. They rot from the inside and then the next you
4 know, they fall and -- and, you know, smash property or
5 people.

6 And so that is what I cut down. I cut down all
7 the cottonwoods that were a danger, really, to the area.
8 Along the front, I planted about eight or nine blue spruce
9 and you can sort of see that I had pipes on each side of
10 the blue spruce to where they would be protected and
11 support there. But all the blue spruce died this last
12 year, so they have to be replanted.

13 MR. JOHNSTON: Thank you.

14 CHAIRPERSON: Any further questions? Ms. Sanford
15 and Mr. McBeath.

16 MS. SANFORD: How long have you owned the
17 property?

18 MR. KENNEDY: About 10 years, a little over.

19 MS. SANFORD: And the new construction that we see
20 in this picture here, when did that start?

21 MR. KENNEDY: That's this year.

22 MS. SANFORD: And what's behind that wall right
23 now? That pink wall.

24 MR. KENNEDY: That is just -- there's an open
25 area, but it's not ground. It's been built in, there's

1 flooring and a door from the inside of the building. So
2 it's -- you might call it like -- it would be like
3 storage, you might call it.

4 MS. SANFORD: So how close to being apartments are
5 those, is what I'm looking at.

6 MR. KENNEDY: Oh, they are quite a ways away, but
7 there is a floor and there is a wall and there's a window
8 there.

9 MS. SANFORD: So.....

10 MR. KENNEDY: But nothing else is really built in
11 there. It's framed in, is all it is, and the floor is put
12 in.

13 MS. SANFORD: In three different spaces?

14 MR. KENNEDY: But -- yeah, vertical. Yeah, three
15 vertical.

16 CHAIRPERSON: Mr. McBeath?

17 MR. McBEATH: So how would -- assuming you went
18 ahead and built the apartments, how would people get in
19 and out? There would be a stairway up the front and a
20 stairway up the back?

21 MR. KENNEDY: Well, the stairwell is already
22 there.

23 MR. McBEATH: Okay.

24 MR. KENNEDY: All three of the levels of the
25 existing apartment complex has a stairwell on each end and

1 the one in the middle. And these would be accessed
2 through either one of those accesses, but are right in the
3 middle. You can see they're right in the middle of the
4 two buildings.

5 MR. McBEATH: There'd be a window in the front and
6 a window in the back?

7 MR. KENNEDY: There's no window to the center
8 because that's hallway that connects the two halves of the
9 building.

10 MR. McBEATH: I see. Thank you.

11 CHAIRPERSON: Further questions, Mr. Pruhs, Mr.
12 Lanning?

13 MR. PRUHS: Mr. Kennedy, would you classify this
14 as a peculinary [sic] hardship or more efficiency if you
15 did it? Do you have to do this to survive?

16 MR. KENNEDY: Well, it will really help. Okay?
17 The way it is, I feel if I can turn them into an
18 apartment, it will pay for the improvement and eventually
19 help towards the -- you know, the operation, the overall
20 operation. But it will pay for itself and that is a key
21 thing that helps. So to call it a hardship or not, I --
22 you know, you have to keep doing little things to improve
23 your property and this was -- is a major thing that I have
24 been considering for years.

25 MR. LANNING: Is the construction you've done

1 already been permitted with the city?

2 MR. KENNEDY: Yes, it was.

3 MR. LANNING: And how did they see it? What did
4 you tell them you were going to build?

5 MR. KENNEDY: Well, I originally wanted to frame
6 it in and I'm doing it -- I was going to do it in stages.
7 And originally it was going to be framed in and used as
8 storage, you know, or I was going to -- considering
9 turning that into a bedroom and attaching it to the
10 existing apartment just to the immediate east of the units
11 that were being added.

12 So I had several options that I was considering,
13 but I needed to get it framed in and beat the weather.
14 Very important.

15 MR. LANNING: Those are different occupancies,
16 storage and additional bedrooms. And so what did the city
17 think of the fire-related issues between those
18 occupancies?

19 MR. KENNEDY: Fire is -- you know, any new
20 construction has to be sprinkled and fire would not really
21 be an issue. I don't.....

22 MR. LANNING: So you're saying these are
23 sprinklered?

24 MR. KENNEDY: It would be sprinkled. It's.....

25 MR. LANNING: Is the rest of the building

1 sprinklered?

2 MR. KENNEDY: The new half is sprinkled. There's
3 a sprinkling system in it and this would just be attached
4 to that part of the system. That's the plan -- that's a
5 very expensive, you know, aspect of construction and it
6 almost makes some things cost prohibitive, but.....

7 MR. LANNING: Believe me, I understand that.

8 MR. KENNEDY: But because the existing building to
9 the west is already sprinkled, has a sprinkling system and
10 all that done, I believe I can attach to that at a
11 reasonable cost. It's still expensive, but it's
12 reasonable.

13 MR. LANNING: So is that part of your city permit?

14 MR. KENNEDY: It would be, but I haven't gone that
15 far until I get this done.

16 MR. LANNING: So the city gave you permission just
17 to do the framing. Is that what my understanding is?

18 MR. KENNEDY: Correct. Yes, correct.

19 CHAIRPERSON: Mr. Bringhurst?

20 MR. BRINGHURST: Mr. Kennedy, thanks for being
21 here. Now, what's your thoughts about our -- what's your
22 reasoning for going for efficiencies of this size opposed
23 to connecting a bedroom to an existing apartment? I mean,
24 busting through the wall and putting a door there, you
25 know.

1 MR. KENNEDY: Well, if I just attach it to another
2 apartment, it will probably never pay for itself.

3 MR. BRINGHURST: You can't raise the.....

4 MR. KENNEDY: No, it's -- you know, you raise the
5 rent a little bit and -- I don't know if you guys are
6 aware of it, but this is a very difficult time to be
7 trying to raise rents and whatnot. There is a glut and a
8 problem with that, and it just -- it doesn't happen. But
9 the small apartment, there is a demand for a small, you
10 know, call it an efficiency apartment or call it a -- you
11 know, a room or whatever you want to call it, there is
12 demand for those. And that would pay for -- that would
13 help pay for this addition, which is very important.

14 MR. BRINGHURST: Are you aware of any similar
15 efficiencies in the area?

16 MR. KENNEDY: Not right in that area. I am, you
17 know, within other parts of the community, yes, I'm very
18 well aware. And that was -- because of that experience
19 and that exposure between that -- between myself and the
20 builder, that was a very important factor in considering
21 this. It would pay for itself if we could do this. It
22 has to be a win-win situation to -- you know, a win.

23 MR. BRINGHURST: Thanks.

24 CHAIRPERSON: Any further questions for
25 Mr. Kennedy? Sir, I just have one question. Have you

1 been made familiar with kind of how we make our decisions
2 on variances?

3 MR. KENNEDY: (Inaudible reply)

4 CHAIRPERSON: In reading through the report and
5 just kind of listening to Ms. Durham give her
6 presentation, are you aware that with the variances we
7 pretty much have to stick closely to the state statute and
8 we have limited ability to interpret the state statutes,
9 you know, in a different light? Have you been made aware
10 of that at all, the criteria for us making decisions on
11 variances?

12 MR. KENNEDY: Well, some. Not that I have
13 attended your meetings on a regular basis. I don't want
14 to mislead you there. However, I got the impression, you
15 know, the Planning Commission, their job is to deny -- or,
16 you know.....

17 UNIDENTIFIED VOICE: Deny, yeah.

18 MR. KENNEDY: Yeah, deny the request based on --
19 you have a set of criteria that you adopted and anything
20 that's not within that scope, they say, oh, you've got to
21 deny it. But I'm saying here is an area that is an
22 obvious good reason to have the variance: one, there was
23 already a small variance -- or a variance given, but, two,
24 it is taking a negative in the area and eliminating that
25 and doing it in a way that will pay for itself. So.....

1 CHAIRPERSON: Thank you. And -- yes, Mr. Lanning?

2 MR. LANNING: Would you tell us a little bit about
3 your apartment complex now. How many one bedrooms, two
4 bedrooms, three bedrooms? A rough breakdown or something.

5 MR. KENNEDY: Okay. I have 29 one bedrooms and 13
6 two bedrooms and that's all I have. I do not have any
7 efficiencies. I don't have any three bedrooms or more in
8 that part of the complex.

9 MR. LANNING: Thank you.

10 CHAIRPERSON: At this time, if there's no more
11 questions from the Planning Commission, staff, you now
12 have the opportunity to ask any questions if you have any
13 of the applicant?

14 MS. DURHAM: I do not.

15 CHAIRPERSON: Thank you. And, Mr. Kennedy, you'll
16 be given five minutes after public hearing to come back
17 and address any of the issues that came up during that
18 time. If there are things that you have to come up and
19 kind of respond to, you'll get an opportunity then. And
20 at this point, sir, you can actually leave the table.

21 MR. KENNEDY: Thanks.

22 CHAIRPERSON: And thank you for presenting and now
23 we're going to open it up for public hearing on this item.
24 So we only have one person signed up. I can pronounce
25 your first name. Ruth. I cannot pronounce your last

1 name, so I won't try. Please come up and join us at the
2 table here and sign in and state your name for the record,
3 and your address.

4 MS. LAHAMIDOUX (ph): This is a copy of my
5 comments I'm going to read.

6 CHAIRPERSON: Okay.

7 MS. LAHAMIDOUX: I only have seven. I didn't
8 (inaudible - away from microphone).

9 CHAIRPERSON: Okay. So we'll just pass them in
10 both directions. We can share if we have to.

11 MS. LAHAMIDOUX: Do I -- oh, okay.

12 CHAIRPERSON: Yeah, please sign in as well and
13 state your name and address for the record.

14 MS. LAHAMIDOUX: My name is Ruth Lahamidoux. I
15 live at 3282 Adams Drive in one of the two Regency Park
16 condos. I am the on-site Regency Condo association board
17 of directors representative, and the manager, and I'm the
18 contact for all the business contacts with the condo. I
19 sit on the board of directors and I'm a condo owner.

20 In reference to Mr. Kennedy's request for a
21 variance, my comments are based on the notice that we
22 received in the mail. I would like to point out that in
23 the back yard of the condo association property, we have a
24 chain link fence that runs along Mr. Kennedy's parking lot
25 and this chain link fence has a gate in it that the condo

1 association was required to have. The purpose of the gate
2 is to require -- is required by the city fire department
3 for them to get through to get to the back side of the two
4 condo buildings should there be a fire on that side of the
5 building.

6 The condo association requests that Mr. Kennedy
7 get the -- if he gets the variance that he's requesting,
8 that it be stipulated that he have enough parking spaces
9 for all the renters in his building, further requesting
10 that it be stipulated that Mr. Kennedy not have any of his
11 parking spots blocking our back gate, and also Mr. Kennedy
12 notify his renters they are not block our back gate. The
13 back gate has been blocked before. He's had a resident
14 that has cut our chain and put a lock on it, but never
15 gave us a key. And when I put "Do Not Block" signs on our
16 gate facing his parking lot, this individual kept taking
17 my signs down. One time the Dumpster was blocking our
18 gate. Should there have been an emergency or fire, it
19 would have been serious.

20 We would like to also request that Mr. Kennedy
21 make sure that all the renters do not come on the private
22 property of the condo association and use our Dumpster.
23 This has happened so many, many times that I've lost
24 count. Recently, when the work was done on these units
25 that were built, the workers were bringing over

1 wheelbarrows of items from where they were doing the work
2 and putting the things in our Dumpster, which included
3 large sections of concrete. These items, and the
4 furniture and trash that sometimes his renters bring over
5 to our Dumpster, of course, is in -- against the rules of
6 the trash company about not putting furniture or concrete
7 or anything like that in the Dumpster. We almost lost our
8 trash pickup when things like this -- we almost lose our
9 trash pickup when things like this are noted.

10 So therefore those are our main concerns and it's
11 the parking and our back gate not being blocked.

12 CHAIRPERSON: Okay. Thank you. Are there any
13 questions? Ms. Sanford?

14 MS. SANFORD: Yes. Thank you for coming here.
15 So.....

16 MS. LAHAMIDOUX: Could you speak up just a little?

17 MS. SANFORD: You bet. I'll try to get into the
18 mike. Is that good?

19 MS. LAHAMIDOUX: Yes, that's better.

20 MS. SANFORD: Okay. So when you look at his
21 parking lot, the parking lot of Mr. Kennedy's housing
22 units now, are they overflowing with cars?

23 MS. LAHAMIDOUX: Well, the last time I looked, he
24 had a lot of cars there, of course, because some people
25 have two vehicles. He also had a piece of heavy

1 machinery, heavy equipment like an earthmover or something
2 there. So he may need to think about how he rearranges
3 his parking spots so that our parking lot gate is not --
4 so our back gate is not blocked.

5 The other point I wanted to bring out, and he has
6 a right to do this because it's his property, but
7 Mr. Kennedy charges people that will drive across his
8 property to get to our back gate. This summer we had to
9 have deck repairs done and the individual, in order to get
10 the heavy equipment in and stuff, had to pay \$50 a month
11 for that.

12 My concern about that is if the fire department
13 ever came, that they should not have to pay any fee to get
14 across his parking lot to get to our back gate.

15 CHAIRPERSON: Mr. Lanning?

16 MR. LANNING: Do you have an easement to cross his
17 property?

18 MS. LAHAMIDOUX: I'm sorry, sir?

19 MR. LANNING: Do you have an easement for.....

20 MS. LAHAMIDOUX: Sir, I need to have you.....

21 MR. LANNING: I'm sorry. Do you have an easement
22 for access through his property?

23 MS. LAHAMIDOUX: An easement?

24 MR. LANNING: Yes, ma'am.

25 MS. LAHAMIDOUX: Oh, I'm not sure what you exactly

1 mean. Our fence runs right up border to his condo -- or
2 our condo property runs up right next to his property.

3 MR. LANNING: And so the driveway out the gate
4 does not enter the street directly, but it goes through
5 his.....

6 MS. LAHAMIDOUX: No, the gate does not go out to
7 the street. In order to get to it, you would have to
8 drive through his property.

9 MR. LANNING: Does your property abut the street
10 directly that you could go out onto the street directly?

11 MS. LAHAMIDOUX: There's -- the fire department or
12 police or troopers come, they can -- there's a parking lot
13 in front of both buildings, but in order to get to the
14 back, there is no way to do it if there's a fire without
15 going through the back gate. Because we have -- the way
16 that it's laid out, there's -- I mean, we have trees along
17 the sidewalk area between the two buildings.

18 MR. LANNING: But does your property abut the
19 street directly in the back?

20 MS. LAHAMIDOUX: I'm sorry, what?

21 MR. LANNING: Does your property abut the street?
22 Is the street on your -- right next to your property in
23 the back?

24 MS. LAHAMIDOUX: Adams Drive goes in front of our
25 condo, but we have our con -- our parking lot is in front

1 of our two buildings. Is that what you're asking?

2 MR. LANNING: No, ma'am.

3 MS. SANFORD: I have an extra.....

4 MR. LANNING: Yes, do you have a picture?

5 MS. SANFORD: There's no street in the back.

6 MR. LANNING: I understand. Thank you.

7 MS. LAHAMIDOUX: Yes.

8 CHAIRPERSON: Mr. Pruhs, but first, Ms. Sanford,
9 since you shared a picture, can you describe that to the
10 other commissioners so we're all on the same page here.

11 MS. SANFORD: Yes. So it shows Adams Drive. It's
12 similar to the picture that was included on page.....

13 UNIDENTIFIED VOICE: Exhibit 2?

14 MS. SANFORD: Exhibit -- where's the map? With
15 it, it shows the streets -- okay. On the North Star
16 Borough map, and so it shows the Regency Park and the West
17 Park -- I guess this would be Regency Park, which is Lot
18 2. It shows two units there and the back of their
19 property actually is up against the Sears parking lot.

20 CHAIRPERSON: Okay.

21 MS. KLEPASKI: Kmart.

22 MS. SANFORD: Kmart. Thank you. And then the
23 triangle-shaped part of 1A, which actually extends out a
24 little bit further, looks like the parking lot goes all
25 the way up to the corner of 1C and 2. There in that

1 probably is where the gate is.

2 CHAIRPERSON: Okay. Thank you. And then,
3 Mr. Pruhs, you had a question?

4 MR. PRUHS: Yes.

5 MS. LAHAMIDOUX: Our back yard looks -- the back
6 yard of the condo looks on the former Kmart parking lot,
7 completely, of which they leave their lights on at night,
8 though.

9 MR. PRUHS: Ms. Lahamidoux.

10 MS. LAHAMIDOUX: It's Lahamidoux.

11 MR. PRUHS: Okay. We got it. Had to take a
12 chance. You -- item number 1 is of great importance to
13 me. You have your parking on the south side of your lot
14 and he has his parking on the north side. Does he ever
15 have his tenants in your parking spots?

16 MS. LAHAMIDOUX: Sometimes. And then I, being the
17 on-site manager, I ask them to leave.

18 MR. PRUHS: Okay.

19 MS. LAHAMIDOUX: Because we have a rule that if
20 you're illegally parked on our property, your vehicle will
21 be towed away at the owner's expense. And we have this
22 sign posted and the city police and troopers say I have
23 the best sign in town.

24 MR. PRUHS: I'm sure you do. At the same time,
25 would that be for -- that his tenants do that or is his

1 parking overflowed and they don't have other places to
2 park?

3 MS. LAHAMIDOUX: (Speaking too close to the
4 microphone distorting speech) That would be
5 (indiscernible), but they can't come on our property.

6 MR. PRUHS: No, I know that. But is it because
7 his tenants are just seeking convenience at your location
8 or is it because he has no available parking and they go
9 over to your parking spot, in your opinion?

10 MS. LAHAMIDOUX: I'm not sure if what his rules
11 are of his people parking. A lot of -- on Adams Drive,
12 the people that live on the first floor of his apartment
13 building, sometimes they just pull on his long (ph) area
14 in front of their first floor apartment. But they do
15 not -- don't come on the condo property to park. So they
16 just do that. I have no idea what his rules are on how
17 his people are to.....

18 MR. PRUHS: So you've been training them, though?

19 MS. LAHAMIDOUX: Pardon?

20 MR. PRUHS: You've been training his people?

21 Nothing. No. Now.....

22 MS. LAHAMIDOUX: But I do want to comment, as far
23 as to my knowledge, there are no efficiency apartments in
24 the immediate area.

25 MR. PRUHS: If these efficiencies were built, do

1 you think it would affect your parking?

2 MS. LAHAMIDOUX: As long as he stipulates to my
3 request that he have enough parking spots for all of the
4 people.

5 MR. PRUHS: Okay. Do you believe that he has
6 enough parking spots now for his people?

7 MS. LAHAMIDOUX: I don't know.

8 MR. PRUHS: Okay. Okay.

9 MS. LAHAMIDOUX: I would think -- I thought there
10 was a rule on how many parking spots you're to have per,
11 say, apartment size building, like there is in a medical
12 clinic. They have to have X number of parking spots.
13 If -- a lot of people now have two vehicles.

14 MR. PRUHS: That's the American way.

15 MS. LAHAMIDOUX: Yeah, welcome to America.

16 MR. PRUHS: Thank you very much.

17 MS. LAHAMIDOUX: You're welcome.

18 CHAIRPERSON: Ms. Durham, did you want to point
19 something out for us?

20 MS. DURHAM: Yes. There is a 30-foot section line
21 easement all the way to the property line over here and
22 then there's another 20-foot access easement that's only
23 on 1B. But this 30-foot section line easement goes all
24 the way through the condo's property.

25 MS. LAHAMIDOUX: Are those on Mr. Kennedy's

1 property?

2 MS. DURHAM: 33-foot. Yes, ma'am. This is the
3 single family residential office here and this is the main
4 building right here. So it comes along -- the 33 feet
5 comes along the whole back, along Kmart, up against the
6 Kmart property to your property line here.

7 CHAIRPERSON: Thank you, Ms. Durham. So,
8 Mr. Lanning.

9 MR. LANNING: So in case you didn't understand
10 that, ma'am, it means you do have legal access across the
11 back of his lot to your gate.

12 MS. LAHAMIDOUX: We do have?

13 MR. LANNING: It looks to me like it, yes.

14 MS. LAHAMIDOUX: Thank you.

15 CHAIRPERSON: Mr. Sovde?

16 MR. SOVDE: The applicant went and suggested that
17 having enclosed the area between the buildings, that it
18 provides a safety, an improvement of safety to the area.
19 Do you concur with his opinion? Were there things going
20 on in between the buildings that were detrimental -- you
21 thought were detrimental to the community, yet now that it
22 is enclosed, that it is an improvement in the area?

23 MS. LAHAMIDOUX: I had no way of knowing and,
24 actually, because I have no way of getting in the building
25 to see what he was referring to. From what we see

1 outside, we -- we have no way of knowing any answer to
2 your question.

3 MR. SOVDE: No, I mean, when it wasn't enclosed
4 there were basically areas in the evening where people
5 could congregate out of sight and do, you know, drugs or
6 waylay people.

7 CHAIRPERSON: Mr. Sovde, I don't think he
8 mentioned drugs or anything, so I think we're kind of
9 going beyond the testimony that was provided by the
10 applicant. And he mentioned children and things like
11 that, but I don't want us to assume that there was
12 anything else going on if we don't know for sure.

13 MS. LAHAMIDOUX: I can say we're not aware of what
14 he was referring to.

15 MR. SOVDE: Okay. Thank you.

16 CHAIRPERSON: Mr. Spillman, did you have something
17 to add earlier?

18 MR. SPILLMAN: Yeah, if I may, while there is a
19 section line easement on the top of the property, there is
20 not a curb cut in this area. There appears to be small
21 walkway through here. So it'd be very difficult to drive
22 a vehicle or a fire truck through this area with a fence
23 in this area. So you could legally drive through the
24 parking lot halfway, as the access easement goes halfway,
25 but it does not appear there's legal access through the

1 parking lot to the lot in question right now, to the
2 condos next door.

3 I just wanted to clarify that. I'm sorry.

4 CHAIRPERSON: Okay. And just for the sake of our
5 discussion, I feel like bringing our questions and
6 discussion back to the application at hand. And maybe --
7 I understand that this is important to you, but for our
8 decision tonight, I feel like we don't need to go too much
9 further into the access and things like that.

10 So let's keep our questions focused on that. And
11 do we have any further questions for Ms. Lahamidoux?
12 Which I now feel comfortable saying your name. Thank you.
13 Mr. Pruhs?

14 MR. PRUHS: Nope.

15 CHAIRPERSON: Nope? Thank you very much.

16 MS. LAHAMIDOUX: Thank you.

17 CHAIRPERSON: Oh, sorry. Staff, did I already ask
18 you if you had questions?

19 MR. SPILLMAN: Yes.

20 CHAIRPERSON: Okay. Thank you very much.

21 MS. LAHAMIDOUX: Thank you.

22 MR. LANNING: Thanks for being here tonight.

23 CHAIRPERSON: Are there any other further
24 questions, or people to testify during public hearing? On
25 this issue? Yes, you can, sir. Except you didn't take

1 the oath earlier, so you're going to have to take an oath.

2 UNIDENTIFIED VOICE: That's fine.

3 CHAIRPERSON: Okay. Come right up then. Raise
4 your right hand. Mary, can you administer the oath?

5 (Oath administered)

6 MR. LABODA (ph): Yes.

7 CHAIRPERSON: Does it count if his hand is broken?

8 MR. LABODA: It is broken.

9 CHAIRPERSON: Please, with your good hand, sign
10 your name in if possible. And state your name and address
11 for the record and indicate that you've taken the oath.
12 And you'll have three minutes when you're ready. Sorry to
13 give you a hard time.

14 MR. LABODA: That's all right. My name is Harley
15 Laboda. I live on Kiana Street, 1713 Kiana Street,
16 Fairbanks, Alaska. I just wanted to say I've rented from
17 Kal before. I'm actually here about the race track,
18 that's what I came for, but hearing this and seeing -- is
19 it denial or something like that for his -- what he's
20 trying to do, I've rented from him before and he really
21 works with his tenants, and I believe that he needs the
22 efficiencies to help pay the bills, you know.

23 And I just want to say he's an honest guy and he
24 gives people a place to live, which is, you know,
25 priceless. So that's all.

1 CHAIRPERSON: Thank you, sir. Are there any
2 questions? Mr. Pruhs?

3 MR. PRUHS: You live within two blocks of that?

4 MR. LABODA: Pretty much, yeah.

5 MR. PRUHS: You're quite knowledgeable of it?

6 MR. LABODA: Of his construction or.....

7 MR. PRUHS: No, of that unit. Of that building.

8 MR. LABODA: Yeah, I've lived there.

9 MR. PRUHS: Okay. Do you think that this
10 construction would be an improvement for the safe, sound,
11 and sanitary of the building itself?

