

CITY OF BETHEL

BOARD OF ADJUSTMENT



Website: <https://www.cityofbethel.org/council>

Location: The Meeting will be held Virtually on Zoom only, Bethel Alaska

Members: Mark Springer, CJ McCormick, Perry Barr, Michelle DeWitt, Rose Henderson, Eric Whitney, Beth Hessler

APPELLANT: Dan and Dawn Hackney, 175 Alex Hatley

APPEAL: Appeal of the City of Bethel's Planning Commission Decision on Remand, denying Hackneys' appeal, finding that oral approval by the previous Planning Director did not justify application of the defense of estoppel as identified by the Superior Court in its remand Order.

DATE AND TIME: February 7, 2022 6:30 p.m.

LOCATION: The meeting will be held Virtually on Zoom only

ZOOM MEETING: <https://us06web.zoom.us/j/82836392937?pwd=N0cvaVVsQ1c5b0RlOFZzQTNqdUdZUT09>
Meeting ID: 828 3639 2937
Passcode: 334945

CALL-IN NUMBER:

+1 253 215 8782 US (Tacoma)	877 853 5257 US Toll-free
+1 301 715 8592 US (Washington DC)	888 475 4499 US Toll-free
+1 312 626 6799 US (Chicago)	833 548 0276 US Toll-free
+1 646 558 8656 US (New York)	833 548 0282 US Toll-free

Meeting ID: 828 3639 2937
Passcode: 334945

If you provided written or oral testimony related to the Planning Commission's consideration of Appeal 2019-01 at the Planning Commission's August 19, 2021, Hearing, you are invited to submit written arguments on the appeal to the City Clerk's Office cityclerk@cityofbethel.net, 300 Chief Eddie Hoffman Highway, P.O. Box 1388, Bethel, AK 99559 by November 30, 2021.

BOARD OF ADJUSTMENT

Appellee.

[illegible]

Appeal of Planning Commission Decision
Appeal No. 2019-01

On September 13, the Bethel Planning Commission issued a “Decision on Remand” in which the Commission rejected the Hackneys’ argument that the doctrine of municipal estoppel should allow them to rely on former Planning Director Betsy Jumper’s approval of the construction of a second building on their property, and its operation as a bed and breakfast. In its decision, the Commission acknowledged that substantial evidence supported the claim that Jumper had, in fact, granted such approval.¹ Moreover, the Commission acknowledged that the Hackneys had, in fact actually relied on the approval, invested substantial sums based on such reliance, and would suffer financial losses if the City reverses Jumper’s decision. Despite these clear findings, the Commission rejected the Hackneys’ appeal, based on three erroneous conclusions. Specifically, the Commission: (1) committed legal error in concluding that the Hackneys’

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reliance on Jumper's undisputed approval was unreasonable; (2) committed legal error in concluding that the recently enacted ordinance #21-37 substantially mitigated the harm they would suffer; and (3) committed legal error in concluding that the public interest in enforcing the code outweighed the prejudice to the Hackneys.

(1) Taking all factors into consideration, the Hackneys' reliance was reasonable.

The Hackneys' testimony was that Jumper was aware of the description and proposed use of the structure, and had advised them that she would approve the permit when drawings were submitted upon conclusion of the project. In its decision, the Commission offers 5 reasons why such reliance was unreasonable. Four of the five offered reasons (numbers 1, 2, 4, and 5) essentially repeat the same contention – that the lack of written confirmation rendered such reliance unreasonable. One reason (number 3) seems to contend that Mr. Hackney had actual knowledge that the construction and use was not permitted, given his prior experience on another property. Neither of these conclusions withstands scrutiny when the full record is considered.

The Commission takes issue with the informal, oral, nature of Jumper's approval, but that does not resolve the matter. There was plain testimony that Hackneys were aware of many bed and breakfast establishments in the area and, in fact, had operated such an establishment in a similar structure across the street, which had been approved by Jumper in similar "come back later" fashion. The Hackneys had prior experience with the same official granting an approval in the same fashion. While it may have been informal, it was reasonable for the Hackneys to believe that Jumper would grant the written approval

because she had done so before. And, after Jumper was removed, they followed up on the issue with the City Attorney, Nancy Burley, who also told them that she did not see any concerns with their activity. In that regard, Ms. Burley also testified that numerous other individuals and organizations had been misled by Ms. Jumper, and detrimentally relied on her statements. This is additional evidence that their reliance was not unreasonable.

The Hackneys also had substantial reason to believe that their activity was permissible. As noted, their neighborhood was the site of several bed and breakfasts that had operated without oversight or objection. The Bethel Comprehensive Plan is clear in stating that the actual pattern of development in residential areas is mixed use. And the City has finally specifically acknowledged the prevalence of Bed and Breakfasts in residentially zoned areas by finally implementing an ordinance approving such uses. Jumper's approval was not surprising to the Hackneys because it reflected reality far more accurately than the outdated zoning code, which had never been amended as contemplated in the Comprehensive Plan.

Moreover, their interaction with City Planner Jumper was not their only interaction with the City. The Hackneys had conferred with the City Attorney, requested and obtained a business license to operate a bed and breakfast, paid taxes on that basis, and applied for water use rights on that basis. The Hackneys were upfront and transparent about those issues, the City was on full notice, and nobody from the City ever expressed any objection to their actions, despite having full knowledge of what was occurring. Jumper's oral approval was just part of a larger course of conduct that led the Hackneys to

reasonably conclude that their activity was known to the City and unobjectionable. Simply put – other than the municipal code, every other message the City sent the Hackneys was that their use was reasonable and acceptable.

- (2) Despite the passage of Ordinance 21-37, the Hackneys remain substantially harmed.

The Planning Commission decision relies on the incorrect assumption that the passage of Ordinance 21-37 substantially reduced the prejudice that the Hackneys may suffer. This assumption is both premature and substantially overstated. While it is correct that the Hackneys have submitted site plans and a conditional use permit to operate their structure as constructed, the application has not yet been approved and, even if approved, will still leave the Hackneys substantially harmed.

First, the ordinance does not classify the Hackneys' use as being permitted in the residential district. Their structure has 4 bedrooms rather than 3 and, importantly, is not constructed in a manner to qualify as a "duplex" under the ordinance, which revised the definition of "duplex" to require a common wall. Thus, the Hackneys do not have the unconditional right to operate in the residential district, but only a limited, conditional right. Specifically, Ordinance 21-37 provides that approval of a grandfathered use expires upon the sale of the business – meaning that the Hackneys' structure will no longer be legally compliant should they ever attempt to sell. With the revised definition of "duplex" it is unclear that there is any basis upon which the existing structure could be brought into legal compliance once the grandfathered status is lost. Even if the Hackneys are able to use their structure as intended for some unspecified period of time, its value is largely

destroyed by this unresolved non-conformity. Most property owners would agree that the loss of the practical ability to sell property is a substantial impact on their legal rights and financial outlook.

- (3) The public interest will not be substantially harmed by approval of the Hackneys' current structure and use.

The Commission's analysis of the comparative harm to be suffered by the Hackneys versus the impact on the public is also legally erroneous. Here, the Commission misconstrues the impact of ordinance 21-37 in two important ways. First, it assumes that the passage of the ordinance substantially mitigated the harm to the Hackneys. As demonstrated, the likely destruction of their resale value remains a substantial impact even if they are able to operate the premises as intended (and after a lengthy delay). Second, the Commission relies on earlier complaints from neighbors regarding the operation of a bed and breakfast in the neighborhood – but those complaints predated the passage of Ordinance 21-37, and focused on the assertion that any operation of a bed and breakfast was out of character with the neighborhood. But that is the wrong benchmark for the question of impact on the public now that 21-37 has been passed. In addition, the Commission failed to address the wide array of correspondence from community members who submitted statements supporting the bed and breakfast ordinance, as well as the Hackney's structure and proposed use. It may be that the Hackney's have drawn the ire of one noisy neighbor with friends on the Commission, but that is not enough to support a finding of community interest. To the contrary, the weight of community support is plainly in the Hackneys' favor.

It is now explicitly the public policy of the City of Bethel that bed and breakfast operations with up to three bedrooms and 9 guests are permitted in residential areas. So, in terms of public impact, there is no impact on the public so long as the Hackneys operate at the level permitted in Code. The real question of impact is whether the operation of a single additional guest room is substantial. The Commission does not address this issue in its findings. The Hackneys submit that the destruction of the economic value of their property is a far greater impact to them than the impact of the operation of a single additional bed and breakfast room has on the public interest. Since bed and breakfasts are now unquestionably permitted in residential areas, the operation of a single additional bedroom is not a substantial impact that justifies the destruction of the Hackneys' resale value.

Based on the above, the Hackneys respectfully request that the Board conclude the following: (1) that the Hackneys' reliance on Betsy Jumper's approval of their development was reasonable; (2) that they will suffer substantial prejudice if they are not permitted to rely on such approval; and (3) that the harm they will suffer vastly exceeds any conceivable impact to the public, requiring that Jumper's commitment to them be honored in the interests of justice.

Respectfully Submitted,

10/11/2021



**CITY OF BETHEL, ALASKA
PLANNING COMMISSION**

**Appeal of Planning
Commission Hearing NO.
2020-01**

DECISION ON REMAND

On August 19, 2021, the City of Bethel Planning Commission (“Commission”) held a hearing on remand for the limited purposes ordered by the Bethel Board of Adjustment (“Board”) and the Alaska Superior Court in *Hackney, et. al. v. City of Bethel, et. al.*, Case No 4BE-20-00080CI. This hearing on remand arose from the issuance of a Notice to Correct Violations on 175 Alex Hatley (the “Property”) by the Bethel Planning Director on August 30, 2019, the Commission’s denial of the Hackneys’ appeal of that issuance, and the Board’s affirmation of the Commission’s denial. After the close of evidence at the August 19, 2021 hearing, the Commission deliberated and reconvened on August 26, 2021, and again on September 2, 2021, in a public hearing. At the September 2, 2021 hearing, the Commission approved a motion, with four members in support and two against, upholding the Commission’s denial of the Hackneys’ appeal.¹

Commission member Lorin Bradbury moved to deny the appeal based upon findings that Betsy Jumper verbally approved the unlawful uses on the Property but such oral approval did not justify application of the defense of estoppel in this case as the elements of estoppel identified by the Superior Court were not met.

Commission members Kathy Hanson (Chair), Lorin Bradbury (Vice Chair), Haley Hanson, and Alex Wasierski voted in favor of the motion and Commission members Jess Schroeder and John Guinn voted against it.² This decision reflects the findings of fact and law underlying the Commission’s decision issued via motion at the hearing.

¹ Commission members also used this opportunity to present some of their individual considerations and notified the parties that a final written decision containing the findings of fact and law by the Commission would be distributed to the parties 10 days after the close of the hearing.

² Commission members Stanley “Stosh” Hoffman, Jr. and Shadi Rabi both recused themselves from participating in the hearing on remand to avoid any perception of conflict of interest or bias. Commissioner Rabi directly supervises Betsy Jumper in her current place of employment and Commissioner Hoffman owns a short-term rental property in another zoning district within the City (the General Use District). Commissioner Brian Henry was not in attendance.

SCOPE OF HEARING ON REMAND

On July 16, 2021, the Board issued an order remanding the above-captioned hearing to the Commission to hold a rehearing as directed by the Superior Court. The Alaska Superior Court defined the scope of the remand as follows:

This court remands this case back to the Board of Adjustment (or Planning Commission) to hold a rehearing and allow the Appellants to fully cross-examine Betsy Jumper regarding her oral statements to the Hackneys about the amended site plan permit. If the Board of Adjustment (or Planning Commission) finds Jumper verbally approved the amended site plan permit and finds it credible, then Board should reconsider its decision dated February 6, 2020 to reflect whether an estoppel defense applies. If the Board (or Commission) finds that Jumper did not verbally approve the amended site plan permit then its decision stands.

Given the Court-defined scope of hearing and the impacts that the limited scope would necessarily have on the Commission hearing process, the Commission notified the parties of the limited scope of the hearing and the Commission's determination regarding related preliminary matters on July 16, 2021. The Commission informed the parties that it interpreted the "scope of rehearing" to be cross examination of Ms. Jumper and any new evidence that might arise from or relate to that testimony on cross examination. Similarly, the Commission determined that its findings and decision on remand should be limited to the defense of estoppel per the Court's direction.

The Commission revisited the scope of the hearing at the hearing itself when it became apparent Ms. Jumper was not going to attend the hearing and would not be available to testify, despite a court-issued subpoena ordering her to attend, a letter from the Commission notifying Ms. Jumper of the need for her testimony, and attempts by the City to locate Ms. Jumper to secure her attendance. The Hackneys, through legal counsel, argued that due to Ms. Jumper's failure to appear, the Commission should hear testimony by rebuttal witnesses regarding Ms. Jumper's oral approval of the Hackneys' amended site plan permit and draw any inferences from that testimony in the Hackneys' favor. The Commission granted the Hackneys' request, permitting all rebuttal testimony, including hearsay testimony by rebuttal witnesses regarding statements and comments by Ms. Jumper relevant to the Notice of Corrections of Violations. The Commission also instructed the City Clerk to play the recording of Ms. Jumper's testimony at the initial hearing before the presentation of other witnesses.

BACKGROUND AND SUMMARY OF EVIDENCE

On July 20, 2018, the Hackneys applied to the Bethel Planning Department for a residential site plan for a "garage/storage/mother-in-law unit." Bethel Municipal Code 18.16.010 requires all persons to obtain a valid site plan permit before commencing, changing, relocating or expanding a use of land or structure. On July 20, 2018, the Hackneys applied for a site plan permit to build a garage, storage, and mother-in-law unit. The Planning Department approved a site plan permit to construct a 20 foot by 42-foot

garage and storage building. On January 9, 2019, the Hackneys submitted an amendment to the site plan, which was approved by the Planning Department, increasing the dimensions of the garage. On February 19, 2019, the Hackneys submitted an “as built” drawing of the structure to the Planning Department. According to the Hackneys, it was at the time that this drawing was submitted that Ms. Jumper provided oral approval to the Hackneys and told Mr. Hackney that she did not see a problem with his use of the building as a bed and breakfast and construction of a second-story building and would have a permit issued by the end of the week.

On June 7, 2019, the Planning Department received an official complaint from four neighborhood residents alleging the Hackneys (1) failed to provide an accurate description of their building plans in their site plan application and (2) built apartments or a hotel in a residential area, with a residence already on the property.

Testimony was presented at the initial hearing, and expanded upon at the hearing on remand, that while there was nothing submitted in writing, Mr. Hackney informed Ms. Jumper of his plan to construct a second story on the Property and that Ms. Jumper was aware that the Hackneys intended to use the structure as a bed and breakfast and build a second story. Specifically, Mr. Hackney testified he attended a meeting at the Planning Department during which he showed Ms. Jumper his drawing and explained to her that the upstairs would have bedrooms for a bed and breakfast but that he forgot to write “two-story” on the drawing. Mr. Hackney further testified that it was in February 2019 when he was drawing the structure for Ms. Jumper that she gave him verbal approval to build a structure with a second story. During the initial hearing, Ms. Jumper initially denied that she granted approval for construction of a second story but later admitted that she “could have” granted such oral approval. During the hearing on remand Ms. Jumper was not present and thus neither party could question her further about her oral approval of the Hackneys’ proposals for use and construction of the Property. However, testimony was presented by the Hackneys’ former legal counsel stating that Ms. Jumper previously told him before he agreed to represent the Hackneys in their appeal that she had orally approved construction of a second story and use of the Property as a bed and breakfast. Former City Attorney Patty Burley testified that Ms. Jumper always acted like she had approved the site plan permit. Ms. Burley also testified at the remand hearing that her conversations with Ms. Jumper regarding use of the Property as a bed and breakfast centered around the complaints raised against the Hackneys rather than the permit and its scope. This testimony was consistent with Ms. Burley’s testimony at the original hearing, during which she testified that she glanced at everything at the end of her tenure when Mr. Hackney stopped by her office and informed Mr. Hackney that she didn’t see a problem, assuring him that “Ted’s being hired from what I hear. I don’t see why he won’t wrap this thing up right away.”³ At no time did any witness testify that the City issued the Hackneys an amended site plan permit confirming Ms. Jumper’s verbal approval or filed any response to the complaint acknowledging the verbal approval was given to the Hackneys. Similarly, there was also no testimony that Ms. Jumper represented to the

³ Original Hearing Transcript, p. 50, lines 4-9.

Hackneys, verbally or in writing, that they were exempt from the Bethel permit requirements or Bethel zoning laws.

Despite Mr. Hackney's testimony that Ms. Jumper stated she would prepare the permit by the end of the week, and despite the filing of a complaint against the Hackneys, an amended site plan permit approving a second story and use of the Property as a bed and breakfast was never issued by the City. Similarly, no evidence was presented that the Hackneys' response to the complaint contained anything in writing asserting that Ms. Jumper had provided verbal approval for the deviations from the site plan permit. There was also no evidence presented showing or alleging that Mr. Hackney requested the issuance of an amendment to the permit or followed up with Ms. Jumper regarding such an amendment.

Although there was no evidence submitted suggesting the Hackneys received or asked for written acknowledgement of Ms. Jumper's verbal approval, there was substantial evidence submitted on remand that demonstrated that the Hackneys made efforts in other arenas to comply with the Code and all local provisions. The Hackneys had a license to operate a bed and breakfast in Bethel, were paying their taxes, and were in compliance with utility requirements. Similarly, Ms. Burley testified that the Hackneys were in compliance with water and sewer requirements. At the original hearing, Planning Director Meyer, who issued the Notice of Corrections, testified that the Hackneys were gracious during his visit to the Property and did not try to dissuade him from inspecting the premises.⁴

DETERMINATIONS ON REMAND

The purpose of the hearing on remand was to determine, after considering all of the evidence, if the former City Planner verbally approved the Hackneys' violation of local law and, if so, if that approval estopped the City from enforcing its laws against the Hackneys. As instructed by the Alaska Superior Court, the general elements of estoppel are (1) assertion of a position by conduct or word, (2) reasonable reliance thereon, and (3) resulting prejudice.⁵ Additionally, the Commission considered what the Alaska Superior Court identified as the fourth element of estoppel, which applies when failure to estop enforcement action will result in injustice.

The Commission relied upon the rebuttal testimony presented at the hearing on remand to find that there was substantial evidence supporting an inference that Ms. Jumper verbally approved the amended site plan permit. Accordingly, the Commission reconsidered its findings affirmed by the Board in its February 6, 2020 decision, reviewing the findings of facts and law, as well as the record to determine whether the defense of estoppel warranted the approval of the Hackneys' appeal. Upon review, and for the reasons expressed in this written decision, the Commission determined that while Ms. Jumper verbally approved the Hackney's use of and construction the Property in violation

⁴ Original Hearing Transcript, p. 69.

⁵ *Hackney, et. al. v. City of Bethel, et. al.*, Case No. 4BE-20-00080CI.

of the site plan permit and Bethel Municipal Code, that approval was oral and unsubstantiated by any writing and thus reliance upon that approval was not reasonable. Finally, the Commission determined that justice does not support application of the estoppel defense in this case because the loss suffered by the Hackneys does not negate or outweigh the strong public interest in enforcing express and codified local laws regardless of verbal representations contradicting such laws, especially in light of recent changes in Bethel law, effective September 1, 2021, that will mitigate the Hackneys' loss and provide them avenues to come into compliance with the Bethel Municipal Code without substantially changing their use of the Property or demolishing completed construction.

I. Ms. Jumper's Verbal Approval

The first determination before the Commission was whether or not Ms. Jumper verbally approved the Hackneys' construction of a second story and/or use of the Property as a bed and breakfast. Ultimately, the Commission's ability to comply with the Superior Court's direction on remand and permit full cross-examination of Ms. Jumper was wholly undermined by Ms. Jumper's failure to appear at the hearing. The majority of Commission members found that the evidence submitted did not clearly, or credibly, establish that Ms. Jumper provided verbal approval for both the construction of a second story and use of the Property as a bed and breakfast. However, due to Ms. Jumper's failure to appear, and drawing all inferences regarding Ms. Jumper's representations to the Hackneys in the Hackneys' favor, the Commission ultimately determined that there was substantial evidence presented at the hearing on remand that Ms. Jumper did orally approve the construction of the second building and operations of a bed and breakfast. While the Commission recognizes the unreliable nature of hearsay testimony, such testimony was considered by the Commission in order to ensure compliance with the Superior Court's directives despite Ms. Jumper's absence.

II. Estoppel

In accordance with the Alaska Superior Court Order, the Commission's determination that Ms. Jumper verbally approved the Hackneys' violation on the Property triggered its need to determine if the defense of estoppel should be applied and, more particularly, if the elements of estoppel, as identified by the Alaska Superior Court and adopted under Alaska law, were met in this case. Ultimately, and after in-depth and exhaustive deliberations, the majority of the Commission members found that the evidence did not support a finding that all the elements of estoppel were met.

A. Estoppel Element One: Did The City Approve the Conduct Through its Words or Actions?

The first element in considering the defense of estoppel is the "assertion of a position by conduct or word." Based upon the Commission's determination regarding Ms. Jumper's comments, this element has been met. However, even if the Commission takes all the testimony as true as presented at the hearing on remand, Ms. Jumper's oral

representations were informal and no evidence was presented that these assurances were formalized. The informal nature of Ms. Jumper's "words and actions" and the lack of clarity regarding the City's adoption of these representations informed the majority of the Commission's consideration of the other elements of estoppel, namely the reasonableness of the Hackneys' reliance on Ms. Jumper's approval in constructing improvements and conducting uses outside the scope of the permit and in express violation of the Bethel Municipal Code provisions.

B. Estoppel Element Two: Was reliance on Ms. Jumper's Testimony Reasonable?

Even if Ms. Jumper clearly and expressly orally approved the specific violations of the Bethel Municipal Code referenced in the Notice of Violation, the Commission has determined that it was not reasonable for the Hackneys to rely upon Ms. Jumper's oral approval given that: (1) Bethel Municipal Code 15.12.070 clearly and unequivocally requires that permit modifications be approved in writing; (2) the cost of the modifications and the investment in a use prohibited in the Residential District and excluded from the permit was substantial; and (3) a reasonable person would have ensured the legality of such development in writing or, at least, confirmation of the permissibility of relying on mere verbal approval, in writing.

In reaching these findings, the Commission also carefully considered objections raised by Commission members Schroeder and Guinn. Commissioners Schroeder and Guinn argued, in part, that a property owner should be able to rely on what the City Planner says and trust in the validity of those representations, especially where, as is the case here, the property owner is an individual that has not had significant experience navigating the permitting process. They also encouraged the Commission to consider the Hackneys' compliance with other City laws, including licensure, water and sewer requirements, and taxation. While the other Commission members considered each of these factors and the evidence presented supporting them, the majority of Commission members did not find this evidence sufficient to support a finding that the Hackneys' reliance was reasonable.

More specifically, the Commission relied upon the following determinations in finding that Ms. Jumper's oral approval was simply not reasonable given the circumstances:

1. While there was testimony presented at the hearing on remand and the original hearing regarding Ms. Jumper's verbal approval, it was notable that there was no evidence presented in the original proceeding or on remand that included a writing memorializing, reflecting or even inferring that the permit modification had been verbally approved. This absence in the record cannot be ignored given that complaints regarding the permit existed during Ms. Jumper's tenure, Ms. Burley's tenure, and then Mr. Meyer's retention. It is reasonable to expect that express verbal approval permitting a property

owner to violate Bethel Municipal Code would, at the very least, have warranted an email request for confirmation. Even if the City somehow failed to place a note in the file or send an email noting the approval, a reasonable person would expect that the Hackneys would have made some note or written mention of the approval in their own records or in its correspondence with the City.

2. Mr. Hackney testified that Ms. Jumper had said she intended to update the permit and send it to Mr. Hackney. Presuming Mr. Hackney's testimony is true, a reasonable person would have followed up with Ms. Jumper to secure the amended permit referenced.
3. As acknowledged by Mr. Hackney in his testimony, he was aware of the relevant permitting and zoning laws and had completed a substantially similar permit process on another property previously. Reliance on verbal representations despite knowledge of contradicting law, without at least written inquiry, is not reasonable.
4. Given the substantial costs of the improvements and the potential losses if the Hackneys were prohibited from using the Property as a bed and breakfast, it was unreasonable for them to ignore express provisions of the Bethel Municipal Code or rely on verbal approval by the City Planner without at least requesting written consent in order to protect their investment.
5. The Hackneys' decision to seek approval after completing modifications, as Mr. Hackney testified, was also unreasonable given the risks associated with asking for approval after funding the modifications.

C. Estoppel Element Three: Did Ms. Jumper's Oral Approval Result in Prejudice to the Hackneys?

Although the majority of Commission members, and thus ultimately the body itself, determined that reliance on Ms. Jumper's representations was not reasonable, all Commission members agreed that the Hackneys invested in the Property and will suffer financial losses based upon the Hackneys' reliance on Ms. Jumper's oral approval. However, recent changes to the law governing uses in the Residential District substantially mitigate any prejudice experienced by the Hackneys in this case.

Per Ordinance #21-37, which was adopted August 24, 2021, and became effective September 1, 2021, the Hackneys are now permitted to use the Property as modified until September 1, 2022, and may also be able to either modify the Property and its use or seek a conditional use permit to continue their bed and breakfast operations and to approve the second story construction. The new "bed and breakfast homestay" provisions in the Bethel Municipal Code provide a permitting process for bed and breakfasts within the Residential District, for which the Hackneys may apply and nothing regarding the notice of violation prevent the Hackneys from demonstrating that they meet

the criteria identified in the Bethel Municipal Code. Bethel Municipal Code 18.32.090 now permits a bed and breakfast homestay as an accessory use to a residential use so long as the “use of the guest rooms for the bed and breakfast homestay is clearly incidental to the use for residential purposes by its occupants. In order to operate a bed and breakfast homestay in compliance with the Code, bed and breakfast homestay hosts must establish and maintain a single family or duplex as their primary domicile at all times while operating it as a bed and breakfast homestay.”⁶ The bed and breakfast homestay may only have three guest rooms and no more than three guests per “guest room.” In addition, all structures must still comply with all dimensional requirements for the Residential District and the bed and breakfast homestay use must be done in such a way as to “maintain the integrity of the residential neighborhood.”⁷

In addition to the outright permitted uses in the Residential District that include a bed and breakfast homestay for up to three guest rooms, the Ordinance also provides protection to the Hackneys for their current use of their lot as a bed and breakfast for a year and provides for a conditional use permit application that, if the criteria are met, the Hackneys would be permitted to operate four guest rooms instead of just three and would not be required to maintain the single-family as their primary residence. Section 4 of the Ordinance states that both pre-existing lawful and unlawful but licensed nonconforming uses have one year from the effective date of the Ordinance (September 1, 2021) to discontinue a nonconformity, come into compliance with the Code or receive a conditional use permit for a licensed nonconforming use, which may now qualify as a permitted “conditional use” in the Residential District.

While the adoption of Ordinance 21-37 primarily weighed into the Commission’s decision regarding the fourth element of estoppel, the ability for the Hackneys to continue operations so long as they come into compliance with the new Code provisions or seek and obtain a conditional use permit also reflects the potential for the Hackneys to significantly reduce any prejudice suffered by them as a result of Ms. Jumper’s verbal approval.

D. Estoppel Element Four: Does Justice Require Estoppel in This Case?

The Commission dedicated a significant amount of time during its deliberations to consideration of the interests of justice. This was not an easy determination given testimony presented at the hearing on remand that showed mismanagement by the former City Planner. While the Commission weighed the harm caused by the conduct and words of Ms. Jumper, and others after the alleged oral approval had been made, the Commission ultimately determined that such approval does not negate or outweigh the public’s interest and the interests of justice in ensuring that City laws are enforced uniformly and consistently. Unlike the Municipality of Anchorage case referenced by the Superior Court, *Municipality of Anchorage v. Schreiner*, there was no written approval here and applying estoppel would permit a direct violation of a law expressly requiring

⁶ BMC 18.32090(A).

⁷ BMC 18.32.090(B)(2)(d).

modifications of permits in writing. The result to the public here would be to permit property owners to ignore clear law in favor of oral representations by mistaken City officials. The Hackneys' decision to ignore the plainly stated language in the Bethel Municipal Code and in the permit itself blatantly violated Bethel Municipal Code. Permitting this type of express violation based upon on mere oral consent or presumptive permission would gravely undermine the City's ability to enforce its Code provisions and its zoning laws. Additionally, there was evidence presented at the hearing that the Hackneys were aware of the zoning code provisions and did not give them value, ignoring known zoning requirements when completing their permit application. Permitting and justifying this disregard for the City's zoning laws does not serve justice. This is especially true in this case where the evidence did not demonstrate a credible effort by the Hackneys to obtain written approval of their modified use and construction or even written confirmation of the lack of the need for a modified permit.

Commissioners Schroeder and Guinn disagreed with the majority of the Commission members, finding that the Hackneys made good faith efforts to communicate with the City and should be able to rely on the City Planner's representations. These Commissioners asserted that the actual use and construction by the Hackneys did not negatively impact the character of the neighborhood and that the financial harm to the Hackneys outweighed the minimal harm to the public. The majority of the Commission members considered, but did not ultimately agree, with these assertions. While some found the construction and use to be grossly out of character with the neighborhood, the Commission did not base its findings on the nature of the construction or use and did not consider the nature or size of the modifications to, without more, prevent estoppel. Instead, the Commission members focused on the violation and representation at issue as well as the prejudice and harms that would befall both the Hackneys and the public. In so doing, the Commission found that property owners had clearly expressed objection to the Hackneys' deviations from the Code, both through the complaint process and during the hearing. The Commission members determined that neighboring property owners had a real and valid interest in the enforcement of the Code and that the evidence presented regarding the informality and oral nature of Ms. Jumper's representations and the Hackneys' reliance on those representations without attempting to secure written approval, did not warrant violating the public's interest in the enforcement of the Code. Further, the Commission determined that the public's interest also requires and justice is served by expecting property owners to at least take steps to obtain written approval when modifications are expressly required to be obtained in writing under the law.⁸

The adoption of Ordinance #21-37, which became effective September 1, 2021 and expands uses in the Residential District, further supports the Commission's finding that justice does not require the application of estoppel in this case. Bethel law now provides the Hackneys with a viable method to come into compliance or modify their use in a way that also preserves the dignity of the City's Zoning Code and the rights of other Residential District property owners. All owners of unlawfully operated bed and breakfasts in the Residential District will be taking the same steps to comply with the changes in the Code provisions adopted via Ordinance #21-37. It would be unfair and

⁸ BMC 15.12.070

unjust to exempt the Hackneys from the requirements under the Ordinance while imposing those provisions on the Hackneys' neighboring properties and competitors.

THIS IS THE FINAL DECISION ON REMAND OF THE BETHEL PLANNING COMMISSION. A PARTY HAS TEN (10) DAYS TO APPEAL THIS TO THE BOARD OF ADJUSTMENT.

September 13, 2021

Dated

Kathy Hanson

via electronic signature

Kathy Hanson, Board Chair

on behalf of The Commission

CITY OF BETHEL, ALASKA
BOARD OF ADJUSTMENT

DANIEL AND DAWN HACKNEY,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	Appeal No. 2019-01
CITY OF BETHEL,	)	
	)	
Appellee.	)	
	)	
	)	

**BOARD OF ADJUSTMENT’S DECISION REGARDING A TIMELINE EXTENSION ON
APPEAL OF THE PLANNING COMMISSION’S DECISION TO THE BOARD OF
ADJUSTMENT**

On September 13, 2021, the City of Bethel Planning Commission issued their Decision on Remand of the above-captioned case. The Planning Commission’s Decision, is the Final Decision on Remand, however, the parties have ten (10) days to appeal this decision to the Board of Adjustment.

On September 21, 2021 the Attorney representing Daniel and Dawn Hackney, Thomas Wang, submitted a request to the City Clerk’s Office to extend the September 24, 2021, appeal of the Planning Commission’s Decision to the Board of Adjustment filing deadline to October 11, 2021. The request for extension was presented to the City of Bethel Planning Department’s representing Attorney, Libby Bakalar, on September 22, 2021, a confirmation of non-objection was provided by Libby Bakalar. This request, and the confirmation of non-objection is made following the decision between the parties to meet and review Ordinance 21-37, to determine if there is a workable solution amenable for each party.

In light of the parties mutually agreed upon continuation of discussion and the statement of non-objection on the filing extension, the Board of Adjustment authorizes the City Clerk's Office acceptance of an appeal of the Planning Commission's Decision to the Board of Adjustment from the parties to be extended to 5:00 p.m. on October 11, 2021.

DATED this 23 day of September, 2021.

This decision has been approved by the majority of the Board of Adjustment members with 5 members in agreement, and 0 members in dissent.

2 members were determined to have a conflict of interest.

CITY OF BETHEL, BOARD OF ADJUSTMENT

Chair

By: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23 day of September, 2021, a true and correct copy of the foregoing was served on the following in the manner indicated:

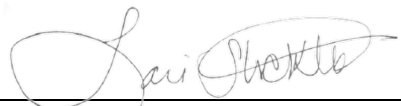
Libby Bakalar, City Attorney
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thomas@anchorlaw.com

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☒ Electronic Delivery
Hand Delivery

BETHEL CITY CLERK

By: 
Lori Strickler

HACKNEY VS BETHEL
DECISION REGARDING TIMELINE EXTENSION ON APPEAL DEADLINE

APPEAL NO. 2019-01
PAGE 2 OF 2

CITY OF BETHEL, ALASKA
PLANNING COMMISSION

DANIEL AND DAWN HACKNEY,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	Appeal No. 2019-01
CITY OF BETHEL,	)	
	)	
Appellee.	)	
	)	
	)	

**PLANNING COMMISSION’S DECISION REGARDING PRELIMINARY PROCEDURE
MATTERS**

On July 16, 2021, the City of Bethel Board of Adjustment issued an order remanding the above-captioned case to the Bethel Planning Commission (“Commission”) to hold a rehearing as directed by the Superior Court. In accordance with that order, the Commission has scheduled a remand hearing on August 19, 2021. In preparation for that hearing, several preliminary matters have surfaced, or been raised by the parties, that warrant consideration by the Commission before the scheduled hearing date. Upon review of the parties’ correspondence regarding these issues as well as relevant law, the Commission hereby issues the following decisions regarding these preliminary procedural matters.

Commission’s Consideration of Preliminary Procedural Matters

On July 5, 2021, the City Clerk issued the “City Clerk Notification Regarding Preliminary Scheduling, Representation, and Procedural Matters in the Remand of Hackney v. Board of Adjustment, Case No. 4BE-20-00080Ci.” This Notice informed the

parties of the retention of attorney Holly Wells to provide legal counsel to the Commission with regard to the remand. While neither party objected to Ms. Wells' representation, the correspondence between the parties reflects some confusion regarding Ms. Wells' role in these proceedings. Ms. Wells has been primarily retained to provide procedural and substantive representation of the [] Commission throughout the rehearing, including but not limited to guidance on the evidence presented at the hearing, the procedural process for considering such evidence, any and all deliberations by the Commission, and the Commission's issuance of its final written decision on remand. While the Commission may take Ms. Wells' guidance or recommendations into account when issuing its findings and may direct Ms. Wells to draft preliminary orders or documents, Ms. Wells' role is to provide the Commission legal guidance in the exercise of the Commission's decision-making authority. Ms. Wells is not serving as a hearing officer and does not have any independent decision-making authority.

In light of the Commission's sole decision-making authority in this proceeding and the Commission's acknowledgement that there may be preliminary procedural matters that arise and warrant a decision by the Commission before the hearing, the Commission hereby implements a "preliminary motion procedure" for this hearing. Under this procedure, a party may submit a motion for a specific action to the Commission. Preliminary motions should clearly state the need for consideration of the motion before the scheduled hearing and should be filed with the City Clerk's Office and served on the other parties to the remand hearing. A party wishing to oppose or respond to a preliminary motion will have five days from the date of service to do so unless the response is otherwise limited by the Commission. The Commission may issue decisions regarding

these motions before or at the hearing, depending upon when the motions are filed and the Commission's need or ability to issue a decision.

Additions to the record, if any, that parties anticipate using as exhibits or relying upon at the hearing should be submitted to the City Clerk on or before August 9, 2021. The City Clerk will distribute the record on remand to the parties by August 12, 2021.

In-person Hearing

The Commission also directs that the hearing be held in-person, rather than virtually, per the request filed by the Hackneys' legal counsel. However, in light of the increase in COVID-19 cases throughout Alaska and within the City, and as authorized by City Council in Resolution #21-11, the Commission may hold a virtual hearing rather than in-person if the active cases within the City necessitate doing so. Further, any party, witness, representative or participant in the hearing may select to attend the hearing virtually. To the extent a party, party representative or the witness intends to attend the hearing virtually, notice of virtual attendance should be provided to the Clerk as soon as possible but not later than August 18 at 5:00 p.m.

The Commission strongly urges both parties and all participants to review Resolution #21-11 and ensure that the parties and Betsey Jumper are familiar with any mandates or advisories issued by the State of Alaska or the City. All hearing participants should be especially aware that, per Resolution #21-11, individuals shall not attend the hearing in-person if they have traveled outside Bethel in the last ten days, unless they are fully vaccinated. Facial coverings will be required during the in-person hearing and the hearing space will be configured in order to permit participants to maintain six feet of

distance between one another throughout the hearing, unless City Council adopts local legislation directing otherwise.

Scope of Hearing

In reviewing correspondence between the parties on preliminary matters arising from this remand, the Commission has determined it may be useful to clarify the scope of the hearing on remand. The Alaska Superior Court defined the scope of the remand as follows:

This court remands this case back to the Board of Adjustment (or Planning Commission) to hold a rehearing and allow the Appellants to fully cross-examine Betsey Jumper regarding her oral statements to the Hackneys about the amended site plan permit. If the Board of Adjustment (or Planning Commission) finds Jumper verbally approved the amended site plan permit and finds it credible, then Board should reconsider its decision dated February 6, 2020 to reflect whether an estoppel defense applies. If the Board (or Commission) finds that Jumper did not verbally approve the amended site plan permit then its decision stands.

Accordingly, the Commission interprets the “scope of rehearing” to be cross examination of Ms. Jumper and any new evidence that might arise from or relate to that testimony on cross examination. Similarly, the Commission’s findings and decision on remand will be limited to the claim of estoppel per the Court’s direction.

Subpoena Power and Availability of Witness Jumper

The parties have requested clarification from the Commission regarding the parties’ obligations to secure Ms. Jumper’s appearance at the remand hearing and the procedure for doing so. Given the limited scope of the remand hearing directed by the Court, the appearance and testimony of Betsey Jumper at the remand hearing is essential to the Commission’s ability to comply with the Court’s directive. Accordingly, both parties should make every effort to secure Ms. Jumper’s appearance. Further, the Commission

directs its legal counsel and the City Clerk to prepare a letter to Ms. Jumper expressing the need for her testimony and directing her to appear and testify at the hearing. Further, the Commission strongly supports any and all efforts by the Hackneys to secure a court-ordered subpoena through the Clerk of Court. The Commission is hopeful that the issuance of a subpoena by the Court for Patty Burley in the initial proceedings suggests that the Court recognizes its power of subpoena over witnesses in a hearing before the Commission and that the Court will once again be willing to issue a subpoena for testimony at the remand hearing. However, it is of course the Court, and not this Commission, that has the power to determine the scope of the court's authority to issue and exercise its subpoena power.

While the Commission recognizes the importance of Ms. Jumper's appearance and testimony at the hearing, the Commission cannot go so far as to compel Ms. Jumper to testify by subpoena. Alaska Statute 29.25.010 clearly requires a fine or penalty, or the establishment of rules or records for a violation of which fines and penalties will be imposed, to be adopted by ordinance. Bethel City Council has complied with this legal requirement granting subpoena power by ordinance to the Board of Ethics and to the City Manager in tax audit matters. See BMC 2.06.060; BMC 4.16.350(G). Presumably, Council would have granted subpoena power to the Commission in the same manner if it intended the Commission to have such power. The Commission does not, however, have authority to unilaterally grant itself this power as the Commission's powers and duties are established by Code and State law.

DATED this 23 day of July, 2021.

This decision has been approved by the majority of the Commission members with 7 members in agreement, and 0 members in dissent.

CITY OF BETHEL, PLANNING COMMISSION

By: Kathy Hanson
Kathy Hanson (Jul 24, 2021 10:24 AKDT)
Chair

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24 day of July, 2021, a true and correct copy of the foregoing was served on the following in the manner indicated:

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Bethel, Alaska 99559
lbakalar@cityofbethel.net

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Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
thomas@anchorlaw.com

U.S. Mail
Facsimile
☒ Electronic Delivery
Hand Delivery

BETHEL CITY CLERK

By: Lori Strickler
Lori Strickler

Planning Commission's Decision Regarding Procedural Matters

Final Audit Report

2021-07-24

Created:	2021-07-24
By:	Lori Strickler (lstrickler@cityofbethel.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAAMOBCEFRS8vFU0etcXDv18grlub3FOskB

"Planning Commission's Decision Regarding Procedural Matters" History

-  Document created by Lori Strickler (lstrickler@cityofbethel.net)
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-  Document emailed to Kathy Hanson (kathyhanson49@gmail.com) for signature
2021-07-24 - 4:17:28 PM GMT
-  Email viewed by Kathy Hanson (kathyhanson49@gmail.com)
2021-07-24 - 6:20:34 PM GMT- IP address: 66.249.84.34
-  Document e-signed by Kathy Hanson (kathyhanson49@gmail.com)
Signature Date: 2021-07-24 - 6:24:45 PM GMT - Time Source: server- IP address: 72.42.147.188
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CITY OF BETHEL
BOARD OF ADJUSTMENT

DAN HACKNEY and DAWN HACKNEY,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	
CITY OF BETHEL, ALASKA, BOARD OF	)	
ADJUSTMENT,	)	
	)	
Appellee.	)	
	)	
	)	

ORDER REMANDING TO CITY OF BETHEL PLANNING COMMISSION
PURSUANT TO DECISION NO. 2020-01

On February 3, 2021, the Alaska Superior Court remanded *Hackney v. City of Bethel, Alaska, et. al.*, Case No. 4BE-20-00080CI, to the Bethel Board of Adjustment “for a rehearing to allow the Hackneys to cross examine Jumper on the issue of oral approval of the amended site plan.” See Order Remanding Back to Board of Adjustment for Rehearing, Case No. 4BE-20-00080CI. Upon review of the Court Order, this Board hereby determines that, in order to fully comply with the above-named court order, a rehearing on the identified matters is necessary and that the need to hear new evidence and issue findings based upon that evidence requires remand to the City of Bethel Planning Commission. In accordance with the Judge’s Order, the Board of Adjustment

hereby remands the above-referenced case to the Bethel Planning Commission to hold a rehearing as directed by the Superior Court.

DATED this 16 day of July, 2021.

CITY OF BETHEL,
BOARD OF ADJUSTMENT

By: 
Michelle DeWitt (Jul 16, 2021 13:25 AKDT)
Board of Adjustment, Chair

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16 day of July, 2021, a true and correct copy of the foregoing **Order Remanding to City of Bethel Planning Commission Pursuant to Decision No. 2020-01** was served on the following in the manner indicated:

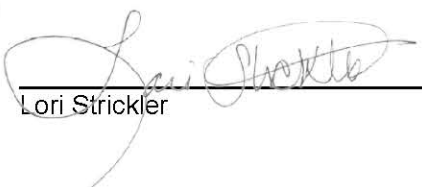
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☐ Hand Delivery

CITY OF BETHEL CITY CLERK

By: 
Lori Strickler

BOA Order Remanding to Planning Commission 7-16-2021

Final Audit Report

2021-07-16

Created:	2021-07-16
By:	Lori Strickler (lstrickler@cityofbethel.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAACuyJsezMBt-shXMmHZ8RE Ae-4s8Gjc5w

"BOA Order Remanding to Planning Commission 7-16-2021" History

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Signature Date: 2021-07-16 - 9:25:52 PM GMT - Time Source: server- IP address: 24.237.58.188- Signature captured from device with phone number XXXXXXX0557
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CITY OF BETHEL
PLANNING COMMISSION
RECORD ON REMAND HEARING



The Board of Adjustments Remand to the Planning Commission in response to Hackney v. City of Bethel, Alaska, et. al., Case No. 4BE-20-00080CI, rehearing to allow the Hackneys to cross examine Betsy Jumper on the issue of oral approval of the amended site plan.

SUPPLEMENTAL RECORD

P. 2	Notice of Remand Hearing
P. 3	02-06-2020 Board of Adjustment Decision Hearing No. 2020-01
P. 8	02-03-2021 Superior Courts Remand Decision Case No. 4BE-20-00080CI
P.17	07-16-2021 Board of Adjustment Remand to the Planning Commission
P. 20	07-23-2021 Planning Commission's Decision Regarding Preliminary Procedure Matters
P. 27	Communications Between Parties
P. 43	08-05-2021 Letter to Betsy Jumper, Expression of Need to Appear and Testify
P. 44	08-03/05-2021 Property Locations Notification of Hearing Sent to
P.45	Transcript of Planning Commissions Hearing November 14, 2019
	Record Submission from Appellant
P. 170	Site Plan Permit
P. 175	Issuance Letters of Support
P. 215A	Map of Establishments

CITY OF BETHEL
PLANNING COMMISSION
NOTICE OF REMAND HEARING



Planning Commission Members

Kathy Hanson, Chair; Lorin Bradbury, Vice-Chair;

John Guinn; Alex Wasierski; Shadi Rabi; Stanley Hoffman Jr.; Brian Henry; Jessica Shroder; Haley Hanson, Council Rep.

REMAND ISSUE: The Board of Adjustments Remand to the Planning Commission in response to Hackney v. City of Bethel, Alaska, et. al., Case No. 4BE-20-00080CI, rehearing to allow the Hackneys to cross examine Betsy Jumper on the issue of oral approval of the amended site plan.

PROPERTY OWNER: Dan and Dawn Hackney

PROPERTY LOCATION: 175 Alex Hately, Survey 84-13, Block 1, Lot 11 Blueberry Field Subdivision, Bethel Alaska

HEARING DATE/TIME: Thursday, August 19, 2021 at 6:30 p.m.

LOCATION: ONC Multipurpose Building, 334 Akiachak, Bethel Alaska

PARTICIPATE BY ZOOM: <https://zoom.us/j/93731339572?pwd=eW1naVVqbW5XZEJYZnBvL1pZVzhSdz09>
Meeting ID: 937 3133 9572 Meeting Passcode: 899704

PARTICIPATE BY PHONE: (253) 215 8782 Meeting ID: 937 3133 9572
(312) 626 6799 US Meeting Passcode: 899704
877 853 5257 US Toll-free
888 475 4499 US Toll-free

RECORD ON APPEAL: The full Record on Appeal will be available on the City's website www.cityofbethel.org under the Calendar of Events.

Lori Strickler, City Clerk

CITY OF BETHEL, ALASKA BOARD OF ADJUSTMENT

Appeal of Planning Commission Hearing NO. 2020-01

DECISION

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

NOTICE OF FINAL DECISION AND RIGHT TO APPEAL

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

DATED this 6 day of February, 2020.

BACKGROUND

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

FINDINGS OF FACT

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

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

- 2) The planning staff assistant testified at the hearing that she and the former planning director, Betsy Jumper, told Mr. Hackney that the mother-in-law unit or two unattached dwelling units were not allowed on one property in the Residential Zone. The application was approved on July 24, 2018 and a Site Plan Permit was issued to only allow for the construction of a 20-foot x 42-foot shop/garage/storage shed.
- 3) On January 9, 2019, Mr. Hackney submitted a request to the Planning Department to amend the approved July 24 Site Plan Permit by increasing the structure dimensions to 24-feet x 64-feet and referring to the structure as an attached garage. The Planning Department issued an addendum to the permit, approving the attached garage with the increased dimensions to 24-feet X 64-feet.
- 4) On February 19 2019, Mr. Hackney dropped off a 2018 As-built drawing at the planning department. The As-built drawing showed the existing Single Family house connected by a planned, hand-drawn deck to the hand-drawn new structure.
- 5) On June 7, 2019, the City of Bethel Planning Department, received an official complaint from four neighborhood residents alleging violations of the City of Bethel Site Plan Permit 18-34, for Daniel and Dawn Hackney of 175 Alex Hatley, lot 11, Blueberry Field Subdivision phase plat 84-13. The Complaint included allegations the Hackneys had (1) failed to provide an accurate description of their building plans in their site plan application and (2) built apartments or a hotel in a residential area, with a residence already on the property.
- 6) Ted Meyer became the planning director in August 2018. Pursuant to BMC 15.12.090, Mr. Meyer, investigated the complaint and found it had merit. Part of the investigation included accepting an invitation from the Hackneys to tour the new building on their property. The second floor included four finished and furnished hotel-style rooms, each with enclosed bathroom, and a kitchen for the guests downstairs. A van full of guests was arriving as planning staff were departing.
- 7) On August 19, 2019, the planning department staff took photos of the Hackney property. The three photos and an additional Google Earth aerial photo show:
 - a. Existing Single Family house side by side with the new structure, with a connecting deck in between.
 - b. Existing Single Family house with the new structure in background.
 - c. A rear view of the new structure.
- 8) On August 30, 2019, the City Planning Department issued the Hackneys a Notice to Correct Violations stating that they had violated the Bethel Municipal Code since they had not received approval to build a second floor with a bed and breakfast (B & B) or other lodging units. The City determined that the Hackneys had committed the following violations:

- a. Non-compliance with Authorized Improvements, in violation of BMC 15.12.070; and
 - b. Non-Compliance with BMC Residential Zoning Code, in violation of BMC 18.32.020 and 18.32.030.
- 9) The City planning department properly determined that the Hackneys violated the Bethel Municipal Code. The evidence presented at the hearing overwhelmingly established that the Hackneys had constructed a B & B or other lodging unit on their property, in violation of their site permit and in violation of the Bethel Municipal Code restrictions on Residential Zones.
- 10) The City gave the Hackneys 30 days to correct the violations and invited them to visit the planning department to discuss the construction project and permissible uses of the property under the Bethel Code. The City further notified the Hackneys of their right to appeal the Planning Department's determination to the City Planning Commission. It explained that "the written appeal must be submitted to the Planning Department and must specify the grounds for appeal and specify the actions and findings of the department that are being disputed."
- 11) On September 9, 2019, the Hackneys appealed the City's August 30 Notice to correct violations. They stated their grounds for appeal were:
 - a. All construction and use of 175 Katie Hatley were authorized by the former Planning Director Betsy Jumper.
 - b. All actions and findings of the planning department are disputed.
- 12) On September 13, 2019, the parties and their respective attorneys met to discuss the August 30, 2019 Notice to Correct Violations. Based upon that meeting, the parties agreed to hold in abeyance the Hackney's September 9, 2019 appeal while a corrective action plan was formulated between the parties.
- 13) On September 26, 2019 the planning department issued the Corrective Action Plan to the Hackneys to bring the structure into code compliance. The plan included deadlines for submission by Mr. Hackney as follows:
 - a. A detailed and scaled floor plan drawing of the constructed floor levels 1 and 2 of the new building¹
 - b. A new Site Plan Permit application with a detailed and scaled site plan drawing with a type of use that is compliant with BMC 18.32.020, 18.32.030, and 15.12.
 - c. A plan for the conversion of the second floor of the structure from transient lodging units to an approved BMC compliant use.
- 14) On October 10, 2019 the Hackneys rejected the Corrective Action Plan and requested their appeal of the August 30 Notice to correct violations "move forward."

- 15) On October 28, 2019, the Bethel Planning Department sent a notification to the Hackneys that their letter of appeal did not provide an adequate explanation for the appeal, as required in BMC 18.72.010A.
- 16) On October 28, 2019 the Hackneys notified the planning department that they were appealing the planning department's October 28 letter regarding the inadequate appeal.
- 17) On October 29, 2019, the planning department notified the Hackneys of the November 14, 2019 Planning Commission hearing for the Hackney appeal.
- 18) On November 14, 2019, the Planning Commission held a public hearing of the Hackneys' appeal from the Planning Department's Notice to Correct. As required by BMC 18.72.010D, the planning department submitted a summary of the application process and statement of findings to support its actions in issuing a Notice to Correct Violations to the Hackneys.
- 19) The Commission heard the sworn testimony and arguments of both parties. It also heard the sworn testimony of members of the public. It considered the permit application, correspondence, materials received from the parties, the letter of appeal, the planning department summary of the application and statement of findings supporting the action of the land use administrator, the verbal testimony taken under oath, and arguments of the parties to the appeal. After considering all of the evidence, the Commission denied the appeal and confirmed the planning director's findings, ordering the Hackneys to come into compliance with the Bethel Municipal Code.

CONCLUSIONS OF LAW

- 1) The Hackney property is located in the Residential ("R") district. **BMC 18.32.010** states that it is the intent of the residential district to provide protection to residential areas from encroachment from nonresidential activities.
- 2) Pursuant to **BMC 18.32.020**, the following are permitted and principal uses and structures in the Residential District:
 - a. Trails and boardwalks;
 - b. Non-motorized public access areas to the Kuskokwim River or other areas that require public access;
 - c. Single-family dwelling units;
 - d. Duplex uses;
 - e. Greenbelts and land reserves;
 - f. Subsistence activities;
 - g. Any accessory use or use of structure associated with the principal use or structure on the lot;
 - h. The facilities of sewer, water and other utilities required to serve the lots in the district;
 - i. Home occupations, but not more than two (2) per dwelling unit;

- 3) **BMC 18.36.020(K)(31)** allows hotels, motels, hostels, bed and breakfasts, bunk houses, and boarding houses in the Bethel General Use District. Bethel residents therefore have the option to build bed and breakfasts in the Bethel General Use District. The Hackneys had the option of building their bed and breakfast in the General Use District but chose not to.
- 4) Pursuant to **BMC 18.32.020G (Residential Zoning District Permitted and Principal Use and Structures)**, any accessory use or structure associated with the principal use or structure on the lot are permitted in the Residential District. However, an accessory is defined in **BMC 16.12.030** as being customarily accessory and clearly subordinate and incidental to the principal use or structure on the lot. The Hackneys' additional 4-unit Bed & Breakfast or other lodging unit on the property is clearly not subordinate and incidental to the already existing Single Family dwelling unit, which is the principal use on the property. The structure at issue is consequently clearly not allowed by **BMC 18.32.020**.
- 5) The Hackneys state that their grounds for appeal are that all construction and use of the property were authorized by the former planning director Betsy Jumper. However, the initial site plan permit only gave the Hackneys permission to "construct a 20-foot x 42-foot shop/garage/storage shed" and the addendum to the permit only allowed for the construction of "a 24-foot x 64-foot garage." The city planning department never gave the Hackneys written consent to build the structure at issue.
- 6) The approved Site Plan Permit is a one-sheet document and is the only approval mechanism used by planning departments to convey a Notice to Proceed to the developer to begin construction. The purpose of posting the permit is to notify the public that the project plans comply with local standards for land use, zoning, and development. The Authorized Improvements listed on the permit sheet are the only improvements that can be made by the property owner. Neither the July 20, 2018 permit, nor the January 9, 2019 addendum, allowed the Hackneys to construct the second floor lodging units.
- 7) The Hackneys are in violation of BMC Section 15.12.070 (Modifications) since they failed to obtain the written consent of the land use administrator (planning director) when they modified the approved plan.
- 8) The Hackneys are also in violation of BMC 18.36.020 (Residential District) since B & B's and transient lodging are not permitted in the Residential Zone. (The Hackneys reside in the residential zone.)
- 9) There is no merit to the Hackneys' appeal and it should be dismissed. The planning director's August 30, 2019 decision which found that the Hackneys had violated the Bethel Municipal Code Sections 15.12.070 and 18.32.020 and required them to come into compliance with the Code should be affirmed.


Board Chair, Mark Springer

2/6/2020
Dated

Case No. 4BE-20-00080 CI
Appeal of Board of Adjustment
Decision No. 2020-01

On June 7, 2019, a complaint was filed with the Planning Department alleging violation of the site permit and violation of residential zoning restriction by building another living unit with a residence already on the property. In response, the current Planning Director, Ted Meyers, investigated the complaint and visited the site to discover that the newly built structure had a finished kitchen downstairs and four finished and furnished rooms with en suite bathrooms upstairs. Following the investigation, the Planning Department issued a Notice to Correct Violations on August 30, 2019, for the violation of authorized improvements and zoning code.² The City allowed 30 days for correction, invited the Appellants to discuss revised plans, and advised of the right to appeal to the Planning Commission.

On September 9, 2019, the Appellants appealed the Notice to Correct Violation to the Planning Commission. In the time frame of the appeal application to the actual administrative hearing, the Planning Department offered a Corrective Action Plan which instructed the Appellants to submit: (a) a detailed and scaled floor plan drawing of the two levels in the new structure, (b) a new Site Plan Permit application compliant with the city ordinances; and (c) a plan to convert the current use of transient lodging to comply with the current zoning code, residential only. On October 10, 2019, the Appellants rejected the proposed Corrective Action Plan and opted to follow through with the appeal process with the Planning Commission.

The appeal was held during a public hearing on November 14, 2019, and both the City and the Appellants were represented by counsel. During the Planning Commission hearing, the Appellants argued that they initially had verbal confirmation from former Planning Director Betsey Jumper in approving their structure built on 175 Alex Hatley. The Planning Commission heard from a number of witnesses as well as testimony/statements from the public. According to Dawn Hackney, Jumper indicated that there was no objection or concern with the amended plan from January 9, 2019 and that the Hackneys should submit a drawing of the structure after

² BMC §15.12.070, §18.32.020, §18.32.030

completion. Hackney further testified that a similar procedure was followed for their other structure on 174 Alex Hatley. Hackney testified that both structures were built as bed and breakfasts and that business licenses and municipal tax documents were all applied for and approved by the City of Bethel to use the structures as bed and breakfasts. Further, Hackney testified that she managed another bed and breakfast in the same neighborhood which led her to believe that the structure and use were permitted in the Blueberry subdivision.

Patty Burley testified that at one point as her job as the City Attorney also was the acting or temporary City Planner, who succeeded Jumper's position as a City Planner. Burley was asked whether Jumper had previously given verbal confirmation for site plan permits. Questions regarding Jumper's actions as City Planner or her termination from employment were objected to by the City on grounds of attorney-client privilege. The Planning Commission sustained such objections.

Betsy Jumper was also called as a witness by the City. During her direct examination by the City she was allowed to testify about whether she ever orally granted the Hackney's permission to build the structure in question. Jumper was allowed to testify that she never gave oral approval to build a bed and breakfast. However, during Jumper's cross examination, the Hackneys were precluded by the Planning Commission from inquiring about her possible verbal confirmation for the site permit in question or to even explore the possibility that she was mistaken about her recollection.

The Planning Commission issued a written decision four days after the hearing affirming the Planning Department's Notice to Correct Violations.

The Appellants further appealed the Planning Commission's decision to the Board of Adjustment on December 19, 2019. On February 6, 2020, the Board of Adjustment issued a decision affirming the Notice to Correct Violations issued by the Planning Director and affirmed by the Planning Commission. The Board's decision included conclusions stating that the

property in question was in a residential district and that a bed and breakfast or lodging unit is not permitted, and that a permit was never issued to build the current structure and that the newly built structure was in violation to the municipal code.

The Hackneys appeal the Commission's decision to this court for judicial review under AS §22.10.020(d) and BMC §18.72.020(F). Alaska Statutes gives the superior court jurisdiction in all matters appealed from a subordinate court, or administrative agency when the appeal is provided by law.³ The superior court acts as an appellate court to consider the evidence and records provided by the hearings held by the Planning Commission or the Board of Adjustment. Under Bethel Municipal Code, the appeal of a decision made by the board of adjustment is to be filed in the superior court of the state of Alaska.⁴

II. STANDARD OF REVIEW

Administrative decisions have four standards of review: "(1) the substantial evidence test for questions of fact; (2) the reasonable basis test for questions of law involving agency expertise; (3) the substitution of judgment test for questions of law where no expertise is involved; and (4) the reasonable and not arbitrary test for review of administrative regulations."⁵

Here, the applicable test is the substantial evidence test, where the Commission's decision will not be reversed if it is supported by substantial evidence and judicial review of zoning board decisions is narrow and a presumption of validity is accorded to those decisions.⁶ Furthermore, a party may not raise an issue for the first time on appeal.⁷

III. ARGUMENT

a. Comprehensive Plan

³ AS §22.10.020(d).

⁴ BMC §18.72.020(F).

⁵ *Griswold v. City of Homer*, 252 P.3d 1020, 1025 (Alaska 2011).

⁶ *S. Anchorage Concerned Coal., Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993)(internal citations omitted).

⁷ *Padgett v. Theus*, 484 P.2d 697, 700 (Alaska 1971)("Ordinarily an issue which was not raised in the trial court will not be treated on appeal.").

The Appellants first argue that the Bethel Land Map and Zoning Code are invalid because they violate, and cannot be reconciled with the Bethel Comprehensive Plan. The City of Bethel has the authority to implement zoning regulations if a comprehensive plan has been implemented.⁸ The Appellants cite to *Lazy Mountain*, where the court held that under AS § 29.40.030(b), a municipality is required to adopt a comprehensive plan, that the plan is adopted before zoning regulations and where zoning is enacted before the adoption of a comprehensive plan, a legal remedy is to be imposed.⁹

The City of Bethel's Comprehensive Plan of 2011 identifies discrepancies between the zoning code and the actual patterns of land use, the need to implement a new land use map reflecting the reality of development, and that the Appellants' neighborhood should be zoned mixed residential use rather than the current exclusive residential use. The Appellants argue that the ordinances relied upon by the City predate the Comprehensive Plan and do not rationally comply with the Plan.

The Appellees, the City of Bethel (the "City"), consider the Appellants' argument waived. The City argues that the land use map and zoning code violating the Comprehensive Plan is being raised for the first time in the appeal, and are not in the record. Therefore the argument was not considered by the Planning Committee or the Board of Adjustment. Accordingly, the City argues that the Hackneys' arguments about the Comprehensive Plan should not be taken into consideration.

The court agrees with the City that the argument regarding the zoning codes and whether or not they conform to the Comprehensive Plan 2011 was not raised during the hearing held by the Planning Commission or the Board of Adjustment. There is no record from prior proceedings on which the court can rely.

⁸ AS §29.35.260(c).

⁹ *Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373, 378 (Alaska 1995).

In the past, courts have relaxed procedural requirements for *pro se* litigants,¹⁰ but here, both parties were represented by counsel during the prior proceedings. Thus this court acting as an appellate court will not consider an issue on appeal that was not raised in a lower decision-making process.¹¹ The court finds that the Hackneys' appeal argument regarding the Comprehensive Plan is waived.

b. Estoppel

The Appellants further argue that the Planning Commission failed to admit and consider evidence that would have been relevant to apply to the correct legal test for estoppel against a municipality. From the appeals to the Planning Commission and the Board of Adjustment, the Appellants have argued that they received verbal approval from then Planning Director, Betsy Jumper, to submit an as-built drawing for approval when the project was completed. The City argued that verbal approval was insufficient and that a written permit was required to build a structure on a property.

The City's argues that the Appellants are contesting based on an evidentiary error: that the Commission improperly relied on Jumper's hearsay and/or failed to consider certain evidence favorable to the Hackneys' position. However, the Appellants critique that relative evidence was improperly omitted whether favorable to their position or not. That being Jumper was questioned by the City's attorney regarding her previous oral statements to the Appellants regarding their site plan permit. While five or six minutes later the Hackneys were prohibited from questioning Jumper on the same issue.

During the Planning Commission hearing, the City attorney asked Jumper whether she had ever orally given permission to the Hackneys regarding their site plan permits, to which she answered "No."¹² However, during cross-examination, the Appellants' attorney asked Jumper whether she had given oral consent to build a second story to the structure to which Jumper

¹⁰ See *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987).

¹¹ *Padgett*, 484 P.2d at 700.

¹² Planning Commission Hearing at 1:34, 1:37.

answered, "I don't believe so," furthering to say "I don't recall," and eventually ending with "I could have."¹³ The City attorney objected stating that the issue was whether the Appellants had a written consent, not what Jumper had orally confirmed. The Planning Commission sustained the objection from the City's attorney and the Hackneys were not allowed to explore the subject further even though Jumper had just stated that "[she] could have [orally granted permission]."

The Appellants argue that the Planning Commission erred in failing to consider conflicting testimony on the issue and acknowledging Jumper's statement of having the possibility of verbally confirming the Appellants' site plan permit. The court agrees that the cross-examination of the witness, Betsy Jumper, was cut short and that the verbal confirmation was within the scope of the direct examination conducted by the City attorney.

Under Rule of Evidence 611(b), the scope of cross-examination limits the subject matter to the direct examination and matters affecting the credibility of the witness.¹⁴ Although an administrative hearing is informal compared to the judicial court, both parties had representation by counsel, objections were made and ruled upon, and the rules of examination were applied. Furthermore, as the contradictory statement is substantial evidence to finding whether estoppel applies, it is advisory for the Planning Commission to acknowledge and consider Jumper's cross-examination regarding her possible verbal confirmation of the site plan permit and allow the Hackneys to fully develop her testimony on this issue. Based on the Planning Commission's findings of fact the court cannot tell whether the Commission took into account Jumper's conflicting testimony.

This court remands this case back to the Board of Adjustment (or Planning Commission) to hold a rehearing and allow the Appellants to fully cross-examine Betsy Jumper regarding her oral statements to the Hackneys about the amended site plan permit. If the Board of Adjustment (or Planning Commission) finds Jumper verbally approved the amended site plan permit and

¹³ *Id.* at 1:39.

¹⁴ ARE 611(b).

finds it credible, then Board should reconsider its decision dated February 6, 2020, to reflect whether an estoppel defense applies. If the Board (or Commission) finds that Jumper did not verbally approve the amended site plan permit then its decision stands.

The general elements of equitable estoppel are (1) assertion of a position by conduct or word, (2) reasonable reliance thereon, and (3) resulting prejudice.¹⁵ A fourth element applicable to promissory estoppel cases is that the estoppel will be enforced to the extent required for justice.¹⁶ The Supreme Court of Alaska held that the fourth element is important when considering estoppel against a municipality.¹⁷ If the Board finds that estoppel applies to the Appellants, it is to use the four elements mentioned above to determine whether estoppel applies against the City.

IV. CONCLUSION

This court finds that substantial evidence had been improperly omitted as Jumper's statements about whether or not she granted oral approval of the amended site plan were properly within the scope of cross-examination. If the Board finds Jumper's statement credible, this court advises the Board to apply the test for estoppel as articulated above. Furthermore, any questions from cross-examination that are within the scope of direct examination may be reheard during the new hearing. The court notes that formal proceedings do not apply in administrative hearings. However, when key evidence as to whether estoppel applies is at issue, this court cannot disregard unjust procedure from the administrative hearing. As stated above, the court finds the Hackneys' argument regarding the Comprehensive Plan and zoning rules to be waived as it was not raised with the Planning Commission or the Board.

This court remands this case back to the Board of Adjustment for a rehearing to allow the Hackneys to cross examine Jumper on the issue of oral approval of the amended site plan. If the Board finds that Jumper gave the Hackneys oral approval for the amended site plan then the

¹⁵ *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d 97, 102 (Alaska 1987).

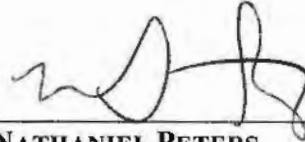
¹⁶ *Glover v. Sager*, 667 P.2d 1198, 1202 (Alaska 1983).

¹⁷ *Municipality of Anchorage v. Schneider*, 685 P.2d 94, 97 (Alaska 1987).

Board must apply that evidence to the test for estoppel as set forth in this decision regarding the amended site plan permit of 175 Alex Hatley. This court does not retain jurisdiction of this case.

IT IS SO ORDERED.

DATED at Bethel, Alaska this 3rd day of February, 2021.



NATHANIEL PETERS
SUPERIOR COURT JUDGE

I certify that on 2/04/21
copies of this form were sent to: T. Wang
E. Bakalar
CLERK K. Carpenter

CITY OF BETHEL
BOARD OF ADJUSTMENT

DAN HACKNEY and DAWN HACKNEY,	)
	)
Appellants,	)
	)
v.	)
	)
CITY OF BETHEL, ALASKA, BOARD OF	)
ADJUSTMENT,	)
	)
Appellee.	)
	)
_____	)

ORDER REMANDING TO CITY OF BETHEL PLANNING COMMISSION
PURSUANT TO DECISION NO. 2020-01

On February 3, 2021, the Alaska Superior Court remanded *Hackney v. City of Bethel, Alaska, et. al.*, Case No. 4BE-20-00080CI, to the Bethel Board of Adjustment “for a rehearing to allow the Hackneys to cross examine Jumper on the issue of oral approval of the amended site plan.” See Order Remanding Back to Board of Adjustment for Rehearing, Case No. 4BE-20-00080CI. Upon review of the Court Order, this Board hereby determines that, in order to fully comply with the above-named court order, a rehearing on the identified matters is necessary and that the need to hear new evidence and issue findings based upon that evidence requires remand to the City of Bethel Planning Commission. In accordance with the Judge’s Order, the Board of Adjustment

hereby remands the above-referenced case to the Bethel Planning Commission to hold a rehearing as directed by the Superior Court.

DATED this 16 day of July, 2021.

CITY OF BETHEL,
BOARD OF ADJUSTMENT

By: 
Michelle DeWitt (Jul 16, 2021 13:25 AKDT)
Board of Adjustment, Chair

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16 day of July, 2021, a true and correct copy of the foregoing **Order Remanding to City of Bethel Planning Commission Pursuant to Decision No. 2020-01** was served on the following in the manner indicated:

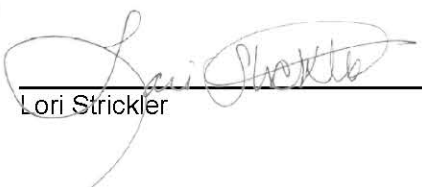
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CITY OF BETHEL CITY CLERK

By: 
Lori Strickler

BOA Order Remanding to Planning Commission 7-16-2021

Final Audit Report

2021-07-16

Created:	2021-07-16
By:	Lori Strickler (lstrickler@cityofbethel.net)
Status:	Signed
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"BOA Order Remanding to Planning Commission 7-16-2021" History

-  Document created by Lori Strickler (lstrickler@cityofbethel.net)
2021-07-16 - 6:56:06 PM GMT - IP address: 24.237.59.18
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CITY OF BETHEL, ALASKA
PLANNING COMMISSION

DANIEL AND DAWN HACKNEY,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	Appeal No. 2019-01
CITY OF BETHEL,	)	
	)	
Appellee.	)	
	)	
	)	

**PLANNING COMMISSION’S DECISION REGARDING PRELIMINARY PROCEDURE
MATTERS**

On July 16, 2021, the City of Bethel Board of Adjustment issued an order remanding the above-captioned case to the Bethel Planning Commission (“Commission”) to hold a rehearing as directed by the Superior Court. In accordance with that order, the Commission has scheduled a remand hearing on August 19, 2021. In preparation for that hearing, several preliminary matters have surfaced, or been raised by the parties, that warrant consideration by the Commission before the scheduled hearing date. Upon review of the parties’ correspondence regarding these issues as well as relevant law, the Commission hereby issues the following decisions regarding these preliminary procedural matters.

Commission’s Consideration of Preliminary Procedural Matters

On July 5, 2021, the City Clerk issued the “City Clerk Notification Regarding Preliminary Scheduling, Representation, and Procedural Matters in the Remand of Hackney v. Board of Adjustment, Case No. 4BE-20-00080Ci.” This Notice informed the

parties of the retention of attorney Holly Wells to provide legal counsel to the Commission with regard to the remand. While neither party objected to Ms. Wells' representation, the correspondence between the parties reflects some confusion regarding Ms. Wells' role in these proceedings. Ms. Wells has been primarily retained to provide procedural and substantive representation of the [] Commission throughout the rehearing, including but not limited to guidance on the evidence presented at the hearing, the procedural process for considering such evidence, any and all deliberations by the Commission, and the Commission's issuance of its final written decision on remand. While the Commission may take Ms. Wells' guidance or recommendations into account when issuing its findings and may direct Ms. Wells to draft preliminary orders or documents, Ms. Wells' role is to provide the Commission legal guidance in the exercise of the Commission's decision-making authority. Ms. Wells is not serving as a hearing officer and does not have any independent decision-making authority.

In light of the Commission's sole decision-making authority in this proceeding and the Commission's acknowledgement that there may be preliminary procedural matters that arise and warrant a decision by the Commission before the hearing, the Commission hereby implements a "preliminary motion procedure" for this hearing. Under this procedure, a party may submit a motion for a specific action to the Commission. Preliminary motions should clearly state the need for consideration of the motion before the scheduled hearing and should be filed with the City Clerk's Office and served on the other parties to the remand hearing. A party wishing to oppose or respond to a preliminary motion will have five days from the date of service to do so unless the response is otherwise limited by the Commission. The Commission may issue decisions regarding

these motions before or at the hearing, depending upon when the motions are filed and the Commission's need or ability to issue a decision.

Additions to the record, if any, that parties anticipate using as exhibits or relying upon at the hearing should be submitted to the City Clerk on or before August 9, 2021. The City Clerk will distribute the record on remand to the parties by August 12, 2021.

In-person Hearing

The Commission also directs that the hearing be held in-person, rather than virtually, per the request filed by the Hackneys' legal counsel. However, in light of the increase in COVID-19 cases throughout Alaska and within the City, and as authorized by City Council in Resolution #21-11, the Commission may hold a virtual hearing rather than in-person if the active cases within the City necessitate doing so. Further, any party, witness, representative or participant in the hearing may select to attend the hearing virtually. To the extent a party, party representative or the witness intends to attend the hearing virtually, notice of virtual attendance should be provided to the Clerk as soon as possible but not later than August 18 at 5:00 p.m.

The Commission strongly urges both parties and all participants to review Resolution #21-11 and ensure that the parties and Betsey Jumper are familiar with any mandates or advisories issued by the State of Alaska or the City. All hearing participants should be especially aware that, per Resolution #21-11, individuals shall not attend the hearing in-person if they have traveled outside Bethel in the last ten days, unless they are fully vaccinated. Facial coverings will be required during the in-person hearing and the hearing space will be configured in order to permit participants to maintain six feet of

distance between one another throughout the hearing, unless City Council adopts local legislation directing otherwise.

Scope of Hearing

In reviewing correspondence between the parties on preliminary matters arising from this remand, the Commission has determined it may be useful to clarify the scope of the hearing on remand. The Alaska Superior Court defined the scope of the remand as follows:

This court remands this case back to the Board of Adjustment (or Planning Commission) to hold a rehearing and allow the Appellants to fully cross-examine Betsey Jumper regarding her oral statements to the Hackneys about the amended site plan permit. If the Board of Adjustment (or Planning Commission) finds Jumper verbally approved the amended site plan permit and finds it credible, then Board should reconsider its decision dated February 6, 2020 to reflect whether an estoppel defense applies. If the Board (or Commission) finds that Jumper did not verbally approve the amended site plan permit then its decision stands.

Accordingly, the Commission interprets the “scope of rehearing” to be cross examination of Ms. Jumper and any new evidence that might arise from or relate to that testimony on cross examination. Similarly, the Commission’s findings and decision on remand will be limited to the claim of estoppel per the Court’s direction.

Subpoena Power and Availability of Witness Jumper

The parties have requested clarification from the Commission regarding the parties’ obligations to secure Ms. Jumper’s appearance at the remand hearing and the procedure for doing so. Given the limited scope of the remand hearing directed by the Court, the appearance and testimony of Betsey Jumper at the remand hearing is essential to the Commission’s ability to comply with the Court’s directive. Accordingly, both parties should make every effort to secure Ms. Jumper’s appearance. Further, the Commission

directs its legal counsel and the City Clerk to prepare a letter to Ms. Jumper expressing the need for her testimony and directing her to appear and testify at the hearing. Further, the Commission strongly supports any and all efforts by the Hackneys to secure a court-ordered subpoena through the Clerk of Court. The Commission is hopeful that the issuance of a subpoena by the Court for Patty Burley in the initial proceedings suggests that the Court recognizes its power of subpoena over witnesses in a hearing before the Commission and that the Court will once again be willing to issue a subpoena for testimony at the remand hearing. However, it is of course the Court, and not this Commission, that has the power to determine the scope of the court's authority to issue and exercise its subpoena power.

While the Commission recognizes the importance of Ms. Jumper's appearance and testimony at the hearing, the Commission cannot go so far as to compel Ms. Jumper to testify by subpoena. Alaska Statute 29.25.010 clearly requires a fine or penalty, or the establishment of rules or records for a violation of which fines and penalties will be imposed, to be adopted by ordinance. Bethel City Council has complied with this legal requirement granting subpoena power by ordinance to the Board of Ethics and to the City Manager in tax audit matters. See BMC 2.06.060; BMC 4.16.350(G). Presumably, Council would have granted subpoena power to the Commission in the same manner if it intended the Commission to have such power. The Commission does not, however, have authority to unilaterally grant itself this power as the Commission's powers and duties are established by Code and State law.

DATED this 23 day of July, 2021.

This decision has been approved by the majority of the Commission members with 7 members in agreement, and 0 members in dissent.

CITY OF BETHEL, PLANNING COMMISSION

By: Kathy Hanson
Kathy Hanson (Jul 24, 2021 10:24 AKDT)
Chair

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24 day of July, 2021, a true and correct copy of the foregoing was served on the following in the manner indicated:

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BETHEL CITY CLERK

By: Lori Strickler
Lori Strickler

Planning Commission's Decision Regarding Procedural Matters

Final Audit Report

2021-07-24

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"Planning Commission's Decision Regarding Procedural Matters" History

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RE: Bethel Board of Adjustment Remand Order-Hackney

Libby Bakalar <lbakalar@cityofbethel.net>

Wed 7/21/2021 2:03 PM

To: Thomas V. Wang <thomas@anchorlaw.com>

Cc: Lori Strickler <lstrickler@cityofbethel.net>; Holly Wells <hwells@bhb.com>

Thanks!

Libby Bakalar
City Attorney, City of Bethel
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From: Thomas V. Wang <thomas@anchorlaw.com>

Sent: Wednesday, July 21, 2021 2:02 PM

To: Libby Bakalar <lbakalar@cityofbethel.net>

Cc: Lori Strickler <lstrickler@cityofbethel.net>; Holly Wells <hwells@bhb.com>

Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

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Understood – safe travels.