12 MR. LABODA: Yeah, absolutely. I mean, if you're
13 talking about like the people gathering in the dark area?

14 MR. PRUHS: Exactly.

15 MR. LABODA: There's a lot of -- lot of traffic
16 there from people walking through the neighborhood, going
17 to Safeway and stuff like that, and you get drunk people
18 that would definitely congregate there and, you know,
19 possibly be a problem or a safety issue.

20 MR. PRUHS: While you were living there, was the
21 population of the parking lot ever overflowing or were
22 there too many cars in the parking lot to make it
23 dangerous or people -- was it overcrowded?

24 MR. LABODA: No, it was never -- there was never
25 an issue with parking.

1 MR. PRUHS: How long did you live there for?

2 MR. LABODA: Probably 14 months, 16 months. It
3 was a while.

4 MR. PRUHS: The type of tenants in the building,
5 are they good tenants, bad tenants, you ever have any
6 issues with the tenants?

7 MR. LABODA: I'm not a judge to say if they're a
8 bad tenant. I mean, they're all people just trying to --
9 trying to make a living and.....

10 MR. PRUHS: You didn't break your hand there, did
11 you?

12 MR. LABODA: No, no, did that at work, but.....

13 MR. PRUHS: Thank you very much. Appreciate it.

14 MR. LABODA: Thank you.

15 CHAIRPERSON: Any further questions? I don't see
16 any. Thank you very much for your testimony. Any more
17 people that used to rent from Mr. Kennedy or have any.....

18 MR. PRUHS: Or want to rent from Mr. Kennedy?

19 CHAIRPERSON: Any further testimony? I don't see
20 any. At this time we're going to close public hearing
21 and.....

22 UNIDENTIFIED VOICE: You might want to give
23 Mr. Kennedy rebuttal.

24 CHAIRPERSON: Oh, I'm sorry. Sorry. Mr. Kennedy,
25 you have your five minutes, as I promised you before.

1 Sorry about that. Please come up to the mike if you'd
2 like some time to address any issues brought up during
3 public hearing.

4 MR. KENNEDY: I appreciate this. The things that
5 were brought up here have very little, if anything to do
6 with construction. I wanted to point out a couple things.
7 Well, the gate doesn't have anything to do with
8 construction, but there is no easement from my property
9 onto their property. If they want to get to the back of
10 their property, all they have to do is go around to the
11 other side of their building and go on the grass or
12 whatever, and go around the back side. They could have
13 their own access very easily. Maybe you'd have to take
14 down a fence or something. But they want to try and use
15 up my parking spots and keep a gate there without a legal
16 easement and I'm not going to give them a legal easement,
17 and because of that I have locked the gate and I have said
18 I will -- if they want access to the back of their
19 property through my property, I will charge them for it.
20 And that is only the right way to do it because it costs
21 me money and it costs me parking if they think they get to
22 have that. And I'm not going to do it when they can go
23 around the other side of the building and the fire
24 department can go around the other side of the building,
25 and the maintenance can go around the other side of the

1 building, and they do now. So that doesn't have anything
2 to do with the construction, but it's just a pet peeve.
3 That's why there is a little bit of a rhubarb there.

4 CHAIRPERSON: Any further comments? Thank you,
5 Mr. Kennedy.

6 MR. KENNEDY: Thank you.

7 CHAIRPERSON: Now we will be closing public
8 hearing, and I'll be looking for a motion. Mr. Sovde?

9 MR. SOVDE: Move for the approval of Variance
10 2014-003.

11 MR. JOHNSTON: Second.

12 CHAIRPERSON: Okay. Mr. Sovde, would you like to
13 address your motion?

14 MR. SOVDE: Yeah. We worked through the three
15 stipulations for asking -- for approving of a variance and
16 one -- I'll go down. First off, special conditions
17 requiring the variance were caused by the person seeking
18 the variance. They are not. The fact that the City of
19 Fairbanks has given -- has accepted and allowed a building
20 permit for a storage area in the area means that it is --
21 does not constitute fire hazards or anything like a
22 concern structurally or to the community at large.

23 The variance will permit a land use in the
24 district which is prohibited. No. We have multifamily
25 structures throughout this area, a lot of apartments in

1 the area. So you cannot deny on that particular either
2 [sic]. You then go to the solely to lead to pecuniary
3 hardships or inconvenience. It would help his bottom
4 line. He has admitted that. But one of the factors
5 involved is a safety factor for the community, I think,
6 which outweigh any potential gain by the applicant. A
7 past renter pointed out the activities that are not
8 conducive to a betterment of the community in the area,
9 which through the actions of the applicant have been
10 resolved.

11 And then you go to the simple fact that are you
12 then going to deny a property owner the right to improve
13 his property in a footprint which has already been
14 approved by the building -- the city building deal? I
15 don't think so. I think that on the merits of the case,
16 none of the conditions for denial are met and I would seek
17 this body's concurrence with my opinion that this variance
18 should be approved.

19 CHAIRPERSON: Mr. Johnston?

20 MR. JOHNSTON: Yeah, and I -- I agree with
21 everything my colleague has said. I would add also that
22 the report indicated that parking would not be an issue.
23 There was enough parking with these additional units, so
24 that would not be an issue. The only question in my mind
25 is that the landscaping is improved and kept up during

1 that period.

2 Based on the testimony and what I've heard today
3 and read today, I would grant approval.

4 CHAIRPERSON: Thank you, Mr. Johnston. Ms.
5 Durham, I'm sorry, before we keep going, no one has
6 offered any changes to the Findings of Fact, so I see that
7 you're taking notes and shifting things a little bit. I
8 would probably wait until someone made a motion.

9 MS. DURHAM: I haven't done the Findings of Facts.

10 CHAIRPERSON: Okay.

11 MS. DURHAM: I just put approval because that was
12 the only thing changed.

13 CHAIRPERSON: Okay. I saw safety factor for
14 community.

15 MS. DURHAM: This is just the provisions they were
16 talking about, meeting the provisions, Title 18 and 29.

17 CHAIRPERSON: Okay. All right.

18 MS. DURHAM: These are the Findings of Facts down
19 here which they made a motion for approval.

20 CHAIRPERSON: Okay. And we're not in agreement,
21 necessarily, either about.....

22 MS. KLEPASKI: Don't start changing anything.

23 CHAIRPERSON:changes.

24 UNIDENTIFIED VOICE: Yeah, don't start.....

25 MS. DURHAM: I didn't change anything on that

1 other thing.

2 CHAIRPERSON: Okay. Even what you wrote about
3 them not -- I mean, I don't say that -- I wouldn't say
4 that all of us agree that they're not caused by the
5 applicant, so.....

6 MS. DURHAM: Right. Right. I'm just -- just when
7 you hit that point.

8 MR. SOVDE: Yeah, okay.

9 CHAIRPERSON: Okay. Yeah. And I believe Ms.
10 Klepaski and.....

11 MS. KLEPASKI: That's okay.

12 CHAIRPERSON: Mr. McBeath?

13 MR. McBEATH: Yeah. Well, I don't want to speak
14 against the motion. I've got some questions I'd like to
15 have answered before we proceed any farther. This Title
16 29 provision, special conditions on a lot require a
17 variance for lot size. Isn't lot size an issue and isn't
18 that why the variance is sought?

19 MS. KLEPASKI: Yes.

20 MR. McBEATH: So, in other words, typically we
21 would not allow any building or construction on a very
22 limited lot size such as we have now.

23 MS. KLEPASKI: The whole idea of the zoning is to
24 limit the number of units on a lot size -- on each lot.

25 MR. McBEATH: And so if we allow the construction

1 of these three efficiency apartments, we've already
2 exceeded the lot size limitations. And the statute
3 doesn't seem to permit us to do that.

4 MS. KLEPASKI: Well, you'd have to come -- there
5 has to be a special condition on the lot and I don't know
6 what that is.

7 MR. McBEATH: Okay. Nor do I have any idea what
8 the special condition would be. The second -- the --
9 we've had hearsay evidence that there are goings on in
10 this sort of space between two apartment buildings that is
11 a public menace and we've had no evidence presented that
12 that is, indeed, occurring. And we're really being asked
13 by the applicant to -- how did he put it? To -- gee, to
14 eliminate a nuisance, I guess. To "eliminate a negative
15 condition that would result in improving the neighborhood"
16 when we don't have any evidence that anything negative is
17 going. So it's a question I'm asking.

18 The third question is, is there anything other
19 than a pecuniary reason being considered? The applicant
20 has said he wants to save fuel costs and heating costs.
21 If the construction were permitted and you went ahead and
22 did it, that is precisely what would occur; he would save
23 money. Isn't -- when is saving money not a pecuniary
24 concern or pecuniary reason? So I don't see from the
25 people proposing the revision of this motion evidence that

1 would allow me to support it.

2 CHAIRPERSON: Mr. McBeath, sorry, are your
3 questions directed toward Ms. Klepaski?

4 MR. McBEATH: Toward whoever would like to answer
5 them.

6 MS. KLEPASKI: Oh. I don't know if they're
7 answerable. I think you've made your points. I don't see
8 what else it is other than a pecuniary interest, the fuel
9 savings and heating costs. I don't know what the
10 conditions -- there has to be a special condition. And I
11 want to call your attention to not only -- we have two
12 things we have to look at: the state statute, but we also
13 have to look at borough code and that's 18.54.040. It's
14 in your white binder. It might help you, because it gives
15 some situa -- some examples of what these conditions can
16 be. It's not limited to those, but -- it's 18.54.040.
17 18.54. So go to 18.54. It's way -- it's towards the back
18 more. And then 040.

19 And it talks about situations where variances may
20 be granted include, but are not limited to, exceptional
21 narrowness, shallowness, or shape of a specific piece of
22 property, exceptional topographical conditions, other
23 extraordinary or exceptional conditions, situations or
24 conditions of a specific piece of property, or because of
25 existing situations or conditions that are generally

1 prevalent in the immediate area that create a character
2 similar to what would occur as a result of the approval of
3 the request for a variance.

4 But then if you go to (b), (b)(1) says an
5 application for variance must meet the following
6 standards. So there has to be a special condition that
7 exists which are peculiar to the land involved and which
8 are not applicable to other land in the same zoning
9 district. And then strict interpretation of the provision
10 of the zoning title would deprive the applicant of rights
11 commonly enjoyed by other properties in the same district
12 under the terms of the zoning title.

13 CHAIRPERSON: Ms. Sanford?

14 MS. SANFORD: Okay. So, I see two different
15 things in the law. One is "must." A variance must meet
16 the following standards. First of all, there are no
17 special conditions that exist on this property in my
18 opinion, nor would a strict interpretation deprive him of
19 his rights. So right there, according to the borough
20 code, I believe that that application fails on its face
21 because the word is "must." Not may. It's must.

22 Then we get to the state code and it says that it
23 may not be granted. Not. There's no wiggle room there.
24 May not be granted if one of those three. And what I
25 heard Mr. Kennedy say like twenty times was this is money,

1 pay for itself, finances, money, I'm going to get money,
2 there's money involved here. And we can't not say that
3 enough. In fact, I think he even said that at one point.
4 So it may not be granted if it's money. Must have these
5 following things. I don't see -- I mean, the law just
6 absolutely does not allow us to approve this. I don't see
7 how -- I don't see any way around it.

8 CHAIRPERSON: And in your opinion, my question to
9 you would be, do we have the ability to reinterpret that
10 here?

11 MS. KLEPASKI: No. No, we do not. It's the law.
12 It's the law.

13 CHAIRPERSON: Okay. Further questions? I saw
14 Mr. Sovde and then Mr. Pruhs.

15 MR. SOVDE: In response to item 3, it says solely
16 to relieve pecuniary hardships. He has already built it
17 and is using it in another fashion, so he has already
18 penciled it out. So the solely pecuniary hardship is not
19 applicable in this case. It is not a grounds for
20 dismissal of this variance.

21 CHAIRPERSON: Mr. Pruhs?

22 MR. PRUHS: That's one of the points I was going
23 to bring up. Under state statute, it's what Mr. Sovde
24 said, and I specifically asked the applicant, is this a
25 make-or-break? Is this for solely because of these

1 issues? And he said, no, but it will help. This is not
2 to relieve a pecuniary hardship or inconvenience, so that
3 one is off the table for a reason to deny this.

4 So I look at other extraordinary conditions and
5 you're supposed to look at the land, the facility, in
6 conjunction with it. And I just look at this as a person
7 and the footprint is there, and he can add a bedroom and
8 it's compliant, but if he adds a bathroom or a kitchen,
9 it's not compliant. And so I look at that and I say,
10 well, what do you want to do?

11 I asked many times about the parking. The parking
12 sounds fine. So it comes down to, are we going to allow
13 three kitchens or three bedrooms? I mean, that's what
14 this comes down to. And he's going to have three more
15 people in there anyway if he adds the bedrooms or adds the
16 kitchens, and he can do either, but if he gets the
17 variance from us, he can add kitchens. That's what it
18 comes down to here. Very simple.

19 So I'm in favor of the kitchens. Simple as that.

20 CHAIRPERSON: For the people who have spoke in
21 favor of this variance, Ms. Sanford brought up a question,
22 someone along the way, maybe Mr. McBeath brought up the
23 question, what is the special condition that exists here?
24 So under 18.54.040(b), procedures for variance, and
25 Ms. Sanford mentioned that it must meet the following

1 standards. So there's the special condition. So I think
2 it was asked what those special conditions are, and how
3 this strict interpretation of the provisions will deprive
4 the applicant of rights commonly enjoyed by other
5 properties. So that's one where even if we've addressed
6 state statute, what is the special condition? Mr. Sovde?

7 MR. SOVDE: I think Mr. Pruhs has already touched
8 on it. We already have the footprint there. There is no
9 difference to it. And what you would be denying this
10 property owner is the ability to improve his property.
11 That is the denial of rights that you are basically
12 looking at performing by denial of this variance.

13 CHAIRPERSON: Ms. Klepaski highlighted what is a
14 special condition and I don't feel that -- personally,
15 that not changing the footprint of the building is a
16 special condition. Ms. Klepaski, can you weigh in on
17 that?

18 MS. KLEPASKI: Well, all I would say is that the
19 footprint is there. If he would have had two or three
20 more stories, it would seem under that type of logic, he
21 could add two or three more stories and that would really
22 change the number of units and the whole idea is that per
23 square foot of property, you're allowed so many units.
24 And you have to look -- you know, we hold other people to
25 that requirement and so we give variances on a real

1 limited basis.

2 So if you can find a situation of the land, not
3 the footprint, then you can give a variance. But you have
4 to find -- in your findings, you'll have to come up with
5 some situation that would be used to grant this variance.

6 CHAIRPERSON: Mr. Hernandez has something and I
7 know there are some hands that went up (indiscernible -
8 simultaneous speech).

9 MR. HERNANDEZ: Yes, I just wanted to make a
10 clarification. I reviewed Ms. Durham's staff report and I
11 was not aware of the landscaping part of this. But I just
12 want to clarify, when I reviewed this, you know, I thought
13 that the (indiscernible) condition was spot on. It's
14 absolutely correct. But I didn't know about the
15 landscaping thing. So I don't really believe that the
16 landscaping aspect plays a part of our recommendation.

17 Our recommendation is based solely on the facts
18 that are before us and one is that it's a pecuniary
19 hardship that he's dealing with and we cannot grant a
20 variance because of that. In addition to that, he is not
21 being deprived of rights that other people have. He has
22 the exact same rights. And if you were to grant this
23 variance, you are giving him even more rights than the
24 surrounding property owners have to develop their
25 property.

1 So -- and it doesn't -- and there are no
2 conditions. So I mean those are the facts, what I saw
3 from Ms. Durham's report, and those are the facts that we
4 stick with. Thank you.

5 CHAIRPERSON: Thank you. Mr. Lanning?

6 MR. LANNING: I own a six-plex, so I'm familiar
7 with some of his property owner problems and his probably
8 lack of profitability. It's a very difficult business and
9 there's no question in my mind that this would improve his
10 bottom line. So I'm tempted from that point of view to
11 try and help him.

12 The fact of the matter is, the borough has already
13 granted him a variance that gives him a lot more
14 development on this lot than his neighbors already have.
15 And so if he could build five more lot -- or five more
16 units or ten more units on the side, that would also
17 improve his bottom line probably. Should we grant him
18 that as well? So where do we draw the line for this
19 particular individual? He's already got development far
20 in excess of anybody else nearby. And so I don't believe
21 I can support this.

22 CHAIRPERSON: Any further -- the question has been
23 called. Mary, please call the roll. And, sorry, just to
24 clarify, the motion is to approve this variance, so a yes
25 vote is to approve it and a no vote is to deny it.

1 THE CLERK: Mr. Johnston?
2 MR. JOHNSTON: Yes.
3 THE CLERK: Ms. Sanford?
4 MS. SANFORD: No.
5 THE CLERK: Mr. McBeath?
6 MR. McBEATH: No.
7 THE CLERK: Mr. Sovde?
8 MR. SOVDE: Yes.
9 THE CLERK: Mr. Bringhurst?
10 MR. BRINGHURST: No.
11 THE CLERK: Mr. Lanning?
12 MR. LANNING: No.
13 THE CLERK: Mr. Pruhs?
14 MR. PRUHS: Yes.
15 THE CLERK: Ms. Huntington?
16 CHAIRPERSON: No.
17 MS. KLEPASKI: Anybody change their vote?
18 CHAIRPERSON: Would anyone like to change their
19 vote?
20 THE CLERK: We have three in favor, five against.
21 CHAIRPERSON: Mr. McBeath, is it related to the
22 vote?
23 MR. McBEATH: I would like to propose another
24 motion, if I may?
25 CHAIRPERSON: Okay. One second. So.....

1 MS. KLEPASKI: The findings?

2 MR. McBEATH: Well, I have -- we have already.....

3 MR. HERNANDEZ: You haven't proposed findings yet.

4 MR. McBEATH: We haven't proposed findings?

5 MS. KLEPASKI: No. Unh-unh.

6 MR. PRUHS: Move to accept the three findings of
7 fact as written by staff.

8 MR. McBEATH: Also we have to -- don't we.....

9 UNIDENTIFIED VOICE: No, it was denied based on
10 that. It's denied.

11 MR. McBEATH: Oh, it's denied.

12 UNIDENTIFIED VOICE: It is denied, yeah.

13 MR. McBEATH: Oh, it is denied? Okay. Sorry. It
14 took me a while.

15 MS. KLEPASKI: And we have to have findings for
16 the denial.

17 CHAIRPERSON: Was there a second to Mr. Pruhs'
18 motion.....

19 MR. McBEATH: Yes.

20 CHAIRPERSON:for findings? Okay. So any
21 person wishing to appeal this decision must do so in
22 writing within 15 days. Applications are available.....

23 MS. KLEPASKI: Wait, we need to vote on.....

24 THE CLERK: We have to vote on the findings.

25 CHAIRPERSON: Okay. Oh, we didn't vote on that.

1 Okay. Sorry.

2 MS. KLEPASKI: Yeah, we just got a motion.

3 CHAIRPERSON: Sorry. We need to vote for the
4 Findings of Facts. Please call the roll. A yes is to
5 approve these three findings as written by staff; no is to
6 not approve them.

7 THE CLERK: Ms. Sanford?

8 MS. SANFORD: Yes.

9 THE CLERK: Mr. McBeath?

10 MR. McBEATH: Yes.

11 THE CLERK: Mr. Sovde?

12 MR. SOVDE: No.

13 THE CLERK: Mr. Bringhurst?

14 MR. BRINGHURST: Yes.

15 THE CLERK: Mr. Lanning?

16 MR. LANNING: Yes.

17 THE CLERK: Mr. Pruhs?

18 MR. PRUHS: Yes.

19 THE CLERK: Mr. Johnston?

20 MR. JOHNSTON: No.

21 THE CLERK: Ms. Huntington?

22 CHAIRPERSON: Yes.

23 MS. KLEPASKI: Change of vote?

24 CHAIRPERSON: Would anyone like to change their
25 vote?

1 THE CLERK: We have six in favor; two opposed.

2 CHAIRPERSON: Okay. Thank you. If there are no
3 further motions or votes, anyone wishing to appeal this
4 decision can do so in writing within 15 days.

5 Applications are available through the borough clerk's
6 office.

7 (This portion not requested)

8 (Off record)

9 *****
10 END OF REQUESTED PORTION

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TRANSCRIBER'S CERTIFICATE

I, Elizabeth D'Amour, hereby certify that the foregoing pages numbered 2 through 56 are a true, accurate, and complete transcript of proceedings the Fairbanks North Star Borough Planning Commission Public Meeting of December 10, 2013, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

march 5, 2014
March 5, 2014

Elizabeth D'Amour
Elizabeth D'Amour, Court Reporter
Notary Public in and for the
State of Alaska
Commission Expires: 12/28/14



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TO: Fairbanks City Council

RE: Position Brief supporting the variance request

DATE: February 18, 2014

2014 FEB 18 PM 12:35

FNSB CLERKS OFFICE
RECEIVED

Thank you for considering my zoning appeal. I appreciate that reasonable decisions are made by caring members of our community who do not just apply a one size fits all mentality to every appeal. Human input and reasoning sometimes needs to trump a robotic checklist protocol.

My intent is to show the zoning rule requiring 2000 sq ft open space per dwelling can be bad policy, and in this case especially, should be over ruled in that:

- The FNSB Planning Director agrees there is no negative community impact from this request.
- There is no negative environmental or neighborhood impact and in fact the addition is an improvement in landscaping and carbon footprint.
- It is discriminatory – favoring a higher economic class, and excluding the lower income citizen from housing. Thereby contributing to community problems of homelessness and government intrusion.
- This corrects a condition not properly addressed in the original 1995 variance.

Planning Department Findings:

Mr. Hernandez, FNSB Planning Director, agrees there is No negative community impact. Stating:

“The proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increase danger of fire because there does not appear to be any sight distance, snow removal, or road safety issues that are made worse due to the addition... They have more than the required parking and are on Golden Heart Utilities sewer and water.” (Source: Packet pg. 11 Findings of fact: #3)

Bravo! So why didn't they recommend approval? Humm....it humorously reminds me of the quip: “There is no dog-gone reason for it – it's just our policy!” In seriousness: They apply a one size fits all mentality to a specific situation that with zoning's own above admission: “*will not jeopardize public health, safety or welfare, traffic or parking conditions, or increase danger of fire...*”

Neighborhood Impacts:

There will be no crowding or overall change in tenant count. Currently changing a one-bedroom unit into a two-bedroom unit is allowed. In simple terms, this allows one more person in that space, the same as accommodated with this request. The difference is making this addition separate, private space, that is safer and cheaper to rent. I contend this is an essential service we are obligated to provide where feasible.

For clarification, the record includes many pages noting trees removed on the property, although this has nothing to do with the addition request before you. In fact, most trees removed were dying or decayed and hazardous cottonwoods. Not mentioned was our planting, on the west end, of eight Blue Spruce to replace removed trees. Alas, they didn't survive winter, but will be replaced this spring.

Environmental Impacts:

There will be no unsightly protrusion, nor loss of landscape buffers. There are these benefits:

- It changes a dark shadowy void exterior space between buildings, to a useful protected interior.
- It gives a welcome reduction in cold corridors for existing residents and a measureable improvement in their winter comfort.
- A small but mention worthy side benefit is reduced fuel use and carbon footprint. The three unheated spaces average about 48 degrees - all from radiated heat historically lost to outside air.

Discrimination Message:

Existing zoning favors the more affluent person or family that can afford the larger living space with multiple bedrooms. It makes good sense to allow smaller lower cost living space and not discriminate against the single lower income person that doesn't want, or qualify for a government program. I don't like that message, nor believe it's the message the Council does or should support.

A Community Service:

This request serves that lower income group, giving them affordability, safety, dignity, & self-sufficiency through their own private space. Homeless is not always a choice, but as in this case, a product of one size fits all zoning that doesn't.

Condition Overlooked in 1995 Original Variance:

The site, the focus of all this, is less than a 10' wide swath tucked between structures. This request corrects the aforementioned environmental conditions caused by this void, which existed before current owners. This addition is the best solution to problems that should have been envisioned, addressed, corrected, and included in the 1995 original variance approval.

There is little said here that isn't somewhere buried in these 106 plus pages of record. May this simplify your task ahead in making the best decision. We cannot change the world, but can, as the song lyric says, "right the unrightable wrong...and ...fight for the right, without question or pause...."* For this cause, I request your help climbing this mountain by approving this appeal request.

Questions are welcomed.



Kal Kennedy
Fairbanks, AK
322-7955 cell

*1965 The Impossible Dream by Mitch Leigh and Joe Darion

APPEAL TO THE FAIRBANKS CITY COUNCIL
 KAL KENNEDY)
)
 Appellants)
)
 FAIRBANKS NORTH STAR BOROUGH)
 No. V2014-003)

BRIEF OF APPELLEE

I. RESPONSE TO APPELLANT

The Planning Commission acted within constraints specified in Alaska State Statute Title 29 and Fairbanks North Star Borough Code Title 18 to deny the request for a lot size variance by appellant. Through thoughtful deliberation, the Planning Commission determined that appellant’s request for a variance did not meet all criteria specified within the codes, and the Commission could not legally grant the variance.

II. RELEVANT FACTS

A. Appellant’s Application for Public Hearing for a Variance.

The applicant, Kal Kennedy, requested a variance (V2014-003) for lot size to allow three additional dwelling units (235 square feet each) on his property.¹ The property already enjoys an existing variance for lot size (V042-95) granting eight dwelling units more than the allowable limit plus the manager’s dwelling unit and office.

B. The December 10, 2013 Public Hearing.

The Planning Commission heard testimony and deliberated for one hour and 18 minutes about the applicant’s request for a variance. After duly considering the staff report, applicant’s presentation, and public testimony, the Planning Commission voted five in favor and three opposed to deny the variance request. Findings of Fact, addressing the three standards in FNSBC Title 18, were adopted by the Planning Commission in support of this decision.

¹ Appellant Record, Page 19

III. REPLY TO APPELLANT

The appellant makes a number of incorrect assertions in support of his appeal to the denial of the variance request. Appellant's Notice of Appeal asserts (1) improper instructions; (2) improper evidence; and (3) denied use common to area. Appellant's Position Brief asserts (1) FNSB Planning Director agrees there is no negative community impact from this request; (2) There is no negative environmental or neighborhood impact and in fact the addition is an improvement in landscaping and carbon footprint; (3) It is discriminatory – favoring a higher economic class, and excluding the lower income citizen from housing. Thereby contributing to community problems of homelessness and government intrusion; and (4) This corrects a condition not properly addressed in the original 1995 variance.

Section I: Reply to Appellant's Notice of Appeal

Assertion 1: *Improper instructions:* Given from the Planning Department to the Planning Commission. The Planning Department cited how I would receive a "financial benefit" from the variance. There is nothing wrong with receiving a financial benefit what so ever. Many Commissioners comment during deliberations as a reason to deny your variance because of the "financial benefit" received. The code says this cannot be granted "solely relieve you of a financial hardship". This variance would not do that. The answer was no.

Response: The Planning Commission was given the following instructions to make a determination on the variance:

FNSBC 18.54.040(B) Application for a Variance. An application for a variance must meet the following standards: (1) Special conditions exist which are peculiar to the land involved and which are not applicable to other land in the same zoning district, and (2) Strict interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly

*enjoyed by other properties in the same district under the terms of the zoning ordinance.*²

No special conditions exist which are peculiar to the land involved and which are not applicable to other land in the same district.³ The Planning Commission found, through deliberation and Findings of Fact, that there are no special conditions unique to the lot requiring a variance for lot size.

Strict interpretation of the provisions of the zoning ordinance does not deprive the applicant of rights commonly enjoyed by other properties in the immediate area.⁴ The applicant has 42 units and a single-family home/office already existing on the lot from a previously-approved variance. This exceeds the allowable limit under Title 18 by a total of nine (9) units and one (1) office; no other variances granted in the vicinity allow greater density to other properties in the area.⁵ The applicant enjoys a greater density than allowed by the Multiple-Family Residential district.

If either of these items were not met, then the Planning Commission is required to deny the variance according to FNSBC Title 18.⁶ The applicant did not meet either of these standards for approval of a variance, nor did he meet the requirements in Title 29 of the Alaska State Statute.

*A variance from a land use regulation may not be granted if (1) special conditions that require the variance are caused by the person seeking the variance; (2) the variance will permit a land use in a district in which that use is prohibited; or (3) the variance is sought solely to relieve pecuniary hardship or inconvenience.*⁷

The additional units proposed by the applicant necessitate the variance for substandard lot size because of the FNSBC requirement for minimum lot size in the MF zone is determined by the

² FNSBC 18.54.040 Procedures for variances. Emphasis added.

³ Appellant Record, Page 21

⁴ Appellant Record, Page 21

⁵ Appellant Record, Page 69

⁶ FNSBC 18.54.040 Procedures for variances.

⁷ AS 29.40.040(b)

number of units; the additional proposed units are a condition caused by the current owner, therefore granting a variance is prohibited per AS § 29.40.040(b).⁸

Furthermore, this variance is sought for fuel savings and heating costs and to add additional rental units, all of which are pecuniary (financial) in nature.⁹

If any one of these items were not met, then the Planning Commission is required to deny the variance according to State law. The applicant was found to not meet standards (1) and (3) of AS § 29.040.040(b), and the Planning Commission was prohibited from granting the variance.

During deliberations, the Planning Commission repeatedly asked the applicant whether the variance request was made for financial benefit or convenience and the applicant answered “it will really help.”¹⁰

The Planning Commission discussed the applicability and interpretation of the state and local statutes:

MR. SOVDE: we worked through the three stipulations for asking – for approving of a variance

MR. JOHNSTON: Yeah, and I – I agree with everything my colleague has said. I would add also that the report indicated that parking would not be an issue

...

MR. MACBEATH: Yeah. Well, I don't want to speak against the motion. I've got some questions I'd like to have answered before we proceed any further. This Title 29 provision, special conditions on a lot require a variance for lot size. Isn't lot size an issue and isn't that why the variance is sought?

MS. KLEPASKI: Yes.

⁸ Appellant Record, Page 21

⁹ Appellant Record, Page 21

¹⁰ Appellant Record, Page 86

...

MS. SANFORD: Okay. So, I see two different things in the law. One is “must.” A variance must meet the following standards. First of all, there are no special conditions that exist on this property in my opinion, nor would a strict interpretation deprive him of his rights. So right there, according to the borough code, I believe that the application fails on its face because the word is “must”, not may, it’s must.

Then we get to the state code and it says that it may not be granted. Not. There’s no wiggle room there. May not be granted if one of those three. And what I heard Mr. Kennedy say like twenty times was this is money, pay for itself, finances, money, I’m going to get money, there’s money involved here. And we can’t not say that enough. In fact, I think he even said that at one point. So it may not be granted if it’s money. Must have these following things. I don’t see – I mean, the law just absolutely does not allow us to approve this. I don’t see how – I don’t see any way around it.

MS. HUNTINGTON: And in your opinion, my question to you would be do we have the ability to reinterpret that here?

MS. KLEPASKI: No. No, we do not. It’s the law. It’s the law.¹¹

One commissioner asked the Legal staff if they had the ability to reinterpret the state code; Legal staff stated that the Planning Commission does not have this ability because “it’s the law.” The decision could only be made based on the standards described in FNSBC § 18.54.040(B) and Alaska Statute § 29.40.040(b).

Assertion 2: *Improper evidence: Introduced by the Commissioners themselves. When the issue was made by the neighbor about having access through your back yard, a Commissioner actually*

¹¹ Appellant Record Addendum, Pages 41 – 42 and 44-48

got on their i-pad, and pulled up my lot to show Commissioners that there was a access issue noted by and for the neighbor. Even though a member of the Planning Staff was able to show on his computer projection system that there was no neighbor access issue, damage was done from this false information.

Response: It is the duty of the Planning Commission to listen to any public testimony provided by interested parties. Using an electronic device to access publicly-available records to clarify confusing or conflicting statements during the quasi-judicial hearing is not improper; in fact, appellant's argument claims that the Planning Staff was able to assist him – using a computer – on the same point of discussion.

The Planning Commission can only approve a variance if it meets established standards from Title 29 of the Alaska State Statute and Title 18 of the Fairbanks North Star Borough Code. After all testimony was given and the public hearing was closed, the Planning Commission thoughtfully deliberated on the request and testimony provided. The access issue was not discussed in the deliberation prior to the Commission's decision on whether to approve or deny the variance. See testimony in response to Assertion 1.

Assertion 3: *Denied use common to area: There is a building permit for this structure. I can put in bedrooms added to existing structure. The issue is can I have a kitchen? The occupancy will be raised the same no matter what. Kitchens give more value to the building. Note: Community need met – with no change in tenant count: Simplified, I can turn a one bedroom dwelling into a two bedroom – and allow one more person in that space. My request adds the same one person to the same, but separate & private space. But current zoning stops it!*

Response: The City of Fairbanks issued a building permit solely to frame that area (see below). The applicant stated that he received the permit by stating he was adding storage units:

MR. LANNING: And how did they see it? What did you tell them you were going to build?

MR. KENNEDY: Well, I originally wanted to frame it in and I'm doing it – I was going to do it in stages. And originally it was going to be framed in and used as storage, you know, or I was going to – considering turning that into a bedroom and attaching it to the existing apartment just to the immediate east of the units that were being added.

So I had several options that I was considering, but I needed to get it framed in and beat the weather. Very important.

MR. LANNING: Those are different occupancies, storage and additional bedrooms. ...

...

MR. LANNING: So is that part of your city permit?

MR. KENNEDY: It would be, but I haven't gone that far until I get this done.

MR. LANNING: So the city gave you permission just to do the framing. Is that what my understanding is?

MR. KENNEDY: Correct. Yes, correct.¹²

Mr. Kennedy incorrectly states in this Assertion that the Planning Commission denied him a right commonly enjoyed by other properties in the area; the previous variance approval has actually allowed the applicant's property to enjoy rights not common to other properties in the area (see Response to Assertion 1, above). With the existing lot size of 69,606 square feet and requirements stipulating 2,000 square feet per dwelling unit, the owner would be normally permitted a total of thirty-four (34) units.¹³

¹² Appellant Record Addendum, Pages 20-21

¹³ FNSBC 18.26.030(A)(3)

In 1995, the property was granted a variance to exceed the maximum of thirty-four (34) units to a new total of forty-two (42) units plus the manager's dwelling/office.¹⁴ With the present request the applicant is asking for three (3) more units for a new total of forty-five (45) units plus the manager's dwelling/office, which exceeds the limit in Title 18 by 12 units.

SECTION II: REPLY TO APPELLANT'S POSITION BRIEF

Assertion 1: *Planning Department Findings: Mr. Hernandez, FNSB Planning Director, agrees there is no negative community impact. Stating: "The proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increase danger of fire because there does not appear to be any sight distance, snow removal, or road safety issues that are made worse due to the addition... They have more than the required parking and are on Golden Heart Utilities sewer and water."*

Bravo! So why didn't they recommend approval? Humm...it humorously reminds me of the quip: "There is no dog-gone reason for it – it's just our policy!" In seriousness: They apply a one size fits all mentality to a specific situation that with zoning's own above admission: "will not jeopardize public health, safety or welfare, traffic or parking conditions, or increase danger or fire..."

Response: Per FNSBC 18.54.040 Procedures for variances, "the planning commission may allow a departure from the numerical regulations of this title pertaining to...lot area..." The request for a variance must demonstrate that it meets two standards: (1) special conditions exist which are peculiar to the land involved and which are not applicable to other land in the same zoning district; and (2) strict interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance.¹⁵ If either of the two standards is not met by the variance request, the Planning

¹⁴ Appellant Record, Pages 33-37

¹⁵ FNSBC 18.54.040(B)(1)

Commission is unable to grant the request. Mr. Hernandez states “Our recommendation is based solely on the facts that are before us and one is that it’s a pecuniary hardship that he’s dealing with and we cannot grant a variance because of that. In addition to that, he is not being deprived of rights that other people have. He has the exact same rights. And if you were to grant this variance, you are giving him even more rights than the surrounding property owners have to develop their property.”¹⁶ This summarizes discussion between Planning Commissioners on pages 44-52 of the complete transcript submitted as an addendum to the Appeal Packet.

In support of the commissioners’ consideration of the two standards listed above, the Planning Commission must also “*consider and adopt findings in each of the following:*

- 1. Whether or not the proposed variance conforms to the intent and purpose of this title and of other ordinances and state statutes;*
- 2. Whether or not the denial of the proposed variance will deprive the applicant the use of his/her property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area;*
- 3. Whether or not the proposed variance will protect the public health, safety and welfare, traffic and parking conditions from danger of fire.”¹⁷*

The Planning Commission adopted the following Findings of Fact in support of their decision to deny the variance request:

“1. The proposed variance does not conform to the intent and purpose of Title 18 and other Ordinances and State Statutes; specifically, there are no special conditions unique to the property that necessitates the granting of the variance.

¹⁶ Appellant Record Addendum, Page 51

¹⁷ FNSBC 18.54.040(D): Hearing and Decision by the Planning Commission.

2. Denial of the proposed variance will not deprive the applicant the use of his property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area. Current density is greater than typically permitted by zoning, although permitted by the 1995 variance.

3. The proposed variance will not jeopardize public health, safety or welfare, traffic or parking conditions, or increased danger of fire because there does not appear to be any sight distance, snow removal, or road safety issues that are made worse due to the addition of the new dwelling units. They have more than the required parking and are on Golden Heart Utilities sewer and water.¹⁸

The first Finding indicates that the variance request does not meet the first standard (that special conditions must exist on the property that are not applicable to neighboring properties) because the intent of the code is to allow all property owners equal use of their property under the restrictions provided in Title 18. Because Mr. Kennedy's property is not constrained by physical limitations such as "exceptional narrowness, shallowness, or shape of a specific piece of property, exceptional topographical conditions, other extraordinary or exceptional conditions,"¹⁹ the code must apply to him as it does to other properties in the Multiple Family Residential zone.

The second Finding addresses potential deprivation of rights. Mr. Kennedy already enjoys much greater density on his property. See Section I, Response to Assertion 3.

Assertion 2A: Neighborhood Impacts: *There will be no crowding or overall change in tenant count. Currently changing a one-bedroom unit into a two-bedroom unit is allowed. In simple terms, this allows one more person in that space, the same as accommodated with this request. The*

¹⁸ Appellant Record, Page 11. Emphasis added.

¹⁹ Appellant Record Addendum, Page 46

difference is making this addition separate, private space, that is safer and cheaper to rent. I contend this is an essential service we are obligated to provide where feasible.

Response: Crowding and tenant density are not considered by the Planning Commission when granting or denying a variance. This point is unrelated to the issue on appeal.

Assertion 2B: *Environmental Impacts: There will be no unsightly protrusion, nor loss of landscape buffers. There are these benefits: It changes a dark shadowy void exterior space between buildings, to a useful protected interior. It gives a welcome reduction in cold corridors for existing residents and a measureable improvement in their winter comfort. A small but mention worthy side benefit is reduced fuel and carbon footprint. The three unheated space average about 48 degrees – all from radiated heat historically lost to outside air.*

Response: Improvement to the internal environment of buildings is not considered by the Planning Commission when granting or denying a variance. This point is unrelated to the issue on appeal.

Denial of this variance does not prevent Mr. Kennedy from using the space already framed in. Per his testimony on pages 20 and 21 of the complete transcript submitted as an addendum to the Appeal Packet, Mr. Kennedy acquired a construction permit from the City of Fairbanks to frame in the area as storage or as additional bedrooms for adjoining apartments. See Section I, Response to Assertion 3.

Assertion 3A: *Discrimination Message: Existing zoning favors the more affluent person or family that can afford the larger living space with multiple bedrooms. It makes good sense to allow smaller lower cost living space and not discriminate against the single lower income person that doesn't want, or qualify for a government program. I don't like that message, nor believe it's the message the Council does or should support.*

Response: Zoning regulations restrict only the number of units per lot; the type of unit constructed (efficiency, one-bedroom, two-bedroom, etc.) is not regulated under FNSBC Title 18.²⁰ Similarly, zoning regulations do not address cost-of-living expenses such as rent. The zoning regulations are non-discriminatory.

Assertion 3B: *A Community Service: This request serves that lower income group, giving them affordability, safety, dignity, and self-sufficiency through their own private space. Homeless is not always a choice, but as in this case, a product of one size fits all zoning that doesn't.*

Response: Regulations in the Multiple-Family Residential district are intended to provide “high density residential development...through a variety of housing types....”²¹ This encourages a mix of unit types, but does not regulate the type of unit constructed by the property owner. Zoning regulations do not address cost-of-living expenses such as rent. Several zoning classifications allow for greater density than permitted in the Multiple-Family Residential district, including General Use-1.

Assertion 4: *Condition Overlooked in 1995 Original Variance: The site, the focus of all this, is less than a 10' wide swath tucked between structures. This request corrects the aforementioned environmental conditions caused by this void, which existed before current owners. This addition is the best solution to problems that should have been envisioned, addressed, corrected, and included in the 1995 original variance approval.*

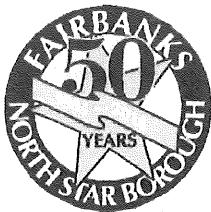
Response: The 1995 variance (V042-95, Exhibit 4 of the Appeal Packet) was conditionally approved based on existing construction of a 24-unit apartment complex and the foundation for an 18-unit apartment complex. The 1995 owner's intent was clearly to finish construction of the 42 dwelling units plus a manager's dwelling, office, and garage as designed.²² The problems referenced by the Appellee were predictable due to the climate in Fairbanks and were designed and

²⁰ FNSBC 18.26.000 Multiple-Family Residential District.

²¹ FNSBC 18.26.010 Intent.

²² Appellant Record, Pages 33-37

constructed according to the plan submitted as Exhibit 5 of the staff report submitted as Exhibit D of the Appeal Packet. The Planning Commission cannot base its decision on a problem “that should have been envisioned, addressed, corrected, and included” in a variance granted nearly 20 years ago; the specific criteria for the approval or denial of a variance request are described in FNSBC 18.54.040. See Section II, Response to Assertion 1.



Fairbanks North Star Borough

Borough Clerk

809 Pioneer Road * PO Box 71267 * Fairbanks, Alaska 99707-1267 * (907)459-1401 FAX 459-1224

CERTIFIED MAIL #7099 3220 0003 2641 2866
Return Receipt Requested

March 19, 2014

Kal Kennedy
2175 Broadmoor Avenue
Fairbanks, Alaska 99709

RE: Board of Adjustment Appeal of V2014-003 (Kal Kennedy)

Dear Mr. Kennedy,

Enclosed is a copy of the Appellee Brief submitted by Bernardo Hernandez, Planning Director. As the Appellant, you may file a written reply brief to the appellee brief not later than ten (10) days after the mailing of this notice.

Should you choose not to file a reply brief, please sign the attached form waiving the ten days to file a reply brief and return in the self addressed envelope. I will then forward the appeal to the City of Fairbanks for scheduling the hearing before the Board of Adjustment.

Sincerely,

A handwritten signature in cursive script that reads 'Nanci Ashford-Bingham'.

Nanci Ashford-Bingham, MMC
Borough Clerk

Enclosure

BOA Appeal – V2014-003

I Kal Kennedy will not be filing a reply brief and waive the ten (10) day reply brief filing period for the appeal of V2014-003.

Signature

Date

18.54.070 Appeals.

A. Initiation of [Appeal](#). Decisions may be appealed to the board of adjustment or a hearing officer by:

1. An applicant for a conditional [use](#) or [variance](#);
2. Any governmental agency or unit;
3. Any person aggrieved by a decision or determination made by the director of the department of community planning in the enforcement of this title, or by a decision of the planning commission concerning a request for conditional [use](#) or [variance](#). To be considered a "person aggrieved," the person must present proof of the adverse effect the decision has or could have on the [use](#), enjoyment, or value of his own property. The decision appealed from must personally affect a matter in which the person has a specific interest or property right in a way different from that of the general public. A request for [variance](#) from the terms of the land [use](#) regulations may be appealed when literal enforcement would deprive a property [owner](#) of rights commonly enjoyed by other properties in the district.

B. Appellees.

1. In the event a decision is appealed as provided in subsection (A) of this section, an appellee brief may be filed as provided in subsection (F)(2) of this section by:

- a. The party in whose favor the lower administrative body's decision was rendered;
- b. Any borough agency;
- c. Any person who would be aggrieved if the decision of the lower administrative body were reversed.

2. Appellees who wish to be notified by the clerk's office of the date the record is available and of the date the appellant's brief is filed must file a notice of intent to file a brief with the clerk's office on a form prescribed by the borough clerk, within 20 days after the decision of the lower administrative body from which the [appeal](#) is taken.

C. Notice of [Appeal](#). An [appeal](#) must be perfected no later than 15 days after the decision of the administrative body from which the [appeal](#) is taken. The [appeal](#) is perfected by the filing of a notice of [appeal](#), [appeal](#) fee and cost bond in accordance with this subsection.

1. The notice of [appeal](#) must be filed with the borough clerk on a form prescribed by the borough clerk and must contain detailed and specific allegations of error.
2. The appellant shall pay a nonrefundable [appeal](#) fee of \$75.00. In addition, the appellant shall file a cost bond of \$200.00. Following completion of the record, the appellant shall pay the actual cost of the record. However, should the decision of the lower body be reversed in whole or in part, the cost bond shall be refunded in full.

3. An untimely notice of [appeal](#) or a notice of [appeal](#) which does not conform with the requirements of this subsection shall be denied. No further proceedings shall be made on a defective notice of [appeal](#) unless the defect is corrected within the period provided for an [appeal](#).

D. New Evidence – Changed Circumstances. [Appeals](#) alleging new evidence or changed circumstances shall not be heard by the board of adjustment or hearing officer but shall be remanded forthwith by the clerk to the lower administrative body, which shall determine whether to rehear the matter.

E. Preparation of Record.

1. Upon timely perfection of an [appeal](#), the borough clerk shall prepare an [appeal](#) record. The record shall contain:

- a. A verbatim transcript of any proceedings before the administrative body from which the [appeal](#) has been taken prepared in accordance with subsection (E)(2) of this section;
- b. Copies of all documentary evidence, memoranda and exhibits, correspondence and other written material submitted to the administrative body prior to the decision from which the [appeal](#) is taken;
- c. A copy of the written decision of the administrative body, including its findings and conclusions.

2. The appellant shall arrange for the preparation of the transcript by a [court](#) reporter and shall pay the cost of such preparation. The appellant shall file this transcript with the borough clerk. If the appellant fails to file the transcript within 30 days of the filing of the notice of [appeal](#), the [appeal](#) shall be automatically denied.

3. Upon completion of the record, the clerk shall notify the appellant by certified mail of the cost of its preparation. If the appellant fails to pay the costs within seven days of receiving the notice, the [appeal](#) shall be automatically denied. Upon timely payment of costs, the clerk shall, by certified mail, serve a copy of the record on the appellant. The clerk shall also notify by certified mail the appellees who have filed a notice of intent to file a brief that the record is available for pickup and the date the record was mailed to the appellant. Upon request, the clerk shall provide a copy of the record to an appellee or the public.

F. Written Argument.

1. Brief of the Appellant. The appellant may file a written brief of points and authorities in support of those allegations of error specified in the notice of [appeal](#) with the clerk's office not later than 15 days after mailing of the [appeal](#) record. The clerk shall deliver a copy of the appellant's brief to the borough staff assigned responsibility for the [appeal](#). The clerk shall also notify by certified mail those appellees who have filed a notice of intent to file a brief that the appellant's brief is available for pickup. Upon request, the clerk shall provide a copy of the appellant's brief to appellees.

2. Brief of Appellee. The borough staff shall prepare and submit to the clerk a written reply to the notice of [appeal](#) and any brief in support thereof no later than 30 days after mailing of the [appeal](#) record. An appellee who has filed a notice of intent to file brief may also file with the clerk's office a written reply to the notice of points on [appeal](#) and any brief in support thereof no later than 30 days after the mailing of the [appeal](#) record. The clerk shall notify the appellant by certified mail that appellee briefs have been filed.

3. Reply Brief. An appellant may file a written reply brief to the appellee briefs no later than 10 days after mailing of notice that the appellee briefs have been filed.

4. Form of Briefs. All briefs shall be typewritten on eight and one-half by 11-inch pages. The text of the brief shall be double-spaced other than quotations from the record, case law, or other applicable law or exhibits which cannot be retyped on eight and one-half by 11-inch pages. The brief of the appellant is limited to 25 pages exclusive of exhibits. The brief of appellee is limited to 25 pages exclusive of exhibits. The reply brief is limited to 10 pages exclusive of exhibits. The clerk shall not accept a brief unless it is in the form prescribed by this subsection.