Thomas

Thomas V. Wang
Ashburn & Mason, P.C.
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From: Libby Bakalar [<mailto:lbakalar@cityofbethel.net>]

Sent: Wednesday, July 21, 2021 2:00 PM

To: Thomas V. Wang

Cc: Lori Strickler; Holly Wells

Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

Thanks, Thomas. As I said, I'll defer to the Planning Commission's attorney on the subpoena issue. I'm going to be out of the office starting this evening for two weeks, so hopefully this can be sorted out among the others in my

Page 27 of 215

absence.

Libby Bakalar
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From: Thomas V. Wang <thomas@anchorlaw.com>
Sent: Wednesday, July 21, 2021 10:57 AM
To: Libby Bakalar <lbakalar@cityofbethel.net>
Cc: Lori Strickler <lstrickler@cityofbethel.net>; Holly Wells <hwells@bhb.com>
Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

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Thank you Libby.

From my perspective, the way this all “should” have worked is that the City “should” have an ordinance in place granting subpoena power to the Municipal Clerk in land use matters, as many municipalities do.

See, e.g., Anchorage Municipal Code 21.12.330 - Subpoenas.

All parties shall have the right to subpoena witnesses and documents using a form provided by the municipal clerk and submitted to the clerk for issuance at least five working days before the date of the hearing.

From my perspective, the failure of an affirmative enactment should not be fatal to the existence of the power. The powers of municipalities are intended to be broadly construed. AS 29.35.400. And plainly the municipality has subpoena power. The question is whether the failure of an ordinance creating subpoena power in this proceeding means that the power does not exist. I would submit not – it is a fair extension of the power (in fact, obligation) to have a hearing process for land use matters. AS 29.25.410. The *expressio unis* rule of statutory interpretation has been disclaimed by statute, so I do not agree that the enumeration of one instance of subpoena power should exclude others. AS 29.35.420.

If we take this authority argument to the extreme, then we devolve into absurdity. The municipality must establish a process for appealing administrative decisions. AS 29.40.050. Note that the statute provides that the ordinance “may” include the appointment of a hearing officer. Notably, the Bethel ordinance contains no such grant of authority – however, I would not take the position that the City is precluded from engaging BHB as hearing officer. If the City can engage a hearing officer without the authority of an ordinance, why can the city not issue a subpoena to compel the attendance of witnesses at a hearing? (Setting aside our contention that the City administration should have the obligation to produce its own witness for the continuation of her prior testimony). If the City’s hearing process does not provide subpoena power, then I would suggest that the process would be deemed constitutionally deficient if the Hackneys are unable to obtain the testimony of the key witness in this case and/or that Ms. Jumper’s testimony be stricken in its entirety.

The code is not as helpful as it might be, but I doubt the answer lies in obtaining a subpoena from the clerk of court, and I hope we can find a solution to this issue.

Thomas

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(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Libby Bakalar [<mailto:lbakalar@cityofbethel.net>]
Sent: Wednesday, July 21, 2021 10:26 AM
To: Thomas V. Wang
Cc: Lori Strickler; Holly Wells
Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

Ok, well, I am going to defer to Holly on what to do here. I don't think the City has subpoena power. Just because we have it in one context doesn't mean we have it in another: indeed, I think basic principles of statutory construction would suggest the opposite. It seems to me that with Holly's approval, a subpoena from the court is just as enforceable as a subpoena the City arguably doesn't have the authority to issue. That said I will do whatever Holly says. I am going to be on leave starting today at 5 p.m. until August 9.

Libby Bakalar
City Attorney, City of Bethel
300 State Highway
PO Box 1388
Bethel, AK 99559
lbakalar@cityofbethel.net
(907) 545-0115
www.cityofbethel.org

From: Thomas V. Wang <thomas@anchorlaw.com>
Sent: Tuesday, July 20, 2021 6:57 PM
To: Libby Bakalar <lbakalar@cityofbethel.net>
Cc: Lori Strickler <lstrickler@cityofbethel.net>; Holly Wells <hwells@bhb.com>
Subject: Re: Bethel Board of Adjustment Remand Order-Hackney

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I don't want to create an issue, but I am not willing to just take her word for it.

Sent from my iPhone

On Jul 20, 2021, at 18:31, Libby Bakalar <lbakalar@cityofbethel.net> wrote:

Before we go any further with this: Thomas, has your paralegal followed up with the contact information I Googled for Ms. Jumper? Perhaps you can secure her participation voluntarily, and we can side-step this whole subpoena issue? Just a thought.

Libby

Libby Bakalar
City Attorney, City of Bethel
300 State Highway
PO Box 1388
Bethel, AK 99559
lbakalar@cityofbethel.net
(907) 545-0115
www.cityofbethel.org

From: Thomas V. Wang <thomas@anchorlaw.com>
Sent: Tuesday, July 20, 2021 5:46 PM
To: Lori Strickler <lstrickler@cityofbethel.net>; Holly Wells <hwells@BHB.com>
Cc: Libby Bakalar <lbakalar@cityofbethel.net>
Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

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Holly/All:

The court specifically declined to retain jurisdiction over the case on remand. It is not clear to me that the court has authority to issue subpoenas in a municipal hearing – Rule 45 contains no such indication, but perhaps I am missing something. The form itself contains reference to a number of provisions that plainly would have no application here. However cooperative we might all wish to be, and whatever good fortune Mr. Karr had when contacting the clerk's office the first time around, I do not think we can agree to imbue the court with authority it does not possess. I do not want to be in the position where a procedurally defective subpoena allows Ms. Jumper to skip the hearing without consequence – particularly if it is a procedure that, in hindsight, it will be claimed that I chose or acceded to.

From my perspective, it makes much more sense for a City official to issue the subpoena. The power to compel testimony seem inherent in any hearing procedure and seems, to me, fairly implied from the statutory grant of authority to the municipality and the mechanism already established for the hearing. The City has established subpoena powers in other contexts, such as with the ethics board (See, BMC 2.06.060.), and it seems that would be a better template than attempting to obtain the court's assistance in a matter over which it has no current jurisdiction.

Please advise.

Thomas

Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Ave., Suite 200
Anchorage, AK 99501
(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Lori Strickler [<mailto:lstrickler@cityofbethel.net>]
Sent: Tuesday, July 20, 2021 3:09 PM
To: Thomas V. Wang; Holly Wells
Cc: Libby Bakalar
Subject: Re: Bethel Board of Adjustment Remand Order-Hackney

Hello,

We thought it may be helpful to the group to have a handy copy of the subpoena being referenced.

Thank you,

Lori Strickler, MMC
City Clerk
City of Bethel
300 Chief Eddie Hoffman Highway
P.O. Box 1388, Bethel, AK 99559
Phone: 907-545-4120
Website: www.cityofbethel.org

From: Thomas V. Wang <thomas@anchorlaw.com>
Sent: Tuesday, July 20, 2021 1:56 PM
To: Holly Wells <hwells@BHB.com>
Cc: Libby Bakalar <lbakalar@cityofbethel.net>; Lori Strickler <lstrickler@cityofbethel.net>
Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

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Holly,

Thank you for the prompt follow up.

I was not involved in this matter until the Superior court appeal and was not aware whether subpoenas were issued initially or, if so, by what means. I assumed that no subpoenas had been issued – perhaps I should have examined that assumption more carefully. If the court did in fact issue one or more subpoenas that is useful to know, and I am willing to make that effort. In order to facilitate the issuance of a subpoena through that process, I imagine I would need a scheduling order or notice providing the details of the hearing. So, on the assumption we are moving down that path, may I ask that such a notice be issued?

I apologize to you and Libby if any of my communications have been abrupt – this matter has generated considerable frustration for my clients and – and some of that frustration may have

inadvertently crept through into my emails.

Thomas

Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Ave., Suite 200
Anchorage, AK 99501
(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Holly Wells [<mailto:hwells@BHB.com>]
Sent: Tuesday, July 20, 2021 12:53 PM
To: Thomas V. Wang
Cc: Libby Bakalar; Lori Strickler
Subject: Re: Bethel Board of Adjustment Remand Order-Hackney

Thomas,

While the Commission is moving quickly to address your request for direction, the Commission and the Clerk's office is aware of the parties' desire to take action to prepare for the hearing as quickly as possible. To that end, I'd recommend that parties use the same method to subpoena witnesses or documents as was used in the initial proceedings, especially given that the Clerk of Court did issue the requested subpoena in those proceedings. To the extent that the Commission provides an alternate avenue or determines it has subpoena authority not identified in the City Code but otherwise permitted under statutory or common law, that subpoena authority can be substituted for or supplemented to the State of Alaska subpoena process.

That said, please note that I have been retained to advise the Commission in its deliberations and during the hearing but I don't have authority to make decisions on behalf the Commission. As a result, requests for clarification, action or direction require the Commission to consider those requests directly.

I hope this is helpful. The City Clerk will be sure that this email guidance is presented to the Commission so it is aware that, to the extent you take the direction referenced above, such action may have been taken based upon this response.

Thank you,

Holly Wells

Sent from my iPhone

—

Holly Wells

Partner
Birch Horton Bittner & Cherot
510 L Street, Suite 700 | Anchorage AK 99501
Tel 907.263.7222 | Main 907.276.1550
hwells@BHB.com | www.birchhorton.com | [Bio](#)

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On Jul 20, 2021, at 10:54 AM, Thomas V. Wang <thomas@anchorlaw.com> wrote:

External Email Address

Libby and Holly,

I apologize if I am being inarticulate. My intention with my email below was to make that request of Holly – I assume(d) that her authority to issue a subpoena would have to emanate from some City statute or authority. I understand that you (Libby) are representing the City administration, and that Holly is advising the City as a hearing officer, I am may have caused confusion by referring to the City too broadly without making that distinction.

Thomas

Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Ave., Suite 200
Anchorage, AK 99501
(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Libby Bakalar [<mailto:lbakalar@cityofbethel.net>]
Sent: Tuesday, July 20, 2021 10:03 AM
To: Thomas V. Wang; Lori Strickler
Cc: Holly Wells
Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

My response is to ask Holly Wells how to issue these subpoenas, as she is advising the relevant body. It seems to me that the subpoena has to come from there/with the PC's authority. I also Googled Ms. Jumper's address and phone number for you. I'm not sure what else you expect the City to do.

Libby Bakalar
City Attorney, City of Bethel
300 State Highway
PO Box 1388
Bethel, AK 99559
lbakalar@cityofbethel.net
(907) 545-0115
www.cityofbethel.org

From: Thomas V. Wang <thomas@anchorlaw.com>
Sent: Tuesday, July 20, 2021 9:54 AM
To: Libby Bakalar <lbakalar@cityofbethel.net>; Lori Strickler <lstrickler@cityofbethel.net>
Cc: Holly Wells <hwells@BHB.com>
Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

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Libby and Holly,

To be clear, I inquired regarding subpoena process on 7/2, and have not received any response. If the City is attempting to disclaim the obligation to obtain Ms. Jumper's attendance, then I would respectfully suggest that the City provide information about how a subpoena can be requested and/or accept this email as a request that such a subpoena be issued. If there is uncertainty about the underlying ability to compel the attendance of witnesses in this proceeding, then I would request that we address that issue promptly.

Thomas

Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Ave., Suite 200
Anchorage, AK 99501
(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Libby Bakalar [<mailto:lbakalar@cityofbethel.net>]
Sent: Monday, July 19, 2021 4:07 PM
To: Thomas V. Wang; Lori Strickler

Cc: Holly Wells

Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

Thomas,

It seems to me that counsel for the quasi-judicial body, the Planning Commission, would be the appropriate person to consult re: the issuance of subpoenas from that body for witnesses in a hearing before it, and Holly Wells should be able to provide direction on that procedure. She's copied here. From what I can tell from Google, Ms. Jumper's last known address is 520 Main Street, PO Box 2273, Bethel 99559. The last known phone number I can find for her is (907) 543-3053. So it looks like she's in town. Again, all of this is from a two-minute Google search that I did just now, but hopefully it sets things in motion for you.

Thanks,

Libby

Libby Bakalar
City Attorney, City of Bethel
300 State Highway
PO Box 1388
Bethel, AK 99559
lbakalar@cityofbethel.net
(907) 545-0115
www.cityofbethel.org

From: Thomas V. Wang <thomas@anchorlaw.com>

Sent: Monday, July 19, 2021 3:40 PM

To: Libby Bakalar <lbakalar@cityofbethel.net>; Lori Strickler <lstrickler@cityofbethel.net>

Cc: Holly Wells <hwells@BHB.com>

Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

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Libby/All,

Plainly, we are not going to agree regarding who should carry the burden for ensuring Ms. Jumper's testimony. To try avoid a dispute, we are willing to move forward with attempting to subpoena her, but we lack information about what we need to do to request the issuance of subpoenas, so I would ask for clarification on that point as soon as possible. And, I would ask that the City provide any information in its possession regarding her whereabouts.

Further, our undertaking of this effort in no way waives our position that Ms. Jumper was and is a City witness; should it not be possible to obtain her attendance we reserve all arguments regarding the significance to be drawn from her unavailability, including but not limited to the possibility that her prior testimony be stricken and/or that negative inferences be drawn against the administration's position on those disputed facts.

Thomas

Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Ave., Suite 200
Anchorage, AK 99501
(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Libby Bakalar [<mailto:lbakalar@cityofbethel.net>]
Sent: Monday, July 19, 2021 1:34 PM
To: Thomas V. Wang; Lori Strickler
Cc: Holly Wells
Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

I don't have any objection to having an in-person hearing, but I will be on Zoom. I'm traveling to Bethel on 8/23 for Collective Bargaining negotiations, and my daughter's bat mitzvah is 8/21. So I can't come up for the 8/19 hearing in person. Yes, we plan to make Ted Meyer available for the hearing. Ms. Jumper is a former City employee and I have no idea where she is. I think regardless of the circumstances at the initial hearing, this remand is being held on your clients' appeal, at their request and insistence. I don't think it's the City's job to procure Ms. Jumper's attendance, and from a practical standpoint, we are in the same exact position (if not worse) as you in terms of being able to. It seems to me that both Patty Burley and Betsy Jumper can be subpoenaed using the considerable resources of the large law firm that you have at your disposal, as any other witness in any other case you are bringing would be.

Thanks,

Libby

Libby Bakalar
City Attorney, City of Bethel
300 State Highway
PO Box 1388
Bethel, AK 99559
lbakalar@cityofbethel.net
(907) 545-0115
www.cityofbethel.org

From: Thomas V. Wang <thomas@anchorlaw.com>
Sent: Monday, July 19, 2021 12:46 PM
To: Lori Strickler <lstrickler@cityofbethel.net>; Libby Bakalar <lbakalar@cityofbethel.net>

Cc: Holly Wells <hwells@BHB.com>

Subject: RE: Bethel Board of Adjustment Remand Order-Hackney

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Greetings Lori/All:

Thanks for your message regarding the remand order. Since we are a month exactly from the hearing date, I wanted to follow up on a few initial items that I would like to address concerning process.

1. We would like to request that the hearing be conducted in-person, provided that witnesses may also be called telephonically/ZOOM as necessary.
2. We currently anticipate the following witnesses for the hearing:
 - a. Betsy Jumper
 - b. Nancy Burley
 - c. Dawn Hackney
 - d. Dan Hackney
 - e. Ted Meyer (TBD)
3. In terms of witness attendance, naturally we will arrange for Dan and Dawn Hackney to attend, and we assume that the City will have Mr. Meyer available. I would like to address Ms. Jumper and Ms. Burley as they are potentially more complicated.

With respect to Ms. Jumper, this is a witness that the City called at the first hearing, and who testified regarding matters undertaken in her capacity as a City employee. Since the improper curtailment of her testimony (by the City) was a large factor in bringing about the remand, we believe that the City should bear the initial burden of tracking her down and securing her attendance at the remand hearing by subpoena. Libby, I understand you may disagree – but if that is the case I would like to get this issue resolved as soon as possible so that we can make efforts to compel her attendance if the City is not willing to do so. Relatedly, we will take responsibility for securing the attendance (likely telephonic) of Ms. Burley, but we look for any guidance regarding the manner in which we can obtain the issuance of subpoenas.

Finally, we are interested in discussing the standards and process for identifying potential conflicts of interest by commission members.

I know there will be many other procedural details to work through but wanted to get these identified for discussion as soon as possible.

Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Ave., Suite 200
Anchorage, AK 99501
(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Lori Strickler [<mailto:lstrickler@cityofbethel.net>]
Sent: Friday, July 16, 2021 3:33 PM
To: Thomas V. Wang; Libby Bakalar
Cc: Holly Wells
Subject: Bethel Board of Adjustment Remand Order-Hackney

Hello,

Please find the attached Order from the Board of Adjustment Authorizing the Remand to the Bethel Planning Commission Pursuant to Decision No. 2020-01. I will be working with Holly to outline a procedure for the Hearing to include the process and timelines for record submissions, you should expect to hear more next week.

Thank you,

Lori Strickler, MMC
City Clerk
City of Bethel
300 Chief Eddie Hoffman Highway
P.O. Box 1388, Bethel, AK 99559
Phone: 907-545-4120
Website: www.cityofbethel.org

Re: Planning Commission's Decision Regarding Procedural Matters

Lori Strickler <lstrickler@cityofbethel.net>

Tue 8/10/2021 1:37 PM

To: Ted Meyer <tmeyer@cityofbethel.net>; Libby Bakalar <lbakalar@cityofbethel.net>

I will be providing a copy of the record to each of the party's representing attorneys and will be putting it on the website under the Planning Commission page- you will find it there on the 12th.

Thanks Ted,

Lori Strickler, MMC

City Clerk

City of Bethel

300 Chief Eddie Hoffman Highway

P.O. Box 1388, Bethel, AK 99559

Phone: 907-545-4120

Website: www.cityofbethel.org

From: Ted Meyer <tmeyer@cityofbethel.net>

Sent: Tuesday, August 10, 2021 1:35 PM

To: Libby Bakalar <lbakalar@cityofbethel.net>

Cc: Lori Strickler <lstrickler@cityofbethel.net>

Subject: RE: Planning Commission's Decision Regarding Procedural Matters

Hi Lori,

Can I get a copy of the record? I'm hoping I don't get called to participate, but if I do, I'd like to be prepared, especially for the stuff Thomas added to the record. Thanks.

Ted Meyer

City Planner, City of Bethel

1155 Ridgecrest Drive

PO Box 1388

Bethel, AK 99559

tmeyer@cityofbethel.net

(907) 543-5306

From: Libby Bakalar <lbakalar@cityofbethel.net>

Sent: Tuesday, August 10, 2021 11:06 AM

To: Lori Strickler <lstrickler@cityofbethel.net>; Thomas V. Wang <thomas@anchorlaw.com>

Cc: Holly Wells <hwells@BHB.com>

Subject: RE: Planning Commission's Decision Regarding Procedural Matters

Good Morning,

The City will not be supplementing the record, and I will appear virtually at the hearing. I am planning to have City Planner Ted Meyer attend in person.

Thanks,

Libby

Libby Bakalar
City Attorney, City of Bethel
300 State Highway
PO Box 1388
Bethel, AK 99559
lbakalar@cityofbethel.net
(907) 545-0115
www.cityofbethel.org

From: Lori Strickler <lstrickler@cityofbethel.net>
Sent: Monday, August 9, 2021 2:41 PM
To: Thomas V. Wang <thomas@anchorlaw.com>; Libby Bakalar <lbakalar@cityofbethel.net>
Cc: Holly Wells <hwells@BHB.com>
Subject: Re: Planning Commission's Decision Regarding Procedural Matters

Thank you Thomas, the documents have been received and will be added to the record.

Lori Strickler, CMC
City Clerk
City of Bethel
300 Chief Eddie Hoffman Highway
P.O. Box 1388, Bethel, AK 99559
Phone: 907-545-4512
Website: www.cityofbethel.org

From: Thomas V. Wang <thomas@anchorlaw.com>
Sent: Monday, August 9, 2021 2:33:35 PM
To: Lori Strickler <lstrickler@cityofbethel.net>; Libby Bakalar <lbakalar@cityofbethel.net>
Cc: Holly Wells <hwells@BHB.com>
Subject: RE: Planning Commission's Decision Regarding Procedural Matters

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Lori/All,

Please see the attached proposed exhibits for the hearing:

- Index to Exhibit of Compiled Letters
- Exhibit of Compiled letters
- List of permits (email and enclosure)

Thank you!

Thomas

Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Ave., Suite 200
Anchorage, AK 99501
(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Thomas V. Wang
Sent: Monday, August 9, 2021 10:48 AM
To: Lori Strickler; Libby Bakalar
Cc: Holly Wells
Subject: RE: Planning Commission's Decision Regarding Procedural Matters

Lori/All,

This is the first of a couple of messages I will send throughout the day regarding the remand hearing, exhibits, and record.

Principally, since we are in a remand setting, it is my assumption that the record to be delivered to the Planning Commission will include the entire record of the case that went up to the Superior Court, including the Court's decision and all briefing.

I am attaching the appellate briefing and the Court's decision. Since the City prepared the record on appeal to the Superior Court, I assume the same record will be included in the remand paperwork.

I will follow later this afternoon with additional exhibits that are not already part of (what I understand to be) the existing record.

Please confirm – thanks.

Thomas

Thomas V. Wang
Ashburn & Mason, P.C.
1227 West 9th Ave., Suite 200
Anchorage, AK 99501
(907) 276-4331 (main office)
(907) 865-9207 (direct)

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From: Lori Strickler [<mailto:lstrickler@cityofbethel.net>]
Sent: Monday, August 9, 2021 8:22 AM
To: Thomas V. Wang; Libby Bakalar
Cc: Holly Wells
Subject: Re: Planning Commission's Decision Regarding Procedural Matters

Hello,

I wanted to provide you with a reminder, today is the deadline for documents to be included in the record material for the hearing in order for me to provide it to the parties on the 12th.

Thank you,

Lori Strickler, MMC

City Clerk

City of Bethel

300 Chief Eddie Hoffman Highway

P.O. Box 1388, Bethel, AK 99559

Phone: 907-545-4120

Website: www.cityofbethel.org

From: Lori Strickler

Sent: Saturday, July 24, 2021 6:36 PM

To: Thomas V. Wang <thomas@anchorlaw.com>; Libby Bakalar <lbakalar@cityofbethel.net>

Cc: Holly Wells <hwells@BHB.com>

Subject: Planning Commission's Decision Regarding Procedural Matters

Hello,

Please find the attached, which we hope to help clarify some of the questions you may have as we near the Commission's Hearing.

Thank you,

Lori Strickler, MMC

City Clerk

City of Bethel

300 Chief Eddie Hoffman Highway

P.O. Box 1388, Bethel, AK 99559

Phone: 907-545-4120

Website: www.cityofbethel.org

CITY OF BETHEL

City Clerk's Office



August 5, 2021

Betsy Jumper
P.O.Box 2273
Bethel, AK 99559

Re: *Hackney v. City of Bethel*
Planning Commission No. 2019-01

Dear Ms. Jumper:

A hearing in the above matter has been scheduled for August 19, 2021, at 6:30 p.m., and will take place at the ONC Multipurpose Building, 334 Akiachak, in Bethel. (Enclosed is a copy of the Notice of Remand Hearing.)

Consistent with a ruling of the Alaska Superior Court, the Planning Commission has ordered that the hearing is limited to "cross examination of Ms. Jumper and any new evidence that might arise from or relate to that testimony on cross examination." (See attached Planning Commission's Decision Regarding Preliminary Procedure Matters.)

It is essential that you appear and testify at this hearing.

Your cooperation is greatly appreciated. Please feel free to contact the City Clerk's office if you have any questions.

Sincerely,


Lori Strickler, MMC
City Clerk

Notice of Hearing Mailed to Property Owners 600' of Property

150	Cranberry	138	Blackberry	138	Alex Hately
156	Cranberry	144	Blackberry	139	Alex Hately
162	Cranberry	145	Blackberry	144	Alex Hately
163	Cranberry	150	Blackberry	145	Alex Hately
168	Cranberry	151	Blackberry	150	Alex Hately
169	Cranberry	156	Blackberry	156	Alex Hately
174	Cranberry	157	Blackberry	157	Alex Hately
175A	Cranberry	162	Blackberry	162	Alex Hately
175B	Cranberry	163	Blackberry	163	Alex Hately
		168	Blackberry	168	Alex Hately
420	Blackberry or Katie Hately	169	Blackberry	169	Alex Hately
174	Blackberry or Katie Hately	175	Blackberry	174	Alex Hately
175	Katie Hately	187	Blackberry	175	Alex Hately
		192	Blackberry	187	Alex Hately
		193	Blackberry	192	Alex Hately
		198	Blackberry	193	Alex Hately
		199	Blackberry	198	Alex Hately
		204	Blackberry	199	Alex Hately
		204	Blackberry	205	Alex Hately
		350	Blackberry	450	Alex Hately
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CITY OF BETHEL

PLANNING COMMISSION MEETING

DAN AND DAWN HACKNEY

APPEAL No. 19-01

Regarding Property at

175 Alex Hately

Bethel, Alaska

TRANSCRIPT OF MEETING

November 14, 2019, 6:37 p.m.

APPELLANTS: DAN AND DAWN HACKNEY

REPRESENTED BY: JARED K. KARR, ESQ.
Valcarce Law Office, LLC
P. O. Box 409
Bethel, AK 99559
(907) 543-2744

APPELLEE: TED MEYER, PLANNING DIRECTOR
City of Bethel

REPRESENTED BY: MARY B. PINKEL, ESQ.
City Attorney
Jermain, Dunnagan & Owens, P.C.
3000 A Street, Suite 300
Anchorage, AK 99503
(907) 563-8844

1	COMMISSION MEMBERS PRESENT:	Kathy Hanson, Chairperson
2		Lorin Bradbury, Vice-Chairperson
3		John Guinn
4		Alex Wasierski
5		Scott Campbell
6		Haley Hanson
7		Shad Rabi
8	ABSENT:	Stanley Hoffman, Jr.
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1 Pursuant to Public Notice, Appeal 19-01 to 175 Alex Hatley
2 code violations was heard by the City of Bethel Planning
3 Commission on the fourteenth day of November, 2019.

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1 P R O C E E D I N G S

2 (on record)

3 CHAIR HANSON: We'll look at the people to be heard now.
4 Let me explain again. This people to be heard, if you want to
5 speak to -- if you want to speak about the public hearing, I
6 would encourage you to wait until we get into that. If you
7 have something else you want to talk with us about, then this
8 people to be heard will be the time for you to do that. So, do
9 we have any people to be heard? It's a 3 minute limit.
10 Charlie, are you on now?

11 MR. BRYANT: Hello. Okay. K.D. (ph) Bryant (ph) here, as
12 you all know me. And I don't know if they're going -- supposed
13 to be forward to everybody, but it's been on my mind for quite
14 a while since we've become one road town going to the airport.
15 And that's BNC (ph) Road from along the river. And everybody
16 knows what that one is, right? The one that they blocked off
17 all the time. That could be a second road in and out of here,
18 so we'd have two ways to get out of the town in case there was
19 an emergency out on this highway. And stop (indiscernible-
20 voice lowered) track for a period of time to where ambulances,
21 or fire trucks, or anything couldn't get off the highway. If
22 there was another emergency. We've got airports out there.
23 We've got a lot of people living out there. Folks (ph) Road is
24 gone. There's no other way to get around. I think that the
25 City should -- should approach BNC (ph) again. I know they've

1 tried it years and years ago. And BNC (ph) put a big price tag
2 on it. I'm just hoping that it might be time to try it again.
3 And folks -- BNC (ph) folks and see if we could get them to
4 change their mind. And make our town a little bit safer.
5 Thank you.

6 CHAIR HANSON: Thank you. Is there anyone else on the
7 speak to be heard now? Seeing none, we'll move on to approval
8 of the Agenda.

9 This evening we have the approval of minutes for three
10 meetings. We got a little behind here. Followed by New
11 Business, which is the public hearing. Followed by Unfinished
12 Business and the Planner's Report, and Commissioners Comments.
13 Is there a motion to approve the Agenda?

14 UNIDENTIFIED MALE VOICE: I move.

15 CHAIR HANSON: Second?

16 UNIDENTIFIED MALE VOICE: Second it.

17 CHAIR HANSON: It's been moved and seconded. Are there
18 any -- any discussion? Hearing none and seeing none, all those
19 in favor of the Agenda as written, say Aye.

20 COMMISSIONERS: aye

21 CHAIR HANSON: Opposed? (indiscernible--voice lowered)
22 We'll move on to approval of the minutes.

23 The first one is June 13, 2019. It's on the backside of
24 your Agenda. Is there a motion to approve?

25 UNIDENTIFIED MALE VOICE: So moved.

1 UNIDENTIFIED MALE VOICE: Second.

2 CHAIR HANSON: It's been moved and seconded. Any
3 discussion? All those in favor of approving these minutes, say
4 aye.

5 COMMISSIONERS: aye

6 CHAIR HANSON: Opposed? Okay.

7 And regular meeting, September 12, turn the page, and
8 there that one is. Is there a motion to approve?

9 UNIDENTIFIED MALE VOICE: So moved.

10 UNIDENTIFIED MALE VOICE: Second.

11 CHAIR HANSON: Thank you. It's been moved and seconded.
12 Is there any discussion about the September 12 minutes? All
13 those in favor say -- all those in favor of approval, say Aye.

14 COMMISSIONERS: aye

15 CHAIR HANSON: And opposed? Thank you.

16 And finally, October 10th, we did not have a quorum. I'm
17 so embarrassed. I completely forgot. I think I was the one.
18 Is there a motion to approve the October 10th minutes.

19 MR. GUINN: So moved.

20 MR. CAMPBELL: Seconded.

21 CHAIR HANSON: Thank you, John. And seconded by Scott.
22 All those -- is there any discussion? There's nothing here.
23 All right. All those in favor say Aye.

24 COMMISSIONERS: aye

25 CHAIR HANSON: Opposed? Thank you.

1 Now, we move on to the New Business, public hearing. And
2 I have the benefit of a very well written script. I'm going to
3 read this to you, just like you're in school. Because if I
4 didn't read it and I tried to, you know, just do it very
5 casually, I would miss most of it. So, we'll -- in this
6 script, I'm going to describe what the issue is and how the
7 procedure will go. So everybody has a good understanding of
8 that before we start (indiscernible--voice lowered). So, we
9 have full house.

10 This is a public hearing on Appeal No. 19-01. An appeal
11 of the Planning Director's decision regarding 175 Alex Hatley,
12 property owned by Dan and Dawn Hackney. The public hearing is
13 conducted on November 14, 2019, at 6:37, in Bethel, Alaska,
14 City Council Chambers. Commission members present for this
15 hearing are Mr. Lorin Bradbury, Mr. Alex Wasierski, Mr. John
16 Guinn, Mr. Scott Campbell, I always want to all you Scott
17 Hamilton, that skater, Scott -- Haley Hanson, and Shadi Rabi.

18 And I should start by asking you, the Commission Members,
19 if any of you have a conflict of interest by a financial
20 interest in any property affected by the appeal. Or could
21 foreseeably profit through resolution of this appeal. All
22 right.

23 Do any of the Commission members have an immediate family
24 member that has a financial interest in the property affected
25 by the appeal. Or could foreseeably profit through resolution

1 of this appeal? Okay.

2 And finally, do any of the Commission members believe that
3 they cannot be fair and impartial in their consideration of
4 this matter? Okay. We move on to ex parte communication.

5 Ex Parte Communication is contact made without opportunity
6 for all the -- all parties to participate between the
7 Commission members and a party or other individuals
8 representing that party regarding the merits of the matter
9 under adjudication.

10 All boards of this city, while acting in a quasi-judicial
11 capacity, shall be impartial in all matters both in fact and in
12 appearance. In an effort to ensure all parties have an
13 opportunity to respond to any communication that may have
14 occurred outside of this hearing, Commissioners, please
15 identify for the record if you have received written and/or
16 oral communication on this appeal. If so, please share any
17 substantive information you received during the course of that
18 contact. And I think I'll just go down the row and ask each of
19 you -- Mr. Bradbury?

20 MR. BRADBURY: The only thing I received -- I received
21 notification because I -- my home is within the 600 feet
22 radius.

23 CHAIR HANSON: Sure. But have you ever had conversation
24 about it with any of the parties?

25 MR. BRADBURY: No -- as far as --

1 CHAIR HANSON: No. Nothing substantial.

2 MR. BRADBURY: Yeah. Nothing (indiscernible--away from
3 mic)

4 CHAIR HANSON: Okay. All right. Thank you. How about
5 you?

6 UNIDENTIFIED MALE VOICE: I have not - (indiscernible--
7 away from mic)

8 CHAIR HANSON: John?

9 MR. GUINN: No.

10 UNIDENTIFIED MALE VOICE: No.

11 UNIDENTIFIED MALE VOICE: No.

12 CHAIR HANSON: Okay. Well, I have. I have talked with
13 one of the people who wrote -- wrote a letter of concern about
14 the property. Over the course of -- of the year or so, I have
15 heard from that person a few times. And each time, my only
16 response was, I can't do anything about that as a Planning
17 Commission member. If you have a question or a concern, you
18 need to take it to the Planning Department. Take it to the
19 Planning Department. Take it to the Planning Department. So,
20 that was about it. So, I -- I believe I'm in the clear there.

21 And I am confident that I can make a decision on this
22 based on the discussion and the evidence here this evening and
23 not on any information I had prior. I'll now present a summary
24 of the appeal for the record.

25 The appellants in this matter are Dawn and Dan Hawkney --

1 Hackney. As provided in the record, correspondence is -- as
2 provided in the record correspondence, it appears the
3 Appellants' legal counsel is Jared Karr of the Valcarce Law
4 Office. The Appellee in this matter is the City of Bethel
5 Planning Director, Ted Meyer. According to the record, the
6 Appellee is being represented by Michael Gatti and Mary B.
7 Pinkel of the Law Firm of Jermain, Dunnagan, and Owens, PC. On
8 September 9th, the Hackneys' representing attorney, Jared Karr,
9 submitted an appeal on their behalf stating their grounds for
10 appeal to be "all construction and use of 175 Alex (excuse me)
11 Alex Hately were authorized by former Planning Director, Betsy
12 Jumper." Karr identified the actions and findings disputed are
13 in the August 30, 2019, letter from City Planner Ted Meyer.

14 The August 30 letter to Mr. and Mrs. Hackney from the
15 Planning Director was a notice to correct violations found by
16 the Planner -- City Planner. The letter identified violations
17 of BMC 15.12.070, site plan permit violations. And 18.32.020,
18 residential district permitted and principal uses and
19 structures. The letter further ordered the discontinuation of
20 the unlawful uses of the land or structure, which is authorized
21 under BMC 18.84.030(b).

22 September 13, the Hackneys put a hold on the appeal
23 verbally at a meeting between the parties. September 26th, the
24 Planning Director issued a corrective action plan for Bethel
25 Municipal Code violations. The corrective action plan listed

1 are October due date. October 10 due date. October 10, the
2 Hackneys' representing attorney, Jared Karr, submitted a
3 request to proceed with the appeal and that the corrected
4 action plan for Bethel Municipal Code is rejected.

5 The Planning Commission is presented with the question to
6 deny or grant the appeal, which must be done in the form of a
7 motion. The motion to deny or grant the appeal must including
8 findings and conclusions based on the evidence presented in the
9 record. If the Planning Commission denies the appeal, it may
10 confirm or modify the findings and conclusions of the City
11 Planner's Summary of Findings.

12 If the -- the Commission grants the appeal, the
13 Commission's decision will take effect ten calendar days from
14 the date the decision is rendered. Unless a timely appeal is
15 filed to the Board of Adjustment.

16 Now I would ask each person who intends to provide
17 testimony to raise your right hand so you can take an oath.
18 Keep that hand up. I'm reading the next thing. We'll now
19 conduct an oath for all parties who will be providing
20 testimony. Parties include City staff, the Appellant and their
21 representatives, any witnesses called to speak, and any member
22 of the community that resides within 600 feet of 175 Alex
23 Hatelly. Okay. The oath.

24 (oath administered)

25 GROUP: I do.

1 **CHAIR HANSON:** Okay. Thank you. All right, to the
2 interested parties, all documents associated with this appeal
3 should have been presented to the Planning Department's office
4 by November 4, 2019, in order to be considered in this
5 proceeding.

6 The hearing process will be as follows, so here's how it's
7 gonna go.

8 First the Appellant will explain the grounds for their
9 appeal and specify the action and findings of the department
10 that are being disputed. The Appellant may at this time call
11 any witnesses they wish to testify. Witnesses may be asked
12 questions by the Appellee.

13 Then the Appellee will provide statements of findings in
14 supporting their action. The Appellee may, at this time, call
15 any witnesses they wish to testify. Witnesses may be asked
16 questions by the Appellant.

17 Next step, we will open up to the people to be heard
18 section of the hearing. All testimony provided must concern
19 the subject matter before us. Now I see this piece of paper
20 here that only has one signature. When you, members of the
21 public, are coming up to speak at this point, we'll ask you to
22 sign in at that time.

23 Then the Appellant will have an opportunity to rebutt.
24 The Appellee will have an opportunity to rebutt. The Appellant
25 will have an opportunity for final statements and rebuttal.

1 Following the testimony, the Planning Commission may ask
2 questions to the Appellant, the Appellee, or interested
3 persons. Okay.

4 Prior to accepting testimony, I want to remind the
5 Commissioners, in accordance with BMC 18.72 we may only
6 consider the following evidence when considering the appeal--

7 Number 1 - the permit application or other application or
8 action that is the subject of the appeal;

9 Number 2 - the correspondence, permit issued and other
10 material sent from the Land Use Administrator or the Planning
11 Director to the permit holder and to any other party in the
12 appeal.

13 Number 3 - the correspondence and materials received from
14 any source regarding the application or actions.

15 4 - the letter or request submitting the appeal to the
16 Planning Commissioner.

17 5 - The Planning Department summary of the application and
18 the stated findings supporting the action of the Land Use
19 Administrator.

20 Number 6 - written comments received prior to the appeal
21 hearing.

22 Number 7 - verbal testimony taken under oath at the appeal
23 hearing. And,

24 Number 8 - Arguments of parties to the appeal.

25 Okay. We will begin with providing the Appellant an

1 opportunity to state the grounds for their appeal and specify
2 the actions and findings of the department that are being
3 disputed. I will ask that each person providing testimony to
4 state and spell their name for the record.

5 And who is going to speak for the Appellant? Mr. Karr?

6 MR. KARR: Thank you, Ms. Hanson. My name is Jared Karr,
7 J-A-R-E-D, K-A-R-R, and I have the pleasure of representing
8 Dawn and Dan Hackney in this issue. I want to clarify or
9 narrow down exactly what we're here about. The City Planner,
10 and Planning Department, states that -- or has leveled
11 accusations against the Hackneys, that they're in violation of
12 two different things.

13 The first is -- is that they did not have permission to
14 build a second-story to an addition to their home at 175 Alex
15 Hatelly.

16 And the second thing they're stating that the Hackneys are
17 doing without permission by the City of Bethel, is that they're
18 having lodgers in the upstairs portion of that addition.

19 Our case and our argument is that the City verified and
20 okayed all of that. We presented evidence to that fact. That
21 the City has re-assured them, giving them verbal okays numerous
22 times. And only after they had built it, after a year of
23 having the okay, does the City then come back, and say, after
24 they built it, no, I'm sorry, you can't do what you want to do.
25 It's not morally right, it's not ethically right, it's not

1 legally right. So, this Notice to Correct Violations by the
2 City Planner, we appealed it because the City said it was okay
3 for them to do it.

4 Ms. Jumper was the City Planner, and she said it was okay.
5 Mr. Meyer comes in and he has no idea what went on before he
6 got there. And he issued this Notice to Correct Violations,
7 which lays out all of these accusations. It's not a way to run
8 a city. And we'll prove that was within their right. Thank
9 you.

10 CHAIR HANSON: Do you have any witnesses you want to call?

11 MR. KARR: I do.

12 MS. PINKEL: Did you want an opening from the City yet, or
13 did you want to wait?

14 CHAIR HANSON: We have to wait.

15 MS. PINKEL: Okay.

16 MR. KARR: Where do you want to do witnesses, where do you
17 want to put them? And put me, and -- it's not really set up
18 for that.

19 CHAIR HANSON: Don't they just come up one by one and
20 speak just as you did?

21 MR. KARR: I don't get to ask them questions? How do you
22 want to --

23 CHAIR HANSON: Oh.

24 MR. KARR: -- do this?

25 CHAIR HANSON: Well, let's see. Do you have a suggestion?

1 MR. KARR: I think they'll be testifying to you. If
2 there's some way I can get over here. They can stand here.
3 They can testify to you as I ask questions.

4 CHAIR HANSON: That -- that'll work for me.

5 UNIDENTIFIED MALE VOICE: Do you want a seat?

6 MR. KARR: No. I'll stand. Thank you. Call Dawn Hackney.
7 Do we -- (indiscernible--away from mic) an additional
8 microphone if it's being recorded?

9 UNIDENTIFIED MALE VOICE: They can hear.

10 MR. KARR: (indiscernible--away from mic) Are you having
11 any trouble hearing me?

12 UNIDENTIFIED MALE VOICE: Excuse me. We're not using the
13 microphones tonight?

14 CHAIR HANSON: We're using ours.

15 UNIDENTIFIED MALE VOICE: Oh. Okay.

16 CHAIR HANSON: Some of us are.

17 DAWN HACKNEY

18 a witness called for examination by the Appellant, being first
19 duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. KARR:

22 Q Dawn, introduce yourself and spell your name for the
23 record, please.

24 A Dawn Hackney, D-A-W-N, Hackney, H-A-C-K-N-E-Y.

25 Q: Thank you for being here tonight, Ms. Hackney. The

1 property that is in question -- this Commission is
2 considering is at 175 Alex Hatley, is that correct?
3 A: Yes, sir.
4 Q: When did you and your husband, Dan, purchase that
5 property?
6 A: Five or six years ago.
7 Q: And when you bought it, what was the condition of the
8 property when you purchased it.
9 A: It was not livable. They weren't using water. There was
10 a bottle of water. There was a honey bucket and the
11 furnace wasn't working. And the pipes, looks like they
12 had exploded at one time. There was a lot of damage and a
13 lot of trash.
14 Q: And were there any existing structures on the property
15 whenever you purchased it?
16 A Yeah. Two broke down shacks in the back.
17 Q: And where was your family living at the time you purchased
18 175 Alex Hatley.
19 A: At 174.
20 Q: And where is that in relationship to 175?
21 A: Directly across the street.
22 Q: And did you start cleaning up the property?
23 A: Yes.
24 Q: About how long did it take to clean out the stuff that you
25 described, the trash --

1 A: About a year. Eight months to a year.

2 Q: And did -- what type of work did you do in order to get
3 the property from dilapidated into a useful state?

4 A: We build a whole new structure around it.

5 Q: And did you apply for a site plan permit for that?

6 A: Yes, sir.

7 Q: And when was that?

8 A: The original to start dirt in '15.

9 Q: 2015?

10 A: Yes.

11 Q: And did you build your main residence at 175 Alex Hatley?

12 A: Yes.

13 Q: And when did you move onto the property?

14 A: October of '18.

15 Q: So, a little over a year ago?

16 A: Yes.

17 Q: So, you build the main residence. You moved in. When did
18 you decide to build an addition to that property? Why
19 we're here today. When did you decide to build that
20 addition?

21 A: There were -- we decided summer of '18.

22 Q: And what did you plan to build in addition to your main
23 residence?

24 A: Garage, shop, storage, with a mother-in-law quarters above
25 it.

1 Q: Okay. And what was the size of that addition?
2 A: It started out 20 by 42, I believe it was.
3 Q: Did you submit a site plan application for that?
4 A: Yes, sir.
5 Q: And what information did you relay to the city planner at
6 the time, Ms. Betsy Jumper, about what you wanted to do.
7 A: All that was included in what we wanted to do in that
8 structure.
9 Q: And did you relay to her that you wanted to build a
10 second-story?
11 A: Yes.
12 Q: Did you relay to her that upstairs was going to be
13 additional lodging?
14 A: Yes. Like we had across the street.
15 Q: Just like you had across --
16 A: Yes.
17 Q: -- the street at 174?
18 A: Yes.
19 Q: Did you relay that to Ms. Jumper that you wanted to do a
20 similar --
21 A: Yes.
22 Q: -- construction project at 175 -- what you had at 174?
23 A: Yep. Same type.
24 Q: And when you submitted that site plan for the addition,
25 the original site plan, was there a second-story drawn in

1 on that application.

2 A: In the drawing, no.

3 Q: Why not?

4 A: Because they were so discussed and talked about that we

5 were doing it. It was a big open discussion.

6 Q: So you discussed it with Ms. Jumper about what you wanted

7 to do?

8 A: Yes.

9 Q: You informed her that there was going to be a second-

10 story?

11 A: Yes.

12 Q: You informed her there was going to be lodging?

13 A: Yes. She'd seemed more concerned with the outside

14 measurements.

15 Q: Did you tell her about this one time, two times --

16 A: Oh, no. Many times. Because we went back for an

17 amendment.

18 Q: Did she ever tell you that you couldn't do a second-story?

19 A: Never.

20 Q: Did she ever tell you, you couldn't have lodging

21 (indiscernible--voice lowered)

22 A: Never.

23 Q: Did she ever tell you that she wanted a more detailed

24 drawing in regards to that change?

25 A: We would submit it to her at the end of the project.

1 Q: So she never asked for a detailed drawing --
2 A Nope.
3 Q -- before?
4 A: We offered.
5 Q: But she wanted a more detailed drawing after it was built.
6 A: Yes.
7 Q: Had you had that happen before?
8 A: Yes.
9 Q Where?
10 A: At 174.
11 Q So, at 174 Alex Hately, you submitted for a site plan.
12 And did you submit complete drawings before you started
13 building that project?
14 A: Of the outside only, of the dimensions.
15 Q After that project at 174 Alex Hately was completed, what
16 did you do in regards to complete drawings and getting
17 them to the Planning Department?
18 A: Actually, the appraiser did it.
19 Q: And the project at 175, the project that we're talking
20 about, you said Ms. Jumper wanted a complete set of
21 drawings after you're done constructing it?
22 A: Yeah because of the inside. Because we were changing it.
23 Q: I want to address the City Planner's Summary that has been
24 provided to this Commission. In that Summary, he states,
25 and I'm quoting here, "Planning Staff told Mr. Hackney

1 that the mother-in-law unit for two unattached dwelling
2 units were not allowed on one property." Were you ever
3 told that by anyone at the Planning Department.

4 A: No.

5 Q: The statement that Mr. Meyer made of Planning Staff never
6 told Mr. Hackney that the mother-in-law unit or two
7 unattached dwelling units were not allowed on one
8 property. Is that a true statement?

9 A: No.

10 Q: So you were -- you were planning -- you stated that you
11 were planning on building a 20 by 42 -- 20 foot by 42 foot
12 structure, two-story. Did that plan ever change?

13 A: Yes.

14 Q How so?

15 A: When my husband was digging through his pile of beams, he
16 found some more and he said that it was time, and that I
17 should have a garage. I've not had a garage, and he was
18 trying to be that loving husband and said we have to
19 attach if we go bigger. And then that way I can have a
20 garage.

21 Q So, the original plan was 20 by 42. You stated that you
22 were going to add some things. Did the dimensions change?

23 A: Yes.

24 Q Of what you wanted to build?

25 A: Yes.

- 1 Q And what were the new dimensions --
- 2 A 20 by 64
- 3 Q And at that time, had you built anything?
- 4 A No.
- 5 Q So, the planning changed. Did you go to the City Planner
- 6 and say -- and tell them that you were amending or
- 7 changing what you wanted to do?
- 8 A Yes.
- 9 Q And did the plans stay the same for the second-story. You
- 10 said that your husband wanted to give you a garage, but if
- 11 you're extending the building, the plan changed for the
- 12 second-story.
- 13 A It also grew with the first story.
- 14 Q Did you submit new drawings that were requested of you?
- 15 A Yes.
- 16 Q And what did the Planning Department say you could do
- 17 anything you want?
- 18 A uh-huh (affirmative)
- 19 Q They said you could?
- 20 A Yep.
- 21 Q And once again, what did Ms. Jumper tell you about the
- 22 drawings that you submitted?
- 23 A They were fine.
- 24 Q Did she say she wanted more drawings later on?
- 25 A No.

1 Q Did she say she wanted drawings when the project was
2 completed?

3 A Only after.

4 Q And was your original site plan amended?

5 A Yes.

6 Q Do you remember when that was?

7 A I believe it -- January of '19, I think. Well, the first
8 of the year.

9 Q And did you see anything that was odd with that addendum?

10 A Yes. That she -- just when they labeled that we were
11 approve, it was for less.

12 Q Ms. Hackney, I want to show you what's marked as Exhibit
13 3.

14 (Exhibit 3 marked for identification)

15 You said that there was something odd about the site plan
16 permit that was issued on January, 2019. What was that
17 oddity you're talking about?

18 A When we were approved with the original, it said -- it
19 stated all, you know, shop, garage, storage shed, land
20 fill and all that. On the second one, it says just the
21 attached -- it gave the dimensions of the new 24 by 64 and
22 it just said attached garage. Along with fill.

23 Q And who signed that January, 2019, site plan?

24 A Pauline.

25 Q Did you ever speak directly to Ms. Boratko about what your

1 plans were and what you wanted to build?

2 A No. It was always Betsy.

3 Q Ms. Hackney, I want to address the June 7, 2019, complaint
4 made to the Planning Commission. One of the signatories
5 to that complaint is Steve Murat. Do you know him?

6 A Yes.

7 Q Is this the first time you've ever heard of Mr. Murat
8 complaining about your property.

9 A No.

10 Q When was the first time you heard him complaining about --
11 complaining to you or your husband about your property at
12 175 Alex Hately.

13 A Summer of '15.

14 Q So, you -- in the summer of '15, you started having issues
15 with Mr. Murat?

16 A That's when the harassment started.

17 Q Tell me about that.

18 A The harassment -- he was -- we were getting up. I was
19 getting ready to go to work. We had people ready to --
20 dump trucks. And he was out there stopping the dump
21 trucks from putting -- dumping the dirt on our property.
22 And so I saw him out the window. I told my husband. My
23 husband went out there and Mr. Murat, with his famous f-
24 word started that Dan should to back where he came from.
25 And that he should have asked him. And that we should not

1 -- that we couldn't put dirt there because of some water.

2 Q You stated that you felt harassed by Mr. Murat. What do
3 you mean by harassing?

4 A Already giving us across the street of what we can and
5 can't do on our property. Even when my children are in
6 the yard, he's yelling at my husband. Telling him his
7 lights too bright. Complaining about anything --
8 everything we did from the size of the septic tank we were
9 putting in and it was all the time. He would walk by, he
10 was always flipping us off. He was standing in the road.
11 He was taking pictures all the time.

12 Q You stated that --

13 A All the time -- yes --

14 Q -- this started in 2015?

15 A Yes.

16 Q Did you tell anybody about this?

17 A No. I thought he would get tired of it, and it would go
18 away.

19 Q When did you learn that he wouldn't stop and he would
20 (indiscernible--background noise).

21 A It progressively just got worse and so when he would walk
22 on to Mr. Frederick's -- I did not see him out there.
23 Went out to see my husband one day. And he was hollering
24 at us while he was on his property. And saying how we're
25 building on top of Mr. Fredericks (ph). But I never saw

1 Mr. Fredericks (ph). I think it was actually for us to
2 hear that. I had had enough and I told my husband to
3 please see if we could get a restraining order on him.

4 Q Through the courthouse?

5 A Yes.

6 Q Do you have paperwork for that?

7 A Yes.

8 Q Did the court grant a restraining order?

9 A No.

10 Q Why was it not granted?

11 A Because he didn't make threats to harm us physically.

12 Q Was it more issue in that restraining order --

13 A Yes.

14 Q -- case.

15 MS. PINKEL: Your honor, I -- I understand that this is an
16 administrative hearing and the rules of evidence are relaxed.
17 But I'm just concerned that this line of questioning is not
18 really relevant to the matter at issue, which is whether or not
19 the Hackneys committed zoning violations.

20 MR. KARR: This is very relevant to why we got here. And
21 this is showing that this didn't start this week. This started
22 four years ago.

23 CHAIR HANSON: I think though the question that we have at
24 hand is what's built there, how it got approved or not, and
25 what's supposed to happen next and how that applies to the best

1 of municipal code. So, thank you, Ms. Pinkel, I have to agree
2 that all this background information, it's interesting. But it
3 really is not really germane to what we have to decide tonight.

4 MR. KARR RESUMES

5 Q So you went to the court, you attempted to get a
6 restraining order. That failed. What did you do next.

7 A I moved a storage -- asked my husband to -- when we moved
8 our wood shed, would he please move it so that it blocked
9 into my living room so that I can at least have the
10 curtains open to see the children.

11 Q And did you talk to anybody else in regards to what was
12 happening with you and Dan and Mr. Morat?

13 A No.

14 CHAIR HANSON: Excuse me, Mr. Karr --

15 Q I'm getting back to Ms. Jumper with the next question.

16 CHAIR HANSON: Okay.

17 Q Just a little bit of latitude. Who else did you talk to
18 about this? (indiscernible--simultaneous speech)

19 A Besides the courts and my husband? I talked to Ms. Betsy
20 Jumper because I asked her if we were doing anything
21 wrong. What is it? Because he will not leave us along --
22 alone. Is there anything we're missing. And she said,
23 no. That she had told him that we were abiding by all the
24 rules.

25 Q And did she -- did she tell or give you anything after you

1 approached her or after the denial of the restraining
2 order?

3 A Yes. She gave us a notepad and said that he was coming in
4 reporting everything to her. That she recommended -- she
5 gave me -- my husband a pad, and said that we can write on
6 it in any type of letter including (indiscernible--
7 background noise) and that we should documenting what he's
8 doing to us.

9 Q And did you write down everything in that notebook?

10 A No. We didn't keep track of it all. Just about 10% of
11 it--20% of it.

12 Q I'd like the Commission members to look at the packet. We
13 did provide a copy, as to Ms. Hackney's statement, about
14 10% of --

15 CHAIR HANSON: So, are we about ready to talk about where
16 we are right now?

17 Q Yes, ma'am. How did you learn about the June, 2019,
18 complaint?

19 A I learned about it in August from a friend who had
20 reported that he had been going around and trying to get
21 signatures and things about a complaint.

22 Q What happened after you learned about that complaint?

23 A We went in to the planning committee [sic] to see what the
24 complaint, exactly, was about.

25 Q And, did you talk with them?

1 A Yes.

2 Q And, did they want to come and inspect your property?

3 A Yes.

4 Q And did they?

5 A Yes. Next day.

6 Q Did you hide anything from them?

7 A No.

8 Q Did you tell them that anything was off limits and they

9 couldn't' look at any --

10 A No.

11 Q One of the violations that the City is saying you're

12 guilty of is that you're in non-compliance with the BMC

13 residential zoning code, BMC 18.32.020 and 18.32.030.

14 They're saying you cannot have people renting rooms in

15 your addition. Just want to ask you, did you ever hide

16 what your intentions were with the City in regards to

17 having people stay there?

18 A No.

19 Q You informed the City that you wanted to have people

20 staying out there?

21 A Yes.

22 Q Did you get an Alaska business license for that?

23 A Yes.

24 Q Business license from the City?

25 A Yes.

1 Q License from the State?

2 A Yes.

3 Q Sales Tax Certificate from the City?

4 A I did get one.

5 Q Pay your taxes?

6 A I did.

7 Q Why did you think it was okay for you to have people stay

8 in the upstairs portion of your addition?

9 A Because I had managed for a while Cranberry Cottage two

10 streets over.

11 Q Okay. So you -- what is Cranberry Cottage?

12 A It is a bed and breakfast just two streets over in my same

13 neighborhood.

14 Q The City ever notify you or the owners of Cranberry

15 Cottage that they couldn't have transient lodging there?

16 A No.

17 Q And you notified the City before having lodgers there that

18 that's what you wanted to do?

19 A Yes. You can look at the dates of when they gave me the

20 transient lodging tax forms versus when we started.

21 Q And Cranberry Cottage is -- and your -- your property --

22 they're both zoned residential?

23 A Yes.

24 Q Ms. Hackney, why did you decide to turn the upstairs

25 portion of your addition into lodging for people to rent

1 out?

2 A I am a nurse here in Bethel. And for extra income I was
3 doing site nursing. And I've been doing it -- I've been
4 doing it combined for about ten years. I've been seeing
5 the very dark side of Bethel. And I wanted to share
6 Bethel with people in a positive light.

7 Q At any point did you lie, deceive, or omit any information
8 about what you wanted to do when dealing with the City?

9 A No.

10 Q Did you inform them you wanted to build a second-story?

11 A Yes.

12 Q Informed them you wanted to put several more rooms
13 upstairs?

14 A Yes.

15 Q Do you know what license and certificates that you need?

16 A Yes.

17 Q City ever tell you, you couldn't do it?

18 A Nope.

19 Q Based upon the City telling you that you could do what you
20 want, how much money did you spend building your addition
21 on your property?

22 A \$365,000.

23 Q Ms. Hackney, if at any point the City had told you that
24 you could not build a second-story, what would you have
25 done?

1 A Invested in another (indiscernible--voice lowered)

2 Q If they told you that didn't have water use, what would
3 you have done?

4 A (indiscernible--voice lowered)

5 Q City told you, you could do those things, didn't they?

6 A Yes, sir.

7 CHAIR HANSON: Could you speak into the mic?

8 A Yes, sir.

9 CHAIR HANSON: Thank you.

10 Q Question and answered, Ms. Hanson.

11 CHAIR HANSON: Thank you.

12 CROSS EXAMINATION

13 BY MS. PINKEL

14 Q Ms. Hackney, I'm Mary Pinkel. I'm an attorney with the
15 firm of Jermain, Dunnagan, and Owens. I represent the
16 City of Bethel. I just have a few questions to ask you.

17 CHAIR HANSON: If you could speak up too.

18 Q I just have a few questions to ask you. When you -- you
19 and your husband initially applied for a site permit in
20 July 2018. Is that correct?

21 A (indiscernible)

22 Q And you're familiar with that document. Correct?

23 A uh-huh (affirmative)

24 Q And that permit says that -- I'm showing you what's
25 Exhibit 2

1 (Exhibit 2 marked for identification)

2 -- you had permission to construct a shop, garage or a
3 storage shed. Correct?

4 A Yes, but you're looking at the back side of it.

5 Q And the back side -- but that's -- that was your
6 application. The permit just said storage shed, correct?
7 That's what the permit says.

8 A That's what that says.

9 Q The permit says storage shed. Now, your husband submitted
10 an application. Correct?

11 A Correct.

12 Q And that application, and I refer you to what's been
13 marked Exhibit 1, that application mentioned a mother-in-
14 law apartment. Correct?

15 (Exhibit 1 marked for identification)

16 A Yes.

17 Q Okay. And were you present with your husband at the
18 Planning Commission [sic] in July, 2018 -- July 20, 2018,
19 when he submitted the application to the Planning
20 Department?

21 A I was not with him.

22 Q Okay. So, you're not aware of what the Planning
23 Department told your husband on July 20, 2018. Correct?

24 A I am aware because my name is on it.

25 Q But you were not present when your husband --

1 A I wasn't there, no.

2 Q So, you were not privy to any conversation that your

3 husband had in July, 2018, when he submitted this

4 application. Correct?

5 A No.

6 Q Is that a yes, you were not present?

7 A I was not present.

8 Q Okay. So, if the Planning Department, if Ms. Boratko or

9 Ms. Betsy Jumper had conversation with your husband on

10 July 20, 2018, and told him he could not build a mother-

11 in-law or an outlaw apartment on that structure he was

12 proposing to build, you would not know about that

13 conversation. Correct?

14 A No. But I have a letter stating that we are approved.

15 Q Are you aware that the permit that is binding on the

16 builder, and it's the duty of the builder, or the

17 homeowner to --

18 MR. KARR: Objection. That's a legal conclusion.

19 Q Well, let's look at the Site Plan Permit.

20 A So then you did not (indiscernible--voice lowered) is what

21 you're saying the second time when I -- I amended it?

22 Q Well, okay. We'll look -- so you agree that the permit

23 you received said you could build a garage, a shop or a

24 storage shed. Correct?

25 A Correct.

1 Q Okay. And then in January of 2009 [sic], your husband
2 went to the Planning Department and wanted to have an
3 addendum to the permit. Correct?
4 A uh-huh (affirmative)
5 Q And have you had a chance to look at the addendum?
6 A Yes.
7 Q And at that -- I'm referring to Exhibit 3. That addendum
8 says construct a 20 by 42 -- I'm sorry. A 24 x 64
9 attached garage, correct?
10 A uh-huh (affirmative)
11 Q And that says a garage, correct?
12 A uh-huh (affirmative)
13 Q It doesn't say you can build a bed and breakfast, does it.
14 A She drove by several times. She knows --
15 Q Well, I'm just going to ask you, what does -- the permit
16 doesn't say --
17 A The permit doesn't say that. That is not -- it's not in
18 it's entirety. It's not my fault she didn't do it. She
19 stamped it approved with a date on the other side where we
20 asked for it. We filled out the application and it has
21 the same date.
22 Q The permit --
23 A Along with the drawings.
24 Q -- the permit just gave you permission -- it's signed by
25 Ms. Boratko in the Planning Department. It just gave you

1 permission --

2 A I didn't talk to her, though, either, and she signed it.

3 Q But the permit just said you could build an attached

4 garage as of January 9, 2019. Correct.

5 A That is what that says.

6 Q Okay. Now the structure you built has four bedrooms

7 upstairs with bathrooms. Each bedroom has a bathroom. Is

8 that correct?

9 A Correct.

10 Q And it has a kitchen downstairs, correct?

11 A It has no kitchen.

12 Q But you do have four bedrooms upstairs and enclosed

13 bathrooms?

14 A uh-huh (affirmative)

15 Q That's not a garage is it.

16 A The garage is downstairs.

17 Q But that -- that structure is not a garage. Correct?

18 A (indiscernible)

19 Q And Ms. Jumper never issued a site permit that said you

20 could build a bed and breakfast or other lodging units on

21 your property. Correct?

22 A She told us we could.

23 Q She never said anything in writing that you could build a

24 bed and breakfast or other lodging units, did she?

25 A She -- not on that.

1 Q There's no written consent for you to build a bed and
2 breakfast or a hotel or lodging units, correct?
3 A On the other side it's stamped with a date that matches
4 that. On the application.
5 Q Can you tell me what you're talking about then?
6 A On the application where he asked what we could have. It
7 even says it on the drawings that's going to be there. On
8 the packet.
9 Q Okay. Is this his application?
10 A It's all complete. We got this back and the letter
11 stating (indiscernible--background noise)
12 Q Okay. So you had an application that asked to build a
13 mother-in-law.
14 A It never -- she has never said we couldn't. And nor in
15 writing there is it saying we could not.
16 Q Okay. So, on your application -- I don't want to argue
17 with you -- but on your application, you asked to build a
18 mother-in-law apartment. Correct?
19 A Yes.
20 Q But the site permit that you received on July 24, 2018,
21 gave you permission to build a shop, garage or storage
22 shed, correct? And that's Exhibit 2. Correct?
23 A Yes.
24 Q Okay. And I just want to go back to -- you had -- you
25 filled out tax forms with the City Finance Department, is

1 that correct?

2 A uh-huh (affirmative)

3 Q And your -- your forms with the Finance Department

4 indicated that you were running a bed and breakfast.

5 Correct?

6 A Yes.

7 Q Okay. And you never submitted that information to the

8 Planning Department, did you?

9 A No.

10 Q Okay.

11 A Are you supposed to? I give them my taxes?

12 Q No. I don't want to argue with you. But you never got

13 permission to build a bed and breakfast in a site permit,

14 correct?

15 A I don't agree to that. That is not my take.

16 Q Okay. Thank you very much.

17 CHAIR HANSON: Thank you. Thank you, Dawn. All right,

18 now we will provide the --

19 MR. KARR: (indiscernible--away from mic)

20 CHAIR HANSON: All right. Sorry. More witnesses. Okay.

21 MR. KARR: I call Ms. Patty Burley.

22 CHAIR HANSON: Ms. Burley, were you here when we did the

23 oath? Okay. Thank you. If you don't mind, sign-in there. To

24 your right.

25 MS. BURLEY: Yes, ma'am.

1 CHAIR HANSON: Thank you.

2 MS. PINKEL: Madame Chairperson, just before --

3 CHAIR HANSON: Sure.

4 MS. PINKEL: -- Ms. Burley speaks, the City objects to any
5 attorney-client communications being elicited from Ms. Burley.
6 She's the former City Attorney for the City of Bethel.

7 CHAIR HANSON: Say that again?

8 MS. PINKEL: We would object, I object on behalf of the
9 City to any attorney-client communications being elicited from
10 Ms. Burley during her testimony.

11 CHAIR HANSON: I'm not --

12 MS. PINKEL: She's the former City Attorney for the City.

13 CHAIR HANSON: I understand that. I don't really
14 understand what you mean, though.

15 MS. PINKEL: We do not want Mr. Karr to ask her any
16 attorney-client information when he questions her in her --

17 CHAIR HANSON: About things that she did as -- as City
18 Attorney?

19 MS. PINKEL: That's correct.

20 CHAIR HANSON: Okay. Go ahead.

21 PATTY BURLEY

22 a witness called for examination by the Appellant, being first
23 duly sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. KARR

1 Q Ms. Burley, Ms. Pinkel took care of a couple of questions
2 for me. You were previously the City Attorney for the
3 City of Bethel. Correct?

4 A Yes.

5 Q How long were you the City Attorney for Bethel?

6 A I'm guessing close to ten years.

7 Q When did you leave that position?

8 A In beginning of August of this year.

9 Q When you -- before you left, did the previous City Planner
10 Betsy Jumper get fired?

11 MS. PINKEL: Objection. He's asking for confidential
12 employee information. We object.

13 Q Prior to your leaving, did Betsy Jumper no longer have the
14 City of Bethel as her employer?

15 A When I left, Betsy had already left. Yes.

16 Q Okay. So there was a time frame where Ms. Jumper was
17 gone, you were still the City Attorney. Is that correct?

18 A Yes.

19 Q Now, during that time frame, were you asked or told or
20 tasked with the duties of the City Planner after her
21 departure.

22 A Yes.

23 Q Now when you were acting as the City Planner, did you deal
24 with an issue in regards to Dan and Dawn Hackney?

25 A I wouldn't say that I was per se the City Planner. I was

1 just -- Pauline wasn't made the Acting, Dowl (ph) wasn't
2 hired, some of the tasks just sort of got rolled over to
3 my office.

4 Q You were handling duties, maybe not all, but you were
5 handling duties of the City Planner, is that right?

6 A I was handling some things, yes.

7 Q And how did the Dan and Dawn Hackney issue come to your
8 attention?

9 A Mr. Howell (ph) asked me to please review the
10 (indiscernible--voice lowered). Ms. Jumper hadn't had a
11 chance to wrap it up before she left the City.

12 Q And what was the issue that was brought to you?

13 A A complaint from a Mr. Murat.

14 Q Not -- without violating any privileges, I don't want you
15 to violate any attorney-client privilege. Please let me
16 know if I go there. It is not my intention. But without
17 violating any privileges, what did you do in addressing
18 that complaint made by citizens of Bethel?

19 A I asked the Public Works Director to take some
20 measurements. I had an unrelated case going on, and I
21 asked the surveyor to come and take some surveys based on
22 an allegation of (indiscernible--voice lowered) that had
23 been moved. Never had any results on either of those.
24 And I (indiscernible--voice lowered) -- the Public Works
25 Director never got a chance to do those measurements. I

1 fielded a lot of calls from Mr. Murat. Wasn't able to
2 really get into that. And there was one day towards the
3 very end when I was wrapping up that Mr. Hackney came in
4 to my office. I did make a phone call for Mr. Hackney
5 trying to ask some general questions. Mr. Howell (ph)
6 will give that number.

7 Q We'll get into that conversation in a little bit. I want
8 to talk with you about a couple of things that were
9 brought up with the City Planner, Ted Meyers. August 30,
10 2019, letter written to the Hackneys, title "Notice to
11 Correct Violations". In it, it cites the BMC 15.12.070
12 stating that "no modifications may take place to a site
13 plan unless the land use administrator, which is the City
14 Planner in the City of Bethel, gives written consent."
15 With that in mind, if a city -- if a citizen goes to the
16 City Planner and gets a site plan and then at a later date
17 tells the Planner, in their official capacity, that they
18 would like to extend the building two foot or move the
19 building five feet. And the Planner tells them, you know
20 what? That's okay. Go ahead, you can do that. Is that
21 legally binding on the City?

22 MS. PINKEL: I'm going to object. This is asking a legal
23 opinion of an attorney who used to serve as the city attorney
24 here, and it's -- it would just be one attorney's opinion. It
25 -- that's not fact. It's not something that's relevant. So I

1 would object. What a former city attorney thinks is legal
2 should not be relevant to this case. At issue is what the City
3 Planner did.

4 CHAIR HANSON: Sustained.

5 Q Was there a history of previous City Planner Betsy Jumper
6 verbally modifying site plans and site plan permits for
7 citizens?

8 CHAIR HANSON: Excuse me.

9 MS. PINKEL: I object again.

10 CHAIR HANSON: I object to that. Because that's asking
11 Ms. Burley about what she did when she was the city
12 attorney and I -- that doesn't -- doesn't seem right.
13 She's not a city attorney.

14 Q Are you personally aware outside of your position as
15 former City Attorney of Ms. Jumper verbally modifying site
16 plan permits for citizens.

17 A Not outside my --

18 MS. PINKEL: I'm sorry. I can't hear.

19 A Not outside of my legal --

20 CHAIR HANSON: Job.

21 A -- job. Yeah.

22 Q Do you know a Gerald (ph) Hale?

23 A Yes.

24 Q Did Mr. Hale have an issue with the Planning Department on
25 a construction project?

1 MS. PINKEL: I'm going to object to relevance.

2 CHAIR HANSON: We're not talking about another site.

3 Another --

4 Mr. KARR: I'm trying to establish that Ms. Jumper would
5 routinely and regularly verbally told people that they could do
6 stuff. People relied upon that. And the City knows that it
7 binds them whenever a department head says, you know what, you
8 can go ahead and you can do that.

9 CHAIR HANSON: Well, Mr. Karr, I think there was a --
10 there -- it's very easy for some of these things to get very
11 confused when there are people coming and going from their
12 jobs. We had City Manager that was in flux, we had the
13 Planning Director that was in flux. And I would just like for
14 -- so -- I don't think it's -- it serves us tonight to go back
15 and talk about somebody else's challenges in where they should
16 build their house. Let's stick to this project we have right
17 here.

18 MR. KARR: Ms. Hanson, with all due respect --

19 CHAIR HANSON: Yeah, I'm not a judge.

20 MR. KARR: With all due respect, we're trying to show that
21 this is a pattern of the City of Bethel of verbally telling
22 people that they could do something. They're investing funds
23 and the City later coming up and telling them you can't do
24 that.

25 MS. PINKEL: Your Honor, if I could just object. It

1 appears that Mr. Karr is trying to make a legal argument here
2 through the former city attorney --

3 MR. KARR: Since you don't provide legal advice --

4 MS. PINKEL: I --

5 MR. KARR: I would highly suggest you give them legal
6 advice instead of representing Mr. Meyer.

7 MS. PINKEL: I think the point is, if the Commission were
8 to look at a case, it's called Jackson vs. Kenai, it talks
9 about when city enforcement and how this type of argument that
10 maybe the city did something in the past is not really what's
11 at issue. What's at issue is whether a -- the fact that if a
12 city at some point, changes it's course, that shouldn't be held
13 against the public. Because at issue here is enforcing the
14 zoning and building code ordinance of the City of Bethel.

15 And even if this had happened, and we do not concede that
16 Ms. Jumper allowed this, but even if it did happen, if you
17 would look at this case, Jackson vs. Kenai, the Alaska Supreme
18 Court had a fact situation with a zoning code violation that
19 went on for years. And then the City of Kenai finally -- or
20 the Borough, finally enforced it. And the Supreme Court, I
21 think it was Justice Moore, said that the City can't be stopped
22 from enforcing its own ordinances. If you have a city official
23 that was waiving that, that city official doesn't have the
24 authority to waive an ordinance that the City of Bethel, or
25 that the City of Kenai is entitled to have enforced. So, we'll

1 just, for the record, make that argument -- make that objection
2 based on the Kenai case.

3 CHAIR HANSON: Mr. Karr, I'd really like to just focus on
4 this problem we have here rather than the history of the
5 Planning Department.

6 MR. KARR: I understand the City does not like having its
7 underbelly shown. I appreciate that and I will move on. I'm
8 not saying that to you.

9 CHAIR HANSON: I know. I'm not the City. Let's move
10 forward.

11 MR. KARR RESUMES

12 Q Did you ever have a meeting and Dan and Dawn Hackney in
13 whenever you were acting as -- or doing City Planner
14 duties after you had investigated multiple complaints
15 against them?

16 A No (indiscernible--background noise). Mr. -- Mr. Hackney
17 did stop by my office towards the end (indiscernible--
18 background noise)

19 Q When you did conduct an investigation into the Dan and
20 Dawn Hackney properties, is that correct?

21 A Yeah. Peripherally, yes.

22 Q What did you tell Dan and Dawn Hackney?

23 A Dan Hackney came to my office one -- one, I think it was
24 morning. I can't say that for sure if it was morning or
25 afternoon. It's kind of a blur towards the end when I was

1 packing.

2 Amy Davis was in there for -- actually I don't remember
3 why -- she was there for something work related. And Mr.
4 Hackney stopped by. And it was kind of towards the end
5 we're all (indiscernible--voice lowered), you know, I'm
6 wrapping things up. This should be over pretty soon. I
7 glanced at everything. I don't see a problem. Ted's
8 being hired from what I hear. I don't see why he won't
9 wrap this thing up right away. I didn't see a problem.

10 Q So, you didn't see a problem with what happened with the
11 Hackney situation (indiscernible--voice lowered)

12 MS. PINKEL: Your Honor, I'm going to object on the basis
13 that this is an attorney who's not a city planner. So the --

14 MR. KARR: She was acting as it. She was doing city
15 planner duties. I know you don't like what she's saying. But
16 she did.

17 MR. PINKEL: I'm going to object because she lacks the
18 expertise to testify --

19 MR. KARR: (indiscernible--simultaneous speech)
20 expertise. She was doing the same planner duties and told them
21 everything was fine.

22 MS. PINKEL: I'm going to object to this, your honor,
23 she's not -- she was not a qualified city planner.

24 CHAIR HANSON: And I think Ms. Burley would be the first
25 to say that she's not. Let's just move forward, Mr. Karr,

1 MR. KARR: Are we just ignoring the fact that Ms. Burley
2 stated that she didn't see any problem with what went on with
3 the Hackneys? Or is that testimony going to --

4 CHAIR HANSON: Well, I think that's fine in her limited
5 role as trying to keep things moving forward in the City.
6 Rather than she was not an acting planning -- planning
7 director.

8 MR. KARR RESUMES:

9 Q Did you -- at the time that you were handling city planner
10 duties, were you aware of anybody else in the city that
11 was handling city planner duties.

12 A No.

13 Q Were you the only one that was handling city planner
14 duties at that time.

15 A Yes.

16 Q And you told the Hackney's you didn't see any problem with
17 what they did?

18 A I didn't see a problem. I looked at the complaint, and I
19 didn't see anything that appeared to be merited.

20 Q No question -- no further questions.

21 CROSS EXAMINATION

22 BY MS. PINKEL

23 Q Hi Patty. I'm Mary (indiscernible--voice lowered). So,
24 you -- we've already established that you're not a city
25 planner. Do you have a master's degree in city planning?

1 A No.

2 Q Your expertise is as a lawyer, correct?

3 A Yes.

4 Q And did you ever go -- you never went out and measured the
5 Hackney property or conducted an inspection of it the way
6 a city planner would? Correct?

7 A No. I had asked Bill Arnold to do that. But he had been
8 very ill and was unable to do that.

9 Q And Bill Arnold was the Public Works Director.

10 A Yes. He was who we tended to rely on when there was no
11 one else around to do measurements. We also did rely on
12 (indiscernible--voice lowered) Ford, but he was busy
13 (indiscernible--away from mic).

14 Q So you never actually went into the structure that at
15 issue in this matter and investigated it. Correct?

16 A No. I knew exactly what it was.

17 CHAIR HANSON: Ms. Burley, can you speak up, please?

18 A I'm sorry.

19 CHAIR HANSON: Because the people behind you can't hear
20 you.

21 Q You never went out there yourself and investigated it or
22 took measurements. Correct?

23 A Took measurements? No.

24 Q And -- and you didn't really have the resources to do a
25 real city planner's type of investigation. Correct?

1 A I'm not sure what a city planner type investigation is.

2 So, I'm going to say no.

3 Q Okay. And -- thank you. I don't really have any other

4 questions. Thank you very much.

5 CHAIR HANSON: Thank you. Do you have any more witnesses,

6 Mr. Karr?

7 MR. KARR: No more witnesses, Chair. I appreciate it.

8 CHAIR HANSON: Okay, then. Let's see. Back to the

9 script. Now we will provide the Appellee an opportunity to

10 present their findings that support their action. I will ask

11 that each person providing testimony state and spell their name

12 for the record.

13 MS. PINKEL: Excuse me. I would like to call our first

14 witness, which would be Ted Meyer. I think all my witnesses

15 are already -- were sworn, but they can do that again.

16 CHAIR HANSON: I'll ask you Ted. Did you take the oath?

17 MR. MEYER: Yes, I did.

18 CHAIR HANSON: All right. Thank you. You still have to

19 sign that piece of paper or write your name or whatever it asks

20 for. And those of you that are speaking as witnesses, just

21 remember that a majority of people are standing behind you, or

22 sitting behind you, so they can't hear you if you don't talk --

23 speak up. You don't necessarily have to face them, but speak

24 loudly.

25 TED MEYER

1 a witness called for examination by the Appellee, being first
2 duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. PINKEL

5 Q Hi Mr. Meyer, could you tell us what your job title is?

6 A I'm the City Planner for the City of Bethel.

7 Q And how long have you been the City Planner for the City
8 of Bethel.

9 A I believe I arrived here three months ago when I was
10 hired. My first day was August 8 of this year, 2019.

11 Q And had you been the City Planner for Bethel before?

12 A Yeah. From November, 2015, to September, 2017.

13 Q And have you also served as the city planner in other
14 municipalities and cities in Alaska?

15 A Yes. Quite a few.

16 Q And do you want to name a few of them?

17 A Aleutians East Borough, Bristol Bay Borough,
18 (indiscernible--voice lowered) Borough. And I've been
19 planner for regional tribal consortium, Kawerak, up in
20 Nome, the Afognak Tribe. And I've been a planner for an
21 engineering firm, ASCG, now (indiscernible--cough)
22 WHPacific.