5. Untimely Briefs. If a brief is not filed within the time prescribed by this section, the clerk shall notify the board of adjustment or hearing officer that the brief was filed late. The board or hearing officer shall determine whether to accept a late brief and whether to allow additional time for any qualified opposing party to file its brief.

G. Appeal Packet – Notice of Hearing. Following the time set for the receipt of written argument from the appellant, appellee and the borough staff, the clerk shall prepare and distribute to the board members or hearing officer an [appeal](#) packet containing only the notice of [appeal](#), the [appeal](#) record and any briefs filed in accordance with subsection (F) of this section. Following distribution of the packets, a date shall be set for consideration of the [appeal](#). Notice of consideration on the [appeal](#) shall be published in a newspaper of general circulation and shall be served by mail on the appellant and those appellees who have submitted briefs. [Appeal](#) packets shall be made available to the public upon demand.

H. Appeal Hearing. The meeting at which the board deliberates and decides an [appeal](#) shall be open to the public and a record of the hearing shall be made. The board or hearing officer shall not hear arguments nor take additional testimony or other evidence. Only the material contained in the [appeal](#) packet shall be considered.

I. Scope of Administrative Review.

1. An [appeal](#) shall be heard solely on the basis of the record established before the lower administrative body, the notice of [appeal](#), appellant's argument and the reply thereto.

2. The board of adjustment or hearing officer may exercise its independent judgment on legal issues raised by the appellant. Legal issues as used in this subsection are those matters that relate to the interpretation or construction of ordinances or other provisions of law.

3. The board of adjustment or hearing officer shall, unless it substitutes its independent judgment pursuant to subsection (I)(4) of this section, defer to the judgment of the lower

administrative body regarding disputed issues or findings of fact. Findings of fact adopted expressly or by necessary implication by the lower administrative body may be considered as true if they are supported in the record by substantial evidence. Substantial evidence for the purpose of this subsection means such relevant evidence as a reasonable mind might accept as [adequate](#) to support a conclusion. If the record affords a substantial basis of fact from which the fact in issue may be reasonably inferred, it shall be considered that the fact is supported by substantial evidence.

4. Notwithstanding the provisions of subsection (I)(3) of this section, the board of adjustment, by an affirmative vote of two-thirds of the fully constituted board, or the hearing officer, may substitute its independent judgment for that of the lower administrative body on any disputed issues or findings of fact. The judgment must be supported on the record by substantial evidence. For the purpose of this subsection, the fully constituted board of adjustment shall not include those members who do not participate in the [appeal](#).

J. Decision.

1. The board of adjustment or hearing officer may affirm or reverse the decision of the lower administrative body in whole or in part. It shall decide an [appeal](#) on the basis of the record on [appeal](#) and the briefs of the parties to the [appeal](#), in accordance with the standards of subsection (I) of this section. A majority vote of the fully constituted board is required to reverse or modify the decision appealed from. For the purpose of this subsection, the fully constituted board shall not include those members who do not participate in the [appeal](#). Where an [appeal](#) has been referred to a hearing officer, the hearing officer alone shall decide the [appeal](#). A decision reversing or modifying the decision appealed from shall be in a form which finally disposes of the case on [appeal](#) except where the case is remanded in accordance with subsection (K) of this section.

2. Every decision to affirm or reverse the decision of the lower administrative body shall be based upon findings and conclusions adopted by the board or hearing officer. Such findings must be reasonably specific so as to provide the community, and where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision. The board may seek the assistance of the borough attorney in the preparation of findings.

K. Remedies.

1. Where the board of adjustment or hearing officer reverses or modifies a decision of the lower administrative body in whole or in part, its decision shall finally dispose of the matter on [appeal](#), except that the case shall be remanded to the lower body where it determines either:

a. That there is insufficient evidence in the record on an issue material to the decision of the case; or

b. That there has been a substantial procedural error which requires further public hearing.

2. A decision remanding a case shall describe any issue upon which further evidence should be taken, and shall set forth any further directions the board or hearing officer deems appropriate for the guidance of the lower administrative body.

3. The lower administrative body shall act on the case upon remand in accordance with the decision of the board of adjustment or hearing officer in the minimum time allowed by the circumstances.

L. Special Rules of Procedure Applicable to [Appeal](#) Hearings Before the Board of Adjustment or Hearing Officer.

1. Ex Parte Contacts Prohibited. Board members and the hearing officer shall be impartial in all [appeal](#) matters, both in fact and in appearance. No board member or hearing officer shall receive or otherwise engage in ex parte contacts with the appellant, other parties adversely affected by the [appeal](#), or members of the public concerning the [appeal](#) or issues specifically presented in the notice of [appeal](#) either before the [appeal](#) hearing or during any period of time the matter is subject to reconsideration.

2. Decisions of the board of adjustment or hearing officer may be brought up for reconsideration or rehearing only if:

- a. There was substantial procedural error in the original proceeding; or
- b. The board or hearing officer acted without jurisdiction in the original proceeding; or
- c. The original decision was based upon fraud or misrepresentation.

The appellant or appellee may seek reconsideration or a rehearing by filing a request with the borough clerk, together with materials supporting one or more of the grounds stated above, within 15 days of the original decision. The board, by majority vote, or hearing officer may schedule a rehearing only if it finds the allegations to be correct. A rehearing shall be conducted in the same manner as original proceedings.

M. Judicial Review. Either the appellant or appellee may [appeal](#) the decision of the board of adjustment or hearing officer to the superior [court](#). [Appeals](#) shall be made in accordance with the Alaska Rules of Civil Procedure. (Ord. 94-003 § 2, 1994)

MEMORANDUM

City of Fairbanks Clerk's Office

Janey Hovenden, City Clerk

TO: Mayor John Eberhart
City Council Members

FROM: Janey Hovenden, MMC, City Clerk

SUBJECT: Application for New Liquor License

DATE: April 16, 2014



Attached you will find notification from the ABC Board of an application for a new liquor license for the following applicant.

License Type: Beverage Dispensary - Duplicate
D.B.A.*: **The Attic**
Licensee/Applicant: The Last Roundup, LLC
Physical Location: 2701 S. Cushman Street (Upstairs), Fairbanks AK

Pursuant to FCG Sec. 14-178 the Council must determine whether or not to protest the liquor license action after holding a public hearing.

There are no other departmental objections to the issuance of this new license.

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board and the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is "arbitrary, capricious and unreasonable". Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-44.62-630. **IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.**

Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify us and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 3 AAC 304.145, Local Governing Body Protest.

Note: Applications applied for under AS 04.11.400(g), 3 AAC 304.335(a)(3), AS 04.11.090(e), and 3 AAC 304.660(e) must be approved by the governing body.

Sincerely,

SHIRLEY A. COTÉ
Director



Sarah D. Oates
Business Registration Examiner
sarah.oates@alaska.gov
(907)269-0356



City of Fairbanks

Office of the City Clerk

800 Cushman Street

Fairbanks, AK 99701

(907)459-6715

Fax (907)459-6710

MEMORANDUM

TO: Mayor John Eberhart and City Council Members

FROM: Janey Hovenden, MMC, City Clerk

SUBJECT: Liquor License Renewals

DATE: April 16, 2014

Attached you will find the notification of liquor license renewals from the State ABC Board for the following liquor licenses.

Lic #	Establishment Name	License Type	Premise Location	Owner Name
104	Red Lantern Steak & Spirits	Beverage Dispensary	820 Noble St	Westmark Hotels, Inc
435	Garden Island Party Store	Package Store	246 Illinois	Market Basket Inc
703	Gavora's Liquor #1	Package Store	250 Third Street Graehl	Market Basket Inc
704	Gavora's Liquor #2	Package Store	1255 Airport Way	Market Basket Inc
995	Safeway Store #2754	Package Store	3627 Airport Way	Safeway Inc
999	Oaken Keg #3410	Package Store	30 College Road	Safeway Inc
1134	Thrifty Liquors	Package Store	1410 Cushman Street	Market Basket Inc

Pursuant to FGC Sec. 14-178 the Council must determine whether or not to protest liquor license renewals after holding a public hearing.

Please note that there are no departmental protests. Please contact me if you need any further information.



March 10, 2014

Renewal Application Notice

City of Fairbanks
Attn: Janey Hovenden
VIA EMAIL: jjhovenden@ci.fairbanks.ak.us
cc: pphillips@co.fairbanks.ak.us

DBA	Lic Type	Lic #	Owner	Premise Address
Geraldo's Restaurant	Beverage Dispensary	542	Garlic Lovers LLC	701 College Road
Pizza Hut #4	Restaurant/Eating Place	884	Kurani Inc	1990 Airport Way
Pizza Hut #5	Restaurant/Eating Place	1475	Kurani Inc	89 College Road
Reflections	Beverage Dispensary	1920	The Lighthouse Inc	2406 S Cushman St
Shenanigan's	Beverage Dispensary	2851	Tiffany Park West Inc	2406 S Cushman St
Lower LA	Beverage Dispensary	4168	Two Amigos, LLC	636 28th Ave (downstairs)
HooDoo Brewing Company	Brewery	5169	Fairbanks Fermentation, LLC	1951 Fox Avenue

We have received a renewal application for the above listed licenses within your jurisdiction. This is the notice as required under AS 04.11.520. Additional information concerning filing a "protest" by a local governing body under AS 04.11.480 is included in this letter.

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board **and** the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is "arbitrary, capricious and unreasonable". Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-

44.62-630. IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.

Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify us and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 13 AAC 104.145, Local Governing Body Protest.

Note: Applications applied for under AS 04.11.400(g), 13 AAC 104.335(a)(3), AS 04.11.090(e), and 13 AAC 104.660(e) must be approved by the governing body.

Sincerely,

SHIRLEY A. COTÉ
Director

/s/Christine C. Lambert

Christine C. Lambert
Licensing & Records Supervisor
Christine.lambert@alaska.gov

cc: Peggy Phillips, Fairbanks North Star Borough Clerk's Office

ORDINANCE NO. 5943

**AN ORDINANCE TO REPEAL FAIRBANKS GENERAL CODE
CHAPTER 14, ARTICLE III TRANSIENT VENDORS AND
REENACT IT AS ARTICLE III MULTI-VENDOR EVENTS**

WHEREAS, the City adopted Business Licensing requirements in 2007 and by doing so made the intent of the transient vendor permit less clear and defined; and

WHEREAS, there is a need to overhaul the transient vendor license requirements; and

WHEREAS, retaining multi-vendor event requirements is necessary to allow for several temporary, transient-style businesses in one location; and

WHEREAS, the proposed changes will make the Code sections pertaining to multi-vendors more consistent with other Code sections governing business and occupational licensing; and

WHEREAS, the season of transient-style operations usually begins in earnest in the spring, so it is desirable that the requirements for multi-vendor events be better defined by then; and

WHEREAS, the proposed changes will streamline the application process,

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. Fairbanks General Code Chapter 14, Article III Transient Vendors, is hereby repealed and reenacted as Chapter 14, Article III Multi-Vendor Events as follows:

ARTICLE III. MULTI-VENDOR EVENTS.

Sec. 14-71. Definitions.

Multi-vendor event means an event such as a public show, bazaar, marketplace, festival, trade show, or other activity involving multiple vendors held at a single location. This includes events taking place with the same vendors over multiple weeks at a single location, not to exceed 15 cumulative days within a calendar year. Exempt from this article are events held for the primary purpose of providing basic, on-site health and wellness services at no cost.

Multiple-vendor event permit means a permit issued by the city clerk to the sponsor of a multi-vendor event.

Sponsor means any individual, business or organization that organizes and manages a multi-vendor event.

Sec. 14-72. Permit required.

(a) No person or organization shall sponsor a multi-vendor event without first obtaining a multi-vendor event permit from the city clerk.

(b) Sponsors shall display the multi-vendor event permit on site at all times during the event.

(c) It shall be a violation of this article for any person who owns, leases, or controls real property to knowingly allow a multi-vendor event to take place upon the premises unless a valid multi-vendor event permit is in effect.

Sec. 14-73. Application for permit; standards for issuance of permit.

(a) Applications for permits issued under this article shall be made upon forms prepared and made available by the city clerk and must state:

- (1) The full name, mailing address and phone number of the event manager and, if applicable, the business or organization sponsoring the event.
- (2) The name, date(s) and location and number of participating vendors of the event. Events that are recurring or involve less than 20 vendors must provide a complete list of participating vendors.
- (3) Whether the event will require closure of city streets and/or sidewalks. Events requiring city street or sidewalk closure may be required to obtain a special event permit as outlined in FGC Section 78-572.
- (4) Such other information as the city clerk may find reasonably necessary to effectuate the general purpose of this article and to make a fair determination of whether the terms of this article have been met.

(b) The sponsor must have a current city and state business license, unless exempted under FGC Sections 14-601 through 14-604.

(c) The multi-vendor event permit fees are as set forth in the city's Schedule of Fees and Charges for Services.

(d) All permits issued under this article shall be for the term of the event and shall not be transferrable.

Sec 14-74. Penalties.

A sponsor who conducts a multi-vendor event without having a valid multi-vendor event permit shall, upon conviction, be punished as provided in FGC Sec. 1-15.

SECTION 2. That the effective date of this Ordinance shall be the ____ day of April 2014.

John Eberhart, City Mayor

AYES:
NAYS:
ABSENT:
ADOPTED:

ATTEST:

APPROVED AS TO FORM:

Janey Hovenden, MMC, City Clerk

Paul J. Ewers, City Attorney

Introduced by: Mayor Eberhart
Date: April 7, 2014

ORDINANCE NO. 5944

**AN ORDINANCE TO AMEND FAIRBANKS GENERAL CODE
CHAPTER 14, ARTICLE XIII BUSINESS LICENSING**

WHEREAS, proposed Ordinance No. 5943 would repeal and reenact FGC Chapter 14, Article III Transient Vendors; and

WHEREAS, Ordinance No. 5943 is being proposed in conjunction with the present ordinance in order to make business licensing fair and uniform for all entities; and

WHEREAS, shortening the due date for obtaining a business license streamlines processing, reduces opportunities for misplacement, and helps ensure timely compliance by allowing staff to send reminder notices during a month in which quarterly billings are not already being conducted,

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. Fairbanks General Code Chapter 14, Article III, is hereby amended as follows [new text in **underlined bold** font; deleted text in ~~striketrough~~ font]:

Sec. 14.601. City business license required.

(a) By last day of ~~March~~**February** of each year, every person and other legal entity required to obtain a state business license shall obtain an annual city business license, in addition to any other license required by this Code, if the person or legal entity maintains business premises within the city limits, delivers goods or provides services within the city limits, or otherwise does business in the city limits.

(b) The city clerk shall provide for a system of issuing city business licenses, and keep records of all holders of general city business licenses. The clerk may propose regulations, subject to approval by the city council, relating to the issuance of city general business licenses.

(c) The following information shall be required to be provided for issuance of a city business license, and updated annually:

- (1) The name of the business owner;
- (2) The name(s) under which the entity does business;
- (3) The mailing address of the owner;

- (4) The mailing and physical address of the business;
- (5) ~~Reserved~~ **A contact telephone number and email address;**
- (6) ~~The number of employees recorded on all of the prior year's employer security contribution reports filed with the State of Alaska~~ **Reserved;**
- (7) A statement of the general nature of the business and the Standard Industrial Classification Number (SIC No.);
- (8) A selection shall be made within an appropriate range indicating the total estimated gross receipts received from all business activities for the prior year inside the city limits (except as provided under section 14-602(b)), which shall be treated as confidential proprietary information by the city and not disclosed to the public or accessed by any city employees who do not have a legitimate work-related need to access the information.

(d) No permit required under chapter 10, building and building regulations, may be issued except upon the presentation of a business license properly issued in compliance with this section.

(e) No occupational license or permit may be issued under any provision of the City Code except upon the presentation of a business license properly issued in compliance with this section.

Sec. 14.602. License fee registration.

(a) The annual license registration shall be based on gross receipts from the prior year as ~~set forth below~~ regardless of the number of physical locations in the city where the business is conducted. ~~For 2011, the license fee schedule is shown below. For calendar years 2012 and beyond,~~ The fee schedule shall be adjusted as part of the annual budget estimate by the estimated annual change in the Anchorage Consumer Price Index (CPI-U) with subsequent year adjustment to reflect the actual change. ~~Starting in 2012, the fee schedule shall be removed from the City Code and instead~~ **shall be** published in the City Schedule of Fees and Charges for Service with fees rounded to the nearest dollar. The minimum license fee shall remain at \$25.00 until further amendment by ordinance.

(b) Any business entity that does not have an established business premises in the Fairbanks North Star Borough but that provides one-time or intermittent contractual products or services within the city must obtain a City of Fairbanks business license prior to delivery of such products or services. The business license fee amount shall be calculated ~~from the chart in subpart (a) and~~ based upon the estimated gross proceeds (receipts) of the products/services provided under each contract. ~~This subsection does not change or modify the five-day exemption found in section 14-604(b).~~

Sec. 14.603. Failure to obtain business license.

Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and, exclusive of any civil penalties specifically provided for in this article, shall be punished as provided in F.G.C. section 1-15.

Sec. 14.604. Exemptions.

(a) Those business owners whose only business activity is to ship tangible property or provide intangible services to buyers within the city in response to an order (whether by phone, mail or internet) without the physical presence of any owner, employee or agent in the city.

(b) Those business owners who are only physically present in the city for short visits (whether at trade shows, special events, sales visits, etc.), so long as their presence ~~does not exceed five days a calendar year~~ **is covered by a multi-vendor permit issued under FGC Chapter 14 Article III Multi-Vendor Event.**

(c) Even if required by state law to have a state business license, ~~those business owners~~ **anyone** making ~~isolated or~~ casual sales within the city, such as "garage" or yard sales.

Section 2. That the effective date of this ordinance shall be the ____ day of _____ 2014.

John Eberhart, Mayor

AYES:
NAYS:
ABSENT:
ADOPTED:

ATTEST:

Janey Hovenden, MMC, City Clerk

APPROVED AS TO FORM:

Paul Ewers, City Attorney

Introduced by: Council Member Renee Staley
Date: April 21, 2014

RESOLUTION NO. 4621

**A RESOLUTION IN SUPPORT OF ALLOWING CRAFT
DISTILLERIES IN THE CENTRAL BUSINESS DISTRICT ZONE**

WHEREAS, there is a growing trend for the development of artisan style craft distilleries across North America; and

WHEREAS, craft distilleries attract tourism, use local products in their production, diversify the community's economic base, and provide a general boost to the local economy's bottom line; and

WHEREAS, the American Craft Distiller's Association defines a craft distillery as one that produces less than 100,000 gallons of product per year; and

WHEREAS, a craft distillery in downtown Fairbanks would complement the other existing uses within the Central Business District; and

WHEREAS, this type of facility does not produce significant noise, odor, or other nuisance; nor does it attract the clientele or function like a bar; nor is it a large industrial production facility.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks City Council supports amending the Fairbanks North Star Borough code of ordinances to allow craft distilleries within the Central Business District;

AND, BE IT FURTHER RESOLVED that these craft distilleries are defined as, and limited to, annual production not to exceed 50,000 gallons and a building size not to exceed 10,000 total square feet.

PASSED and APPROVED this 21st day of April, 2014.

JOHN EBERHART, MAYOR

AYES:
NAYS:
ABSENT:
APPROVED:

ATTEST:

APPROVED AS TO FORM

Janey Hovenden, MMC, CITY CLERK

Paul J. Ewers, CITY ATTORNEY

Introduced by: Mayor John Eberhart
Date: April 21, 2014

RESOLUTION NO. 4622

A RESOLUTION AMENDING THE SCHEDULE OF FEES AND CHARGES FOR SERVICES BY ADJUSTING THE MULTI-VENDOR EVENT PERMIT FEES

WHEREAS, with the adoption of Ordinance Nos. 5943 and 5944, it was determined that a fee breakdown was necessary; and

WHEREAS, there is a need to establish a reasonable fee for those non-consecutive but reoccurring events; and

WHEREAS, the current fee is excessive for smaller venues.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, to approve the attached amended version of the *Schedule of Fees and Charges for Services* amending the Multi-vendor Event Permit Fees, effective upon passage.

PASSED and APPROVED this ____ day of April 2014.

John Eberhart, Mayor

AYES:
NAYS:
ABSENT
APPROVED:

ATTEST:

APPROVED AS TO FORM

Janey Hovenden, MMC, City Clerk

Paul J. Ewers, City Attorney

City of Fairbanks Fee Schedule

As of Resolution 4622 - Effective April 21, 2014

Category	Code Sec.	Topic	Current Fee	Unit
Events	14-74	Multi-Vendor Event	\$ 500.00	20 or more vendors , not to exceed \$1,200 per calendar yr for multiple events by same applicant
			\$ 500.00	Recurring Events (non-consecutive Days)
			\$ 250.00	Events with less than 20 vendors
	14-75	Transient Vendor License	\$ 100.00	Fee
	78-572	Special Events (using streets or sidewalks)	\$ 100.00	Each Event Timely Permit Application - 20 or more calendar days in advance of event
			\$ 200.00	10 calendar days or more in advance
\$ 500.00			Less than 10 calendar days advance notice	

ORDINANCE NO. 5945

**AN ORDINANCE RATIFYING A LABOR AGREEMENT
BETWEEN THE CITY OF FAIRBANKS AND THE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL 1547**

WHEREAS, the Collective Bargaining Agreement between the City and the IBEW Administrative, Professional, Executive & Supervisory bargaining unit expired on December 31, 2013; and

WHEREAS, the IBEW and City Administration have reached a tentative agreement for a new three-year agreement which incorporates the labor goals of the City Council and is consistent with the terms of other recently adopted labor contracts.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. That the attached three-year collective bargaining agreement is hereby ratified.

SECTION 2. That this ordinance becomes effective upon ratification of the agreement by IBEW Local 1547.

SECTION 3. That once ratified, the collective bargaining agreement shall be effective from January 1, 2014, through December 31, 2016.

John Eberhart, City Mayor

AYES:
NAYS:
ABSENT:
ADOPTED:

ATTEST:

APPROVED AS TO FORM:

Janey Hovenden, MMC, City Clerk

Paul J. Ewers, City Attorney

CITY OF FAIRBANKS
FISCAL NOTE

I. REQUEST:

Ordinance or Resolution No: 5945

Abbreviated Title: Ratifying 2014 IBEW CBA

Does the adoption of this ordinance or resolution authorize:

1) additional costs beyond the current adopted budget? Yes X No

2) additional support or maintenance costs? Yes No X

If yes, what is the estimate?

3) additional positions beyond the current adopted budget? Yes No X

If yes, how many positions?

If yes, type of positions? (F - Full Time, P - Part Time, T - Temporary)

II. FINANCIAL DETAIL:

ESTIMATED EXPENDITURES	FY 2014	FY 2015	FY 2016	Total
Wages & benefits 2.5% on the package	\$103,867	\$103,867	\$103,867	\$311,601
Increase in leave banks	\$8,782			\$8,782
				\$0
Wages & Benefits 2% per hour increase 2nd Year		\$84,981	\$84,981	\$169,962
Increase in leave banks*		\$11,885		\$11,885
Wages & Benefits 2% per hour increase 3rd Year			\$86,680	\$86,680
Increase in leave banks*			\$12,123	\$12,123
TOTAL	\$112,649	\$200,733	\$287,651	\$601,033

ESTIMATED FUNDING SOURCES	FY 2014	FY 2015	FY 2016	Total
General Fund	\$112,649	\$200,733	\$287,651	\$601,033
Capital Fund				\$0
Federal Grant				\$0
State Grant				\$0
Local Contract				\$0
Cash Match				\$0
In-Kind Match				\$0
Other				\$0
TOTAL	\$112,649	\$200,733	\$287,651	\$601,033

Reviewed by Finance Department: Initial JNS Date 3/18/2014

1. Package rate adjusted by an increase of 2.5% effective January 1, 2014.

1.5% to Wages and 1% distributed equally to each member (.48 cents) for health care.

2. On January 1, 2015 and January 1, 2016 the package rate will be increased by 2%.

3. Leave estimated using 12-31-2013 balances.

*Assumes the entire wage is allocated to the base rate and not allocated by union members to health or pension

WORKING AGREEMENT

BETWEEN

THE CITY OF FAIRBANKS

AND

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL 1547**

**SUPERVISORY, ADMINISTRATIVE, PROFESSIONAL AND EXECUTIVE
EMPLOYEES**

January 1, 2014 – December 31, 2016

AGREEMENT

BETWEEN

**THE CITY OF FAIRBANKS
FAIRBANKS, ALASKA
(EMPLOYER OR CITY)**

**LOCAL UNION #1547 OF
THE INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO (UNION)**

For the purpose of maintaining cordial relations between the City and the Union, as more fully set forth in Article 1 below, the parties hereto do enter into, establish, and agree to the following:

ARTICLE 1 POLICY, PURPOSE AND EFFECT OF THIS AGREEMENT

It is the policy of the City and the Union to continue harmonious and cooperative relationships between the City employees and the City to insure orderly and uninterrupted operations of government.