23 Q And can you tell us if you have an advanced training in
24 urban planning?

25 A Masters Degree in Urban and Regional Planning from San

1 Jose State University.

2 Q And can you tell us what are your duties as the city
3 planner for the City of Bethel?

4 A Well, I manage the planning, zoning, land use for the City
5 of Bethel. And in accordance with the Bethel Municipal
6 Code and Bethel Comp Plan.

7 Q So, as part of your duties, are you also responsible for
8 enforcing the code?

9 A Yes.

10 Q And is that a pretty important part of being a city
11 planner?

12 A Yes. Uh-huh (affirmative)

13 Q And why is that?

14 A Well, in planning not all the time, projects turn out the
15 way the permit was -- was -- the way it was laid out. The
16 way it was approved. And so, there's code violations and
17 it's the Planning Department's job to make sure that
18 development follows the standards of the city. Code
19 development and other things that for Bethel, there's
20 honey buckets, and they're illegal. So, adversely, that's
21 part of the job. Abandoned cars --

22 Q So, pursuant to your duties as a city planner for Bethel,
23 have you come to know Dawn and Daniel Hackney.

24 A Yes.

25 Q And how did you become familiar with them.

1 A Well the first week I was in Bethel, that would be the
2 week of the 8th, I -- I heard about the complaint from
3 four neighbors on from -- four Hackney neighbors. And I
4 read the complaint. I --

5 Q Can I just show you what's been marked as Exhibit 5 in the
6 -- in your exhibits. Is this the --

7 (Exhibit 5 marked for identification)

8 A That's the complaint.

9 Q -- the complaint? Okay. So, you're saying there was some
10 -- a complaint from some neighbors. What was the -- what
11 was the gist of this complaint?

12 A That the building plans weren't accurately stated on the
13 application. And that there was an apartment building
14 and/or apartments being built in the residential zone,
15 which is not permitted.

16 Q And so, after you received the complaint, did you -- did
17 you take any course of action to investigate it?

18 A Right. I pulled the application and the approved permits
19 so I reviewed them. And the following week, Dan and Dawn
20 Hackney came by to visit the office to talk about their
21 project. I believe that was August 15th. We discussed
22 the project. And then they invited me to come and see for
23 myself their new building and they gave me a tour of the
24 first and second floor of the new structure.

25 Q And what did you observe when you visited their property?

1 A On the ground floor of the new structure there was a
2 garage, a (indiscernible) workshop, kitchen, guest kitchen
3 and another smaller garage on the first floor. On the
4 second floor there was a hallway with four hotel style
5 living units. Each with an enclosed bathroom.

6 Q And then did you make any observations as you were leaving
7 the property.

8 A As I was leaving there was a van full of people getting
9 out of the van going into the new structure.

10 Q Okay. And so, what did -- did you take any pictures on
11 the property?

12 A Not that day. But on 19th of August, I drove by and I
13 took three -- three pictures. And they're in here.

14 Q Okay. And they're -- they're in the exhibits you
15 submitted? Is that correct? The pictures --

16 A Yes.

17 Q -- you took that day?

18 A uh-huh (affirmative)

19 Q And is that Exhibit 6?

20 (Exhibit 6 marked for identification)

21 A Yes.

22 Q Okay. And I'm showing you the first picture of Exhibit 6.
23 What does that indicate?

24 A Well it shows the existing single-family structure with --
25 with an addition. A deck and then a deck with the next --

1 new structure with the addition.

2 Q Okay. And you took this picture on what date?

3 A 19th of August.

4 Q All right. And we do have a couple other pictures. What
5 does the second photo show?

6 A The second photo is further back, a different perspective
7 from the street showing the two structures side by side on
8 the lot.

9 Q And then what does the third photo show?

10 A It's the rear view of the new structure.

11 Q Okay. And so did you take any action after you visited
12 the property, took the photos, (indiscernible--cough) did
13 you have -- did you look in the planning records of your
14 department to see what was in there?

15 A Well, the only records that I saw were the approved
16 drawing, 24th, 2018, permit for a 20 by 42 garage, wood
17 shop, storage area. And the addendum, the January 9,
18 2019, addendum which extended -- the approved addendum
19 which extended the structural dimensions to 40 -- I
20 believe 42 by 64 foot.

21 Q And I'm just going to show you what's been marked as
22 Exhibits -- well, first of all, Exhibit 2. What is
23 Exhibit 2?

24 A That's the July 24, 2018, approved site plan permit to
25 construct a 20 by 42 foot wood shop, garage, storage shed.

1 Q Okay. And then Exhibit 3, I'm showing you, what does
2 Exhibit 3 show?

3 A Well Exhibit 3 shows the original authorized improvements
4 and then there's an addendum dated January 9, 2019, to
5 construct a 24 x 64 attached garage.

6 Q Okay. And then there was an application submitted
7 previously in July, 2008 [sic]. Correct?

8 A Yes.

9 Q And that was the --

10 A (indiscernible)

11 Q Did I say 2008? I meant 2018, sorry.

12 A Yes.

13 Q And what was the authorization on that?

14 A Well that -- the authorization for that was a 20 by 42
15 foot garage. That was the authorized -- the one and only
16 authorized approved.

17 Q So after you viewed your records and visited the Hackney
18 property, you took the photos, did you -- what did you do,
19 after you did all those things.

20 A Well, I -- with all the evidence before me, I determined
21 that the -- that June 7th complaint by their four
22 neighbors had merit and I proceeded to write a notice to
23 correct violations to the Hackneys.

24 Q Okay. And you prepared for the Planning Commission today
25 some proposed findings and what your findings were based

1 on the notice to correct that you indicated -- that you
2 initiated. Correct?
3 A uh-huh (affirmative)
4 Q And just going back through your findings, what did -- you
5 talk in there about the notice to correct, and I believe
6 your notice to correct is attached as an exhibit to the
7 materials. I believe it's Exhibit --
8 A The Notice to Correct is Number 7.
9 (Exhibit 7 marked for identification)
10 Q Seven. Okay. And can you tell us -- yes, Number 7. So,
11 what did you tell the Hackneys in your Notice to Correct
12 that you issued. And can you tell us what was the date
13 again?
14 A It was August 30, 2019.
15 Q Okay. And so you'd been out to inspect on August 15th?
16 Correct? You --
17 A I observed their property on August 15th.
18 Q Okay. And when did you start in your job as city planner?
19 A August 8th.
20 Q Okay. So, you've been there, at the City, since August
21 8th, and on August 30th you were able to issue a Notice to
22 Correct?
23 A Yes.
24 Q And so what were the two -- what were the -- what were
25 your -- the corrections for the violations that you

1 thought that the Hackneys had committed?

2 A Well the first one was non-compliance with authorized
3 improvements that were -- that were listed on the -- both
4 the July 24, 2018, site plan permit and the January 9,
5 2019, addendum. All that was on there was a garage, shop
6 on both the permit and the addendum, all there was -- was
7 stated was a garage for a shop and a storage area. And
8 that's the site plan permit is the only mechanism to
9 approve development. There is nothing else.
10 And so when I'm looking at that, you know, and at the
11 application it said mother-in-law unit, but that mother-
12 in-law unit was not on the application.

13 Q You mean it was not on the permit.

14 A Oh, yeah. It was not listed on the permit. And neither
15 was the second floor with transient lodging units. That
16 wasn't listed either. So, as a planner, there's only one
17 conclusion. And that -- I don't understand how anybody
18 says it was authorized, when it's not.
19 And, again, it's the permit that's posted. These permits
20 are posted on the construction site and whatever is on
21 that permit is the only development you can do. You can't
22 do anything else. And if anybody here at the City gave
23 verbal permission and said, yeah. Well, how does anybody
24 at the site know that, you know? It has to be on the
25 permit and in all my years of planning, that's the way

1 its' always been. It has to be on that one-page permit.
2 What's in the application is meaningless. It's what's on
3 that permit that's supposed to be posted.

4 Q And if someone has -- starts off with an original plan say
5 to build a garage and they want to modify that plan, they
6 have to apply for a whole new permit or get a
7 modification?

8 A Well, it depends. A minor modification can be listed or
9 typed on the existing permit. But if it's a major
10 modification, you're going to need a new permit. You've
11 got to fill out a new application.

12 Q Okay. And based on your familiarity with the Planning
13 Department records, there was never any authorization in
14 writing to these -- to the Hackney's to build anything
15 other than a garage. Is that correct?

16 A That's correct.

17 Q And what you've observed when you went out and visited on
18 August 15th was what? What did you see out there that was
19 the structure? It was not a garage, correct?

20 A Well, there were -- again, what I remember, was a garage,
21 a work shop or boiler room, a guest kitchen, and a smaller
22 garage. And went upstairs, and there's a hallway that
23 gave access to four finished and furnished hotel style
24 units with enclosed bathroom. Each had an enclosed
25 bathroom.

1 Q And so you concluded based on your observations and your
2 review of the record that they had violated Bethel
3 Municipal Code. Correct?

4 A Yes. Because you know I had heard they were B and B
5 units, bed and breakfast. And they're not -- they're not
6 a permitted use in a residential zone. I -- I have had
7 residential zoning code in front of me. And it's not
8 listed here as a permitted and principal use or a
9 conditional use.

10 Q Okay. So then you concluded that they had committed two
11 violations of the Bethel code?

12 A Yes.

13 Q Okay. And then after -- did you tell the Hackneys they
14 had the right to appeal your notice to correct?

15 A Yes. On the -- on my Notice to Correct Violations, I made
16 it out what the violations were, I mentioned their
17 corrections of violations, and -- and I mentioned a
18 compliance site plan permit application is required. And
19 I stated they have a right to appeal my determination,
20 this letter, within ten days, which they did. On the
21 tenth day they submitted the appeal.

22 Q Okay. And I want to just direct your attention to one of
23 your photos -- and I'm going back to June 6, you took a --
24 it looks like you presented an aerial photo, photo Number
25 4 of Exhibit 7, why did you put that picture in here.

1 A Well, to give another perspective. This is a Google Earth
2 and it happens to be 2019, recent. And it gives a
3 perspective of the neighborhood in relation to the Hackney
4 development.

5 Q Okay. And does this show a residential neighborhood?

6 A Yeah. It looks like a residential neighborhood.

7 Q Okay. And they are zoned residential. Correct?

8 A Yes.

9 Q And because their zoned residential, there can only be
10 certain types of structures in that neighborhood? Is that
11 correct?

12 A Yes. Code -- its residential code is very explicit --
13 explicit about permitted and principal uses. Accessory
14 units to those principal uses, or principal structures and
15 then there's another section about uses that need a
16 conditional use permit.

17 Q Okay. And so based on all that you know as a city planner
18 is that it's your conclusion that there were two
19 violations of the code that need to be addressed. Is that
20 correct?

21 A That's correct.

22 Q And what are you asking the Commission do today?

23 A Well, I'm ask -- I'm asking you to -- to agree -- well to
24 confirm that there's no merit to the appeal and to -- the
25 appeal should be dismissed. That's number --

1 Q And did you -

2 A That's number one.

3 Q Okay. Excuse me. Did you also -- I'm sorry to interrupt.

4 But --

5 A Oh.

6 Q -- did you also prepare a summary of the application
7 process and prepare some proposed findings for the
8 Commission? Today? Did you do a list -- show you a list
9 in your packet? It's called the City Planner Summary and
10 Findings?

11 UNIDENTIFIED MALE VOICE: Yes.

12 Q (indiscernible--background noise)

13 A Oh, yes.

14 Q Is that part of your exhibits as well. Correct?

15 A Yes.

16 Q And are you -- what are you asking the Commission to do
17 with regard to your findings?

18 A Well I'm asking that the appeal be dismissed. I'm asking
19 that the violations that I listed in my August 30
20 correction letter, non-compliance with authorized
21 improvements and non-compliance with the residential
22 zoning code, I'm asking that letter and those two non-
23 compliance be confirmed by the Planning Commission. And
24 the last one, I'm asking that the Hackneys come into
25 compliance with the Bethel municipal code by agreeing to

1 and implementing the corrective action plan that I sent
2 them on September 26th.

3 Q Thank you. I have no further questions.

4 CROSS EXAMINATION

5 BY MR. KARR

6 Q Thank you for being here, Mr. Meyer. I didn't catch the
7 date when you started as your second stint as city
8 planner. What was that date again?

9 A August 8, 2019.

10 Q Did you have any talks or discussions with Mr. and Mrs.
11 Hackney regarding their property -- regarding the property
12 before that?

13 A No.

14 Q When did you learn about the complaint made about the
15 property at 175 Alex Hatelly?

16 A It was during my first week of work. It was -- the
17 complaint was sitting on my desk.

18 Q Investing -- and in investigating this complaint, did you
19 ever ask the Hackneys about what had happened prior to you
20 getting the job as the city planner?

21 A No.

22 Q So you relied only on the written record.

23 A Yeah. I relied -- yeah, what was in front of me and it
24 did say -- that was quite a bit right there because I
25 didn't see the authorized improvement -- the only

1 authorized improvements were the garage and storage and
2 work shop.
3 Q So you started August 8, 2019 --
4 A uh-huh (affirmative)
5 Q And when was the first site plan permit issued?
6 A For this -- for this structure was July 24, 2018.
7 Q So that site plan was issued over a year prior to you
8 starting.
9 A Yes.
10 Q You never asked the Hackneys about what had happened?
11 A Well they came to the office and --
12 Q Previously (indiscernible--simultaneous speech) ask them
13 about that.
14 A Well, they got -- again, it's the permit, again, that
15 there's only one document that approves development. And
16 that's the site plan permit. What's behind that site plan
17 permit isn't posted at the job site. So, I had enough
18 right there.
19 Q That's your opinion. Correct?
20 A No. That's in the planning profession, the site plan
21 permit doesn't matter what people say verbally. What
22 matters is what's put -- what's put on that -- on the
23 permit itself. You know, back to when it's posted at the
24 site, the application isn't posted at the site. It's that
25 new sheet called the permit.

- 1 Q You're saying what people said doesn't matter. Is that
2 correct?
- 3 A Well not for -- no, not what's posted at the site.
- 4 Q Is that a no.
- 5 A I'm not going to say that. I believe that communications
6 always important.
- 7 Q Why didn't you ask the Hackneys.
- 8 A Why should I. Ask them what? The history of it? All I
9 saw was the complaint. That's all that was told me. I
10 don't have a crystal ball. I can't go back and
11 (indiscernible--voice lowered). All I -- all I have was
12 the -- the application and permits in front of me and the
13 complaint. They came into the office. They could have
14 talked about the past. And I don't believe they did.
- 15 Q Did you ever ask them about it?
- 16 A Well, how would I know to ask them?
- 17 Q A yes or no? Because you were hired over a year after the
18 site plan was issued.
- 19 A Yes.
- 20 Q So you -- you're (indiscernible--voice lowered) right?
21 And you went and looked at the property. Correct?
- 22 A Yes.
- 23 Q And did you ask to go or did they invite you?
- 24 A They invited me.
- 25 Q Did they try to avoid you or dissuade you from coming in

1 any way?

2 A No.

3 Q Did they restrict you in any way. Say, oh, you can't go

4 upstairs, you can't go here. Anything like that?

5 A No.

6 Q Gracious?

7 A I'm sorry?

8 Q Were they gracious?

9 A Very.

10 Q Welcoming?

11 A Yes.

12 Q Answered every question you asked?

13 A Yes.

14 Q Seem like they were trying to hide something?

15 A No.

16 Q Did you ever ask your predecessor, Ms. Jumper, about the

17 property at 175 Alex Hatelly?

18 A Yes.

19 Q When was that?

20 A I guess it would have been late August. Sometime in -- I

21 guess around late August.

22 Q I want to -- you have your Findings of Fact in front of

23 you. Is that correct? I can --

24 A Yes.

25 Q Want you to go to Page 5 of that, if you would.

1 A Okay. I'm here.

2 Q It says, the last paragraph, I think it's the last
3 paragraph, (indiscernible--background noise) my notes. It
4 says, I'll wait for everybody to get there. Your last
5 paragraph states, "as a fact, there is no merit to the
6 Hackneys' appeal. It should be dismissed." Is that a
7 fact --

8 A Yes.

9 Q -- or is that an opinion?

10 A It's a -- it's a fact because of --

11 Q (indiscernible--simultaneous speech)

12 Q -- because of the site -- of the approved site permit. The
13 permit of the addendum. There's nothing else on there
14 except the garage. So, yeah, it's fact.

15 Q I wish I was as sure of that as you are. So, a site plan
16 was issued over a year before you were there. You didn't
17 ask the Hackneys what went on, and yet you (indiscernible-
18 -voice lowered) an appeal as though you'd been there.
19 That's what I'm understanding it.

20 A Well, again, Jared, there -- all I need to see is the
21 approved permit. That is the only mechanism to approve a
22 project. There is nothing else that approves a project
23 anywhere that I've ever worked. Anywhere that I've
24 (indiscernible--voice lowered)
25 The site plan permit that's what conveys development. And

1 so, what happened previously, all I need to see is the --
2 the application and the approved permit. And that's all --
3 that's all that matters in a development.
4 Q I am glad that you think that's all you need.
5 A This is -- (indiscernible--simultaneous speech)
6 Q (indiscernible--background noise) I have no further
7 questions. I have no further questions.
8 A All right.
9 MS. PINKEL: I just have a few questions I'm going to ask.
10 MR. KARR: I do not get rebuttal.
11 MS. PINKEL: Pardon?
12 MR. KARR: I have not asked for rebuttal. There's no
13 rebuttal.
14 MS. PINKEL: Oh, yes. Okay. Okay.
15 CHAIR HANSON: That comes later.
16 MS. PINKEL: We're ready to call our next witness.
17 CHAIR HANSON: Okay. Thank you.
18 MS. PINKEL: Ms. Betsy Jumper.
19 CHAIR HANSON: Ms. Jumper, did you take the oath?
20 MS. JUMPER: I did.
21 CHAIR HANSON: Okay. Thank you.
22 MS. JUMPER: uh-huh (affirmative)
23 CHAIR HANSON: Please state your name and spell it.
24 MS. JUMPER: Betsy Jumper, B-E-T-S-Y, J-U-M-P-E-R.
25 CHAIR HANSON: Thank you. And did -- can you sign that

1 paper there --

2 MS. JUMPER: Oh, sure.

3 CHAIR HANSON: -- too, please? Thank you.

4 BETSY JUMPER

5 a witness called for examination by the Appellee, being first
6 duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. PINKEL:

9 Q Hi, Ms. Jumper. I just have a few questions for you.

10 A Okay.

11 Q So, can you state your full name for the record?

12 A Betsy Jumper.

13 Q And did you work for the City of Bethel for some time?

14 A Yes.

15 Q And can you tell us when you worked for the City of
16 Bethel.

17 A I started in the year 2000. You mean as a planner?

18 Q Well, okay, so you worked for the City of Bethel starting
19 in 2000?

20 A Yeah. And worked my way up and became the Planner in
21 2017.

22 Q And then you were the planner until when?

23 A Until 2019.

24 Q Okay. And when did you leave your position as City
25 Planner?

1 A In early June --
2 Q Of --
3 A -- 2019.
4 Q And what were your duties as the City Planner for Bethel.
5 A Site Plan Permits. Planning Commission meetings. Zoning,
6 code -- a little code enforcement.
7 Q Okay. That's fine.
8 A Yeah.
9 Q So, did -- Mr. Meyer had testified that he has a Masters
10 in Urban Planning. Do you have such a masters?
11 A No.
12 Q Okay. And what is your formal education?
13 A Just on the job training.
14 Q Do you have a college degree?
15 A No.
16 Q Okay. Have you taken planning classes?
17 A No.
18 Q Okay. So, are you familiar with the -- Dan and Dawn
19 Hackney in your capacity as the former City Planner?
20 A Yes. I'm familiar with Dan.
21 Q Okay. Did you have occasion to meet with him about a site
22 plan permit?
23 A Yes.
24 Q Okay. And I'm going to show you what's been marked in the
25 materials here as Exhibit 1. Can you tell us what Exhibit

1 1 is?

2 A Exhibit 1 is an application for a site plan permit -- for

3 a residential site plan permit?

4 Q Okay. And was -- was this application presented to you in

5 your capacity as City Planner for Bethel?

6 A Yes.

7 Q Okay. Do you remember approximately when that was?

8 A Well, that would have been in July, 2018.

9 Q Okay. And what did the application on Page 2 indicate, if

10 you can read the handwriting there.

11 A Sure. It says garage, storage shop, mother-in-law/outlaw,

12 20 by 42, no in-fill needed, existing in-fill, sand

13 bagged, and seeded with erosion control jute netting.

14 Q Okay. And, who's the applicant?

15 A Dan -- Daniel Hackney.

16 Q Okay. And so, is that typical that when people want to

17 get a site plan permit, they do an application?

18 A Correct.

19 Q And do -- do you always give people what they ask for on

20 the application?

21 A No.

22 Q Okay. And what was the actual authorized improvement for

23 Mr. Hackney.

24 A It was -- let's see, I think -- a site plan that was

25 issued --

1 Q Okay. I think that's Exhibit 2.
2 A Yes.
3 Q And what was the authorization --
4 A To construct a 20 by 14 shop, garage, storage shed.
5 Q Okay. Did you tell -- ever tell Mr. Hackney he could
6 construct a mother-in-law apartment?
7 A No.
8 Q Okay. And then on -- I'm going to show you what's Exhibit
9 3, and what is -- can you tell us what's included in
10 Exhibit 3 here?
11 A Sure. It's the original and then with an Addendum 1
12 that's dated January 1, 2019. And it's to construct a 24
13 x 64 attached garage.
14 Q Okay. And so, were -- are you familiar with that permit?
15 A Yes.
16 Q Okay. And did you ever have occasion to issue any other
17 permits for this property.
18 A No.
19 Q Okay. So, the only permission that Mr. Hackney had would
20 have been indicated in this -- the two site -- the site
21 plan permit from July and then the addendum from Aug --
22 January, 2019?
23 A Yes.
24 Q Did you -- so, did you ever give Mr. Hackney written
25 consent to modify the site permit that was amended in

1 January, 2019.

2 A No.

3 Q Okay. Now, did you ever receive complaints about the

4 Hackney construction at their, I think it's 175 Alex

5 Hately property.

6 A Yes.

7 Q And when did you receive complaints?

8 A I believe starting in 2018.

9 Q Okay. And were they -- who made the complaints?

10 A Neighbors.

11 Q Okay. And was it the same neighbor each time?

12 A Pretty much.

13 Q Okay. And did you -- what were the complaints about?

14 A A big septic tank was being installed. The stop sign got

15 moved and the in-fill looked like it was placed on the

16 road.

17 Q Okay. Did you have occasion to go out and look at the

18 property?

19 A I did in June of 2019.

20 Q Okay. And did you go out there by yourself or did someone

21 go with you?

22 A My assistant, Pauline Boratko, came with me.

23 Q Okay. And what did you observe in June, 2019, when you

24 went out to the property.

25 A My initial thought was that it was huge. And it looked

1 more than a shop, garage, storage shed to me.

2 Q And did you get a written complaint in June, 2019, from
3 any neighbors?

4 A Yes. I think there were four -- four neighbors that
5 signed off on the letter.

6 Q And I'm showing you what's been marked as Exhibit 5. Is
7 this the complaint that you got in -- on June 7 --

8 A Yes.

9 Q -- 2019?

10 A Yes.

11 Q Okay. And then did you do anything about that complaint
12 that you received on June 7th?

13 A No. Because I was let go on June 13th.

14 Q Okay. Did you -- what -- did you ever tell Mr. Hackney
15 that he could build a bed and breakfast or a hotel on his
16 property?

17 A No.

18 Q Okay. When you went out to see the property in June,
19 2019, what -- what was your reaction?

20 A I was shocked.

21 Q And why were you shocked?

22 A Because it was huge. That's my orig -- my initial
23 reaction when I saw the structure.

24 Q And you said -- just going back to Exhibit 5, which was
25 the complaint, what was the neighbors -- the gist of the

1 neighbors' complaint. Was it that it was huge or were
2 there some other complaints?

3 A That it's violating the zoning -- that's a residential
4 zone.

5 Q Okay.

6 A And -- yeah.

7 Q So, you never had a chance to investigate it.

8 A No. Never.

9 Q Okay. I have no further questions. Thank you. Mr. Karr
10 will ask you some questions. Thank you.

11 CROSS-EXAMINATION

12 BY MR. KARR:

13 Q Ms. Jumper, my name is Jared Karr. And I have a -- a few
14 questions for you. You stated that you went by the 175
15 Alex Hatley construction project. That you were shocked
16 because it was huge.

17 A uh-huh (affirmative)

18 Q Was that -- was that the first time you'd ever heard of
19 there being a second-story on the addition?

20 A No.

21 Q When was the first time?

22 A I'm not sure.

23 Q Was it 2003? Was it 2018?

24 A I'm not -- I don't remember.

25 Q Well, where was it -- the summer? June was in the summer.

1 Was there snow on the ground?

2 A No.

3 Q When was the first time you saw that structure with a

4 second-story?

5 A That would have been in June of this year.

6 Q June of this year was the first time you saw --

7 A I believe so, yes.

8 Q And I want to be absolutely clear in your testimony.

9 You're testifying that you never told Mr. Hackney that he

10 had approval to build a second-story to his addition.

11 A No. I don't believe so.

12 UNIDENTIFIED MALE VOICE: You lie.

13 Q You don't believe so? Or --

14 A Not that I recall.

15 Q You don't recall?

16 A I don't recall.

17 Q Could you have told him that it was okay to build a

18 second-story?

19 A I could have.

20 MS. PINKEL: I'm going to object on relevancy. The issue

21 is whether she gave written consent.

22 CHAIR HANSON: I agree.

23 UNIDENTIFIED MALE VOICE: I agree as well.

24 CHAIR HANSON: It isn't a question -- is what consent --

25 MR. KARR: I'm sorry, Ms. Hanson. I just need a ruling

1 whether I can continue this line of questioning or not.

2 CHAIR HANSON: I think not. And I just would like to say
3 one thing. If members of the audience can't contain themselves
4 during this, everybody's trying to focus and stay
5 concentrating. So if I hear people making noises and comments,
6 I'm going to ask you to leave. So, contain yourselves, please.
7 Go ahead, Mr. Karr.

8 MR. KARR RESUMES

9 Q Do you remember having a conversation with me in early
10 September of this year?

11 A Vaguely.

12 Q What did you tell me in that conversation?

13 MS. PINKEL: I'm going to object. This is a lawyer making
14 himself a witness.

15 MR. KARR: I'm asking about what she stated. I'm not
16 testifying anything. I asked a question about what she said.

17 CHAIR HANSON: Go ahead. Do you -- answer the question.

18 MR. KARR RESUMES:

19 A Yes (indiscernible--simultaneous speech) I remember.

20 Q Okay. And what did you say to me?

21 A What was the question that you asked me?

22 Q I can't tell you the question I asked you. I can only ask
23 you what was your response. Otherwise --

24 A I said that there's nothing in the code against a two-
25 story shop. That's what I said.

1 Q I have no further questions.

2 CHAIR HANSON: Thank you, Ms. Jumper. Do you have more
3 witnesses to call?

4 MS. PINKEL: I just have one more witness --

5 CHAIR HANSON: Okay.

6 MS. PINKEL: And that's Ms. Pauline Boratko.

7 CHAIR HANSON: Okay. Pauline, did you take the oath?

8 MS. BORATKO: Yes.

9 CHAIR HANSON: Thank you. So please, spell your name and
10 write it on that paper.

11 MS. BORATKO: My name is Pauline Boratko, P-A-U-L-I-N-E,
12 B-O-R-A-T-K-O.

13 CHAIR HANSON: And Pauline, be sure and speak up clearly
14 so everybody can hear you.

15 MS. BORATKO: Okay. Sorry.

16 CHAIR HANSON: We can hear you, but they can't.

17 MS. BORATKO: Oh, okay.

18 CHAIR HANSON: Thank you.

19 PAULINE BORATKO

20 a witness called for examination by the Appellee, being first
21 duly sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. PINKEL:

24 Q Pauline, can you tell us what your job title is?

25 A I'm currently the Planning Admin Assistant.

- 1 Q And do you work for the City of Bethel?
- 2 A Yes, I do.
- 3 Q And how long have you been the Planning Administrative
4 Assistant for the City of Bethel?
- 5 A Two years last month.
- 6 Q Okay. And so, do you currently work with Mr. Ted Meyer?
- 7 A Yes, I do.
- 8 Q And previously, did you work with Ms. Betsy Jumper?
- 9 A Yes.
- 10 Q Okay. And pursuant to your duties -- oh, can you tell us
11 a little bit about what your duties at the administrative
12 planning off --
- 13 A Well, I prepare agendas, packets, I help people with their
14 legal descriptions, like, you know, whatever the director
15 asks me to do, to type up something, just file, you know,
16 stamping, data --
- 17 Q So, are you in the office when people come in with the
18 residential site plan permit applications?
- 19 A Yes.
- 20 Q Okay. And I'm going to show you what's been marked as
21 Exhibit 1. Are you familiar with this residential site
22 plan permit application?
- 23 A Yes.
- 24 Q And who's application is it?
- 25 A It's Daniel and Dawn Hackney.

1 Q And were you in the office when Mr. Hackney came in with
2 his application?
3 A Yes.
4 Q Okay. And I'm going to show you the application on the
5 second page, he said intended improvements, garage,
6 storage, shop, mother-in-law/outlaw. Correct?
7 A Yes.
8 Q And do you ever have -- or have yourself, or Ms. Betsy
9 Jumper, have any conversation with him about that?
10 A Yes.
11 Q And what was the conversation about?
12 A We told him he cannot have two separate single-family
13 dwellings on the property. And it's residential -- in
14 residential zone.
15 Q Okay. And was it your understanding they live in a
16 residential zone.
17 A Yes.
18 Q Okay.
19 A because we check the zone, you know, as reference to see
20 what they were (indiscernible--voice lowered)
21 investigation on a property (indiscernible--voice lowered)
22 Q So on -- just going back to Exhibit 1, at the bottom --
23 it's -- at the bottom of that page, it says please do not
24 write below this line, to be filled out by Planning
25 Department staff. Correct?

- 1 A Correct.
- 2 Q And what does it say zoning is?
- 3 A Residential.
- 4 Q And is that your handwriting?
- 5 A Yes.
- 6 Q Okay. And then it says authorized improvements, what does
7 that say?
- 8 A Construct a 20 foot by 42 foot garage/shop.
- 9 Q Okay. And then are those your initials on the bottom?
- 10 A Yes.
- 11 Q And did you discuss that with Ms. Jumper at the time?
- 12 A Yes.
- 13 Q Okay.
- 14 A Ms. Jumper was (indiscernible--poor audio)
- 15 Q So, then did your office give Mr. Hackney a site plan
16 permit?
- 17 A Yes, we did.
- 18 Q And I'm showing you Exhibit 2, is that it?
- 19 A Yes.
- 20 Q Okay. And what does that site plan permit say that Mr.
21 Hackney could do on the property?
- 22 A Construct a 20 foot by 42 foot shop/garage/storage shed.
- 23 Q Okay. And then did Mr. Hackney come in a few months later
24 asking to build -- to make the garage bigger?
- 25 A Yes.

1 Q Okay. And I'm showing you Exhibit 3. What does that
2 indicate?

3 A It says to construct a 24 by 64 attached garage.

4 Q Thank you. And -- did the Planning Department ever give
5 the Hackney's permission to build a residential unit in
6 their structure.

7 A No.

8 Q And did you ever give them permission to build a bed and
9 breakfast in their structure?

10 A No.

11 Q Did you -- did you get complaints about the Hackney
12 property?

13 A Yes.

14 Q And what were the substance of those complaints?

15 A There were accusations of a second floor being built using
16 for a bed and breakfast purpose.

17 Q And do you remember when that complaint came in?

18 A I don't remember if it was after (indiscernible--cough) it
19 was after the second (indiscernible--voice lowered) second
20 permit (indiscernible--voice lowered)

21 Q And -- I'm sorry.

22 A I'm sorry. Of the first of January (indiscernible--voice
23 lowered)

24 Q So, sometime after January, 2019, you started to get
25 complaints.

1 A Yes.

2 Q Okay. And did you and Ms. Jumper go out to the property?

3 A Yes. We drove -- we drove by and we couldn't find
4 anything wrong at the time because it was just one,
5 single-story structure at the time.

6 Q And then did you get some complaints in the summer of
7 2019?

8 A Yes, we did.

9 Q And what was the substance of those complaints?

10 A That they were building a second-story and it's not on
11 their site plan permit and the usage -- the septic tank --
12 they (indiscernible) that they're going to be a bed and
13 breakfast.

14 Q Okay. I have no more questions. Thank you. And Mr. Karr
15 will ask you a few questions.

16 A Okay.

17 CROSS-EXAMINATION

18 BY MR. KARR:

19 Q Good evening, Ms. Boratko. Is it your job to tell people
20 when they're not in compliance with BMC?

21 A No.

22 Q Were you present during all of the conversations between
23 the Hackneys and Ms. Jumper.

24 A I believe so.

25 Q Well, if you weren't there, you wouldn't know, would you?

1 A I wouldn't know.

2 Q You stated that the first time or -- let me rephrase that.

3 What was the first that you observed a second-story being

4 built at 175 Alex Hately on the addition?

5 A I don't know the exact date. But it had to be sometime

6 before (indiscernible--voice lowered) Betsy Jumper.

7 Q How many times did you observe the property with the

8 second-story under construction?

9 A How many times I have observed it?

10 Q uh-huh (affirmative)

11 A I think about twice.

12 Q And this was before Ms. Jumper left?

13 A Yes.

14 Q And when did Ms. Jumper leave?

15 A Mid-June.

16 Q So, in mid-June, you and Ms. Jumper observed the property.

17 A Yes.

18 Q Second-story was being constructed --

19 A Yes.

20 Q And either way I'll say.

21 A I wouldn't know. I couldn't say anything. I can only

22 speak for (indiscernible--voice lowered)

23 Q You don't know when the first time the Hackneys got

24 notification that they couldn't do a second-story on their

25 addition?

1 A When -- can you please repeat your question again?

2 Q Do you know the first time the City notified the Hackneys
3 that they could not do a second-story on their addition.
4 On the addition at 175 Alex Hatelly.

5 A When we --

6 MS. PINKEL: I'm going to object because the evidence
7 shows that they were never given permission.

8 Q When did the City of Bethel -- I withdraw. When did the
9 City of Bethel send the notice of violations to the
10 Hackneys.

11 A Notice of Violations, I believe it was after Ted was
12 hired. I cannot give you a specific date when it
13 (indiscernible) that it was moved to the end of August.

14 Q I represent to you that it was August 30, 2019. Would you
15 have any reason to disbelieve that?

16 A No.

17 Q So, you and Ms. Jumper knew in mid-June about the second-
18 story, but the City didn't submit any formal notification
19 until the end of August. Is that correct?

20 A Correct.

21 Q Do you know why the City waited two and a half months?

22 A Because we didn't have a Planner at the time.

23 Q Okay.

24 A (indiscernible) correctly, the Planning Department.

25 Q Any department. Were you aware that Ms. Burley who was

1 doing some City Planner duties at the time, after Ms.
2 Jumper left the City.
3 MS. PINKEL: Objection. That mis-characterizes her role.
4 MR. KARR: Ms. Burley testified she was doing City Planner
5 duties after Ms. Jumper left.
6 MS. PINKEL: Well -- okay. I'll withdraw the objection.
7 MR. KARR CONTINUES:
8 A I wasn't --
9 MS. PINKEL: Her testimony speaks for itself.
10 A I wasn't aware of any actual duties. I know that we -- we
11 would go to Ms. Burley to ask her for guidance on how we
12 should go -- go over the -- the complaints for potential
13 violations of the code for the usage of what your -- what
14 someone's constructed.
15 Q I understand. You said we. But I'm talking about after
16 Ms. Jumper left, it was just you. Correct?
17 A Yes. (indiscernible) As a -- as the acting Planning
18 Director, I worked hands on closely with -- with
19 (indiscernible--voice lowered) I needed some sort of
20 guidance.
21 Q So you were acting City Planner after Ms. Jumper left?
22 A Yes.
23 Q Why didn't you send out notice of violations to the
24 Hackneys then?
25 A Because I was --

1 Q Why take all the way through June and July --

2 A Because I was not -- I don't have authority as an acting
3 to fulfill all the duties of a planner to (indiscernible--
4 voice lowered). I provided information. I wasn't
5 instructed to -- on everything that I did and didn't do, I
6 had to shadow everything and write everything down and let
7 Ms. Hulsey know on everything that I did.

8 Q Did you write down that you observed a second-story being
9 built at 175 Alex Hatley?

10 A No. (indiscernible) that.

11 Q That's not my question. I asked did you write it down?

12 A No, I didn't.

13 Q I have no further questions.

14 MS. PINKEL: That concludes the City's witnesses.

15 CHAIR HANSON: Okay. Thank you very much. Thank you,
16 Pauline.

17 MR. KARR: And Madame Chair, I think now would be a good
18 time for a break for everyone.

19 CHAIR HANSON: Sure. Just a little break. All right.
20 Let's -- let's give -- let's make it ten minutes.

21 (off record)

22 CHAIR HANSON: Now we're to the part where the interested
23 people from the public may comment. And unlike what I said
24 before that it needs to be only people that live in a 600 --
25 the radius of the -- around the property that's in question,

1 actually, any citizen of Bethel can speak.

2 So, how do we do this. How do we decide who goes first?

3 Well the list is on the table. And it also includes people

4 who've already spoken. So, let's just start in the first row.

5 Is there anybody in the first row that wants to be -- wants to

6 speak. Okay.

7 Lets' start the second row with you, John. I'm going down

8 the second row. Thank you. Please come forward. Did you take

9 the --

10 MS. BURRIS-COFSKY: (indiscernible--away from mic)

11 CHAIR HANSON: Okay. Well they lied. You were --

12 MS. BURRIS-COFSKY: (indiscernible--away from mic)

13 CHAIR HANSON: See, justice -- justice is being service.

14 Please state your name and spell it and you did take the oath.

15 Correct?

16 MS. BURRIS-COFSKY: Yes, I did, Your Honor.

17 CHAIR HANSON: Okay. Thank you.

18 MS. BURRIS-COFSKY: It's Jane Burris-Cofsky, J-A-N-E, B-U-

19 R-R-I-S - C-O-F-S-K-Y.

20 CHAIR HANSON: Okay. Thank you. I'm glad you spelled

21 that. And let me just remind everyone you have -- this is a

22 three minute time limit. Okay. And Charlie's going to set the

23 timer. And be sure and speak very loudly and/or into the

24 microphone.

25 MS. BURRIS-COFSKY: Okay. Thank you. We moved here in

1 1999. As potential buyers of property and also in various job
2 positions I've had. I have been in many homes in Bethel and
3 several in the Blackberry Subdivision. Almost every time I've
4 gone into a house, someone has been very open about having a
5 mother-in-law apartment or a bed and breakfast. I'm pretty
6 sure that there were no permits for these (indiscernible) in
7 this residential zone for having these businesses. Will you
8 now go after everyone who's a bed and breakfast or has renting
9 out a room to someone? The home we bought in 2006 in Hoffman
10 Sub, when we bought it, it was a residential home and yet there
11 was a washer and dryer hook-ups upstairs, there were phone
12 hook-ups in every room, and we were told that it would be a
13 perfect house to be used as a bed and breakfast. It was never
14 even wired to code in 1983, let alone when we bought it and it
15 had to be re-wired. But almost half the places we looked at as
16 potential buyers were -- we were told, this is the place you
17 could do a sub business out of. None of those places were
18 built with permits that said they could do that. We have
19 gotten permits to do different things on our property. No one
20 ever came out and measured anything. No one came out and
21 looked to see if what we did is what we said we were going to
22 do. So, that's my three minutes. Thank you.

23 CHAIR HANSON: Thank you very much.

24 MR. COFSKY: Hi. My name's Glen Cofsky, C-O-F-S-K-Y. I
25 live at 1430 Yugak (ph). I -- I met Dan and his wife about 17

1 and a half years ago in a sporting goods store in Anchorage. I
2 told him I lived in Bethel. Their eyes got big. They said
3 we'll be moving to Bethel. Well, little did I know that Dan
4 was a very good carpenter. Dan and I don't frequent each
5 other. We're not like real hard core friends or anything. We
6 just say hi in passing. So, there's no gain for me here.

7 I've been watching Dan work -- sorry, guys. I'm a little
8 bit nervous here. I've been watching Dan without him really
9 knowing over the years and seeing what he has accomplished with
10 his home, and I call it (indiscernible) type --

11 CHAIR HANSON: Yeah. No, it's Blueberry --

12 MR. COFSKY: Excuse me?

13 CHAIR HANSON: It's Blueberry Subdivision.

14 MR. COFSKY: It is -- it is Blueberry?

15 CHAIR HANSON: Yeah.

16 MR. COFSKY: Okay. Okay. So, I -- not only did I -- did
17 Dan do a very nice job on his house -- and him and his wife
18 fixed up the yard, and in return increased the value of all the
19 surrounding area. Not only on his house. But the other
20 surrounding properties as well. Since then, I've seen him buy
21 another home across the street in which he is living in now.
22 That house was not in very good condition. Dan brought it up
23 to condition from disarray to a very outstanding home. I
24 watched Dan put up another building behind his house. And --
25 sorry, like I said, I'm a little nervous here. And Dan

1 (indiscernible) which turns out to be an apartment, B and B,
2 garage, I really honestly don't know. Like I said, I don't
3 visit Dan very often. You do not -- you cannot sit here
4 tonight and tell me, Dan and his family do not deserve
5 something back for his efforts. A simple, B and B to generate
6 some income for his family. I personally would love to have
7 Dan and his family living in the Hoffman Subdivision to give
8 him -- to build nice homes around my home to increase the value
9 of my home without me having to do anything. Thank you.

10 CHAIR HANSON: Thank you very much, Glen. Glen, did you
11 sign that paper?

12 MR. COFSKY: Yes, I did.

13 CHAIR HANSON: Thank you. And moving forward
14 (indiscernible) have any comments? Patty? Anybody else on the
15 second row? All right. Let's go back. Janet, how about you?

16 MS. KAISER: Yes.

17 CHAIR HANSON: Did you take the oath?

18 MS. KAISER: I did.

19 CHAIR HANSON: All right. Thank you.

20 MS. KAISER: And I was afraid I agreed to be a witness.

21 CHAIR HANSON: And please, state your name and spell it.

22 MS. KAISER: My name is Janet Kaiser. Last name is
23 spelled, K-A-I-S-E-R. I got the letter. The appeal notice
24 because we live in the 600 foot radius for the action that's
25 under consideration tonight. And without knowing all the

1 details, and it was very informative to hear more about the
2 situation that's been going on, I would like to speak in favor
3 of the City's action on that property and against the appeal.

4 And the reason -- well, I think it's caused a lot of
5 hardship and problems for people in the neighborhood. Like,
6 without knowing the details, I heard people talking about it
7 and how upset it had made people. And I have -- I wanted to
8 say, I live at 600 Peekaton (ph). We have lived there 30
9 years. My husband, Ron, and I. We did a project at our place,
10 also. We made a fish hatchery over and remodeled it and turned
11 it into our home. And we have lived there 30 years and raised
12 two children there. And we are lucky that we live next door to
13 one of our children now and grandchildren. Blueberry is a
14 really nice place to live. It has a good quality of -- it's a
15 residential area. It promotes -- I think the City wants to
16 promote, like nice places for people to live. I think for
17 neighborhoods of actual quality in a community. And so I just
18 -- I can't believe that the City actually came through with
19 this action, and I want to support it because it seemed like
20 the project is very big. I heard Betsy say she thought it was
21 huge. And, you know, she was questioned about that. But as a
22 neighbor in that community, or that neighborhood, I think so
23 too. I thought it was so large and then it has caused
24 distress.

25 So, when my parents started Blueberry, they had

1 residential use in mind. And they had the property divided
2 that way. And it's been really amazing to see it stayed most
3 residential all these years.

4 And there this talk about mother-in-law apartments plan.
5 In 1983, the State of Alaska was financing a lot of homes and
6 they had allowed mother-in-law apartments in homes. And so a
7 number of the new homes that were built around 1983 out there
8 did include mother-in-law apartments. So, maybe there's ten of
9 them out there, maybe there's twelve of them out there. I'm
10 not sure. But, of course, you know, you take a good thing, and
11 this happened, people started pushing the limit on what a
12 mother-in-law apartment was. And then they were starting to
13 (indiscernible--cough) duplexes. So, the State of Alaska came
14 up with new rules for mother-in-law apartments that are very
15 defined. And they can only be so much stuff feet in a home and
16 they have to meet -- there's a single door going in and then it
17 separates. The State of Alaska has the definition of what a
18 mother-in-law apartment and it is in located within a
19 residential home.

20 So, it can be found on web site--that definition. So, if
21 that's a question about, you know, types of housing, I would,
22 you know, we can talk more about it or you can learn more about
23 that.

24 CHAIR HANSON: Jan, your time.

25 MS. KAISER: I didn't expect to be that long. So, thank

1 you.

2 CHAIR HANSON: Thank you very much. Did you sign --

3 MS. KAISER: I did.

4 CHAIR HANSON: Okay. Thank you. Todd? Are you next?
5 No? Stephanie? Stephanie, did you take the oath?

6 MS. BUTTE: I did.

7 CHAIR HANSON: Okay. State your name and spell it and
8 make sure your names on that list.

9 MS. BUTTE: Okay.

10 CHAIR HANSON: Please.

11 MS. BUTTE: Sure thing. My name is Stephanie Butte.
12 Stephanie, S-T-E-P-H-A-N-I-E, B-U-T-T-E.

13 CHAIR HANSON: (whisper) Speak up.

14 MS. BUTTE: Steve Murat is my father. But I am speaking
15 as a general citizen. In the fact that some of the things
16 presented in this hearing, you know, to just say or to try to
17 say that just because other people are also doing things that
18 are against code, this should be okay too, isn't right. Two
19 wrongs don't make a right. And if someone decided to take up
20 one of the empty lots at our house in Thunder (ph) Ridge,
21 another residential area, and decided to put up a hotel, I
22 believe my property value would go down. Because it's supposed
23 to be homes and not hotel traffic. (indiscernible--voice
24 lowered).

25 CHAIR HANSON: Thank you, Stephanie. Diane, I skipped

1 over you. Steve? Mike? Colleen, have you spoken? No? Is
2 that everyone? Thank you, folks. Appreciate your comments and
3 taking the time to come and share them with us.

4 We now move to the point where the Appellant can have a
5 rebuttal. Mr. Karr? I know you have something to say.

6 MR. KARR: I actually have a question, a rebuttal for
7 (indiscernible--away from mic)

8 CHAIR HANSON: I barely even know what the word rebuttal
9 is.

10 MR. KARR: I'll make it easy for you -- (indiscernible--
11 simultaneous speech)

12 CHAIR HANSON: Okay. Just additional comments. How's
13 that.

14 MR. KARR: (indiscernible--simultaneous speech)

15 CHAIR HANSON: Okay. All right. Thank you. Ms. --

16 MS. PINKEL: Well, I guess, since he didn't have anything
17 to say, I don't. But if I could just -- could I make a
18 concluding statement? Okay?

19 CHAIR HANSON: Well, yes.

20 MS. PINKEL: Is that okay?

21 CHAIR HANSON: uh-huh (affirmative)

22 MS. PINKEL: On behalf of the City of Bethel, Bethel is
23 really blessed with Mr. Meyer, who's here -- who's trying to
24 enforce your code. He takes his position very seriously, as
25 you can tell from his testimony. He also has the wonderful

1 assistance of Pauline Boratko, who has been a big support in
2 that office. And they're trying to do the right thing by the
3 community, to enforce the code to help Bethel be the best place
4 it can be. It's a very tough job. They probably have one of
5 the tougher jobs in the community. And they're doing an amazing
6 job. And maybe in the government, it's not always possible to
7 be perfect, but you do the best you can.

8 And this is an example here, this enforcement action,
9 where you have someone new on a job, and, you know, within two
10 weeks, he's -- or a week, he's out investigating and he's nice
11 to these -- to Mr. and Mrs. Hackney and respectful, tries to
12 work with them. Gives them a correction plan. Really does
13 everything he can. And they chose to appeal this, and that's
14 their right, and no one at the City bears any ill will for
15 that.

16 And -- but this is an example of where a city needs to
17 step forward and enforce it's code and make the city the best
18 place it can be. I just want to quote from the case that I
19 talked to you earlier about. Jackson vs. Kenai Peninsula, it's
20 a 1987 case from the Alaska Supreme Court, but Justice Moore
21 talks about a similar situation with Kenai involving zoning.
22 And he says, "the purpose of zoning is to protect the public
23 interest. And zoning regulations are drawn by representation
24 of the public will, pursuant to the political process." And
25 he's talking about the cities, and the towns, and the

1 municipalities in Alaska. You develop these codes. And so
2 that's part of the political will of -- we're in a democracy.
3 So, you have these codes and a particular officer or individual
4 city representative lacks the authority to waive the public's
5 right to enforce its ordinance. So the right to enforce an
6 ordinance, it's the public's right. Occasionally, you may have
7 a city official that doesn't do the best job that you might
8 want them to do. Or maybe they do. But the point is that this
9 is a right of the public. And so, you can't say, oh, well,
10 you've got that Cranberry Acres B and B, then you've got to let
11 this other property owner build a B and B or hotel in a
12 residential neighbor -- that's not the purpose these codes.

13 And we're not a perfect society. We're not a perfect
14 democracy. But this is an example of a democracy in action and
15 you have been fortunate here in Bethel. You've got some very
16 dedicated city employees who are trying to do the best they
17 can. And I think what we've shown here tonight is they did.
18 And, we're asking, on behalf of the City of Bethel, that you
19 confirm Mr. Ted Meyers' findings as to what happened here and
20 that you deny the Hackneys' appeal.

21 CHAIR HANSON: Thank you. Mr. Karr, you have the
22 opportunity for the finalist, final statement.

23 MR. KARR: I will take this opportunity. First off, if I
24 was Dan, I would be a little upset with pictures of my property
25 being plastered everywhere and he's not able to -- I would

1 think, I would be like why couldn't y'all wait to take pictures
2 until my project was done and it looks all nice.

3 That aside, what is a citizen to do, if it can't trust
4 it's government. It rules so much of our life. Pay taxes when
5 they tell you to. You have to listen to them if you want to
6 open a business. If you want to pay sales tax. If you want to
7 build something or put a load of dirt on my property. I have to
8 go to the government. They tell me I can do something, they
9 shouldn't later come back and say, you know what, you couldn't
10 do that. You've got to tear it down. We're going to fine you.
11 We're going to put you on blast in front of the entire city.
12 That's not right. I know I can't testify as to my and Ms.
13 Jumper's interaction, well I won't. Because I know Ms. Pinkel
14 would object like crazy. And that's unfortunate for you, as a
15 finder of fact.

16 That means never get a single action, a single thing that
17 they want to do. They contacted Mr. Meyer, the very next day,
18 he was inspecting their house. They didn't hide it. They
19 didn't say, how about next week. They said, come on in. We
20 are so proud of what we've done. They wanted to show it off.
21 That confidence comes from your government telling you, go
22 ahead, you do it. And they did it. If they were ashamed,
23 they're trying to hide something, would you ever invite the
24 city planner to inspect. That's lunacy. That's beyond belief.
25 You don't see those facts.

1 We ask that this appeal go forward. It shall reverse the
2 findings of Mr. Meyer. Let the Hackneys do what the City told
3 them they could. Thank you.

4 CHAIR HANSON: Thank you, Mr. Karr. Now we will provide
5 the Planning Commissioners an opportunity to ask questions of
6 the parties and the public that provided public comment under
7 oath.

8 Are there any questions from the Commissioners?

9 UNIDENTIFIED MALE VOICE: How are we going to do this? Are
10 we -- we just going call people out that spoke? Or --

11 CHAIR HANSON: uh-huh (affirmative)

12 UNIDENTIFIED MALE VOICE: (indiscernible--voice lowered) I
13 guess, one of my questions is to -- so, Dan's not answering
14 questions, Dawn is because she spoke? Is that --

15 CHAIR HANSON: Yes.

16 UNIDENTIFIED MALE VOICE: So, do you guys considered what
17 you guys built a mother-in-law apartment? Is that --

18 MRS. HACKNEY: After it extended, we had it connected
19 (indiscernible--away from mic)

20 UNIDENTIFIED MALE VOICE: So you consider what you built a
21 duplex?

22 MRS. HACKNEY: Well, we got permission from Mr. Meyer at
23 one point to do it --

24 CHAIR HANSON: Excuse me. Excuse me, Ms. Hackney, can you
25 come -- I just got a text from Lori Strickler. She told me.

1 MRS. HACKNEY: I'm sorry.

2 CHAIR HANSON: That's all right.

3 MRS. HACKNEY: No, after education, I consider it a
4 duplex. And we talked to him about it. And he had me actually
5 sign, I believe you have the paper, the (indiscernible) and
6 then the next day, Mr. Meyer came back and said, no, I don't
7 think so. And at that point, I was frustrated. I just would
8 like to be told what I can and can't do. From the beginning. I
9 would not be here. They are meant to be connected. That is a
10 thing in our neighborhood. We were just asked to stop. So we
11 did. We've not gotten a red tag. We have not -- a picture of
12 one where it's connected. The second permit. It's never been
13 shown here, but I (indiscernible) It has the appraiser from
14 our property. I believe I would like the City to reconsider.
15 I know the code enforcement was denied.

16 I don't want anyone else in this situation. Really ask
17 that that really be looked into. Especially if some people are
18 told yes, and others are told no because of the same year. How
19 are people supposed to know the rules. It's hard to look up,
20 which is why we went to the City and counted on it. And when I
21 look at my site plan, it's says in bold, printed letters, as
22 per application. All right. It's not (indiscernible) That's
23 how I take it. So you go back to the original application.

24 I have -- I can change and modify. I would like my
25 neighbors happy. We had talked to a few. We didn't know there

1 was a problem. I would like -- it would have been nice for
2 them to talk to us then.

3 CHAIR HANSON: Do you have any further questions for Ms.
4 Hackney?

5 UNIDENTIFIED MALE VOICE: I guess --

6 MRS. HACKNEY: When it -- I guess (indiscernible--voice
7 lowered) extended it, and we have the misfortune of switch of
8 staff and the rules changing in the middle of our project. Is
9 basically where we're at.

10 UNIDENTIFIED MALE VOICE: And so, I mean, when you read
11 your site plan permit, it's very different from what was build.

12 MRS. HACKNEY: And the addendum, and you're right.

13 UNIDENTIFIED MALE VOICE: And so, when you guys went in --

14 MRS. HACKNEY: Where it was connected and the second one
15 that was permitted (indiscernible--away from mic)

16 UNIDENTIFIED MALE VOICE: Yeah. I had -- I had --

17 MRS. HACKNEY: Okay.

18 CHAIR HANSON: We've got that.

19 MRS. HACKNEY: And he initialed it, and he told me to
20 initial it. I did. But he just did the picture and said okay.
21 And then that's when I decided, you know what, I can't handle
22 the rules changing. I need an attorney.

23 UNIDENTIFIED MALE VOICE: Yeah. So, that's why we're
24 here.

25 MRS. HACKNEY: That's why we're --because they kept

1 changing. The rules just kept changing. One day what was
2 okay, is not okay the next. And he also did that, and that's
3 what I'm like, I don't know what else to do.

4 UNIDENTIFIED MALE VOICE: Okay. Anybody else have
5 questions --

6 CHAIR HANSON: Anybody else have questions for Ms.
7 Hackney?

8 UNIDENTIFIED FEMALE VOICE: yeah, I have a question real
9 quick. So is there anything in your application to imply that
10 a second-story would be built?

11 MRS. HACKNEY: You know what, that is where we kept going
12 back with Mrs. Jumper. She still here? Across the street.
13 Because we did it the same thing across the street. And that's
14 how that keeps coming in.

15 UNIDENTIFIED FEMALE VOICE: But it wasn't in the
16 application.

17 MRS. HACKNEY: It was always talked about verbally. And I
18 have -- have some pictures in that the second-story was going
19 on earlier that summer. If you need to see those, when they
20 drove by, you know, (indiscernible--background noise), I can
21 get those.

22 I even have a letter from -- they could not mail the site
23 permit -- permit to us. That they mailed it to -- and it was a
24 letter saying it was always (indiscernible--voice lowered).

25 UNIDENTIFIED FEMALE VOICE: Sorry. Who's the letter from?

1 MRS. HACKNEY: The planning committee. I think it has
2 Pauline's name on it.

3 UNIDENTIFIED FEMALE VOICE: But in these site plan
4 permits, nothing's ever stated that it would be a two-story.

5 MRS. HACKNEY: It was always talked about. Always.

6 UNIDENTIFIED FEMALE VOICE: Talked about, but not written
7 about?

8 MRS. HACKNEY: Correct.

9 UNIDENTIFIED FEMALE VOICE: Okay. Thank you.

10 CHAIR HANSON: Shadi -- question now?

11 MR. RABI: Just going back to what you noted there, were
12 you -- so that I understand clearly. When you say that you
13 went in and Mr. Meyer said okay --

14 MRS. HACKNEY: We never did this with Mr. Meyer. It was -
15 - it was built pretty much, as you see by the pictures he took.

16 MR. RABI: Right. I just heard that you got approval for
17 -- (indiscernible--simultaneous speech)

18 MRS. HACKNEY: Oh. He said he believes -- he was looking
19 up rules. They have to be connected. And when I initialed it
20 on what he did, he was saying, okay, I think you qualify. And
21 we can call it a duplex. And then after he came out and --
22 later and Dan went -- that was the day after he came and did
23 the inspection of everything, and then he said no. Because we
24 could make modifications to do that. And what he's calling a
25 kitchen, if you guys need to come see, it has a sink in it. It

1 had a table. It's not even done because we stopped.

2 CHAIR HANSON: I have a question. I see what was
3 requested was a shop and mother-in-law apartment, and then when
4 you got the site plan permit and the mother-in-law apartment
5 wasn't on there, you noticed it, I would assume the first time?
6 That it said -- your first, your initial site plan --

7 MRS. HACKNEY: We told her, but we were going to do
8 something different. And we didn't have the plans yet.

9 CHAIR HANSON: Okay. So, even though you had asked for --
10 said you wanted to build a shop and a garage and mother-in law
11 apartment, then verbally you changed your mind and so you were
12 okay that it didn't say that --

13 MRS. HACKNEY: (indiscernible--simultaneous speech) and we
14 would get the plans later.

15 CHAIR HANSON: And when you updated the site plan permit -
16 -

17 MRS. HACKNEY: And the drawings on the back still, it's --

18 CHAIR HANSON: Right. But you didn't notice that the
19 addendum didn't say anything about four apartments?

20 MRS. HACKNEY: Well, no because in bold it says as per
21 site plan application on file.

22 CHAIR HANSON: Where does it say that?

23 UNIDENTIFIED MALE VOICE: Number 3, per site plan permit
24 (indiscernible--away from mic)

25 CHAIR HANSON: Am I looking at the wrong thing?

1 UNIDENTIFIED MALE VOICE: (indiscernible--away from mic)

2 per site plan --

3 UNIDENTIFIED FEMALE VOICE: In bold (indiscernible--

4 background noise)

5 CHAIR HANSON: Per site plan permit --

6 UNIDENTIFIED FEMALE VOICE: Application (indiscernible--

7 cough)

8 CHAIR HANSON: Right. But below that, there's nothing

9 about apartments. That's -- I don't -- it seems like if you

10 just looked at the Bethel Municipal Code, it says right there

11 what could be -- what's allowable in a residential area.

12 MRS. HACKNEY: Since I have been so involved in the bed

13 and breakfast in this area, and the same person that was doing

14 it alongside with me that was also approved. But you don't

15 want to talk about that case, I can't bring it up. So, I --

16 I'm like, so, do I have to be a man, since I know his case was

17 approved and mine wasn't? Same year, same time frame, only

18 months ahead of mine? Same -- under same stipulations. How

19 are you supposed know the rules. If I was told it was okay.

20 Everyone else is doing it around me. But I'm not.

21 CHAIR HANSON: uh-huh (affirmative)

22 MRS. HACKNEY: What are the rules, then?

23 CHAIR HANSON: In this packet is the code. It says right

24 -- it doesn't say anything for apartment, for a four unit

25 apartment building on the same site as a single-family home.

1 MRS. HACKNEY: And I didn't look at it as an apartment.

2 So --

3 CHAIR HANSON: Oh. All right. Thank you. That's all my
4 question. Mr. Bradbury?

5 MR. BRADBURY: Just the -- just for clarification on first
6 site plan permit, I mean, all of these -- the things that are
7 selected here are per site plan application on file. Just
8 because it says per, doesn't mean that you go back to the site
9 plan application. It just means that these come about as a
10 result of the site plan application. I would think.

11 CHAIR HANSON: Maybe. Yeah.

12 MR. BRADBURY: (indiscernible--simultaneous speech)

13 CHAIR HANSON: But this is why we're asking questions.
14 Not of each other. But --

15 MR. BRADBURY: Oh, I'm sorry.

16 CHAIR HANSON: That's -- that's deliberation part.

17 UNIDENTIFIED MALE VOICE: Perhaps we should ask Ted that
18 question.

19 CHAIR HANSON: Okay. That's a good question. Ask Mr.
20 Meyer a question.

21 MR. BRADBURY: Yeah. For clarification, that would be --

22 MR. MEYER: Ted Meyer.

23 MR. BRADBURY: Mr. Meyer, with each of these, it does say
24 per site plan application. Is my question -- or maybe my
25 thought on it was that -- because I think it should be on every

1 site plan, looks like that you do have the application on file,
2 but these authorized and mandated -- mandatory improvements
3 come about -- is that correct, I guess is what I'm -- am I
4 correct in making that assumption, that these are per the site
5 plan application. It doesn't mean, go back to the site plan
6 and take that instead of these items. In other words, things
7 that are approved are here, but just because it's got "per site
8 plan application" does not mean that you go back to the
9 application. See everything that's on the application is
10 approved. We're saying these three things are approved, per
11 the application. Am I correct in making that assumption?

12 MR. MEYER: Approved per the application -- well, yeah,
13 the 20 by 42 shop/garage/storage shed is on the application.

14 MR. BRADBURY: Right. So, my -- what I'm saying, it seems
15 to me that these -- just because it says, "per site -- per site
16 plan permit application", doesn't mean I go back and read
17 what's on that application. See everything's on the
18 application. Because you can make anything on application and
19 come forward and say, well this is all I approve.

20 MR. MEYER: That's correct. And on any correct -- on any
21 construction site, this -- it's always a one-sheet document.
22 There is nothing -- there's no -- never an application attached
23 to the permit on-site. I --

24 MR. BRADBURY: Question. Question. What I was hearing,
25 so I'm -- I want clarification on this. Just because it says

1 "per site plan application on file" doesn't mean that
2 everything in the application is approved.

3 MR. MEYER: No.

4 MR. BRADBURY: It says these three items were approved,
5 per the site plan application.

6 MR. MEYER: Yes. That's correct.

7 CHAIR HANSON: Does anybody have any -- since Ted's there,
8 does anybody have any questions for Ted? Thank you, Ted.

9 Any other questions on the part of the Commissioners to
10 anybody that's here? Well, I think we're ready to move into
11 the -- oh, my gosh, I've lost my notes.

12 UNIDENTIFIED MALE VOICE: (indiscernible--background noise)

13 CHAIR HANSON: That's not the right note. We now move to
14 the -- to -- what the heck.

15 UNIDENTIFIED MALE VOICE: Now we're down to the part where
16 --

17 CHAIR HANSON: I'm looking for the script they gave me
18 that somehow got lost in this pile of papers. But I know what
19 we do. Oh, here it is. Page 5.

20 The Commissioners will now deliberate the evidence
21 presented during the hearing to determine the Commissions'
22 findings and conclusions. Conclusions are the issues in the
23 matter and the findings are the facts that support the
24 conclusions. The goal of the Commission is to determine if the
25 findings presented in the hearing support a denial or granting

1 of the appeal. When a determination is established, a member
2 shall make a motion to deny or grant the appeal. The motion
3 shall include a statement of findings and conclusions based on
4 the evidence presented. So, Commissioners, what are your
5 thoughts?

6 COMMISSIONER CAMPBELL: Well, I tell you, when I looked
7 through this packet that we got, it seemed very clear to me
8 that the Hackney's had their anticipated plans. They had
9 bought licenses and permits and -- they've gotten a lot of
10 their paperwork well in advance of this. In other words, they
11 had been planning to do something along these lines for a
12 while. What isn't clear to me is whether or not their -- what
13 they put forward as being very clear in their eyes as to what
14 the plans were and they had talked about it with everybody and
15 everyone agreed, but it was never on paper. So, it's not
16 certainly -- not clear to me that it was clear to everyone in
17 the Planning Department that he was going to go ahead and build
18 this large structure with four bedrooms in it.

19 I -- you know, and from hearing the testimony from the
20 people from the Planning Department, previous person, as well
21 as the assistant there, it just doesn't seem like -- they were
22 totally shocked that the building that ended up being there was
23 there in the condition it was in. And so I don't believe that,
24 in anyone's part on the planning office that they anticipated
25 that this was going to be built in this manner.

1 So, I just think that the Hackneys had their ideas of how
2 it was going to go. And even though the mother-in-law
3 apartment was crossed off, that their -- their anticipation of
4 what they believe was the rules was not what the Planning
5 Department believed were the rules. And it's unfortunate, but
6 I don't believe -- you know, he's an experienced builder. And
7 it kind of surprised me that he wasn't one of the people that
8 was up talking. But I think that's by design. That they
9 didn't want him talking because it was going to shine badly
10 that he built a building that did not conform with the site
11 plan permit.

12 And I -- I just don't see how you can take that site plan
13 permit and turn it into the building that they ended up with
14 and feel like it was straightforward all the way and that they
15 had permission to do so. And it's very clear that the
16 municipal code says that you can't have these things. And just
17 because other people do have these -- you know, they have these
18 bed and breakfast that are outside of what the municipal code
19 says they are, that doesn't really give them license to build.
20 So -- anyway, that's what I have to say.

21 COMMISSIONER WASIERSKI: I guess I kind of agree with what
22 Scott said. I mean, this isn't a fun process at all. They
23 invested a lot of money. But everything in front of us that is
24 -- would -- I mean, we have two people saying different things.
25 Mr. Hackney hasn't said anything. So, we have to go hearsay

1 through the wife. And, but, in the end, we just have to go with
2 what's on record -- I mean, I'm in the construction business.
3 It's always back to writing. I mean, that's just how it is.

4 So, we go off what's in writing and what's in writing is
5 not what was built. I mean, I think it's kind of black and
6 white. And -- kind of -- it's rough. But I think it's pretty
7 clear cut that they built something that was not permitted.
8 And it's not permitted by the BMC code and it's not permitted
9 in the permit. So, that's basically my take on it.

10 CHAIR HANSON: Mr. Bradbury?

11 COMMISSIONER BRADBURY: And I think, regardless of how I
12 would feel one way or another on this, we're left with what we
13 have here. We're left with the code. And we're left with the
14 steps that were taken. And what it says -- in this case what
15 the site plan permit says. Not the application, the permit.

16 And so, there's no where that I can find in the site plan
17 permit that there's any indication of the kind of building
18 that's been built. This -- I don't find anywhere that -- in
19 any event, a mother-in-law apartment is not a four bedroom B
20 and B. Even if that was approved, I didn't see that.

21 CHAIR HANSON: Shadi?

22 COMMISSIONER RABI: Yeah. I agree with Scott, Alex, and
23 Lorin. I think it's a very unfortunate circumstance, and all
24 we could look at is what we have in front of us. And it clearly
25 states as Ted was saying, construct a 24 by 64 attached garage.

1 And for me that's -- that's not what was built, unfortunately.
2 (indiscernible--background noise) would be consistent within
3 the (indiscernible--background noise).

4 CHAIR HANSON: I agree. This is an unfortunate situation.
5 I'm sorry that the City did not move forward with -- on the
6 complaints earlier. But the city administration was in, let's
7 say, somewhat of disarray. As was the Planning Department in
8 the most critical months for this project.

9 I feel like it's -- a lot of times, often, we make
10 assumptions about things, such as thinking, well, there's an
11 extra apartment down in that house, and those people over there
12 have -- are doing it, so even though it didn't get put on my
13 site plan permit, surely, everybody must understand that it's
14 okay and I'll just go ahead and do it anyway. And I think it's
15 -- that was just -- that was poor judgment. If I got a site
16 plan permit back that did not reflect what I had applied for, I
17 would ask and say well, how come it doesn't -- where's my --
18 where's the things that I put on my application. Instead of
19 just assuming, oh, it's all right.

20 We're trying to be more aware and -- as a Planning
21 Commission, we have talked about the need for the City of
22 Bethel to start enforcing the codes because people are going
23 out and doing whatever they feel like they can do.

24 And in the Blueberry Subdivision, it's very residential.
25 There are lots of kids playing in the streets. And having a

1 commercial enterprise in the middle of it, does not benefit the
2 other families. And the extra traffic and all of that. I feel
3 like the right thing to do is to deny the appeal. Any other
4 comments. Haley, you have anything?

5 COMMISSIONER HANSON: Yeah. I just want to say, too, you
6 know Bethel is a pretty informal town. And people say things
7 and people think things that aren't exactly approved. But I do
8 strongly believe in the strength in written approval. And
9 there was, you know, something brought up about why a code
10 violation wasn't issued. And it's -- it's not about that
11 because we didn't even have a planner, we didn't have proper
12 code enforcement. You know CSOs (ph) try to handle some of
13 that.

14 But the issue was really getting written consent. And the
15 answer is no. And when you start wavering on that or saying,
16 well they told me this, they told me that. If we can't rely on
17 written consent or something to back that up, I think we're in
18 really dangerous waters. And so I think if we're ever going to
19 try and be better, you know, as a City or as a government or as
20 a town, I think we have to become reliant on that and use that
21 to back up what we're saying.

22 o, I didn't see anything to tell me otherwise in there
23 about the two-story plans or putting in a bed and breakfast or
24 a hotel. And so, I'd have to believe that we have to deny this
25 appeal. Thanks.

1 CHAIR HANSON: John, you're the one we haven't heard from.

2 Anything to say?

3 COMMISSIONER GUINN: No.

4 CHAIR HANSON: Is there further discussion or are we ready
5 for a motion?

6 UNIDENTIFIED MALE VOICE: We're ready.

7 CHAIR HANSON: Scott, you want to make a motion?

8 COMMISSIONER CAMPBELL: I move that we deny the appeal
9 before us today.

10 COMMISSIONER WASIERSKI: Second.

11 CHAIR HANSON: Okay. It's been moved and seconded to deny
12 the appeal. Does that mean, I'll go back to you Scott, that
13 you want to confirm the findings and conclusions of the
14 Planning Department?

15 COMMISSIONER CAMPBELL: yes.

16 CHAIR HANSON: Okay. Is that good with you Alex?

17 COMMISSIONER WASIERSKI: yes.

18 CHAIR HANSON: Okay. So, we've moved to deny the appeal
19 based on the finding and conclusions as written by the Planning
20 Department. Is there further discussion? All those in favor
21 say Aye.

22 COMMISSIONERS: Aye.

23 CHAIR HANSON: All those opposed? It's unanimous.

24 I want to say to all the people that came in tonight to
25 help us make this decision, you really did help us. And I

1 appreciate your civic mindedness. Or maybe just your -- you
2 didn't have anything else to do. But it was very interesting,
3 and it was very difficult to listen to this. But thanks for
4 coming in and helping us along the way.

5 Now returning to our Agenda, wherever it is. I believe
6 it's time for the Planning Director's -- do you have a further
7 report for us, Ted?

8 MR. MEYER: Do you want to hear it?

9 CHAIR HANSON: You gave it to us in writing. Do you have
10 anything you want to add?

11 MR. MEYER: (indiscernible--away from mic)

12 CHAIR HANSON: Yeah, your paperwork's about the same shape
13 as mine.

14 MR. MEYER: If anyone has a question?

15 CHAIR HANSON: Any questions for Ted on his Planner's
16 Report.

17 COMMISSIONER CAMPBELL: Not on the report. Is it
18 appropriate to ask him a question outside of his planning
19 report?

20 CHAIR HANSON: I don't know. It sounds kind of scary.

21 COMMISSIONER CAMPBELL: No. I was thinking about what we
22 just went through tonight. And I was wondering if there
23 wouldn't be a way to help avoid some of that by perhaps
24 requiring a complete set of drawings to go with that site plan
25 application. And then there wouldn't be a surprise as to what

1 ended up on that lot.

2 MR. MEYER: Well, we already do ask for scaled drawings.
3 Drawings to scale.

4 COMMISSIONER CAMPBELL: (indiscernible--background noise)

5 MR. MEYER: When they don't come in to scale, and we -- I
6 mean, since I've been here, we send it back. Especially for
7 new construction. It has to be drawn to scale. And now, what
8 makes it even -- that even more important is you have the Army
9 Corps of Engineers is coming up in here January 9th to give a
10 presentation. And they're going to -- there's going to be a
11 section of Army Corps information data to be filled out. They
12 want -- they want to know any new construction that's been --
13 tundra that's never been disturbed before. It's got to go
14 through them. And -- but they want to have statements on
15 there. So, but -- that they're involved in -- in the process.
16 So, that's what we're going to do -- they're going to come in
17 January.

18 But just getting back to emphasize that yeah, even for
19 fill, you need scaled drawings. (indiscernible--background
20 noise) scaled drawings as well. So, we're going back to that.
21 And the drawings you saw --

22 COMMISSIONER CAMPBELL: But I'm not talking about just the
23 overhead site plan drawing that they have to do. I'm talking
24 about actual stick building because your two-story building
25 with the rooms that are inside. The whole complete drawing

1 package.

2 MR. MEYER: Well --

3 COMMISSIONER CAMPBELL: Is that not something that would
4 help avoid the majority of this type of a situation.

5 MR. MEYER: We don't have a building code here. So, in
6 other words, what's inside -- use is important, but the actual
7 construction inside, we don't necessarily deal with.

8 COMMISSIONER CAMPBELL: uh-huh (affirmative)

9 MR. MEYER: And so, we're interested in the exterior foot
10 print and the use of the property. The very first thing that
11 we -- the site plan permit application (indiscernible) is check
12 the zoning.

13 COMMISSIONER CAMPBELL: Okay.

14 MR. MEYER: And it's fine. And if it's not, I've told
15 people, applicants, this is a -- it goes against the zoning, we
16 can't consider this.

17 COMMISSIONER CAMPBELL: Right.

18 MR. MEYER: It's not its own property. So, I guess --
19 yeah. So, as far as drawings, did show drawings on the inside,
20 that would be something that we could ask for without having a
21 building code here and enforcing a building code.

22 COMMISSIONER CAMPBELL: Okay. And then I have one last
23 question.

24 CHAIR HANSON: Scott, do you have your microphone on?
25 Lori is -- Lori is scolding us.

1 COMMISSIONER CAMPBELL: I have one last question. I come
2 from Tacoma, Washington, originally. And down there they have
3 a code that does not allow you to build a garage structure
4 that's larger than your residence on residential property. Is
5 that something that we have in our codes here? Or is that
6 something we should, perhaps --

7 MR. MEYER: Well, the -- I might have something to say
8 about that. But you know there was already a principal use on
9 the property that was a single-family house. And in the
10 residential code says well an accessory unit. It defines
11 accessory unit and it's a building that's incidental to that
12 house. Normally that means a garage.

13 And yeah, maybe we should strengthen the code there to
14 make it more -- make it more informative to the -- to the
15 applicant. But yeah, that's -- I never, when I saw that
16 building, I didn't say or think, whoa, you know. But that was
17 -- it was amazing. It went -- just went too far.

18 COMMISSIONER CAMPBELL: Okay.

19 MS. PINKEL: Can we just -- say something? We don't want
20 you getting into the case because the issues that were -- just
21 came up in the hearing --

22 MR. MEYER: Okay.

23 CHAIR HANSON: Okay.

24 MS. PINKEL: (indiscernible--away from mic)

25 CHAIR HANSON: Thank you, Mary.

1 COMMISSIONER CAMPBELL: That was the end of my questions.

2 Thank you, Ted.

3 CHAIR HANSON: Any other questions for Ted?

4 We'll have Commissioners Comments. Shadi?

5 COMMISSIONER HANSON: I'm happy to be part of the Planning
6 Commission, and I look forward to future meetings, I'll say.

7 Thanks.

8 COMMISSIONER CAMPBELL: And I wanted to say it was kind of
9 a tough thing to adjudicate today. But I -- I want to commend
10 you. I think you handled it very well. Thank you.

11 CHAIR HANSON: I'm ready for a vacation. John?

12 COMMISSIONER GUINN: No comment.

13 UNIDENTIFIED MALE VOICE: (indiscernible--away from mic)

14 CHAIR HANSON: Lorin?

15 COMMISSIONER BRADBURY: I want to commend you on
16 (indiscernible--background noise) also. I had one thing,
17 particularly on this material. If we could get it -- I know we
18 try to save paper by doing both sides. But boy, at a time like
19 this, it's really hard trying to find which is up, which is
20 down. If we could get it one-sided when we're -- especially a
21 hearing like this.

22 CHAIR HANSON: We don't have (indiscernible) would have
23 been, if it had been one-sided.

24 COMMISSIONER BRADBURY: Well, I wouldn't have
25 (indiscernible) using the -- I just found it difficult to find

1 my way through it (indiscernible)

2 CHAIR HANSON: It was. You guys, thank you for
3 everything. For showing up. That was strength in numbers. It
4 was very difficult. It was complicated. It was hard to hear.
5 Those are our neighbors, you know. So, it's tough. It was
6 tough. And I appreciate everybody, you know, leaving the
7 hospital, and getting your car fixed quickly, and everybody
8 making it here to do this. So, appreciate it.

9 Is there a motion for adjournment?

10 UNIDENTIFIED MALE VOICE: So move.

11 UNIDENTIFIED MALE VOICE: Second.

12 CHAIR HANSON: Second? All in favor, say aye.

13 COMMISSIONERS: Aye.

14 CHAIR HANSON: Opposed? Okay. Turn off your microphones.
15 Charlie, thank you. You were very good at getting that stuff
16 up there so fast.

17 UNIDENTIFIED MALE VOICE: Yeah. You did great.

18 CHAIR HANSON: Yeah.

19 (off record)

20 END OF REQUESTED PORTION

21

22

23

24

25

1 **TRANSCRIBER'S CERTIFICATE**

2

3 STATE OF ALASKA)

4)

5 CITY OF BETHEL)

6 _____)

7

8 I, Betty L. Caudle, transcriber for Kron Associates Court
9 Reporting, do hereby certify that the foregoing pages numbered
10 6 through 123 are a true, accurate, and complete transcript of
11 proceedings in the Planning Commission public meeting on
12 November 14, 2019, concerning Appeal No. 19-01 in the matter of
13 Dan and Dawn Hackney transcribed by me from a copy of the
14 electronic sound recording to the best of my knowledge and
15 ability.

16

17

18 _____

19 Date

Betty L. Caudle, Transcriber

20

21

22

23

24

25

TRANSCRIBER'S CERTIFICATE

STATE OF ALASKA)

CITY OF BETHEL)
_____)

I, Betty L. Caudle, transcriber for Kron Associates Court Reporting, do hereby certify that the foregoing pages numbered 6 through 123 are a true, accurate, and complete transcript of proceedings in the Planning Commission public meeting on November 14, 2019, concerning Appeal No. 19-01 in the matter of Dan and Dawn Hackney transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

August 10, 2021
Date

Betty L. Caudle
Betty L. Caudle, Transcriber

list of site plan permits

email: "pboratko@cityofbethel.net Pauline Boratko"

Friday, August 10, 2018 at 3:32:14 PM Alaska Daylight Time

To: email: "awasierski@gmail.com Alex Wasierski" , email: "bjumper@cityofbethel.net Betsy Jumper" , email: "msguinn45@gmail.com John Guinn" , email: "kathyhanson49@gmail.com Kathy Hanson" , email: "Lorin192@icloud.com Lorin Bradbury" , email: "s.campbell021@gmail.com Scott Campbell" , email: "Shadi.Rabi@hfit.com Shadi Rabi" , email: "twilliams@cityofbethel.net Thor Williams"

all,
here is the list of permits as promised

--

Pauline R. Boratko

Planning Administrative Assistant

City of Bethel

1155 Ridgecrest

P.O. Box 1388

Bethel, Alaska 99559

Phone: (907) 543-5301

2018 SITE PLAN PERMITS ISSUED

Number	Housing Type	Date arrived in Planning	Approval Date	Cubic Yards Fill	Lot	Block	Subdivision	Name of Applicant	Land Owner	Address
18-24	infill/fence/smoke house	06.08.18	06.08.18	50	14	9	Tundra Ridge Phase 1	Kyle Kaganak	Kyle Kaganak	233 Kaligluq
18-25	north harbor widen road		07.18.18	840			Small Boat Harbor Sub	City of Bethel- Port	City of Bethel Port	North Harbor
18-26	construct a house	05.14.18	06.15.18	2000	12	2	Muntretlek	Marilyn Wassillie	Marilyn Wassillie (ONC)	181 Main Street
18-27	infill	06.20.18	06.21.18	44	1	7	Ulvik	Brad Thomas	Brad Thomas	1131 Ulvik
18-28	infill	06.21.18	06.22.18	445	7	2	Larson	Paul Saltzman	Paul Saltzman	4403 Larson
18-29	in fill	06.25.18	06.26.18	220	34A	4	Blueberry	Jack and Meghan Crow	Jack and Meghan Crow	235 Blackberry
18-30	infill/construct a house	06.14.18	06.28.18	414	5	2	USS Survey 3790	Sara Christiansen	Sara Christiansen (ONC)	431 Hangar Lake
18-31	infill/construct a duplex	06.22.18	06.22.18	148	10A	13	Tundra Ridge Phase 1	WNA Rentals	WNA Rentals	9401 A/B Ptarmigan
18-32	install cellular tower	07.02.18	07.09.18		Tract D	D	Muntretlek Subdivision	AT&T	AT&T	265 Main Street
18-33	construct a house	07.16.18	07.17.18		C13C-3		Blueberry Fields	Joshua Howell	Joshua Howell	115A Alex Hatley
18-34	construct a house	07.20.18	07.24.18		11		Blueberry Fields	Daniel and Dawn Hackney	Daniel and Dawn Hackney	175 Alex Hatley
18-35	in fill	07.23.18	07.24.18	1800	28		Blueberry Fields	Douglas Tony	Douglas Tony	162 Blackberry St.
18-36	move a garage to property	07.24.18	07.24.18		2	1	Tsikoyak Subd	Brock & Jennifer Hampton	Brock & Jennifer Hampton	4011 Sonny's Way
18-37	addition	07.27.18	07.31.18		4	1	Bethel Heights	Richard Robb	Richard Robb	915 Delapp
18-38	move shed to property/infill	07.30.18	07.31.18	72	14	1	Blueberry Fields	Darrell Garrison	Darrell Garrison	157 Alex Hatley
18-39	infill	08.01.18	08.02.18	480	27		Blueberry Fields	US Fish and Wildlife	US Fish and Wildlife	156 Blackberry
18-40	construct a house	08.02.18	08.02.18		1	4	USS Survey 3790	Tom Martini	Tom Martini	71 Osier
18-41										

2018 SITE PLAN PERMITS ISSUED

Number	Housing Type	Date arrived in Planning	Approval Date	Cubic Yards Fill	Lot	Block	Subdivision	Name of Applicant	Land Owner	Address
18-01	housing addition	01.17.2018	01.26.18		5	1	City Center Subd.	Kevin Phelan	Kevin Phelan	013 Kwethluk Lane
18-02	relocate building	03.08.17	03.14.18		2	3	US Survey 3770	Robert Graham	Robert Graham	280 6th Avenue
18-03	VOID									
18-04	move house on property	03.22.18	3.26.18		2A	4	USS Survey 3790	John Jordan	John Jordan	55 Osier
18-05	infill	04.02.18	04.02.18	2400	38M/38L		Nunvak Estates	Robert Herron	Robert Herron	
18-06	construct a duplex	04.18.18	04.18.18		2	11	Kasayuli Subd.	Mario Kuqo	Mario Kuqo	5457 Paul John St.
18-07	infill	04.20.18	04.20.18	74	25E	4	US Survey 3230 A/B	Shane Paulson	Shane Paulson	780 6th Avenue
18-08	infill	04.26.18	04.27.18	88	1	2	Tsikoyak Subd	Brock & Jennifer Hampton	Brock & Jennifer Hampton	4007 Sonny's Way
18-09	infill	05.02.18	05.02.18	1500	18	1	Tundra Ridge Phase 1	Brian Lefferts	Brian Lefferts	9448 Ayaginar
18-10	infill	05.07.18	05.07.18	720	5	1	Martina Oscar Subd	Steven Sorg	Steven Sorg	430 Plamigan
18-11	install (4) 40 ft antenna	05.09.18	05.15.18		4 & 5	1	USS Survey 3770	James Kohl	James Kohl	310/370 7th Avenue
18-12	infill	05.09.18	05.14.18	111	6	5	Tsikoyak Subd	Daniel Smith	Daniel Smith	4045 AJ Way
18-13	construct a house	05.11.18	05.15.18		12	2	Kasayuli Subd.	Mersin Pellumbi	Mersin Pellumbi	5425 Noel Polty Blvd
18-14	construct a house	05.18.18	05.22.18	2393	D-24		Blueberry	Joshua Howell	Joshua Howell	2200 B State Highway
18-15	construct a garage	05.18.18	05.21.18		16		Mumtretrek	Jon Lavalle	Jon Lavalle	235 Hoffman Rd.
18-16	move lot on property	05.22.18	05.22.18		5	5	Tsikoyak Subd	Daniel Smith	Daniel Smith	4037 Larson Sub.
18-17	infill	05.22.18	05.23.18	1200	20	7	Kasayuli Subd.	Ron McElwee	Ron McElwee	5802 Tuutangayak St
18-18	construct a house	05.24.18	05.31.18	160	10	4	Chief Eddie Hoffman Highway	Sam Beaver Sr.	Sam Beaver Sr. (ONC)	202 State Highway
18-19	construct a house	05.24.18	05.31.18	666.6	10	10	East Avenue	Ignatius Andrew	Ignatius Andrew (ONC)	152 East Avenue
18-20	construct a garage	05.29.18	06.04.18		14	3	Housing	Greg Shults	Greg Shults	253 Akakeek
18-21	infill	06.01.18	06.05.18	1422.2	5	1	Hanger Lake Rd	Brian Glasheen	Brian Glasheen	443 Hanger Lake Rd
18-22	infill	06.01.18	06.05.18	5000	37		Blueberry Fields	Elijah Miller	Elijah Miller	139 Blackberry
18-23	construct a garage	05.30.18	06.06.18		3B	2	USS Survey 3770	Brittany Demientieff	Brittany Demientieff	510 7th Avenue



City of Bethel
Planning Department
P.O. Box 1388
Bethel, Alaska 99559
(907) 543-5301, Planner
(907) 543-5301, Assistant

04/25/2019

Dear Site Plan Permit Applicant,

After several failed attempts to notify that your site plan permit has been approved and that you are able to pick it up at the planning office you are now receiving the permit by mail.

I would like to remind you that according to the Bethel Municipal Code Chapter 15.12 (see attached) you are required to have a site plan permit posted during construction. If you have not done so already, remit \$25.00 to the City of Bethel Planning Department. If you have any questions or concerns please do not hesitate to call me or stop by my office.

Thank you,

A handwritten signature in blue ink that reads "Pauline Boratko".

Pauline Boratko,
Planning Assistant

SITE PLAN PERMIT

No. 18--34

DATE: 7/24/2018

PERMITEE: Daniel and Dawn Hackney		Address: 175 Alex Hatley		
Lot: 11	Block:	Subdivision: Blueberry Fields Subd. Phase	Plat No.: 84--13	R./T./Sec.: R71W, T8N, S7, SM
Authorized and mandatory Improvements: 1. Construct a 20'x42' Shop/garage/storage shed. 2. Take all construction debris to the city landfill, do not fill residential trash bins. 3. Abide by all set back requirements.				
PER SITE PLAN PERMIT APPLICATION ON FILE.			The Property Owner is responsible for culvert installation as needed, and abatement of any run-off resulting from development.	
*****ADDENDUM*****01-09-2019***** 1. Construct a 24'x64' attached garage. 2. Take all construction debris to the city landfill, do not fill residential trash bins. 3. Abide by all set back requirements.				
PLANNING DEPARTMENT: <u>Pauline Boratko</u> Pauline Boratko, Planning Assistant				
Intended Use: Residential				
This permit has hereby been posted on the above property this ___ day of __, ____ By _____ Your Signature				

EXHIBIT

3

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Cox	5		Addresses need for housing, transient workforce,
Davis	7	350 Katie Hatley	Addresses need for housing, history of bed & breakfast activity in Blueberry subdivision; quality of Hackney's development and positive impact on property values
Decker	8	Anchorage – involved in tourism	Addresses limited housing for tourism; addresses history of bed & breakfast activity in Blueberry
Egger	9		Addresses source of complaints
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Jeppesen	15	(Former Bethel Resident)	Addresses need for housing options; consistency with other structures in Blueberry; improvement on property values; and history of bed& breakfast activity in Blueberry
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MICHAEL R. BURLEY
35637 Walker St. N.
Soldotna AK 99669
(907) 545-0880

October 1, 2020

To the City of Bethel & Bethel Planning Commission:

I am writing this letter in support of Dawn and Dan Hackney and their attempt to build a duplex in Blueberry Subdivision. While my address is currently in Soldotna, I was a resident of Bethel for 37 years, and have only recently left.

I am very familiar with the Hackney's and their attempt to operate a duplex or Bed and Breakfast in Blueberry subdivision and I am horrified at how the City of Bethel is treating them. The Hackney's were given verbal okays to proceed. They did not move forward with such an expensive project without the consent of the City. I drove by their construction numerous times for over a year and watched the process progress. The City was there more than once and was well aware of what was happening. Not once did I witness a hostile interaction between the City and the Hackney's; instead I often watched them speaking amicably outside the frame or coming out of the structure talking and laughing. There is no question in my mind that the City knew what was happening in there. As a school bus driver for LKSD I drove by the place all the time: the bus route was at their house – it was hard to miss what was going on.

What I can tell you about the Hackney's is that they are very polite people who have raised two wonderful young girls. Both of their girls were extremely well behaved on the school bus and never gave me any issues. The Hackney's were attentive parents ensure their girls showed manners and courtesy to everyone around them. The Hackney's are also very private but also very giving to our community. While Dan can be extremely shy, whenever he hears of anyone needing something, he gives quietly and anonymously, never seeking the spotlight. Dawn is much the same: always going to work with a good disposition despite the horrendous things she has to face day in and day out. She gives dignity and hope to women and children after they have experienced probably the most traumatic thing anyone can experience. She also works to help others in the community.

I will remind the City and the Planning Department that the Hackney's were not only up front by applying for a Building Permit, they also applied for and received a business license for the premises and applied for and were approved for utility services. That meant that not just one, but three City departments were aware of the Hackney's plans and all three approved them. The Hackney's were actually open and operational, albeit minimally, when the City shut them down without so much as a courtesy call. One day while Dawn is out getting chemotherapy, they learn that the water/sewer to their addition has been shut off by order of the City yet no one at the City could take the time to provide them advance notice or an opportunity to contest the matter. The business license which they had validly obtained was essentially nullified without

so much as a courtesy notice and without a refund of the fees which they had paid. Everything that was done to them by the City was done without any notification and without any ability for the Hackney's to prepare or respond.

Anyone who constructs in Bethel or who lives in Bethel knows that housing is extremely difficult to come by. The waiting lists are long and many people are taken advantage of and placed into sub-par situations that lack running water or electricity. Yet when two honest people try to put up decent housing or try to operate a by the book establishment, they are not only told that they can: they are then broadsided and without any notice, they come home to find the utilities shut, the business shut, and the City telling them the structure is illegal despite the prior permissions granted. How would you feel if in their shoes? If you can't trust the City, then who can you trust?

This would not be happening if there had not been a vacancy in the Planning Office or if the Planning office had kept better records. The past practice of verbal authorizations is well documented and put the City in jeopardy numerous times before. There are a number of bed and breakfasts and other non-conforming structures in Blueberry Subdivision as well as pretty much every other zoned subdivision in Bethel – one only has to look to find them. Why then are the Hackney's being singled out?

Please do the right thing and be a City that does right by its citizens. If a mistake was made, it was not by the Hackney's. The City should honor its word and should stop harassing the Hackneys. While it may not be popular with a few of the residents in the subdivision, it is the honorable thing to do. The assurances that this will not permanently ruin the subdivision can come from the City cleaning up its processes and ensuring that in the future, the level of errors that it believes occurred here do not happen again. The City has not treated these people fairly by retroactively making an example of the people who did not cause those errors. This is not the way to proceed.

Sincerely,

Mike Burley

To whom it may concern,

I am writing out of concern for restrictions being placed on BNBs. Proposing ordinances twice as strict as Anchorage doesn't pass the sniff test or adhere to common sense. Decisions made by a few for all should be carefully thought out as these decisions can affect many. It is easy to pass ordinances that don't personally affect you but you should consider those you are affecting.

Finding good affordable housing is difficult in Bethel and we have a very transient workforce. Having more places available improves recruitment and retention which improves the overall wellness of our community.

Lastly, if you must pass strict ordinances, don't have it affect those that have followed current or lack of guidelines. That is unfair and unreasonable. Remember you are chosen to be the voice of the entire community, not just your group or circle of influence.

Thank you for taking the time to read this email

--

Jeremiah Caywood, BSN, RN
907.545.1208

235 Alex Hately
PO Box 584
Bethel, AK 99559
29 Sept 20

City of Bethel
Planning Department
1155 Ridgecrest Drive
Bethel, AK 99559

To Whom it may concern,

I am writing to show support for Dawn and Dan Hackney at 175 Alex Hately. I understand there is disagreement relating to the development/outcome/use of their property with the possibility of heavy financial fines. I understand the reasoning behind this is them operating part of their property as a Bed and Breakfast.

As long as I've lived in Blueberry Sub(since 2010), it's no secret, there are some form of Bed and Breakfast/rooms to rent/multiple resident rentals located on a single property on every street, Cranberry, Blackberry, Alex Hately and Salmonberry. I don't believe they were constructed at the same time, it was over the years by various property owners. To my knowledge, none of those property owners are experiencing the same difficulties operating their properties as a Bed and Breakfast/rooms to rent/multiple resident rentals located on a single property. If Dawn and Dan Hackney are being singled out aside from all the other properties, it is justly unfair.

There is diversity in every lot in Blueberry Subdivision with regards to structure and maintenance. Both of the properties they have owned were maintained with care for both their family and the area, which any homeowner in the same area would appreciate. As a person born and raised in Bethel, for those who move here and try to do good by the city and its people by staying and making it their home here, it means something to me, and in the end makes Bethel better for us all.

Resolution by the City of Bethel that demonstrates fairness to all parties in this matter should be the goal.

Thank you for your time in this matter.


Monica Charles

To whom it may concern,

I am writing this brief letter in support of one of the best examples of a citizen that I know of in Bethel. She is a hard working tax payer that gives back time to the community and is always in support of making new comers happy by easing the housing and hotel room availability shortage that exists here in Bethel. As most would know, any recruiting department would have very little success if they do not have availability for transient housing or placement in to permanent housing. Often times, more than not, we do not have the availability to place a new comer in transient housing and the waiting list for permanent housing is long with long wait times that end up being a lot of money out of pocket for someone-either the employer or employee. Either way, Dawn has always been competitive and is one of the cheaper vendors here in Bethel that has excellent customer services and insures a clean room. Even if there is no availability, she will help you find something. She has helped my departments out multiple times. She is a team player that wants to see success in my recruitment and overall expenses.

And she genuinely has a warm heart, even to those she doesn't know. She'd give her shirt off her back to help others. Which brings me to the concern that I have of problems with her new place that with my understanding, the planning office began to pursue with her property due to whatever reason. I just find it hard to believe that the planning office could let construction go unnoticed on what I refer to as 'the compound', her new place, that as a citizen, she invested all of her life savings in to for a place for others to stay and undoubtable that it was for future revenue, planning for the future. A place that would benefit different employers here by assisting with housing of new comers that offers excellent oversight of people staying there since it would be in her backyard simply with by being next to her permanent residence.

The biggest issues I have is that this lady has never done anything except help others. And now it seems that she is fighting a battle to keep her new place going while somehow apparently, the city allowed her to build this all the way to completion before pursuit of the city stopping operations right as the building was in final touches. I question all of these

intentions because I know how honest, hardworking, and how Dawn gives her heart and hands out every day for anyone that appears in need. It leaves me to question the intention and purpose with the timing and all.

I ask of you to reconsider options based on what I know of this citizen. A good, honest, citizen that not only pays taxes, has two kids in School here, helps others with new employee housing in placement for long term/permanent housing, but also helps with new employee retention by doing so. All of this increases city revenues, either directly or indirectly. So reconsider leaving this open, for all the good that Dawn is and has done; as I see it, not doing any harm to anyone with having built this building. And to the fact of how this looks like it is some kind of horrible misunderstanding that can't seem to be cleared up. Please reconsider options that or more obtainable and leave her helping us in our recruiting processes an/d continuance of her influence of bringing the good out in others here in Bethel/

Thank you for your time, and respectfully for your consideration of review of this matter.

Russell Cox

09/01/20

 9/1/20

Amy and Chad Davis
350 Katie Hatley
Bethel, AK 99559

City of Bethel
Planning Department
Bethel, AK 99559

To Whom It May Concern:

We are the property owners of 350 Katie Hatley and neighbors of the Hackneys; we have lived in Bethel for approximately ten years. We watched the Hackney's take a dilapidated house in Blueberry Subdivision and turn it into a beautiful place that raises all of our property value. I have also watched one of our neighbors bully the Hackneys and the City of Bethel until he got his way.

There are numerous privately ran bed and breakfasts in Bethel and Airbnb's and for some reason Steve Marrat has so much pull with the City of Bethel that the city has shut down and tormented the Hackneys. One of the major problems in Bethel is housing and it effects all entities in Bethel. I'm appalled that one person can stop future growth for the city. This is an opportunity for housing as well as a revenue stream for the city, so it seems like a win win situation.

We as homeowners in Blueberry Subdivision are in support of the Hackney's building a rental on their property.

Sincerely,

Amy and Chad Davis



9/17/20

City of Bethel
Planning Division
300 State Highway
Bethel, Ak.
99559

Greetings,

For over 20 years I have brought visitors to Bethel to enjoy the region's rich, renewable wilderness recreational opportunities. These people, and my business, have contributed to Bethel's economy through the purchase of services and supplies, and by obtaining lodging for guests and guides. Over the years, the one difficulty in bringing tourism to Bethel has been securing pleasant, clean, family oriented, short term lodging for my clientele, many of whom are family groups.

While there are B & B's operating throughout Bethel neighborhoods (and two downtown 1 Star hotels, as well), they lack the proper floorplan and/or facilities for visiting families, short term workers and guests such as my clientele. The Hackney's have operated a B & B at this same intersection in Blueberry Subdivision in the past, it is unfathomable that their new home (across the street from their prior location) has been singled out for closure, among all the B & B's operating in Bethel neighborhoods.

I am convinced that Dan and Dawn Hackney went through all proper steps in obtaining permitting for their new home. It is upsetting that so well intentioned a plan, with such benefit to the community, could have come up against so unexplainable a shut down. I hardly see how the Hackney's low key operation could possibly provoke any negative response from the residents of Blueberry Subdivision, other than perhaps one based on personal vendetta.

It is clear to me that these good people have been wronged and their investment in the community has been placed at risk.

Most Sincerely,



Marty Decker
Frontier River Guides

To Whom It May Concern,

While myself and my family was staying at our temporary housing at the Hackney residence in Bethel, AK. We were being watched by the Hackney's neighbor Mr. Murat every time we walked the dogs, entered, or left the dwelling. The only time that I had an interaction with Mr. Murat is when I caught him videoing my son coming in and out of the house around 1pm on a workday between January and February of this year. This concerned me a great deal. It is one thing to be a nosey neighbor and quite another to be filming children playing outside or coming in and out of a home that should be considered a safe place for them. I spoke with Mr. Murat outside along with his two sons and grandchildren about his filming my son and myself outside. He stated that he only films when Mr. Hackney is on the bobcat. However, Mr. Hackney was not even in town or home that day. That sometimes he films them outside or from the windows and he felt it was not a big deal or any of my business. It is my business when it comes to the safety of my son and my family. I do not know Mr. Murat and am not sure what his grudge is against the Hackney family, but I will inform the authorities the next time I catch him filming the Hackney children, my son, or my wife outside. He also stated that he films the girls when they are outside with their father as well. I told him this is not normal behavior to film minor children that do not belong to your family, its crossing the line of becoming a stalker and predator. His complaint was over snow removal about how Mr. Hackney removes the snow. Mr. Murat removes snow and pushes it all the way down the street. If that is his argument, then why is he involving minor children in it was my response. This is an irresponsible waste of the city's time and funds. If it is the city's job to clear the road then the city needs to step up and take care of the road. If this is an issue because one family has a bigger home than the other, then it needs to stop. These minors do not need to be filmed by adult men that are not in their immediate family, there are without my consent laws to keep people safe from stalking and harassment in Alaska.

Sincerely,

James Egger

Edward and Heather Flores
169 Alex Hatelly Dr
Bethel, AK. 99559

City Of Bethel
Planning Commission
Bethel, AK. 99559

To Whom It May Concern:

We am writing in response to the “alleged” complaint of violations for Site Plan Permit No. 18-34, for Daniel and Dawn Hackney of 175 Alex Hatelly, lot 11, Blueberry Subdivision phase plat 84-13.

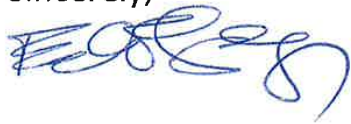
1. BMC 15.12.030: A site plan was filed with the City Planner and the permit did give an accurate description of the structure to be built ahead of time. During the permitting process with City of Bethel Planning Department, Daniel and Dawn Hackney had previously worked with the City Planner to build a house with almost the exact same structure plan permit directly across the street from 175 Alex Hatelly. Thus this information was used and referenced for the current structure in question. Special note should be made with regard to the covered entryway joining the two buildings, because this covered entryway has been built almost the same on both properties. The City Planner reported no issues ahead of time with a similar site plan permit, because this was approved before.

2. BMC 189.32.020: 175 Alex Hately is not building or operating a hotel next door to our property at 169 Alex Hately. They do have a B & B which is Safe, Clean, and Affordable inside our quiet neighborhood. As evidenced by not having a parking lot or taxi cabs coming/going at all times of day/night.
3. BMC 18.32.010: With Regards towards the definition of “Intent” and providing protection from non-residential activities in an R district. Please see BMC 18.32.030 Conditional Uses which clearly identifies approved site plan structures such as the one in question built at 175 Alex Hately.
4. BMC 16.04.10 A#2 & A#6: The City of Bethel Planning Commission can “Encourage” the most appropriate use of land throughout the city and they must help preserve property values. This being stated, the City Planning Commission cannot however tell a property owner not to build a structure, because it might not be aesthetically pleasing for some neighbors. The Planning Commission must demonstrate a noteworthy safety issue or code violation. 175 Alex Hately is one of the cleanest properties on the street and there is no way our property values will go down in our subdivision due to this structure, which is far from being an “Atrocity” as stated in the complaint.

5. BMC 15.12.020: This section of the Code is referencing a site plan permit needed and this was provided/granted from the Planning Commission previously. The complaint stated that a small shop used for cutting up wood logs is sitting on a city easement and it seems like a site visit could simply clear this issue up with a few measurements.

In closing, we hope that the City of Bethel Planning Director and the City of Bethel Planning Commission can take a closer look at these alleged complaints in the hope of finding a peaceful resolution for all parties involved. We feel confident that the City of Bethel Planning Commission will advocate for all taxpayers involved in this unfortunate situation to search for facts and not mere allegations.

Sincerely,



Edward G. Flores & Heather A. Flores

Jeff Hoffman
P.O Box 1081
Bethel, AK 99559

To: City of Bethel City Council
City of Bethel planning commission

To whom it may concern.

I'm writing about the home of Dan and Don Hackney's home they built in Blue berry subdivision and the list of complaints about their landfill and construction of their home. The complaints I feel all started from a disgruntled neighbor about there their development from the start and has not stopped to this date. I have visited the Hackneys property and I'm impressed what they have done for the neighborhood as well as for the city of Bethel to enhance it. I have read the complaints of the house construction. I have lived here all my life and our family has developed a subdivision. When I have talked to the planning department in the past about conveniences being enforced I was told the City does not enforce them. Connected to the house is a bed a breakfast for traveling Doctors and nurses which is much needed as we all know due to lack of housing that is clean and secure. In the past they constructed across the road almost the exact same style of home with the Cities approval. If their land fill for proper drainage is problem, the city of Bethel should be working with the Hackneys with culverts and proper ditches for drainage. As you drive around Bethel's subdivisions it seems everybody owns a swamp on their property which as for myself I have had due to development next to me I addressed it and was resolved with the help of the city of Bethel. I would have been proud if the Hackneys built their house in my subdivision. In the future the city of Bethel should work and inspect the developer that proper constructions as well as land fill concerns are met. All concerns from neighbors should be looked into but those holding resentment should be properly addressed, not after the fact when lots of money has been spent. Below is a list of signatures that support the Hackneys for their development of their home and property. Thanks for your time and hope this will be resolved in the Hackneys favor. The following page are residents of Bethel that support the Hackneys and this letter.

Sincerely Jeff Hoffman

A handwritten signature in blue ink, appearing to be 'Jeff Hoffman', with a stylized, flowing script.

Print

Signature

THOMAS HAWKINS

Thomas Hawkins

Kenneth Eric Hoffman

Kenneth E Hoffman 9-4-2020

Tina Stickman Hoffman

Tina Stickman Hoffman 9-4-2020

Steve M. Hoffman

Steve M Hoffman

James R. Hoffmann (Robby)

James R Hoff 9-4-2020

Elizabeth Hoffman (DIT)

E Hoffman 9-4-2020

Stephanie K Hoffman

S Hoffman 9-4-2020

Doug Wade

Doug Wade 9-5-2020

Jackie M. Hoffman

Jackie M Hoffman 9/5/20

LEON S. TREAT Jr.

Leon S Treat Jr 9/5/20

BLAINE E. ELLIOTT

Blaine Elliott 9-8-20

6/7/2021

To Whom It May Concern
City of Bethel
Planning Division
Bethel, AK 99559

To Whom It May Concern:

I am writing in response to the housing planning issue in the Blueberry Subdivision, specifically the property owned by Dan and Dawn Hackney.

I lived in Bethel, AK for over three years. In my last 6 years of employment out of Bethel, I have been tasked with making lodging arrangements for various visitors and folks relocating there. During this time, I often have had to resort to using local accommodations for these folks. More times than not, there is a housing/lodging shortage in Bethel. This is a consistent problem for a number of folks: those relocating to Bethel for employment who must rely on temporary housing until they can secure permanent housing; for applicants visiting Bethel; and for transient workers who need housing for a short, contracted period of time, etc. My organization has many temporary housing units for employees/visitors, but those often fill completely. Then with no available units, we are forced to rely on temporary lodging within the community to keep up with our demand. The shortage of lodging establishments within the community creates a definite challenge on many fronts.

We are often short-staffed with employees, and a recruiting incentive is the ability to supply housing for workers. However, that requires that we have enough adequate housing in Bethel for all current, potential or short-term employees. If we do not have enough temporary accommodations in Bethel, we run the risk of employment deficits for the critical personnel needed to work in the Bethel community and our surrounding villages.

The Hackneys have recognized this shortage firsthand and have built clean, upscale lodging on their property in order to assist with this issue. I have difficulty comprehending why there has been such an ongoing struggle to open this extra lodging. I lived in Blueberry Subdivision when I first moved to Bethel. There are other very large homes, multi-unit rentals, and at least two existing B&Bs that provide additional accommodations for visitors and workers. There are also several other very tall housing units all within this subdivision. Additionally, the Hackneys have an historical record of improving property values, having owned 1-2 previous well-maintained properties in this subdivision. One would hope that all within the community strive to improve and better it. Our humanity requires us to be hospitable to others and supportive of community growth. So I am left to ask, what is the issue with this unit on the Hackney property?

To Whom It May Concern

6/7/2021

Page 2

I compel the City of Bethel to resolve this situation as quickly as possible in order to open up the very necessary extra housing Bethel so desperately needs. I do not see how this property - whether operated as a B&B or short-term rental - that has been well maintained since it was built two years ago would change any aspect of Blueberry Subdivision, other than to enhance it and contribute to the greater needs of our community. At this point, considering the many other similar properties in residential areas of Bethel, it seems the Hackneys have been unfairly targeted. If they cannot be allowed to operate as a B&B, then all other residential B&Bs should be shut down as well. Then maybe when the city residents experience the ripple effect this will have on employment in our region, they might reconsider. I would much rather the City of Bethel direct its focus toward the positives that can occur from the additional lodging the Hackneys are providing rather than have to react later to negative circumstances.

Devon Jeppesen





Dawn Hackney <3dhackney@gmail.com>

Letter of support

Carole Jung Jordan <carole312@hotmail.com>
To: "3dhackney@gmail.com" <3dhackney@gmail.com>

Sat, Jun 5, 2021 at 2:08 PM

Carole Jung
PO BOX 1065
Bethel, AK 99559
907-545-2351

June 5, 2021

Dear Council Members and City Planner,

I am writing to you in support of Dawn and Dan Hackney at 175 Alex Hatley. I have been following this story for some time. I have to say that I am completely disgusted by the way the city has treated this family. The city appears to be singling out this one family. It's sad and embarrassing but the city has a reputation for doing this type of thing. If this building was built illegally why did the city issue them a business license and why are they gladly accepting their sales tax money? It makes no sense at all. You can't single one business out and let others slide by. I don't see how this building can even be described as an "atrocitiy." It's amazing. I wish I had that house! Maybe what's really going on is just "jealousy." Bethel needs housing! Everyone knows that. But this has gone too far. Stop harassing this family. They are good people. Their kids attend school here. Dawn has worked at the hospital for a long time. They aren't leaving. Let this family get back to making a living for themselves and everyone will benefit.

Sincerely,
Carole Jung

[Get Outlook for iOS](#)

October 2, 2020

Laura Karr
229 Alex Hatley Dr.
Bethel, AK 99559

City of Bethel
Planning Department
Bethel, AK 99559

To Whom it May Concern:

I am writing on behalf of Dan and Dawn Hackney located at 175 Alex Hatley Drive, I would like to address concerns I have as a Bethel resident, Alex Hatley homeowner, and local small business owner.

Born and raised in Bethel I have always admired and took pride in the community that we have here. Bethel and the great people of Bethel have help build the person that I am. You might understand my heart break and disappointment in the cruelty and hostility that has been acted on towards the Hackneys. Bethel has always been a place that has welcomed and encouraged entrepreneurs. The Hackneys are good people that have chosen Bethel as their home and place to invest in. Dawn is a SART nurse and has taken care of many people in the YK Delta. Dawn and her family have had to endure health hardship. She has given to our community and has chose to invest in our town and our people. I am heartbroken that during such a hard time in her life our town has kicked a good person when they are down. This is not what my town is. We do not place a blame on a patron when the City is broken.

My family and I moved to Alex Hatley four years ago. We have enjoyed living in Blueberry Subdivision. I get the pleasure of driving by the Hackney's on a daily basis. They are pleasant neighbors and have improved the neighborhood. Dan is a great contractor and Dawn is a beautiful home decorator. As a team they have built a beautiful resort like getaway. They add to the family-oriented neighborhood that we had been hoping to find. Their two precious girls are very well behaved, I have seen them taking care of smaller children in the neighborhood. That speaks volumes in the character of the Hackney's. The Hackney's were the only family to welcome us to Blueberry Sub. When I say they are kind and giving it is not just what I have witnessed but how they have welcomed and treated us. They add value in character and structure. I appreciate how the Hackneys have increased our property value.

As a small business owner, I have concerns with how the City has been handling zoning issues. Issues in this area are not met with communication but a hearing with the Planning Commission. Bethel is a small knit town; we all seem to have at least a one degree of connection so when a person or a business seems to be under attack, we feel like the City is not for its people. The City needs to understand that their income comes from small business owners and patrons of their town. This basic understanding and customer service in each department would go a long way. It

October 2, 2020

really is appalling how the City is working against the Hackney family. It sends the wrong message in so many ways. It tells us small business owners that we can not trust the very City that we are serving. It tells us that the City is incompetent. That the City can be bullied or coerced into favoritism. That even if we get a business license and work with the departments directly to do things right, it can all still be taken away from us. The City is responsible not the Hackneys for the misunderstanding and misfortune that has been caused. The City hired people that they thought could fulfill their duties, as a City employee in a decision-making position with the power to approve and deny. A verbal consent is binding to the City. Knowing the Hackneys and how diligent they are, I know that they were in full communication with the Planning Director at the time of build. They would not proceed unless if given the approval. They trusted in the direction and approval given, rightfully so. After all if we can't trust the direction of the City than who can we trust? It does not make sense that all of this heartbreaking hardship should have transpired. I admire people that find a need and look to fulfill it so that others have a better experience or quality of life. The Hackneys have worked hard to take care of a desperately needed housing issue. Their desire to provide in an area of lack and bring in income for our City seems like a win win for everyone. It really does not make sense that any issues that the new Planning Director has couldn't have been worked out with simple communication. The Hackneys work in full transparency and just needed the City to do the same. I implore you to please reconsider each step you as the City are making and the message it sends your patrons.

All the Best,

Laura Karr

Jaimie and Lynn Kassman

252 Alex Hately

Bethel, AK 99559

September 29, 2020

City of Bethel

Planning Department

1155 Ridgecrest Drive

Bethel, AK 99559

To whom it may concern:

As owners of property in Blueberry Subdivision (252 Alex Hately) we are in support of Dawn and Dan's new construction at 175 Alex Hately. I fully understand that there was an error on the building permit application. Errors can be, and have been corrected. There is no logical reason to stop construction or levy fines. I have looked around the neighborhood; there are several 2 story structures that are approximately the same size. The Hackney's have turned a dilapidated, low valued eyesore into a beautiful home that raises property values in the area.

I hope that Dawn and Dan are able to bring more rental space into our community (something that is very limited in Bethel). Again, there is history of rental properties throughout the subdivision. If the Hackney's are not allowed to rent then it should be the same for all property owners in the Blueberry subdivision.

We are in support of the Hackney's completing the construction on their property. We are against double standards and wasted resources, which seem to be taking place with this issue.

Sincerely,



Jaimie and Lynn Kassman

To Whom it May Concern:

We are writing on behalf of our neighbors, Dan and Dawn Hackney. They have been our neighbors since we moved to Bethel. We appreciate having them as our neighbors, and hope they remain so for many years. They have helped us on multiple occasions and been good enighbors by assisting us with lawn care and loaning us needed tools. Their yard always looks beautiful and well maintained. They are friendly and respectful when we see each other on the street. They are quiet neighbors who always say "Hello."

We have no concerns regarding their addition to their house or proprerty. Again, everything is well maintained.

Thank you,


James and Sandra Marion

174 Alex Hately Dr.

Raphael Martins
4006 Sonny's Way
Bethel, AK 99559

City of Bethel
Planning Division
Bethel, AK 99559

To Whom It May Concern:

I am contacting you in regards the housing planning issues the Hackneys are facing in their subdivision.

I have lived in Bethel for almost 10 years, and during this time I have learned two things are for sure here. One, housing is extremely short, and two, people who have the means to fix the issue are doing so by either building new housing, or adding to their own.

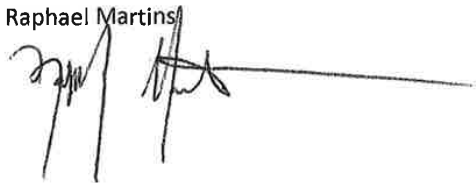
I do not know how many times we have lost good professionals simply because they could not find appropriate housing, and because of this our city suffers, our economy suffers, and most importantly, the local people suffer.

I find disturbing that after all Mrs. Hackney has done for the community, as a SART nurse, as a manager and simply as an individual the city decided to handle this issue so poorly, as it has been done. Not to mention the fact that the city by itself is taking away the means for her and husband to support their own family. One may say that what she has done is illegal, or was not done correctly, so what? What she has done was not done without the city's knowledge, was not done without someone's signature. If the city so chooses in continuing handling this matter in the same manner which it is, then please let's apply the same standard to all B&B's in town, it cannot be only to the Hackney's.

It is my hope that the city can once and for all find a solution to this matter, where Mrs. Hackney can focus on her physical recovery, and the family on their emotional one, this has gone way too long.

Sincerely,

Raphael Martins

A handwritten signature in black ink, appearing to be 'Raphael Martins', followed by a long horizontal line extending to the right.

To whom it may concern:

I am writing this letter to ask you to reconsider giving the Hackneys permission to rent the apartments they built.

I moved to Bethel in 2010 from Texas I had an apartment which I was going to rent, but at the last moment that was not available. We had 30 days with YK housing but in that time we were not able to find suitable housing. We were desperate and Dawn Hackney helped us find a house we could rent.

With her position at YK, Dawn is aware of the need of housing in Bethel. The hospital brings in a lot of people and does not have enough housing. I know a lot of people that have struggled to find housing, why would the city of Bethel deny them the permission to rent the apartments they made. They have invested their hard earned money to help the people coming to Bethel. If Bethel had enough housing more people would accept jobs. Not only people from the lower 48 but people from the villages who also have issues finding housing in Bethel.

The Hackneys did Bethel a service by building this apts please let them rent them.

Thank you,

Rosa McCabe

June 4, 2021

Jaris Michaels

PO Box 2298

Bethel, AK 99559

City of Bethel

Planning Department

Bethel, AK 99559

To Whom it may concern:

I am writing in support of Daniel and Dawn Hackney's new construction at 175 Alex Hatley Drive. I have seen what they have done with the former home an old run down shack and turned it into a dream home. It is anything but "an atrocity". If you want to see "an atrocity" please visit Alaska Inn or Hawaii Inn. Bethel is growing and expanding and has multiple new subdivisions coming up. I have worked for companies that needed to find temporary housing for employee's to provided essential services to this community and have gone through the Hackney's for lodging needs. They have a business license and pay the city sales taxes for their transit lodging.

The city needs revenue to provide services to its citizens, the Hackney's pay taxes for their BNB, I would rather have BNB's paying a transit tax than paying a "sugary beverage tax" that the city council was trying to enact. Are you holding off having a hearing to try to write the Hackney's out of the new ordinance?

As a home owner in the City of Bethel I am in support of the Hackney's building a rental on their property.

Sincerely,



Jaris Michaels

Dear Board Members,

As a long term, self-contractor who has been working in Bethel since 1999, I welcome the ordinance to allow B&Bs in all residential neighbourhoods of Bethel.

We can all agree that housing in the City is at a critical shortage. B&Bs offer much support to the City, offering both short and long term housing for critical workers and travellers to the area. This demand will only increase.

Please do not implement bed restrictions on B&B owners because often there is no room in Bethel for visitors and the B&Bs fill a much appreciated need. These B&B owners are taxed; use the money to accomplish improvements in Bethel, don't destroy the progress made by these hard working people.

Thank you for your time.

Kathleen Morgan

Mariann Norcross
172 East Ave
Bethel, Alaska

City of Bethel
Planning Department
Bethel, Ak 99559

To Whom It May Concern,

It is my pleasure to offer my unreserved recommendation and support of the Hackney's building a rental on their property.

I have known Dawn for 4 years, as I have had the pleasure to work with her as my manager, and have found her to be a reliable and conscientious person. Just this week, she found out I was staying at T.W.C. and took immediate action by helping me get into my own one bedroom apartment. Because of Dawn's kindness, my young son and me are safe in a home we can call our own. As an Alaskan Yupik Native who was born and raised right here in Bethel, I have always known her and her husband as a direct part of this community. I have watched Dawn and her husband take a ram shackled run down house in Blueberry Subdivision and transform it into a beautiful place that raises that area's property value. However, unfortunately, I have also seen her bullied and tormented by one of her neighbors and the City of Bethel so severely that the City of Bethel has asked the Hackney's to shut down their rental. Despite all of these horrible experiences, Dawn has always remained respectful and honest.

I can tell you first hand the major housing problem we have in Bethel. This problem has affected my son and me personally to the point that if it were not for Dawn, we would still not have a place to live. I am livid and appalled that one person can have so much pull with the City of Bethel that they can decide to shut down what I see as future growth for our city. There are countless privately owned B&B's/AirBnB's that are being ran here in Bethel but the Hackney's property is the only one being told to be shut down. The only reason I can fathom this happening is the bullying and torment the Hackney's have received from Steve Murrat who has seems to have swayed the City of Bethel.

This an amazing chance for housing for the people of Bethel and it is definitely a big gain for the city. As a Bethel resident, who has lived in Bethel my entire life, I am 100% in support of the Hackney's building a rental on their property.

Sincerely,

Mariann Norcross



09/18/20

Cynthia Randolph
The Shindig Inn
216 Blackberry
Bethel, AK 99559
Phone: (907) 545-2588
9/9/2020

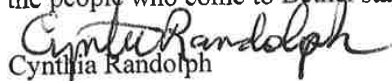
City of Bethel
Planning Committee/Planning Dept.
Bethel, AK 99559

RE: Dan and Dawn Hackney/ Hackney Housing

Dear City of Bethel Planning Commission/Planning Department;

I have lived in the Blueberry sub-division for 2 ½ years and have not seen any issue with Dan and Dawns house as a matter of fact I think it has improved the neighborhood as I remember what was on that lot before they built their house.

If the issue is it being a transient lodging facility in any way there are many houses in neighborhoods here in Bethel that serve as transient lodging facilities. And furthermore the City sold and issued them a business license. I was under the impression that the City was under the obligation to treat everyone the same if this is the case are you going to go after and shut down every household in Bethel that offer this much needed service. And if this happens where do all the people who come to Bethel stay?


Cynthia Randolph

Cynthia Randolph

Wade Renfro
4102 ML Rd. Formerly 151 Blackberry
Bethel, AK 99559

City of Bethel
Planning Division
Bethel, AK 99559

To Whom It May Concern:

I'm contacting you regarding the housing planning issues the Hackney's are having in Blueberry subdivision.

As all are aware Bethel has a extreme shortage of nice nightly lodging and short-term housing options. The Hackney's building located at 175 Alex Hately is very nice and provided Bethel with a much needed service. The numerous other B&B establishments located in Bethel's Blueberry Subdivision over the years have never been a problem in the past, nor are the current B&B's.

It is very disturbing the way the process has unfolded and the economic hardship it caused. It would stand to reason that you will be closing down all of the B&B locations in Bethel that are not currently commercially zoned, as it wouldn't seem possible or legal to pick and choose who needed to comply and who would get a free pass to operate. This will further compound the lodging shortage.

I hope the City of Bethel can find a way the work with the Hackney's and other B&B owners around Bethel to allow their continued operation as it is an essential service for our community.

I'm very vested in the community and have lived in Bethel for over 20 years. My wife and I own and operate several local businesses.

Sincerely,



Wade Renfro

172 E Ave Apt 208
Bethel, AK 99559

June 4, 2021

To Whom it may concern:

I am writing to show support for Dan and Dawn Hackney and their new construction and to operate their B&B in its current location. I have resided in Bethel for 2 years and have worked in several industries. One of which relies on B&B's such as the Hackney's. The visitors that were referred to the Hackney's, are all business professionals and are in town for personal needs that contribute to the financial growth of Bethel as a whole. I am a current member of the City of Bethel Finance Committee and understand the need for Tax dollar revenue.

The city is looking for ways to add income by taxing sugary beverages which are already high cost for those who are purchasing them causing the cost of living for certain residents to go up. Yet here is an opportunity for the city to attract tax revenue dollars from tourism and visitors to the city of Bethel. In San Antonio Texas, I used to sit on a board for the Walzem Road Area Revitalization. Our goal was to find ways to help restore a dilapidated side of town in San Antonio, without adding tax expenses to the residents of smaller suburbs in the area, which most of them were Section 8 housing or underprivileged households. We discovered tourism is the best way to increase revenue without burdening the residents of the area. I encourage the city to revisit the solutions that the Hackney's are given to offer them the opportunity to continue to add Tax Dollar revenue to the city of the Bethel.

I understand that the Hackney's did not submit a correct building plan while constructing their building. However, I see this is a 2-way street of failure and the city must also take ownership of this. Below are the responsibilities listed online for the Planning Department. Please review the bold underlined areas.

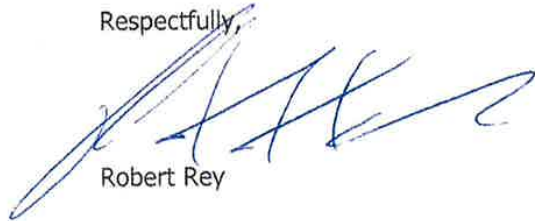
Primary responsibilities of the Planning department are:

- **Assist citizens in regards to new development and rehab of property**
- Review applications regarding such development
- **Provide sound advice to advance responsible development**
- **Enforce city code compliance as it relates to planning activities, health, and safety of the community**
- Ensure that floodplain development meets standards set forth through BMC, state, and federal regulations
- Maintain permit records, files, and community data
- Recommend changes to BMC that promote health, safety, and responsible development in the community
- **Keep abreast of planning issues on local, state and national levels**

In the course of the action leading up to the Hackneys construction issues, it was discovered that the operation of B&B's in housing areas are against the City Code. If this is true, then this also

displays a failure on the city to manage its business licenses. No license should have been issued to any B&B operating in a subdivision. The city must make a choice, it is going to keep all of them operating or close them all down.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Robert Rey', with a stylized, flowing script.

Robert Rey

August 31, 2020

Doris Rockwell

9332 Nengquilaria Dr. (Former Resident of 121 A Alex Hately Rd)

Bethel, AK. 99559

To Whom It May Concern

Planning Division

Bethel, AK. 99559

To Whom It May Concern:

I am writing this letter regarding the concerns that you are having with the Hackney's Blueberry subdivision. I have lived in Bethel for just over 4 years and lived on Alex Hately Rd and in fact still drive down it every so often to visit co-workers and friends. I have known Dawn and Dan for as long as I have lived here and driven by their house frequently. The edition or short-term lodging that they built behind their residence is almost invisible from the road as you drive by. The building itself is very beautiful and respectable and would increase the properties value and not bring down the neighborhood's appearance. They have put in a great deal of time and money to make it this way. There are only a few bed and breakfast establishments in Bethel and unfortunately, they do not have the same qualities as the Hackney's building. One in fact in the same subdivision. Why would you close one and not all the short-term lodging? The hospital relies on short term housing for the temporary employees and ones that are just moving to Bethel and taking these away only hinders the possibility of bringing them here to Bethel.

I am hoping that you are able to resolve this dilemma with the Hackneys as I know other small business owners have come to you in the past without such difficulty (they are also in a subdivision) and have provided needed services. The Hackney's just are wanting to provide for the community a service and have given so much to the city of Bethel and want to continue.

Sincerely,



Doris Rockwell

Jessica Schroeder
118 H Marker Rd Formerly 228 Blackberry
Bethel, AK 99559
08/25/2020

To Whom It May Concern
City of Bethel
Planning Division
Bethel, AK 99559

Dear To Whom It May Concern:

I am writing in response to the housing planning issue in the Blueberry subdivision. The home effected is that of Dawn and Dan Hackney.

I have lived in Bethel, Ak for 3 years. Housing is a huge problem in this area. This effects people moving here and visiting here. We lose out on tourist dollars due to the fact that tourist have nowhere to stay.

I think it is appalling how the Hackney's have been treated when they are only trying to provide something Bethel desperately needs. Housing! Being able to offer visiting friends and family a clean and safe place to stay is almost impossible.

Housing is so dysfunctional that I have brought professional people to dirty or occupied housing. It would be nice if we had a clean and nice back up plan.

I have lived in Blueberry sub. I do not see why a clean, nice, professionally run Bed and Breakfast would diminish the value of the neighborhood. My husband and I would still purchase a home there if the opportunity arose. If anything, the BnB would be more of a selling point so visiting friends would be close by.

Sincerely,



Jessica Schroeder

907 545-2330
RNsess1984@yahoo.com

Sept-15-20

I'm writing this letter for the house on the corner of
Katie Hatley & Alex Hatley # 175 in Blueberry Sal.
We lived in Trailer Court for over 20 years. Then we
moved to Alex Hatley.

I have more trouble with drunk people & customers than
surrendering all houses of the Day & Night from Alcohol than
we do from Mr. Harkness.
When he moved across the street, Kitty Corner from us, there
was trees & bushes & lawns all around.
He filled it all in, which helped with the mosquitoes, &
Planted grass, put in a few bushes & did yard work. It looks
really nice.
We have no problem with the people that rent his back shop
as the kids.

Thank you

~~Jammy Rogers~~

Jammy Rogers
168 Alex Hatley

Sept 16 2020

This is what I think!

Let's start at the beginning of Alex Hatley.

At 10 min to 8 in the morning you have a hard, difficult time getting on Alex Hatley from the Highway. Or coming the other way to get on the Highway. Because people are getting their coffee from the Coffee Shop. It's a pain.

She needs to make a living.

Then you come to the cars all out by the road for the car shop. They are off the road. You just have to be careful.

He needs to make a living.

Over on Cranberry there's a Bed & Breakfast.

They need to make a living.

There's a whole bunch of homes on Alex Hatley & in Blueberry that rent out rooms.

They need to make a living.

Mr + Mrs Hackney have a lovely home. lovely yard.

They need to make a living.

I don't have a problem with any of these. We don't have very many fights at midnight. Noise is kept down.

Whoever numbered Blueberry for house numbers did a horrible job. Every street has the same #. on the houses.

Thank you



Tamy Rogers
168 Alex Hatley-

October 1st, 2020

City of Bethel
Planning Department
1155 Ridgecrest Dr.
Bethel, AK 99559

Dear COB Planning Department,

I am writing this letter to show support for the new construction at 175 Alex Hatley. I have been following this dispute distantly since it began last year, and on behalf of many like-minded individuals, we would like to see this come to a peaceful end.

I feel that our planning department and commission should use their valuable and limited time, focusing on higher priority projects that would positively affect the whole community. A complaint from a single neighbor does not justify the amount of time, personnel and resources that have gone into this. The results you are seeking to achieve only single out a single property owner and ignores the many similar developments both in the same neighborhood, and across town. If the City Administration wishes to change certain municipal code or departmental protocol and procedure to prevent this from happening again, I would be onboard with that. This, however, is not the way forward. Isolating a single case that did what they were asked, and then turning them into an example to deter others is simply a band aid to the bigger problem.

I have faith in the outstanding men and women that administer our local government. Your job is not easy, and we always ask for "more" from you. But a momentary lapse in judgement in our planning department that happened during a period of high turnover, should not come at a cost to the citizens that you serve. Instead it should be viewed as an opportunity to learn from and improve your department, so it does not happen again.

It is absolutely possible to find a logical resolution to this issue, please make your community members proud by doing the right thing. Let this family continue to peacefully upgrade their property, like so many others around them already have.

Sincerely,

Local resident of 22 years

Naim Shabani



9-10-20
Cedar House
163 Alot
Hately

To Whom Concerned,

My name is Archelaus Ernest Turrentine I am 64 yrs old. I have spent most of my life in Bethel. I go by 'Ernie'. Writing this short letter about my neighbors the Hackneys.

They bought a very dilapidated little house across from them. I wished somebody like the Hackneys would buy the dilapidated house across from me. I will just say nice job for what the Hackneys have done. Next item they are not operating a hotel, it is or was a B+B we have a lot of them (B+B's) in the finest neighborhoods in Bethel. Which is a good thing for the economic well being of Bethel. We have a housing shortage, we also have substandard hotel that professionals do not or will not stay in period.

Sincerely,

 A 'Ernie' Turrentine

House addition

pooh_07_us <pooh_07_us@yahoo.com>
To: <3dhackney@gmail.com>

Sun, Jun 6, 2:10 PM

June 6, 2021

To Whom It May Concern,

From a concerned member of the community and an essential worker in the community, I have followed this situation regarding the B&B's in Bethel and I am in awe of the injustice of the city judicial system. The Hackney's built on to their home at their own expense to expand not only for their benefit but for the benefit of the city itself. If there is not sufficient housing to accommodate much needed labor workers, nurses, providers, construction workers and essential workers who are needed then the community and the city both suffer. Dan Hackney did state that he did not add a second story on his addition in his plans but the former planner for the city of Bethel did say that she may have given verbal permission for the second story. So if this is the issue then allow the Hackney's to amend the plans, pay the appropriate fees for the addition and operate their business. Allowing the Hackney's to house essential workers provides income not only to themselves but to the surrounding businesses and to the city. The city should want to encourage the community to grow not be discouraged and punished by being singled out on a whim and jealousy of other neighboring residents who have nothing better to do than constantly complain to the city. The current city planner, Ted, should be ashamed of himself. If you cannot be fair and set a precedence for honor and compassion for equal opportunity to everyone in your city then shame on you for allowing personal acquaintances to cloud your better judgment. If you are going to limit income and city revenue for Bethel and it's business owners by preventing the operation of much needed B&B businesses in residential areas then at least be fair and close all B&B's. By all means, go ahead be unfair and punish the city of Bethel and it's private residents by denying them the right to help the city grow and attract new workers, potential residents and much needed healthcare personnel and at the same time cause hardship for the residents who already live here and have invested money to expand. It is crazy that this pettiness has gone on for as long as it has, 2 years really. And as for the residents who continues to create havock in the Blueberry Community, please do everyone a favor, grow up and get a hobby and preferably one that doesn't involve cameras and inappropriate allegations.

Sherry Vancor
5919B Kasayuli
Bethel, AK 99559

Sent from my Verizon, Samsung Galaxy smartphone



September 1, 2020

From:

Dr Calvin L Vermeire
PO Box 3392, Bethel, AK
Formerly 174 Alex Hately for 9 years part time
And 121 Alex Hately for 2 years.

To: City of Bethel; Planning Division
Bethel, AK 99559

Dear board members:

I am a physician on staff at YKHC since April 2007. Over the years we have had to recruit many new staff members. When they come for interview, they are housed for 2-3 nights somewhere in Bethel. I have seen them in some of the ugliest, run down housing because there is no decent place to house professional couples' short term. Now the Hackneys are trying to provide a valuable service to the community with a new, modern, clean and convenient B & B, and they are being inhibited by some illogical thought.'

Because there has been a change of leadership in the planning commission, should be no reason to impose illogical rules on someone who had approval for their building.

They are being singled out by unfair bias that is small minded.

Bethel needs more B & B establishments as it grows. They should be allowed in decent neighborhoods.

Sincerely,



Calvin L Vermeire DO

199 Alex Hatelly Drive
Bethel, AK 99559

September 11th, 2010

City of Bethel
Ted Myers
Planning Department
1155 Ridgecrest Drive
Bethel, AK 99559

Dear Mr. Myers:

I am writing in support of Danial and Dawn Hackney's new construction at 175 Alex Hatelly Drive. I understand that Mr. Hackney's final structure did not follow the plan for which he applied, but that is not the matter I wish to address. I wish to the double standard that is being applied to the Hackney's and not being applied to every other Bed and Breakfast operator in Blueberry Fields Subdivision.

There are four such businesses, that I know of, and perhaps some that I do not, in Blueberry Subdivision. The home at the end of Alex Hatelly, formerly the Blevins home, has two dwellings on it and the smaller of the two has been rented since I moved to Bethel in 2008. In fact, it was offered to me to rent. To apply such force to the Hackneys and no one else is openly bias, and one could say institutional bullying. If the Hackneys cannot run a Bed and Breakfast, then no one should be allowed such a privilege.

I read the complaint that your office received on June 8th, 2020. The plaintiff devoted a tremendous amount of time crafting his, very direct, letter to your office. His letter, however, severely exaggerates what the Hackney's a doing with their property. A Bed and Breakfast or a short-term rental is hardly a hotel. To describe the Hackney's home as an atrocity is quite the opposite of reality. As a neighbor, I see 175 Alex Hatelly as a well kempt jewel on my street. When completed, it will likely raise our property values significantly. That is why fining the Hackney's \$1000.00 per day for doing what many of my neighbors are doing is an outrage to me. The prior owner of my house rented out four of his rooms and ran a dance studio business in this house and you never levied a fine against him. Why is that?

What your office is doing to the Hackney's is wrong. Allowing a complaining neighbor to dictate your actions is wrong. Singling out a struggling family, while ignoring all others is wrong. This is not leadership, it is governmental bullying, and it must stop.

Sincerely,

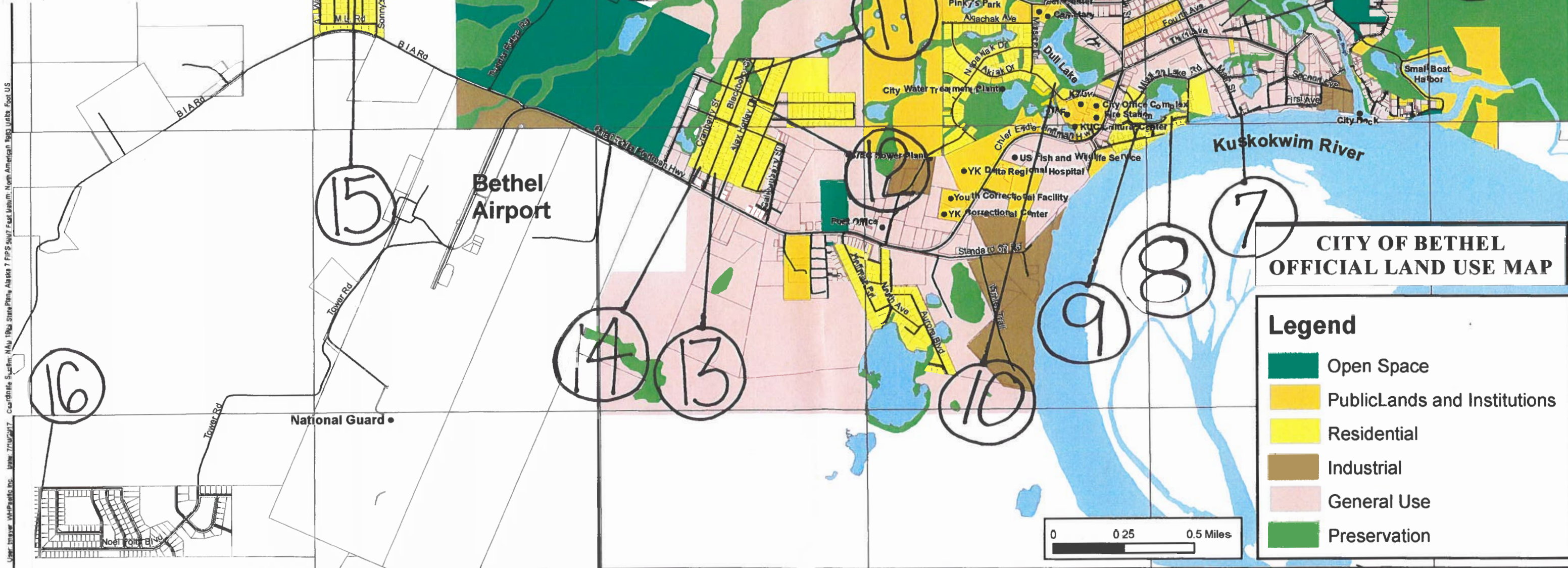
Jerry L. White

original Sent = Sig to Ted in The Mail

BED & BREAKFASTS

#	NAME	ZONE	BUSINESS LICENSE
1	Clean & Cozy Resting Place	RES	no
2	Sleep Tite	GU	no
3	White House	GU	yes
4	Willow Lodge	GU	yes
5	Midtown Cottages	GU	yes
6	Sandy's B&B	GU	yes
7	Bentley's	GU	yes
8	Old Mission House	RES	yes
9	The Right Place to Stay	RES	no
10	Sleepy Salmon	RES	yes
11	The Shindig Inn	RES	yes
12	Hackney Homes	RES	yes
13	Blackberry B&B- closed	RES	closed
14	Cranberry Cottage	RES	yes
15	Miller Hospitality	RES	yes
16	Igloo of Enlightenment	N/A	yes
17	Entire House- As good as it Gets	N/A	no
18	Aurora Lights	N/A	no

**17/18 location unknown



CITY OF BETHEL OFFICIAL LAND USE MAP

Legend

- Open Space
- Public Lands and Institutions
- Residential
- Industrial
- General Use
- Preservation

0 0.25 0.5 Miles

Adopted July 10, 1991

1 CITY OF BETHEL

2

3 PLANNING COMMISSION MEETING

4

5

6 DAN AND DAWN HACKNEY

7 Appeal 19-01

8 Alaska Court Case No. 4BE-20-00080 CI

9

10 Regarding Property at

11 Survey 84-3, Block 1, Lot 11

12 Blueberry Field Subdivision, commonly known as

13 175 Alex Hately

14 Bethel, Alaska

15

16

17

18 TRANSCRIPT OF REMAND HEARING

19

20 August 19, 2021, 6:30 p.m.

21

22

23

24 APPELLANTS/PLAINTIFFS: DAN AND DAWN HACKNEY

25

26 REPRESENTED BY: THOMAS V. WANG, JR., ESQ.

27 Ashburn & Mason

28 1227 W. 9th Avenue, Suite 200

29 Anchorage, AK 99501

30 (907) 276-4331

31

32 APPELLEE/DEFENDANTS: TED MEYER, PLANNING DIRECTOR

33 City of Bethel

34

35 REPRESENTED BY: ELIZABETH (LIBBY) M. BAKALAR, ESQ.

36 City Attorney

37 Attorney at Law

38 211 4th Street, Suite 108

39 Juneau, AK 99801

40 (907) 723-9492

41

42 PLANNING COMMISSION HOLLY C. WELLS, ESQ.

43 LEGAL REPRESENTATIVE Birch Horton Bittner & Cherot

44 510 L Street, Suite 700

45 Anchorage, AK 99501

46 (907) 276-1550

1	COMMISSION MEMBERS PRESENT:	Kathy Hanson, Chairperson
2		Lorin Bradbury, Vice-Chairperson
3		John Guinn
4		Alex Wasierski
5		Jessica Shroder
6		Haley Hanson
7		Shad Rabi (telephonic)
8		Stanley Hoffman, Jr. (telephonic)
9	ABSENT:	Brian Henry
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1 Pursuant to Public Notice, the Remand Hearing in response
2 to Hackney v. City of Bethel, Alaska, et al., Alaska Superior
3 Court Case No. 4BE-20-00080CI, concerning 175 Alex Hatelly code
4 violations was heard by the City of Bethel Planning Commission
5 on the nineteenth day of August, 2021.

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1 audio). -- I had it on at one time. It's dark again. Okay.

2 (audio got worse)

3 CHAIR HANSON: Thank you. Okay. (indiscernible--poor
4 audio) After closing the arguments and hearing the arguments by
5 both parties, the Commission will ask the parties and any
6 members of the public to exit the building. The Commission
7 will deliberate and consider the evidence presented. I
8 apologize (indiscernible--poor audio) we repeatedly had
9 (indiscernible--poor audio) as you all know (indiscernible--
10 poor audio) construction (indiscernible--poor audio) what we
11 have (indiscernible--poor audio) now have (indiscernible--poor
12 audio)

13 This is the sign in sheet (indiscernible--poor audio)
14 Please be sure to provide a contact number of who
15 (indiscernible--poor audio) contact you (indiscernible--poor
16 audio) deliberation (indiscernible--poor audio) After
17 deliberation, the Commission will exit deliberation either
18 reach a decision tonight or members will have time to
19 deliberate (indiscernible--poor audio) decision (indiscernible-
20 -poor audio) In the event the Commission is not prepared to
21 issue a decision tonight Commission will (indiscernible--poor
22 audio) everyone (indiscernible--poor audio)

23 If we (indiscernible--poor audio) reach decision
24 (indiscernible--poor audio) consider (indiscernible--poor
25 audio). This procedure (indiscernible--poor audio) submission

1 (indiscernible--poor audio) we are all (indiscernible--poor
2 audio) this evening(indiscernible--poor audio) more time
3 (indiscernible--poor audio) we will (indiscernible--poor audio)
4 I promise(indiscernible--poor audio). Does anyone have
5 questions. Will the parties (indiscernible--poor audio) please
6 identify themselves for the record(indiscernible--poor audio)

7 MR. WANG: Thank you. My name is Thomas Wang, the
8 attorney (indiscernible--poor audio) I represent the petitioner
9 (indiscernible--poor audio) remand (indiscernible--poor audio)

10 CHAIR HANSON: Thank you.

11 MS. BAKALAR: My name is Libby Bakalar. I'm the City
12 Attorney for City of Bethel and I represent the City Planning
13 Department.

14 CHAIR HANSON: Thank you.

15 MR. HACKNEY: My name is Daniel Hackney.

16 COMMISSIONER SHRODER: Jessical , alternate for Planning
17 Commission.

18 COMMISSIONER GUINN: John Guinn, Planning Commission.

19 MS. WELLS: I'm Holly Wells, the legal counsel
20 (indiscernible--poor audio) Planning Commission.

21 COMMISSIONER WASIERSKI: Alex Wasierski, Planning
22 Commission.

23 COMMISSIONER HANSON: Haley Hanson, City Council
24 Representative (indiscernible--poor audio) Planning Commission.

25 COMMISSIONER BRADBURY: Lorin Bradbury, Planning

1 Commission.

2 MR. MEYER: Ted Meyer, City Planner.

3 MS. STRICKLER: Lori Strickler, City Clerk's Office and
4 next to me is Kevin Morgan, Deputy City Clerk.

5 CHAIR HANSON: (indiscernible--poor audio) Thank you.

6 Does any Commissioner or member have any ex parte
7 (indiscernible--poor audio), conflicts or (indiscernible--poor
8 audio) Excuse me. Before we answer that question, ask Lori
9 about people connected to or (indiscernible--poor audio) can I
10 have them introduce themselves.

11 MS. STRICKLER: That would be great. Yes, it looks like
12 we have a few Commission members, at the very least, who
13 participated online or through ZOOM.

14 COMMISSIONER RABI: My name is Shadi Rabi, I'm a Planning
15 Commissioner.

16 CHAIR HANSON: Thank you.

17 COMMISSIONER HOFFMAN: My name is Stan Hoffman, Planning
18 Commissioner.

19 CHAIR HANSON: Thank you. Is there anyone else?

20 MS. STRICKLER: Doesn't appear -- there doesn't appear to
21 be anyone else.

22 CHAIR HANSON: All right. Thank you.

23 UNIDENTIFIED VOICE: Hello (indiscernible--poor audio) Roy
24 and (indiscernible--poor audio) I'm calling (indiscernible--
25 poor audio)

1 CHAIR HANSON: Thank you. Anyone else connected through
2 Zoom? All right. Thank you. (indiscernible--pool audio) Ask
3 commissioner's question. Does any Commission member have any
4 ex parte communication (indiscernible--poor audio) identify
5 (indiscernible--poor audio)

6 COMMISSIONER RABI: Madame Chair, this is Shadi Rabi.

7 CHAIR HANSON: Go ahead Shadi.

8 COMMISSIONER RABI: I would like to recuse myself. I have
9 a conflict of interest with this case.

10 CHAIR HANSON: Can you explain (indiscernible--poor audio)

11 COMMISSIONER RABI: Betsy Jumper works at the organization
12 that I work at (indiscernible--poor audio), and I actually
13 supervise her.

14 CHAIR HANSON: All right. Shadi, thank you, and I
15 appreciate that. We will allow you to recuse yourself. Thank
16 you.

17 COMMISSIONER RABI: Thank you.

18 CHAIR HANSON: uh-huh (affirmative) Anyone else?

19 MR. WANG: Madame Chair, may I (indiscernible--poor
20 audio).

21 CHAIR HANSON: Yes, go ahead.

22 MR. WANG: In terms of the disclosure of conflicts of
23 interest, the Petitioners (indiscernible--poor audio)
24 fundamental hearings dictate that members of the Commission
25 disclose whether or not they (indiscernible--poor audio) to the

1 Hackney's (indiscernible--poor audio) particularly as it
2 relates to (indiscernible--poor audio) analysis. So
3 specifically, we would seek disclosure from any of the
4 commissioners regarding their current or former activity
5 operating residential rental or bed and breakfast business in a
6 residential area, which is this subject of dispute here. It is
7 our understanding one or more commissioners have or currently
8 do operate bed and breakfast.

9 CHAIR HANSON: All right. I think that's fine. Let's
10 (indiscernible--poor audio) start with Commissioner Bradbury.

11 COMMISSIONER BRADBURY: Yeah. I, many years ago, don't
12 remember how many years, we did run a bed and breakfast for a
13 few years at (indiscernible--poor audio) Alex Hately. At that
14 time I had my -- or rather our two bedrooms (indiscernible--
15 poor audio) That's all I have (indiscernible--poor audio)

16 CHAIR HANSON: You don't have any short-term rentals -- -

17 COMMISSIONER BRADBURY: I don't have short-term, no.

18 CHAIR HANSON: Okay. Thank you. (indiscernible--poor
19 audio).

20 UNIDENTIFIED COMMISSIONER: I have never owned
21 (indiscernible--poor audio) a B and B (indiscernible--poor
22 audio).

23 CHAIR HANSON: Thank you. Alex?

24 COMMISSIONER WASIERSKI: I have never (indiscernible--poor
25 audio)

1 CHAIR HANSON: Speaking for myself, never had any
2 (indiscernible--poor audio) rentals. But that's not the
3 subject tonight's (indiscernible--poor audio) How about you
4 (indiscernible--poor audio).

5 UNIDENTIFIED COMMISSIONER: Never had a bed and breakfast?

6 CHAIR HANSON: Thank you. (indiscernible--poor audio)

7 COMMISSIONER H. HANSON: No, I -- nope. Never had a bed
8 and breakfast or rental.

9 CHAIR HANSON: Okay. Thank you, Haley. Stanley Hoffman?

10 COMMISSIONER HOFFMAN: Thank you, Madame Chair. This is
11 Stan Hoffman. I do have (indiscernible--poor audio) in the
12 general (indiscernible--poor audio) district. And then - so
13 that's - so, I guess I don't really have a B and B in
14 residential area.

15 (sidebar conversation)

16 MS. BAKALAR: So, what I would suggest, looking at short-
17 term rentals, this is, unlike a regular hearing, possible that
18 hearing (indiscernible--poor audio) question (indiscernible--
19 poor audio) proposal (indiscernible--poor audio) is it is in
20 competition with bed and breakfast (indiscernible--poor audio)
21 then (indiscernible--poor audio) commissioner (indiscernible--
22 poor audio) long-term rental, same question(indiscernible--poor
23 audio) that question. (indiscernible--poor audio)

24 CHAIR HANSON: I think we can safely say (indiscernible--
25 poor audio) in this case there's no possibility of

1 (indiscernible--poor audio) recuse yourself this evening.

2 COMMISSIONER HOFFMAN: Madame Chair?

3 CHAIR HANSON: Yes.

4 COMMISSIONER HOFFMAN: Okay. Yeah, so because I have a
5 structure (indiscernible--poor audio) in a general use
6 district. That because it's - it could be -- it could be -- I
7 just lost the words --

8 CHAIR HANSON: A conflict?

9 COMMISSIONER HOFFMAN: -- in competition with B and B and
10 that's why I'm asking to recuse myself.

11 CHAIR HANSON: Because it has the appearance of
12 (indiscernible--poor audio).

13 COMMISSIONER HOFFMAN: Okay. Okay. Fair enough. I will
14 agree with - so, what do I do now? Do I --

15 CHAIR HANSON: Will you please stay on and listen, if you
16 like. But you can't participate in (indiscernible--poor
17 audio).

18 COMMISSIONER HOFFMAN: Okay. Thank you, Madame Chair.

19 CHAIR HANSON: Are there any other conflicts at this
20 point? Mr. Wang, do you have anything else to say?

21 MR. WANG: Yes. I would be curious to know more detail
22 about the business that you operate at the Blueberry
23 Subdivision.

24 CHAIR HANSON: The business?

25 MR. WANG: Yes.

1 CHAIR HANSON: We have a (indiscernible--poor audio) next
2 door.

3 MR. WANGE: Okay. And just - how many rooms, what are the
4 terms of the rental?

5 CHAIR HANSON: One room. She rents by the month. She's
6 been there two years.

7 MR. WANG: Okay. Thank you.

8 CHAIR HANSON: Anything else? Hearing none, I guess we
9 can --

10 UNIDENTIFIED VOICE: (indiscernible--poor audio) Mr.
11 Wang(indiscernible--poor audio) appeal decision(indiscernible--
12 poor audio) not appropriate or warranted(indiscernible--poor
13 audio)

14 CHAIR HANSON: Okay. (indiscernible--poor audio)

15 MR. WANG: You know, the concern that has been expressed
16 to me (indiscernible--poor audio) occasions and this setting is
17 that people are asking (indiscernible--poor audio) rules in
18 this case one of the, you know, the underlying questions
19 relating to the operation the Hackney's (indiscernible--poor
20 audio) operate includes traffic and had some community
21 questions from our standpoint is -- you know, did the impacts
22 on the community from your residential tenant -- how do they
23 relate to what is being considered this evening (indiscernible-
24 -poor audio)

25 CHAIR HANSON: (indiscernible--poor audio) I've got to

1 tell you, we have two lots, side by side. And that rental is
2 on the other lot. It didn't (indiscernible--poor audio) my
3 lot. The house (indiscernible--poor audio) single family home,
4 one bedroom, (indiscernible--poor audio) one person.

5 MR. WANG: Then we don't have an objection to your
6 continued participation.

7 CHAIR HANSON: Okay. Thank you. All right. We can go
8 on. Before we begin, does either party have any preliminary
9 objections?

10 MR. WANG: This is Mr. Wang. I'll speak to an issue that
11 we had discussed via email. And (indiscernible--background
12 noise) appears so far as I am unaware. But our understanding
13 of this goes to the hearing, should Ms. Jumper present herself
14 for examination, to submit her for further cross examination.
15 And, if necessary, to present rebuttal witnesses and testimony
16 to the extent necessary and appropriate so we have three
17 persons present who can testify, if necessary, and rebuttal
18 witnesses and those are Daniel Hackney, Jared Karr, and Patty
19 Burley. Their testimony may or may not be necessary, depending
20 on if Ms. Jumper testifies and in what nature she testifies.

21 CHAIR HANSON: Okay. At what point do we -- at what point
22 would we have Ms. Jumper (indiscernible--poor audio)

23 MR. WANG: I would propose that we address that straight
24 away, since it is the entire purpose for this proceeding. And
25 to be clear, it is our understanding that (indiscernible--poor

1 audio) correspondence from the City urging Ms. Jumper's
2 participation. We have previously expressed -- made the
3 observation that even though Ms. Jumper was no longer a city
4 employee at the time of the last hearing, she was
5 (indiscernible--poor audio) -- she was called by the City to
6 appear, but she was not compelled to testify by subpoena, as
7 she was speaking solely and exclusively to acts she undertook
8 in her status and capacity as a city employee.

9 So, we had expressed and we raised a concern that had Ms.
10 Jumper testify initially with the City's obligation to make her
11 present and available. And she -- testimony in cross-
12 examination, particularly, when -- while it's not the accurate,
13 present, City's counsel, attorney or advisor, her testimony was
14 improper (indiscernible--poor audio) requiring an appeal for
15 this period (indiscernible--poor audio) for continuation of
16 this hearing. So, in addition to the City's apparent -- we
17 would accept a good faith attempt to compel her testimony.

18 We also engaged in a significant number to obtain a
19 subpoena from the Bethel Superior Court compelling her
20 testimony. That was served on her on August 11th by a State
21 Trooper. We are unable to explain or account for her lack of
22 attendance. So, if she doesn't present herself in person or
23 virtually, the question is by what significance we should
24 attach to that.

25 And our point of view is that there is conflicting

1 testimony between parties at the initial hearing. Where the
2 Hackney's presented clear testimony about their perspective
3 about what had happened. About Ms. Jumper's oral approval of
4 the site plan, her knowledge of what was being developed. Her
5 approval of that application of the operation bed and breakfast
6 at 175 Alex Hatley.

7 Ms. Jumper's testimony on that issue was critical.
8 Ultimately saying that she could have given such an
9 authorization. We appreciate that there was conflicting
10 testimony from her. So, we would suggest that in light of Ms.
11 Jumper's equivocal testimony and unclear testimony about
12 whether she granted that approval and in light of the Hackney's
13 clear testimony, one appropriate outcome would be for this
14 Commission to make fact finding that when the City Planning
15 Department has been unable to present its key witness, for
16 continued examination, an inference is drawn against Ms.
17 Jumper's testimony and fact finding should be made in favor of
18 the Hackney's testimony.