The welfare of the City and its employees is dependent largely upon the service the City renders the public. Improvements in this service and economy in operating and maintaining expenses are promoted by willing cooperation between the City and each employee to render honest, efficient and economical service.

The purposes of this Agreement are:

- A. To promote the settlement of labor disagreements by conference, to prevent strikes and lockouts, to prevent avoidable delays and expense, and generally to encourage a spirit of helpful cooperation between the City and its employees to their mutual advantage.
- B. To recognize the legitimate interest of the employees of the City to participate through collective bargaining in the determination of terms and conditions of their employment.
- C. To promote fair, safe and healthful working conditions and to encourage the growth and development of City employees.
- D. To promote individual efficiency, the highest degree of professionalism, management skill, and service in an atmosphere of mutual respect between the City and its employees.
- E. To avoid interruption or interference with the efficient operation of the City.

- F. To provide a basis for the adjustment of matters of mutual interest and concern by means of amicable discussion.
- G. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. This Agreement may only be amended during its term by the parties' mutual agreement in writing.
- H. The City of Fairbanks Personnel Ordinance is superseded by this Agreement and unless specifically referenced herein has no applicability to any Union member.

ARTICLE 2 RECOGNITION

2.1 - Exclusive Bargaining Agent

The City recognizes the Union as the exclusive bargaining agent for the purpose of collective bargaining with respect to wages, hours, and other terms and conditions of employment for all members of the bargaining unit, consisting of the individuals employed in the job classifications set forth hereafter.

2.2 - Job Classifications and Descriptions

The parties recognize the City's bargaining unit job classifications as listed in Schedule "A" of this Agreement, the job descriptions for such classifications, and that such classifications are in existence at the signing of this Agreement.

- A. Additional classifications or reclassifications shall be included within the bargaining unit or exempt therefrom on the basis of the Alaska Labor Relations Agency criteria.
- B. The City agrees to submit material changes in job descriptions for review and comment by the Union prior to implementing such changes. New job classifications created or existing job classifications changed during the life of this Agreement shall be submitted to the Union for review and comment prior to implementation.

Union comments are due within 5 business days of submission to the Union unless agreed otherwise by the parties. The City shall make a good faith effort to take Union comments into consideration. The City reserves the right to make the final decision regarding such classifications and reclassifications. Only the most recently dated and initialed version of the job description is effective.

- C. Should unresolvable differences as to inclusion or exclusion of additional

classifications or reclassifications to the bargaining unit occur, either party may request that the jurisdiction be determined by the Alaska Labor Relations Agency, or its successor for resolution.

- D. Any jurisdictional disputes involving another union that may arise as a result of the action of the parties regarding such classifications or reclassifications shall be submitted to the Alaska Labor Relations Agency, or its successor for resolution.

2.3 - Intern Program

The City and IBEW agree to establish and maintain an efficient and effective internship program for students from qualified educational institutions working less than 25 hours per week during the fall and spring semesters. The purpose of the internship program is to develop, train and mentor students interested in engineering, accounting, information technology, or construction management fields covered by the existing collective bargaining agreement. The internship program will not displace qualified workers within departments that use interns.

The City will compensate the interns at a rate mutually agreed to by the parties. The City also agrees to make a contribution per compensable hour worked to the Union's money purchase plan equal to the pension and health care contribution requirements. Interns will receive no other benefits. If an intern continues to be employed with the City during the summer months and exceeds the established hours of this program, the City and Union agree to meet to create a benefit arrangement that will allow the intern the ability to vest in the Union's pension plan as a temporary employee or continue the contributions to the money purchase plan.

The City and IBEW reserve the right to terminate this program but will not do so without consultation and mutual agreement between the parties.

2.4 - Work-Study Job Training Program

Recognizing the value of the High School Work Based Learning programs, the parties agree to a partnership program by the City with local High Schools for the purpose of work-study job training. Students participating in work-study opportunities, whereby they work with City employees covered by this CBA, will be exempted from membership in the Union and will not be eligible for wages and benefits as provided under this CBA. The City may establish compensation for participants in this program so long as it does not negatively impact wage and benefits for City employees covered by this CBA. Participation in this program is viewed as a learning opportunity and is not intended to displace staffing levels.

ARTICLE 3 HIRING PREFERENCES

3.1 - Non-Discrimination

The Employer agrees that it will not discriminate in the hiring or treatment of employees because of race, color, national origin, sex, age, religion, marital status or changes in marital status, sexual orientation, parenthood, disability, genetic information, or union affiliation or activity, or association or political party affiliation; and agrees to comply with all applicable Federal and State statutes and regulations prohibiting discrimination.

3.2 - Local Hire Clause

To the extent permitted by law the City and the Union agree to utilize the standard referral procedures of the IBEW and to give priority of hire to residents of the Fairbanks, Alaska area, when such residents possess the requisite skills and abilities, and are available for hiring.

3.3 – Nepotism

A person may not be employed when that person is related by blood or marriage to an employee within and including the second degree of kinship if a direct supervisory or direct working relationship would exist.

ARTICLE 4 UNION SECURITY

4.1 - Agency Shop

- A. All employees shall, as a condition of continued employment, either become a member of the Union and pay Union dues or pay an agency fee to the Union equal to the amount of Union dues assessed uniformly against all Union members in this bargaining unit. To be eligible for the agency fee provision, an employee shall meet the "religious objection" criteria. Payment of Union dues or agency fee shall commence within 30 days after the date of hire.
- B. Upon the written request by the Union to the City, a unit member employed for more than 30 days who is not complying with the membership or agency shop provisions of the Agreement shall be terminated in accordance with the Union's written instructions. Where such dismissal action is taken by the City in accordance with the Union's written request, the Union will hold the City harmless.
- C. Persons hired in a bargaining unit position shall be informed at the time of the employment offer of the Union membership obligation under this Agreement. The employee shall report to the Union office for membership discussion within 5 working days after reporting to work.
- D. Newly hired bargaining unit members shall be afforded the opportunity to

participate in an orientation meeting not to exceed one hour conducted by a bargaining unit Shop Steward. The meeting may be conducted at the earliest date reasonably accommodated but not later than 2 weeks following the first day of employment. This orientation is intended to familiarize the newly hired member with bargained benefit plans.

4.2 - Exclusive Negotiations with Union

The Employer shall not negotiate with any organization other than the Union and its representatives with reference to the terms and conditions of employment of employees covered by this Agreement, except as otherwise provided in this Agreement.

4.3 - Check Off and Payroll Deductions

The Employer agrees to deduct dues and fees from the wages of each employee covered under this Agreement, as may be authorized by the employee by written assignment. Such deduction shall be transmitted to the Union within 15 days following the end of each calendar month.

The Union shall notify the Mayor in writing of a decrease or increase in authorized dues or fees deducted. The City shall then make the appropriate changes in payroll deductions. The City shall remit the employee's authorized Union deductions to the duly authorized representative of Union, together with a list of the names and addresses of the employees from whose pay deductions are made.

The Union, or its designee, shall have the right to receipts from deductions of dues, initiation fees or agency fees, Union-sponsored insurance premiums and Union-sponsored employee benefits as previously authorized or as may be authorized by the bargaining unit member.

4.4 - List of Bargaining Unit Members

The Employer agrees to furnish the Union with a roster of all employees working under the jurisdiction of this Agreement upon request.

4.5 - Professional Representation

The Union shall have representatives who are not employees of the Employer who shall be authorized to speak for the Union in all matters covered by this Agreement, and shall be permitted to visit any work area at any reasonable time, consistent with operational requirements, and with advance notice to the Mayor.

4.6 - Employee Representatives

The Union shall have the right to designate a representative or shop steward, and an alternate. The Union shall notify the City in writing as to the identity of the designated representative prior to their assumption of duties as representative. In addition to their

work as an employee, the representative or their alternate shall have the right to receive complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. The representative shall, in addition to their work, be permitted to perform during working hours such normal Union duties as cannot be performed at other times. The City will not discriminate against the representative with regard to the proper performance of their Union duties provided that such duties are conducted in a timely manner. The representative(s) shall notify their appropriate supervisor where they can be reached before the assumption of such Union duties. The Union shall notify the City within 24 hours as to the appointment or official status change of any Union representative. The designated Union official (representative) shall be consulted by the City prior to the representative's termination.

4.7 - Negotiating Team

The Union and City negotiating teams shall consist of no more than 3 persons per side. Employees who are members of, or advisors to a Union negotiating team may attend negotiating sessions held during the employees' duty hours without loss of pay, provided that no more than 2 on-duty employees may attend any session without loss of pay. This section shall not be construed to limit the number of off-duty employees who may attend negotiating sessions, and who make their own arrangements to be away from their duties. This section only limits the obligation of the City to pay on-duty employees for attendance.

ARTICLE 5 MANAGEMENT'S RIGHTS

5.1 – General

The City, under this Agreement, has and will retain the right to represent and manage the City, and direct its working forces, including the right to hire, to promote and demote, to discharge personnel for good and just cause in the interest of the City, provided such actions do not conflict with the provisions of this Agreement. Nothing in this Agreement is intended, nor is it to be construed in any way, as to interfere with the prerogative of the City to manage and control the business of the City.

5.2 – Subcontracting

The City reserves the right to subcontract any work falling within the scope of this Agreement. An employee whose position is eliminated as a result of subcontracting shall be offered reasonably comparable work within the City at their regular rate of pay and level of benefits. If no such position is available, the affected employee shall be given at least 6 months' notice prior to lay-off or severance pay equal to 6 months' pay and benefits minus the amount of notice actually given. The employee may opt, however, to take 3 months' severance pay in lieu of 3 months of the notice period. Any employee suffering a loss of hours shall be made whole by an amount of pay and benefits equal to their reduction in hours for a 6 month period.

An employee laid off as a result of the City's exercise of its rights under this Section

shall have the first right of refusal to their former or any equivalent position, in the event either becomes available within the next 36-month period. Disputes as to the comparability or equivalence of any position shall be resolved in accordance with expedited arbitration. Notification of vacancy pursuant to this Section shall be to the Union's Fairbanks business office. The employee's time to respond to such notice shall be as set forth in Article 23, Section 2(B).

ARTICLE 6 HOLIDAYS

6.1 – Listing

The following days shall be considered holidays with no deductions in pay:

New Year's Day	- January 1
Martin Luther King Jr. Day	- 3rd Monday in January
Presidents' Day	- 3rd Monday in February
Memorial Day	- Last Monday in May
Independence Day	- July 4
Labor Day	- 1st Monday in September
Veteran's Day	- November 11
Thanksgiving Day	- 4th Thursday in November
Christmas Day	- December 25

One personal floating holiday and such other days as the City Council may fix as additional holidays for all employees.

6.2 - Observance of Holidays

A designated holiday will normally be observed on the calendar day on which it falls, except that employees who are regularly scheduled to work on Monday through Friday will observe the preceding Friday when the holiday falls on Saturday, and will observe the following Monday when the holiday falls on Sunday. Normally only those employees designated in advance by appropriate supervision will be required to work on a designated holiday.

6.3 - Working on Holidays

If a non-exempt employee is required to work on a holiday, the City will pay 8 hours' straight time pay for the holiday, plus time and a half for hours actually worked. If a holiday falls during an employee's vacation, the employee shall receive holiday pay for the holiday and shall not be charged leave time for that day.

Employees shall not be paid for holidays occurring while they are on unpaid but approved leave of absence.

In order to receive pay for an observed holiday an employee must not have been absent without authorized leave on the work day before or after the holiday.

ARTICLE 7 GRIEVANCE/ARBITRATION PROCEDURE

It is the mutual desire of the City and the Union to provide for the prompt adjustment of grievances in a fair and reasonable manner, with a minimum amount of interruption to work schedules. Every reasonable effort shall be made by both the City and the Union to effect the resolution of grievances at the earliest step possible. In furtherance of this objective, the City and the Union have adopted the following procedure as the exclusive means of resolving differences and disputes under this Agreement.

A grievance is defined as any dispute involving the interpretation, application or alleged violation of any provision of this Agreement. However, any dispute involving the commencement date or termination date of this Agreement shall not be considered a grievance and shall not be submitted to the grievance/arbitration procedure set forth herein. Any dispute concerning commencement or termination of this Agreement shall be specifically reserved for judicial review. Grievances may be initiated by the Union or the City as hereafter specified. Where a matter requires resolution on an accelerated basis, expedited arbitration shall also be available.

7.1 - Regular Arbitration

STEP ONE –

When an employee has a grievance, the employee, accompanied by a Union Representative if the employee chooses, shall verbally discuss the matter with the relevant immediate supervisor and attempt to resolve the problem. The grievance must be brought to the attention of the immediate supervisor within 10 working days of the employee having through the exercise of reasonable diligence, gained knowledge that a grievance exists. If the grievance cannot be resolved through verbal discussion, the grievance shall be reduced to writing, signed by the employee, and presented within 3 working days to the immediate supervisor by a Union Representative. The grievance shall state the Article and Section number of this Agreement allegedly violated, the manner in which the employee believes that Section has been violated, and the precise remedy sought. The immediate supervisor shall investigate the grievance and shall indicate thereon, in writing, his or her response to the grievance within 5 working days following the day on which the written grievance was presented. The written grievance containing the response of the immediate supervisor shall then be delivered to the Union, with a copy to the aggrieved employee(s), within 5 working days for further handling at the next step of this procedure.

STEP TWO –

- A. If the grievance is not settled, the written grievance and the response thereto of the immediate supervisor shall be submitted to the Mayor or his/her designee, by the Union with a written statement as to why the response at Step One was not acceptable.

- B. A grievance initiated solely by the Union and not on behalf of a particular employee shall begin at this step and shall, within 10 working days of receipt of the response of the immediate supervisor, be submitted to the Mayor or his/her designee in writing. A grievance initiated by the City shall commence at this step and shall be submitted to the Union in writing. The Union shall have 15 working days to meet with all involved parties in conciliation, investigate and consider the grievance and deliver a written response to the Mayor. If the Union rejects the City's grievance remedy, the reason(s) shall be stated in the response. Grievances initiated by the Union or the City shall state the Article and Section number of this Agreement alleged to have been violated and the manner in which it has been violated. Grievances for which expedited arbitration is sought shall also be initiated at this step.
- C. The Mayor shall have 15 working days to meet with all involved parties in conciliation, investigate and consider the grievance and deliver a written response to the Business Agent. If the Mayor rejects the grievance remedy, the reason(s) shall be stated in the response.
- D. At the parties' meeting all pertinent facts and information will be reviewed in an effort to resolve the matter through conciliation. Where such conciliation efforts are unsuccessful, the grievance may be advanced to arbitration as follows.

7.2 - Expedited Arbitration

Where expedited arbitration is provided for under this Agreement, or mutually desired by the parties, the grievance at issue shall be initiated at Step Two and advanced from there to the selection of an arbitrator under Section 4, Expedited Arbitration/Arbitrator Selection.

7.3 - Regular Arbitration/Arbitrator Selection

- A. The moving party shall make demand in writing upon the other party for binding arbitration within 10 working days from the date of delivery of the final response of the Mayor or of the Union, as the case may be. Time for delivery of such demand shall not be extended on account of unfinished conciliation efforts, unless a written consent to extension is executed by both parties.

The parties agree to request the Federal Mediation and Conciliation Service or the American Arbitration Association to submit a list of 7 names of persons who are available for service as labor arbitrators.

- B. Within 5 working days, from the date of receipt of the list, the Employer and the Union Representative shall meet and alternately strike 1 name from the list until 1 name remains. The side to strike the first name shall be chosen by the flip of a coin.

- C. If either party fails, or refuses, to jointly request a list of arbitrators or fails or refuses to choose an arbitrator from such list as provided above, then either party may make a demand or submission to the American Arbitration Association and the neutral arbitrator shall be appointed in accordance with Rule 12 of the American Arbitration Association Arbitration Rules as are in effect at the time of demand.

7.4 - Expedited Arbitration/Arbitrator Selection

- A. The parties may meet and adopt a list of arbitrators suitable to both parties for use as arbitrators and/or mediators pursuant to this Section. The party proposing a name for the list shall submit biographical information or a resume for that person for the other party's consideration. For selected issues the parties recognize that a local arbitrator may have better knowledge of local conditions and problems and there could be cost and time savings by the selection of a local arbitrator. Consequently, the parties shall endeavor to include the names of at least 3 local persons on the list. The arbitrators on the expedited arbitration list shall not be required to be members of the Federal Mediation and Conciliation Service or of the American Arbitration Association.
- B. Where expedited arbitration or mediation is required by this Agreement, or mutually desired by the parties, within 10 working days of receipt of the demand for arbitration or mediation or another mutually agreeable time, the parties shall meet and select a name from the pre-determined list based upon the following factors in order of priority: 1) the arbitrator's early availability; 2) the background and experience of the arbitrator in the issues to be determined; 3) the aggregate of the travel and per diem expense of the arbitrator; and 4) such other factors as are deemed important by the parties at the time of selection. When the parties cannot mutually agree upon a name that is on the list based upon the above criteria, then they shall alternately strike 1 name from the list until 1 name remains. The side to strike the first name shall be chosen by the flip of a coin. In no event shall the arbitration hearing be held more than 60 days after a request for expedited arbitration has been made. However, if none of the arbitrators are available within that time, the mutually agreed to arbitrator with the earliest availability dates shall be selected.

7.5 - Rules Common to Regular and Expedited Arbitration

- A. The Arbitrator shall consider and decide only the specific issue or issues submitted in writing and shall have no authority to decide issues not so submitted. The authority of the Arbitrator shall be limited to the application and interpretation of this Agreement. The Arbitrator shall have no authority to amend, alter, modify or otherwise change the terms or scope of this Agreement. The Arbitrator shall be empowered to conduct a formal hearing governed by the procedural rules of the American Arbitration Association, take evidence, issue subpoenas to compel testimony or the production of

physical evidence, and to issue a written opinion and award.

- B. The decision of the Arbitrator shall be final and binding upon the parties to the dispute. The final decision of the Arbitrator shall be implemented as soon as possible, but not later than 30 days after the final decision is rendered.
- C. The City and the Union mutually agree to have more than 1 grievance or dispute submitted to the same Arbitrator. Each grievance or dispute may by mutual agreement be submitted to separately convened arbitration proceedings.
- D. The expenses of the neutral Arbitrator shall be borne by the losing party. If, in the opinion of the Arbitrator, the positions of both parties were reasonable and neither party can be fairly considered the losing party, then such expenses shall be borne equally by the parties.

7.6 - Employee Witnesses

The City and the Union shall bear the expense of their respective representatives and witnesses. Any City employee called as a witness by either side will continue to receive his or her regular rate of pay while attending a hearing during normal working hours for the witness. Should a hearing be scheduled outside of regular working hours or extended beyond regular working hours, no compensation shall be paid by the City for the time outside regular working hours nor shall any employee witness be entitled to overtime or premium pay for attendance at an arbitration hearing. The shop steward may attend the hearing during normal working hours and continue to receive his/her regular rate of pay. The parties will in good faith schedule and conduct arbitrations so as to try to minimize overtime costs and disruption of work schedules or lost productivity.

7.7 - Retroactive Pay

No Arbitrator appointed hereunder shall have any authority whatsoever to award any grievant any retroactive pay for any period of time prior to 15 calendar days of the employee having, through the exercise of reasonable diligence, gained knowledge that a grievance exists in accordance with Article 7, Section 1. To the extent this provision may conflict with applicable State or Federal law regarding employee wage or benefit claims, such applicable law will prevail.

7.8 – Discharge

In cases where it is determined an employee was discharged unjustly and without cause, the Arbitrator may order the Employer to return the employee to their position without loss of pay and benefits. When the employee is reinstated to their position, the employee shall be reinstated with no loss of seniority. An employee has the affirmative duty to mitigate damages. All unemployment compensation and all such amounts of money received or available by mitigation of damages will be deducted from any award granted by the Arbitrator.

7.9 – Default

Notwithstanding Sections 3 and 4, in the event either party to a grievance fails to properly answer, respond or act within the time specified at any step of the grievance procedure, the grievance shall be deemed settled against the party which failed to timely answer, respond, act, or appeal. Any of the time limits set forth in the grievance procedure may be extended by written agreement. Grievances resolved by default may not be the basis of establishing precedent on the merits for the resolution of any other grievances.

ARTICLE 8 DISCHARGE AND NOTICE

8.1 - Timely City Notice To Employee

Except for discharges or suspensions for just cause, all permanent employees who have fulfilled probationary requirements shall be given 30 days' notice of separation, or 4 weeks' pay, computed at the regular hourly rate, in lieu of such notice. Such notice, or pay in lieu of notice, shall not be required in the case of terminations or suspensions for just cause.

8.2 - Timely Employee Notice To City

All permanent employees who have fulfilled probationary requirements shall give the Employer two weeks' notice before leaving their employment unless mutually agreed beforehand between the Employer and the employee. Notation of failure to give proper notice will be placed in the employee's personnel file and may result in the employee being classified as "Ineligible for Rehire."

8.3 - Manner of Delivery of Notices

Notices required or allowed by this Agreement to be given to the Mayor shall be deemed given when actually delivered to the Mayor, or when delivered to the secretary of the person in charge of the office of the Mayor. Notices required or allowed to be given to the Union shall be deemed given when actually delivered to the Union's business agent, or when delivered to the secretary or person in charge of the Union's Fairbanks business office. Notices to an immediate supervisor shall be personally delivered. Notices to an employee shall be personally delivered, or, if an employee is absent from the work place, shall be deemed delivered when placed in the United States mail, postage fully prepaid, certified mail, addressed to the employee at his or her mailing address as shown on the records of the City.

8.4 - Termination For Cause

An employee terminated for just cause shall not be entitled to severance pay. A written statement of the reasons for termination for cause shall be given to the affected employee and his or her Union Representative. The term "severance pay" does not

include accrued leave or other earned benefits.

ARTICLE 9 HEALTH AND WELFARE

9.1 - Health and Welfare

- A. The City agrees to pay each month for coverage of regular employees working under the terms of this Agreement in the Alaska Electrical Health and Welfare Plan. All new employees shall be covered on the first of the month following the date of employment.

The City's contribution for regular employees shall be as provided in Schedule "A".

9.2 - Retirement/Pension and Social Security

- A. The City agrees to pay the Alaska Electrical Pension Trust Fund (AEPTF), as provided in Schedule "A".
- B. In the event Federal legislation is passed which appears to require public employees participating in a private pension plan to also participate in Social Security, the parties shall meet and by mutual agreement, determine how such legislation shall impact this Agreement.
- C. Employees may voluntarily contribute to the Alaska Electrical Worker's Money Purchase Pension Plan. The Employer agrees to withhold and forward voluntary contributions authorized by the employee.

9.3 - Deferred Compensation

Employees covered by this Agreement shall continue to be eligible to participate in any City deferred compensation program. The Union will be consulted prior to any change in deferred compensation plans by the City.

9.4 - Physical Examinations

- A. A yearly physical examination at the expense of the Employer is offered to employees at their election beginning during their second year of employment. The results of these tests shall be confidential between the employee and the examining physicians.
- B. The expense of any physical that is required by the City or by law, at a provider of the City's choice, shall be paid by the City. The City will not pay for charges for services that are not reasonable and customary.

9.5 - Fitness to Perform Duties

When in the opinion of the City there arise documented incidents, which raise specific questions as to the physical and/or mental ability of an employee to perform their normal work assignment or fitness for duty, an appropriate examination, including all relevant substance abuse test procedures, of the employee may be ordered by the City. If such examination demonstrates, in the opinion of the examining physician or specialist, that the employee is physically and/or mentally incapable of performing their normal work assignment or is not fit for duty, the employee shall be allowed to seek a second opinion from a local licensed physician or specialist (whichever the case may demand) of their choice at their own expense. If there is no other physician or specialist within the Fairbanks area from which the employee may acquire a second opinion, the City will share equally the costs of the employee's second opinion, including related travel costs, so long as the employee goes to a physician or specialist within the Anchorage, Alaska area.