19 Currently, the hearing would have to be reset for a later
20 date. But, you know, a lot of people have come a long way and
21 have inconvenienced themselves (indiscernible--poor audio) to
22 make this happen. And it would be very (indiscernible--poor
23 audio) not here. That's our point of view. I'm sure
24 (indiscernible--poor audio) differently.

25 MS. BAKALAR: I actually don't have -- my opinion actually

1 does not differ significantly from yours at all. So I think
2 the records clear. We made a number of attempts
3 (indiscernible--poor audio) enough to go back and forth to how
4 we were going to (indiscernible--poor audio) Ms. Jumper. How
5 we were going to have her here. Whether we had -- the City had
6 Subpoena power. I believe there's an order from the Planning
7 Commission that ultimately concluded that the City did not have
8 independent power to subpoena Ms. Jumper.

9 I made efforts to locate her. I found her contact
10 information. Mr. Wang, I believe he subpoenaed her. If I'm
11 not mistaken, the standard of -- the preponderance of the
12 evidence of standard applies here.

13 The City is not objecting to any of the rebuttal witnesses
14 that Mr. Wang wants to call. If your testimony substitutes in
15 for what Ms. Jumper may or may not have said, I don't think the
16 city has a problem with the Commission drawing any inference it
17 likes from that. I think that there are numerous witnesses
18 here that testified one way or the other as to what happened.
19 That (indiscernible--poor audio) with approval with the site
20 plan permit, one way or the other, people with personal
21 knowledge of that situation, of course, current City Manager,
22 working for the City right now, has knowledge of what happened
23 then.

24 So, there isn't -- I can't put Ted Meyer on the stand and
25 testify one way or the other what happened when Ms. Jumper was

1 the City Planner. I can't -- you know -- and myself, of
2 course, is not involved in that initial hearing. Nor would I
3 have made myself a witness in any event.

4 But given that there's a preponderance of the evidence
5 standard, Mr. Wang, has additional evidence that he wishes to
6 put on, then I think it's incumbent on the Commission to take
7 that under consideration.

8 As for preponderance of the evidence (indiscernible--poor
9 audio) wishes to infer from Ms. Jumper's absence or presence
10 here, I think both parties did their very good faith effort to
11 get her here. I agree with Mr. Wang that it would be more
12 inconvenience to have her reschedule this entire hearing, which
13 has already been pushed out numerous times, and so I actually
14 don't have a very good difference of opinion from Mr. Wang
15 about that.

16 I think it must be incredibly frustrating that the entire
17 purpose of this remand hearing was to have Ms. Jumper here to
18 testify, what she did or didn't say. Hear for record as to
19 what her testimony was or wasn't at that initial hearing
20 (indiscernible--poor audio) There's only so much you can do
21 to get a witness to show up. Nobody can -- this is not the
22 kind of court appearance where somebody can (indiscernible--
23 poor audio) and make her testify, if she doesn't want to be
24 here. She doesn't have to be here. She has a subpoena, that's
25 as far as we can go.

1 So, we can't force her to testify again. And in all
2 fairness, whatever evidence that happens to be put on tonight,
3 should be considered and in the grand scheme of the
4 preponderance of the evidence standard that this Commission is
5 tasked with (indiscernible--poor audio) with reviewing under.

6 So, I -- Mr. Wang and I are actually not very far apart at
7 all on that. I think we should hear from whatever witnesses
8 Mr. Wang and the Hackney's wish to put on in the absence of Ms.
9 Jumper. And then the Commission can draw from both that
10 testimony and whatever Ms. Jumper's presence or absence --
11 hopeful presence, but absence may imply, you know, I'm
12 certainly not going to sit here and argue that we should have -
13 - I'm not going to advocate for direct inference from her
14 absence. But I certainly understand (indiscernible--poor
15 audio) Mr. Wang putting up his preponderance of evidence as to
16 what she may or may not have said. So, does that make sense,
17 Mr. Wang and Chair Hanson?

18 CHAIR HANSON: Yeah, I understand what you're saying. I'm
19 not quite sure how to proceed. All of my notes are
20 (indiscernible--poor audio) Do we have (indiscernible--poor
21 audio)

22 MR. WANG: Sure. And may I ask one question before we go
23 on break.

24 CHAIR HANSON: Sure.

25 MR. WANG: Is Patty Burley, by any chance, participating

1 on zoom?

2 MS. STRICKLER: I saw her on zoom. I believe she did
3 (indiscernible--poor audio) on zoom. So, I do see her name
4 there.

5 MR. WANT: Okay.

6 MS. BAKALAR: So, she's on there. Yes.

7 MR. WANG: Okay. So, just -- I believe what we'll propose
8 doing is to call Mr. Hackney, Ms. Burley, and Jared Karr, who I
9 believe, will also be present for brief testimony earlier in
10 the evening that I had anticipated.

11 MS. BAKALAR: Okay. And just -- also just to keep things
12 in order so you know where I am going with this as well. I
13 intend to do, you know, involved cross-examination of these
14 witnesses. I don't intend to bounce some sort of
15 (indiscernible--poor audio) I think the purpose of this hearing
16 is to find out what happened during the interaction at issue,
17 which was the oral approval or the not oral approval of the
18 site plan permit.

19 So, I'm not going to turn this into a giant court room
20 spectacle here. So, for the purposes of timing, planning, I
21 think it's fair to say my goal, the city's goal, is to have the
22 Hackney's have a fair opportunity to present their witnesses,
23 present the situation as it was believed to have happened. And
24 I'm not going to waste the Commission's time, you know, trying
25 to, you know, cross examine witnesses to tell as to -- yeah,

1 none of the city employees who are here now were here then.
2 So, we just need to hear from folks as to what happened back
3 then. (indiscernible--poor audio) I don't intend to hang us up
4 with a kind of cross examination or anything of that nature.
5 Just so folks understand my strategy here.

6 CHAIR HANSON: Thank you very much. (indiscernible--poor
7 audio)

8 MS. STRICKLER: Chair Hanson, I wonder if -- very quickly,
9 we do have a number of people participating by phone. I wonder
10 if the Commission would mind us just ask if one of those
11 participants might be Betsy --

12 CHAIR HANSON: Oh, yeah.

13 MS. STRICKLER: Thank you. So, if Betsy Jumper has joined
14 us by phone, if you could just unmute yourself and let us know.
15 You may need to press star (*) 6 to mute -- or, excuse me,
16 unmute your line.

17 Okay. We have no movement on ZOOM. Thank you.

18 CHAIR HANSON: (indiscernible--poor audio)

19 UNIDENTIFIED MALE: (indiscernible--poor audio) use my
20 pen.

21 (pause)

22 COMMISSIONER RABI: If you'd like us to excuse ourselves,
23 I assume.

24 CHAIR HANSON: It's okay. You're good.

25 (sidebar conversation)

1 CHAIR HANSON: Okay. Thank you.

2 I'm going to -- after consulting legal counsel -- I'm going to
3 recommend to the Commission that we take the following steps
4 tonight in light of Ms. Jumper's failure to appear despite
5 subpoenas issued by the Court. And I will read these from the
6 source text and then ask the Commission for a motion to approve
7 them or not. In case of approval, we will move forward. So,
8 these steps would be --

9 Number 1 (indiscernible--poor audio) play recording of
10 Ms. Jumper's testimony from the initial hearing.

11 Step 2 - Mr. Wang will present any rebuttal witnesses he
12 believes have testimony (indiscernible--poor audio)

13 3. (indiscernible--background noise) cross-examine
14 witnesses. And,

15 4. -- (indiscernible--poor audio) representatives will be
16 asked any closing statements. I would ask that these
17 statements prove the parties position regarding the estoppel.

18 So, I ask the Commission, is there any objection to that,
19 any discussion or is there a motion to approve that? Mr.
20 Bradbury?

21 COMMISSIONER BRADBURY: I make a motion to approve those
22 four steps as (indiscernible--poor audio)

23 CHAIR HANSON: Thank you. Is there a second?

24 COMMISSIONER GUINN: Second. (indiscernible--poor audio)

25 CHAIR HANSON: (indiscernible--poor audio)

1 MR. WANG: I have no objection (indiscernible--poor audio)

2 CHAIR HANSON: Ms. Bakala?

3 MS. BAKALA: I have no objection to (indiscernible--poor
4 audio)

5 CHAIR HANSON: Thank you. There is a motion on the floor
6 (indiscernible--poor audio) to approve of these following steps
7 (indiscernible--poor audio) from the Commission. Mr. Guinn
8 thank you very much. It has been moved and seconded. Any
9 discussion about it?

10 COMMISSIONER WASIERSKI: Clarification. So, Commissioners
11 won't be hearing the (indiscernible--poor audio)

12 UNIDENTIFIED: Correct.

13 COMMISSIONER WASIERSKI: It will be just the attorneys?

14 CHAIR HANSON: Maybe -- yes. (indiscernible--poor audio)
15 Commissioners ask (indiscernible--poor audio)

16 UNIDENTIFIED VOICE: Yes.

17 CHAIR HANSON: (indiscernible--poor audio) All right. All
18 those in favor say, aye.

19 (motion passed unanimously)

20 CHAIR HANSON: Thank you. All the opposed, say nay.
21 Okay. Thank you.

22 So, moving along. (indiscernible--poor audio) recording
23 testimony. If you can't hear, speak up. (indiscernible--poor
24 audio)

25 UNIDENTIFIED VOICE: Commissioner Hanson?

1 CHAIR HANSON: Yes.

2 UNIDENTIFIED VOICE: Can we (indiscernible--poor audio)
3 and follow along?

4 CHAIR HANSON: Lori?

5 MS. STRICKLER: I'm sorry to say that I do not know the
6 page number where the testimony begins at? I can tell you it
7 is halfway through the audio. I don't know if that's going to
8 -- yeah, I know. I'm very sorry. I was not prepared for that
9 question.

10 MR. WANG: So, this is Mr. Wang. For the convenience of
11 the parties, if we go to the transcript of the prior proceeding
12 prepared by Kron Associates, Ms. Jumper's testimony starts on
13 page 72 of the transcript.

14 CHAIR HANSON: Thank you for that.

15 (playing audio of Ms. Jumper's testimony from November 14,
16 2019)

17 UNIDENTIFIED VOICE: Page 116.

18 MS. STRICKLER: Can everyone hear it okay?

19 I'm sorry. I'm going to pause it.

20 (continue playing audio)

21 (end audio)

22 CHAIR HANSON: Mr. Wang, do you have rebuttal witnesses.
23 (indiscernible--poor audio) testimony.

24 MR. WANG: I do. Yes, I have three that I'd like to start
25 with. I have three witnesses, and I'd like to start by calling

1 Dan Hackney.

2 CHAIR HANSON: Okay. Ms. Strickler, are witnesses require
3 to (indiscernible--poor audio) take oath or anything like that.

4 MS. STRICKLER: So, at this point, I believe that -- will
5 they be required to take an oath? Yes. I should have all the
6 parties -- do you need for the record the audio record, Holly,
7 the -- does the name statement and spelled out -- because I do
8 not.

9 MS. WELLS: I (indiscernible--poor audio) have the --

10 MS. STRICKLER: The parties spell the --

11 MS. WELLS: (indiscernible--poor audio) have the
12 (indiscernible--simultaneous speech)

13 MS. STRICKLER: Okay. Very good. Thank you. Just want
14 to make sure. So, Dan, if you're ready. I'm going to go ahead
15 and read the oath. You can repeat after me. Okay. Actually,
16 you don't repeat after me. Just say --

17 (oath administered)

18 MR. HACKNEY: I do.

19 MS. STRICKLER: Thank you.

20 DANIEL HACKNEY

21 a witness called for examination by the Appellee, being first
22 duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WANG:

25 Q Thank you, Mr. Hackney. So, you just heard Ms. Jumper's

1 prior testimony from the earlier hearing and that
2 testimony concerned a meeting that you had with her
3 (indiscernible--poor audio) testimony was factually
4 accurate in your estimation.

5 A No, it was not.

6 Q Okay. Tell me about that conversation and where you
7 disagree (indiscernible--poor audio) description of what
8 happened.

9 A Well, from the beginning, like she said, she always knew
10 it was going to be a two-story structure.

11 Q Okay. So, what's your basis for that -- tell me -- when
12 you walked into the meeting, describe what you had with
13 you and what discussion took place.

14 A The meeting, let me clarify, at her office, the Planning
15 Department?

16 Q Yes.

17 A Went to amend the drawing to show exactly how the two
18 structures would be tied together and to show the -- the
19 actual size we were -- we'd come up with for the final
20 building, which was 24 x 60 foot. And as I was drawing,
21 she'd already (indiscernible--poor audio) the roadblock,
22 as I referred to it as, she goes, oh, that looks just like
23 you have across the road. And I looked over my shoulder
24 because she was watching me, her and Pauline both. As I
25 was drawing this new map of the structure, I said,

1 exactly. But the upstairs is going to be different. It's
2 going to be bedrooms for a B and B because the other side
3 has got two bedrooms upstairs. And on the other end is
4 our car bed.

5 Q Okay.

6 A She says, no problem.

7 Q Okay.

8 A I'll have Pauline write you a permit and you'll have it in
9 a week.

10 Q So, tell me about the property across the road. Is that
11 the property at 174 Alex Hatelly?

12 A It is.

13 Q Okay. So, tell me a little bit about -- describe that
14 property because that's the property you were referencing
15 to each other.

16 A Correct. Initially, we did, I forget exactly what the
17 year, maybe '08, which had a two-car garage. Basically,
18 the structure is 24 by 48, with a second floor. On one
19 end of it, 24 by 24 was two story apartment that we did a
20 rental and B and B out of for numerous years. And that
21 was half of the structure. The other half was our side of
22 the building to reside in. And we can't have two separate
23 structures. This was explained to me back then, so we
24 tied them together with a 24-foot skywalk, as I called it.
25 And that's about it.

1 Q Okay. So, one 174 Alex Hatley, there are two structures
2 connected by a skywalk on each of the two structures that
3 are two stories. Is that correct?

4 A Yes.

5 Q Okay. And based on your conversation with Ms. Jumper, it
6 was clear that she understood that you were talking about
7 two two-story structures. Correct?

8 A Absolutely.

9 Q Okay. And did you discuss the use of the property at 174
10 being for bed and breakfast purposes?

11 A I did.

12 Q Okay. And she indicated that she was familiar with that?

13 A She did.

14 Q Okay. And so, to paraphrase your conversation, you
15 understood that you had described the structure similar in
16 concept to the one across the street. Correct?

17 A Correct.

18 Q Okay. And she expressed to you that there would be no
19 objection in ultimately obtaining a site plan permit for
20 that.

21 A That is correct.

22 Q Okay. So, tell me a little bit about how that is supposed
23 to work as a practical matter.

24 A Other than having all my setbacks squared away; having the
25 two structures connected, you cannot have two separate

1 living quarters on one lot in a subdivision --

2 Q Let me rephrase the question. That there had been
3 discussion about the kind of informal nature of the sketch
4 of your site plan application. Did you discuss with Ms.
5 Jumper bringing back a second set of as-built plans?

6 A (indiscernible--poor audio) we were talking, she mentioned
7 like the structure across the road. And I said yes. I
8 said we don't know exactly the layout of the upstairs yet.
9 But as soon as we figure out what we're going to do, I'll
10 bring you back a to scale drawing of the upstairs. I
11 expressed what we were going to be using it for. And she
12 said no problem.

13 Q Okay. And you -- your wife had a history of operating a
14 bed and breakfast at the 174 Alex Hatley address?

15 A For a number of years.

16 Q Okay. And that's something that Ms. Jumper and other
17 members of the Planning Department were well aware of?

18 A I don't know if they were or not. There was absolutely no
19 derogatory comments, statements, protests about that.

20 Q Okay. And just going to the specific conversation you had
21 with Ms. Jumper, there was discussion on specifically
22 about the prior bed and breakfast use of 174, similar use
23 for 175.

24 A Yes.

25 Q Okay. And then the -- when the structure at 175 was

1 ultimately built up, it still had the same footprint
2 (indiscernible--poor audio) dimensions. Is that correct?

3 A Basically. It was the same width. But a little bit
4 longer so I could -- I wanted, in this structure, for my
5 wife to have a garage.

6 Q Okay.

7 A Since, for sixteen years -- fifteen-sixteen years, she had
8 to go outside and clean snow off the car every morning to
9 go to work, and I had a nice warm heated garage. So, in
10 this building, I wanted to make sure she had a garage as
11 well.

12 Q Sounds like something important to fix. So, at a later
13 date were there complaints filed about the structure at
14 175, to the best of your knowledge?

15 A There have been complaints since 2013, when we bought the
16 property, and started bringing in fill to make the land
17 useable.

18 Q Who at the City did you discuss those complaints with?

19 A From time to time I went and asked Betsy if there was any
20 problem with what I was doing. She expressed to me that
21 there was a neighbor that was calling daily, sometimes a
22 couple times a day, complaining about what we were doing.
23 And she goes (indiscernible--poor audio) taking pictures.
24 She even gave me a notepad with waterproof paper so I can
25 take my own notes and document my own documentation of

1 what he was (indiscernible--poor audio)

2 Q And so, did she express to you that there was validity to
3 those complaints, that you should stop building?

4 A No. She's saying he's a pain in the rear and that half
5 the time she doesn't pick up the phone, or when she does,
6 she says, yeah, yeah, we'll look into it to pacify him.
7 And then hangs up.

8 Q Okay.

9 A But he's persistent.

10 Q So, your impression, based on your conversations regarding
11 the subsequent complaints that there was -- the city had
12 no concerns about your ongoing project as you were
13 (indiscernible--poor audio)

14 A No. She'd drive by periodically. She'd look at us
15 constructing it. Wave, and drive on by. Never stopped,
16 never asked any questions, never red tagged us. Never did
17 anything along the lines that would let me know that I was
18 in the wrong. Or that something would come up in the
19 future.

20 Q Okay. And then I understand that Ms. Jumper, at some
21 point, ceased to be employed by the city. Did you have
22 later discussions with Patty Burley regarding those
23 complaints and the status of your structure.

24 A I did. I got a call and was asked, at my convenience, to
25 come into the office. She wanted to talk to me. So, I

1 did. The Acting Police Chief happened to be there the
2 afternoon that I arrived. Ms. Burley asked the Acting
3 Police Chief to leave the room. I said, no, that's okay.
4 She can stay. I've got nothing to hide.
5 And she went on to tell me that she had reviewed the
6 plans, the situation, both sides of the story, and pretty
7 much her exact words, from what I can remember, was go
8 forth and conquer. There is no problem.

9 Q So, she expressed that there was no compliance problem
10 with your structure at 175 Alex Hatley.

11 A That is absolutely correct.

12 Q And what was her role with the city when you were having
13 this discussion, to your knowledge.

14 A She was the City Attorney and filling in until the next
15 Planner -- I believe, she also wore that hat as well.

16 Q Was there anybody else at the city, to the best of your
17 knowledge, who would have had authority over planning and
18 that type of complaint, as opposed to Ms. Burley?

19 A Possibly, the City Manager. But I never heard anything
20 from anybody.

21 Q But so far as you're aware, she had authority to speak for
22 the city --

23 A Oh, absolutely.

24 Q Okay. I don't have any further questions for you at this
25 time. Thank you.

1 A You're welcome.

2 CHAIR HANSON: Ms. Bakalar, do you have any other
3 questions for Mr. Hackney?

4 MS. BAKALAR: Yes, just very briefly.

5 CROSS EXAMINATION

6 BY MS. BAKALAR:

7 Q I'm just trying to get a sense of the timeline here, Mr.
8 Hackney. So, in July, 2018, that was when you -- Ms.
9 Jumper, gave you, I think, the oral approval to build the
10 structure with the second story. Is that right?

11 A 2018?

12 Q Yeah. July, 2018.

13 A Possibly -- possibly the first time. But we had nothing
14 nailed down at that point. And definitely nothing drawn
15 to connect the two structures.

16 Q At what point did she approve the connection of the two
17 structures orally --

18 A Well, I was --

19 Q -- to your belief?

20 A When I was in her office, I believe, it was February, '19,
21 drawing the connection and the amended site with the
22 garage and B and B above. 24 by 64, and I didn't write
23 two-story on that drawing.

24 Q Please elaborate a little bit more about that particular
25 conversation with Ms. Jumper, since she isn't here and I

1 think, you know, I agree with your attorney, we want to
2 know what those conversations were. So, what was the
3 substance of that conversation where you did present the
4 amended site plan permit request and the connection
5 between the structures.

6 A Well, like I just said, I was drawing the amended site
7 structure and house to be connected to the house that we
8 had just remodeled on that lot. And Pauline and -- and
9 Betsy were basically at the table while I was drawing.
10 Betsy looking over my shoulder, as I was drawing, and
11 making those comments of how similar to the structure at
12 174. And that was the time of her oral consent.

13 Q Okay. I don't have anything further for Mr. Hackney.

14 MR. WANG: Okay. Thank you. I don't have anything
15 either.

16 CHAIR HANSON: Are there any questions from Commissioners
17 for Mr. Hackney? Go ahead.

18 COMMISSIONER WASIERSKI: Did you ever mention that there
19 was going to be four separate rooms with Betsy?

20 MR. HACKNEY: I said it was going to be a B and B.

21 COMMISSIONER WASIERSKI: So you said the four separate
22 rooms were going to be a B and B?

23 MR. HACKNEY: The upstairs I was drawing, yes.

24 COMMISSIONER WASIERSKI: Did you guys ever discuss
25 parking?

1 MR. HACKNEY: No, we didn't. It's a corner lot. We've
2 got all -- the plan -- the reason why I took from 2018 to '19
3 is to get the lot squared away, so that we could utilize every
4 square inch that we could, legally. That's why we hired to
5 have the house moved when we had the lot filled and we put it
6 exactly where we wanted it so as we built on it, we would have
7 room for parking. It wasn't an issue.

8 COMMISSIONER WASIERSKI: Okay. (indiscernible--poor audio)

9 MR. HACKNEY: No, we didn't.

10 CHAIR HANSON: Go ahead, Mr. Bradbury.

11 COMMISSIONER BRADBURY: Madam Chair -- I guess, Mr.
12 Hackney, I was just wondering what was your -- what was the
13 reason for you -- you say you were called by Ms. Burley, or you
14 went to Ms. Burley for a -- you got a phone call. What did she
15 say was the purpose of the phone call?

16 MR. HACKNEY: She said she'd like me to come to her
17 office.

18 COMMISSIONER BRADBURY: And what for?

19 MR. HACKNEY: I didn't ask.

20 COMMISSIONER BRADBURY: Once you got there, though.

21 MR. HACKNEY: Excuse me?

22 COMMISSIONER BRADBURY: Once you got there, what was the
23 purpose of your visit there.

24 MR. HACKNEY: To listen to what she had to say.

25 COMMISSIONER BRADBURY: And what did she have to say?

1 MR. HACKNEY: She told me she had reviewed it, the plans,
2 the situation, and that I had (indiscernible--poor audio) I was
3 good to go.

4 COMMISSIONER BRADBURY: I guess my question is, her role
5 as an attorney, what was the reason that she was acting at the
6 of the planner.

7 MR. HACKNEY: Well, you'd probably have to ask her. But I
8 would assume (indiscernible--poor audio). Since there wasn't a
9 Planner at the time, she was wearing that hat as well.

10 COMMISSIONER BRADBURY: (indiscernible--poor audio)

11 CHAIR HANSON: Any other questions for Mr. Hackney?

12 Hearing none --

13 COMMISSIONER HALEY HANSON: I have a question. Just

14 (indiscernible--poor audio) understand earlier --

15 (indiscernible--poor audio) structure didn't match the site
16 plan permit and the submitted drawing (indiscernible--poor
17 audio) structure later.

18 MR. HACKNEY: I did what I did with her oral consent from
19 the Planner. I built as I went, and updated drawings under the
20 permitted site permit that was issued to me. We didn't have an
21 overall plan at the time. We kind of made it as we went along.
22 But we amended the size, we amended the structure, how we would
23 tie them together under the legal site permit application and
24 rules. And we were given the okay.

25 My mistake is that I didn't write two-story on the

1 structure. If I had done that, I wouldn't be here today.

2 COMMISSIONER HALEY HANSON: Thank you.

3 MS. STRICKLER: I'm sorry. Really quickly, Chair, if you
4 could, when you're calling on the Commission members to
5 identify their names, or the Commission members identify who
6 they are for the audio record before they speak. Thank you.

7 CHAIR HANSON: Commissioner Schroder, go ahead.

8 COMMISSIONER : Thank you. Mr. Hackney, you're referring
9 to rules, are you talking, I know -- numerous planning
10 (indiscernible--poor audio) ordinances (indiscernible--poor
11 audio) What rules are you talking about (indiscernible--poor
12 audio) State of Alaska rules?

13 MR. HACKNEY: No. The only rule that I -- was always
14 stuck in my head, was the mistake that I made when we first
15 started our construction at 174 Alex Hately with the pad for
16 the addition we were going to build.

17 COMMISSIONER SCHRODER: uh-huh (affirmative)

18 MR. HACKNEY: There wasn't a pad to the existing pad that
19 the existing house was on. At that time, I was told that I
20 cant have two separate living quarters on one lot. Therefore,
21 we improvised and connected them with a 24-foot skywalk. So
22 that they would all be under one roof, and they would comply
23 with the ordinance of not having two separate structures on one
24 lot (indiscernible--poor audio).

25 COMMISSIONER SCHRODER: (indiscernible--poor audio)

1 MR. HACKNEY: Kind of -- yeah -- (indiscernible--poor
2 audio)

3 COMMISSIONER SCHRODER: Are you a licensed contractor?

4 MR. HACKNEY: No. I'm a homeowner.

5 COMMISSIONER SCHRODER: Are you a general contractor?

6 MR. HACKNEY: No, I'm not.

7 COMMISSIONER SCHRODER: So, you have no formal education
8 (indiscernible--poor audio) Planning Commission.

9 MR. HACKNEY: Basically, yeah. I mean, I didn't want to
10 have to (indiscernible--poor audio) homeowner. Because I have
11 worked in construction, pretty much all my life.

12 COMMISSIONER SCHRODER: Okay. How many -- how many, like,
13 say -- how many years (indiscernible--poor audio)

14 MR. HACKNEY: When we did our addition, that was our first
15 permit and (indiscernible--poor audio) 174 Alex Hatelly.

16 COMMISSIONER SCHRODER: So, (indiscernible--poor audio)
17 too?

18 MR. HACKNEY: And once to keep them active.

19 COMMISSIONER SCHRODER: Thank you.

20 MR. HACKNEY: You're welcome.

21 CHAIR HANSON: Any more questions for Mr. Hackney? Yes,
22 Mr. Bradbury.

23 COMMISSIONER BRADBURY: Yeah, going back to Ms. Burley's
24 conversation, when you met with her. So, when you left there,
25 you didn't leave there with any additional permit. You didn't

1 leave there with a permit that said what you could do, what you
2 said she called you in, almost sounds like the fact that there
3 (indiscernible--poor audio) complaint or something and she was
4 calling you in to deal with that complaint.

5 MR. HACKNEY: Well, yeah. (indiscernible--poor audio)
6 know about that. Of course there's complaints. The City
7 Planner knew about it. (indiscernible--poor audio)

8 COMMISSIONER BRADBURY: I'm just asking specifically ask -
9 -

10 MR. HACKNEY: Neighbors (indiscernible--poor audio) sign a
11 petition every time you drive by. Yeah, she knew about a
12 complaint.

13 COMMISSIONER BRADBURY: Just asking about that day. She
14 called you in. She wasn't calling you then to approve a site
15 plan permit. She was calling you in to deal with a complaint.

16 MR. HACKNEY: She called me in to say that the site plan
17 permit that I was okayed to have, there was no problem with and
18 could go forth and conquer. She wasn't there to give me a
19 permit. I already had a permit.

20 COMMISSIONER BRADBURY: Okay.

21 CHAIR HANSON: Any questions?

22 COMMISSIONER WASIERSKI: One more.

23 CHAIR HANSON: Go ahead.

24 COMMISSIONER WASIERSKI: (indiscernible--poor audio) When
25 you (indiscernible--poor audio) did your original plan on the

1 building across the street, besides the walkway, did you have
2 to (indiscernible--poor audio) did you put mother-in-law
3 apartment, B and B?

4 MR. HACKNEY: I said mother-in-law apartment and was told
5 that I can't have a mother-in-law apartment, it's illegal.

6 COMMISSIONER WASIERSKI: And -- but you did it anyway? Or
7 --

8 MR. HACKNEY: No. It's not a mother-in-law. It's a
9 rental. And no, I didn't have any problems. I had zero issues
10 until we bought the lot and started to fill at 175 Alex Hatley
11 in 2015. With how far back that was (indiscernible--poor
12 audio)

13 COMMISSIONER WASIERSKI: So, you -- but I'm talking about
14 the original --

15 MR. HACKNEY: I know --

16 COMMISSIONER WASIERSKI: -- across the street.

17 MR. HACKNEY: And I said that I had no issues.

18 COMMISSIONER WASIERSKI: So, you -- but you did put
19 mother-in-law on that -- and you were told that you could not
20 build a mother-in-law apartment on that one, so it's a rental?

21 MR. HACKNEY: Correct.

22 COMMISSIONER WASIERSKI: But now on this other
23 application, you put mother-in-law again in 2018?

24 MR. HACKNEY: On the first one?

25 COMMISSIONER WASIERSKI: Yeah.

1 MR. HACKNEY: Yeah. I amended it.

2 COMMISSIONER WASIERSKI: But I thought you said it was
3 illegal. You learned that on the first structure you built.

4 MR. HACKNEY: I did.

5 COMMISSIONER WASIERSKI: Okay. So it was just a mistake
6 that you put it. But now you --

7 MR. HACKNEY: No. It was (indiscernible--poor audio)
8 smart. And my dry sense of humor, is what it was, Alex.

9 COMMISSIONER WASIERSKI: Okay. No more questions. I
10 guess (indiscernible--poor audio) indirect questions. I
11 appreciate you were trying to be smart with your application in
12 2018. But is it fair to say that you believe you had figured
13 out a way to get approval based on your experience at 174 and
14 you were trying to repeat that at 175?

15 MR. HACKNEY: Yes.

16 COMMISSIONER WASIERSKI: Okay. And did you have any
17 reason to believe that same approach wouldn't work a second
18 time.

19 MR. HACKNEY: Well, I did because of my experience with
20 the first go around.

21 COMMISSIONER WASIERSKI: But you did get a permit for 17
22 (indiscernible--simultaneous speech) --

23 MR. HACKNEY: I did.

24 COMMISSIONER WASIERSKI: -- you built it. And there were
25 no complaints, and you no --

1 MR. HACKNEY: That is correct.

2 COMMISSIONER WASIERSKI: So, that seemed like a template
3 for future success based on your conversations with Ms. Jumper?

4 MR. HACKNEY: It did.

5 COMMISSIONER WASIERSKI: I don't have any further
6 questions.

7 CHAIR HANSON: (indiscernible--poor audio) All right, Mr.
8 Wang, call your second witness.

9 MR. WANG: Okay. If Patty Burley is still on the line,
10 I'd like to call Patty Burley.

11 MS. STRICKLER: Hi Patty. We can barely hear you. So,
12 we'll do an audio check as we do your oath. Okay? Can you
13 hear me okay?

14 MS. BURLEY: I can.

15 MS. STRICKLER: Okay. Great.

16 (oath administered)

17 MS. BURLEY: I do.

18 MS. STRICKLER: Very good. Thank you. And we can hear
19 you well. Thank you.

20 PATTY BURLEY

21 a witness called for examination by the Appellee, being first
22 duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WONG:

25 Q Ms. Burley, thank you for your attendance here tonight. I

1 have just a few questions for you. I'd like to start just
2 by confirming if you heard Mr. Hackney's testimony
3 regarding his conversation with you regarding a complaint
4 about the property at 175 Alex Hately. Is that correct?

5 A Yes, I heard.

6 Q Okay. And based on your recollection, did his testimony
7 fairly capture the essence of that conversation?

8 A I think he was slightly mistaken. But for the most part,
9 yes.

10 Q Okay. So, tell me about your recollection of what
11 prompted you to have that conversation with Mr. Hackney
12 (indiscernible--poor audio)

13 A So, some of Betsy's duties were brought to me by then
14 Acting City Manager Bill Howell (ph). And he asked me to
15 take care of a few of them. One of them was a formal
16 written complaint by a Mr. Murat. Ms. Boratko was having
17 difficulties with it. She wasn't able to do the planning
18 work. So, Mr. Howell asked me to look into that one and
19 try to handle that. I had a couple of staff members try
20 and do most of the work. Mr. Fleming (ph) from public
21 works, I believe that was his last name. I had him look
22 into one of the allegations. Bill Arnold, he was out.
23 So, I couldn't have him do some of the measurements. I
24 had someone else on an unrelated case that was going to do
25 some survey work. And so I asked them to do some survey

1 work for one of the allegations. But I wanted to talk to
2 the Hackneys to get their side of it.
3 At the time I couldn't reach them. And I asked Bill if he
4 had an idea as to why. He didn't know if Mrs. Hackney was
5 ill and that they had went out. Bill Howell (ph) assisted
6 me in reaching the Hackneys. He gave me a better phone
7 number. And I want to say it was Dan Hackney who called
8 me back. He was exceptionally cooperative. He answered
9 all of my calls -- excuse me, he answered all of my
10 questions. And so, I was able to hear his side of what
11 was going on.
12 I looked through the permits, I looked through all of
13 that. He (indiscernible--poor audio) different from what
14 they had been operating in the past. I couldn't find
15 anything that looked like it was a violation of the BMC
16 code. I did tell him that I looked into it.
17 (indiscernible--poor audio) stop by at some point.
18 Honestly, I don't remember. It was such a blur towards
19 the end there, trying to wrap up. Basically numerous
20 (indiscernible--poor audio) practice. So, I do recall him
21 coming in. I do recall Amy Davis, who was the Acting
22 Chief, being there. And I did let him know that I had
23 looked into the complaints that had been filed. And I
24 didn't see anything wrong. I didn't see that there was a
25 violation of the Bethel Municipal Code. And Amy Davis, at

1 the time, went on to say how she had almost accidentally
2 shot Mr. Murat one time because he was harassing the
3 house. He was literally outside their window at 2 o'clock
4 in the morning with a flashlight. Scared them half to
5 death. So -- so, this has already been a neighborhood
6 dispute. But I hadn't been able to find any corroboration
7 that there had been a violation. I was able to
8 corroborate that they had filed a business license, that
9 they had been paying the taxes, that water and sewer had
10 been properly hooked up. And I just couldn't find that
11 this was any different than before.

12 I spoke with Ms. Jumper. She knew about it. I spoke with
13 Ms. Boratko. She knew about it. They both admitted that
14 they had been aware of this. I had many conversations
15 with them. They were tired of the complaints. So, I just
16 didn't see anything (indiscernible--poor audio) from
17 information (indiscernible--poor audio)

18 Q Did you -- (indiscernible--poor audio) you were the acting
19 city attorney at the time. But this duty had been
20 specifically delegated to you as one of your
21 responsibilities (indiscernible--poor audio) the City?

22 A (indiscernible--poor audio) Mr. Howell (ph) and I from
23 equal footing, as I would have been with Ms. Strickler.
24 So, the three of us were all employees of the City
25 Council. So, Mr. Howell would not have had enough

1 authority to delegate. He would have (indiscernible--poor
2 audio) asked me to review something. And I would have
3 tended to say, sure, I'll help out.

4 Q Okay. So, fair clarification. But it would have been
5 within the scope of your responsibilities as they evolved
6 over time.

7 A Would have just -- probably not. But I would have
8 definitely would have said, yeah. We didn't have a
9 Planner. We didn't have anybody to do it. The contract
10 wasn't in place with (indiscernible--poor audio) yet. And
11 so, yes. Somebody needed to do it. It didn't seem like
12 it was something that would have taken a lot of time. We
13 just didn't have anyone that would have done it.

14 Q Okay. And, I'm sorry -- so, there was no other live body
15 to do the work? So, it fell to you.

16 A Yeah.

17 Q Okay. And then you mentioned that Ms. Jumper was aware of
18 the situation. Can you describe your conversations with
19 her that led you to that conclusion?

20 A So, one thing that we did almost regularly, I can't recall
21 the day of the week, that we reviewed it. But one thing
22 that happened often was there was director meetings.
23 Although I was not a director, I was frequently invited to
24 directors' meetings. And so, we would often sort of talk
25 about what we had going on, we talked about issues. And

1 the complaints from Mr. Murat was one thing that Ms.
2 Jumper talked about. (indiscernible--poor audio) she
3 brought to my office, she brought the complaints from Mr.
4 Murat. She brought up the situation. So, she and I had
5 spoken about these complaints. We'd spoken about this
6 property. She had spoken to me about the B and B going
7 up. About how it looked a lot like the property across
8 the street. We had talked about this prior to her
9 leaving. I can't recall if we did it once, twice, or ten
10 times. But we had definitely spoken about it.

11 Q And I hope you were able to hear the recording of Ms.
12 Jumper's prior testimony regarding her first not having a
13 clue, and then perhaps having orally a clue, the structure
14 at 175 Alex Hatley. Based on the information that you had
15 gathered, did you have an ability to (indiscernible--poor
16 audio) a conclusion about whether she had granted an oral
17 approval.

18 A Well, some she didn't get to finish her statements.
19 Sounded like she -- she started to recall that she might
20 have approved it. But in our conversations, she always
21 acted like she had.

22 Q Okay. So, when you spoke to her, she never expressed to
23 you that she hadn't approved it. That the structure was a
24 surprise to her.

25 A No. Not at all. She always was very knowledgeable about

1 that property. She was more perplexed as to how to handle
2 the complaints that were coming in, just about daily, from
3 Mr. Murat.

4 Q Did -- in the course of your employment with the City, did
5 you find information that Ms. Jumper had, on other
6 occasions, orally granted site plans or other approvals in
7 her capacity as Planning Director?

8 A Yes. That was a frequent issue.

9 Q Okay. So, this wasn't the only time that happened. And
10 when you say frequent, can you provide some context for
11 that?

12 A One of the issues that was sort of (indiscernible--poor
13 audio) between her and Mr. Howell (ph), was another
14 matter, a Mr. Joe Pale (ph) where he had been given oral
15 permission as well. And he ordered a lot of supplies. He
16 relied on that oral permission to order these supplies.
17 It led to some serious changes over potential
18 (indiscernible--poor audio) changes. It caused us a lot
19 of trouble. It led to a lot of difficulties that I
20 believe Mr. Meyer had to deal with when he first got to
21 the office.

22 Q Okay. So, this wouldn't be the only time an oral approval
23 for (indiscernible--poor audio)

24 A Correct.

25 Q Okay. I don't believe I have any other questions at this

1 time. Thank you.

2 CHAIR HANSON: Thank you, Mr. Wang. Ms. Bakalar?

3 MS. BAKALAR: I don't have any questions for Ms. Burley,
4 Chair Hanson.

5 CHAIR HANSON: Thank you. Are there commissioners who
6 have questions for Ms. Burley? Mr. Bradbury.

7 COMMISSIONER BRADBURY: Yeah, Ms. Burley, just listening
8 to you there, (indiscernible--poor audio) earlier, I'm rather
9 confused whether Ms. Jumper was on duty -- was still on duty or
10 not, because you mentioned having discussions with her about
11 this. It almost sounded like that after -- you had discussed
12 with her questions, after you had your meeting with Mr.
13 Hackney. So, on one hand I'm hearing that there was no
14 planner, and then I was hearing that you were discussing with
15 Ms. Jumper. So, I'd like clarification.

16 MS. BURLEY: Yes, sir. I discussed -- I had -- excuse me.
17 I had had discussions with Ms. Jumper when she was in her role
18 as the Planner.

19 COMMISSIONER BRADBURY: Okay.

20 CHAIR HANSON: Any other questions? Haley.

21 COMMISSIONER HALEY HANSON: Yeah. (indiscernible--poor
22 audio) So, the question (indiscernible--poor audio) so, when
23 you sent Mr. Farmer (ph), Arnold, and then determined that they
24 were good to go, were they just addressing things, such as
25 fill, drainage, some of those issues that had to do with the

1 actual pad of land? Or did they have to do with the structure?

2 MS. BURLEY: So, Mr. Farmer (ph) dealt with an allegation
3 that there -- I don't recall the specific complaint. There
4 were about five things on the complaint. I believe Mr. Farmer
5 (ph) went by the (indiscernible--poor audio) allegation of
6 something having to do with (indiscernible--poor audio) He
7 confirmed that it had not been done. Mr. Arnold was actually
8 very ill at the time. And never went out and did setback --
9 the measurement. But there was an allegation that the
10 construction of the building did not meet the setback
11 requirements under the Bethel Municipal Code.

12 Later he was able to confirm for -- I apologize, he was
13 able to confirm or teach me how to look at the as-built that
14 was in the file to determine that, in fact, the surveyor had
15 already done the work and that it did conform. So, he
16 personally, did not measure.

17 CHAIR HANSON: (indiscernible--poor audio)

18 COMMISSIONER HALEY HANSON: So, once again, this is all
19 about (indiscernible--poor audio) the actual land
20 (indiscernible--poor audio)

21 MS BURLEY: This was not about the land. This was only
22 about the complaints that were lodged in writing by Mr. Murat.

23 COMMISSIONER HALEY HANSON: Okay. (indiscernible--poor
24 audio)

25 MS. BURLEY: Correct.

1 COMMISSIONER HALEY HANSON: Okay. Thank you.

2 CHAIR HANSON: (indiscernible--poor audio)

3 COMMISSIONER WASIERSKI: So, you and Betsy, the City
4 Planner or former City Planner, specifically talked about a B
5 and B. So, she knew it was a B and B during your discussions?

6 MS. HURLEY: Yes. But the basis of it wasn't, oh, it's a
7 B and B. We were at all times our conversations centered about
8 investigating the complaints that were lodged. It wasn't
9 centered around the fact that it was a B and B or not. It just
10 happened to come up as part of the conversation. Sort of the
11 aside to the conversation.

12 COMMISSIONER WASIERSKI: Can you recall that a little
13 clearer. What -- what brought it up?

14 MS. BURLEY: The -- the almost daily calls from Mr. Murat.
15 For example, three people just went into the property today.
16 That would prompt a phone call. A young man has come out of
17 the property today. That would prompt a phone call. So, Betsy
18 was at her wit's end. She's like, you know, for God's sake,
19 the man has a B and B. What else am I supposed to do?

20 COMMISSIONER WASIERSKI: So -- so, she said B and B. Not
21 that she had ever approved a B and B, is that -- so she was
22 aware there was a B and B.

23 MS. BURLEY: I would imagine she would make statements to
24 be correct. You know, it's a B and B, what is he supposed to
25 do. I mean, she -- she might have (indiscernible--poor audio)

1 to verify that they had a license. I'm not sure -- I'm not
2 really sure how else to answer that.

3 COMMISSIONER WASIERSKI: Okay. You said that numerous
4 other times, she gave verbal permission.

5 MS. BURLEY: Yes, sir.

6 COMMISSIONER WASIERSKI: Do you remember any other ones
7 besides the Joe Hale (ph)?

8 MS. BURLEY: Yes, sir. We had an issue with AT&T that got
9 us into some legal difficulties.

10 COMMISSIONER WASIERSKI: Where she gave verbal permission
11 to do something and then after the fact -- (indiscernible--
12 simultaneous speech)

13 MS. BURLEY: (indiscernible--simultaneous speech) Yeah.
14 She was working for Ted Meyers at the time. She was actually
15 the Assistant Planner for a just a few because they caused
16 legal difficulties for us. But it wasn't an isolated incident.
17 We had some difficulties with the Blue Sky Subdivision.

18 COMMISSIONER WASIERSKI: Thank you.

19 CHAIR HANSON: Ms. Shroder.

20 COMMISSIONER SCHRODER: Ms. Burley, so, the Hackneys, when
21 you were reviewing their case, they did have a business license
22 (indiscernible--cough)

23 MS. BURLEY: Yes, they did.

24 COMMISSIONER : And they had, like, all of the other
25 approval that they would have, like, approve (indiscernible--

1 poor audio) enough water (indiscernible--poor audio) sewer
2 evacuation (indiscernible--poor audio) obviously
3 (indiscernible--poor audio) for people use, you know, enough
4 water to run a B and B, etc. And they were paying their taxes
5 on that B and B.

6 MS. BURLEY: (indiscernible--poor audio) business license
7 authority they had with City of Bethel. They properly
8 registered. At the time that I looked, were codes that the
9 City of Bethel was (indiscernible--poor audio) According to
10 the City of Bethel sales tax (indiscernible--poor audio) at the
11 time. I believe her name was Tamara or, I could be remembering
12 that wrong.

13 And as far as the water and the sewer, all I can say to
14 that, is that there was a construction report on file up front
15 that utility, which means that something had been requested,
16 stated that they were putting in a tank. Someone had come out.
17 Someone from Public Works had done an inspection and said it
18 was good to go. So, (indiscernible--simultaneous speech)

19 COMMISSIONER SCHRODER: So --

20 MS. BURLEY: -- water, sewer.

21 COMMISSIONER SCHRODER: Just for clarification, so not
22 only did they have verbal approval from the Planner, talked to
23 you about the fact that they had a B and B, complaints
24 (indiscernible--poor audio) , they had a City of Bethel
25 inspection for the tank to supply water to the B and B,

1 business license for a B and B, and (indiscernible--poor audio)
2 taxes for the B and B, and everybody's surprised that they have
3 a B and B? Just to clarify real quick. Thank you.

4 CHAIR HANSON: Any other questions for Ms. Burley?
5 Mr. Bradbury.

6 COMMISSIONER BRADBURY: Yeah, Ms. Burley, (indiscernible--
7 poor audio) I know your role varied with BMC, and many times
8 core assignment, but with all this talk about verbal -- getting
9 verbal permission, nothing was done, and it says
10 (indiscernible--poor audio) that no modification for approved
11 plan may take place without the written consent of the land use
12 manager. It seems that -- it seems strange that you wouldn't
13 have stepped in and said, oh, that can't be done because
14 there's nothing in writing. So, I'm just wondering about that.

15 UNIDENTIFIED VOICE: I'm going to leave that legal
16 argument in the capable hands of Mr. Wang and Ms. Bakalar.

17 CHAIR HANSON: Further questions? All right. Mr. Wang,
18 we have one more witness?

19 MR. WANG: Yes. Is Jared Karr present?

20 CHAIR HANSON: Okay.

21 MR. WANG: Ask him to step forward.

22 MS. STRICKLER: So, you're going to press the button when
23 you start. Okay.

24 (oath administered)

25 MR. KARR: I do.

1 MS. STRICKLER: Thank you.

2 JARED KARR

3 a witness called for examination by the Appellee, being first
4 duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WANG:

7 Q Mr. Karr, thank you for making yourself available to us
8 and the Commission tonight. Appreciate that. Can I ask
9 you just to identify yourself and state in general terms
10 your connection to the matter being discussed here today?

11 A My name is Jared Karr. I was Mr. and Mrs. Hackney's
12 attorney before (indiscernible--poor audio).

13 Q Okay. And you conducted the prior hearing that we had the
14 good fortune to listen to the recording.

15 A That's correct.

16 Q And during that hearing, Ms. Jumper offered different
17 versions of her testimony whether or not she granted an
18 oral approval. Did you ever have occasion later to meet
19 with her to discuss that issue?

20 A After the hearing?

21 Q After the hearing.

22 A No, I did not.

23 Q Okay. Did you have discussion at any time to discuss that
24 issue with her?

25 A About her testimony?

1 Q About the oral approval.

2 A Yes, I did.

3 Q Okay. Could you explain the context and nature of that
4 discussion?

5 A I can. So, Mr. and Mrs. Hackney had came to me with the
6 issue for this Commission. And in researching the BMC and
7 Alaska Statutes, I knew that the case hinged upon whether
8 or not Ms. Jumper had given them oral approval or not.
9 So, I told the Hackneys that before I took the case, I
10 have to speak with Ms. Jumper. Because that was the crux
11 of the issue right there. Whether she said they could go
12 forward or not. According to Alaska Statute, not the BMC,
13 which (indiscernible--poor audio) --

14 So, I attempted to contact Ms. Jumper upon, I think,
15 probably two separate occasions. By that time, she was
16 not employed with the City of Bethel. So, I found out
17 where she lived. I left my card. I can't really remember
18 if she contacted me or if I was stopping by to see if she
19 was home. In any event, I met with her on her front porch
20 at her residence and discussed, essentially, her actions
21 in regards to the property on Alex Hatley and the
22 Hackneys.

23 Q Okay. Did she acknowledge that she granted oral approval?

24 A I asked her specifically about two different issues. I
25 said -- because that was brought up in the -- later at the

1 August 20 Notice of Violation that the Planning Department
2 sent out. The two issues that were at issue was about the
3 second story, and the use of the B and B. I asked her
4 specifically, if she knew about it and if she approved it.
5 And on both of those issues, she said, that yes, you're
6 right, and I approved it.

7 At that point, I agreed to take the Hackney's case because
8 in my mind -- at that point, the burden had been met for
9 the Hackney's justification for what they initially built
10 (indiscernible--poor audio).

11 Q Okay. And you were surprised then by her testimony on the
12 night of the hearing that you conducted?

13 A I was very surprised that someone would commit a felony
14 (indiscernible--poor audio) on the stand, yes.

15 Q Okay. I have no further questions. Thank you.

16 CHAIR HANSON: Ms. Bakalar do you have any questions for
17 Mr. Karr?

18 MS. BAKALAR: No, I don't, Chair Hanson. Thank you.

19 CHAIR HANSON: Do the Commissioners have questions for Mr.
20 Karr? Hearing none. I'll now ask that --

21 MR. KARR: May I be excused?

22 CHAIR HANSON: Oh, yes. Go ahead and sit there
23 (indiscernible--poor audio)

24 MR. KARR: I can do that too.

25 CHAIR HANSON: Thank you. I would ask each of the party's

1 representatives to make closing statements. We'll start with
2 Mr. Wang.

3 MR. WANG: Okay. Thank you, Madame Chair and members of
4 the Commission. We are appreciative of the time that the
5 Commission has offered to the Hackneys tonight for a second
6 crack at this issue.

7 We're here because the Hackneys and their lawyer, Mr.
8 Karr, were initially denied a clear opportunity to question the
9 City's main witness, Betsy Jumper.

10 They were denied the opportunity to ask Patty Burley
11 relevant questions regarding the situation that has led to this
12 dispute about the development at 175 Alex Hatley.

13 We're also here tonight because the Commission, Board of
14 Adjustments were, we believe, improperly advised by the City's
15 former legal counsel regarding the correct rule of standard for
16 determining if the Hackney's should have been permitted to rely
17 on Ms. Jumper's oral approval of the project.

18 Your Honor, I direct the Commission, the Commission's
19 Counsel, Counsel's attention to the Superior Court's ruling
20 regarding concepts of municipal estoppel and the right of
21 citizens to rely on affirmative statements made by public
22 officials made in the course of the scope of their duties. And
23 the circumstances other than that reliance may be justified and
24 -- if so, we've reached the point tonight after Ms. Jumper's
25 surprising non-attendance at this hearing, she's made herself

1 unavailable for further examination. I would submit to the
2 Commission that the record now reflects many (indiscernible--
3 poor audio) regarding Ms. Jumper's former testimony to the
4 dispute at 175 Alex Hatley. Ms. Jumper clearly lacked any of
5 the credentials typically required of the City's Planner. She
6 had no degree in planning. She acknowledged in her
7 (indiscernible--poor audio) testimony that she had no
8 specialized training in planning. We have heard testimony now
9 on several occasions, separate from -- Ms. Jumper granted oral
10 approvals for building permits and projects have caused
11 inconvenience for members of the public and the City. And it
12 is unfortunate that the City found itself in the position where
13 it was unable to have a competent person to perform the duties
14 that they were charged with. It is even more unfortunate that
15 that person chose to be dishonest with the Commission when she
16 testified to you the last time she was here.

17 Every witness that we have heard tonight, and credible
18 witnesses, Mr. Hackney, Mr. Karr, the City's former attorney,
19 credibly contradicted Ms. Jumpers prior testimony. We have
20 demonstrated that the Hackney's reasonably relied on approval.
21 They did so by spending substantial funds on improving their
22 property. Again, Ms. Jumper was acting in the course and scope
23 of her employment as Acting City Planner. It was within her
24 authority to grant the permit that is at issue here.

25 We demonstrated that the Hackney's had previously built a

1 substantially similar structure across the street at 174 Alex
2 Hately. (indiscernible--poor audio) to the exact same use to
3 which they proposed to use 175 Alex Hately.

4 Prior testimony before this Commission has made it plain
5 that there are any number of bed and breakfast operations in
6 the Blueberry Subdivision neighborhood. A residential
7 subdivision. And throughout many residential areas of the
8 City. And I would just call the City's attention to the
9 exhibits that -- Page 215A of the City's materials -- showing
10 the number of Bed and Breakfasts throughout the City of Bethel,
11 including any number of bed and breakfasts within residential
12 areas.

13 (Appellee/Defendants' Exhibit 1 marked for identification)

14 So, what I would submit is that the Hackneys, who had
15 prior experience at 174 Alex Hately, who were well aware of the
16 existence of bed and breakfasts throughout residential
17 subdivisions, that their reliance on Ms. Jumper's oral approval
18 was reasonable. And, moreover, giving it legal effect to Ms.
19 Jumper's oral approval will not harm public interest. And
20 there are many reasons for that.

21 One is to be simply one more of many bed and breakfast
22 uses in residential subdivided areas.

23 Moreover, the Hackneys registered their business with the
24 City. They were transparent about what they were doing. They
25 paid their taxes. They had a water tank inspection. They had

1 no reason to believe or understand that Ms. Jumper's initial
2 word wouldn't stand or that the City would change its mind when
3 leadership changed. And we appreciate that the oral approval
4 may be irregular. But that is what happened. It happened
5 frequently with the City and the Hackneys had no reason to
6 believe or suspect otherwise that they would have
7 (indiscernible--poor audio).

8 Moreover, since we're talking about the law, I bring the
9 City's -- I bring the Commission's attention to some of the
10 (indiscernible--poor audio). And the Comprehensive Plan
11 addresses some of the questions of residential uses and
12 patterns of development in the City of Bethel.

13 And the Comprehensive Plan speaks eloquently to the fact
14 that Bethel has not been developed in a (indiscernible--poor
15 audio) formalized fashion. That development in Bethel has
16 frequently and overwhelmingly been mixed use within residential
17 areas. And the City plan, the Comprehensive Plan, which was
18 implemented long ago speaks to the need to conform the rules of
19 the residential districts to the reality of Bethel. And if we
20 can say one thing about Ms. Jumper here tonight, what she did,
21 the permit she granted actually was consistent with the actual
22 pattern of development in the City of Bethel. What she did
23 reflected reality. And if the City has sat for years on the
24 Comprehensive Plan, which calls out -- specifically identifies
25 serious discrepancies between zoning codes and reality in

1 Bethel. And the Hackneys are the unwitting victims of those
2 discrepancies.

3 And the City has finally realized that those discrepancies
4 need to be resolved. And as we sit here, my understanding is
5 that the City is actively working on a proposed ordinance that
6 would finally recognizes the reality that bed and breakfast
7 uses are not (indiscernible--poor audio) residential area. And
8 that they can and should be approved.

9 And so there is no harm to the public interest if the
10 Hackney's structure is approved and their proposed use is
11 approved. Because it reflects reality far more than the prior
12 ruling of this Commission.

13 Taking all of this into consideration, we would ask,
14 respectfully, that the Hackneys be allowed to finish their
15 construction in accordance with (indiscernible--poor audio).
16 The plans that were approved in concept by Ms. Jumper, the
17 plans that are consistent with and similar to other structures
18 and uses in the area, including the structure and use directly
19 across the street. We would ask and (indiscernible--poor
20 audio) that the site plan be issued based on their as-built
21 and that it reflects reality. And we would ask also that their
22 proposed use as a bed and breakfast be recognized as permitted
23 for the structure as it is (indiscernible--poor audio).

24 So, that's our request of the Commission tonight. We
25 believe that it is consistent with the rules governing

1 municipal estoppel. We think that Ms. Jumper's oral approval,
2 which was fortunately testified to by Mr. Hackney, Ms. Burley
3 and Mr. Karr, those words have weight. She was acting as the
4 representative for the City.

5 And citizens shouldn't be forced to be suspicious of the
6 words and actions of their public officials. And they should
7 be allowed to rely on those statements, as demonstrated through
8 the length and substantial -- there was a substantial business
9 investment. The work they did is consistent with the
10 neighborhood. It's in the public interest we've attached, and
11 I won't belabor the point, but we attached a number of
12 statements from (indiscernible--poor audio) citizens who are
13 supportive of the new zoning ordinance. We speak to the need
14 for quality residential uses, such as the Hackneys. And
15 (indiscernible--poor audio) uses such as the Hackneys are
16 proposing.

17 So that's all (indiscernible--poor audio) the Commission
18 tonight. I'm deeply appreciative of your time and
19 (indiscernible--poor audio).

20 CHAIR HANSON: Thank you, Mr. Wang. Ms. Bakalar, would
21 you like to make a final statement? (indiscernible--poor
22 audio) regarding the estoppel.

23 MS. BAKALAR: Yes, Chair Hanson. Thank you.
24 (indiscernible--poor audio) So, some of this (indiscernible--
25 poor audio) is pretty narrow. Pursuant to Superior Court's

1 remand order, the testimony and issue before the Commission is
2 confined to the question of whether Betsy Jumper did or didn't
3 orally approve the site plant permit for the Hackneys in July
4 2018 to build the structure that they ultimately built.

5 Now, Mr. Wang mentioned the Comprehensive Plan in his
6 closing statement. But I just want to know, and I'm not making
7 any formal objection, because it wasn't testimony, it's
8 argument. But the Superior Court specifically found the issues
9 about the Comprehensive Plan were waived on appeal. So, I
10 would just ask that when deliberating its decision on --
11 tonight, that the Commission stay focused on the issue of Ms.
12 Jumper's testimony or Ms. Jumper's oral approval, rather than
13 anything about the Comprehensive Plan, because that's the only
14 issue before the body.

15 Now, the Commission did ask if the (indiscernible--poor
16 audio) position on estoppel (indiscernible--poor audio) I
17 believe (indiscernible--poor audio) just asked me again. And I
18 do think the answer to that question is largely on that first
19 element. Estoppel, whether Ms. Jumper asserted a certain
20 position by a conduct her words. Whether Ms. Jumper -- whether
21 the Commission finds one way or the other, that Ms. Jumper did
22 or didn't tell the Hackneys that they could build the
23 structure, that's the core issue. I agree with Mr. Karr's
24 testimony. A hundred percent about that. And I would agree
25 also with Mr. Wang about the need for, and the fact that

1 alleged (indiscernible--poor audio) deal with the reality of
2 underground of these B and B's.

3 Now, I believe, that Commissioner Bradbury had mentioned
4 (indiscernible--poor audio) the municipal code. And Ms. Burley
5 referred to it as well. And it says what it says. And any
6 change to a site plan permit has to be in writing. And when
7 Mr. Meyers took over as City Planner, he found that there had
8 been no such approval, no evidence of that approval, and that
9 the building was not to code. And that there was nothing in
10 writing that was going to allow it, which is part of why we're
11 here now.

12 But Mr. Karr, in his testimony, also highlighted that we
13 had equitable issue here in -- by under the law of the State.
14 That has this Commission now deciding the question of whether
15 the City should be estopped or aligned on that (indiscernible--
16 poor audio) instead that find that it was reasonable
17 (indiscernible--poor audio) consistent with the public interest
18 for the Hackneys be allowed to proceed in the matter. That
19 they did.

20 And I'm not going to try to refute the facts or the
21 testimony that was given tonight. I am not in a position to do
22 that. Mr. Meyers is in no position to do that. He wasn't here
23 for any of these things that happened. For any of the relevant
24 events that are before us tonight. Only Mr. Karr and Mr.
25 Burley -- sorry, Ms. Burley and Mr. Karr (indiscernible--poor

1 audio) were the only -- and Mr. Hackney, were the only
2 witnesses that were presented that were here at the time.

3 So, Ms. Jumper didn't show up. It's unfortunate that she
4 didn't. But, you know, there's other evidence here for the
5 Commission to consider. I'm not sure that it's necessarily
6 reasonable to invest so much money in a property that's not
7 authorized in writing. I'm certainly not going to argue
8 without prejudicial (indiscernible--poor audio) because to be
9 on that kind of money, it's certainly a great detriment. But I
10 think the core issue, and I would encourage the Commission to
11 focus on this issue, is whether the preponderance of the
12 evidence shows that Ms. Jumper did or did not grant oral
13 approval for this structure. And answering that question, I
14 think, the Commission will come to a reasonable conclusion on
15 this estoppel issue. So, that's really all the City has.

16 CHAIR HANSON: All right. Thank you very much, Ms.
17 Bakalar. Does any party have anything further to present at
18 this time?

19 MR. WANG: We have just one additional, brief comment.
20 Ms. Bakalar is correct in part regarding the Superior Court's
21 ruling on the importance of the Comprehensive Plan. And yet,
22 the Comprehensive Plan remains fairly relevant to what the
23 Commission's considering tonight. And I'd like to explain two
24 things.

25 One is the argument that was put before the Superior

1 Court, there is case law in the State of Alaska that provides
2 that municipal entities which are charged with exercising
3 building authority, making zoning rules, must implement the
4 Comprehensive Plan prior to those rules. And that the zoning
5 rules that a municipality implements must be rationally
6 consistent with the terms of the Comprehensive Plan.

7 And, in the course of working on the Superior Court
8 appeal, I took it upon myself to read the City's Comprehensive
9 Plan, and I was comparing it with the City's residential
10 building code. And the City's residential zoning code reads
11 like a very restrictive zoning code from some other community
12 that's not Bethel. The Comprehensive Plan speaks eloquently to
13 the actual practice of mixed-use development in Bethel. And
14 so, we put the argument to the Superior Court that the failure
15 of the code to be consistent with the Comprehensive Plan, meant
16 that the residential code would not be enforceable because of
17 that inconsistency.

18 And the Court ruled on a procedural technical issue that
19 that argument had not been previously put before the
20 Commission. So, the court said, I'm not going to strike the
21 residential zoning code because the Comprehensive Plan. And
22 I'm not asking the Commission to strike the residential zoning
23 code because of use of the Comprehensive Plan. But the
24 Comprehensive Plan does come in. It does have relevance is the
25 question of the equity and the impact on the public interest.

1 Because we articulated initially, in most cases, an estoppel
2 requires that words or conduct be taken -- that someone relied
3 on. That reliance be reasonable. And in the public entity
4 context, there's an additional requirement that enforcing that
5 promise will only be recognized to the extent it's consistent
6 with the public interest or not be inconsistent with the public
7 interest. And so, what I would urge the Commission to
8 consider, is that a strict application of the residential
9 zoning code isn't necessary to protect the public interest for
10 two reasons.

11 One, the Comprehensive Plan itself says that the strict
12 application of the zoning code isn't necessary. A strict
13 application of the residential zoning code is inconsistent with
14 history and reality in Bethel. And moreover, we demonstrated
15 numerous, numerous, numerous instances of bed and breakfast
16 activity taking place in the residential district. So, guess
17 all I would say is that, not only should the (indiscernible--
18 poor audio) be enforced, there is no reason or public interest
19 that it shouldn't be enforced because it is consistent with
20 history that just reflects the policy of the City
21 (indiscernible--poor audio) to the Comprehensive Plan. Thank
22 you.

23 CHAIR HANSON: Thank you, Mr. Wang. This concludes the
24 hearing and (indiscernible--poor audio). As discussed in the
25 beginning of this hearing, would a commissioner like to make a

1 motion to enter deliberation (indiscernible--poor audio)
2 hearing.

3 COMMISSIONER BRADBURY: So moved.

4 CHAIR HANSON: Thank you, Mr. Bradbury. Do I have a
5 second to that motion?

6 COMMISSIONER HALEY HANSON: I'll second.

7 CHAIR HANSON: Thank you. All those in favor say, aye.

8 (aye)

9 Opposed?

10 (motion carries)

11 Thank you.

12 Will the parties and the public please exit the room while
13 we deliberate. Remember to leave your contact information on
14 the sign-in sheet at the door before you leave.

15 (too much background noise)

16 Thank you for your time tonight.

17 (off record at 8:31 p.m.)

18 (on record 10:10 p.m.)

19 MS. STRICKLER: We're ready.

20 CHAIR HANSON: This is Cathy Hanson, the chair. And first
21 I want to say thank you to everyone for your patience. Waiting
22 for us while we do this deliberation. But -- what we have
23 found is that we need more time to continue our deliberations.
24 And so we will be continuing this hearing until a later date.
25 Oh, here. Okay. I have a script here. Thank you.

1 MS. STRICKLER: I'm sorry. Can we pause just a second.

2 I've got Libby, who just joined the waiting room. Just a
3 second. I apologize.

4 (sidebar conversations)

5 Okay. It looks like Libby has connected. Libby, can you
6 hear us okay?

7 MS. BAKALAR: Yes, I can. Thank you.

8 MS. STRICKLER: Great. Thank you.

9 CHAIR HANSON: This is Cathy Hanson, the Chair. I want to
10 thank you all for re-joining us. After deliberating, it
11 appears that the Commission is not prepared to issue a decision
12 tonight. And would like to consider the evidence presented and
13 issue its findings at a later date. Before the Commission
14 considers a motion to continue the hearing, we would like to
15 hear from the parties regarding the best date for a
16 continuance.

17 Remember if the hearing is continued, the evidence part of
18 the hearing is closed and the only reason for the hearing will
19 be to issue the Commission's decision and findings. The
20 Commission will hold a hearing virtually or in-person. It
21 depends on if we can find a location to meet. Since there will
22 not be any testimony or argument presented by the parties.

23 The date that we are considering is next Thursday, August
24 26, at 6:30. And I would like to hear from the parties if that
25 time would be acceptable.

1 MS. BAKALAR: Chair Hanson, this is Libby Bakalar, the
2 City Attorney. That is fine. I will actually be in Bethel at
3 that time. That day and time is fine with me. Thank you.

4 CHAIR HANSON: Thank you. Mr. Wang?

5 MR. WANG: Yes. This is Mr. Wang. I think that that date
6 looks fine with us. Yes, thank you.

7 CHAIR HANSON: All right, thank you. So, Commissioners,
8 would someone like to make a motion to continue the hearing to
9 Thursday, August 28th at 6:30.

10 MS. STRICKLER: August 26th.

11 CHAIR HANSON: August 26th.

12 COMMISSIONER H. HANSON: So moved.

13 CHAIR HANSON: Thank you, Ms. Hanson. Is there a second?

14 COMMISSIONER GUINN: (indiscernible--poor audio)

15 CHAIR HANSON: John -- thank you John Guinn. All those in
16 favor, say aye.

17 (ayes)

18 Opposed? So moved. Now please note that the evidence and
19 argument is closed. When the Commission reconvenes, we will
20 issue findings and a decision by motion. As a reminder, as
21 provided in BMC Code 18.70.72.010(e), the Commission will deny
22 or grant this appeal in the form of a motion. A statement of
23 findings and conclusions based on the evidence presented shall
24 be included in the motion. If the Commission denies the
25 appeal, it may confirm or modify the findings of the Planning

1 Department or the Land Use Administrator.

2 If the Commission grants the appeal, the Commission's
3 decision will take effect ten calendar days after the
4 Commission renders its decision. Unless a timely appeal is
5 filed to the Board of Adjustment.

6 All right. Is there a motion from the Commission to
7 continue the hearing until Thursday -- Oh, we did that. All
8 right. The motion to adjourn? Okay. Good night.

9 Thank you, folks.

10 (off record 10:14 p.m.)

11 END OF REQUESTED PORTION

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TRANSCRIBER'S CERTIFICATE

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STATE OF ALASKA)
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CITY OF BETHEL)
)

I, Betty L. Caudle, transcriber for Kron Associates Court
Reporting, do hereby certify the following:

THAT the electronic recording of this hearing of the
Bethel Planning Commission was extremely poor, with feedback
and echo from the voices and sound system throughout the entire
recording. Consequently, there are several places where the
spoken words could not be determined and were marked as
indiscernible.

THAT the foregoing pages numbered 6 through 73 are as
true, accurate, and complete a transcript of proceedings as
they can be due to the quality of the audio of the Planning
Commission Remand Hearing on August 19, 2021, concerning Alaska
Superior Court Case No. 4BE-20-00080CI in the matter of Dan and
Dawn Hackney vs. City of Bethel, Alaska, et al. transcribed by
me from a copy of said sound recording to the best of my
knowledge and ability.

Date Betty L. Caudle, Transcriber

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT BETHEL, ALASKA

DAN HACKNEY AND	)	
DAWN HACKNEY,	)	
	)	
Appellants,	)	Case No. 4BE-20-00080 CI
	)	Appeal of Board of Adjustment
v.	)	Decision No. 2020-01
	)	
CITY OF BETHEL, ALASKA,	)	
BOARD OF ADJUSTMENT,	)	
	)	
Appellee.	)	
_____	)	

ORDER REMANDING BACK TO BOARD OF ADJUSTMENT FOR REHEARING

I. FACTS & PROCEDURE

This case arises on an appeal from a quasi-judicial hearing held by the Board of Adjustments regarding the approval of a newly built structure located on 175 Alex Hatley in the Blueberry Subdivision in Bethel, Alaska. The Bethel Municipal Code §18.16.010 requires a valid site plan permit issued by the city Planning Department to improve land or a structure.¹

On July 20, 2018, the Appellants applied to the Planning Department for a residential site plan for a garage/storage/mother-in-law unit. The Planning Department advised that two unattached dwelling units were not permitted on a single property. Four days later the Department approved a site plan permit for construction of garage/storage measuring 20ft by 42ft. On January 9, 2019, the Appellants filed a request to amend the permit to increase the dimensions and referred to the structure as an “attached garage” which was granted. On February 19, 2019, the Appellants dropped off an “as-built” drawing of the building with the new structure.

¹ BMC §18.16.010, §15.12.010

On June 7, 2019, a complaint was filed with the Planning Department alleging violation of the site permit and violation of residential zoning restriction by building another living unit with a residence already on the property. In response, the current Planning Director, Ted Meyers, investigated the complaint and visited the site to discover that the newly built structure had a finished kitchen downstairs and four finished and furnished rooms with en suite bathrooms upstairs. Following the investigation, the Planning Department issued a Notice to Correct Violations on August 30, 2019, for the violation of authorized improvements and zoning code.² The City allowed 30 days for correction, invited the Appellants to discuss revised plans, and advised of the right to appeal to the Planning Commission.

On September 9, 2019, the Appellants appealed the Notice to Correct Violation to the Planning Commission. In the time frame of the appeal application to the actual administrative hearing, the Planning Department offered a Corrective Action Plan which instructed the Appellants to submit: (a) a detailed and scaled floor plan drawing of the two levels in the new structure, (b) a new Site Plan Permit application compliant with the city ordinances; and (c) a plan to convert the current use of transient lodging to comply with the current zoning code, residential only. On October 10, 2019, the Appellants rejected the proposed Corrective Action Plan and opted to follow through with the appeal process with the Planning Commission.

The appeal was held during a public hearing on November 14, 2019, and both the City and the Appellants were represented by counsel. During the Planning Commission hearing, the Appellants argued that they initially had verbal confirmation from former Planning Director Betsey Jumper in approving their structure built on 175 Alex Hatley. The Planning Commission heard from a number of witnesses as well as testimony/statements from the public. According to Dawn Hackney, Jumper indicated that there was no objection or concern with the amended plan from January 9, 2019 and that the Hackneys should submit a drawing of the structure after

² BMC §15.12.070, §18.32.020, §18.32.030

completion. Hackney further testified that a similar procedure was followed for their other structure on 174 Alex Hatley. Hackney testified that both structures were built as bed and breakfasts and that business licenses and municipal tax documents were all applied for and approved by the City of Bethel to use the structures as bed and breakfasts. Further, Hackney testified that she managed another bed and breakfast in the same neighborhood which led her to believe that the structure and use were permitted in the Blueberry subdivision.

Patty Burley testified that at one point as her job as the City Attorney also was the acting or temporary City Planner, who succeeded Jumper's position as a City Planner. Burley was asked whether Jumper had previously given verbal confirmation for site plan permits. Questions regarding Jumper's actions as City Planner or her termination from employment were objected to by the City on grounds of attorney-client privilege. The Planning Commission sustained such objections.

Betsy Jumper was also called as a witness by the City. During her direct examination by the City she was allowed to testify about whether she ever orally granted the Hackney's permission to build the structure in question. Jumper was allowed to testify that she never gave oral approval to build a bed and breakfast. However, during Jumper's cross examination, the Hackneys were precluded by the Planning Commission from inquiring about her possible verbal confirmation for the site permit in question or to even explore the possibility that she was mistaken about her recollection.

The Planning Commission issued a written decision four days after the hearing affirming the Planning Department's Notice to Correct Violations.

The Appellants further appealed the Planning Commission's decision to the Board of Adjustment on December 19, 2019. On February 6, 2020, the Board of Adjustment issued a decision affirming the Notice to Correct Violations issued by the Planning Director and affirmed by the Planning Commission. The Board's decision included conclusions stating that the

property in question was in a residential district and that a bed and breakfast or lodging unit is not permitted, and that a permit was never issued to build the current structure and that the newly built structure was in violation to the municipal code.

The Hackneys appeal the Commission's decision to this court for judicial review under AS §22.10.020(d) and BMC §18.72.020(F). Alaska Statutes gives the superior court jurisdiction in all matters appealed from a subordinate court, or administrative agency when the appeal is provided by law.³ The superior court acts as an appellate court to consider the evidence and records provided by the hearings held by the Planning Commission or the Board of Adjustment. Under Bethel Municipal Code, the appeal of a decision made by the board of adjustment is to be filed in the superior court of the state of Alaska.⁴

II. STANDARD OF REVIEW

Administrative decisions have four standards of review: “(1) the substantial evidence test for questions of fact; (2) the reasonable basis test for questions of law involving agency expertise; (3) the substitution of judgment test for questions of law where no expertise is involved; and (4) the reasonable and not arbitrary test for review of administrative regulations.”⁵

Here, the applicable test is the substantial evidence test, where the Commission's decision will not be reversed if it is supported by substantial evidence and judicial review of zoning board decisions is narrow and a presumption of validity is accorded to those decisions.⁶ Furthermore, a party may not raise an issue for the first time on appeal.⁷

III. ARGUMENT

a. Comprehensive Plan

³ AS §22.10.020(d).

⁴ BMC §18.72.020(F).

⁵ *Griswold v. City of Homer*, 252 P.3d 1020, 1025 (Alaska 2011).

⁶ *S. Anchorage Concerned Coal., Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993)(internal citations omitted).

⁷ *Padgett v. Theus*, 484 P.2d 697, 700 (Alaska 1971)(“Ordinarily an issue which was not raised in the trial court will not be treated on appeal.”).

The Appellants first argue that the Bethel Land Map and Zoning Code are invalid because they violate, and cannot be reconciled with the Bethel Comprehensive Plan. The City of Bethel has the authority to implement zoning regulations if a comprehensive plan has been implemented.⁸ The Appellants cite to *Lazy Mountain*, where the court held that under AS § 29.40.030(b), a municipality is required to adopt a comprehensive plan, that the plan is adopted before zoning regulations and where zoning is enacted before the adoption of a comprehensive plan, a legal remedy is to be imposed.⁹

The City of Bethel's Comprehensive Plan of 2011 identifies discrepancies between the zoning code and the actual patterns of land use, the need to implement a new land use map reflecting the reality of development, and that the Appellants' neighborhood should be zoned mixed residential use rather than the current exclusive residential use. The Appellants argue that the ordinances relied upon by the City predate the Comprehensive Plan and do not rationally comply with the Plan.

The Appellees, the City of Bethel (the "City"), consider the Appellants' argument waived. The City argues that the land use map and zoning code violating the Comprehensive Plan is being raised for the first time in the appeal, and are not in the record. Therefore the argument was not considered by the Planning Committee or the Board of Adjustment. Accordingly, the City argues that the Hackneys' arguments about the Comprehensive Plan should not be taken into consideration.

The court agrees with the City that the argument regarding the zoning codes and whether or not they conform to the Comprehensive Plan 2011 was not raised during the hearing held by the Planning Commission or the Board of Adjustment. There is no record from prior proceedings on which the court can rely.

⁸ AS §29.35.260(c).

⁹ *Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373, 378 (Alaska 1995).

In the past, courts have relaxed procedural requirements for *pro se* litigants,¹⁰ but here, both parties were represented by counsel during the prior proceedings. Thus this court acting as an appellate court will not consider an issue on appeal that was not raised in a lower decision-making process.¹¹ The court finds that the Hackneys' appeal argument regarding the Comprehensive Plan is waived.

b. Estoppel

The Appellants further argue that the Planning Commission failed to admit and consider evidence that would have been relevant to apply to the correct legal test for estoppel against a municipality. From the appeals to the Planning Commission and the Board of Adjustment, the Appellants have argued that they received verbal approval from then Planning Director, Betsy Jumper, to submit an as-built drawing for approval when the project was completed. The City argued that verbal approval was insufficient and that a written permit was required to build a structure on a property.

The City's argues that the Appellants are contesting based on an evidentiary error: that the Commission improperly relied on Jumper's hearsay and/or failed to consider certain evidence favorable to the Hackneys' position. However, the Appellants critique that relative evidence was improperly omitted whether favorable to their position or not. That being Jumper was questioned by the City's attorney regarding her previous oral statements to the Appellants regarding their site plan permit. While five or six minutes later the Hackneys were prohibited from questioning Jumper on the same issue.

During the Planning Commission hearing, the City attorney asked Jumper whether she had ever orally given permission to the Hackneys regarding their site plan permits, to which she answered "No."¹² However, during cross-examination, the Appellants' attorney asked Jumper whether she had given oral consent to build a second story to the structure to which Jumper

¹⁰ See *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987).

¹¹ *Padgett*, 484 P.2d at 700.

¹² Planning Commission Hearing at 1:34, 1:37.

answered, “I don’t believe so,” furthering to say “I don’t recall,” and eventually ending with “I could have.”¹³ The City attorney objected stating that the issue was whether the Appellants had a written consent, not what Jumper had orally confirmed. The Planning Commission sustained the objection from the City’s attorney and the Hackneys were not allowed to explore the subject further even though Jumper had just stated that “[she] could have [orally granted permission].”

The Appellants argue that the Planning Commission erred in failing to consider conflicting testimony on the issue and acknowledging Jumper’s statement of having the possibility of verbally confirming the Appellants’ site plan permit. The court agrees that the cross-examination of the witness, Betsy Jumper, was cut short and that the verbal confirmation was within the scope of the direct examination conducted by the City attorney.

Under Rule of Evidence 611(b), the scope of cross-examination limits the subject matter to the direct examination and matters affecting the credibility of the witness.¹⁴ Although an administrative hearing is informal compared to the judicial court, both parties had representation by counsel, objections were made and ruled upon, and the rules of examination were applied. Furthermore, as the contradictory statement is substantial evidence to finding whether estoppel applies, it is advisory for the Planning Commission to acknowledge and consider Jumper’s cross-examination regarding her possible verbal confirmation of the site plan permit and allow the Hackneys to fully develop her testimony on this issue. Based on the Planning Commission’s findings of fact the court cannot tell whether the Commission took into account Jumper’s conflicting testimony.

This court remands this case back to the Board of Adjustment (or Planning Commission) to hold a rehearing and allow the Appellants to fully cross-examine Betsy Jumper regarding her oral statements to the Hackneys about the amended site plan permit. If the Board of Adjustment (or Planning Commission) finds Jumper verbally approved the amended site plan permit and

¹³ *Id.* at 1:39.

¹⁴ ARE 611(b).

finds it credible, then Board should reconsider its decision dated February 6, 2020, to reflect whether an estoppel defense applies. If the Board (or Commission) finds that Jumper did not verbally approve the amended site plan permit then its decision stands.

The general elements of equitable estoppel are (1) assertion of a position by conduct or word, (2) reasonable reliance thereon, and (3) resulting prejudice.¹⁵ A fourth element applicable to promissory estoppel cases is that the estoppel will be enforced to the extent required for justice.¹⁶ The Supreme Court of Alaska held that the fourth element is important when considering estoppel against a municipality.¹⁷ If the Board finds that estoppel applies to the Appellants, it is to use the four elements mentioned above to determine whether estoppel applies against the City.

IV. CONCLUSION

This court finds that substantial evidence had been improperly omitted as Jumper's statements about whether or not she granted oral approval of the amended site plan were properly within the scope of cross-examination. If the Board finds Jumper's statement credible, this court advises the Board to apply the test for estoppel as articulated above. Furthermore, any questions from cross-examination that are within the scope of direct examination may be reheard during the new hearing. The court notes that formal proceedings do not apply in administrative hearings. However, when key evidence as to whether estoppel applies is at issue, this court cannot disregard unjust procedure from the administrative hearing. As stated above, the court finds the Hackneys' argument regarding the Comprehensive Plan and zoning rules to be waived as it was not raised with the Planning Commission or the Board.

This court remands this case back to the Board of Adjustment for a rehearing to allow the Hackneys to cross examine Jumper on the issue of oral approval of the amended site plan. If the Board finds that Jumper gave the Hackneys oral approval for the amended site plan then the

¹⁵ *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d 97, 102 (Alaska 1987).

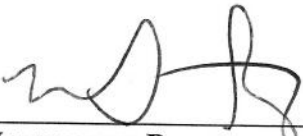
¹⁶ *Glover v. Sager*, 667 P.2d 1198, 1202 (Alaska 1983).

¹⁷ *Municipality of Anchorage v. Schneider*, 685 P.2d 94, 97 (Alaska 1987).

Board must apply that evidence to the test for estoppel as set forth in this decision regarding the amended site plan permit of 175 Alex Hatley. This court does not retain jurisdiction of this case.

IT IS SO ORDERED.

DATED at Bethel, Alaska this 3rd day of February, 2021.



NATHANIEL PETERS
SUPERIOR COURT JUDGE

I certify that on 2/04/21
copies of this form were sent to: T. Wang
E. Bakalar
CLERK K. Campbell

CITY OF BETHEL

BOARD OF ADJUSTMENT



Website: <https://www.cityofbethel.org/council>

Location: Council Chambers, City Hall, 300 Chief Eddie Hoffman Highway, Bethel

Board Members: Perry Barr, Haley Hanson, Fred Watson, Alyssa Leary, Mark Springer, Cece Franko, Michelle DeWitt

APPELLANT: Dan and Dawn Hackney, 175 Alex Hately

APPEAL: Decision by Planning Commission to Deny appeal 2019-01 of the City of Bethel's Planning Director's August 30, 2019 Notice to Correct Violations and adopt without amendment the Planning Director's Findings and Conclusions.

DATE AND TIME: February 4, 2020, 6:30 p.m.

LOCATION: Bethel City Council Chambers, 300 State Highway, Bethel Alaska

SUMMARY: On August 30, 2019 the Planning Director, Ted Meyer, issued a Corrective Action Plan to Dawn and Dan Hackney, claiming violations of the Bethel Municipal Code at 175 Alex Hately. **P 47-48 of Record.**

On September 9, 2019 Jared Karr, ESQ, Representing Attorney, Appealed the decision by the Planning Department regarding 175 Katie Hately (corrected to 175 Alex Hately), Dan and Dawn Hackney. **P 55 of Record.**

On November 14, 2019 the Planning Commission held a hearing to consider the appeal. At this hearing, the Commission adopted/confirmed the findings and conclusions issued by the Planning director on August 30, 2019. **P 9-15 of Record.**

On December 18, 2019, Jared Karr, ESQ, Representing Attorney for Dawn and Dan Hackney, submitted an appeal to the Board of Adjustment. **P 2-8 of Record.**

The grounds for appeal state:

Actions and findings of the Planning Commission that are disputed in the November 18, 2019 Order: All matters involving the authorization of the City of Bethel for the Hackney's to build and use their property as a two-story addition that houses transient lodgers; that planning staff did not authorize such construction and use; that written authorization by planning staff is the only mechanism to bind the City of Bethel; that the Hackney's violated Bethel Municipal Code; That the Hackney's must comply with the September 26, 2019 Corrective Action Plan; and that there is a "Kitchen for the Guests downstairs."

CITY OF BETHEL

BOARD OF ADJUSTMENT

Website: <https://www.cityofbethel.org/council>

Location: Council Chambers, City Hall, 300 Chief Eddie Hoffman Highway, Bethel

Board Members: Perry Barr, Haley Hanson, Fred Watson, Alyssa Leary, Mark Springer, Cece Franko, Michelle DeWitt



List of Exhibits in the Record

Exhibit 1	P. 1
12/18/2019 Appeal from Jared Karr, Hackney's Representing Attorney, December 18, 2019	P. 2-8
11/18/2019 Planning Commission's Decision Considered November 14	P. 9-15
Exhibit 2	P. 16
11/14/2019 Planning Commission Meeting Minutes	P. 17-19
11/14/2019 Transcription of Planning Commission Hearing (Expected January 30)	P. NA
Exhibit 3 Planning Commission Record from the November 14, 2019 Hearing	P. 20
Proof of House Number/and or Change	P. 21-22
Notices of Public Hearing issued by Planning Department and Map of notice distribution	P. 23-25
City Planner's Summary of Findings for the November 14, 2019 Hearing	P. 26-30
List of Exhibits in Planning Record	P. 31-32
7/20/2018 Residential Site Plan Permit	P. 33-37
7/24/2018 Planning Department Approval of the Residential Site Plan Permit	P. 38
Planning Department Addendum to Site Plan Permit increasing structural dimensions of garage	P. 39-40
*Planning Record indicates issuance on January 9, 2019 the document doesn't appear to be dated.	
2/19/2019 Hackney's drawing of skywalk from existing home and new garage	P. 41
6/7/2019 Complaint from property neighbors alleging violations of BMC	P. 42
8/19/2019 Images of 175 Alex Hatley taken/Google Earth Aerial photo of property	P. 43-46
8/30/2019 Planning Department Notice to Correct Violations	P. 47-48
9/9/2019 Hackney's appeal of the Planning Department's Notice to Correct Violations	P. 49
9/13/2019 Hold in abeyance, appeal of the Notice to Correct Violations	P. 50-51

9/26/2019 Planning Department's Corrective Action Plan to establish code Compliance	P. 52-54
10/10/2019 Hackney's Notice of Appeal of Planning Director's Decision	P.55
10/28/2019 Planning Department's notice to Hackney's grounds of appeal is inadequate	P. 56-57
10/28/2019 Hackney's appeal of the Planning Department's Notice of Inadequate appeal	P. 58-59
10/29/2019 Planning Department's notice of November 14, 2019 Planning Commission Hearing	P. 60
City of Bethel Official Land Use Map	P. 61
Bethel Municipal Code 18.32 Residential District	P. 62-64
Bethel Municipal code 18.36 General Use District	P. 65-68
Bethel Municipal Code 15.12.070 Site Plan Permit Medications	P. 69-70
Bethel Municipal Code 16.12.010 Planning, Land Use, Platting and Site Development Definitions	P. 71-85
Bethel Municipal Code 18.72 Zoning Appeals	P. 86-89
Bethel Municipal Code 2.45 Administrative Adjudication	P. 90-95
Entry of Appearance for Planning Commission Hearing, Jermain, Dunnagan and Owens	P. 96-98

CITY OF BETHEL

BOARD OF ADJUSTMENT

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Board Members: Perry Barr, Haley Hanson, Fred Watson, Alyssa Leary, Mark Springer, Cece Franko, Michelle DeWitt



Items presented by the Hackney's for Planning Appeal Record

Some items within this portion of the Record are
duplicates to items listed in Exhibits 1-3

This Exhibit List will only reference those items not
listed in the Exhibits 1-3

8/5/2015 Site Plan Permit for 175 Alex Hatley to finish house and fill.	P. 100
1/19/2019 Court Documents Hackney Vs. Maratt	P. 116-121
8/19/2019 City of Bethel/State of Alaska Business License Information	P. 122-127
Spiral Note Book with handwritten Notes	P. 130-133
Bethel Airbnb Print Outs	P. 152-154
Subpoena to Appear/Produce Records issued to Patty Burley	P. 155
Photos of property area	P. 156-159
11/04/2019 City Manager's Report to Council to include Department Head Reports	P. 160-190



Exhibit 1

Appeal Statement from Jared Karr, Hackney's Representing Attorney

Dated December 18, 2019

Planning Commission's Decision

Considered November 14, 2019

Issued November 18, 2019

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JIM VALCARCE, ESQ.

*Bush Lawyers Serving
Bush Alaska*

December 18, 2019

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

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

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

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

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

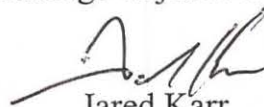
mechanism to bind the City of Bethel; that the Hackney's violated Bethel Municipal Code; that the Hackney's must comply with the September 26, 2019 Corrective Action Plan; and that there is a "kitchen for the guests downstairs."

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

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

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

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



Jared Karr
Attorney for Dan and Dawn Hackney

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

685 P.2d 94
Supreme Court of Alaska.

MUNICIPALITY OF ANCHORAGE, Appellant,
v.

Richard J. SCHNEIDER and
Mary M. Schneider, Appellees.

No. S-63.

|
July 6, 1984.

Synopsis

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

Affirmed.

West Headnotes (5)

[1] **Municipal Corporations**

⚙ Powers of officers or boards

Public Contracts

⚙ Authority and capacity of particular governmental bodies to contract

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

1 Cases that cite this headnote

[2] **Estoppel**

⚙ Essential elements

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

35 Cases that cite this headnote

[3] **Estoppel**

⚙ Municipal corporations in general

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

15 Cases that cite this headnote

[4] **Estoppel**

⚙ Municipal corporations in general

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

22 Cases that cite this headnote

[5] **Compromise and Settlement**

⚙ Subject-matter

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

3 Cases that cite this headnote

Attorneys and Law Firms

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

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

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

OPINION

MATTHEWS, Justice.

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

I.

The Schneiders own a lot in the Fire Lake Subdivision in Eagle River which was zoned R-2 by the Municipality until August 20, 1982. This zoning classification allows construction of up to eight dwelling units per lot, provided the units are incorporated into a single structure. On July 7, 1982 the Municipality brought an action against the Schneiders for maintaining two detached dwelling units on their lot, a violation of Anchorage Municipal Code (AMC) 21.40.040.¹

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

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

II.

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

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

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

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

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

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

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

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

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

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

The defense [of estoppel] typically applies where a property owner

receives a permit that was beyond the power of an administrative officer to grant, the owner detrimentally relies on the validity of the permit, and the local government attempts to revoke the permit and then enforce the ordinance.

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

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

Id. at 931 n. 3.

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

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

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

[5] Also of significance in this case is the fact that the Schneiders' reliance arose from a settlement agreement. There is a strong public policy in favor of the settlement of disputes. See, e.g., *Godfrey v. Hemenway*, 617 P.2d 3, 8 (Alaska 1980). Failure to apply an estoppel theory in this case would only serve to re-open a lawsuit that both parties believed was settled. Indeed, although actually reached after the property in question had been rezoned R-2A, the settlement agreement

arose out of a lawsuit filed in July 1982, when the property was zoned R-2. Thus, given the equitable context of this case, the settlement agreement could be characterized as relating back to the situation existing when the suit was initiated.

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

All Citations

685 P.2d 94

Footnotes

- 1 AMC 21.40.040 provides in part:
 - A. The R-2 use district is intended to be a low-density urban and suburban multiple-family residential district, allowing up to 8 dwelling units.... The R-2A and R-2D use districts are intended as low-density urban and suburban two-family residential areas. Except for the greater number of dwelling units per lot permitted in the R-2 use district, the R-2, R-2A and R-2D use regulations are identical....
 - B. Permitted principal uses and structures:
 1. single-family dwellings ...;
 2. two-family dwellings (only a single principal structure may be allowed on any lot or tract);
 3. multiple-family dwellings containing up to eight dwelling units in R-2 district only, provided, however, that only a single principal structure may be allowed on any lot or tract;
- 2 AMC 21.40.040B(2). See note 1, *supra*.
- 3 Courts have allowed **estoppel** against **municipalities** when the **public** officer has performed in an irregular manner, but has not acted *ultra vires* or outside his legal authority. See *Rogers v. First Sewerage Dist. of City of Lake Charles*, 171 So.2d 820 (La.App.1965); *Parker v. Township of West Bloomfield*, 60 Mich.App. 583, 231 N.W.2d 424, 428 (1975); *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 257 S.E.2d 716 (1979); *Pasadena Police Officers Ass'n. v. City of Pasadena*, 497 S.W.2d 388, 394 (Tex.Civ.App.1973); 2 C. Antieau, *Municipal Corporation Law* § 16A.04 (1984); see also *City of Kenai v. Filler*, 566 P.2d 670, 675-76 (Alaska 1977) (noting the distinction between an illegal, *ab initio* action not giving rise to **estoppel** and a technical or procedural irregularity which does give rise to the theory).
- 4 See also *City & County of Denver v. Stackhouse*, 135 Colo. 289, 310 P.2d 296 (1957); *Miller v. Board of Trustees of Town of Palmer Lake*, 36 Colo.App. 85, 534 P.2d 1232 (1975); *State ex rel. Barker v. Town of Stevensville*, 164 Mont. 375, 523 P.2d 1388 (1974); *Murrell v. Wolff*, 408 S.W.2d 842 (Mo.1966); *Tillberg v. Township of Kearny*, 103 N.J.Super. 324, 247 A.2d 161, 166 (1968).
- 5 The Wisconsin Supreme Court has stated this policy as follows:

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

Milwaukee v. Leavitt, 31 Wis.2d 72, 142 N.W.2d 169, 172-73 (1966).
- 6 See 2 Antieau, *supra*, § 16A.06, at 16A-15 ("courts should be encouraged to weigh in every case the gravity of the injustice to the citizen if the doctrine is not applied against the injury to the commonweal if the doctrine is applied...."); see also *State ex rel. Barker v. Town of Stevensville*, 164 Mont. 375, 523 P.2d 1388, 1391 (1974).

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

End of Document

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City of Bethel

Planning Commission

DANIEL AND DAWN HACKNEY
Appellants,

vs.

CITY OF BETHEL,
Appellee.

Case No. 2019-1

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

INTRODUCTION

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

FINDINGS OF FACT

- 1) On July 20, 2018, Dan and Dawn Hackney, owners of 175 Alex Hatley, Block 1, Lot 11, Blueberry Field Subdivision, Bethel, Alaska, submitted a Residential Site Plan Permit application to the Planning Department for a 20-foot X 42-foot garage/storage/shop and mother-in-law unit.
- 2) The planning staff assistant testified at the hearing that she and the former planning director, Betsy Jumper, told Mr. Hackney that the mother-in-law unit or two unattached dwelling units were not allowed on one property in the Residential Zone. The application was approved on July 24, 2018 and a Site Plan Permit was issued to only allow for the construction of a 20-foot x 42-foot shop/garage/storage shed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

- 1) The Hackney property is located in the Residential ("R") district. **BMC 18.32.010** states that it is the intent of the residential district to provide protection to residential areas from encroachment from nonresidential activities.
- 2) Pursuant to **BMC 18.32.020**, the following are permitted and principal uses and structures in the Residential District:
 - A. Trails and boardwalks;
 - B. Non-motorized public access areas to the Kuskokwim River or other areas that require public access.
 - C. Single-family dwelling units;
 - D. Duplex uses;
 - E. Greenbelts and land reserves;
 - F. Subsistence activities;
 - G. Any accessory use or use of structure associated with the principal use or structure on the lot.
 - H. The facilities of sewer, water and other utilities required to serve the lots in the district.
 - I. Home occupations, but not more than two (2) per dwelling unit
- 3) **BMC 18.36.020(K)(31)** allows hotels, motels, hostels, bed and breakfasts, bunk houses, and boarding houses in the Bethel General Use District. Bethel residents therefore have the option to build bed and breakfasts in the Bethel General Use District. The Hackneys had the option of building their bed and breakfast in the General Use District but chose not to.
- 4) Pursuant to **BMC 18.32.020G (Residential Zoning District Permitted and Principal Use and Structures)**, any accessory use or structure associated with the principal use or structure on the lot are permitted in the Residential District. However, an accessory is defined in **BMC 16.12.030** as being customarily accessory and clearly subordinate and incidental to the principal use or structure on the lot. The Hackneys' additional 4-unit Bed & Breakfast or other lodging unit on the property is clearly not subordinate and

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

- 5) The Hackneys state that their grounds for appeal are that all construction and use of the property were authorized by the former planning director Betsy Jumper. However, the initial site plan permit only gave the Hackneys permission to “construct a 20-foot x 42-foot shop/garage/storage shed” and the addendum to the permit only allowed for the construction of “a 24-foot x 64-foot garage.” The city planning department never gave the Hackneys written consent to build the structure at issue.
- 6) The approved Site Plan Permit is a one-sheet document and is the only approval mechanism used by planning departments to convey a Notice to Proceed to the developer to begin construction. The purpose of posting the permit is to notify the public that the project plans comply with local standards for land use, zoning, and development. The Authorized Improvements listed on the permit sheet are the only improvements that can be made by the property owner. Neither the July 20, 2018 permit, nor the January 9, 2019 addendum, allowed the Hackneys to construct the second floor lodging units.
- 7) The Hackneys are in violation of BMC Section 15.12.070 (Modifications) since they failed to obtain the written consent of the land use administrator (planning director) when they modified the approved plan.
- 8) The Hackneys are also in violation of BMC 18.36.020 (Residential District) since B & B’s and transient lodging are not permitted in the Residential Zone. (The Hackneys reside in the residential zone.)
- 9) There is no merit to the Hackneys’ appeal and it should be dismissed. The planning director’s August 30, 2019 decision which found that the Hackneys had violated the Bethel Municipal Code Sections 15.12.070 and 18.32.020 and required them to come into compliance with the Code should be affirmed.

ORDER

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

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

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

RIGHT TO APPEAL

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


Lorin Bradbury
Planning Commission Vice Chair

11/18/19
Date

CERTIFICATE OF SERVICE:

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

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

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

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

Ted Meyer 11/18/19
Pauline Boratko/Ted Meyer



Exhibit 2

Planning Commission Meeting Minutes from November 14, 2019

Transcription of Planning Commission Hearing 19-01

Will be provided January 30, 2020

City of Bethel, Alaska

Planning Commission

November 14, 2019

Regular Meeting

Bethel, Alaska

I. CALL TO ORDER:

A regular meeting of the Planning Commission was held on November 14, 2019 at the Bethel City Hall, Council Chambers in Bethel, Alaska. The Chair of Commission, Kathy Hanson called the meeting to order at 6:30 PM.

II. ROLL CALL:

Comprising a quorum of the Commission, the following members were present for roll call: Kathy Hanson, Lorin Bradbury, John Guinn, Alex Wasierski, Scott Campbell, Stanley Hoffman Jr, and Council Rep. Haley Hanson. Shadi Rabi arrived at 6:32pm and Lorin Bradbury arrived at 6:36pm

Excused Absence: Tracy Beans

Also Present: Charlie Dan, Recorder; Ted Meyer, City Planner

III. PEOPLE TO BE HEARD:

Steve Murat- would like to see a BNC road established between Larson Sub and Tundra Ridge

IV. APPROVAL OF THE AGENDA:

MOVED:	John Guinn	Motion to approve the agenda
SECONDED:	Scott Campbell	
VOTE ON MOTION	Unanimous	

V. APPROVAL OF THE MINUTES:

MOVED:	Scott Campbell	Motion to approve the June 13, 2019 regular meeting minutes.
SECONDED:	John Guinn	
VOTE ON MOTION	Unanimous	

MOVED:	Scott Campbell	Motion to approve the September 12, 2019 regular meeting minutes.
SECONDED:	John Guinn	
VOTE ON MOTION	Unanimous	

MOVED:	John Guinn	Motion to approve the October 10, 2019 minutes- no meeting due to lack of quorum.
SECONDED:	Scott Campbell	
VOTE ON MOTION	Unanimous	

VI. SPECIAL ORDER OF BUSINESS:

VII. NEW BUSINESS:

- A. On October 10, 2019 the City of Bethel Planning Department was notified by Daniel & Dawn Hackney with a request to move forward with their September 9, 2019 appeal of the Planning Department's notice to correct (BMC) Bethel Municipal Code violations at Blueberry Subdivision Block 1 Lot 11, 175 Alex Hatley. (action item).

The Planning Commission, acting in a quasi-judicial body held a public hearing on Appeal 19-01.

Chair of the Commission Kathy Hanson opened up the public hearing 19-01.

The following were present for the hearing: Kathy Hanson, Lorin Bradbury, Alex Wasierski, John Guinn, Shadi Rabi, Scott Campbell, and Stanley Hoffman Jr., and Haley Hanson.

The Chair asked members of the Commission to disclose any conflicts of interest or Ex Parte Communications they may have had on the action before them.

Lorin Bradbury- received calls/complaints about 175 Alex Hatley.

Kathy Hanson-received calls/comments about 175 Alex Hatley.

The oath was conducted for all parties providing testimony at the hearing.

Testimony by Witnesses

Representing Dawn and Dan Hackney (Appellants), Attorney, Jared Karr, called the following witnesses to testify on the appeal;

Dawn Hackney, Appellant.

Patty Burley, former City Attorney. -

Representing the City of Bethel Planning Director (Appellee), Attorney Mary Pinkle called the following witnesses to testify on the appeal;

Ted Meyer, Planning Director.

Betsy Jumper, former Planning Director.

Pauline Boratko, Planning Administrative Assistant. -

Testimony by Interested Parties

Jane Burris-Kofsky. Spoke in Favor of the Appellant.

Glen Kofsky. Spoke in favor of the appellant.

Janet Kaiser. Spoke in favor of the Appellee.

Stephanie Butte. Spoke in favor of the Appellee.

The Appellant was provided an opportunity for statement.

The Appellee was provided an opportunity for final statement. The Appellant was provided an opportunity for final statement.

The Planning Commissioners were provided an opportunity to ask questions of the parties.

MOVED:	Scott Campbell	Motion to deny appeal 2019-01 of the City of Bethel's Planning Director's August 30,2019 Notice to Correct Violations and adopt without amendment the Planning Directors findings and conclusions.
SECONDED:	Alex Wasierski	
VOTE ON MOTION	Unanimous	

Chair Kathy Hanson closed the public hearing on Appeal 19.01.

VI. PLANNER'S REPORT: Ted gave his report.

VII. COMMISSIONER'S COMMENTS:

S. Rabi- no comment

A. Wasierski- no comment

S. Campbell- I would like to commend you, Kathy, you did a great job.

S. Hoffman- no comment

K. Hanson- no comment

L. Bradbury-with the hearings like tonight can we have pages printed one sided?

J. Guinn- no comment

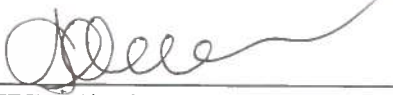
H. Hanson- I'm looking forward to future meetings.

X. ADJOURNMENT:

MOVED:	John Guinn	Motion to adjourn the meeting.
SECONDED:	Shadi Rabi	
VOTE ON MOTION	Unanimous	

With no further business the meeting adjourned 9:28 pm

APPROVED THIS 12th DAY OF Dec, 2019


ATTEST: Charlie Dan, Recorder


Kathy Hanson, Chair

CITY OF BETHEL

Board of Adjustment Hearing

February 4, 2020 6:30 p.m.

Appeal No. 2020-01 – Hackney/175 Alex Hately



Exhibit 3

Planning Commission's Record on Appeal



CITY OF BETHEL

Planning Department
P.O. Box 1388
Bethel, Alaska 99559

August 7, 2019

PROOF OF HOUSE NUMBER/AND OR CHANGE

I, Pauline Boratko, the City of Bethel Planning Assistant, is changing an address back to the original address 175 Katie Hatley to 175 Alex Hatley. Please note that this is the Hackney Residence, a single family dwelling.

**Pauline Boratko
City of Bethel
Planning Assistant**

**Cc: AVEC, GCI, COB Fire Dept.; Police Dept., Public Works Utilities Dept., and Finance Dept.
Hackney's**



CITY OF BETHEL

Planning Department

P.O. Box 1388

Bethel, Alaska 99559

August 22, 2018

PROOF OF HOUSE NUMBER/AND OR CHANGE

**I, Pauline Boratko, the City of Bethel Planning Assistant, changing an address to a property---
175 Alex Hatelly Lane to 175 Katie Hatelly Lane.**

A handwritten signature in black ink, reading "Pauline R. Boratko". The signature is written in a cursive style with a horizontal line underneath the name.

**Pauline Boratko
City of Bethel
Planning Assistant**

Cc: AVEC, GCI, COB Fire Dept.; Police Dept., Public Works Utilities Dept., and Finance Dept.,



City of Bethel

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

November 4, 2019

To whom this may concern: You are receiving this notice pursuant to Bethel Municipal Code 18.04.070 "Notice shall be mailed to the owners of each parcel of property any part of which is within six (600) feet of the exterior boundary that is the subject of the application"

PUBLIC HEARING NOTICE **APPEAL TO 175 ALEX HATELY** **CODE VIOLATION**

Notice is hereby given that on October 10, 2019 the City of Bethel Planning Department was notified by Daniel & Dawn Hackney with a request to move forward with their September 9, 2019 appeal of the Planning Department's notice to correct (BMC) Bethel Municipal Code violations. The legal description is: Plat # 84-3 Lot 11. The physical address is 175 Alex Hateley.

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

Applicant: same as land owner

City of Bethel Contact: Ted Meyer, Planning Director, City of Bethel Planning Dept., phone 907-543-5306.

Time and Place: The regular meeting of the City of Bethel Planning Commission, 6:30 PM, November 14, 2019 at City Hall, located at 300 Chief Eddie Hoffman Highway in Council Chambers.



City of Bethel

Planning Department

P.O. Box 1388

Bethel, Alaska 99559

(907) 543-5306

PUBLIC HEARING NOTICE APPEAL TO 175 ALEX HATELY CODE VIOLATION

Notice is hereby given that on October 10, 2019 the City of Bethel Planning Department was notified by Daniel & Dawn Hackney with a request to move forward with their September 9, 2019 appeal of the Planning Department's notice to correct (BMC) Bethel Municipal Code violations at Blueberry Subdivision Block 1 Lot 11. 175 Alex Hateley.

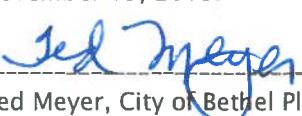
Land Owner: Daniel & Dawn Hackney P.O. Box 3288 Bethel, Alaska 99559

Applicant: same as land owner

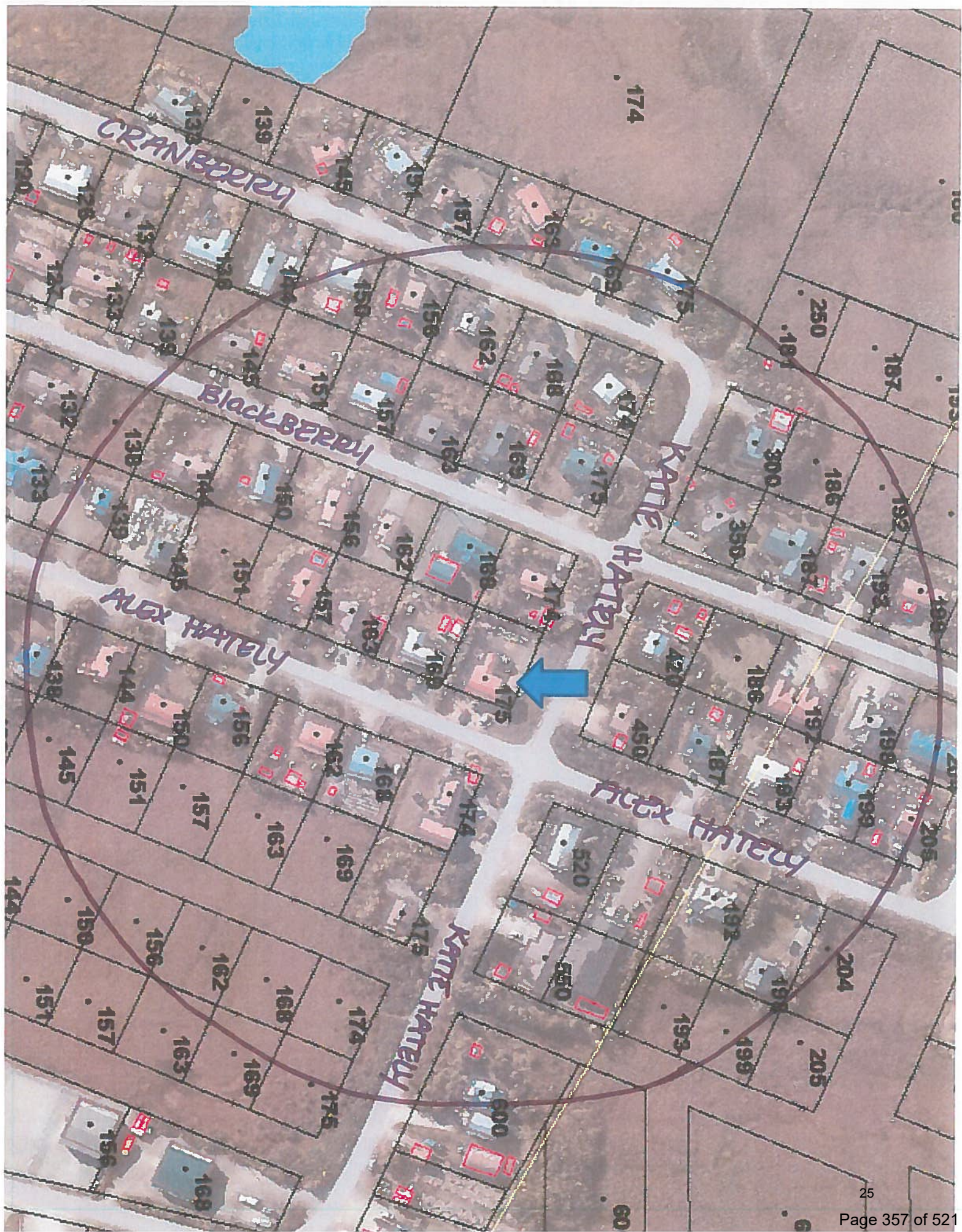
City of Bethel Contact: Ted Meyer, Planning Director, City of Bethel Planning Dept., phone 907-543-5306.

Time and Place: The regular meeting of the City of Bethel Planning Commission, 6:30 PM, November 14, 2019 at City Hall, located at 300 Chief Eddie Hoffman Highway in Council Chambers.

I hereby certify that this Notice of Hearing -Appeal to 175 Alex Hateley Code Violation- has been posted at City Hall, the Post Office, Bethel Native Corp. and Swanson's Bulletin Boards on or before November 8, 2019. It is further certified that this Notice has been published in the Anchorage Daily Newspaper on November 7, 2019 and will be published in the Delta Discovery and Anchorage Daily Newspaper on November 13, 2019.

 11/7/19

Ted Meyer, City of Bethel Planner





City of Bethel

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

City Planner's Summary and Findings for the November 14, 2019 Planning Commission Hearing Regarding the Hackneys' Appeal of Notice to Correct Violations

INTRODUCTION

Pursuant to *BMC 18.72.010D*, the City of Bethel planning department submits the following summary of the application process and statement of findings that support the land use administrator's actions in issuing a Notice to Correct Violations to Daniel and Dawn Hackney on August 30, 2019. In its Notice to Correct, the planning department indicated that the Hackneys had committed the following violations:

1. Noncompliance with authorized improvements stated on approved July 24, 2018 Site Plan permit and on the approved January 9, 2019 addendum (*BMC 15.12.070 Site Plan Permit Modifications*).
2. Noncompliance with Residential Zoning Code (*BMC 18.32.020 Residential District – Permitted and Principal Uses and Structures*).

SUMMARY OF THE APPLICATION PROCESS

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

Planning staff told Mr. Hackney that the mother-in-law unit, or two unattached dwelling units were not allowed on one property in the Residential Zone. The application was approved on July 24, 2018 and a Site Plan Permit was issued to only allow for the construction of a 20-foot x 42-foot shop/garage/storage shed per the Site Plan Permit Application on file. (**Exhibit #2.**)

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

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

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

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

On August 19, 2019, planning department staff took photos of the Hackney property. (**Exhibit #6.**) The three photos and an additional Google Earth aerial photo show:

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

On August 30, 2019, the City Planning Department issued the Hackneys a Notice to Correct Violations stating the Hackneys had violated the Bethel Municipal Code since they had not received approval to build a second floor with a bed and breakfast (B & B) or other lodging units. (**Exhibit #7.**) The City determined that the Hackneys had committed the following violations:

- (1) Non-compliance with Authorized Improvements, in violation of **BMC 15.12.070**; and
- (2) Non-Compliance with BMC Residential Zoning Code, in violation of **BMC 18.32.020 and 18.32.030.**

The City gave the Hackneys 30 days to correct the violations and invited them to visit the planning department to discuss the construction project and permissible uses of the property under the Bethel Code. The City further notified the Hackneys of their right to appeal the Planning Department's determination to the City Planning Commission. It explained that "the written appeal must be submitted to the Planning Department and must specify the grounds for appeal and specify the actions and findings of the department that are being disputed". (**Exhibit #7.**)

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

- (1) All construction and use of 175 Katie Hatley were authorized by the former Planning Director Betsy Jumper.
- (2) All actions and findings of the planning department are disputed. (**Exhibit #8.**)

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

On September 26, 2019 the planning department issued the Corrective Action Plan to the Hackneys to bring the structure into code compliance. (**Exhibit #10.**) The plan included deadlines for submission by Mr. Hackney as follows:

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

On October 10, 2019 the Hackneys rejected the Corrective Action Plan and requested their appeal of the August 30 Notice to correct violations "move forward". (**Exhibit #11.**)

On October 28, 2019, the Bethel Planning Department sent a notification to the Hackneys that their letter of appeal did not provide an adequate explanation for the appeal, as required in BMC 18.72.010A. (**Exhibit #12.**)

On October 28, 2019 the Hackneys notified the planning department that they were appealing the planning department's October 28 letter regarding the inadequate appeal. (**Exhibit #13.**)

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

STATEMENT OF FINDINGS OF THE LAND USE ADMINISTRATOR

- 1) The Hackney property is located in the Residential ("R") district. **BMC 18.32.010** states that it is the intent of the residential district to provide protection to residential areas from encroachment from nonresidential activities.
- 2) Pursuant to **BMC 18.32.020**, the following are permitted and principal uses and structures in the Residential District:
 - A. Trails and boardwalks;
 - B. Non-motorized public access areas to the Kuskokwim River or other areas that require public access.
 - C. Single-family dwelling units;

- D. Duplex uses;
- E. Greenbelts and land reserves;
- F. Subsistence activities;
- G. Any accessory use or use of structure associated with the principal use or structure on the lot.
- H. The facilities of sewer, water and other utilities required to serve the lots in the district.
- I. Home occupations, but not more than two (2) per dwelling unit.

- 3) On June 7, 2019, the City of Bethel, Planning Department received an official complaint from four neighborhood residents alleging violations of the City of Bethel Site Plan Permit 18-34, for Daniel and Dawn Hackney, owners of 175 Alex Hatley. The complaint included allegations the Hackneys had (1) failed to provide an accurate description of their building plans in their site plan application and (2) built apartments or a hotel in a residential area, with a residence already on the property. (see **Exhibit #5**).
- 4) In response to the complaint, planning staff reviewed the Site Plan Permit application materials and upon invitation from the Hackneys, visited the property which included a tour of the 2nd floor transient lodging units. Staff observed four furnished hotel-style rooms, each with an enclosed bathroom, and a guest kitchen downstairs. A van full of guests was just arriving.
- 5) Based upon its investigation, the planning department determined the June 7th complaint had merit and wrote a notice to correct violations to the Hackneys on August 30, 2019. The planning department stated that it had determined the July 24, 2018 Site Plan Development Permit (for a 20-foot X 42-foot shop/garage/storage shed) and the approved January 9, 2019 addendum to the permit (to increase the size of the structure to 24-feet X 64-feet) did not include written approval to build an additional second floor consisting of B&B or other transient lodging units.
- 6) The planning department notified the Hackneys that there structure violated two chapters of the BMC:
 - A. **BMC 15.12.070 (Modifications)** (“Once the site plan permit is approved, no modifications to the approved plan may take place without the written consent of the land use administrator.”)
 - B. **BMC 18.32.020 (Residential District)** (B&B’s, transient lodging or hotels) are not included as a permitted or principal use in the Residential Zone.
- 7) **BMC 18.36.020(K)(3I)** allows hotels, motels, hostels, bed and breakfasts, bunk houses, and boarding houses in the Bethel General Use District. Bethel residents therefore have the option to build bed and breakfasts in the Bethel General Use District. The Hackneys had the option of building their bed and breakfast in the General Use District but chose not to.

- 8) Pursuant to **BMC 18.32.020G (Residential Zoning District Permitted and Principal Use and Structures)**, any accessory use or structure associated with the principal use or structure on the lot are permitted in the Residential District. However, an accessory is defined in **BMC 16.12.030** as being customarily accessory and clearly subordinate and incidental to the principal use or structure on the lot. The Hackney's additional 4-unit Bed & Breakfast or other lodging on the property is clearly not subordinate and incidental to the already existing Single Family dwelling unit, which is the principal use on the property. The structure at issue is clearly not allowed by **BMC 18.32.020**
- 9) The Hackneys state that their grounds for appeal are that all construction and use of the property were authorized by the former Planning Director Betsy Jumper. Yet there is nothing in the planning department record to support the Hackneys' contention that the former planning director permitted the construction which resulted in the code violations at issue. The initial site plan permit gave the Hackneys permission only to "construct a 20-foot x 42-foot shop/garage/storage shed" and the addendum to the permit only allowed for the construction of "a 24-foot x 64-foot garage." There is therefore no written consent or anything in the department record to support the argument that the construction of a B&B or other lodging units was ever permitted by the City.
- 10) The approved Site Plan Permit is a one-sheet document and is the only approval mechanism used by planning departments to convey a Notice to Proceed to the developer to begin construction. The purpose of posting the permit is to notify the public that the project plans comply with local standards for land use, zoning, and development. The Authorized Improvements listed on the permit sheet are the only improvements that can be made by the property owner. Neither the July 20, 2018 permit, nor the January 9, 2019 addendum allowed the Hackneys to construct the second floor lodging units.
- 11) There is no merit to the Hackneys' appeal and it should be dismissed. The decision of the planning director on August 30, 2019 which found that the Hackneys had violated the Bethel Municipal Code Sections 15.12.070 and 18.32.020 should therefore be affirmed. The Hackneys should come into compliance with the Bethel Municipal Code by agreeing to and implementing the September 26, 2019 Corrective Action Plan sent to them by the Bethel City Planning Department.



Ted Meyer, City Planner, MUP



Date



City of Bethel

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

November 14, 2019 Planning Commission Hearing Regarding Daniel and Dawn Hackney Appeal of Planning Department's August 30, 2019 Notice to Correct Violations

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

LIST OF EXHIBITS

- Exhibit 1 July 20, 2018 - Dan Hackney's Site Plan Permit Application.
- Exhibit 2 July 24, 2018 – Planning Department approves Hackney's Site Plan Permit for shop/garage/storage shed.
- Exhibit 3 January 9, 2019 – Planning Department approves the Hackney Site Plan Permit Addendum increasing structural dimensions of garage.
- Exhibit 4 February 19, 2019 – Dan Hackney delivers As-built drawing showing planned skywalk linkage between existing Single Family house and planned new garage structure.
- Exhibit 5 June 7, 2019 - Complaint from Hackney neighbors regarding alleged Bethel Municipal Code (BMC) violations of the Hackney development.
- Exhibit 6 1) August 19, 2019 – Three photos taken by planning department staff of the Hackney property showing the existing Single Family house and new structure containing the four B&B units.
 2) Google Earth aerial photo of Hackney property
- Exhibit 7 August 30, 2019 - Planning Department Notice sent to the Hackneys to Correct Violations.
- Exhibit 8 September 9, 2019 – The Hackneys appeal the Planning Department's Notice to Correct Violations.
- Exhibit 9 September 13, 2019 - Stipulation signed by attorneys for both parties that includes an agreement to hold in abeyance the Hackney September 9, 2019 appeal of the Notice to Correct until a Corrective Action Plan is formulated between the parties.
- Exhibit 10 September 26, 2019 - Planning Department issues Corrective Action Plan to the Hackneys to bring their development into compliance with the BMC.

- Exhibit 11 October 10, 2019 - The Hackneys reject the Corrective Action Plan and request their September 9, 2019 appeal of the "Notice to Correct Violations" move forward.
- Exhibit 12 October 28, 2019 – The Planning Department sends notification to the Hackneys that their September 9, 2019 letter of appeal was inadequate regarding their grounds for appeal.
- Exhibit 13 October 28, 2019 – The Hackneys appeal the Planning Department's October 28 notice of inadequate appeal
- Exhibit 14 October 29, 2019 Planning Department notifies the Hackneys of the November 14, 2019 Planning Commission hearing of their appeal.
- Exhibit 15 City of Bethel Official Land Use Map
- Exhibit 16 BMC 18.32 Residential District
- Exhibit 17 BMC 18.36 General Use District
- Exhibit 18 BMC 15.12.070 Site Plan Permit (Modifications)
- Exhibit 19 BMC 16.12.010 Definitions
- Exhibit 20 BMC 18.72 Appeals
- Exhibit 21 BMC 2.45 Administrative Adjudication
- Exhibit 22 Entry of Appearance filed by Jermain, Dunnagan & Owens

Jed Meyer 11/7/19

#1

Permit # 18-34



RECEIVED

JUL 20 2018

CITY OF BETHEL
PLANNING DEPARTMENT

CITY OF BETHEL

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

RESIDENTIAL SITE PLAN PERMIT APPLICATION

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

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

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

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

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

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

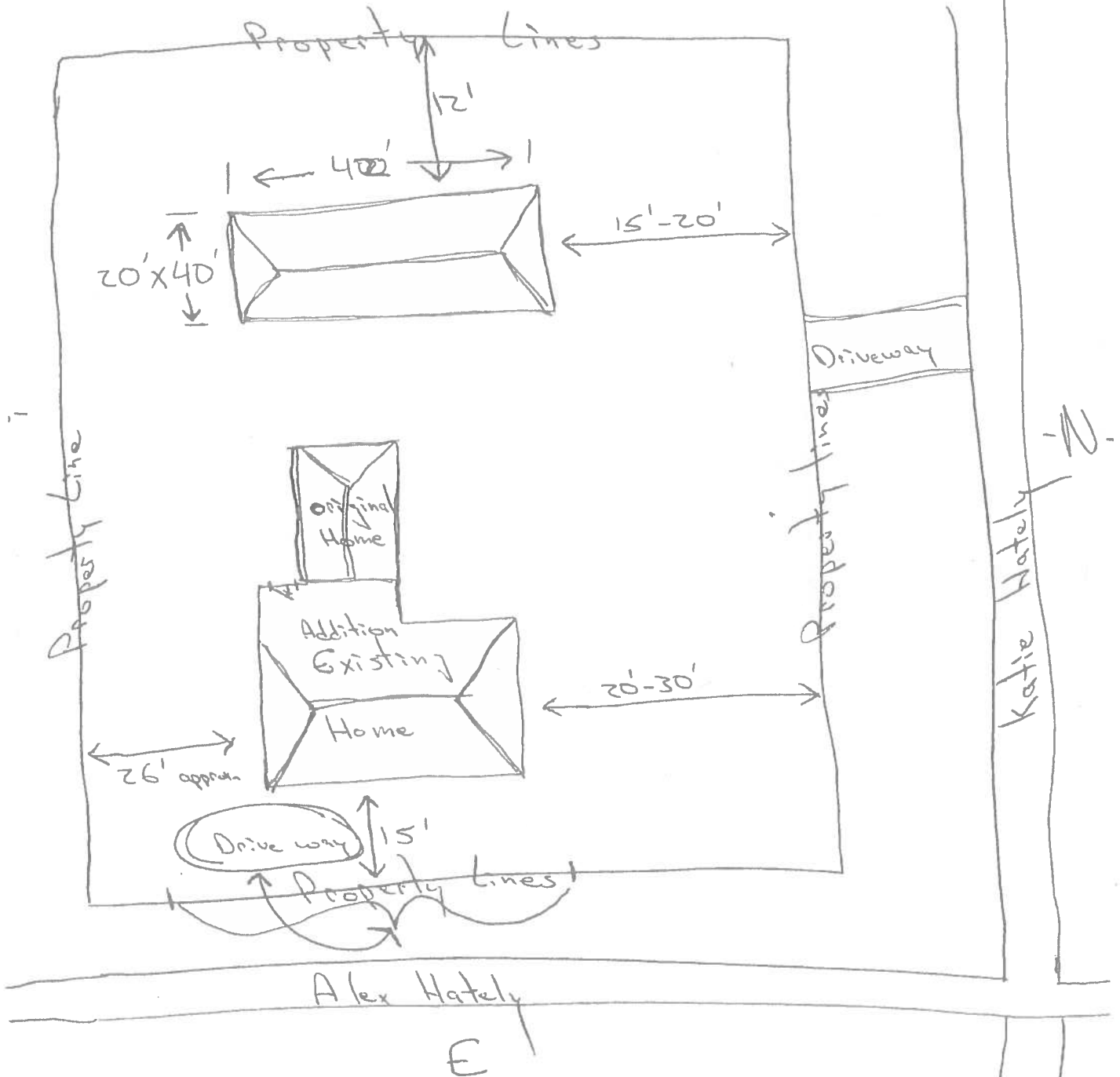
A permit must be obtained at least ten (10) calendar days before construction begins. The permit can be obtained from the City Planning Office which is located upstairs at 1155 Ridgecrest Drive and is open weekdays from 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. The Planning Department Office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

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

- W -

Drawing of Site Improvements

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



City of Bethel Public Works Department

Culvert Installation Inspection Form

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

Pre-Installation Approval

APPROVED: _____ Date: _____ DENIED: _____

Signed By: _____

Brief Explanation: If denied:

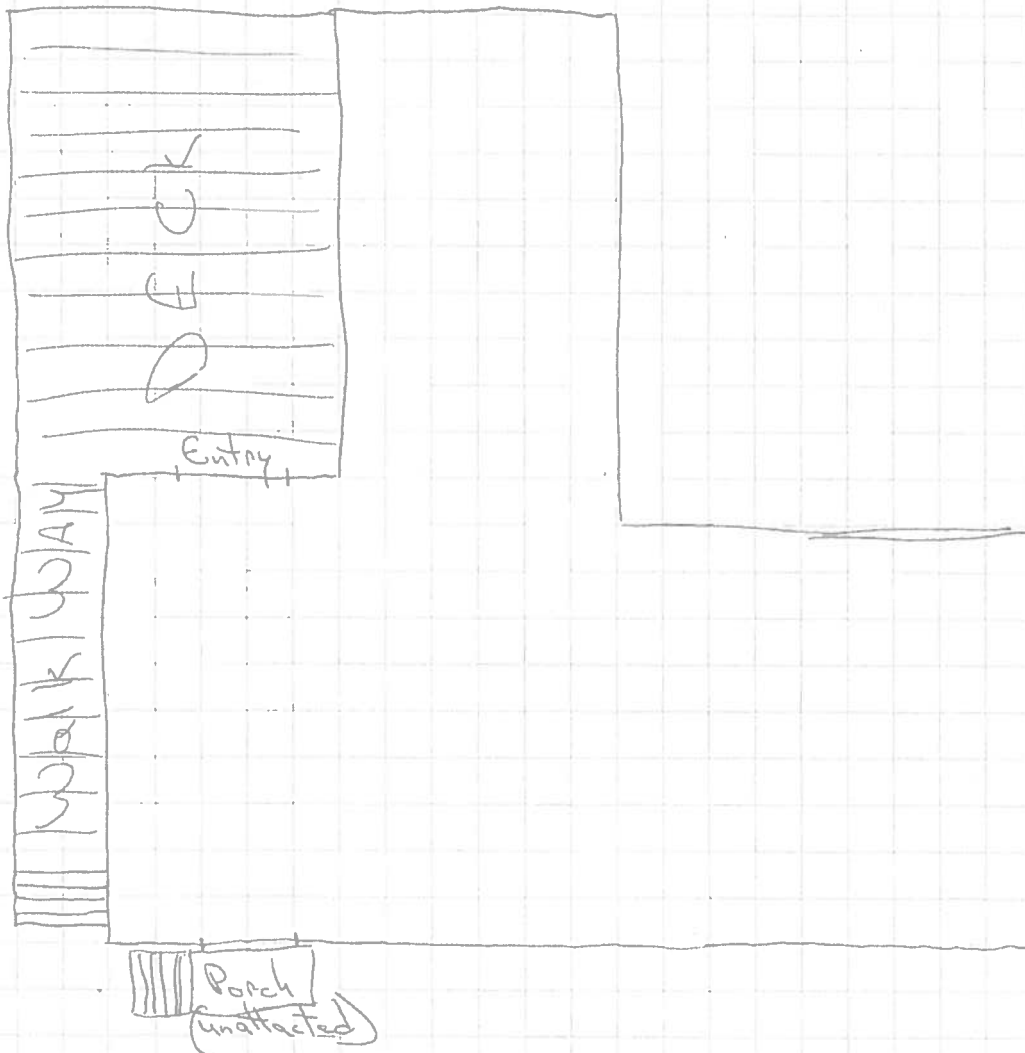
Installation Inspection

Inspected By: _____

Comments:

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

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



SITE PLAN PERMIT

No. 18--34

DATE: 7/24/2018

PERMITEE: Daniel and Dawn Hackney		Address: 175 Alex Hatley		
Lot: 11	Block:	Subdivision: Blueberry Fields Subd. Phase	Plat No.: 84--13	R./T./Sec.: R71W, T8N, S7, SM
Authorized and mandatory Improvements: 1. Construct a 20'x42' Shop/garage/storage shed. 2. Take all construction debris to the city landfill, do not fill residential trash bins. 3. Abide by all set back requirements. PER SITE PLAN PERMIT APPLICATION ON FILE. The Property Owner is responsible for culvert installation as needed, and abatement of any run-off resulting from development. PLANNING DEPARTMENT: <u>Pauline Boratko</u> Pauline Boratko, Planning Assistant				
Intended Use: Residential				
This permit has hereby been posted on the above property this ___ day of __, ____ By _____ Your Signature				

SITE PLAN PERMIT

No. 18--34

DATE 7/24/2018

PERMITEE:**Daniel and Dawn Hackney**

Address 175 Alex Hatley

Lot
11

Block

Subdivision
Blueberry Fields Subd. PhasePlat No.
84-13R / T / Sec
R71W, T8N, S7 SM**Authorized and mandatory Improvements**

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

PER SITE PLAN PERMIT APPLICATION ON FILE

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

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

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

PLANNING DEPARTMENT: Pauline Boratko
Pauline Boratko, Planning Assistant

Intended Use: Residential

This permit has hereby been posted on the above property this ___ day of ___

By

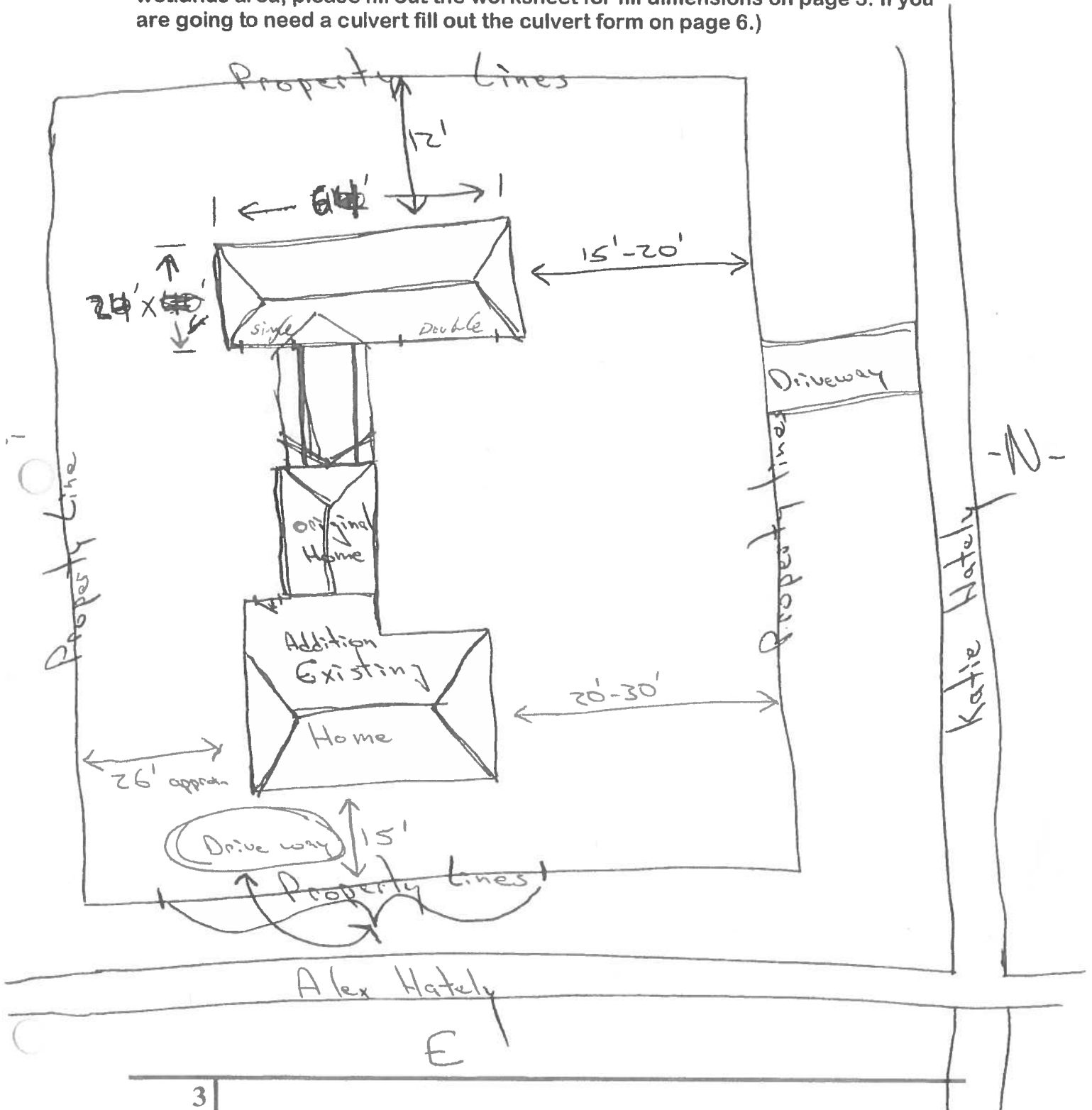
Your Signature

B

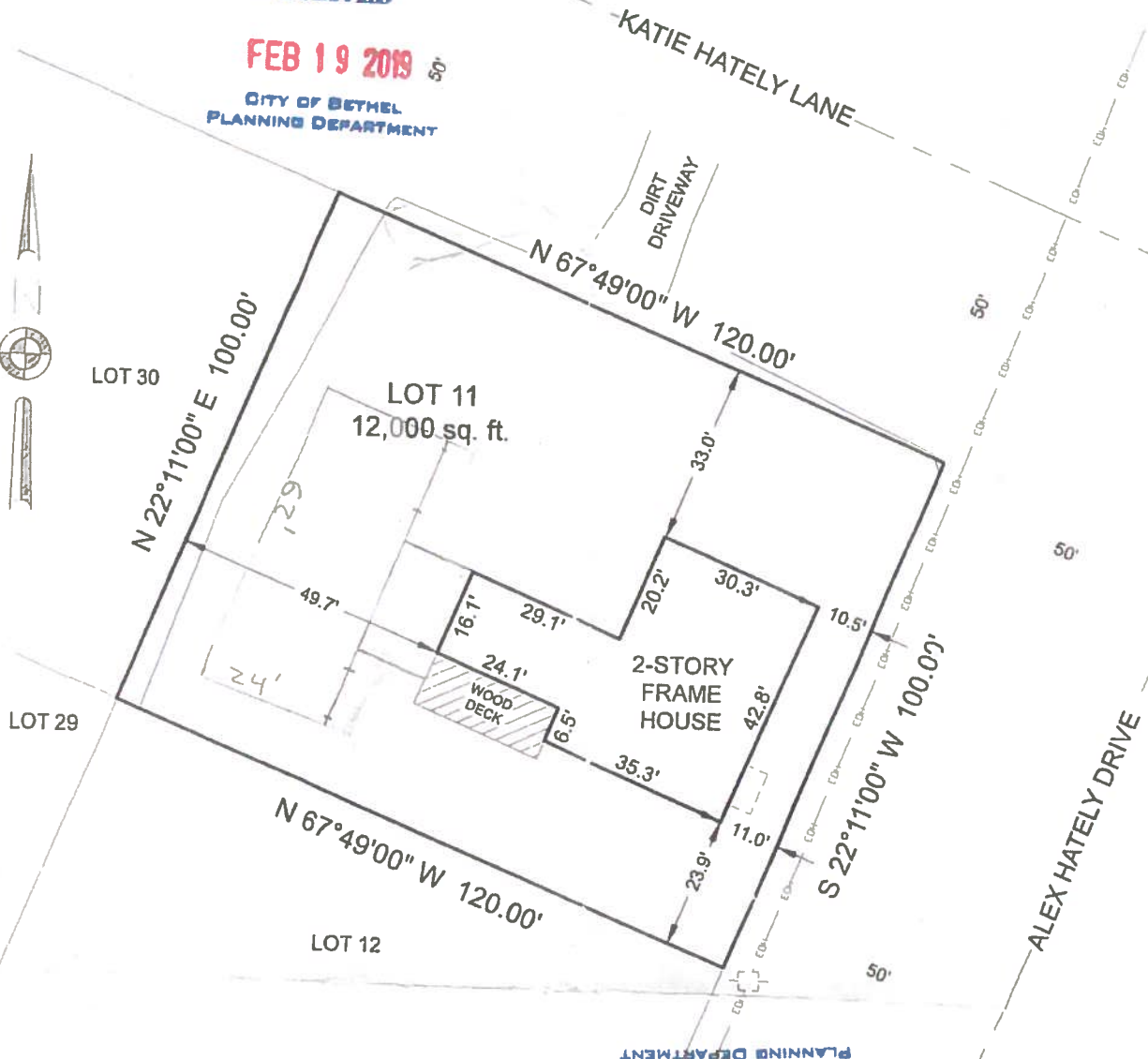
- W -

Drawing of Site Improvements

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

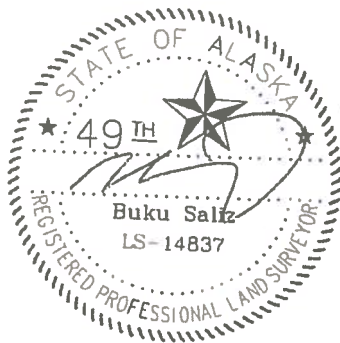


RECEIVED
FEB 19 2019
CITY OF BETHEL
PLANNING DEPARTMENT



CITY OF BETHEL
PLANNING DEPARTMENT

RECEIVED
FEB 19 2019



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

FIXED HEIGHT, LLC
Land Surveying Services

225 W 23rd Ave.
Anchorage, AK
907.280.8949
WWW.FIXEDHEIGHT.COM

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

Legend
--- EAVE
[] UTILITY POLE
--- OVERHEAD UTILITY LINE

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

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

06/07/19

To: Betsy Jumper
Planning Department
City of Bethel

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

RE: BMC Chapter 15, 16 & 18
Section 15.12.090 Complaint
Section 18.84.020 Complaint
Section 18.32.020 Permitted & Principal use & Structures
Section 18.32.010 Intent
Section 15.12.030
Section 15.12.060 F.4 Planning needs to ask more questions
Section 16.04.010 Purposes A#2 & A#6
Section 15.12.020 Permit Required B#6 & C


Todd Fredericks

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



Wilkes Huntz
Box 57
Bethel, AK
99559

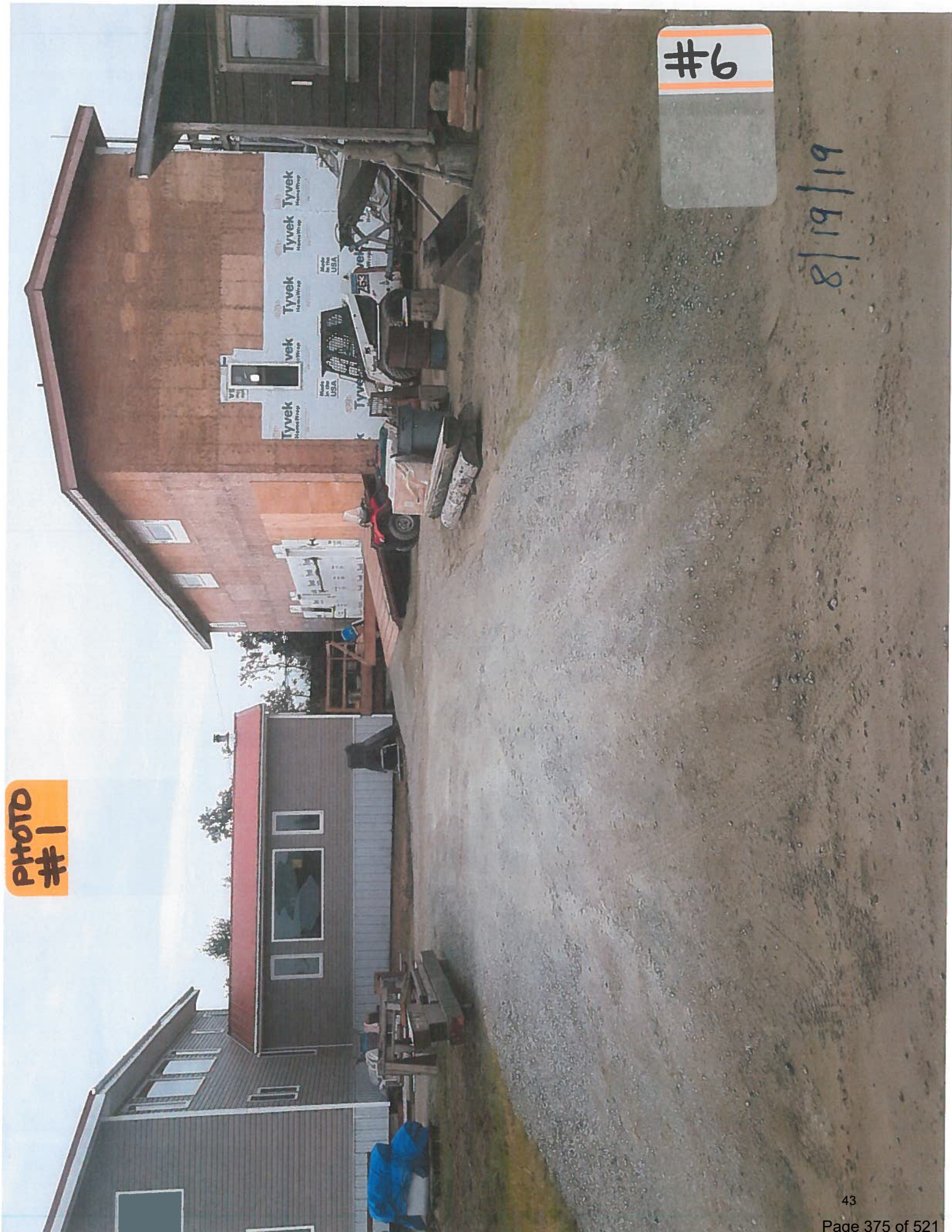
This is an official complaint of violations of City of Bethel Site Plan Permit No. 18-34, for Daniel and Dawn Hackney of 175 Alex Hatelly, lot 11, Blueberry Field Subdivision phase plat 84-13.

Permittee has violated the following City of Bethel Municipality codes:

1. BMC 15.12.030 The site plan permit was incomplete. Permittee did not give accurate description of what their real plans were, or the size and use of the structure and this huge 24' X 60' two story building is going to be used as a commercial business. Not a garage/storage building, as permittee wrote down.
2. BMC 18.32.020 Permittee is building apartments or a hotel in a residential area, which is not permitted. Only one residence per lot.
3. BMC 18.32.010 Intent: The intent of the residential district is to provide protection to residential areas from encroachment from non-residential activities.
4. Permittee has a fence on the edge of the roads, Alex Hatelly road and Katie Hatelly Lane. Fence on city easement, should be on permittee's property line.
5. BMC Chapter 16.04 Section 16.04.10 A#2 & A#6. This will negatively affect everyone's home appraisal that lives next to this atrocity. The city has an obligation to protect our property from things like this. The City of Bethel should have stopped this project/construction months ago after being told about the actual scope of construction vs site plan.
6. BMC 15.12.020 Permittee moved a 12' X16' building onto city easement, along Katie Hatelly Lane, with no permit, it is illegal and needs to be moved.
7. The City should have been inspecting the project. Permittee has installed two 1000 gallon water tanks and a 2400 gallon sewer tank for a garage/storage. No. To run a commercial business with a second residence on their lot. Building must be moved.

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

PHOTO
#1



#6

8/19/19

PHOTO
#2



8/19/19

PHOTO
#3

8/19/19







City of Bethel

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

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

August 30, 2019

RE: Notice to Correct Violations

Dear Mr. and Ms. Hackney,

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

Noncompliance with Authorized Improvements

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

Noncompliance with Residential Zoning Code

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

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

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

Correction of Violations

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

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

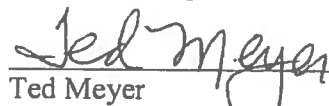
BMC Compliant Site Plan Permit Application Required

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

Right to Appeal Stated Violations

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

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



Ted Meyer
Planner, City of Bethel

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

VALCARCE LAW OFFICE

A LIMITED LIABILITY COMPANY

900 THIRD AVENUE

P.O. BOX 409

BETHEL, ALASKA 99559

TELEPHONE: (907) 543-2744 OR (907) 543-HELP

TOLL FREE (888) 610-2744

TELEFAX 907 543-2746

EMAIL: jared@bushlawyers.com

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

*Bush Lawyers Serving
Bush Alaska*

September 9, 2019

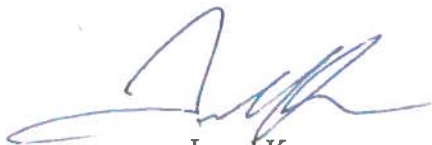
City of Bethel
Planning Department
PO Box 1388
Bethel, AK 99559

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

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

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

Actions and findings of the planning department that are disputed in the August 30, 2019 letter: all.



Jared Karr

Attorney for Dan and Dawn Hackney

CITY OF BETHEL
PLANNING DEPARTMENT

DANIEL AND DAWN HACKNEY,)
)
 Appellants,)
)
 vs.)
)
 CITY OF BETHEL,)
)
 Appellee.)
 _____)

2019-1

STIPULATION BETWEEN THE PARTIES

Appellants, Daniel and Dawn Hackney, through their attorney, Valcarce Law Office, and the City of Bethel, Planning Department, through its attorney, Jermain Dunnagan & Owens, P.C., hereby stipulate and agree as follows:

On July 20, 2018, Daniel and Dawn Hackney submitted to the City of Bethel a Residential Site Plan Permit Application to construct a 20' x 42' garage/shop. The application was approved on July 24, 2018 and a Site Plan Permit was issued to construct a 20' x 42' shop/garage/storage shed per the Site Plan Permit Application on file.

On January 9, 2019, an Addendum to the Site Plan Permit was issued to construct a 24' x 64' attached garage.

On June 7, 2019, the City of Bethel, Planning Department, received an official complaint from Steve Murat, Steve Sorg, Todd Fredericks, and Mike Shantz of violations of the City of Bethel Site Plan Permit 18-34, for Daniel and Dawn Hackney of 175 Alex Hatley, lot 11, Blueberry Field Subdivision phase plat 84-13.

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

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

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

VALCARCE LAW OFFICE
Attorneys for Daniel and Dawn Hackney

DATED: 9/18/19

By: [Signature]

Jared Karr

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

DATED: 9/20/19

By: [Signature]

Michael R. Gatti



City of Bethel

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

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

September 26, 2019

RE: Corrective Action Plan for Bethel Municipal Code Violations

Dear Mr. and Mrs. Hackney,

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

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

1st Violation

Noncompliance with Authorized Improvements on Approved Site Plan Permit

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

Phase 1 Corrective Action

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

Due Date: October 10, 2019

2nd Violation

Noncompliance with BMC Residential Zoning Code

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

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

Phase 2 Corrective Action

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

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

Due Date: October 24, 2019

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

Conversion to BMC Code Compliant Use and Verification:

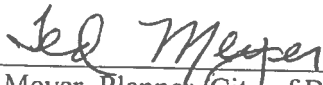
Phase 3 Corrective Action

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

Due Date: November 24, 2019

Penalties

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



Ted Meyer, Planner, City of Bethel

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

VALCARCE LAW OFFICE

A LIMITED LIABILITY COMPANY

900 THIRD AVENUE

P.O. BOX 409

BETHEL, ALASKA 99559

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EMAIL: jared@bushlawyers.com

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

*Bush Lawyers Serving
Bush Alaska*

October 10, 2019

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

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

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



Jared Karr

Attorney for Dan and Dawn Hackney



City of Bethel

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

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

October 28, 2019

RE: Hackney Appeal to City Planning Commission of City Planning Department Notice to Correct Violations

Dear Mr. Karr,

This letter is to inform you that the Hackneys' September 9, 2019 letter appealing the City Planning Department's August 30, 2019 Notice to Correct Violations does not meet the requirements of Bethel Municipal Code 18.72.010(A).

Bethel Municipal Code Section 18.72.010(A) requires that individuals who appeal decisions or actions of the planning department specify (1) the grounds for their appeal and (2) the actions and findings that they dispute. The appeal letter does not meet these requirements.

The letter states that the grounds for the appeal "[are that] all construction and use of 175 Hately" was authorized by the former planning director. It further states that the actions and findings that the Hackneys dispute are "all." These stated grounds for appeal are inadequate.

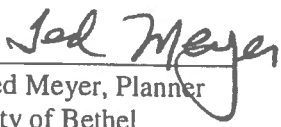
First, there is nothing in the record to support the Hackneys' position that the former planning director somehow permitted the construction which resulted in the code violations at issue. The initial approved site plan permit gave the Hackneys permission to "construct a 20-foot x 42-foot shop/garage/storage shed" and the addendum to the permit allowed for an increase in structural dimensions to "a 24-foot x 64-foot garage." There is therefore nothing in the record to support the argument that the construction of a bed and breakfast or other lodging units was ever permitted by the City.

Second, the appeal letter does not provide adequate notice to the City of the specific actions and findings that the Hackneys now seek to challenge. Rather, you state that the Hackneys dispute "all" actions and findings of the City. However, the City is entitled to know, prior to its appearance before the Planning Commission, which City actions and findings the Hackneys claim to be in error. While the City understands that the Notice of Violations itself is being

challenged, it is important for the City to know precisely why the Hackneys contend that the City has acted in error so that it can adequately prepare for the appeal hearing before the Commission.

Consequently, please provide an amended appeal statement which meets the requirements of Bethel Municipal Code Section 18.72.010(A) by November 4, 2019. Thank you.

Sincerely,


Ted Meyer, Planner
City of Bethel
PO Box 1388
Bethel, AK. 99559
907-543-5306
tmeyer@cityofbethel.net

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

*Bush Lawyers Serving
Bush Alaska*

October 28, 2019

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

Re: October 28, 2019 letter and by Ted Meyer

In compliance with BMC 18.72.010, Dan and Dawn Hackney hereby provide notice to the City of Bethel that it appeals the decision of the planning director and the letter sent by the planning department on October 28, 2019.

Grounds for Appeal: The planning director ordered in an October 28, 2019 letter that the Hackney appeal's notice of September 9, 2019 was deficient, even though it complied with the letter of the law

Actions and findings of the planning department that are disputed in the October 28, 2019 letter: That the Hackney's need to submit an emended appeals notice.

The Hackney's provided notice to the City that it requested an appeals hearing seven weeks ago. It notified the City on October 10, 2019 that the stipulated stay on an appeal's process was rejected. It took the City 18 days to respond to that letter. This is after the City has notified them that they are facing an audit from the Finance Department and that the City is planning on doing a survey of their property based off of more harassing complaints. I caution the City in its further actions in regards to the Hackney's.

Once again, the Hackney's request an appeal's hearing on not only the August 30, 2019 letter but also the October 28, 2019 letter.

The Hackney's have complied with BMC 18.72.010 to the letter and expect the City to comply with the laws it made up.

A handwritten signature in black ink, appearing to read 'Jared Karr', with a stylized, cursive script.

Jared Karr

Attorney for Dan and Dawn Hackney



CITY OF BETHEL

P.O. Box 1388 Bethel, Alaska 99559

907-543-1384

FAX # 543-3817

#14

October 29, 2019

Jared Karr
Valcarce Law Office
PO Box 409
Bethel, AK. 99559

RE: Public Hearing on Hackney Appeal to City Planning Commission of City Planning Department Notice to Correct Violations (Issued August 30, 2019)

Dear Mr. Karr:

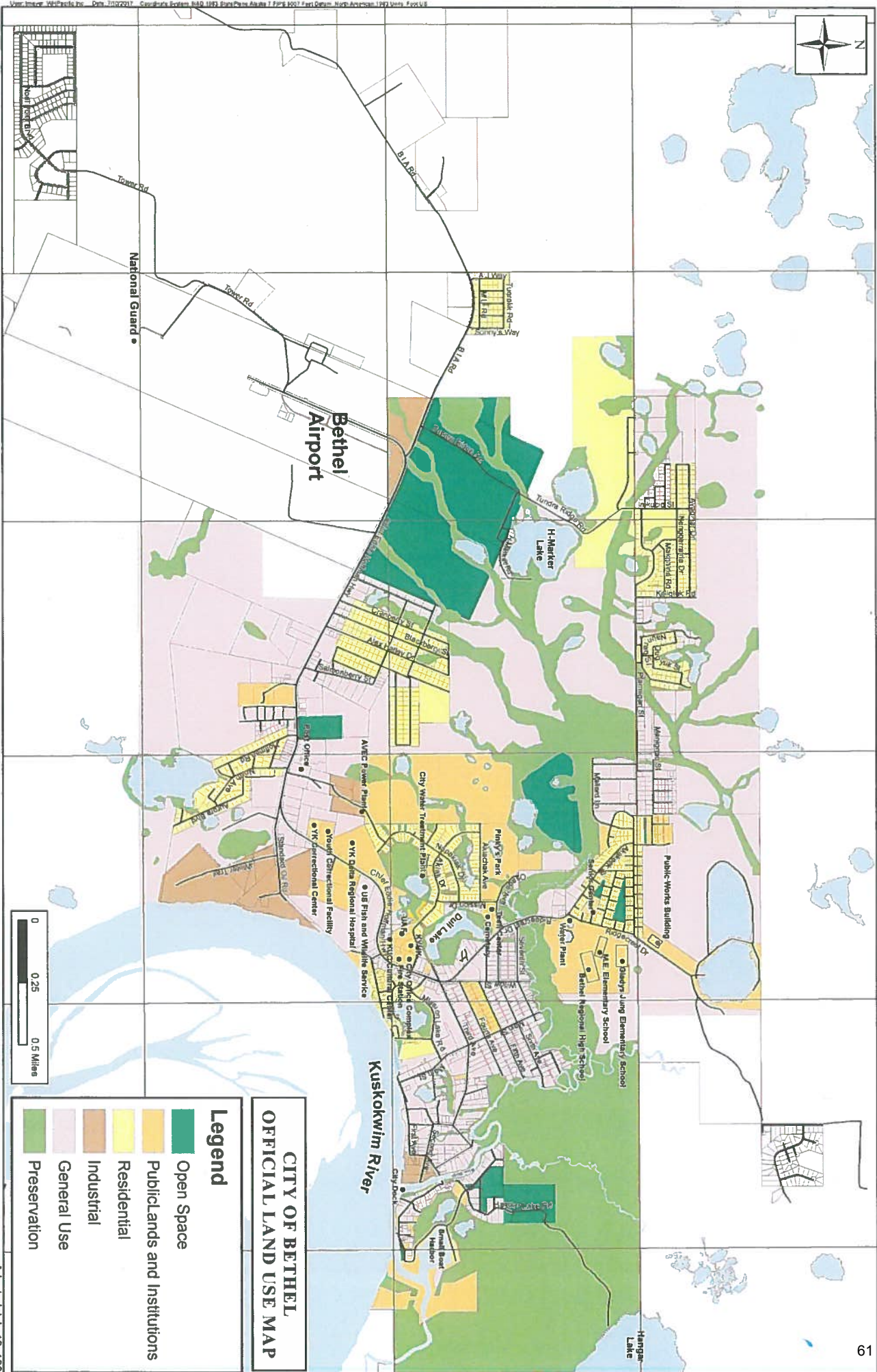
On October 10, 2019, you re-instated your appeal to the City of Bethel Planning Commission of the Planning Department's August 30, 2019 decision to issue a Notice to the Hackneys to Correct Violations.