If the results of these two examinations are not in agreement, then a third opinion shall be solicited from a physician or specialist (whichever the case may demand) mutually agreeable to the Employer and employee. The results of this third examination shall be final and binding, subject only to the grievance (appeal) and arbitration procedures described elsewhere in this Agreement. The Employer shall pay for the first physical and/or mental examination. If the third physician agrees with the first physician, then the employee will be responsible for the cost of the third examination. Otherwise, the Employer shall pay for the cost of the third examination.

9.6 - Drug Testing

The parties agree to be covered by a random drug test policy in the same manner as Federal CDL holders are subject to, at the expense of the City.

9.7 - Unemployment Compensation

The employees covered by this Agreement shall be entitled to coverage of the Unemployment Compensation Act of the State of Alaska, as amended from time to time.

9.8 - Section 125 Plan

The City agrees to maintain a Section 125 "Flexible Benefits Plan" as a means for employees to pay insurance premiums on a pre-taxed basis, and for the purpose of setting aside monies to pay uncovered costs of medical insurance and dependent care as allowed under Federal law.

ARTICLE 10 WORKING CONDITIONS

10.1 - Work Week

- A. Members of this bargaining unit are professional, executive and/or administrative employees, and as such are required to work a sufficient

number of hours to perform their job duties, some of whom are exempt from receiving overtime.

- B. Flexible work week and work day schedules will be fully considered and used with the mutual consent of the City and employee, including work beyond 8 hours a day and work on more than 5 days.
- C. Non-exempt employees shall receive overtime for all hours that exceed 8 hours per day or 40 hours per week. Employees working a flex schedule are an exception to this rule, whereby overtime will be paid for hours in excess of the established daily flex schedule or 40 hours per week. No employee will work any overtime or any hours outside the employee's normal schedule without the prior approval of the Department Head.
- D. Employees called back to work by their Department Head after leaving work will be employed for a minimum of 2 hours or credited with a minimum of 2 hours of work to be credited towards the 8 hours for that day or 40 hours of work for that week.
- E. Unless mutually agreed otherwise, an employee called into work outside of their regular shift will be allowed to work all hours of the regular shift on the day called in.

10.2 – Job Share

The job share program is designed to retain the valuable services of qualified employees through two employees sharing a single budgeted position. Availability and approval for job share opportunities will be at the sole discretion of the Mayor and affected Department Head.

- A. Job sharing is defined as two employees qualified for the same classification sharing 1 position. Job share opportunities will be based on a schedule to be approved in advance by the Department Head.
- B. If a job share employee separates or successfully bids into another classification, the remaining employee will have the option of reverting to full-time or requesting that the job share position be bid. If no other job share employee is hired into the position, the employee will be expected to resume full-time work status.
- C. Personal leave accrual will be prorated based on the hours worked.
- D. The employee scheduled on a holiday will observe the holiday. The employee not scheduled will not be compensated for the holiday. Each employee shall be entitled to one personal floating holiday per year.
- E. Alaska Electrical Health and Welfare Plan premium contributions will be paid for the active employee only. The inactive employee will have all benefits

suspended during their job share inactive time including the use or drawdown of any accumulated personal leave.

- F. The employee who is not actively working may elect to receive COBRA benefits under the Alaska Electrical Health and Welfare Plan.

10.3 - Pay Periods

Pay days shall be established covering payroll periods from the 1st to the 15th day of the month, paid no later than the end of that month inclusive and from the 16th day of the month to the last day of the month paid no later than the 15th of the following month inclusive, except when pay day falls on Saturday, Sunday or a holiday. If pay day falls on Saturday or Sunday unless preceded by a recognized holiday, pay day shall be on Friday. If pay day falls on a recognized holiday, pay day may be on the day prior to the holiday, if Monday is a recognized holiday, in which event pay day will be on the Friday prior. The City reserves the right to establish a 26 pay period/year pay period. Each check shall have a stub, or duplicate, itemizing all legal and authorized deductions, hours worked, rate of pay for straight time and, if applicable, overtime hours worked. If an employee is not paid on the established pay day, they shall receive 8 hours pay at the straight time rate for each 24 hour period until they receive their paycheck.

10.4 - Revocation of Driver's License

Certain jobs within this bargaining unit require a valid driver's license in the performance of their job duties. Loss of this license may result in termination or suspension during the period they do not possess a valid license. The Employer, however, shall make reasonable efforts to accommodate the employee's loss of driving privileges. No employee may be deprived of pay or seniority based upon the revocation of their driver's license for a violation or violations of the law which result from the direct orders of their superior to specifically commit such violation or violations.

10.5 - Work Environment

The City will make every reasonable effort to provide adequate ventilation, temperature controls, sanitary facilities, and privacy. In the event these standards are not maintained, the employees affected shall not be penalized for any loss of productivity arising out of these conditions.

10.6 - Bulletin Boards

The City shall furnish bulletin boards in each work area. Such bulletin boards are to be used for notices to employees given by the City, the Union, the Department of Labor, and other governmental agencies. Neither the City nor the Union shall post or allow the posting of materials which are inflammatory in nature, insulting or in poor taste. Existing bulletin boards may be used instead of installing new ones.

10.7 – Indemnification

In the event any action or claims are made by a person or entity against any employee, or their estate, for actions done while in the scope of City employment, the claim shall be defended by the City and any liability incurred by the employee or estate as a result shall be paid by the City, provided that, any actions or claims, defense of liability resulting therefrom shall not be paid by the City if the action or claim(s) are based upon acts or omissions of the employee resulting from recklessness, gross negligence, or intentional misconduct. In the event the City Council may by ordinance enact indemnification provisions that provide added protections to employees, such indemnification provisions shall apply to this bargaining unit.

In the event the City resolves an action or claim involving an employee for purely pragmatic reasons not involving any misbehavior by the employee, the City will issue a letter to the employee stating the reasons for the settlement, with a copy to be placed in the employee's personnel file.

ARTICLE 11 PROBATION

11.1 – Object

The probationary or working test period is an integral part of the hiring and employment process. It shall be utilized to secure the most effective adjustment of a new or promoted employee to their position, to allow the Employer and the employees the opportunity to consider their ability to make a long term commitment, and for the Employer to reject any employee whose performance does not meet required work standards.

11.2 – Duration

The probationary period shall be 6 months for all employees covered under this Agreement. A promotion or transfer shall not trigger any additional formal probation; however, for a 90-day period following any transfer or promotion, the employee may elect, without penalty, to return to their former position, even if this requires the layoff of the person holding the position. Likewise, the Employer may elect to return the employee to their former position during the same time period without cause, without penalty to the employee. But for this one exception, a transferred or promoted employee retains all rights and entitlements.

11.3 – Dismissal

During the probationary period the Mayor may remove an employee who is unable or unwilling to perform the duties of the position satisfactorily or whose habits and dependability do not merit their continuance in the service. Any employee removed during the probationary period does not have the right to appeal to arbitration. Likewise, a probationary employee may elect to sever the employment relationship during this period without any penalty or adverse reflection on their record.

ARTICLE 12 EMPLOYEE RECORDS

12.1 - Examination of Records

Every employee covered by this Agreement shall have the right to examine all records pertaining to them on reasonable demand, subject to the availability of the personnel administrator or other employee(s) authorized to produce such files. In no event shall an employee be caused to wait more than 8 working hours. The Employer shall make available original or copies of the original records for examination by an authorized Union Representative having written authorization of the affected employee(s) upon 24 hours' notice from the Union, weekends excluded. The City, the Union, and the affected employee agree to periodically meet to review documents that relate to "stale" matters when the employee has successfully resolved the problem.

The City agrees to make available to the Union business agent, or his appointed representative, individual payroll records when requested of employees covered by this Agreement upon receipt of written authorization from affected employees.

12.2 – Work Time Records

Work time records of employees shall not be changed without consulting with the employee involved, except where time is of the essence. In such cases where the Employer must change a work time record, consultation with the employee shall occur at the first reasonable opportunity. Copies of the employee's work time records shall be made available by the Employer for inspection by the employee or Union Representative during working hours. In the event the employee disagrees with the Employer's change, even after consultation, the disagreement may be submitted as a grievance for resolution in accordance with Article 7.

ARTICLE 13 EQUIPMENT AND CLOTHING

13.1 – Clothing

The City agrees to provide work gloves, rubber boots, coveralls and such other protective clothing to be determined by the Mayor, and as required by State and Federal Safety regulations, for use by members as duties require.

13.2 - Employer Issued

Employees who are issued equipment for City use shall have that equipment receipted to them and shall be responsible for its proper use. When the equipment issued becomes damaged, broken, unsafe or unserviceable, it shall be turned in to the City to be repaired or replaced. Employees shall use all reasonable means to protect and secure all City property, equipment and supplies.

13.3 - Personal Property

In the event the Mayor approves in writing the use of the employee's personal property during such employee's normal duties, the Employer shall reimburse the employee for the repair or replacement of said personal property. The employee, however, shall not be reimbursed for the consequences of their own gross negligence or willful misconduct.

13.4 - Improved Equipment

The City shall make an effort to provide employees with equipment that will allow the employee to work efficiently and improve productivity, i.e., computers, word processors, vehicles, and all other equipment and instruments necessary to perform the work. In the event such necessary equipment is not provided, the employee(s) affected shall not be penalized for any loss of efficiency or productivity that may result.

13.5 - City Property

Upon termination of employment, each employee shall return to the City any property of any kind belonging to the City, no later than the time at which the employee is paid all wages and other sums due under this Agreement.

ARTICLE 14 SAFETY

All work should be executed in a safe and proper manner. The Alaska Occupational Safety and Health Standards will serve as minimum standards.

The Employer shall furnish and provide adequate training in the use of such safety equipment as is necessary for the safety of the member. Safety devices and first aid equipment as may be needed for safety and proper emergency medical treatment shall be provided and be available for employees working under adverse conditions.

ARTICLE 15 EDUCATION, TRAINING AND TUITION

15.1 - Employer Provided

The Employer shall provide education and training necessary for an employee to maintain professional licenses or certifications required by law. Employer required education and training shall be provided at the Employer's expense. The actual and necessary expenses incurred by bargaining unit members for approved official travel outside the City of Fairbanks because of such education and training shall be paid pursuant to Article 19, Travel and Per Diem. The provisions of Section 15.2 will not apply if the employee is required by the Mayor, or designee, to attend training or education. The parties agree that reimbursement responsibility will be made clear prior to education and training.

15.2 - Employee Requested

An employee may wish to obtain education or training in addition to that provided by the Employer under Section 1 of this Article. In order to obtain a tuition refund or reimbursement for any other conference or seminar (tuition), education or training costs and fees, including travel and accommodations, employees must first obtain prior written consent of the Mayor. Where such consent has been provided and upon proof of successful completion of the education or training, the City shall give the employee administrative leave for travel to and from, as well as attendance at, the conference or seminar and shall refund 100% of tuition paid for such education or training. The City shall also reimburse the employee for any pre-approved reasonable costs, fees or travel expenses paid by the employee in connection with such education or training. Reasonable costs, fees and travel expenses reimbursed for travel outside the City of Fairbanks shall be as described in Article 19, Travel and Per Diem.

The employee whose educational or training request has been granted shall sign an agreement providing that any refund or reimbursement will be returned to the City on a prorated basis in the event of voluntary termination within 360 calendar days. Involuntary terminations or separations involving medical reasons will not require refunds to be returned.

ARTICLE 16 WAGES

16.1 - Wage Classification and Salaries

The wage rate, which is the package rate minus allocations for benefits, for the classifications is shown in Schedule "A." The City is not precluded from paying a higher wage rate or annual bonus as it finds necessary for superior performance to any of the employees covered by this Agreement. (See text accompanying Schedule "A," Section 2).

- A. The package rate will be adjusted by an increase of 1.5% effective January 1, 2014. Additionally, where other groups were given a bonus, this group elects to calculate the additional 1% increase to be applied to all members as an additional \$0.48 per hour to Employer health care (total per hour amount of \$5.38).
- B. On January 1, 2015, and on January 1, 2016, the package rate will be adjusted by an increase of 2% each year. If any other City bargaining unit receives an increase to their package rate that is greater than 2% for 2015 or 2016, the City agrees to reopen Article 16.1 for negotiation. Negotiations will commence no later than January 10, 2015, or January 10, 2016, if such conditions arise.
- C. Newly created classifications, temporary and intern employees' wage structures will be mutually established by the City and Union assessed by the knowledge, skills and abilities of the individuals.

16.2 – Pay for Temporary Assignments

Under ordinary circumstances, the Employer agrees to use employees within their own CBA and classification. When an employee is required to assume the duties of another position in excess of 5 days, the employee will be paid 4% extra starting after 5 days.

16.2.1 – Compensation for Service as Acting Department Head

When a Department Head is on personal leave and unavailable for more than 12 hours to physically respond to the work if needed, another employee may be appointed by the City Mayor or designee as Acting Department Head. The added duties of this assignment include performance of all duties of the Department Head, including appearance at inter-agency meetings and taking responsibility for overall operations of the Department including performing normal duties and, if needed, performing duties of other Department employees. While serving as Acting Department Head, the employee shall receive the higher rate of pay. Any leave cash out will be at the regular rate, not the higher rate.

16.3 - Compensatory Time

A. Exempt Employees.

Compensatory time is time off made available to an employee who has worked in excess of 40 hours per work week as a result of their attendance at such things as mandatory meetings, actual call-outs, evening work on special projects the completion of which is not feasible during the ordinary work day or work week or other similar functions. The accrual and use of compensatory time shall be pre-authorized and administered in the manner set forth by the Mayor, as amended from time to time.

B. Non-Exempt Employees.

Non-exempt employees who are eligible for overtime may elect to accrue compensatory time at the rate of 1.5 hours for each hour worked. Compensatory time will be used in the same manner as annual leave per Article 20.

C. Compensatory Time Balances.

No balance beyond 240 hours may be accrued with the following exceptions. Public Safety employees may by law accrue up to 480 hours. Any amount of compensatory time accrued by special assignments beyond the 240-hour limit as a result of this exception must be approved by the Mayor or the Mayor's designee and used within 6 months of the date it was earned, beyond which time any amount remaining in excess of 240 hours will be cashed out. Exempt employees will lose any amount over 240 hours. No employee covered by this CBA may accrue over 480 hours.

16.4 - Court Appearance

Employees required for court, as a result of actions performed for the City in the line of duty, shall suffer no loss in regular earnings, but shall be compensated during their service at the employee's rate of pay if on-duty. Any witness fees shall be turned over to the City. If members are off-duty they shall receive pay or compensatory time at the appropriate rate with a 2 hour minimum being paid or credited.

ARTICLE 17 PERFORMANCE EVALUATIONS

Employees in the bargaining unit, on probationary status, shall receive written performance evaluations midway through and at the completion of the probationary period. Regular employees may be evaluated as the need arises or as requested by the employee. Bargaining unit members shall be given at least 10 working days prior to finalization of any evaluation to make a written rebuttal, which shall become a part of the employee's official personnel record.

ARTICLE 18 FILLING OF VACANCIES

18.1 - Promotional Opportunities

The parties understand and agree that hiring and promotional decisions shall be made on the basis of merit and fitness. Where merit and fitness are equal, the greater seniority of one applicant over another shall be considered an additional qualification. Preference may be given to the acting appointee for the vacant position pursuant to Article 16, Sections 16.2 and 16.2.1 of this Agreement.

18.2 - Vacancy Promotions

When a vacancy occurs or a new position is created pursuant to this Agreement, the Mayor or the Personnel Office, through him, shall post vacancy announcements which shall include a job description, salary information and a complete list of all factors or criteria including but not limited to education, training and experience that will be considered in making the job award. The announcement will also state whether a formal written application is necessary and where and when such application can be obtained.

Vacancy announcements shall also specify the position's opening date, a job description and title, and any other pertinent information including any tests or examinations that will be required and together with the closing time and date of the application period. Copies of all such notices will also be provided to the Union's Fairbanks business office.

18.3 - Application Procedure

Where applications are to be made for any vacant or newly created position within the

bargaining unit, application forms will be made available from the Personnel Office.

18.4 – Rights

Employees offered and who accept a promotion or transfer into a vacant or newly created position will be placed at the appropriate level or step given their current level of service and compensation. For all transferred or promoted employees, length of service will remain unbroken and all accrued benefits shall remain unchanged.

18.5 - Promotions/Transfers

Any employee may refuse a permanent, non-disciplinary transfer to a lower or comparable rank or classification or a promotion to a higher rank or classification. Such refusal shall not be the basis for discipline or any other adverse action including but not limited to: leave, training or reimbursement request denials, an otherwise unwarranted demotion or transfer, changes in work assignments, work location, or support personnel.

ARTICLE 19 TRAVEL AND PER DIEM

19.1 - Official Travel Outside City of Fairbanks

Business travel shall be governed by the current City Travel Policy, as adopted by the Mayor. Employees' time spent at official conferences, meetings or training sessions is compensable. If the employee is unable to return to the normal work place, a full 8 hours of compensable time is earned. Should the actual training or meetings exceed 8 hours, all time spent is compensable.

The City will fully reimburse the employee for travel, lodging, parking, and other required expenses. In addition, \$40.00 a day will be paid for meals and optional items and shall be adjusted upward by the same amount as any increases in the City Code.

19.2 - Use of Personal Vehicles

Employees are not authorized to use their privately owned vehicles for City business. However, when members are authorized by the City in writing to so use their private vehicles for official business, reimbursement for such use shall be at the rate allowed by the Internal Revenue Service as proper. In the event the employee is required to respond to a problem or emergency after regular work hours, the employee may use their personal vehicle to go directly to and return from the site of the problem or emergency and be reimbursed at the rate allowed by the Internal Revenue Service as proper.

ARTICLE 20 PERSONAL LEAVE

20.1 - Personal Leave

Employees shall accrue leave according to the following schedule:

One to Two Years: 160 hours per calendar year;
Two to Five Years: 200 hours per calendar year;
Over Five Years: 240 hours per calendar year.

20.2 - Leave Requests

Scheduled personal leave may be taken in conjunction with approved travel on City business so long as any additional expenses to the City are reimbursed by the employee. When personal leave is used for illness or bereavement, the employee shall notify the supervisor as soon as possible.

20.3 - Termination Cash Out

Upon termination of any employee covered by this Agreement, the full value of all accrued personal leave shall be paid at the employee's then-current rate of pay. The City will make pension contributions on all compensable hours.

20.4 - Draw Down of Personal Leave

Subject to the "cap" provision set forth below, any employee covered by this Agreement may cash out their personal leave in accordance with the following schedule. Member "cash out" requests must be submitted to the Mayor or designee. The cashed out hours will be paid on a separate check due at the same time as the employee's next regular paycheck. Cash outs will be subject to union dues and the City will make pension contributions on all leave cash outs.

The City will pay pension contributions on personal leave cashed out by IBEW members, under this Section.

LEAVE USAGE. All personal leave hours have full leave usage and leave usage is not reduced at any time regardless of the total number of hours accrued.

Total Personal Leave Hours for Draw Down:

0 - 200 hours: Cannot cash out without Mayor or designee approval.
Over 200 hours: 100% cash out value.

20.5 - Personal Leave Donations

The parties recognize that it is desirable from time to time to have a means for employees to assist other City employees in time of need. The following shall be the vehicle for that purpose.

- A. Each employee wishing to donate personal leave will fill out, date and sign a leave slip showing the amount of leave the employee wishes to donate in

increments of not less than 4 hours and deliver said leave slip to the Finance Department.

- B. Each leave slip will have written or typed along the bottom: "Leave donated to (employee name)." The employee receiving the leave donation will have the amount of leave converted to their pay rate.
- C. Once personal leave is donated, it is irretrievable by the donor.
- D. It is the understanding of the City that the Internal Revenue Service at this time treats donated leave as income to the recipient, and not a taxable event to the donor. However, the City has no control over the tax treatment of such donated leave.

20.6 - Expiration of Accrued Personal Leave

A sick or disabled employee who exhausts accumulated personal leave may request leave without pay, which may be granted at the discretion of the Mayor in accordance with Article 21, Section 6 of this Agreement. In exercising such discretion, the Mayor may require a report from the employee's attending physician which specifically describes the nature of the illness or disability and includes the physician's opinion as to the member's expected time to return to work. The employee may also be required to submit to his supervisor a monthly report from the attending physician affirming the continued illness or disability.

20.7 - Seniority Rights During Illness or Disability

Seniority rights accrued by an employee up to the date of commencement of a sickness or disability which requires absence from work shall not be lost during any period of approved absence due to sickness or disability. Additional seniority rights shall not accrue during any period of leave without pay attributable to a non-work related sickness or disability, except as provided for under the parental leave provisions of this Agreement.

20.8 - Job-Incurred Injury or Illness

In the event of a job-incurred injury or illness within the coverage of the Alaska Workers' Compensation Act in effect at the time of injury, the employee's position shall be held for such employee until it has been established that the employee will be unable to return to work or one year, whichever is sooner. An award to the employee of Workers' Compensation Permanent Disability shall be deemed to establish that the employee will be unable to return to work unless the employee, by actually returning to work, or by the report of a competent physician establishes that a permanent partial disability will not preclude their return to the job in question. The City will comply with all requirements of the Alaska Workers' Compensation Act. The employee shall be required to submit to their supervisor a monthly report from the attending physician. An employee may choose to use personal leave to supplement income during times of Workers' Compensation leave, provided that total net compensation is equal to or less

than the employee's regular compensation.

20.9 - Light or Limited Duty

In the event of an injury precluding the employee from returning to full duty status, the City and the Union shall mutually establish the scope of the employee's adjusted duties and adjusted rate of pay, with the employee's physician's approval of the adjusted duties. The employee's regular rate of pay shall be reinstated by the City upon receipt of a doctor's full work release.

ARTICLE 21 OTHER APPROVED ABSENCES

21.1 - Family/Medical Leave

The parties shall comply with the Alaska Family Leave Act (AS 23.10.500-.550; AS 39.20.305) and the Federal Family and Medical Leave Act (Public Law 103 - 3). Under both Acts, employees are required to pay their portion of monthly medical/health premiums. During such periods of leave, employees may use both paid and unpaid leave to try to meet the obligations of employee deductions. When possible, employees shall make arrangements in advance to pre-arrange leave usage to meet required deductions.

21.2 – Elections

An employee shall be given the necessary time off, without loss of pay, for the purpose of voting when the polls are not open at least 2 hours before or after the employee's scheduled hours of work.

21.3 - Jury Duty

Employees required to serve on jury duty will suffer no loss in regular earnings, but shall be compensated during their service while serving such jury duty, provided, however, that any jury duty pay received is turned over to the Employer by the employee. It is agreed that an employee reporting for jury duty who is then released for the day shall return to work for the rest of the work shift.

21.4 - Funeral Leave

An employee may use personal leave or leave without pay to attend a funeral.

21.5 - Military Service Leave

Military leave means training and service performed by an inductee, enlistee or reservist, or any entrant into a temporary component of the Armed Forces of the United States and the time spent reporting for and returning from such training in service, or if a rejection occurs, from the place of reporting for service. It also includes active duty training as a reservist in the Armed Forces of the United States or as a

member of the National Guard of the United States where the call is for mandatory training only. A copy of the employee's Orders must be provided to Payroll.

- A. Eligibility. Any permanent employee who leaves the City service for compulsory military duty shall be placed on military leave to extend through a period of 90 days after their release from the service. Also, a permanent employee shall be granted a leave of absence for the purposes of being inducted or otherwise entering military service. If not accepted for duty, the employee shall be reinstated in their position without loss of status or reduction in pay.
- B. Restoration. An employee returning from military leave shall be entitled to restoration to their former position, provided the employee makes application within 90 days after their release from duty and is physically and mentally capable of performing the duties of the position involved. In the event that the position the employee vacated no longer exists at the time he or she is qualified to return to work, such person shall be entitled to be reemployed in another existing position of the same class without reduction in pay or loss of status. Disputes as to the employee's fitness shall be resolved through expedited arbitration. In accordance with applicable State and Federal laws and regardless of any language or provision of this Agreement to the contrary, there shall be no adjustment of an affected employee's anniversary date for seniority or longevity purposes.
- C. Disposition of Vacation Leave. An employee who leaves the City service for such military leave without pay may elect to be paid for any accrued leave they may be entitled to as if they were actually separating from the City service. The employee's decision shall be noted on the personnel action form effecting the leave. If the employee elects not to be paid for such leave, the accrued leave credits shall be reinstated upon return of the employee to the City service.
- D. Military Reserve Training or Emergency National Guard Service. Any employee who has completed their probationary period and who is a member of any reserve component of the United States Armed Forces will be allowed leave of absence for required training or duty for a period not exceeding 120 work hours during any one calendar year. Such military leave shall be with pay if all military pay the employee receives for the duties performed on such leave is paid to the City. The Mayor may authorize additional periods of military leave in the event of employee hardship in the event of prolonged involuntary military service.