Pursuant to Bethel Municipal Code Section 18.72.010(D), the City of Bethel Planning Commission will hear the Hackneys' appeal at its regularly scheduled meeting on Thursday, **November 14, 2019 at 6:30 p.m.** in the Bethel City Council Chambers at 300 State Highway in Bethel, Alaska. The Planning Department will hand-deliver packets of information relating to this matter to Planning Commissioners and to your office on November 8, 2019. If you have additional materials regarding the application or actions which you wish us to include in the packet, please deliver those documents to the City of Bethel Planning Department Office by 4:00pm on **November 4, 2019** so that we can include them in the materials.

If you or your representative plan to participate in the Appeal Hearing telephonically rather than in person, please let me know by November 8, 2019 so that I can provide you with the necessary call-in information.

Sincerely,

Ted Meyer, Planner



Chapter 18.32

RESIDENTIAL DISTRICT – R DISTRICT

#16

Sections:

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

18.32.010 Intent.

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

18.32.020 Permitted and principal uses and structures.

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

- A. Trails and boardwalks.
- B. Nonmotorized public access areas to the Kuskokwim River or other areas that require public access.
- C. Single-family dwelling units.
- D. Duplex uses.
- E. Greenbelts and land reserves.
- F. Subsistence activities.
- G. Any accessory use or structure associated with the principal use or structure on the lot. The use of a freezer van for any purpose is specifically prohibited; except, during the construction or substantial improvement of the primary structure on a lot, a freezer van used solely for storage of construction materials and equipment may be located on the lot for a period not to exceed twelve (12) months unless, for good cause shown, the time is extended in writing by the land use administrator.
- H. The facilities of sewer, water and other utilities required to serve the lots in the district.
- I. Home occupations, but not more than two (2) per dwelling unit. [Ord. 01-05 § 8.]

18.32.030 Conditional uses.

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

- A. Triplex and residential apartment buildings.
- B. Planned unit developments.
- C. Professional offices.
- D. Parks, playfields, and playgrounds.
- E. Churches and synagogues, along with the customary accessory uses, including administrative offices, parsonages, day nurseries, kindergartens and meeting rooms.
- F. Headquarters or administrative offices for charitable organizations and similar quasi-public organizations of a noncommercial nature.
- G. Radio and television transmission towers and antennas, not including amateur radio and citizen band radio antennas that are accessory to a residential use.
- H. Food and beverage sales.
- I. Personal services.
- J. The facilities of sewer, water and other utilities required to serve lots outside the district. [Ord. 01-05 § 8.]

18.32.040 Minimum lot size.

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

18.32.050 Minimum setback requirements.

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

- A. Front yard: Fifteen (15) feet.
- B. Side yard: Ten (10) feet; provided, for lots that were lawfully platted prior to 1985 with less than seven thousand (7,000) square feet, seven (7) feet shall be provided for side yards.
- C. Rear yard: Ten (10) feet; provided, for lots that were lawfully platted prior to 1985 with less than seven thousand (7,000) square feet, seven (7) feet shall be provided for rear yards.

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

18.32.060 Maximum height of structures.

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

18.32.080 Noise.

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

The Bethel Municipal Code is current through Ordinance 19-16, passed August 13, 2019.

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

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Chapter 18.36

GENERAL USE DISTRICT – GU DISTRICT

#17

Sections:

- 18.36.010 Intent.**
- 18.36.020 Permitted and principal uses and structures.**
- 18.36.030 Conditional uses.**
- 18.36.040 Minimum lot size.**
- 18.36.050 Minimum setback requirements.**
- 18.36.060 Maximum height of structure.**
- 18.36.070 Minimum requirements for marijuana facilities.**

18.36.010 Intent.

The general use district is intended to allow a mix of compatible residential and commercial uses. Noxious, injurious, or hazardous uses shall not be permitted in the GU district. [Ord. 16-23 § 2; Ord. 01-05 § 8.]

18.36.020 Permitted and principal uses and structures.

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

- A. Trails and boardwalks.
- B. Nonmotorized public access areas to the Kuskokwim River or other areas that require public access.
- C. Single-family dwelling units.
- D. Duplex uses.
- E. Greenbelts and land reserves.
- F. Subsistence activities.
- G. Any accessory use or structure associated with the principal use or structure on the lot. The use of a freezer van as a residential unit is specifically prohibited, but its use as an accessory structure for storage is not prohibited.
- H. The facilities of sewer, water and other utilities.
- I. All uses listed as conditional uses in the PLI district.
- J. Triplexes and apartment buildings.

K. Commercial uses and structures, including:

1. Delicatessens, meat, seafood, and other food specialty shops.
2. Art and picture framing shops.
3. Shoe repair shops.
4. Bookstores, stationery, gift, novelty, souvenir, and card shops.
5. Drug stores.
6. Laundry and dry cleaning shops.
7. Beauty and barber shops.
8. Cafes, restaurants, drive-in and fast-food restaurants, and other places serving food and beverages.
9. Knit shops, yarn shops, dry goods, dressmaking and notions stores.
10. Small appliance repair shops.
11. Photography studios, art studios.
12. Sporting goods stores, bicycle sale shops.
13. Business, professional, and administrative offices.
14. Day care facilities.
15. Video stores.
16. Clothing, apparel, and shoe stores.
17. Hobby store.
18. Florist.
19. Tobacco store.
20. Wholesaling and distribution operations, including incidental assembly or processing of goods for sale at retail or wholesale on the premises, but not to include yards for storage or display of any scrap, junk, or salvaged materials or for any scrap or salvage operations.
21. Jewelry stores.
22. General merchandising store.
23. Wholesale and retail camera and photographic supply stores.
24. Funeral services, including crematoriums.

25. Motion picture theaters and live theaters.
26. Banking and financial institutions.
27. Medical and health services.
28. Business service establishments, including office supply and printing and publishing establishments.
29. Parking lots.
30. Taxicab and dispatching offices.
31. Hotels, motels, hostels, bed and breakfasts, bunk houses and boarding houses.
32. Radio and television studios.
33. Plumbing and heating service and equipment dealers.
34. Paint, glass and wallpaper stores.
35. Electrical or electronic appliances, parts and equipment.
36. Gasoline service stations.
37. Aircraft and marine parts and equipment stores, and outboard motor repair.
38. Antiques and secondhand stores, including auctions, pawnshops.
39. Automotive accessories, parts and equipment stores.
40. Automotive repair, services and garages.
41. Motor vehicle dealers, new and used.
42. Wholesale and retail fur repair, storage, and sales.
43. Automobile display lots, new and used.
44. Lumber yards and builders supply stores.
45. Nurseries and garden supply stores.
46. Automobile car washes.
47. Air passenger terminals.
48. Amusement arcades, billiard parlors, bowling alleys, roller and ice skating rinks.
49. Veterinary clinics and boarding kennels, with activities conducted in a completely enclosed building.
50. Vocational or trade schools.

51. Wholesale and retail furniture and home finishing stores.
52. Wholesale and retail radio and television stores.
53. Wholesale and retail household appliance stores.
54. Wholesale, industrial, and retail hardware stores.
55. Merchandise vending machines sales and service.
56. Frozen food lockers.
57. All-terrain vehicles remodeling or repair.
58. Boat building.
59. Sign shops.
60. Cabinet shops.
61. Cleaning, laundry or dyeing plants.
62. Other commercial uses of a character similar to those uses listed in this section. [Ord. 16-23 § 2; Ord. 01-05 § 8.]

18.36.030 Conditional uses.

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

- A. Industrial uses permitted in the I district.
- B. Radio and television towers and antennas, but not including amateur radio and citizen band radio antennas that are accessory to the principal use of the lot.
- C. Landing strips and air taxi services.
- D. Planned unit developments.
- E. Alcohol sales and dispensing.
- F. Indoor marijuana cultivation facilities (within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof and doors).
- G. Marijuana testing facilities.
- H. Marijuana retail store. [Ord. 16-23 § 2; Ord. 16-11 § 2; Ord. 01-05 § 8.]

18.36.040 Minimum lot size.

The minimum lot size in the GU district is seven thousand (7,000) square feet. [Ord. 16-23 § 2; Ord. 01-05 § 8.]

18.36.050 Minimum setback requirements.

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

- A. Front yard: Fifteen (15) feet.
- B. Side yard: Ten (10) feet.
- C. Rear yard: Ten (10) feet.
- D. Twenty-five (25) feet from the mean high water mark of any drainage or lake. [Ord. 16-23 § 2; Ord. 01-05 § 8.]

18.36.060 Maximum height of structure.

The height of a structure in the GU district is not restricted except as may be limited under airport height restrictions applied under BMC [18.48.250](#) through [18.48.270](#). [Ord. 16-23 § 2; Ord. 01-05 § 8.]

18.36.070 Minimum requirements for marijuana facilities.

- A. Indoor cultivation facilities must be fully enclosed and secure. If the facilities will be a greenhouse, in addition to the need to be fully enclosed and secure, the greenhouse must have rigid walls, a roof and doors.
- B. Outdoor cultivation facilities must be obscured from public view either by a sight obscuring wall or a fence at least six (6) feet in height. [Ord. 16-23 § 2.]

The Bethel Municipal Code is current through Ordinance 19-16, passed August 13, 2019.

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15.12.070 Modifications.

Once the **site plan permit** is approved, no modifications to the approved plan may take place without the written consent of the land use administrator. The applicant may submit a request for modification of the approved site plan permit. Minor modifications may be approved by the land use administrator if it is determined that the circumstances or conditions applicable at the time of original approval remain valid, and the modifications would not affect the required conditions prescribed under BMC [15.12.050](#). If the modification requested is not granted under this section, a full application must be filed and processed as provided in BMC [15.12.030](#) through [15.12.060](#). [Ord. 10-15 § 3.]

The Bethel Municipal Code is current through Ordinance 19-16, passed August 13, 2019.

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[City Website: www.cityofbethel.org](http://www.cityofbethel.org)

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Chapter 16.12

DEFINITIONS

Sections:

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

16.12.010 Titles applicable.

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

16.12.020 General rules of interpretation.

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

- A. Words used in the present tense include the future tense;
- B. The singular number includes the plural, and the plural includes the singular;
- C. Words of any gender may, when the sense so indicates, refer to any other gender;
- D. The word "person" includes a corporation and any other entity or form of association as well as an individual;
- E. The words "must" and "shall" are always mandatory and the terms "must not," "shall not" and "may not" are prohibitory;
- F. The word "used" or "occupied," as applied to any land or structure, shall be construed to include the phrase "intended, arranged or designed to be used or occupied." [Ord. 10-15 § 6.]

16.12.030 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"City" means the city of Bethel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The overflow of inland or tidal waters;
2. The unusual and rapid accumulation of runoff of surface waters from any source.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Plan" means the city comprehensive plan.

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

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

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

"Platting authority" means the planning commission.

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

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

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

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

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

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

"Property line" means the perimeter of the lot.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"State" means the state of Alaska.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bethel Municipal Code is current through Ordinance 19-16, passed August 13, 2019.

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

City Website: www.cityofbethel.org

Code Publishing Company

Chapter 18.72

APPEALS



Sections:

18.72.010 Appeal of decision of planning department.

18.72.020 Appeal of decision of planning commission.

18.72.010 Appeal of decision of planning department.

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

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

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

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

1. The permit application or other application or action that is the subject of the appeal;
2. The correspondence, permit issued and other materials sent from the land use administrator to the permit holder and to any other party to the appeal;

3. The correspondence and materials received from any source regarding the application or actions;
4. The letter or request submitting the appeal to the planning commission;
5. The planning department summary of the application and the statement of findings supporting the action of the land use administrator;
6. Written comments received prior to the appeal hearing;
7. Verbal testimony taken under oath at the appeal hearing; and
8. Arguments of parties to the appeal.

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

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

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

18.72.020 Appeal of decision of planning commission.

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

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

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

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

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

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

The Bethel Municipal Code is current through Ordinance 19-16, passed August 13, 2019.

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

[City Website: www.cityofbethel.org](http://www.cityofbethel.org)

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#21

Chapter 2.45

ADMINISTRATIVE ADJUDICATION

Sections:

- 2.45.010** **Applicability of section.**
- 2.45.020** **Definitions.**
- 2.45.030** **Accusation.**
- 2.45.040** **Application for administrative decision.**
- 2.45.050** **Notice of appeal.**
- 2.45.060** **Date of hearing.**
- 2.45.070** **Hearing procedures.**
- 2.45.080** **Scope of review.**
- 2.45.090** **Decisions.**
- 2.45.100** **Reconsideration.**
- 2.45.110** **Ex parte contacts prohibited.**
- 2.45.120** **Conflicts of interest.**
- 2.45.130** **Transition measures.**
- 2.45.140** **Appeals from administrative decision.**

2.45.010 Applicability of section.

Except as otherwise provided by this code or by law, the provisions of this chapter apply to all quasi-judicial proceedings and administrative hearings conducted by city officials, agencies, boards and commissions and the city council. Where the provisions of this chapter are in conflict with the specific provisions of another law, statute or ordinance, the provisions of that law, statute or ordinance shall govern. [Ord. 16-26 § 2.]

2.45.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. "Administrative hearing" means any hearing, formal conference or other proceeding before a city board, agency, commission or official which is required by law or by this code as a condition precedent to the determination by such board, agency, commission or official of any matter relating to the rights, privileges, duties, obligations or remedies of an identified individual.
- B. "Agency, board and commission" means any elected or appointed body, department, division or other administrative organ of the city having any legislative, quasi-judicial or administrative functions.

- C. "Official" means any person elected, appointed, named or employed by the city to conduct as part of his duties quasi-judicial proceedings or administrative hearings.
- D. "Quasi-judicial proceeding" means any hearing, formal conference or other proceeding before a city board, commission or official to review the legality, appropriateness or wisdom of official actions taken on behalf of the city as they relate to the particular legal rights, privileges, duties, obligations or remedies of identified individuals. [Ord. 16-26 § 2.]

2.45.030 Accusation.

An administrative hearing permitted under this code to determine whether a right, authority, license, privilege or permit should be suspended, revoked, limited or conditioned shall be initiated by the filing of an accusation on behalf of the official, board or commission empowered to take such action. The accusation:

- A. Shall set forth in writing, in ordinary and concise language, the acts or omissions with which the respondent is charged so that a defense may be prepared;
- B. Shall specify the ordinance, statute or regulation which the respondent is alleged to have violated, but may not consist merely of charges phrased in the language of the statute and rule; and
- C. Must be served personally on the respondent, or in compliance with the Alaska Rules of Court. [Ord. 16-26 § 2.]

2.45.040 Application for administrative decision.

An administrative hearing permitted under this code to determine whether a right, authority, license, permit or privilege shall be granted, issued or reviewed is initiated by the filing of a written application for such administrative action with the official, board or commission empowered by law to take such action. The written application must identify the applicant, specify the nature of the right, authority, license, permit or privilege desired by the applicant, explain the reasons for such application, and recite the legal authority for such application. The application shall be served personally on the official, agency, board or commission empowered to make the decision. [Ord. 16-26 § 2.]

2.45.050 Notice of appeal.

Where, under the provisions of this code, a quasi-judicial proceeding is permitted to review an administrative action, the appellant shall apply in writing to the official, board or commission empowered to hear such appeal and shall identify himself, cite the administrative decision from which the appeal is taken, and in a succinct and coherent manner state the reasons for such appeal. [Ord. 16-26 § 2.]

2.45.060 Date of hearing.

Unless otherwise provided in this code, the following shall apply:

- A. Where an administrative hearing is allowed following an accusation as described in BMC 2.45.030, such hearing shall take place no less than thirty (30) calendar days and no more than sixty (60) calendar days following the date of service of such accusation on the respondent unless the parties agree to extend or reduce the time for a hearing. Any changes in scheduling are subject to approval of the hearing officer.
- B. Where an administrative hearing is permitted upon formal application by one seeking any right, authority, license, permit or privilege, such hearing shall take place no less than forty-five (45) calendar days and no more than ninety (90) calendar days following date of actual receipt of such application by the administrative official, agency, board or commission empowered to conduct such administrative hearing unless the parties agree to extend or reduce the time for a hearing. Any changes in scheduling are subject to approval of the hearing officer.
- C. Where a quasi-judicial proceeding is permitted to review any administrative action taken on behalf of the city, such proceeding shall take place no more than sixty (60) calendar days following the date a written notice of appeal as provided by BMC 2.45.050 is filed with the official, board or commission empowered to hear such appeal unless the parties agree to extend the time for a hearing. Any changes in scheduling are subject to approval of the hearing officer. [Ord. 16-26 § 2.]

2.45.070 Hearing procedures.

Administrative hearings and quasi-judicial proceedings shall be conducted informally and may be governed by such rules and procedures as the official board or commission empowered to conduct such hearings or proceedings may choose to establish, except that:

- A. Parties may appear in person or through counsel.
- B. Parties may present witnesses and evidence on their own behalf.
- C. Parties or their counsel may cross examine opposing witnesses on matters relevant to the issues, impeach witnesses regardless of which party first called the witness to testify, and rebut evidence against the party.
- D. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be considered provided there are guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.
- E. All administrative hearings and quasi-judicial proceedings shall be open to the public, unless otherwise agreed by all parties to such hearings or proceedings.
- F. All parties shall have the right to subpoena witnesses and documents using a form provided by the city clerk and submitted to the city clerk for issuance at least ten (10) business days before the date of the hearing.

G. All administrative hearings and quasi-judicial proceedings shall be memorialized by an electronic recording. [Ord. 16-26 § 2.]

2.45.080 Scope of review.

Unless otherwise provided in this code, officials, boards or commissions empowered to conduct quasi-judicial proceedings may hear and decide de novo all matters appealed and may exercise independent judgment as to the weight of evidence supporting or refuting the findings of the city official, board or commission from whose decision the appeal is taken, and may exercise independent judgment on legal issues raised by the parties. Decisions by department heads or city officials may be modified, remanded or affirmed by the reviewing official, board or commission. [Ord. 16-26 § 2.]

2.45.090 Decisions.

Unless otherwise provided in this code, no later than thirty (30) calendar days following an administrative hearing or quasi-judicial proceeding conducted under this chapter, the official, agency, board or commission empowered to conduct an administrative hearing or proceeding shall issue a written decision based on findings and conclusions adopted by the official, agency, board or commission. Such findings must be in writing and must be reasonably specific so as to provide interested persons and, where appropriate, reviewing authorities, a clear and precise understanding of the reasons for the decision entered. The decision, findings of fact and conclusions of law shall be forwarded to all parties to the appeal. A final appealable decision must indicate that it is a final order and that a party disputing the decision has thirty (30) calendar days to appeal. [Ord. 16-26 § 2.]

2.45.100 Reconsideration.

A decision of a board, commission or official reached at the conclusion of a quasi-judicial proceeding or administrative hearing may be reconsidered or reheard only if:

- A. There was substantial procedural error in the original proceedings;
- B. The official, board or commission acted without jurisdiction in the original proceeding; or
- C. The original decision was based on fraud or misrepresentation.

Any person seeking reconsideration or rehearing must file a request with the city clerk together with the materials supporting one (1) or more of the grounds stated in this section within fifteen (15) calendar days of the decision for which reconsideration or rehearing is requested. A rehearing shall be conducted in the same manner as the original proceeding. [Ord. 16-26 § 2.]

2.45.110 Ex parte contacts prohibited.

Officials, boards or commissions while acting in their quasi-judicial capacity shall be impartial in all matters both in fact and in appearance. No member of any board, commission or any official shall receive or otherwise engage in ex parte communications with the appellant, applicant or other parties adversely affected by the appeal or application or members of the public concerning the appeal or application or issues specifically presented in the notice of appeal either before the appeal hearing or during the period of time the matter is subject to reconsideration. This section shall not be deemed to prevent those charged with conducting administrative hearings or quasi-judicial proceedings from discussing matters relating to the appeal among themselves or to prohibit communications between the city staff and such persons where staff members are themselves not named parties to an appeal or members of any body which has in its own name become an active party to the appeal. [Ord. 16-26 § 2.]

2.45.120 Conflicts of interest.

No person shall serve on any administrative hearing or quasi-judicial proceeding if:

- A. That person or a member of his immediate family has a financial interest in any property affected by the application or appeal;
- B. That person or a member of his immediate family could foreseeably profit in any material way through resolution of the matters before such official, agency, board or commission;
- C. That person believes they could not be fair and impartial or due to the person's job, position or other reason, a reasonable person would believe the person serving could not be fair and impartial; or
- D. That person would be faced with a violation of the code of ethics of the city by voting on or participating in the application or appeal. [Ord. 16-26 § 2.]

2.45.130 Transition measures.

The provisions of this chapter shall apply only to those appeals or applications for administrative decisions filed on or after the effective date of the ordinance from which this chapter is derived. [Ord. 16-26 § 2.]

2.45.140 Appeals from administrative decision.

A final decision issued under BMC 2.45.090 may be appealed to the Superior Court, Fourth Judicial District, within thirty (30) calendar days of the date the decision was issued. For the purposes of this section the date of issuance is the date upon which the decision was mailed or delivered to the parties. [Ord. 16-26 § 2.]

The Bethel Municipal Code is current through Ordinance 19-16, passed August 13, 2019.

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

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[Code Publishing Company](#)

#22

JDO LAW

JERMAIN DUNNAGAN & OWENS, P.C.

1000 A Street, Suite 300 • Anchorage, Alaska 99503
Tel: 907.563.8844 • Fax: 907.563.7322 • www.jdolaw.com

November 6, 2019

Lori Strickler
City Clerk
300 State Highway
P.O. Box 1388
Bethel, Alaska 99559

Re: *Daniel and Dawn Hackney v. City of Bethel*
Case No. 2019-1

Dear Ms. Strickler:

Enclosed for filing, please find City of Bethel's Entry of Appearance in the above-referenced matter.

If you have any questions, please give me a call. Thank you.

Sincerely yours,

JERMAIN, DUNNAGAN & OWENS, P.C.



Stephanie Glenn
Legal Secretary to Michael Gatti

:smg
Enclosure

CITY OF BETHEL
PLANNING COMMISSION

DANIEL AND DAWN HACKNEY,)
)
 Appellants,)
)
 vs.)
)
 CITY OF BETHEL,)
)
 Appellee.)
)

2019-1

ENTRY OF APPEARANCE

PLEASE TAKE NOTICE that Michael Gatti and Mary B. Pinkel, of the law firm of JERMAIN, DUNNAGAN & OWENS, P.C., hereby enters their appearance as counsel on behalf of the Appellee, the City of Bethel, in the above-captioned matter. The undersigned counsel hereby request that copies of all future pleadings and documents be sent to Michael Gatti and Mary B. Pinkel at Jermain, Dunnagan & Owens, 3000 A Street, Suite 300, Anchorage, Alaska 99503-4097.

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

DATED: 11-6-19

BY: Mary B. Pinkel
Michael Gatti
Alaska Bar No. 8306033
Mary B. Pinkel
Alaska Bar No. 8505030

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

CERTIFICATE OF SERVICE

This is to certify that a true and
correct copy of the forgoing was served
by (X) mail () fax () hand
this 6th day of November, 2019 to

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



CITY OF BETHEL

BOARD OF ADJUSTMENT

Website: <https://www.cityofbethel.org/council>

Location: Council Chambers, City Hall, 300 Chief Eddie Hoffman Highway, Bethel

Board Members: Perry Barr, Haley Hanson, Fred Watson, Alyssa Leary, Mark Springer, Cece Franko, Michelle DeWitt



Exhibit 4

Items presented by the Hackney's for Planning Appeal Record

Some items within this portion of the Record are
duplicates to items listed in Exhibits 1-3

This Exhibit List will only reference those items not
listed in the Exhibits 1-3

8/5/2015 Site Plan Permit for 175 Alex Hatley to finish house and fill.	P. 100
1/19/2019 Court Documents Hackney Vs. Maratt	P. 116-121
8/19/2019 City of Bethel/State of Alaska Business License Information	P. 122-127
Spiral Note Book with handwritten Notes	P. 130-133
Bethel Airbnb Print Outs	P. 152-154
Subpoena to Appear/Produce Records issued to Patty Burley	P. 155
Photos of property area	P. 156-159
11/04/2019 City Manager's Report to Council to include Department Head Reports	P. 160-190

RECEIVED
NOV 04 2019
CITY OF BETHEL
PLANNING DEPARTMENT

Materials provided
to COB in re
Hackney Appeal.
Hand delivered 11/4/19.

→

SITE PLAN PERMIT

No. 15-61

DATE: 8/5/2015

PERMITEE: Dan and Dawn Hackney		Address: 175 Alex Hatley		
Lot: 11	Block: 1	Subdivision: Blueberry Fields Subd. Phase	Plat No.: 84-13	R./T./Sec.: R71V, T8N, S7, SM
Authorized and mandatory Improvements: 1. Add approximatley 2400 c/y of infill. 2. No culvert needed at this time as per the Streets and Roads Foreman. 3. Abide by all setback requirements. 4. Seeding is required for dust and erosion control. PER SITE PLAN APPLICATION ON FILE <i>Amendment 4-3-17 to finish house & infill</i>				
PLANNING DEPARTMENT: <i>Betsy J. [Signature]</i> Rich [Signature]				
Intended Use: Residential				
This permit has hereby been posted on the above property his ___ day of __, ____ By _____ Your Signature				

Permit # 18-34



RECEIVED

JUL 20 2018

CITY OF BETHEL

CITY OF BETHEL
PLANNING DEPARTMENT

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

RESIDENTIAL SITE PLAN PERMIT APPLICATION

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

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

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

Zoning: <u>Residential</u>	Flood Hazard Zone: <u>N/A</u>
Authorized & Mandatory Improvements:	
<u>construct a 20' x 40' garage/shop</u>	
City of Bethel Reviewed: <u>[Signature]</u>	Date: <u>JUL 24 2018</u>
City of Bethel Approved: <u>[Signature]</u>	Date: <u>JUL 24 2018</u>

Intended improvements: Describe residential improvements or site activity.	
Garage/Storage/shop Make in law (out law) Duplex DH. 8/15/19	
20' x 42'. No infill needed.	
Existing infill, sandbagged & seeded w/ erosion control just nothing...	
Lot Size: 100' x 120' Sq. ft.	Proposed total number of Buildings: 2
Number of Bedrooms:	
If placing fill indicate cubic yards or truckloads (if no fill is needed, indicate: 0):	
Dimensions of Fill (Required) Max. Height of fill: _____ (Required) Length of fill: _____ (Required) Width of fill: _____ (see also worksheet on page 4)	Method of stabilizing sand pad slopes: ☒ Seeding ☒ Sandbagging
If improvements include construction, renovation, or floor area addition to a residence, indicate the following:	
Sewer service type: ☐ Hauled ☐ Piped	
If hauled please indicate:	
Hauled water tank size (gallons): _____	Hauled sewer tank size (gallons): _____
I attest that all information and measurements presented are correct.	
Signature of applicant: <i>Dan H. H.</i>	

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

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

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

SITE PLAN PERMIT

No. 18--34

DATE: 7/24/2018

PERMITEE: Daniel and Dawn Hackney		Address: 175 Alex Hately		
Lot: 11	Block:	Subdivision: Blueberry Fields Subd. Phase	Plat No.: 84--13	R./T./Sec.: R71W, T8N, S7, SM
Authorized and mandatory Improvements: 1. Construct a 20'x42' Shop/garage/storage shed. 2. Take all construction debris to the city landfill, do not fill residential trash bins. 3. Abide by all set back requirements.				
PER SITE PLAN PERMIT APPLICATION ON FILE. *****ADDENDUM*****01-09-2019***** 1. Construct a 24'x64' attached garage. 2. Take all construction debris to the city landfill, do not fill residential trash bins. 3. Abide by all set back requirements.			The Property Owner is responsible for culvert installation as needed, and abatement of any run-off resulting from development.	
PLANNING DEPARTMENT: <u>Pauline Boratko</u> Pauline Boratko, Planning Assistant				
Intended Use: Residential				
This permit has hereby been posted on the above property this ___ day of __, ____ By _____ Your Signature				

Permit # 18-34



RECEIVED

JUL 20 2018

CITY OF BETHEL
PLANNING DEPARTMENT

CITY OF BETHEL

P.O. BOX 1388, BETHEL, ALASKA-99559 <http://www.cityofbethel.org>

907-543-5306

FAX# 907-543-4186

RESIDENTIAL SITE PLAN PERMIT APPLICATION

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

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

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

Zoning: <u>Residential</u>	Flood Hazard Zone: <u>N/A</u>
Authorized & Mandatory Improvements:	
<u>Constructs a 20' x 40' garage/shop</u>	
City of Bethel Reviewed: <u>[Signature]</u>	City of Bethel Approved: <u>[Signature]</u>

Date:

Date:

Date:

JUL 24 2018

JUL 24 2018

Intended improvements: Describe residential improvements or site activity.	
Garage/Storage/shop Mother-in-law (outlaw)	
20' x 42', No infill needed.	
Existing infill, sandbagged & seeded w/	
erosion control jute netting...	
Lot Size: 100' x 120' Sq. ft. Proposed total number of Buildings: 2	
Number of Bedrooms: _____	
If placing fill indicate cubic yards or truckloads (if no fill is needed, indicate: 0):	
Dimensions of Fill (Required) Max. Height of fill: _____ (Required) Length of fill: _____ (Required) Width of fill: _____ (see also worksheet on page 4)	Method of stabilizing sand pad slopes: ☒ Seeding ☒ Sandbagging
If improvements include construction, renovation, or floor area addition to a residence, indicate the following:	
Sewer service type: ☐ Hauled ☐ Piped	
If hauled please indicate: Hauled water tank size (gallons): _____ Hauled sewer tank size (gallons): _____	
I attest that all information and measurements presented are correct.	
Signature of applicant: 	

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

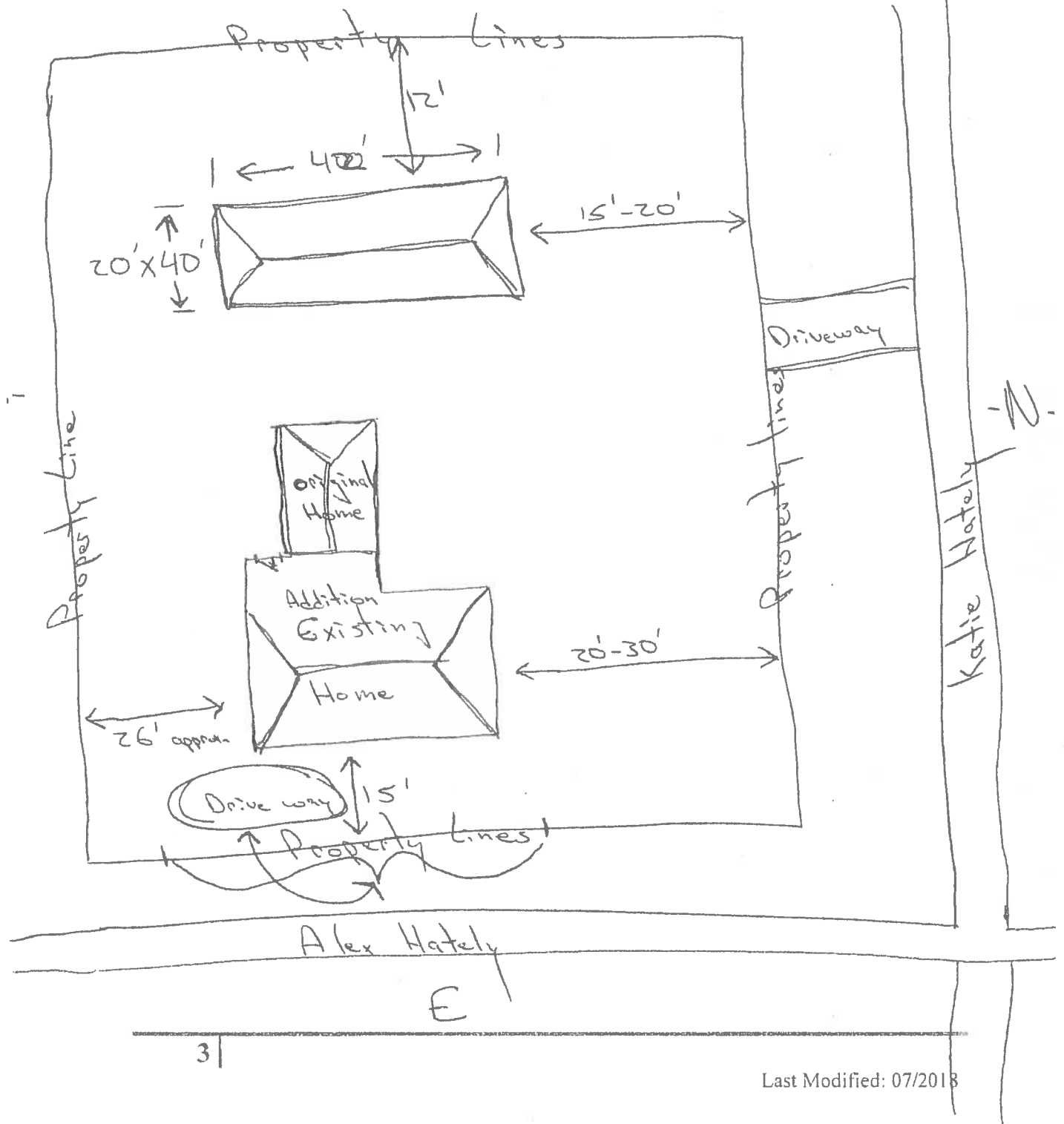
A permit must be obtained at least ten (10) calendar days before construction begins. The permit can be obtained from the City Planning Office which is located upstairs at 1155 Ridgecrest Drive and is open weekdays from 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. The Planning Department Office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

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

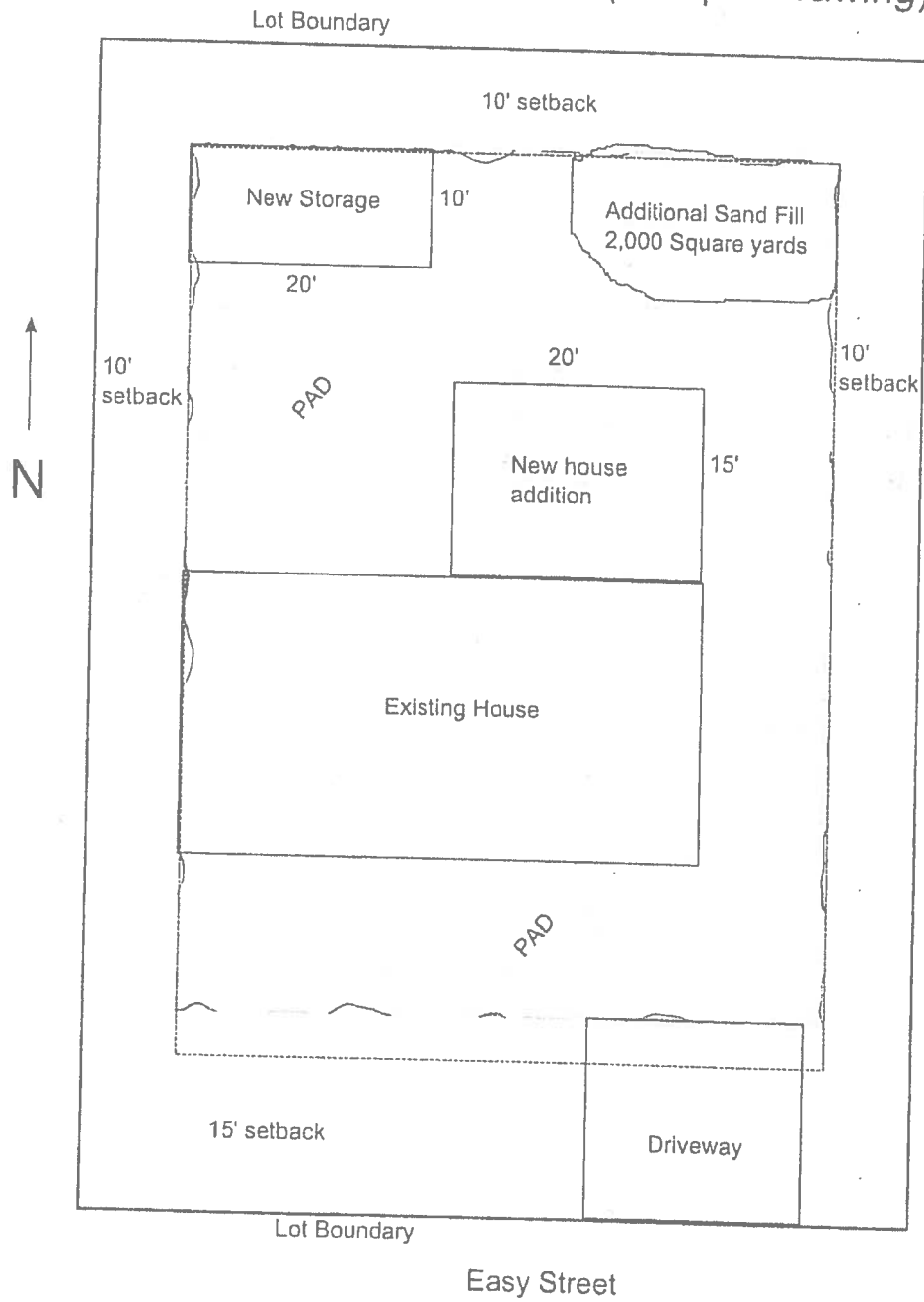
- W -

Drawing of Site Improvements

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

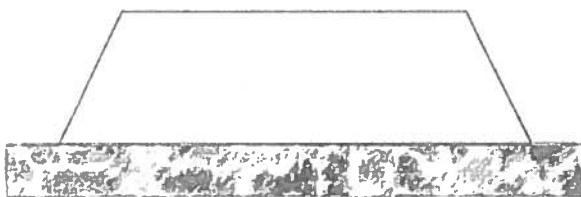


(Sample Drawing)



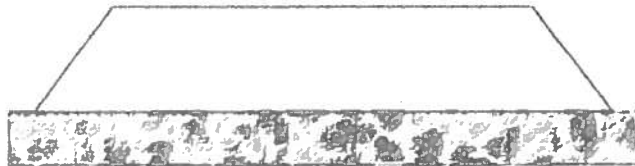
Worksheet for Fill Dimensions

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



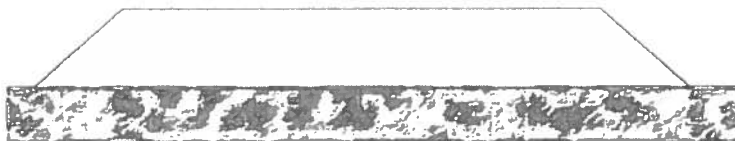
Driveway

H =
W =
L =



Parking Area

H =
W =
L =



Main Sand Pad

H =
W =
L =

Turn this form in with your Site Plan Permit Application.

City of Bethel Public Works Department

Culvert Installation Inspection Form

Name: Dan & Dawn Hackney
Property Location: 175 Alex Hotel
Mailing Address: P.O. Box 3288
Contact Phone: 543.7951
Request Date: 20 July '18
Site Plan Number: _____

Pre-Installation Approval

APPROVED: _____ Date: _____ DENIED: _____

Signed By: _____

Brief Explanation: If denied:

Installation Inspection

Inspected By: _____

Comments:

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

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

—
— ✓
— U
— H
— O
—
Entr

A11

32121

1 Porch
una ac ed

RECEIVED

FEB 19 2019

CITY OF BETHEL
PLANNING DEPARTMENT



LOT 30

N 22°11'00" E 100.00'

LOT 11
12,000 sq. ft.

KATIE HATELY LANE

DIRT
DRIVEWAY

N 67°49'00" W 120.00'

49.7'

LOT 29

N 67°49'00" W 120.00'

LOT 12

2-STORY
FRAME
HOUSE

10.5'

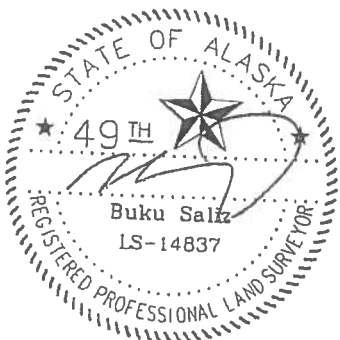
S 22°11'00" W 100.00'

ALEX HATELY DRIVE

CITY OF BETHEL
PLANNING DEPARTMENT

FEB 19 2019

RECEIVED



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

FIXED HEIGHT, LLC
Land Surveying Services

225 W 23rd Ave
Anchorage, AK
907 290.8949
WWW.FIXEDHEIGHT.COM

AS-BUILT
LOT 11

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

Legend

--- EAVE
[] UTILITY POLE
--- OVERHEAD
UTILITY LINE

110 CORNERS SET THIS DATE

SCALE 1" = 30'

CHECKED/DRAWN BY

AP/BS

JOB NO

18024

DATE

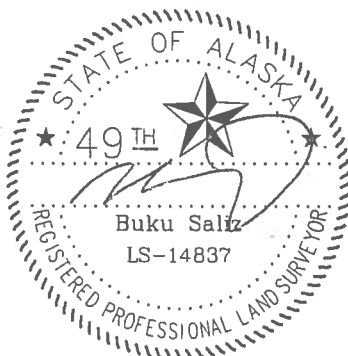
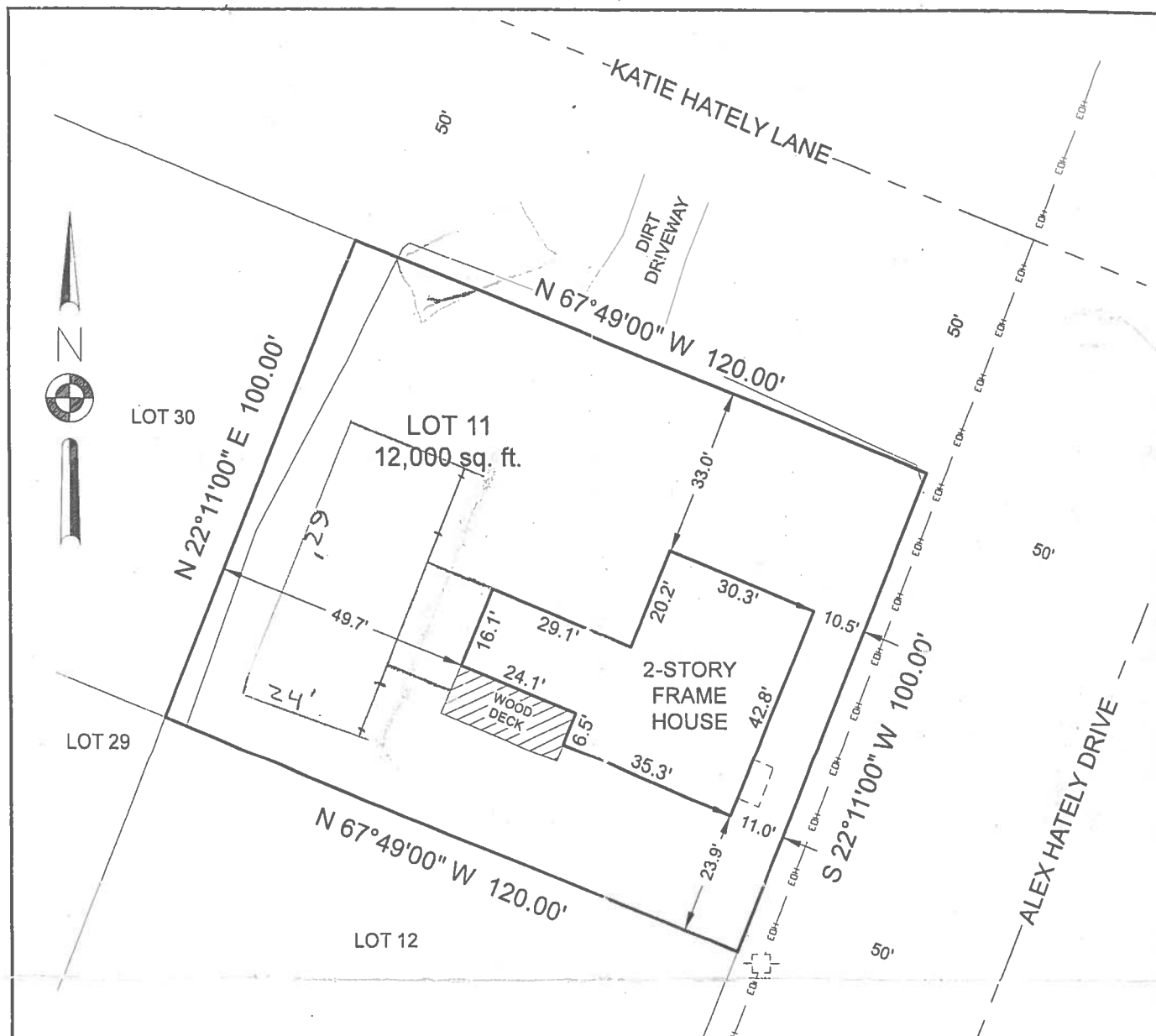
10/22/2018

SITE PLAN PERMIT

No. 18--34

DATE: 7/24/2018

PERMITEE: Daniel and Dawn Hackney		Address: 175 Alex Hatley		
Lot: 11	Block:	Subdivision: Blueberry Fields Subd. Phase	Plat No.: 84--13	R./T./Sec.: R71W, T8N, S7, SM
Authorized and mandatory Improvements: 1. Construct a 20'x42' Shop/garage/storage shed. 2. Take all construction debris to the city landfill, do not fill residential trash bins. 3. Abide by all set back requirements. PER SITE PLAN PERMIT APPLICATION ON FILE. The Property Owner is responsible for culvert installation as needed, and abatement of any run-off resulting from development. PLANNING DEPARTMENT: <u>Pauline Boratko</u> Pauline Boratko, Planning Assistant				
Intended Use: Residential				
This permit has hereby been posted on the above property this ___ day of __, ____ By _____ Your Signature				



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

FIXED HEIGHT, LLC
Land Surveying Services

225 W 23rd Ave.
Anchorage, AK
907.290.8949
WWW.FIXEDHEIGHT.COM

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

Legend

--- EAVE
[] UTILITY POLE
--- EDH --- OVERHEAD UTILITY LINE

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

SITE PLAN PERMIT

No. 18--34

DATE: 7/24/2018

PERMITEE: Daniel and Dawn Hackney		Address: 175 Alex Hatley		
Lot: 11	Block:	Subdivision: Blueberry Fields Subd. Phase	Plat No.: 84--13	R./T./Sec.: R71W, T8N, S7, SM
Authorized and mandatory Improvements: 1. Construct a 20'x42' Shop/garage/storage shed. 2. Take all construction debris to the city landfill, do not fill residential trash bins. 3. Abide by all set back requirements.				
PER SITE PLAN PERMIT APPLICATION ON FILE. *****ADDENDUM*****01-09-2019***** 1. Construct a 24'x64' attached garage. 2. Take all construction debris to the city landfill, do not fill residential trash bins. 3. Abide by all set back requirements.			The Property Owner is responsible for culvert installation as needed, and abatement of any run-off resulting from development.	
PLANNING DEPARTMENT: <u>Pauline Boratko</u> Pauline Boratko, Planning Assistant				
Intended Use: Residential				
This permit has hereby been posted on the above property this ___ day of __, ____ By _____ Your Signature				



CITY OF BETHEL

Planning Department
P.O. Box 1388
Bethel, Alaska 99559

August 22, 2018

PROOF OF HOUSE NUMBER/AND OR CHANGE

I, Pauline Boratko, the City of Bethel Planning Assistant, changing an address to a property---
175 Alex Hatley Lane to 175 Katie Hatley Lane.

A handwritten signature in cursive script, reading "Pauline R. Boratko", written over a horizontal line.

Pauline Boratko
City of Bethel
Planning Assistant

Cc: AVEC, GCI, COB Fire Dept.; Police Dept., Public Works Utilities Dept., and Finance Dept.,

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT BETHEL

Daniel Hackney,

Petitioner

DOB 08/27/1962

☐ Male ☐ Female

vs.

Steve Maratt,

Respondent.

DOB

☐ Male ☐ Female

CASE NO: 4BE-19-00008CI

DENIAL ORDER

- ☒ An *ex parte* hearing on the petitioner's request for a protective order was held and the following person(s) appeared: ☒ Petitioner ☐ Respondent ☐ Neither Party
Date: January 9, 2019 Courtroom # 4

IT IS HEREBY ORDERED THAT:

- ☒ **Case Closed – Short Term Petition Denied or Dismissed.** All requests in the petition, including any request for a long term order, are denied or dismissed because:

- ☒ there is not sufficient evidence that petitioner is the victim of stalking as defined in AS 11.41.270, or sexual assault as defined in AS 18.66.990(9). Case closed.
[DSTS]

The respondent clearly engaged in repeated acts of nonconsensual contact involving the petitioner and his family. However, this Court does not find probable cause to believe that this nonconsensual contact placed the petitioner or his family in fear of death or physical injury, as is required by AS 18.65.850 and defined by AS 18.65.870(4), AS 11.41.260, AS 11.41.270.

This Court does not approve of the respondent's behavior, as alleged in the petition. Should respondent's behavior escalate and cause the petitioner or his family to be placed in fear of death or physical injury then the petitioner is free to re-file for a stalking protective order.

This order will be served on respondent ☐ in court today ☐ by mail ☐ by police.

January 9, 2019, at
2:45 PM

Effective Date & Time

Judicial Officer

William T. Montgomery

(Type or Print Name)

In-Court Distribution on above date:

- ☐ Petitioner
☐ Respondent

In-Court Clerk: _____

Other Distribution:

I certify that on 1/9/19 a copy of this Order was given or mailed to:

- ☒ Petitioner ☐ Respondent

☐ Local police/AST at _____ for their records

☐ Local police/AST at _____ to serve respondent

Clerk: [Signature]

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA

FILED IN THE TRIAL COURTS
STATE OF ALASKA
JUDICIAL SERVICE AREA

AT Bethel

JAN 08 2019

Daniel Hackney
Petitioner Date of Birth 27 Aug '62
☒ Male ☐ Female

v.

Steve Maratt
Respondent Date of Birth '50
☒ Male ☐ Female

By _____
DEPUTY CLERK

CASE NO. 4BE-19-08C1

PETITION FOR
PROTECTIVE ORDER
☒ Stalking ☐ Sexual Assault

I swear or affirm under penalty of perjury that all the information I provide in this petition is true to the best of my knowledge and belief.

I am requesting the following protective order(s). **NOTE: If there is any chance you might need protection for more than 20 days, you should request both a long-term order (6 months) and an ex parte order (20-day). To do this, check both boxes.**

1. ☒ an ex parte protective order (20 day order). (This order can take effect immediately based on only the petition and the petitioner's testimony, without the respondent knowing about the ex parte petition. The police will serve the ex parte order if granted.) I certify that I

☒ have not tried to notify the respondent that I am filing this petition.

☐ notified or tried to notify the respondent as follows: _____

- ☒ a long-term protective order (6 month order). (This order can only be issued after notice to the respondent and a court hearing. This order will last for 6 months, unless the court ends it sooner. The police will notify the respondent of the hearing.)

2. The respondent is a (check all that apply):

☐ (former) friend ☒ neighbor ☐ classmate ☐ co-worker

☐ client or former client ☐ correctional facility employee

☐ legal guardian of petitioner ☐ other (describe): _____

☐ I do not know and have never been acquainted with the respondent

3. I (petitioner) am ☐ a minor: Age 56 ☒ an adult

This is Not a Court Order

4. The respondent is (or appears to be) ☐ a minor: Age 65+ ☒ an adult

5. a. Respondent has stalked or sexually assaulted me as described below and this conduct has placed me in fear of:

- ☐ death or physical injury to me ☐ further sexual assault
☐ the death or physical injury of the following family member of mine:

Name of family member: _____

Relationship to me: _____

b. I am afraid of physical injury or death, or further sexual assault, because

Telling me to ~~take~~ my family & move the "hell out of Bethel". Harrassing me while I work after the sun goes down. Harrassing me about "work lights" as I'm working, etc. Using foul language & bombs etc. while doing so.

6. Description of respondent's conduct. (Explain what respondent is doing or did, including when, where and how often the stalking or sexual assault occurred. Be specific. Include dates and places.)

Since 2015 upon purchasing house & property @ 175 Alex Hatley, Steve Marshall has stalked/harassed us every time we improved our property. From adding fill, to repositioning house, putting in driveway, adding on to our house, to construction on our property. Harrassing hired crew & operators of machinery hired by us to do work. Site permits were acquired and O.K.ed by planning dept. Using ~~stark~~ foul language & harassing us w/ young children present. Harrassing me while working, from a different neighbors property @ night, through the shadows. Etc. Going to neighbors, slandering us, bugging city planner with our remodel yard work, etc.

This is Not a Court Order

v.

Case No.

7. I request an order from the court directing (check all that apply)

☒ a. respondent not to follow, approach, confront, watch or stalk me in any other way or threaten to do so.

☒ b. respondent not to contact me by telephone, e-mail or U.S. mail or otherwise communicate directly or indirectly by any means with me or the following members of my household:

Anyone

☐ c. respondent to stay away from my residence.

Is this also respondent's current residence?

☐ yes

☒ no

Respondent's residence is ☐ unknown to me

☐ within my apartment complex

☒ approximately 200 feet/miles from my residence

Describe: Neighbor kitty corner from our property

☐ d. respondent to stay away from my school.

Name and location of school: *

Is this also respondent's school?

☐ yes

☐ no

☐ e. respondent to stay away from my place of employment. Name and location of place of employment: *

Is this also respondent's place of employment?

☐ yes

☒ no

If yes, list the hours respondent works (if known)

☒ f. respondent to stay away from the following places I go to:

Our home

☐ g. respondent not to have sexual contact with me.

* You do not have to provide this information if you do not want the respondent to know the location of your school or place of employment.

This is Not a Court Order

v.

Case No. _____

8. Other cases. The following are all the pending civil cases or criminal cases, in this or another state, involving either me or respondent (that I know of):

<u>Type of Case</u>	<u>Court Location</u>	<u>Petitioner or Respondent</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The following are other court cases (civil or criminal) involving the respondent that I want the court to know about:

<u>Type of Case</u>	<u>Court Location</u>
_____	_____
_____	_____
_____	_____

Both petitioner and respondent have the responsibility to tell the court of any criminal or civil lawsuits involving either of you that arise while a petition for protective order is pending. AS 18.65.865(d)

9. Information about respondent (if known).

Respondent's full legal name and any nicknames or other names used: _____

Respondent's mailing address: _____

Respondent's home phone: _____ Work phone: _____

This is Not a Court Order

v.

Case No.

10. Petitioner information. [The court needs your mailing address to send court papers, including notices of hearing, to you. If you believe it is not safe for the respondent to know where you live, write a "message" address where you can be sure you will receive court papers. If you do not have an address and telephone number that can safely be revealed to the respondent, ask the court clerk how you can provide this information so that it will be kept confidential and not revealed to the respondent. Civil Rule 65.1]

My mailing/message address P.O. Box 3288 Bethel, AK, 99559
 Street or Box No. City State Zip

My message phone: 543-7951

My full legal name: Daniel K. Hackney

Any nicknames or other names: _____

8 Jan. 19
 Date

Daniel Hackney
 Petitioner's Signature

Daniel Hackney
 Print Name

Subscribed and sworn to or affirmed before me at Bethel, Alaska on
1/8/19 (date)



[Signature]
 Clerk of Court, Notary Public or other person
 authorized to administer oaths

My commission expires: 7/1/20

This is Not a Court Order

Check Number

6174

Date Posted

08/20/19

Check Amount

\$150.00

DANIEL K. DAWN L. HACKNEY
P O BOX 3288
BETHEL, AK 99569-3288
907-543-7951

6174
82-978/1241 9384

Date 8/19/19

Pay to the Order of City of Bethel \$ 150.00

One hundred fifty dollars 00/100 Dollars

 Wells Fargo Bank, N.A.
Idaho
wellsfargo.com

For Bethel License Dawn L. Hackney

Photo Safe Deposit
Circle on back

7740421782

For Deposit Only
CITY OF BETHEL
1000177585
Wells Fargo Bank Branch 3442
Bethel, Alaska

For your security, information like account numbers, signatures, and the ability to view the backs of checks have been removed from the images.

You can see full or partial fronts and backs of the images by using the link at the top of the window.

 Equal Housing Lender

2019-2020 City of Bethel Business License Application

P.O. BOX 388
BETHEL, ALASKA 99559
(907) 543-2097 (fax-3817)

Business ID: 10255

Business Classification: _____

(Please print or type --- all information is required)

Expires 12/31/2020

☐ New

☒ Renewal

quarters site located

☐ inside city limit

☒ outside city limit

Name of business Hackney Homes

AK business license # 1002765

Mailing address PO Box 3288

Business phone # 907-543-7951

City Bethel

State AK

Zip code 99559

E-mail 3dhackney@gmail.com

Physical address of business 175 Alex Hatley

Name of owner (s) (please complete information for all owners) Dawn L Hackney

EIN or Social Security Number 519154353

Drivers Lic. # 7109818

Home phone # 907-543-7951

Mailing address (if different from business address)

n of business: ☒ proprietorship ☐ corporation ☐ partnership (If filing as corporation or partnership, please attach supporting documentation, i.e. list of corporate officers/partners.)

Type of business (as it appears on state license) and services provided (explain in detail)

Rental licenses please list street location and number of rentals with number of bedrooms

53-Real Estate, Rental and Leasing 72- Accommodation and Food Services

ected sales per year \$ 40,000

☒ estimated

☐ based on previous year

nit \$150.00 for each business license.

renewal application made after December 31 of the license expiration year shall be subject to a fee for the business
ense of twice the fee set out in BMC 5.04.040.

erson who engages in business before filing a business license application, or who fails to file any report or to pay
e fee as prescribed in BMC 5.04.040, or who fails to file a license renewal application before February 1st,
all, in addition to payment of the required fee, be subject to a penalty of \$100.00 that shall be paid before the
ense may be issued (BMC 5.04.100).

erson who is found guilty of a violation of any provision of the City of Bethel Municipal Code, or any regulation
dopted pursuant thereto, is subject to a fine of up to \$200.00. A violation that occurs within three years of
conviction of a prior violation is subject to a fine of up to \$500.00 (BMC 5.04.130).

hereby make application for a City of Bethel business license for the period from 01/01/2019 to 12/31/2020.

derstand that this is only an application for business license, and is subject to approval by the City of Bethel.

Signed

Dawn L Hackney

Title

8/19/2019

Date

owner

Co-owner

Title

Date



CITY OF BETHEL BUSINESS LICENSE

Licensee: **HACKNEY HOMES
DAWN HACKNEY
P.O. BOX 3288
BETHEL AK 99559**

License Number:
10255

Fee Paid
150.00

Business ID	Business Type
10255	Business License 150

Issue Date	Expires
01/01/2018	12/31/2019

City of Bethel Finance Department

License is not transferable or assignable

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE AT THE LOCATION

This is to certify that the licensee named above has made application and paid the fee for a City of Bethel Business License covering the calendar year as show or fraction thereof to engage in business. This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State of Alaska or of the United States.

City of Bethel PO Box 388 Bethel, AK 99559-0388 Phone: 907-543-2097 Fax: 907-543-3817



Department of Commerce, Community, and Economic Development
**DIVISION OF CORPORATIONS, BUSINESS &
PROFESSIONAL LICENSING**

State of Alaska / Commerce / Corporations, Business, and Professional Licensing / Search & Database
Download / Business License / License #1002765

LICENSE DETAILS

License #: 1002765

[Print Business License](#)

Business Name: HACKNEY HOMES

Status: Active

Issue Date: 03/19/2014

Expiration Date: 12/31/2019

Mailing Address: P.O. BOX 3288
BETHEL, AK 99559-3288

Physical Address: P.O. BOX 3288
172 ALEX HATELY
BETHEL, AK 99559-3288

Owners

DAWN L HACKNEY

Activities

Line of Business	NAICS	Professional License #
53 - Real Estate, Rental and Leasing	531110 - LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS	

Endorsements

No Endorsements Found

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CITY OF BETHEL

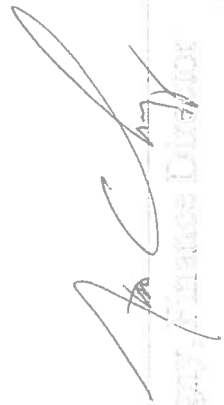
COMMUNAL AUTHORIZING COLLECTION OF CITY SALES TAXES PURSUANT TO RCN 04.16.100

The City of Bethel authorizes HACKETT HOMES, sales tax registration number 10255 to collect sales taxes on behalf of the City of Bethel. Such sales taxes are the property of the City of Bethel and are required to be remitted on or before the last day of the month following the period for which the return is required to be submitted by the collector. This certifying is only valid at the following address:

114A ALLEN HAVENLY

Failure to display this certificate will result in a receipt showing the amount of sales tax collected is a violation of the Bethel Administrative Code and should be reported to 544-1381.

Expires 12/31/2019


Mr. Chong, Finance Director

Date: 1/31/18

Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806

This is to certify that

HACKNEY HOMES

P.O. BOX 3288, BETHEL, AK 99559-3288

owned by

DAWN L HACKNEY

is licensed by the department to conduct business for the period

October 28, 2017 to December 31, 2019
for the following line(s) of business:

53 - Real Estate, Rental and Leasing; 72 - Accommodation and Food Services



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.
It is not transferable or assignable.

Julie Anderson
Commissioner

RECEIVED

FEB 19 2019

CITY OF BETHEL
PLANNING DEPARTMENT

KATIE HATELY LANE

DIRT
DRIVEWAY



LOT 30

N 22°11'00" E 100.00'

LOT 11

12,000 sq. ft.

N 67°49'00" W 120.00'

LOT 29

N 67°49'00" W 120.00'

LOT 12

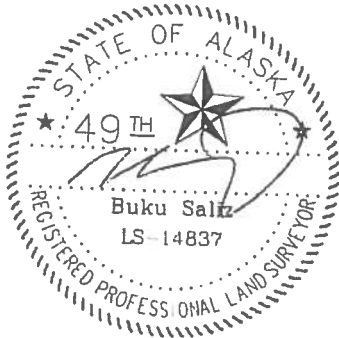
S 22°11'00" W 100.00'

ALEX HATELY DRIVE

CITY OF BETHEL
PLANNING DEPARTMENT

FEB 19 2019

RECEIVED



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

FIXED HEIGHT, LLC
Land Surveying Services

225 W 23rd Ave
Anchorage, AK
907.290.8949
WWW.FIXEDHEIGHT.COM

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

Legend

--- EAVE
[] UTILITY POLE
--- OVERHEAD
UTILITY LINE

110 CORNERS SET THIS DATE

SCALE 1" = 30'

CHECKED/DRAWN BY

AP/BS

JOB NO

18024

DATE

10/22/2018



Rite in the Rain
ALL-WEATHER
NOTEBOOK
№146

24 Feb. 1715 Talked w/ Todd
Friedrichsen about
accusations made by City of
Bethel via Steve Marshall. Todd
stated that, "NO, he hadn't said
made written statement. If he
had a problem, he wouldn't go to
the city, or Steve, but me..."

21 Mar. 1445 Steve drove by
videoing our project. Parked
his truck and flipped me off
and mumbled obscenities...

26 Mar. 1715 Steve comes home
and starts taking photos
of our project. Complains about
the windows... Ranting & Raving.
Witnesses: Michael John, Steve
Denny, Jeremy Jacobs.

Rite in the Rain

10 Apr. 1300 Steve stopped in front of our driveway (W) and was cussing about woodshed and shop building. Then down and stopped at property line to complain about building being too close to property line. Windows down and saying a lot of crap...

10 May. 1345 Steve flipped off Mike John + I working on garage...

17 May. 1045 Steve yelled @ Niden, a worker at ours, and called him a dumb ass. Niden reported that to me.

29 May. 1250 Steve complaining to Colby about parking on side of road while working on our house.

Used some choice adjectives and
said he (Colby) was breaking the
law. Colby said nothing in re-
sponse...

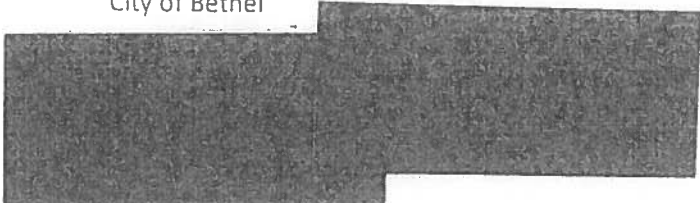
8/19/19 was notified by J.S.
that Steve Murat is saying
we are liars and did
not fill out on Site permit
correct to be illegal and
has petition going around
to be signed

8 Aug @ 1015 - Pauline's call about
our address & change it back,
Dawn said, as long as we aren't
in any violation of any statutes
or city ordinances...

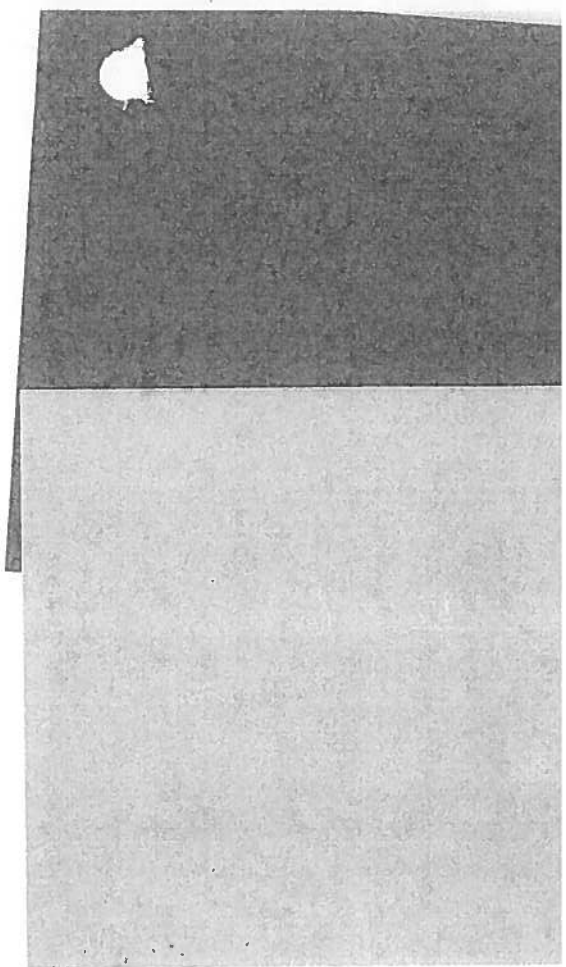
Rite in the Rain

06/07/19

To: Betsy Jumper
Planning Department
City of Bethel



RE: BMC Chapter 15, 16 & 18
Section 15.12.090 Complaint
Section 18.84.020 Complaint
Section 18.32.020 Permitted & Principal use & Structures
Section 18.32.010 Intent
Section 15.12.030
Section 15.12.060 F.4 Planning needs to ask more questions
Section 16.04.010 Purposes A#2 & A#6
Section 15.12.020 Permit Required B#6 & C



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

Permittee has violated the following City of Bethel Municipality codes:

1. BMC 15.12.030 The site plan permit was incomplete. Permittee did not give accurate description of what their real plans were, or the size and use of the structure and this huge 24' X 60' two story building is going to be used as a commercial business. Not a garage/storage building, as permittee wrote down.
2. BMC 18.32.020 Permittee is building apartments or a hotel in a residential area, which is not permitted. Only one residence per lot.
3. BMC 18.32.010 Intent: The intent of the residential district is to provide protection to residential areas from encroachment from non-residential activities.
4. Permittee has a fence on the edge of the roads, Alex Hatley road and Katie Hatley Lane. Fence on city easement, should be on permittee's property line.
5. BMC Chapter 16.04 Section 16.04.10 A#2 & A#6. This will negatively affect everyone's home appraisal that lives next to this atrocity. The city has an obligation to protect our property from things like this. The City of Bethel should have stopped this project/construction months ago after being told about the actual scope of construction vs site plan.
6. BMC 15.12.020 Permittee moved a 12' X16' building onto city easement, along Katie Hatley Lane, with no permit, it is illegal and needs to be moved.
7. The City should have been inspecting the project. Permittee has installed two 1000 gallon water tanks and a 2400 gallon sewer tank for a garage/storage. No. To run a commercial business with a second residence on their lot. Building must be moved.

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



CITY OF BETHEL

Planning Department

P.O. Box 1388

Bethel, Alaska 99559

August 7, 2019

PROOF OF HOUSE NUMBER/AND OR CHANGE

I, Pauline Boratko, the City of Bethel Planning Assistant, is changing an address back to the original address 175 Katie Hatley to 175 Alex Hatley. Please note that this is the Hackney Residence, a single family dwelling.

Pauline Boratko
City of Bethel
Planning Assistant

Cc: AVEC, GCI, COB Fire Dept.; Police Dept., Public Works Utilities Dept., and Finance Dept.
Hackney's



City of Bethel

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

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

August 30, 2019

RE: Notice to Correct Violations

Dear Mr. and Ms. Hackney,

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

Noncompliance with Authorized Improvements

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

Noncompliance with Residential Zoning Code

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

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

CITY OF BETHEL
PLANNING DEPARTMENT

DANIEL AND DAWN HACKNEY,	)	
	)	
Appellants,	)	
	)	
vs.	)	
	)	
CITY OF BETHEL,	)	
	)	
Appellee.	)	
_____	)	_____ 2019-1

STIPULATION BETWEEN THE PARTIES

Appellants, Daniel and Dawn Hackney, through their attorney, Valcarce Law Office, and the City of Bethel, Planning Department, through its attorney, Jermain Dunnagan & Owens, P.C., hereby stipulate and agree as follows:

On July 20, 2018, Daniel and Dawn Hackney submitted to the City of Bethel a Residential Site Plan Permit Application to construct a 20' x 42' garage/shop. The application was approved on July 24, 2018 and a Site Plan Permit was issued to construct a 20' x 42' shop/garage/storage shed per the Site Plan Permit Application on file.

On January 9, 2019, an Addendum to the Site Plan Permit was issued to construct a 24' x 64' attached garage.

On June 7, 2019, the City of Bethel, Planning Department, received an official complaint from Steve Murat, Steve Sorg, Todd Fredericks, and Mike Shantz of violations of the City of Bethel Site Plan Permit 18-34, for Daniel and Dawn Hackney of 175 Alex Hatley, lot 11, Blueberry Field Subdivision phase plat 84-13.

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

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

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

VALCARCE LAW OFFICE
Attorneys for Daniel and Dawn Hackney

DATED: 9/18/19

By: [Signature]

Jared Karr

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

DATED: 9/20/19

By: [Signature]

Michael R. Gatti



City of Bethel

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

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

September 26, 2019

RE: Corrective Action Plan for Bethel Municipal Code Violations

Dear Mr. and Mrs. Hackney,

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

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

1st Violation

Noncompliance with Authorized Improvements on Approved Site Plan Permit

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

Phase 1 Corrective Action

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

Due Date: October 10, 2019

2nd Violation

Noncompliance with BMC Residential Zoning Code

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

Page 1 of 3

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

Phase 2 Corrective Action

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

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

Due Date: October 24, 2019

Once your new September 2019 Site Plan Permit Application is received by the Planning Department, BMC timelines for City action will be adhered to. Staff will review your application for compliance to the **BMC 18.32.020 and 18.32.030 (Residential Zoning District)** and to **BMC 15.12 (Site Plan Permits)**. Staff will notify you if any additional information and/or permits are required based on the type of intended use indicated on your application. Additional permits may extend the conversion deadline. Please contact planning department staff at 543-5306 if you have any questions.

Conversion to BMC Code Compliant Use and Verification:

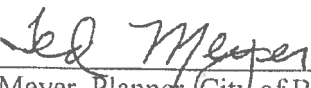
Phase 3 Corrective Action

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

Due Date: November 24, 2019

Penalties

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



Ted Meyer, Planner, City of Bethel

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

VALCARCE LAW OFFICE

A LIMITED LIABILITY COMPANY

900 THIRD AVENUE

P.O. BOX 409

BETHEL, ALASKA 99559

TELEPHONE: (907) 543-2744 OR (907) 543-HELP

TOLL FREE (888) 610-2744

TELEFAX 907 543-2746

EMAIL: jared@bushlawyers.com

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

*Bush Lawyers Serving
Bush Alaska*

October 10, 2019

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

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

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



Jared Karr
Attorney for Dan and Dawn Hackney

Subject: Courtesy Notice of Planned As-built Survey of the Hackney property

From: Ted Meyer <tmeyer@cityofbethel.net>

Date: Fri, 25 Oct 2019 17:36:07 -0800

To: Jared Karr <jared@bushlawyers.com>

CC: Bill Howell <bhowell@cityofbethel.net>, Michael Gatti <mgatti@jdolaw.com>, "Mary B. Pinkel" <mpinkel@jdolaw.com>, Pauline Boratko <pboratko@cityofbethel.net>

Hi Jared,

We have received numerous and continuous complaints from multiple people that Mr. Hackney has placed various structures deep inside the City's 100-foot wide Right-of-Way, that includes a fence, five or six 4-foot boulders, a wood storage cabin, and container. Complaints also include the moving of a City stop sign deeper into the ROW.

In order to respond to these complaints, I have ordered an as-built survey of the property to determine the exact locations of these structures, and specifically for the recently-placed boulders, as they are both a safety and road maintenance issue.

The surveyors plan to perform the survey on Tuesday, October 29. They will not step foot on the Hackney property. Please pass this on to Mr Hackney. Thank you.

--

Ted Meyer, Planner

City of Bethel

P.O 1388

Bethel, Alaska 99559

(907) 543-5306

tmeyer@cityofbethel.net



Virus-free. www.avg.com

Subject: Re: Courtesy Notice of Planned As-built Survey of the Hackney property
From: Ted Meyer <tmeyer@cityofbethel.net>
Date: Mon, 28 Oct 2019 15:37:19 -0800
To: Jared Karr <Jared@bushlawyers.com>
CC: Bill Howell <bhowell@cityofbethel.net>, Michael Gatti <mgatti@jdolaw.com>, "Mary B. Pinkel" <mpinkel@jdolaw.com>, Pauline Boratko <pboratko@cityofbethel.net>

Hi Jared,

There has been a date change regarding the as-built survey of the Hackney property. The surveyor notified me his crew will be in Bethel to survey on Thursday, October 31. Please pass this on to the Hackneys. Thank again.

Ted.

On Fri, Oct 25, 2019 at 5:43 PM Jared Karr <Jared@bushlawyers.com> wrote:

I will pass this along to the Hackney's.

When will the City respond to my October 10 email and notice to the City in regards to an appeals hearing?

Jared

On Fri, Oct 25, 2019, 5:36 PM Ted Meyer <tmeyer@cityofbethel.net> wrote:

Hi Jared,

We have received numerous and continuous complaints from multiple people that Mr. Hackney has placed various structures deep inside the City's 100-foot wide Right-of-Way, that includes a fence, five or six 4-foot boulders, a wood storage cabin, and container. Complaints also include the moving of a City stop sign deeper into the ROW.

In order to respond to these complaints, I have ordered an as-built survey of the property to determine the exact locations of these structures, and specifically for the recently-placed boulders, as they are both a safety and road maintenance issue.

The surveyors plan to perform the survey on Tuesday, October 29. They will not step foot on the Hackney property. Please pass this on to Mr Hackney. Thank you.

--

Ted Meyer, Planner

City of Bethel

P.O 1388

Bethel, Alaska 99559

(907) 543-5306

tmeyer@cityofbethel.net

--

Ted Meyer, Planner

City of Bethel

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tmeyer@cityofbethel.net



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City of Bethel

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

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

October 28, 2019

RE: Hackney Appeal to City Planning Commission of City Planning Department Notice to Correct Violations

Dear Mr. Karr,

This letter is to inform you that the Hackneys' September 9, 2019 letter appealing the City Planning Department's August 30, 2019 Notice to Correct Violations does not meet the requirements of Bethel Municipal Code 18.72.010(A).

Bethel Municipal Code Section 18.72.010(A) requires that individuals who appeal decisions or actions of the planning department specify (1) the grounds for their appeal and (2) the actions and findings that they dispute. The appeal letter does not meet these requirements.

The letter states that the grounds for the appeal "[are that] all construction and use of 175 Hately" was authorized by the former planning director. It further states that the actions and findings that the Hackneys dispute are "all." These stated grounds for appeal are inadequate.

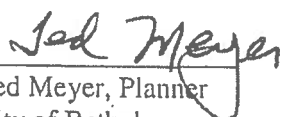
First, there is nothing in the record to support the Hackneys' position that the former planning director somehow permitted the construction which resulted in the code violations at issue. The initial approved site plan permit gave the Hackneys permission to "construct a 20-foot x 42-foot shop/garage/storage shed" and the addendum to the permit allowed for an increase in structural dimensions to "a 24-foot x 64-foot garage." There is therefore nothing in the record to support the argument that the construction of a bed and breakfast or other lodging units was ever permitted by the City.

Second, the appeal letter does not provide adequate notice to the City of the specific actions and findings that the Hackneys now seek to challenge. Rather, you state that the Hackneys dispute "all" actions and findings of the City. However, the City is entitled to know, prior to its appearance before the Planning Commission, which City actions and findings the Hackneys claim to be in error. While the City understands that the Notice of Violations itself is being

challenged, it is important for the City to know precisely why the Hackneys contend that the City has acted in error so that it can adequately prepare for the appeal hearing before the Commission.

Consequently, please provide an amended appeal statement which meets the requirements of Bethel Municipal Code Section 18.72.010(A) by November 4, 2019. Thank you.

Sincerely,


Ted Meyer, Planner
City of Bethel
PO Box 1388
Bethel, AK. 99559
907-543-5306
tmeyer@cityofbethel.net

VALCARCE LAW OFFICE

A LIMITED LIABILITY COMPANY

900 THIRD AVENUE

P.O. BOX 409

BETHEL, ALASKA 99559

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TOLL FREE (888) 610-2744

TELEFAX 907 543-2746

EMAIL: jared@bushlawyers.com

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

*Bush Lawyers Serving
Bush Alaska*

*Hand delivered
to L. Strickler
10/28/19*

October 28, 2019

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

Re: October 28, 2019 letter and by Ted Meyer

In compliance with BMC 18.72.010, Dan and Dawn Hackney hereby provide notice to the City of Bethel that it appeals the decision of the planning director and the letter sent by the planning department on October 28, 2019.

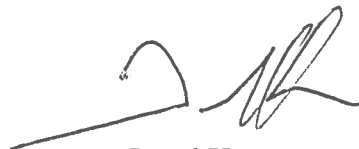
Grounds for Appeal: The planning director ordered in an October 28, 2019 letter that the Hackney appeal's notice of September 9, 2019 was deficient, even though it complied with the letter of the law

Actions and findings of the planning department that are disputed in the October 28, 2019 letter: That the Hackney's need to submit an emended appeals notice.