21.6 - Leave Without Pay

Regular employees in good standing may be granted leave without pay. An employee is in good standing if their job performance has been satisfactory for a period of 12 months preceding their request.

Requests for leave without pay shall be made in writing to the Mayor. Approval of such leave requests shall be made on an individual basis. Where service requirements permit and where the employee has demonstrated a serious and legitimate need, approval shall not be unreasonably withheld. Cost of such request shall be a factor in such determination.

While on leave without pay, seniority and personal leave will not accrue. Longevity credits for the purpose of completing probation and pay anniversary date shall also be suspended during any period of leave without pay.

Where leave without pay is granted, the employee shall not first be required to use their accumulated personal leave.

During an approved leave of absence, an employee's position may be filled by assigned or temporary employees. At the expiration of any period of leave without pay, the employee has the right to and shall be reinstated to the position vacated.

21.7 - Union Leave

A regular employee elected or appointed to a position as a full-time Union official shall be entitled to a maximum of 90 days leave of absence from the City to fill their Union position. During such leave of absence, such employee shall have the right to elect, without penalty, to return to their former position with the City. In the event such election is made, the employee's anniversary date shall be adjusted for any period of leave without pay in accordance with Article 21, Section 6. In the event the employee does not elect to return to their former position by the end of this 90 day period, the employee shall forfeit their seniority with the City. Upon termination of their position with the Union at any time after expiration of this 90 day period, said employee shall be given the first option, for a period of 3 years, in filling a vacancy which may occur in the department or classification in which they were formerly employed or for which they are otherwise qualified. The Union shall notify the City when the employee has terminated their Union position. Notification of vacancy pursuant to this Section shall be to the Union's Fairbanks business office. The employee's time to respond to such notice shall be as set forth in Article 23, Section 2(B) - Notice of Recall.

ARTICLE 22 SENIORITY

22.1 - Definition of Seniority

There are two types of seniority for members of this bargaining unit:

- A. Seniority is total length of service the member of this bargaining unit has worked for the City of Fairbanks without separation, without regard to prior bargaining unit(s), subject to adjustment as set forth in this Agreement.
- B. Classification seniority is the length of service of the employee in the job classification with the Employer, subject to adjustment as set forth in this

Agreement.

22.2 - Termination of Seniority

- A. Seniority shall be terminated upon:
1. Discharge,
 2. Resignation,
 3. Layoff for a period of 2 years or more (or 9 months in the case of medical incapacity due to non-job related injury or illness), or inability to return to work from a job-incurred injury or illness of 2 years or more as provided for in Article 20, Section 8,
 4. Failure to respond in a timely and/or prescribed fashion to notice of recall, or
 5. Failure to return from an approved leave of absence on the stipulated date of expiration, or any unapproved absence from work without advance Employer approval in the absence of a legitimate and verifiable explanation.
- B. Seniority shall not be interrupted by:
1. Periods of approved leave, except as set forth in Article 21, Section 6 - Leave Without Pay,
 2. Workers' Compensation Leave, up to one year,
 3. Military Leave,
 4. Family/Medical Leave as set forth in Article 21, Section 1, or
 5. Active military duty when recall for such duty is beyond the control of the employee.

**ARTICLE 23
LAYOFF**

23.1 - General Provisions

- A. Layoff(s) shall be made by classification, starting with the least senior member in the classification. A layoff of not less than 12 months, during which the employee returns to work at the first opportunity, shall not be considered a separation. Seniority credits for purposes of completing probation, pay anniversary date and the accumulation of leave benefits shall be suspended during the period of layoff.
- B. An employee receiving a layoff notice (the "noticed employee") has 5 working days to notify the Mayor in writing of the employee's intent to displace ("bump") another employee in this bargaining unit with less seniority in the same or lower classification within the City. The Mayor will approve the displacement if (a) the Mayor finds that the noticed employee has the qualifications, skills, training, and experience to perform the work duties of the other employee, and (b) if the noticed employee has worked continuously

for the City, regardless of bargaining unit status, longer than the other employee. If the Mayor approves the displacement, the noticed employee will be transferred to the other employee's classification, at the pay rate of the other employee. The displaced employee shall then be given notice of layoff and may invoke the displacement process if eligible.

23.2 - Recall

- A. Procedure. Upon layoff, the laid off employee shall be placed on the layoff list for that classification group from which the employee was laid off, and for the bargaining unit. Recall rights exist for 1 year from the effective date of layoff.
1. The classification layoff list shall be ranked in inverse order of layoff. The recalled position shall be offered to the first employee on the classification layoff list.
 2. If the classification layoff list is exhausted and/or eligible employee(s) decline appointment or are not available, then the position shall be offered to the employee with the most seniority of those employees on the bargaining unit's layoff list that possess the required skills and abilities.
 3. If the bargaining unit's layoff list is exhausted and eligible employee(s) decline appointment or are not available, then the position shall be offered to the employee with the most City seniority of those employees on the bargaining unit's layoff list. In order to receive recall notice from the bargaining unit's layoff list the employee shall provide written notice to the City at the time of layoff of interest and possession of skills and abilities to perform the available jobs. The City shall exhaust the bargaining unit's layoff list.
 4. The laid off employee must have the skills and abilities to perform the position for which they are recalled. Vacant positions which are to be filled may be filled through promotion provided no employee is on layoff from the classification. However, the vacated position may subsequently be filled only in accordance with this Article.
 5. If an employee is recalled to a position in which he or she has attained regular status, the recalled employee shall be appointed to that position as a permanent employee. If an employee is recalled to a position in which he or she has not attained regular status, the recalled employee shall be appointed to that position as a probationary employee.
- B. Notice of Recall. Notice of recall shall be sent to all laid off employees at their last known address by restricted delivery certified mail and by certified mail to the Union's Fairbanks business office. The employees on the recall list shall within 10 working days after receipt of the recall notice notify the City in writing as to his or her decision regarding the recall offer. The employee at the top of the recall list shall have the first opportunity to accept the position

provided they possess the qualifications for the position being recalled. If the City does not receive notice as required above from the employee first eligible for recall within the 10 working day period of when the recall notice was postmarked, then that employee goes to the bottom of the recall list, and the next individual on the list who responded to the notice of recall and who possesses the qualifications for the position will be offered the position. If none of the individuals on the list who respond possess the required skills and abilities, the City may implement a recruiting process pursuant to Article 18, Filling of Vacancies.

23.3 – Notification

In every case of layoff of any regular or probationary employee, the City shall give the employee at least 30 days' written notice in advance of the effective date as provided for in Article 8, Section 1.

ARTICLE 24 NO STRIKE OR LOCKOUT

24.1 - No Strikes

The Union agrees that during the life of this Agreement it will not sanction, authorize, initiate, aid or encourage any work stoppage, slowdown, "sick-out", refusal to work or strike against the Employer.

24.2 - No Lockouts

The Employer agrees that during the term of this Agreement there will be no lockouts.

24.3 - Violations

Any alleged violation of this Article, whether by the Union or the Employer, shall be submitted to the Alaska Labor Relations Agency as soon as possible.

ARTICLE 25 SEVERABILITY

In the event any term or provision of this Agreement is found to be in violation of law or not to comply with administrative regulations or requirements, or is otherwise unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted in a manner consistent with the spirit and purpose of this Agreement. In the event a provision is found to be contrary to law or to not comply with administrative regulations or requirements or is otherwise unenforceable, either the City or the Union may demand renegotiation of such unlawful or non-complying provision in a manner which will be lawful or compliant. Any such demand must be made within 60 days from the date on which the provision was held to be contrary to law or non-complying or unenforceable.

ARTICLE 26 DURATION OF AGREEMENT

26.1 - Term of Agreement

This Agreement shall be effective from January 1, 2014 through December 31, 2016. Any provision within this Agreement which has a retroactive effect shall only apply to those employees covered by this Agreement and actually employed by the City on the date that this Agreement is approved and signed by both the City and the Union. This Agreement may only be amended in the form of Letters of Understanding, executed upon the mutual written agreement of both parties.

26.2 – Negotiations

Negotiations for a successor contract shall commence no later than October 1, 2016.

- A. In the event the expiration date of this Agreement is reached during the course of or prior to the completion of negotiations for a new or modified agreement, this Agreement shall continue in full force and effect until a new agreement is reached, ratified and executed by the parties.
- B. Should negotiations not result in an agreement after negotiations have been in progress for 90 calendar days, the no strike, no lockout provision of the Agreement shall become null and void, unless extended by mutual written agreement.

26.3 - Successor Clause

This Agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the consolidation, merger, sale, transfer or assignment by either party hereto, including any change in ownership or management of either party and any change in the place of location of business of either party.

26.4 - Dispute Resolution

Any dispute involving the commencement date or termination date of this Agreement shall be considered a grievance and submitted to the expedited grievance-arbitration procedure set forth herein, unless the parties mutually agree to submit the issue for judicial review.

26.5 – Printing

Upon final consummation and approval of this Agreement, it shall be printed in booklet form. The Union agrees to pay the cost of the printing and furnish a reasonable number of copies to the City.

26.6 – Ratification

The City and Union Representatives will seek ratification as soon as practicable after the Agreement has been finalized by both parties.

ARTICLE 27 DEFINITION OF TERMS

27.1 - Tense, Number and Gender as used in this Agreement

- A. Words in the present tense include the past and future tenses, and words in the future tense include the present tense.
- B. Words in the singular number include plural, and words in the plural number include the singular.
- C. Words of any gender include masculine, feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

27.2 – Definitions

For purposes of this Agreement, terms shall be defined to mean:

- A. "Administrative Leave" shall mean authorized absence from an employee's regular work duties for purposes such as training, education, or other reasons.
- B. "Base rate" shall mean the specific dollar amount paid the employee.
- C. "Anniversary date of hire" shall mean the date at which an employee has completed a service year of 52 weeks of paid service.
- D. "Promotion" shall be the assignment of an employee from one position/classification to another which will provide an increase in salary and which has a higher base rate of pay.
- E. A "regular appointment" shall be an appointment without time limitation, or special restrictions as to continued employment.
- F. A "regular employee" is an individual receiving a regular appointment.
- G. A "permanent employee" is one who has successfully completed probation.
- H. "Member" and "employee" mean a member of the bargaining unit covered by this Agreement, unless the context indicates otherwise.
- I. "Position" is the office or employment whether occupied or vacant, full-time or part-time, consisting of duties and responsibilities assigned to one

SCHEDULE "A"

Section 1.

Position Classifications		2014 Package Rate	Pension	Health & Welfare	Benchmark Wage Rate Range "C"
	Union	1/1/2014			
Administrative Assistant	1547				
Legal Secretary #	1547				
Deputy City Clerk	1547				
Deputy City Clerk I	1547				
Property. & Development Manager	1547				
Engineer IV	1547				
Engineer III	1547				
Engineer II	1547				
Engineer I	1547				
Engineering Intern	1547				
Environmental Manager	1547				
Engineering Technician Supervisor	1547				
Quality Control Officer	1547				
Public Works Director/City Engineer	1547				
Facilities Manager	1547				
Building Official	1547				
Plans Examiner	1547				
Senior Structural Plan Check Engineer.	1547				
Code Compliance Inspector	1547				
Combination Building Inspector	1547				
Police Chief	1547				
Emergency Dispatch Ctr Mgr	1547				
Fire Chief	1547				
Assistant Fire Chief	1547				
Chief Financial Officer #	1547				
Controller#	1547				
General Ledger Acct/Grants Manager	1547				
Accounting Specialist	1547				
Information Technology Manager #	1547				
Network Administrator #	1547				
Network Engineer	1547				
Programmer/System Administrator	1547				
System/Network Administrator	1547				
Help Desk Coordinator	1547				
FMATS M.P.O. Coordinator	1547				
FMATS Planner	1547				

Section 2.

After the package rate is set effective January 1, 2014, 2015 and 2016 as provided in Section 16.1(A) and after the Union designates allocation to Pension and H&W, employee will be paid at the benchmark Range C unless, based upon merit evaluation of employee experience, knowledge and skills, dedication and performance, the Mayor finds that individual wages be adjusted to the following ranges.

Range A	Range B	Benchmark Range C	Range D	Range E
90%	95%	100%	105%	110%

Range A is meant to be the starting wage for employees whose knowledge, experience or skills are still developing. It is also meant to apply to employees whose knowledge, skills or performance have declined to the minimally acceptable level.

Range B is meant to apply to employees whose knowledge, skills and experience are progressing but have not yet reached the average. It is also meant to apply to employees whose knowledge, skills and performance have slipped below average.

Range D is meant to apply to employees whose knowledge, skills and experience are above average and for employees whose performance is above average.

Range E is meant to apply to employees with extensive knowledge, skills and ability whose performance is superior.

While initial range placement and subsequent range advances to a higher range are at the discretion of the Mayor, employee(s) may not be moved from a higher to a lower Range without just cause subject to the following:

- a. In the event the Mayor has concerns about the adequacy of an employee's work performance which may trigger a decision of a reduction in pay range, the performance issue will first be orally discussed by the employee, the Department Head and the Mayor.
- b. After said meeting, a written "performance improvement plan" identifying the areas needed for improvement will be provided to the employee. Follow up meetings will be held at the request of the employee
- c. 6 calendar months or more shall be allowed to elapse after the issuance of the performance improvement plan before any decision to reduce pay range is made.
- d. Prior to the Mayor's decision to reduce pay, a pre-disciplinary meeting shall be held with the employee, the Department Head, the Mayor and any other persons the employee wishes to attend so that the issues can be discussed.
- e. Prior to the Mayor's decision to reduce pay, the Mayor will inform the Union Business Agent of the decision and provide 30 days' notice before the reduction is made.

- f. Should the employee elect to grieve the matter, he/she shall remain at the prior pay range until the grievance is resolved under the terms of this collective bargaining agreement.

If an employee is involuntarily moved to a lower pay range, that demotion shall not last longer than 1 calendar year. If the Mayor wishes to again reduce the pay range, the above procedure shall be followed.

Section 3.

Classifications marked with # will routinely be entrusted with confidential information placing them in a potential conflict of interest between their roles as City officials and bargaining unit members. In such situations, the employees' duty as a public official will prevent any disclosure of information subject to the provisions of law.

DRAFT

ORDINANCE NO. 5946

**AN ORDINANCE AMENDING THE 2014
OPERATING AND CAPITAL BUDGETS FOR THE SECOND TIME**

WHEREAS, this ordinance incorporates the changes outlined on the attached fiscal note to amend the 2014 operating and capital budgets; and

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows [amendments shown in **bold** font]:

SECTION 1. There is hereby appropriated to the 2014 General Fund budget from the following sources of revenue for the City of Fairbanks in the amount indicated to the departments named for the purpose of conducting the business of said departments of the City of Fairbanks, Alaska, for the fiscal year commencing January 1, 2014 and ending December 31, 2014:

	APPROVED BUDGET	AS AMENDED
Taxes, (all sources)	\$ 19,920,196	\$ 19,920,196
Charges for Services	4,372,020	4,372,020
Intergovernmental Revenues	4,387,280	4,387,280
Licenses & Permits	1,438,000	1,438,000
Fines, Forfeitures & Penalties	1,022,185	1,022,185
Interest & Penalties	130,500	130,500
Rental & Lease Income	158,744	158,744
Other Revenues	215,000	215,000
Other Financing Sources	3,335,131	3,335,131
Total appropriation	<u>\$ 34,979,056</u>	<u>\$ 34,979,056</u>

SECTION 2. There is hereby appropriated to the 2014 budget expenditures for the City of Fairbanks in the amount indicated:

DESCRIPTION	APPROVED BUDGET	AS AMENDED
Mayor and Council	\$ 502,467	\$ 504,689
Office of the City Attorney	175,761	178,255
Office of the City Clerk	344,049	348,624
Finance Department	903,321	925,089
Information Technology	1,404,586	1,420,447
General Account	5,560,395	5,560,395
Risk Management	1,040,819	1,040,819
Police Department	7,105,660	7,109,368
Dispatch Center	2,048,745	2,051,602
Fire Department	6,351,259	6,357,616
Public Works Department	7,530,572	7,535,240
Engineering Department	489,065	521,446
Building Department	655,195	670,953
Total appropriation	<u>\$ 34,111,894</u>	<u>\$ 34,224,543</u>
12/31/13 general fund balance	\$ 13,270,041	\$ 13,270,041
Increase to fund balance	867,162	754,513
Nonspendable	(424,514)	(424,514)
Committed for snow removal	(250,000)	(250,000)
Committed self insurance	(785,248)	(785,248)
12/31/14 Unassigned balance	<u>\$ 12,677,441</u>	<u>\$ 12,564,792</u>

SECTION 3. There is hereby appropriated to the 2014 Capital Fund budget from the following sources of revenue for the City of Fairbanks in the amount indicated to the departments named for the purpose of conducting the business of said departments of the City of Fairbanks, Alaska, for the fiscal year commencing January 1, 2014, and ending December 31, 2014.

	APPROVED BUDGET	AS AMENDED
Transfer from Permanent Fund	\$ 514,960	\$ 514,960
Transfer from General Fund	500,000	500,000
Transfer Ambulance Mileage from General Fund	65,000	65,000
Budgeted Garbage Equipment Replacement	219,545	219,545
Equipment Replacement - Public Works	250,000	250,000
Equipment Replacement - Building Department	10,000	10,000
Equipment Replacement - Police	180,000	180,000
Equipment Replacement - Dispatch	80,000	80,000
Equipment Replacement - Fire	250,000	250,000
Equipment Replacement - IT	110,000	110,000
Property Repair & Replacement	145,000	145,000
	<hr/>	<hr/>
Total appropriation	\$ 2,324,505	\$ 2,324,505

SECTION 4. There is hereby appropriated to the 2014 capital budget, expenditures for the City of Fairbanks in the amount indicated:

<u>DEPARTMENT</u>	<u>DESCRIPTION</u>	<u>APPROVED BUDGET</u>	<u>AS AMENDED</u>
14	Information Tech. Department	637,300	637,300
20	Police Department	180,000	180,000
21	Dispatch Department	555,488	555,488
30	Fire Department	572,829	572,829
50	Public Works Department	1,955,463	1,955,463
	Total appropriation	\$ 3,901,080	\$ 3,901,080
	12/31/13 capital fund balance	\$ 6,139,228	\$ 6,008,765
	Decrease to fund balance	(1,576,575)	(1,576,575)
	12/31/14 Assigned fund balance	<u>\$ 4,562,653</u>	<u>\$ 4,432,190</u>

SECTION 5. All appropriations made by this ordinance lapse at the end of the fiscal year to the extent they have not been expended or contractually committed to the departments named for the purpose of conducting the business of said departments of the City of Fairbanks, Alaska, for the fiscal year commencing January 1, 2014 and ending December 31, 2014.

SECTION 6. The effective date of this ordinance shall be the _____ day of April 2014.

JOHN EBERHART, MAYOR

AYES:
NAYS:
ABSENT:
ADOPTED:

ATTEST:

APPROVED AS TO FORM

Janey Hovenden, MMC, City Clerk

Paul J. Ewers, City Attorney

FISCAL NOTE

**ORDINANCE 4946, AMENDING THE 2014 OPERATING AND CAPITAL BUDGETS
FOR THE SECOND TIME**

ESTIMATED REVENUES and OTHER FINANCING SOURCES (USES)

No Change

1. Taxes – No Change
2. Charges for Services – No Change
3. Intergovernmental Revenues – No Change
4. Licenses & Permits – No Change
5. Fines, Forfeitures & Penalties – No Change
6. Interest & Penalties – No Change
7. Rental & Lease Income – No Change
8. Other Revenues – No Change
9. Other Financing Sources & (Uses) – No Change

FISCAL NOTE CONTINUED
ESTIMATED EXPENDITURES

\$112,649 INCREASE

1. Mayor & Council – \$2,222 Increase
 - \$1,188 Increase Salaries (IBEW CBA)
 - \$1,030 Increase Benefits (IBEW CBA)
 - \$ 4 Increase Leave (IBEW CBA)
2. City Attorney’s Office – \$2,494 Increase
 - \$1,311 Increase Salaries (IBEW CBA)
 - \$1,032 Increase Benefits (IBEW CBA)
 - 151 Increase Leave (IBEW CBA)
3. City Clerk’s Office – \$4,575 Increase
 - \$2,429 Increase Salaries (IBEW CBA)
 - \$2,061 Increase Benefits (IBEW CBA)
 - \$ 85 Increase Leave (IBEW CBA)
4. Finance Department – \$21,768 Increase
 - \$11,302 Increase Salaries (IBEW CBA)
 - \$ 8,267 Increase Benefits (IBEW CBA)
 - \$ 2,199 Increase Leave (IBEW CBA)
5. Information Technology – \$15,861 Increase
 - \$8,754 Increase Salaries
 - \$6,167 Increase Benefits
 - \$ 940 Leave
6. General Account – No Change
7. Risk Management – No Change
8. Police Department – \$3,708 Increase
 - \$1,838 Increase Salaries
 - 1,664 Increase Benefits
 - 206 Increase Leave

9. Dispatch – \$2,857 Increase

- \$ 1,677 Increase Salaries (IBEW CBA)
- \$ 1,037 Increase Benefits (IBEW CBA)
- \$ 143 Increase Leave (IBEW CBA)

10. Fire Department – \$6,357 Increase

- \$ 3,779 Increase Salaries (IBEW CBA)
- \$ 2,036 Increase Benefits (IBEW CBA)
- \$ 542 Increase Leave (IBEW CBA)

11. Public Works – \$4,668 Increase

- \$ 2,461 Increase Salaries (IBEW CBA)
- \$ 1,555 Increase Benefits (IBEW CBA)
- \$ 652 Increase Leave (IBEW CBA)

12. Engineering – \$32,381 Increase

- \$17,306 Increase Salaries (IBEW CBA)
- \$11,860 Increase Benefits (IBEW CBA)
- \$ 3,215 Leave (IBEW CBA)

13. Building Department – \$15,758 Increase

- \$ 8,946 Increase Salaries (IBEW CBA)
- \$ 6,167 Increase Benefits (IBEW CBA)
- \$ 645 Increase Leave (IBEW CBA)

FISCAL NOTE CONTINUED

Capital Fund

1. REVENUES

- No change

2. OTHER FINANCING SOURCES (USES)

- No Change

3. EXPENDITURES

- No Change

4. INTERNAL TRANSFERS

- No Change

Fairbanks North Star Borough / City of Fairbanks
CHENA RIVERFRONT COMMISSION
MINUTES
February 12, 2014

The Fairbanks North Star Borough/City of Fairbanks Chena Riverfront Commission (CRFC) met on Wednesday, February 12, 2014 with Acting Vice-Chair Buki Wright presiding. The following Commission members were in attendance: Anna Plager (via phone), Lee Wood; John Jackovich, Sue Rainey, Matt Wilken and Bob Henszey.

Also present were: Bernardo Hernandez, FNSB Community Planning; Jewelz Nutter, TVWA (via phone); Barry Hooper, DOT; Nancy Durham, FNSB Community Planning; Doug Sims, FNSB Community Planning; Jackson Fox, City of Fairbanks; Donna Gardino, FMATS; Steve Taylor, FNSB Parks & Recreation; Carrie McEnteer, USARMY; and Laura McLean, FNSB Recording Clerk.

1. CALL TO ORDER

Wright called the meeting to order at 12:02 p.m.

2. APPROVAL OF AGENDA

A motion was made by Rainey, seconded by Wood to approve the Agenda for February 12, 2014. There were no objections.

3. APPROVAL OF MINUTES OF December 11, 2013

A motion was made by Wilken, seconded by Rainey to approve the minutes for December 11, 2013. There were no objections.

4. COMMUNICATIONS TO THE COMMISSION

5. PUBLIC COMMENTS

None

6. NEW BUSINESS

Nutter presented a letter of support intended to accompany a grant application that TVWA is submitting to the Alaska Clean Water to fund a green infrastructure project downtown. She said this will be one of three grants that TVWA will be applying for. One will be in coordination with Jackson Fox on the Complete Streets project for Cushman and Barnette. **Rainey** commented that she appreciates that in this particular letter, it is indicated that there will a measurable impact on the Chena River. **Plager** thanked Nutter for drafting the letter in her absence. **Wright** asked if TVWA had a building in mind for this grant. **Nutter** responded that part of the process in the application is to evaluate different buildings downtown. TVWA finds the Lathrop Building ideal for this.

7. UNFINISHED BUSINESS

A. Plan Update Report

- a. Width of river corridor

Wright commented that Hegarty-Lammers had information that she wanted to present to the Commission, however, as she is not in attendance, her information will be deferred until the next meeting. **Plager** added that she does have some input to the Commission regarding the width of the river corridor. She stated that the Commission reworded the plan and where it used to say “the river corridor was generally defined as those lands within 200’ of the centerline of the river.” Recognizing that the width of the river varies so much, at our last meeting, the commission suggested rewording it to read that “the river corridor is defined as those lands within 175’ of the river’s ordinary high water line.” **Wright** added that in some areas that is probably going to be about the same and in other areas it might be quite different. There could be folks that are impacted by and live on the river or work on the river who would welcome this and there might be others who may have some push back to it. He feels that additional thought might be needed on this subject.

Wright questioned how the Commission might try this new concept with other folks who are affected by it. The Commission could adopt a new measurement policy and no one would know, but in the future if an issue came up, people are going to question where this new policy came from. **Plager** commented that she feels that is the job of the planning process to make sure that as many people as possible hear about the change before the actual adoption next fall. **Rainey** added that at a prior meeting she handed out a sheet that shows what other communities show as their corridors and even at 175’ from the high water line, that is pretty minimal compared to what a lot of other communities recognize as their river corridor.

Hernandez commented that there are a lot of residential uses along the river and that these small, family owned properties may feel that they’re being affected. However, generally speaking, the CRFC is more concerned with commercial types of enterprises that are close to the river. He suggested that the CRFC might think about those two types of uses and how this might affect them. On the other hand the CRFC does not have any direct regulatory authority. The most that the CRFC does is to review applications for rezones, variances and conditional uses along this corridor. **Plager** added that she thinks this will be a good discussion and to try and put the research that Rainey has on corridor width into a slide to add to Hegarty-Lammers presentation.

Wood asked if it might be possible to try and expand the number from 175’ to 200’ and see what kind of backlash this will create. If it creates an issue, then the CRFC can back-peddle to 175’. **Wright** commented that that is a good thought and the CRFC can keep this in mind. **Jackovich** commented that he isn’t sure what the CRFC is trying to accomplish with this. **Wright** clarified that what the CRFC is trying to do is to change the point where measurements are originated for possible project review by measuring from the ordinary high water line rather than the center line of the river, so that the land affected will always be consistent without regard to the width of the river itself. **Jackovich** questioned what the purpose of this proposed distance was. **Rainey** commented that if the CRFC has concerns about the river and its adjacent land, there has to be a perception of what that distance is. She feels that this is what the CRFC is trying to determine.

Plager commented that she wanted to point out that this is a question that is as much for the CRFC to be concerned about as it is for the public to be concerned about. The CRFC has worked for the last year with the staff of the Department of Community Planning to come up with a process for what the Commission will do when they think that there is a project proposed that might affect the river. Hopefully the CRFC will learn about the project early enough so that if there are any thoughts about said project the CRFC can convey those thoughts through the Planning Department to the Planning Commission and then the Planning Commission can relay these thoughts to the Borough Assembly. She reiterated that the CRFC does not have any regulations or ordinances to impose on anybody's actions along the river. As a commission, the CRFC only has their awareness and education of what things might affect the river and ways that the CRFC might suggest to someone that they might consider doing something a little different.

Jackovich asked if the Army Corps of Engineers has any input regarding projects that are along the river. **Hernandez** added that there are some new zoning ordinances that restrict how close an owner can build to a property line. There are also floodplain ordinances that dictate if a person builds within a floodplain, certain practices must be used to minimize damage if flooding is to occur. **Hernandez** commented that generally speaking, if there is a project along the river the Corps of Engineers may be involved as well. **Henszey** clarified that if it is below the ordinary high water line, or if it were to affect wetlands, then the Corps of Engineers would be involved. If it is above the ordinary high water line, the Corps likely would not be involved. The Department of Environmental Conservation might, however.

b. Distance between access points

Wright commented that Jackson Fox had developed a listing of access points along the Chena River through town. **Fox** stated that he and Steve Taylor collaborated on this map and access points list and further stated that he started at Ft. Wainwright and went to the confluence of the Tanana River and then yet further to the Chena Pump Wayside on the Tanana River. The mileage that is depicted on this list are in river miles. He further pointed out that some of these public access points are well known and then there are others which are not quite as well known. He stated that he further wanted to point out that generally speaking, there is some sort of public access point within every mile or so.

Rainey asked about the Rivers Edge. **Fox** responded that it is private but he could certainly add it to the list. He tried to list all the public access points which have signage. **Taylor** added that the mileage depicted on the map he created is in river miles beginning at the confluence of the Tanana and Chena rivers. It was recommended that perhaps on the map that Taylor created, public access points could be depicted in blue and private access points could be depicted in green. **Carrie McEnteer** questioned if the CRFC would like to have additional access points added along Ft. Wainwright property and their opinion regarding this. **Plager** added that getting access to Ft. Wainwright is now a little more convoluted compared to the way it was when the plan was first developed. However, the

CRFC should definitely considering going up to Glass Park and perhaps all the way to the Chena River State Recreation Area, where access points occur quite frequently.

Jackovich commented that the local rafting and canoeing club has a fantastic map that pretty much shows the river all the way from Chena Hot Springs Road to the Tanana River. **Nutter** clarified that it was the Paddlers club and that also the State Parks has a wonderful map as well.

c. Community Planning department comments regarding stewardship goals

Hernandez addressed the CRFC and stated that for the last several years, Doug Sims has been the borough's floodplain manager, therefore he asked Doug to look at the plan and make recommendations. A handout with Sims' comments was dispersed to all who were present. **Rainey** commented that she agrees with Sims regarding Objective "A". **Sims** commented that he does not understand "harm caused to the river by sedimentation." He does not understand what harm is being caused to the river through the natural process of sedimentation. It is his recommendation that Objective "A" be eliminated.

Henszey commented that it is not the natural sedimentation, but rather the additional induced sedimentation. **Sims** further commented that he remembers when this section of the plan was being developed by prior members of the Commission [Ed. Note: Sims was staff for the original Commission & CRFC Plan development] and that there was a great deal of concern about the low flows in the Chena River that were happening at the time. There was some feeling that the commission could do something to increase flows. He finds this impossible, however that particular wording got put into the plan anyway.

Henszey added that the main cause of the reduced flows in the lower Chena is the Flood Control Project, in his opinion. **Sims** stated that he disagrees. In terms of the water flow and the volume of water coming down the river, that is a given. **Rainey** asked if some of the concern has to do with manmade changes that can change the flow. She questioned if the height of the Tanana and the volume in the Tanana can impact the Chena River. **Sims** stated that to a certain point there is a backwater effect near the mouth. **Rainey** speculated that what prior members were getting at when writing this part of the plan was being concerned about projects that might impact the flow and therefore causing sediment because of the flow.

Hernandez commented that in the 1940's someone blocked off the Chena Slough with the rest of the Tanana River and when it was reopened, the Chena Slough brought forth a lot more water through the community, but it also brought more sedimentation. There was probably more water flow, but there was also more sedimentation. **Henszey** agreed with Hernandez and stated that he has a real good presentation showing photographs before and after.

Wood asked if this particular language was put into the plan because of concerns with the Riverboat traffic. **Sims** stated that that may have been part of it, but he also remembers the Golden Heart Plaza and their inability to put a launching facility into the river safely and have it to be accessible from the river. **Wood** asked if Sims sees this language as the Commission commenting on something that they have no control over. **Sims** added that he doesn't feel it hurts to make a policy statement and say that these are our concerns. **Wright** added that he feels that Sims made some good points. It is good to get another perspective. Also, if there is going to be a plan, the plan needs to be reasonable and realistic. The CRFC does

not want to have something in the plan that is totally unreasonable and unobtainable because then the whole plan becomes suspect.

B. Airport Way West Project

Plager stated that she wanted to share what she had learned from recent phone conversations with Barry Hooper and Carl Heim (DOT) and another conversation with the Borough transportation planner, Kellen Spillman. She commented that because this DOT letter has been talked about since November, she would like to see this letter out in the mail, since this project is on the “fast-track” and DOT is ready to move on the project. She stated that she drafted this letter trying to be reflective of the comments that the CRFC had from their November meeting and what she learned from the two phone conversations.

Plager said that Heim and Hooper were encouraging the CRFC to be as specific as possible. **Plager** stated that Spillman indicated that the letter was lacking a little support. Spillman suggested that the CRFC look at resources that could be “brought to the table” that could then be incorporated into the design.

Plager stated that she has now re-written the draft letter to make it more specific, however it also acknowledges DOT’s fiscal constraints and indicates that there are a couple of places where the CRFC might be able to bring in some partners that have an interest in the riverfront and in the “community welcoming space” within the roundabout. **Plager** asked if there are any issues within the letter where one thinks that the CRFC has overstepped its boundaries.

Wood questioned if the CRFC would be tasked with going out and obtaining funding for this project. **Plager** responded that she feels that the CRFC will be looking for partners who would be interested, such as TVWA or Festival Fairbanks or Borough grant opportunities. **Wood** questioned what form these requests would be in. **Plager** responded that they could vary depending on what it is that the CRFC really gets excited about. **Wright** added that Wood made a good point in that this is a good supportive letter and it also says that the CRFC will do something as well.

Hernandez added that possibly there might be some ways to come forward and develop the roundabout in a way that is attractive for our community, but also provides water and electricity to the site. He questioned Gardino and Hooper if either of them knew whether or not water and electricity were planned for the roundabout. **Hooper** stated that he does not believe that DOT has gotten that far in the plan. **Hernandez** suggested that these two items could be included in the letter to make sure that those two resources are available in the future. **Plager** agreed with Hernandez. He also suggested that perhaps DOT could fund a process to identify appropriate community enhancements.

Wright asked Hooper and Gardino about their general feedback regarding the letter. **Hooper** stated that he thinks the first step is to get an idea of what the CRFC wants and then figure out how to get there. He further stated that if he has a letter that says the CRFC wants X, Y and Z, then he can pursue it on his end. **Wright** asked what is the timeframe that Hooper would be looking at. **Hooper** stated that this project is part of the 2015 budget, so it would be nice to get moving on this in the next few months. **Gardino** asked if there was funding in the STIP for this. **Hooper** stated that he did not know. **Gardino** then commented that this is a DOT project, so FMATS is not involved at this point except to make recommendations. **Gardino** cautioned the CRFC to be careful in how they move forward in trying to figure out what it is that is wanted in that space. It really takes a robust public process in order for it to be well received.

Plager commented that she could not hear Hooper on the speaker phone, but asked Wright if he could edit the draft letter to include the items that Hooper spoke of. **Wright** agreed to do so and will have it for review by the CRFC at the next meeting.

C. Project List Review

Due to time constraints, this item will be deferred until next meeting.

A motion was made by Rainey, seconded by Wood to defer this item until the March 2014 meeting. All were in agreement and there were no objections.

D. Timing of Projects Review

Plager commented that this particular topic has to do with the CRFC not being apprised of certain projects in a timely fashion so that they have time to respond. **Wood** asked if the CRFC could be advised of any application that comes through the Community Planning Department that is within the to-be-determined corridor. **Hernandez** responded that most of the applications that come into the Planning Department are usually rezones, variances and conditional use permits. Those applications, by state statute, have a 90-day turnaround timeframe. Conversely, DOT projects are usually years in the making. By the time it gets to the Planning Commission, it is pretty much done.

Hooper added that perhaps once the river corridor is determined, DOT can work with the CRFC to bring any projects that are being considered that fall within the corridor to the CRFC. He further stated that he does not know what happened with the Airport Way West Project and why it is just recently being brought to the attention of the CRFC. He surmises that it was just not a project that would be of concern to the CRFC.

Henszey questioned if there were other opportunities regarding this particular project where the CRFC could have been engaged earlier than it was. **Hooper** responded he was not sure. **Hooper** also commented that DOT has been good about keeping the public and the CRFC informed with the bridge projects that they have been doing here in town. **Gardino** commented that many times certain projects are merely part of a bigger plan. **Hernandez** asked Hooper if he felt that perhaps projects should be directed to the CRFC during the environmental phase. **Hooper** responded that once the CRFC determines the corridor width issue, he can approach the project managers at DOT and request them to keep the CRFC informed during that time.

8. STAFF AND LIASION COMMENTS

Carrie McEnteer wanted to remind everyone about "Earth Day" at Ft. Wainwright. It will be held on April 22, 2014, from 10:00 a.m. to 2:00 p.m. Everyone is invited. If anyone is interested in having a table at the event, you can contact Carrie at 353-9507.

Jackson Fox reported that regarding the Chena Riverwalk Trail, Phase III, they have finally obtained the land use permit from the Alaska Railroad and it has been signed by both the railroad and the city Mayor. This will release the funding from FMATS. There was \$400,000 allocated for the design for this project. It is his assumption that in the next few weeks the City of Fairbanks will have the design money available to begin the design of the Chena Riverwalk Trail, Phase III.

Gardino commented that regarding the letter of support for the Airport Way West project, both city and borough mayors should be cc'd.

Hernandez commented that after the last meeting, a request was made to see if the Community Planning Department could find the funding for an improved phone system for use in the Ester Room. After attempting to procure this within either the

Computer Services budget or the Department of Community Planning budget, the Mayor declined the request.

9. COMMISSIONERS COMMENTS

None

10. ADJOURNMENT

/I



CLAY STREET CEMETERY COMMISSION
REGULAR MEETING MINUTES, MARCH 5, 2014
FAIRBANKS CITY COUNCIL CHAMBERS
800 CUSHMAN STREET, FAIRBANKS, ALASKA



The **Clay Street Cemetery Commission** convened at 5:00 p.m. on the above date to conduct a Regular Meeting at the City Council Chambers, 800 Cushman Street, Fairbanks, Alaska, with Chair Bill Robertson presiding and with the following members in attendance:

Members Present: David Pruhs, Seat B
 Anne Castle, Seat C (Arrived at 5:06 P.M.)
 Frank Turney, Seat D
 Phil Sanders (for Mike Schmetzer, ex-officio member)

Absent: Dave Erickson, Seat A

Also Present: D. Danyielle Snider, Deputy City Clerk
 Laurie Halpin, FNSB Historic Preservation Intern

APPROVAL OF PREVIOUS MINUTES

a) Regular Meeting Minutes of February 5, 2014.

Mr. Pruhs, seconded by **Mr. Turney**, moved to APPROVE the Regular Meeting Minutes of February 5, 2014 as presented.

Chair Robertson called for objection and, hearing none, so ORDERED.

APPROVAL OF AGENDA

Mr. Pruhs, seconded by **Mr. Turney**, moved to APPROVE the Agenda as presented.

Chair Robertson called for objection and, hearing none, so ORDERED.

COMMUNICATIONS

a) Letter from Laurie Halpin, FNSB Historic Preservation Intern

Mr. Pruhs read the letter into the record.

Ms. Halpin stated that most of the properties to be involved with the Interpretive Historical Signs project have already been selected by the Historic Preservation Commission but indicated that the list would be finalized at the next commission meeting on March 11. She distributed a copy of the legal agreement that the Clay Street Cemetery Commission and the City Council will have to agree to in order to participate in the project. Ms. Halpin exhibited sign materials and a sample sign for the commission to examine. She indicated that she will work with Clay Street Commission members to decide on sign content after the approval process is complete.

Chair Robertson asked how signs are made and mounted.

Ms. Halpin passed around the sign sample and stated that in accordance with the project, the signs must be placed on the property and may be affixed on any permanent structure, pole, fence, etc. She suggested that it may be best to place a sign in an area that may catch the eye of those passing by or near the kiosk the commission plans to install in the future. She commented that the signs are designed to be placed outside.

Mr. Pruhs moved to forward the project agreement to the City Attorney.

Chair Robertson stated that he will attend the next meeting of the Historic Preservation Commission and recommended that the Clay Street Cemetery Commission hold off on forwarding the approval of the contract to the City until a final copy of the agreement is drafted.

b) Clay Street Cemetery Policy and Application for Placement

Ms. Castle pointed out that the first draft of the policy and application was produced by the Clay Street Cemetery Commission in April of 2013, prior to her taking a seat on the commission.

Chair Robertson stated that the commission will be drafting new policies and bylaws. He expressed concern that the Policy and Application for Placement may not align with those new bylaws and indicated that he would like to see the policies and bylaws come first.

Mr. Pruhs suggested that the draft of the Policy and Application for Placement be used in the interim until a Council-approved set of bylaws and policies is in place.

Deputy Clerk Snider asked if the commission would be opposed to having the policy and application available to the public both at the City Clerk's Office and on the City's website.

Chair Robertson stated that he does not believe the commission would be opposed as long as the policy and application remains in line with the bylaws of the commission. He indicated that the policy may need some tightening up.

Ms. Castle commented that the original policy and application was created by the Clay Street Cemetery Commission and expressed confusion as to the hesitation in making it available to the public.

Ms. Snider stated that the only changes she made to the document were the addition of a "Name of Deceased" field to the application and the addition of language to the policy regarding the history of the Clay Street Cemetery Commission. She indicated that no changes had been made to the intent of the policy as it was originally written. She assured commissioners that any future changes in policy would be tracked and updated, as necessary. Ms. Snider stated that the application was brought to the attention of the City Clerk's Office when a member of the public requested the document. She indicated that the Clerk's Office had been unaware that the document existed. She stated that she made it a priority to find the policy and application and make it available to the public.

Chair Robertson spoke to making the policy more stringent. He stated that he would be comfortable with making the policy and form available to the public as long as the commission could revise it in the future, if necessary.

Mr. Turney suggested that the application be amended to allow for the placement of urns or ashes on gravesites.

Ms. Castle pointed out that the application would allow for such placement under the “other” category.

Mr. Pruhs, seconded by **Mr. Turney**, moved to approve the Policy and Application for Placement for public use.

Chair Robertson amended the motion to clarify that the Policy and Application is subject to change as future changes to commission bylaws and policies take place.

Ms. Castle requested that a date of revision be placed at the bottom of the document in order to track changes.

There was no objection from the commission to the approval of the Policy and Application for Placement.

UNFINISHED BUSINESS

a) Granite Marker Order

Chair Robertson stated that the commission has about \$12,000 in their account. He stated that, after doing some research, he found that concrete bases for the granite markers could be made locally for less than half the cost of ordering matching granite bases from the marker company.

Members discussed the various sizes, types and costs of bases that could be ordered locally. Members also discussed how to place bases and anchor marker to bases.

Mr. Sanders stated that he would prefer if sand could be used to level/bed the markers instead of gravel. He commented that gravel damages the maintenance equipment.

Members discussed placing raised pillow-type markers in order to provide some variety in the cemetery. A discussion ensued regarding the number of markers to be ordered.

Members agreed that they would like to order a few of the larger 300-pound markers. They discussed marker delivery location. Members agreed that pillow-type markers should be ordered, but discussed waiting to see photos before deciding what size and quantity to order.

Mr. Sanders suggested that the commission order the bases with rounded edges and possibly a finished surface.

b) Possible Modifications to Existing Markers

Members discussed using blocks as a base for markers.

c) Installation of New Kiosk and Posts

Chair Robertson stated that there has been money donated for the supplies to build a new kiosk near the gate of the cemetery. He asked members what should be done to install the 6 x 6 posts.

Mr. Sanders replied that they should install all-weather posts and should place the posts 3 ½ - 4 feet into the ground. He suggested that pea gravel be used around the base of the posts.

Mr. Robertson stated that the kiosk would be installed as soon as weather permits.

Mr. Pruhs stated that he would try to borrow an auger for the digging.

d) Changes to the Commission

Mr. Robertson stated that he testified before the City Council on Ordinance No. 5936, as Amended, regarding the Clay Street Cemetery Commission. He stated that the commission should try to come up with some recommendations for new members to forward to Mayor Eberhart for appointment. He indicated that he would like to find a new member who is good with publicity and one who has background in the study of the history of Fairbanks. He suggested Karen Erickson, a local historian, as a potential candidate.

Members agreed that Ms. Erickson would be a good candidate.

Mr. Pruhs suggested that members make a list of possible candidates to be discussed at a future meeting.

Ms. Snider clarified that any individual who would like to serve on the commission must first complete an application to serve on a City commission. She stated that the applications must then be submitted to the City Clerk's Office in order to be considered by the Mayor and Council.

Members discussed a possible conflict of interest in adding a member who also serves on the FNSB Commission on Historic Preservation. They determined there would be no conflict.

Ms. Snider reminded members that one of the new members should be a City resident.

NEW BUSINESS

a) Orientation Markers

Chair Robertson stated that the commission had previously discussed placing 40 wayfinding posts within the cemetery. He indicated that, originally, they had talked about using 8-foot posts.

Mr. Pruhs stated that the commission decided against the idea.

Chair Robertson stated that he likes the idea of installing some sort of wayfinding signage.

Discussion ensued as to the various types of signage that could be installed and to how the different signs may change the look and maintenance routine of the cemetery. They talked about the challenges in finding a specific plot without any reference points.

Mr. Sanders suggested using pillow markers as wayfinding signage throughout the cemetery. He reminded members that they should also keep the potential for vandalism in mind.

Chair Robertson stated that marker placement is more critical and that wayfinding signage could be addressed at a later date.

Mr. Pruhs and Ms. Castle agreed that some sort of navigation aid besides a map is necessary.

b) Bylaws

Chair Robertson requested that members submit items for inclusion in the draft of the new commission bylaws.

Mr. Pruhs suggested that the bylaws should include rules regarding member attendance and the operation of the commission and cemetery. He stated that the bylaws should also include procedures on how to amend the rules.

Chair Robertson asked what should be done with items that were placed without approval.

Mr. Turney stated that he sometimes has to place items that are not permanent in the shed.

Chair Robertson stated that he will send a draft of the bylaws to members by April 1, 2014.

c) Highlights for Upcoming Rules at the Cemetery

Chair Robertson included this item under the discussion regarding bylaws.

d) Cemetery Advertisement

Ms. Castle asked if there had been any response to the advertisement from the public.

Ms. Snider replied that she had not yet received any responses. She assured members that if she received any responses, she would forward the information to the commission. She asked members if they would like the advertisement to recur in the News Miner.

Mr. Pruhs suggested using target marketing for Clay Street exposure and asked if there has been any research done at the UAF Rasmuson Library.

Ms. Castle stated that members would have to do the research themselves and indicated that there is not a specific "Clay Street Cemetery" file at UAF. She stated that if there was valuable information at the library it would be difficult to find without knowing which collection to research.

Chair Robertson stated that the advertisement is a good place to start in looking for historical information. He indicated that the best method for obtaining information may be through a website.

Ms. Castle asked if the information in the advertisement could be placed on the commission's portion of the City's website.

Ms. Snider stated that she can place the information on the site. She indicated that there is a lot of potential for the commission to use the website and demonstrated to members what the page currently looks like.

Members discussed online exposure of the website through search engines like Google. Members agreed they would like the advertisement to appear in the News Miner twice in March every year.

OPEN AGENDA

Mr. Turney stated that he found some photos of a tour bus that visited the Clay Street Cemetery. He indicated that he would like to find the name of the tour bus.

Ms. Halpin stated that the walking tour pamphlet would be updated and reproduced soon.

Mr. Turney stated that the walking tour guides visitors through the old back entrance of the cemetery and suggested that it be modified to lead them to the main entrance.

Mr. Robertson suggested having street signs made and placed strategically around the area guiding visitors to the main entrance.

Mr. Sanders stated that signage tends to be a "hot button" item but that it may be a possibility. He stated that Public Works Director Mike Schmetzer would be the person to contact.

Mr. Turney stated that the U.S. Army canon that used to be at the Clay Street Cemetery is now at Alaskaland. He asked if anyone knew how or when it was moved.

Mr. Pruhs stated that it may have been moved when Alaskaland was owned by the City.

NEXT MEETING DATE

The next regular meeting of the commission is scheduled for April 2, 2014.

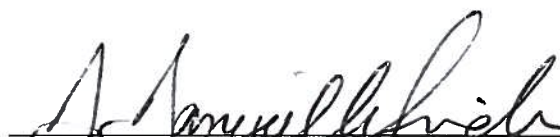
ADJOURNMENT

Ms. Castle, seconded by **Mr. Turney**, moved to ADJOURN the meeting.

Chair Robertson called for objection and, hearing none, so ORDERED.

Chair Robertson declared the meeting adjourned at 6:25 P.M.



Bill Robertson, Chair

D. Danyielle Snider, Deputy City Clerk

Transcribed by: DS