The Hackney's provided notice to the City that it requested an appeals hearing seven weeks ago. It notified the City on October 10, 2019 that the stipulated stay on an appeal's process was rejected. It took the City 18 days to respond to that letter. This is after the City has notified them that they are facing an audit from the Finance Department and that the City is planning on doing a survey of their property based off of more harassing complaints. I caution the City in its further actions in regards to the Hackney's.

Once again, the Hackney's request an appeal's hearing on not only the August 30, 2019 letter but also the October 28, 2019 letter.

The Hackney's have complied with BMC 18.72.010 to the letter and expect the City to comply with the laws it made up.

A handwritten signature in black ink, appearing to be 'Jared Karr', with a long horizontal line extending to the left.

Jared Karr
Attorney for Dan and Dawn Hackney



CITY OF BETHEL

P.O. Box 1388 Bethel, Alaska 99559

907-543-1384

FAX # 543-3817

October 29, 2019

Jared Karr
Valcarce Law Office
PO Box 409
Bethel, AK. 99559

RE: Public Hearing on Hackney Appeal to City Planning Commission of City Planning Department Notice to Correct Violations (Issued August 30, 2019)

Dear Mr. Karr:

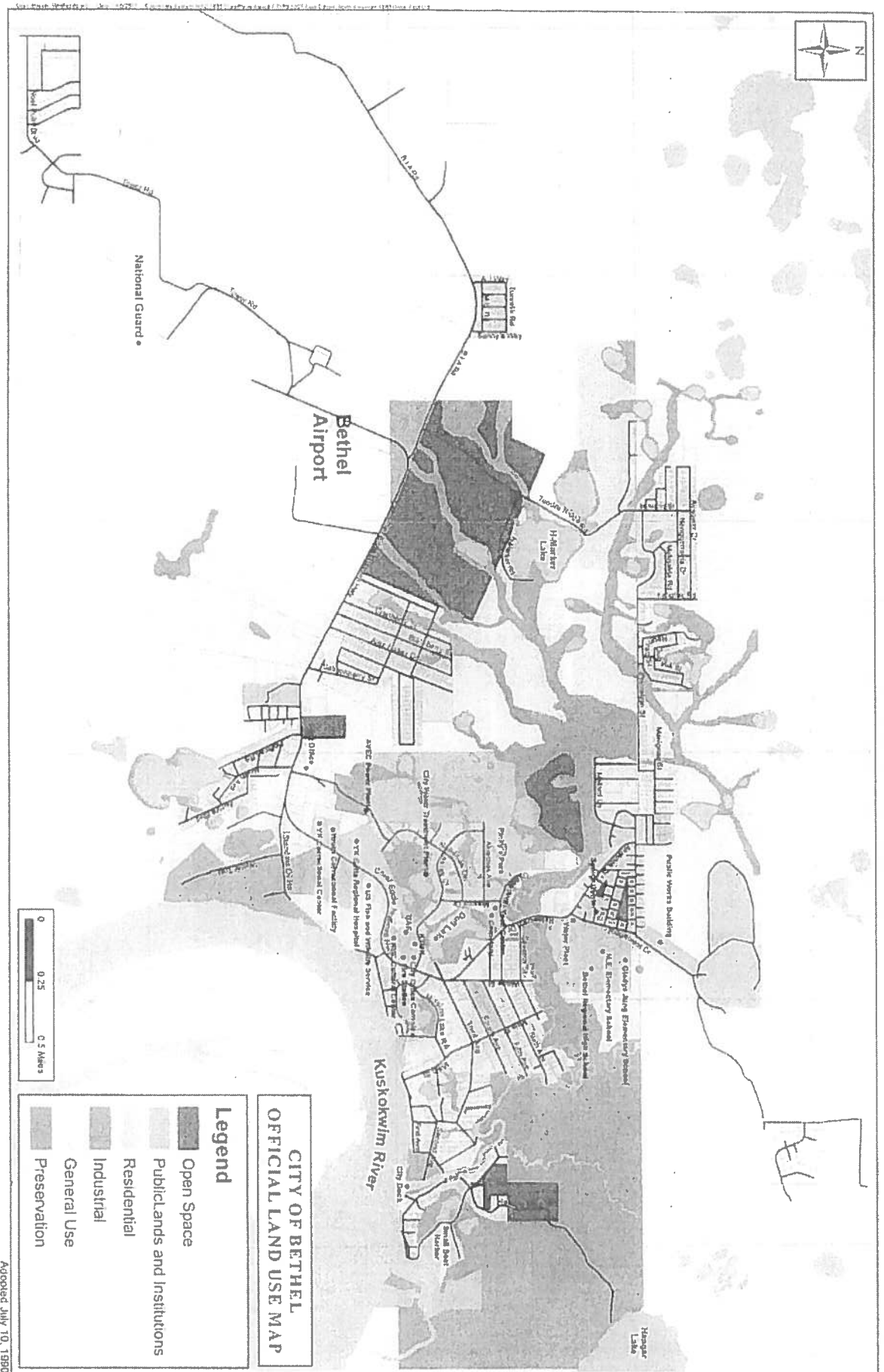
On October 10, 2019, you re-instated your appeal to the City of Bethel Planning Commission of the Planning Department's August 30, 2019 decision to issue a Notice to the Hackneys to Correct Violations.

Pursuant to Bethel Municipal Code Section 18.72.010(D), the City of Bethel Planning Commission will hear the Hackneys' appeal at its regularly scheduled meeting on Thursday, **November 14, 2019 at 6:30 p.m.** in the Bethel City Council Chambers at 300 State Highway in Bethel, Alaska. The Planning Department will hand-deliver packets of information relating to this matter to Planning Commissioners and to your office on November 8, 2019. If you have additional materials regarding the application or actions which you wish us to include in the packet, please deliver those documents to the City of Bethel Planning Department Office by 4:00pm on **November 4, 2019** so that we can include them in the materials.

If you or your representative plan to participate in the Appeal Hearing telephonically rather than in person, please let me know by November 8, 2019 so that I can provide you with the necessary call-in information.

Sincerely,

Ted Meyer, Planner



Adopted July 10, 1990



Nov 14 - 15

1 guest

Work trip

Price

Instant Book

More filters

Show Map

No results

To get more results, try adjusting your search by changing your dates

More places to stay nearby

These places to stay are just outside the current map area

ENTIRE GUESTHOUSE

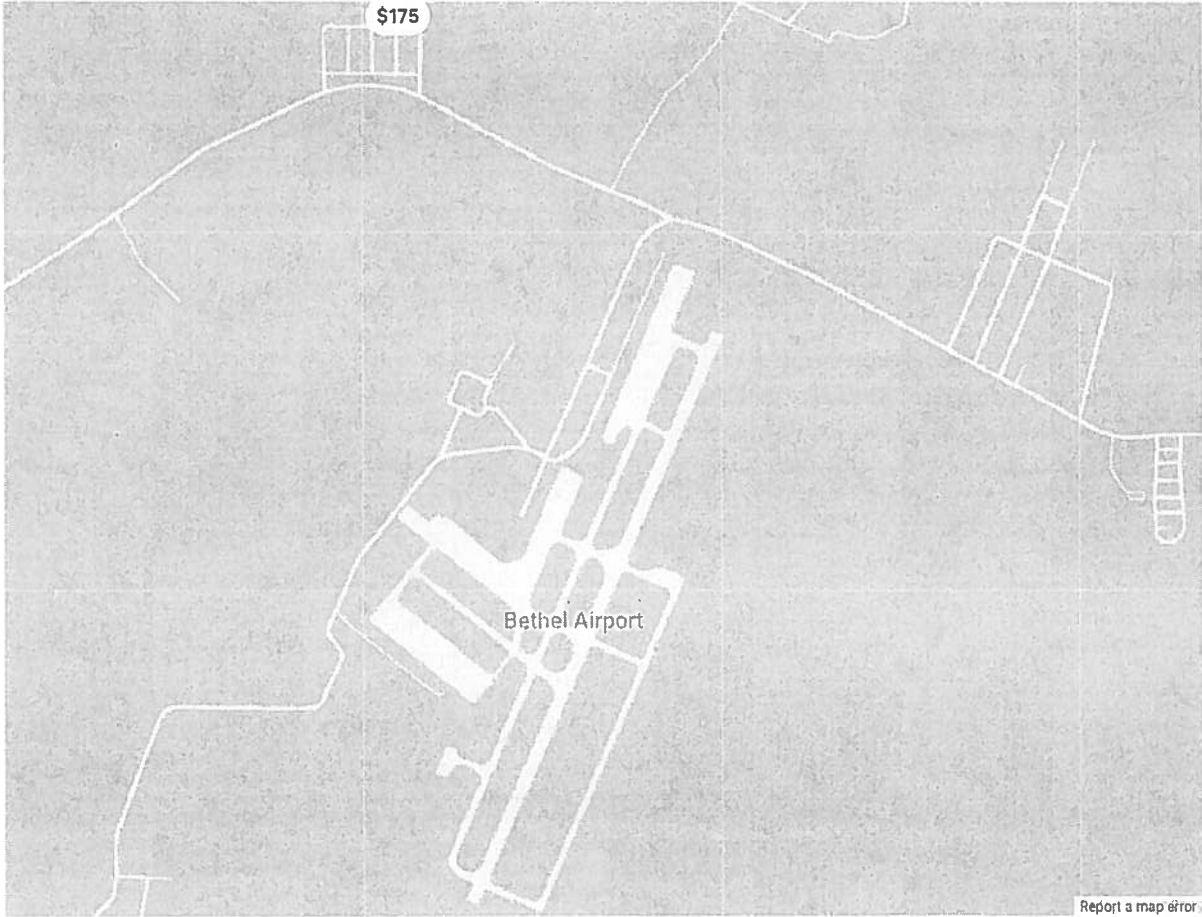
Tundra Oasis

2 guests · 1 bedroom · 1 bed · 1 bath



5.0 (9)

\$175/night
\$198 total



Report a map error



Nov 14 - 15

1 guest

Work trip

Type of place

Price

Instant Book

More filters

Show Map



Only 1 places to stay left for these dates. We recommend booking a place soon.

1 places to stay

PRIVATE ROOM IN APARTMENT

Clean and Cozy Resting Place

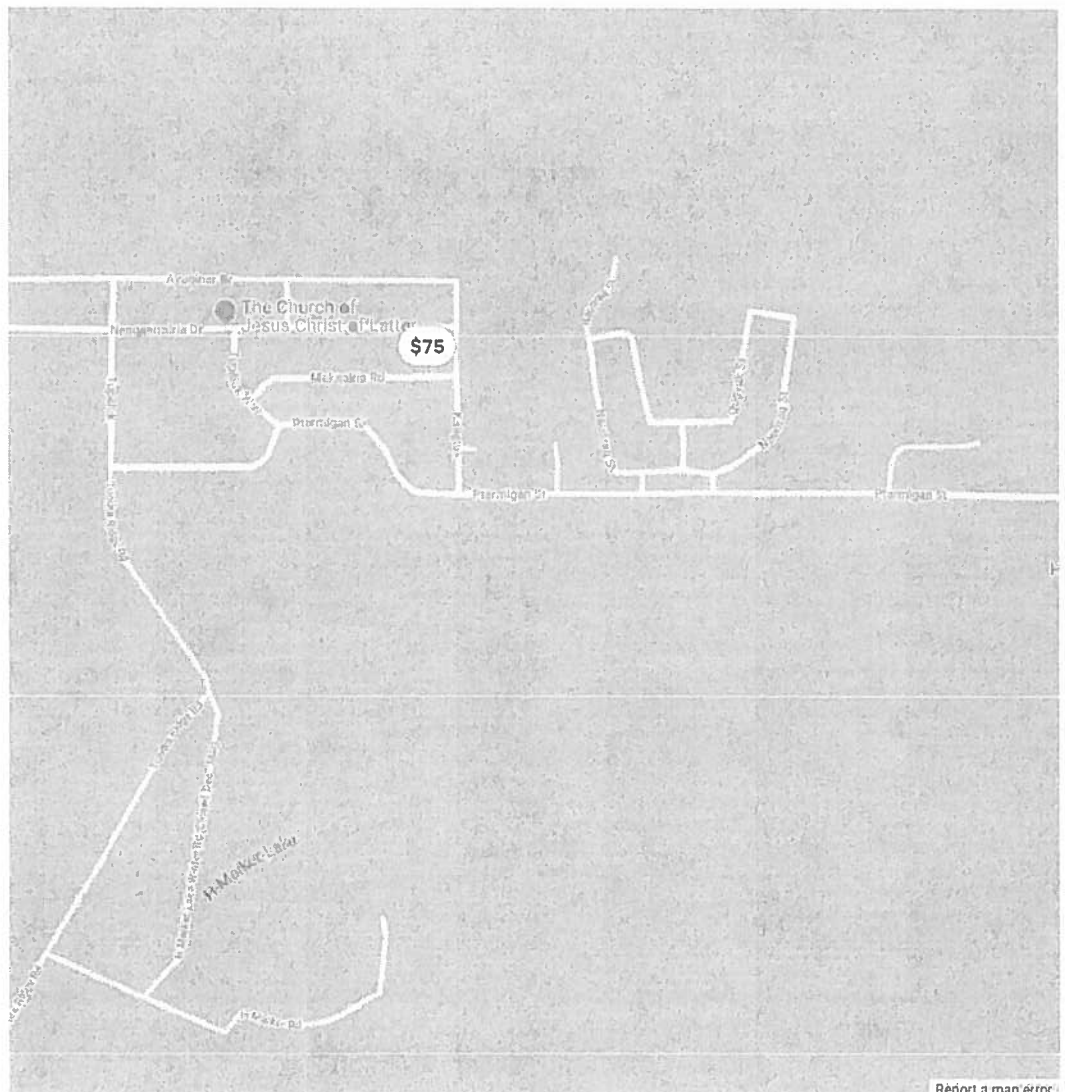
2 guests · 1 bedroom · 1 bed · 1 shared bath



4.80 (5)

\$75/night

\$85 total



Report a map error



Nov 14 - 15

1 guest

Work trip

Type of place

Price

Instant Book

More filters

Show Map

Only 1 places to stay left for these dates. We recommend booking a place soon.

1 places to stay

ENTIRE HOUSE

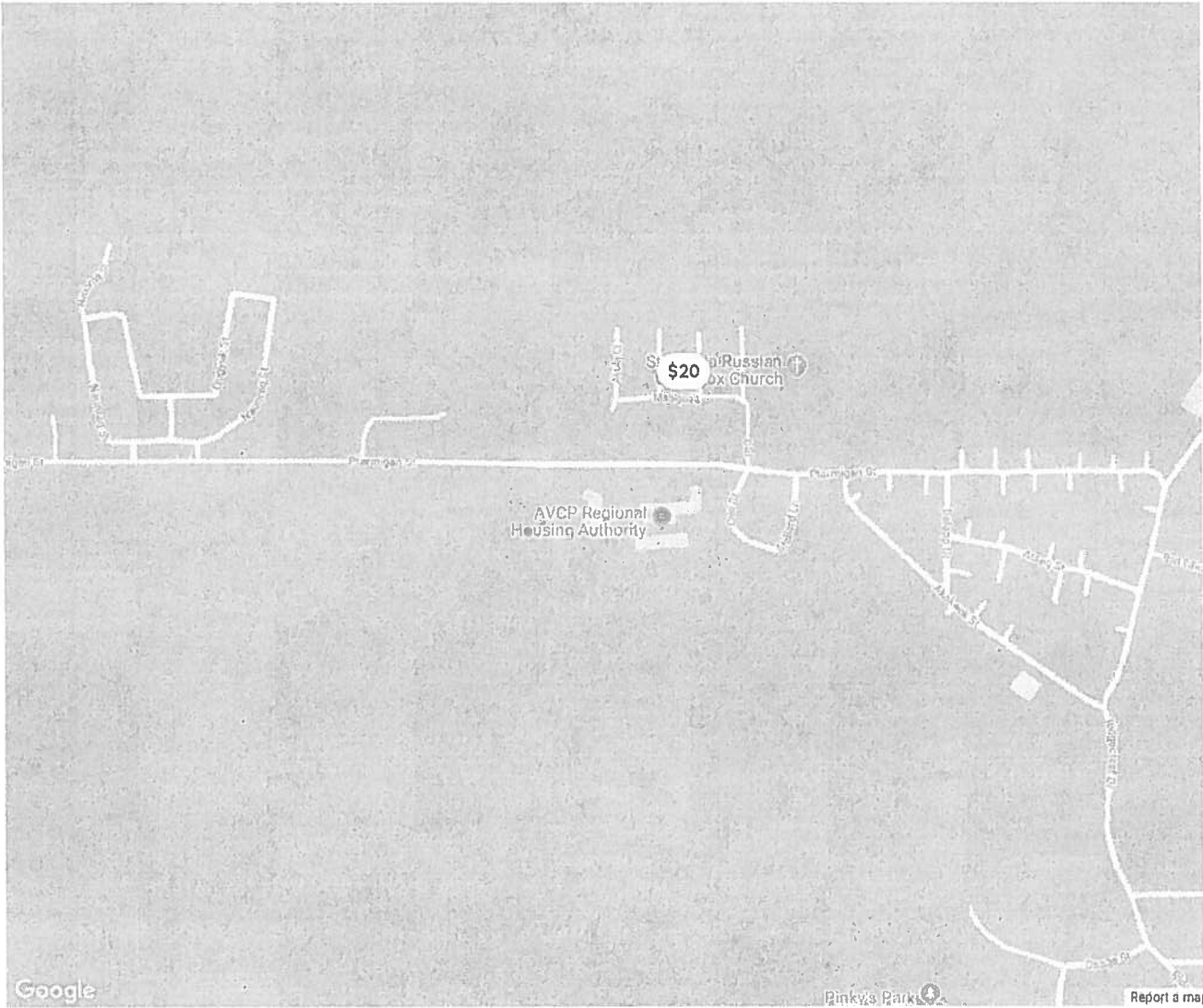


Clean, friendly and a great location

2 guests · 1 bedroom · 1 bed · 1 bath

No reviews yet

\$20/night
\$23 total



IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT BETHEL

SUBPOENA TO APPEAR/PRODUCE

To: Patty Burley
DOB:
Home Phone:
Home Address:

Other Info: Kenai Borough Deputy Attorney
SSN:
Work Phone: 907-714-2120
Work Address:

You are commanded to appear at the Bethel City Council Chambers ~~State Courthouse~~ to testify in the case of:

Case Name: Hackney Appeal
Date: 11/14/19 Time: 6:30 pm Case No. 488 Hackney Appeal
Court Address: 204 Chief Eddie Hoffman Highway, Bethel, Alaska. Courtroom: _____

If you fail to appear and testify as ordered, a warrant may be issued for your arrest. This subpoena shall remain in effect from the date you are required to appear until you are granted leave to depart by the court or by an officer acting at the direction of the court.

You are ordered to bring with you:

You are entitled to witness fees and (if you live more than 30 miles from the court) travel and living expenses. You are not, however, entitled to advance payment of these fees if this subpoena is issued at the request of the state, city, borough, Public Defender Agency or other court-appointed counsel. Contact the attorney's office listed below to arrange for payment of fees. You must contact the attorney's office before you travel if you want to be paid travel expenses.

This subpoena does not require you to appear anywhere except the court at the above address. However, please call the attorney's office listed below on the afternoon of the working day before your scheduled appearance to find out whether you are still required to appear, the time to appear and other instructions. Failure to call the attorney's office may make you ineligible for payment of witness fees and travel and living expenses.

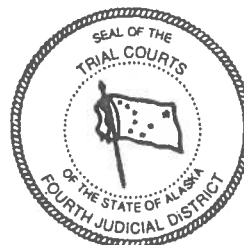
10/31/19
Date

Natalie Alexie
Natalie Alexie, Clerk of Court

Subpoena issued at the request of:

Jared Karr
Attorney for Dan + Dawn Hackney - Valcarlos Law Office
Address: P.O. Box 409 Bethel AK 99554
Telephone: 907-543-2744

If you have any questions, please contact the attorney listed above.



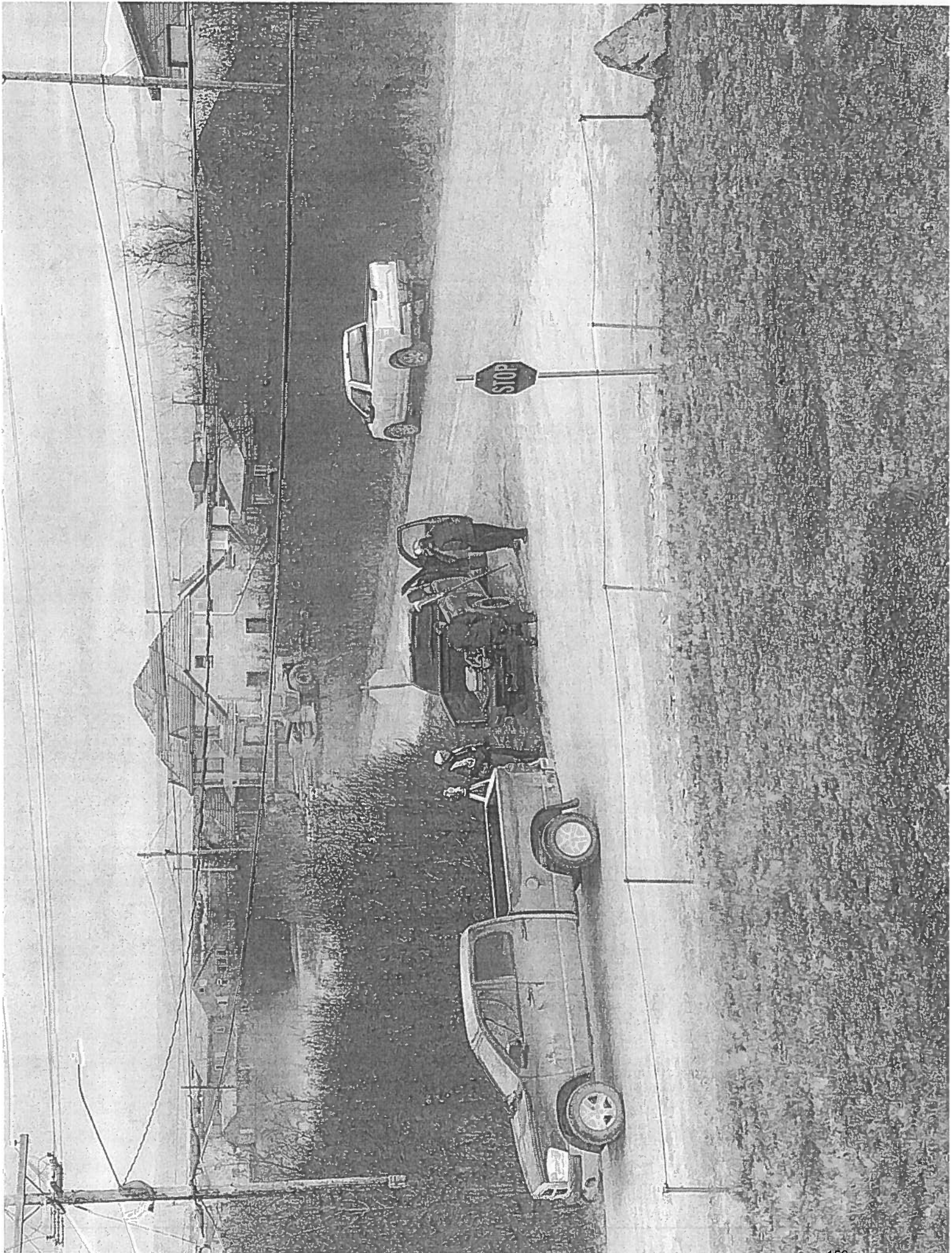
RETURN

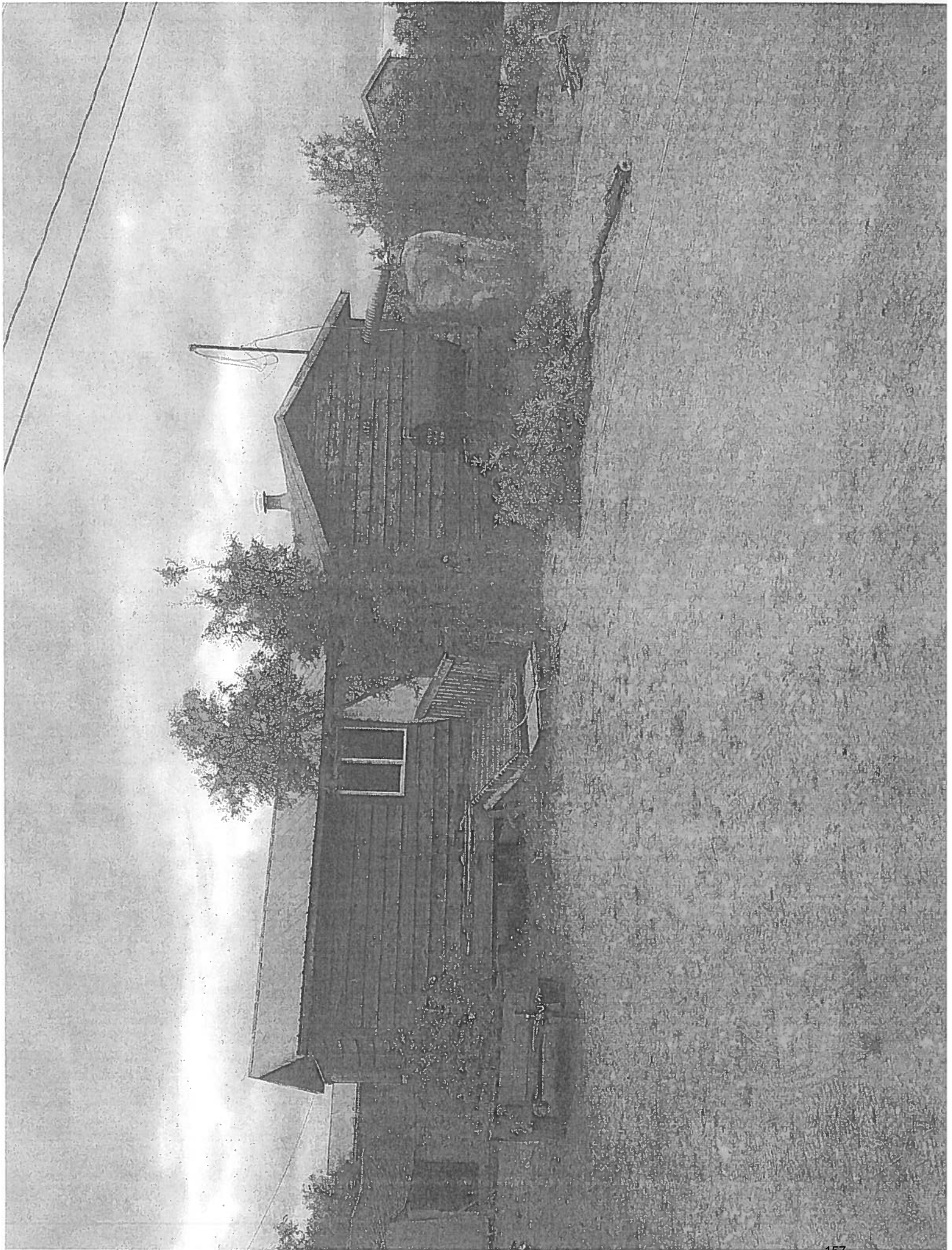
I served the above subpoena on Patty Burley, the person to whom it is addressed, on 10/31/19, 20 19, in Kenai, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance, except as provided in Criminal Rule 17.

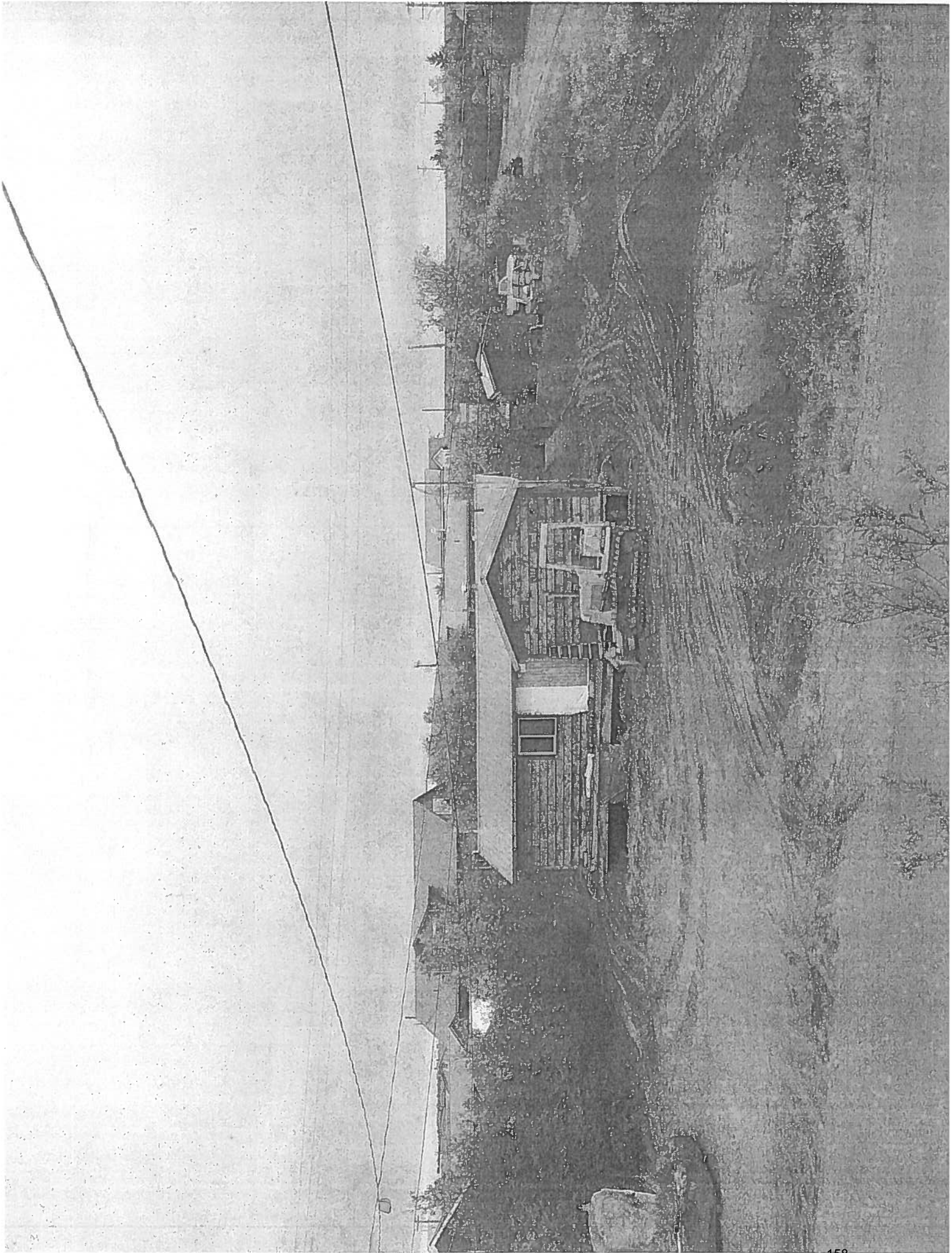
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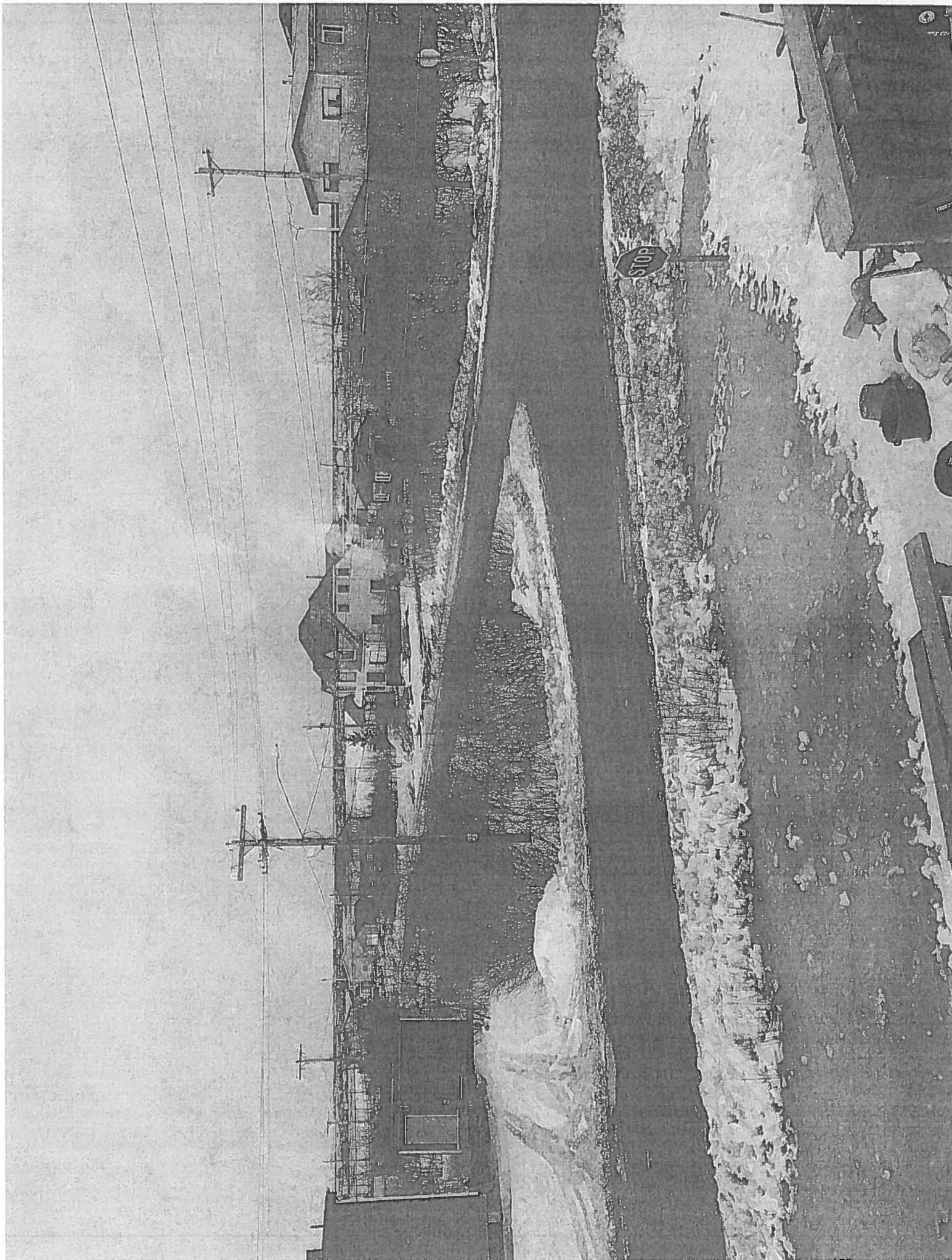
Attorney
Title

Jared Karr
Type or Print Name











Celebrating 50 Years of Service

CITY OF BETHEL
Managers Office

William F. Howell III
P.O. Box 1388, Bethel, Alaska 99559
Phone: (907)-543-2131
Fax: (907)-543-2702
Cell: (907) 545-4998
bhowell@cityofbethel.net

DATE: November 04, 2019
TO: Perry Barr, Mayor
FROM: Bill Howell, Acting City Manager
SUBJECT: City Manager's Report - October 20 through November 4, 2019

Current Events

- The last few weeks have been business as usual, managing day to day operations, attending meetings, dealing with personnel, planning and legal matters. Departments and Administration are busy preparing for winter operations. We are continuously improving City operations when and where opportunities present themselves.
- I worked closely with our HR and Finance Departments to fill three vacancies in the front office. Finance should be fully staffed in the next 10 days.
- Police Chief applications are being reviewed. A peer panel to select the new Chief is being formed under direction of HR and the Acting Chief of Police.
- I am encouraged by the internal promotion of two Public Work's employees for the Utilities and Hauled Services Foreperson positions. I congratulate Gary Watson and Clyde Erickson for assuming leadership in these positions. Their experience, knowledge and work ethic are a tremendous boon to City operations. I foresee continued improvement and increased efficiency in these departments through their oversight.
- The pool roof is still leaking. I am working with Public Works and Bethel Services Incorporated to apply for and complete warranty repair of the roof.
- I attended the Yuut Elitnaurviat Board meeting on October 30, 2019. Discussions included recruitment of local youth into trades, DHAT program and the soon to come Class-B CDL training program.

- On October 30, 2019 I met with the City Clerk and the City's attorney; Guess and Rudd for an update on the Kilbuck school site. A work plan for the cleanup is in the works.
- I am working with Patty Jones and Ashley Crace to continue Bethel's newest tradition, the second annual Christmas tree lighting. The three of us are coordinating the project with volunteers and a number of local entities. We are scaling the event this year to improve upon last year's success.

Ongoing Business

- The City auction went well. Auction revenues exceeded \$37,000.00.
- DOWL is continuing structural assessment of the Public Works floor. A plan for repair is in the works. Copy of the structural report was sent to Council and is attached to this report.
- We are waiting for a draft of the Long Range Transportation Plan (LRTP) from DOWL.
- A Department Head meeting was held on October 31, 2019. The next Department Head meeting is scheduled for November 7, 2019 at 10 A.M.

Response to Council questions

Public Works Bldg.

- Administration is researching water sewer grants and USDA grant/loans to fund construction of a new public works building. A legislative appropriation is also being considered.

KUC Road Dip

- Streets and roads filled the dip with gravel and bladed to grade.

Code enforcement animal control revenue

- Administration needs more time to research. Numbers for this period are decades old and not readily available.

Amazon tax revenue estimates

- Administration has requested this information from Finance. We will send out via E-mail when available.

Memorandum

Date: November 1, 2019
To: Bill Howell, Acting City Manager
From: Bo Foley, IT Director
Subject: IT Director's Report



October 2019 Current Events

- **Caselle Update:**
During this month, I rolled out the latest major Caselle update taking us from version 2019.05.131 to version 2019.08.84.
- **Eforce Software Slowdown:**
There has been a recurring problem with the Police Dept.'s CAD/RMS software lately where it is lagging quite badly and is wholly unresponsive. In investigating the issue, it appears that something the program is doing is tying up all of the system's physical resources. Currently, Arctic IT is assisting in helping me isolate the issue. Once we do that, we can determine the steps needed to fix it.
- **Council Member Rotation:**
With the new council members rotating in, I have been working with the City Clerk to make sure all the new email accounts are created, the council tablets are swept of old data, and that the old email accounts of exiting members are deactivated.
- **City of Bethel Hardware Rotation:**
It has been months in the making, but a contract for a lease agreement with Hewlett Packard was finalized after the City's temporary legal dept. managed to reach agreeable terms in the language of the document. With this, it will be taken to Council for final approval at which point I can finally pull the trigger on ordering new computers to replace our aging machines if approved.
- **Cyber Security Training Course:**
The City's Grant Manager secured funding that will enable me to head into Anchorage for a week-long course detailing different aspects of Cybersecurity. The course will have me away from Bethel for a week mid-November.
- **Xpress Billpay Communication Problem:**
The Utility Billing clerk informed me of errors she was getting when processing online payments. I looked into the error and thought it had been a missed configuration in the new firewall we had installed in September. I have been trying to work with Caselle, Xpress Billpay, and Arctic IT to alleviate the issue, but our attempts have been fruitless. Arctic IT and myself have been applying all the changes XBP and Caselle have asked of us, but we are still getting the errors when our end tries to communicate with XBP. We have little choice but to keep chipping away at this until we find the root of the issue and address it.

Memorandum

Date: November 1, 2019

To: Bill Howell, Acting City Manager

From: Bo Foley, IT Director

Subject: IT Director's Report



- **Business-As-Usual:**

Beyond the above-mentioned items, the month has been spent fixing or helping with run-of-the-mill trouble tickets such as email issues, printing/scanning, cellphone replacement, missing network drives, login problems, etc.

Future Plans

- **Hardware Rotation:**

One of my immediate concerns is to obtain our new computer hardware and have it rolled out across the different departments before January 2020. This is due to Windows 7 reaching the end of its service life. This means that Microsoft will stop supporting it and, more importantly, stop releasing security patches for it. It is important that we have no computers on the network that run Windows 7 or earlier versions of Windows to avoid any security vulnerabilities exploited by those who prey on operating systems that are no longer supported. Unfortunately, due to the time it took for HP to offer us agreeable terms (four months), this goal might be realized later than I would like on account of the logistics.

- **Office 365 Migration:**

Currently, the City utilizes G-Suite, which is an office environment created by Google, in conjunction with Microsoft Office. G-Suite has tools to emulate the different Apps within Microsoft Office, but the Microsoft product is by and large the more accepted and sought software. The City users tend to only use a handful of the Apps available with G-Suite while electing to use the typical Office Apps such as Word, Excel, and Power Point. To help save the City money in licensing costs, I will be endeavoring, with the rollout of our new computers, to shift from G-Suite to Office 365. Doing so will combine the costs of the two software packages we are using into one. This should net savings of around \$15,000 a fiscal year.

- **Vacation:**

I have a small vacation lined up for the end of October along with a large vacation for the last month of the year in which I will be out of the country for about five weeks. I plan to have Arctic IT make a large onsite visit somewhere in that timeframe to begin the rollout of our new computers while also possibly helping to migrate users to the new Office 365 environment.

PORT OF BETHEL

Post Office Box 1388
Bethel, Alaska 99559
Voice: 907-543-2310
Fax: 907-543-2311



TO: Bill Howell, Acting City Manager
FROM: Allen Wold, Port Director
SUBJECT: October 2019 Managers Report

- **Small Boat Harbor**
 - Cleaning around the Harbor using Loader
 - Pulling out Floats, Anchors, and Buoy's.
 - Bilging out boats.
 - Pulling out sunken boats and putting boats into storage for the winter. Buttoning up SBH.
- **City Dock/Beach 1/Petro Port**
 - Customers are in and out of the Dock.
 - Vessels being repaired on Beach 1.
 - 2 mainline barges (AK logistic) 600 thousand lbs. (AML) 1.6 Million lbs.
 - 20 tugs and barges offloading and loading freight.
 - Tugs and barges being pulled up for winter storage.
 - 8 fuel barges at the Petro Port offloading and loading fuel.
- **Port Office**
 - Property Maintenance checking on building daily.
 - Ordered office furniture
 - Called the Coast Guard about a leak from a Landing Craft and a Barge in Steam Boat Slough.
- **Admin**
 - Monthly Storage billing for customers.
 - Getting together with departments for a surplus sale.
 - Training City Dock Attendants in heavy equipment. Our full time employee got their CDL permit.
 - Helping out with the Sealed Bid Auction (Surplus sale) 80 bids (37 items were bid on) Totaling \$37,680.62
- **Seawall**
 - Consistent clean up.
 - Put more Life rings up and made rescue poles for the seawall.
 - Port Attendants checking on lower access daily to make sure life rings and rescue poles are still in place (Safety Checks)
 - Removal of trees with the flail mower on Lower Access Road (ordered more blades for the flail mower)
 - Added gravel to trail on Lower Access Road
 - Graveled roads around Beach 2. 8 Loads of D1.
 - 10 tugs and barges parking along the Seawall to avoid the storms.



CITY OF BETHEL
Fire Department

Celebrating 50 Years of Service

Daron Solesbee, Acting Fire Chief

P.O. Box 1388, Bethel, Alaska 99559

Phone: (907)-543-2131

Fax: (907)-543-2702

dsolesbee@cityofbethel.net

DATE: October 31, 2019

TO: Bill Howell, Acting City Manager

FROM: Daron Solesbee, Acting Fire Chief

SUBJECT: Management Report, October 2019

Current Events

- Medic-5 is on the Alaska Marine Lines barge to Seattle. The barge is expected to arrive in Seattle mid-November, as the barge had to moor in Dutch Harbor due to bad weather and high seas.
- The Stryker Power Pro XT cot and Power LOAD have been ordered and will be shipped directly to Braun Northwest, Inc. to be installed in Medic-5.
- The State of Alaska DHSS has issued new guidelines and scope of practice for EMS services. EMS Instructors will receive training on these changes, as will all EMS providers. These regulations went into effect on September 23, 2019.
- City of Bethel Property Maintenance personnel are in the process of rebuilding the fire station's front deck. The project is almost complete, but Property Maintenance is waiting on more material for the cable railing.
- Salzbrun Drilling and Welding Services installed two pilings in the fire station front yard. One piling will be used for the relocation of the flagpole and the other for the installation of a new basketball goal. The flagpole was taken down and will be placed on the piling soon.
- The Department is in the process of creating the Bethel Arson Investigation Task Force in conjunction with the Bethel Police Department, Alaska State Troopers, and the State Fire Marshal's Office. The task force is awaiting approval to access and utilize the ATF's Bomb Arson Tracking System (BATS) Program as a case management system. This system will assist the task force with organizing investigations and provide more resources for investigators.

Community Planning/Preparedness

- The Department is assisting administration with the cleanup and disposal of a release of Muriatic Acid inside a storage container at the pool. The storage container was secured by BFD personnel with a Knox padlock until City personnel can perform clean-up operations under the oversight of a qualified contractor. Unfortunately, EMI-Alaska was unable to meet our requested scope of work. This project is on hold until Spring 2020.
- The Department participated in the YKHC Emergency Preparedness Drill on October 9, 2019. This drill's scenario was a mass casualty incident that resulted from a wind-driven structure fire that spread to two adjacent structures. There were a total of 18 victims, including three simulated fatalities. The Department met its objectives, which were to initiate Incident Command, contain the simulated fire, rescue victims, triage casualties, properly communicate with partnering agencies, and provide prompt transport of victims to the YKDRH Emergency Department.
- Bethel Fire Department has been selected as a test site for the new Medicaid Supplemental Emergency Medical Transport (SEMT) program. Being part of this pilot will allow Bethel to shape the program to meet Bethel's needs. SEMT legislation (HB 176) was signed into law in June of last year. This law allows municipal ambulance services to receive reimbursement of 50% or more of the uncompensated cost (UCC) of providing ambulance services. City personnel are required to complete cost report spreadsheets based on FY18 and FY19 budget figures. The department is entering into a contract with AP Triton to provide this service to the City of Bethel for a fee of \$5,000.00 + 3% of annual earnings.

Training

- On 10/01/19 at 7:00 p.m., the EMT Meeting was cancelled due to personnel operating at a large structure fire.
- On 10/10/19 at 7:00 p.m. a Fire Meeting was held at the fire station. Responders reviewed a recent fire incident and conducted refresher training on the Incident Command System
- On 10/12/19, staff and volunteers EMT's completed an AHA Advanced Cardiac Life Support course. This certification is now required for State of Alaska EMT-3's, according to the new State of Alaska EMS Regulations.
- On 10/15/19 at 7:00 p.m. an EMT Meeting was held at the fire station. Responders reviewed SCBA use and maintenance for use during Carbon Monoxide incidents.

- On 10/24/19 at 7:00 p.m. a Fire Meeting was held at the fire station. Responders reviewed salvage and overhaul skills and knowledge.
- The 2019 EMT-1 Course will start on Monday, November 4 at 6:00 p.m. Students have already completed their EMT Physical Ability Tests and Basic Life Support classes.

Responses

- Between 10/01/19 and 10/31/19, the Bethel Fire Department responded to 149 EMS and 17 Fire incidents.
- On 10/01/19 at 3:05 p.m., Firefighters responded to H-Marker Lake Road for the report of a structure fire. Upon arrival, Firefighters observed a two-story log cabin with smoke and fire showing. Firefighters deployed several hose lines and set up a Fol-da-Tank for water supply. The fire was brought under control and overhauled. Due to safety issues and the deep-seated nature of the fire, responders were unable to be completely extinguish the fire. Staff remained on scene for a fire watch and extinguished a rekindle fire the same night. The structure burned for approximately four days. The cause of the fire was undetermined and the investigation is ongoing.
- On 10/02/19 at 4:18 p.m. Firefighters responded to Front Street for the report of a structure fire. Upon arrival, Firefighters observed a manufactured trailer home with smoke and flames showing. Firefighters deployed hose lines and extinguished the fire. One individual was arrested on scene and charged with Arson II.
- On 10/03/19 at 8:57 p.m. medics responded to AC Main for the report of a person who fractured their collarbone. The patient was assessed and transported to the hospital.
- On 10/03/19 at 11:37 p.m. medics responded to intersection of Seventh Avenue and Ridgcrest Drive for the report of a person who sustained human bites. The patient was assessed and transported to the hospital.
- On 10/06/19 at 5:19 p.m., medics responded to Cultural Center for the report of someone being stabbed in the hand with a knife. Medics found the wounds to be superficial and were able to clean and bandage the wounds. The patient refused transport to the hospital.
- On 10/08/19 at 2:45 a.m., medics responded to Prematernal Home for the report of a woman going into labor. The patient gave birth and medics assessed both, the mother and baby. They were transported to the YKDRH OB Department.

- On 10/14/19 at 4:06 a.m., Medics responded to Tundra Ridge for the report of a person with a prolapsed anus. The patient was assessed and transported to the hospital.
- On 10/15/19 at 6:28 a.m., medics responded to Ptarmigan Road for the report of a person with a self-inflicted gunshot wound to the head. The patient was assessed and transported to the hospital.

Budget/Financial

- The department is operating within budget.

Grants

- The Department was awarded \$5,141.00 from the Department of Homeland Security for a new Thermal Imaging Camera (TIC). Three quotes have been obtained and a purchase will be made once DHS approves it. This TIC will be installed on the new ladder truck, Truck-1.
- The Department was awarded funding through the Volunteer Fire Assistance program for \$7,470, for three sets of firefighting turnouts. Due to Federal budget cuts to the VFA program, this award was cut in half. Only one set of structural firefighter turnout gear will be purchased with these funds.
- The Department applied for and passed the first round of approval for the Phase 18 Code Blue Grant for \$45,000 for the remount of Medic-5 to a new chassis. Funds have been awarded and will be reimbursed once expenditures are made.
- The Department was awarded \$7,500 in Code Blue grant funding for a new power stretcher for Medic-6. The YKHC EMS Department administers this grant and BVESA has committed matching funds. The stretcher is in service in the new ambulance. Invoices were submitted to BVESA and the grant will be closed out soon.

Staffing/Recruitment

- The Department has one open Firefighter/EMT position, which is being advertised on the State of Alaska ALEXSys website and nation-wide on the IAFC's Daily Dispatch website. Five applications have been received to this date.
- The Department has a newly created Temporary Administrative Assistant position. The position description is now being advertised and should be filled soon.

- The Department hired Thomas Dymont as a full-time Firefighter/EMT. He is a current State of Alaska EMT-2 and was a former Summer Firefighter Intern. He is progressing through his Driver/Operator and Firefighter training.
- All employee evaluations have been completed to date.

Vehicles & Equipment

- The new ladder truck was repaired by a technician from Hughes Fire Equipment. Issues corrected were the nozzle nesting feature of the elevated master stream, aerial boom centering feature, and an upgrade to the Command Zone 3 aerial operating software.
- We have received the parts for the Class-A Foam system for Engine-4. Staff determined that a 1" valve was required, upon finding the ¾" valve shipped was too small for the current foam system plumbing. The foam system will be installed upon receipt of the properly sized valve.
- Department mobile and portable radios and pagers were repaired and tuned up by a technician from ProComm Alaska.
- Pump and aerial testing was performed by a technician from Underwriter's Laboratories. Engine-3 and Engine-4 failed their vacuum tests. Staff will adjust and/or replace packing material in E-3 and E-4's pump packing glands and repeat the vacuum test. Truck-1 passed its pump test, but failed the aerial test. See attached reports. Staff have contacted Hughes Fire Equipment for a technician to troubleshoot and replace parts on Truck-1's aerial device.

FIRE DEPARTMENT VEHICLE STATUS			
Vehicle	Type	Year	Status
Medic 4	Ambulance	1999	<i>(Backup ambulance) In service, Airbags repaired.</i>
Medic 5	Ambulance	2003	Being barged to Seattle, WA to be refurbished and remounted onto a new 2019 Dodge Ram 4500, gas chassis at Braun Northwest, Inc.
Medic 6	Ambulance	2017	<i>(Frontline Ambulance) In service.</i>
Engine 4	Pumper	2013	<i>(Frontline pumper) In service, Seat belt sensor silenced but still needing repair by V&E. DEF tank heater malfunction parts on order.</i>
Engine 3	Pumper	1986	<i>Being outfitted as a tender and water supply unit. 3000 feet of LDH (future). (Poor overall condition needs replacement) Generator was remounted.</i>
Truck 1	Ladder Truck	2017	Outfitting, in service. See 2019 UL Pump and Aerial reports. DEF sensor malfunction (parts ordered by V&E)
Com 1	Pickup	2014	In service
Com 2	Pickup	2004	In service.

TO: Bill Howell
FROM: Christine Blake, Finance Director
SUBJECT: November 2019 Managers Report

Staff

Since the last Manager's report we lost three people in Finance (37% of our department). Fortunately, we have filled all three (although one is temporary), with two of them starting mid- November. The salaries we have in the budget are not adequate to attract and keep candidates that have the skills and abilities listed in the job descriptions, and I am carefully squeezing every dollar out of our personnel budget.

Utility Billing

The new Billing Clerk will start in a couple of weeks and our Asst. Finance Director will be doing the billing for October. We have had many calls regarding billing errors and are correcting them as the calls come in, so I expect we will have a better outcome for October's billing (better, but not perfect).

We will be including an insert in the October bills with information and instructions regarding online bill pay and paperless billing.

The new folder/stuffer arrived and we are waiting for Pitney to come out and provide training.

FY19 Audit

We are working hard to get accounts reconciled and final entries recorded and we will start pulling documents for the auditors this week. They will be on site November 12- 22. Due to the time we are spending on audit preparation, many of the FY20 numbers are not up to date.

IRS Debt

Last month we paid the outstanding penalties and interest related to FY17 and FY18 payroll taxes. The total was \$29,539. The penalties and interest were for late and missed payment of payroll taxes and the City tried unsuccessfully to work with the IRS to avoid the charges. This situation has had a negative impact on our RUBA score, and now that we are fully compliant with the IRS, RUBA will be rescoring us soon.

While working on this matter I learned from the IRS that we are looking at another \$21,100 in Civil Penalties for "failure to file W2's with willful disregard". The City has filed an appeal on the matter and we are waiting for the response. This has not yet impacted our RUBA score, and if our appeal is denied, we will need to pay this immediately.

MEMORANDUM

DATE: November 4, 2019

TO: William F. Howell, III, Acting City Manager

FROM: John Sargent, Grant Manager

SUBJECT: Grant Manager's Report – November 12, 2019 Bethel City Council Meeting



Grant Award

The City was awarded \$500,000 in a School Violence Prevention Program (SVPP) grant that the City applied for on behalf of the Lower Kuskokwim School District. The funds from the Department of Justice, Community Oriented Policing Services, will cover the cost associated with the purchase of a cell phone "panic button" alert application, exit door bar alarms, key fobs for all doors, and a "buzz-in" entry system with cameras, intercom, and door lock controls. The City and LKSD will develop a Memorandum of Agreement between the two entities that defines the roles of each in the grant administration process.

The Department of Justice received 598 SVPP grant applications in the nation-wide solicitation and approved 103 awards valued at \$32.5 million. Only two entities received awards in Alaska: City of Bethel and Fairbanks North Star Borough School District.

Grant Management

Lift Station Improvement Project

The City is anxious to secure the grant agreement addendum from Village Safe Water valued at \$1,000,000 to cover increased costs associated with the Lift Station project. The City's Best Practices score (RUBA score) of zero in the "Payroll Liability Compliance" category stopped all VSW progress on the City's behalf. The City has since paid its taxes to the IRS and received documentation thereunto appertaining. State reviewers are rescoring Bethel's Best Practices conduct as a courtesy.

The Avenues Project

The City signed a second scope of work document to have DOWL perform predevelopment services on the Avenues project. DOWL plans to send surveyors to Bethel this week.

Audit Preparation

I copied and emailed to Carmen Jackson, CPA, all the City's grant reports, progress and financial reports, and supporting documents for all active grants during FY 2019. I continue to answer questions and provide information in the interest of audit prep.

Purchasing Agent Duties

RFP for Vending Machines

I reviewed a Request for Proposals to allow a vending machine company to install vending machines in select City buildings. The RFP asks prospective vending machine companies how much they propose to give the City for the privilege of vending machine placement. Final review and issuance is expected soon.

Dumpsters

The City received City Council approval to negotiate and execute a contract with Wastequip for the purchase of 18 dumpsters for \$39,954. Shorty's Shop relinquished their tentative bid award, so the City selected the second best bid submitted for award. The City and Wastequip signed the contract. The dumpsters will be manufactured and shipped to Bethel on the first barge of 2020.

AP Triton

I continue my work on the AP Triton contract so that the City can purchase financial services that result in the City receiving Medicaid reimbursements for ambulance transports.

Administrative Duties

I presented the Budget Modification form and how to use it to those who attended the Department Head meeting held on October 31, 2019. I emailed the newly developed template to department heads after the meeting. I received direction from the Acting City Manager to develop a Budget Mod policy/protocol.



City of Bethel Grant Summary Fiscal Year 2020

Preparing

Sponsor	Name	Products/Services	City Depts. (Partners)	Date	\$ Grant \$ City Match
Rasmuson Foundation	Tier 1 Grant	Feasibility Study to construct a gym to YK Fitness Center	Public Works	July 2020	\$25,000 0
Bethel Community Services Foundation	Community Grant	Feasibility Study to construct a gym to YK Fitness Center	Public Works	July 2020	\$15,000 0
United States Dept. of Agriculture-Rural Development	Water and wastewater grant/loan program	Piped water and sewer system in The Avenues subdivision	Public Works	Target 1/31/19	\$13,321,000 \$306,000

Submitted in Fiscal Year 2020

Most recent first

Sponsor	Name	Products/Services	City Depts.	Date	\$ Grant \$ Match
AK Dept. of Transportation	Statewide Transportation Improvement Project Nomination 2020-2023	Akakeek, Ptarmigan, Delapp Streets Heavy Use Road Improvement Project	Public Works	9/15/19	\$3,034,424 \$494,886
Village Safe Water Pgm, Dept of Env. Conservation	Sewer Lagoon Improvements Grant	New lagoon pump & new skiff with trailer	Public Works	8/13/19	\$155,238 0
AK Dept. of Transportation, Transit Division	Community Transportation Grant	Public transit system operations	Public Works	12/25/19	\$316,832 \$86,381

Approved in Fiscal Year 2020

Most recent first

Sponsor	Name	Products/Services	City Depts.	Date	\$ Grant \$ Match
U.S. Department of Justice, COPS Office	School Violence Prevention Program	Alert button mobil phone ap, exit door bar alarms, card reader door entry system, controlled front entrance.	Admin.	11/12/19	\$500,000 \$166,667 LKSD
AK Dept. of Env. Conservation, Village Safe Water Program	Water and Wastewater Program	Design, build, and install two electric panels for City Hall and City Shop and complete current rehab. of Main Lift Station.	Public Works	8/30/19	\$279,827
Alaska Dept. of Health and Social Services	Community Service Patrol Program	Community Service Patrol Program	Public Works	7/1/19	\$323,081 \$32,308 in-kind
AK Dept. of Env. Cons, Village Safe Water Pgm.	Infrastructure Protection Funding	Replace heat trace and/or electric panels on sewer line from Airport to FAA.	Public Works	7/19/19	\$137,700 \$22,500 in-kind
Alaska Division of Homeland Security and Emerg. Mgmt.	State Homeland Security Program Grant	Thermal imager & fencing around tank at water treatment plant	Fire	8/19	\$49,141 0
Total					\$1,289,749

3

30 September, 2019



CITY OF BETHEL

Post Office Box 1388
Bethel, Alaska 99559
Phone: 907-543-2047

TO: City Manager
FROM: Human Resources
SUBJECT: October 2019 Manager Report

DATE: 31 October 2019

Position	Number of Vacancies	Number of New Applications	Number Hired During Period	Number of Vacancies Remaining	Applicants in Review
City Manager	1	0	0	1	0
City Attorney	1	0	0	1	0
Police Chief	1	0	0	1	2
Driver Hauled	6	2	0	6	2
Driver-Landfill	1	0	0	1	0
Water Operator	1	0	0	1	0
Mech-II	2	0	0	2	0
TOTALS	13	2	0	13	4

Applications and Hiring:

****Two candidates for Chief of Police have been selected for interview, to be conducted during the 18-22 November time frame****

HR received a total of 7 **Applications** in October

From those 5 Applicants:

- 1 Water Foreman was selected internally
- 2 CDL candidates were selected for OJT training through a partnership with the State of Alaska.
- 1 internal selection was made for a vacant account specialist that became vacant and simultaneously filled at time of this report.

We currently have 7 job positions with a total of 13 openings, with 4 applications under review.

BEACON Programs:

30 September, 2019

1 – Pre-employment BEACON test was conducted during the month of October

Reports of Injury:

There was one report of injury

Administrative Actions:

Multiple routine PAR actions were executed.

Multiple yearly performance evaluations were submitted and processed.

Employee related announcements:

Training, Conferences and Seminars:

HR Manager attended the yearly APEI conference in Anchorage 22-24 October and received continuing education training in management and hiring programs.

James P. Harris
Human Resources Manager

“Deep Sea and Transportation Center of the Kuskokwim”

To: Bill Howell, Acting City Manager

From: Ted Meyer, Planner

Subject: October Manager's Report

Date: November 1, 2019

SUBDIVISIONS

Blue Sky Subdivision

The performance bond has been issued and signed by Blue Sky. We anticipate delivery shortly.

ONC Ciulllkulek Subdivision

Met with ONC staff and their consultants while teleconferencing with our consultant, DOWL staff on October 15 to discuss the remaining punch list of tasks identified in the subdivision agreement. DOWL gave the green light for ONC to put the project out to bid in order to acquire the required insurance data. The Notice to Proceed for road construction will be issued only after our consultant gives the thumbs up and the subdivision agreement is signed by the city manager.

SITE PLAN PERMITS

Six site plan permit applications were approved during the month of October.

MAPPING

The Planning Department received the updated 2018 aerial imagery on October 1 for the Bethel Address GIS program application received earlier in the summer. The imagery enhances our work as it visually includes all construction that has taken place since 2002 (the date of last mapping project).

CODE ENFORCEMENT

Staff continues to work with the attorney on a code enforcement issue. The issue will be heard by the Planning Commission on November 14.

LAND USE SURVEY

Staff performed a windshield land use survey of Kasayuli in preparation for a zoning hearing with the Planning Commission later this year. This will bring the subdivision into compliance with the City's zoning code.

CONDITIONAL USE PERMIT APPLICATION FOR MARIJUANA LICENSE

Staff developed a CUP application strictly for marijuana.

US ARMY CORPS OF ENGINEERS VISIT TO BETHEL

Have been coordinating with the Corp about a tentative visit to Bethel and a November 14 meeting with the Planning Commission about the City's Wetland General Permit Program. They will confirm the date this week.



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MEMORANDUM

DATE: 10.31.2019
TO: Bill Howell, Acting City Manager
FROM: Bill Arnold, Public Works Director
SUBJECT: Manager's Report – Public Works Department

Programs/Divisions

Hauled Utilities: Foreman is out on Pre-Approved PTO

Utility Maintenance: 6 alarms on residential lift stations were responded to. Multiple issues with grinder pumps, heat trace, and float systems.

- Monthly meter reading and service connections were completed
- Clean up and organization of shops and vehicles.
- 6 residential lift station repairs
- Power restored to heat-trace on Owl St and 6th ave. Heat trace turned on
- Line flushing and leveling activities on low-flow and plugged sewer lines. Non-compliance reports were filled out per DEC requirements.
- Sewer Lagoon discharge is complete and samples are being sent away for analysis.
- Institutional Corridor: 1 inch ball valve cracked and leaked. Repaired.
- Bethel Heights shut-down was complete. 24 corp-stops, 3 new residential tie-ins, and replaced 7 hydrant valves and 8 drain valves.
- Glycol arrived and we began putting it in storage.
- Winterized lagoon pump.
- Vango contractors arrived 10/21 and replaced old heat-trace along highway and installed heater in chemical connex. Complete 10/28
- Daily safety meetings.
- City hall lift station failure. Pulled grinder pumps and cleaned them.
- All 3 Utility Maint. Trucks are having issues that require repairs. Several of these are major safety issues. Continue to work with V&E to repair them, but some issues are arising due to 2 of the vehicles are more than 10 years old.

Property Maintenance:

- PW Building
 - Fire sprinkling system NOT in operation. Dry line system was charged with water and leaks developed. Frontier Fire contracting inspected damage and is providing quotation/estimation to repair system. Also a compressor will need to be ordered to replace the failed dry system failure currently in place.
 - South Bay roll up door entrance closed. NO USE. Serious problems exist within the

flooring. As mentioned in manager report early 2019. PW building floor and foundation are experiencing issues. During an inspection, building maintenance discovered broken joists, brackets, support flooring and gusset beams and substantial wood rot. Engineering firm completed an inspection of the building and has provided a preliminary memo summarizing the findings that will be outlined in greater detail on the engineering report. In the meantime a section of the South Bay has been closed to use until a remedy plan can be developed.

- General preventative maintenance on the used oil furnaces has begun in preparation for the colder season approaching.
- Several programming issues were discovered with new boiler install. Contractor remedied the issues and is monitoring.

- City Hall

- Parking lot paving project complete. Front entrance (Stairs and Handicap ramp) replaced and operational. Open to public use. However, the new parking lot is already showing signs of settling and some adjustments of the ramp and stairs will be needed often until the settling subsides. Support pads will need to be adjusted to contact ground as parking lot settles.
- Temporary parking lines are being painted to determine functional layout for permanent painting of parking, loading and unloading, fire line and handicap markings/lines. Paint and paint machine has been rented from Anchorage. Machine arrived, paint ordered and arrived. Need dry day with warmer temperature to complete the project.
- Window closures on most windows throughout the building are non-operational and will need to be replaced. Quotation requested for the correct arm length for closure. Lumberyard not able to supply the correct length. Will need to reach out to Spenard Builders for correct parts.
- Boiler general preventative maintenance service complete.
- Air furnace needs cleaned and tune up.
- Glycol in City Hall system will need a full replacement this winter. Awaiting order of glycol and other time sensitive summer projects to be complete before this task.
- Air trap auto vents (vacuum breaks) installed in high points between City Clerk office and HR office to prevent air lock in that area..
- Troubleshoot back door opening issue to find the striker plate and locking mechanism were off center by a small amount. Repaired. Door in normal operation.

- Court House

- **Dry Sprinkler System:**
 - Dry system is in NORMAL operation minus ONE isolated sprinkler head located on the outside of the building to the left of the front main entrance. Frontier Fire Contractor inspected the damage and is providing estimate to make system in full working order again.
 - The dry system has a small leak in the system piping just above court room 4. Leak is temporarily fixed and holding. Static air pressure is remaining constant with additional help from the fire system air compressor. A plan is

being developed to have the dry system evaluated for replacement and repair Fall/Winter 2019 by a contracted service. Pressures checked daily.

- Frontier Fire contractor arrived to complete onsite inspection and recommend repair. Contractor will be providing an estimation and quotation for repair.

- **Water leak damage remediation survey:**

- This will need to be planned out after time sensitive summer projects are complete.

- Port Office Building

- The aircon in the server room is non-operational. Original installer contacted about warranty work to the system. Eric Middlebrook (Local HVAC contractor) has been contacted by original installer to complete the work. TBD

- Port Dock Warehouse Building

- Roll up Door on East side was accidentally destroyed by a customer who drove into the door. Driver provided insurance information. Materials to repair were ordered and contractor technician scheduled to complete the work. Payment for the damage will need to be coordinated with the financial department or Port Department.

- Old “Bus Barn” Warehouse Building

- The foundation is failing
 - Man door is no longer accessible as the floor and door jam are being severely affected by the foundation movement.

- Log Cabin

- No new updates. Building is in NON USE status. Water disconnected.
 - Graffiti and vandalism are a continuing constant problem.
 - Kids consistently climb the building to get on the roof.
 - Foundation has settled enough that the entrance closest to the ONC multipurpose building is jammed itself and will not operate.

- YKFC - Pool

- Both Boilers in good working condition. Minor adjustments being made now to have similar cycles per day on each.
 - Reports of roofing materials flapping freely in the wind. Area inspected. Ordered materials needed to repair.
 - Air mover on west side the pool deck has failed. New fan ordered and replaced.
 - Roof leaking during rain and wind. This is a recurring issue and needs to be address by city leadership and the original installers/constructors. Stacey Reardon has videos and photos to show the problem. Bill Arnold has been notified, PnR committee has been informed. IT IS NOT CONDENSATION DRIPPING FROM THE CEILING. The locations of the leaks are consistent dependent on wind direction, speed and rain level. Multiple reports of this issue during this month.

- Police Department
 - Periodic low fuel level alarm activation for the emergency power generator. The issue has been isolated to a set of terminals outside the building that get wet and short causing a false alarm. The alarm will short and activate when the weather is rainy and windy.
 - This has been addressed multiple times including with the original installer but continues to occur.
 - We've had the electrical contractor troubleshoot. No discrepancies found. Perhaps the original ONSITE GEN contractor will need to be involved.
 - VnE department has been made aware and is also troubleshooting.
 - Boiler #2 (Right side) had a firomatic valve failure and went into lock out from lack of fuel flow. This is a fire prevention device and can be replaced. They are known to fail/close occasionally.
- Fire Department
 - BFD front entry replacement project in progress.
 - Significant amount of water and dry rot was discovered. Acting City Manager, Chief Howell requested local contractor repair the rotted areas. All work on the new deck is on hold until the contractor completes the work. Once complete, City Maintenance will resume on the rebuild.
 - Rear deck has been repaired and leveled. Temporary set of stairs has been placed until Front entrance is complete. Then City Maint, will focus its efforts on making new rear steps.
 - Paring lot has large puddled areas from ground settling. Placed gravel and spread out evenly to prevent large puddles of water to build up.
- Bethel Heights Water plant
 - Both Main boilers are online and operating for winter. Minor service needed. Small boiler placed in off status for winter.
- City Sub Water Plant
 - Minor adjustments and repairs being made to the A and B loop glycol line returns and supply. Pump boiler pressures up with additional glycol and brought boilers to online/operational status for winter.
- Teen Center
 - New Push bar exits installed on Teen center back doors.
 - Leaking water valve found and replaced during building checks.
 - Run gutter was vandalized on building. Completely removed. New elbow for down spout installed. Down spout remaining to be installed.
- Senior Center
 - Boilers inspected and prepared for fire up. Building has three boilers ready for operation. Currently one boiler is being utilized to keep the building from developing a moisture/humidity issue. AS the temperature drop we will bring more boilers online to prevent freeze up.

- Reports of children gaining access to the building has become more prevalent. Evidence of kids playing around, under and on top of the building is present.
- New windows have been found broken or cracked.
- Provided building walkthrough for potential customer interested in converting the building into a laundromat.

Parks and Recreation:

- Parks and Rec in General
 - Park and Rec activities as a majority ceased Oct 1st.
 - No employees for Parks and Rec.
 - When maint staff are available, rounds of the parks are being conducted.
 - Identified problems and needs for repairs will be prioritized accordingly and done if possible.
 - Same as above for boardwalks.
 - Identified areas for level and board replacement are being prioritized.
- Projects so far, more to be considered.
 - All play parks
 - General maintenance and grounds upkeep
 - Trashcan repair/replacement
 - Ground cover/chips upkeep has been halted for winter also out of chips.
 - Equipment repair and maintenance
 - Pinky's Park
 - Potential Softball field refurbish/re-sod/re-seed in discussion
 - Potential dugout repairs, repaint (Moved to Next year project)
 - Bleacher maintenance (Moved to Next Year project)
 - Soccer Sports Field
 - Completed - Temporary fencing to prevent field traffic
 - Completed - Hydro Seed and ground aerating completed
 - Completed – Bleachers On site
 - Completed – Paint concrete blocks separating field from parking
 - Completed – Portable bathrooms on site
 - Completed – Bike rack ready to be moved to location and installed
 - Completed - As needed agreement made for Maintenance contract options for field with Codman Services
 - Fall/Winter Build - Build and place information bulletin stand at location
 - TBD – Funding for permanent fencing. Quotations received for two options. Shipping costs equal or greater to the materials cost.
 - Airport Cemetery (on Hold status)
 - Requested quotation for additional fencing
 - RFP initiated for hydro seeding proposals
 - TBD - Installing additional fencing
 - TBD - Hydro seeding expanded sections

- Boardwalks

- Completed - Trial Lighting pole ordered
- Completed – Trial Solar Lighting fixture received
- TBD – Install the trial solar lighting
- General maintenance and upkeep
- Vegetation trim back
- Way finding signage
- Location marking signage project.
- Leveling boardwalk
- Board replacement as needed
- Trash can replacement as needed
- Benches and sitting areas repairs

Road Maintenance:

Streets and Roads replace driveway culvert in 1009 BNC Subdivision, which was crushed by water and sewer trucks. This culvert was not draining water in the spring properly due to being crushed and now that it is fixed, it should not be a problem anymore.

Streets and Roads is also done with mixing road salt sand at the north side of city shop for our road sander. We mixed 48 bags of salt and 15 bags of calcium chloride into this pile.

Streets and Roads hauled in sand from city sand pit to build up Jacob's Way, Swan Court, and Yukon Court. After that was done we capped them off with D-1 gravel.

Streets and Roads used the 324E excavator to dig up the 616 feet of asphalt on Ptarmigan Street and Tundra Ridge Subdivision, between 9114 and 9123. Then, we hauled road sand to bring it up to level, and capped it off with D-1 gravel.

Streets and Roads hauled in road sand to build up Mission Lake Road and installed a seawall culvert pipe across Mission Lake. This road has been sinking, because of this, it has been muddy, and has washed out during the spring thaw.

Vehicles and Equipment:

For V&E: business as usual, Fleet in, hopefully Fleet out. New water truck, totem steamer and 950M came in on the last barge and have been put into service except the steamer which is pickled and put away for the winter.

Transit System:

October 1-31, 2019 the Bethel Transit System transported 2681 passengers, 290 of those riders had a disability and 237 were elders that paid the regular trip fare. 820 passengers used the ONC monthly bus passes, senior and caregivers. Revenue for the month was \$2467 ONC Monthly Passes, \$1206 TWC Trip and Day passes, and \$2227 regular trip passes, day passes, and monthly passes. The average daily ridership is 100 – 125.

There are two drivers, Sally Evans, who is a full time driver, and Brenda J. George, is a part time driver.

The new bus arrived on the last barge. City Shop, Jake Thompson, City Shop Foreman, went down and did the acceptance inspection, 12 pages, and brought it up to the Transit Bus Barn. I put the Transit LOGO decals and the new studded tires on. We are still waiting for the required paper work so we can get the license plates and Tags. As soon as we do, we will start using it.

Currently our main bus is 5 years old and has 163,000+ Bethel miles. We had requested another new bus in the FY 20 grant, City Council approve it, and now we are waiting for the State /DOT to approve it. As soon as they do, we would like to get it ordered so it is on the first summer barge (2020) and not the last one.

The State / DOT has not upload the FY 20 Billing Summaries, on BlackCat, and we not able to submit them, July, August and September, until they do. Hopefully next week. We have submitted the National Transportation Data report, the Title VI Nondiscrimination Program Plan and signed FY2020 Transportation Grant acceptances.

We have taken off the summer tires, three buses, and put the winter studded tires on. Bus 438 and 439 have last years studded tires and the new bus will have new studded tires.

Landfill / Recycle Center:

Last month we got all the debris from YKHC demolishing the North Wing. This month, we got all the debris from YKHC remodeling. Both were huge amounts of debris. In order to deal with all of this debris, we simply pushed it back and then had Randy from Streets and Roads bring the excavator up and mash it all down so that next spring we can cover it with sand.

Streets and Roads has hauled a great deal of cover material and sand for our soon to be salt sand pile, so that we can cover daily in the winter.

We got our new 950 loader on the last barge. What a delight to get that. We want to thank everyone that had a part of getting that piece of equipment. We have needed newer equipment for a long time. Thank you everyone.

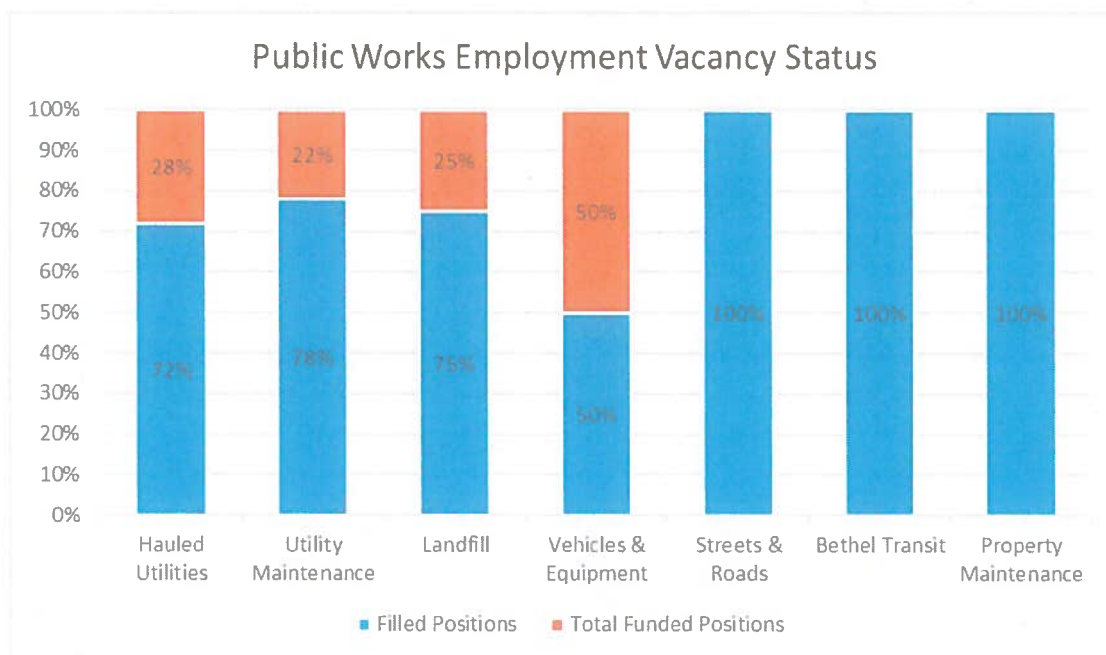
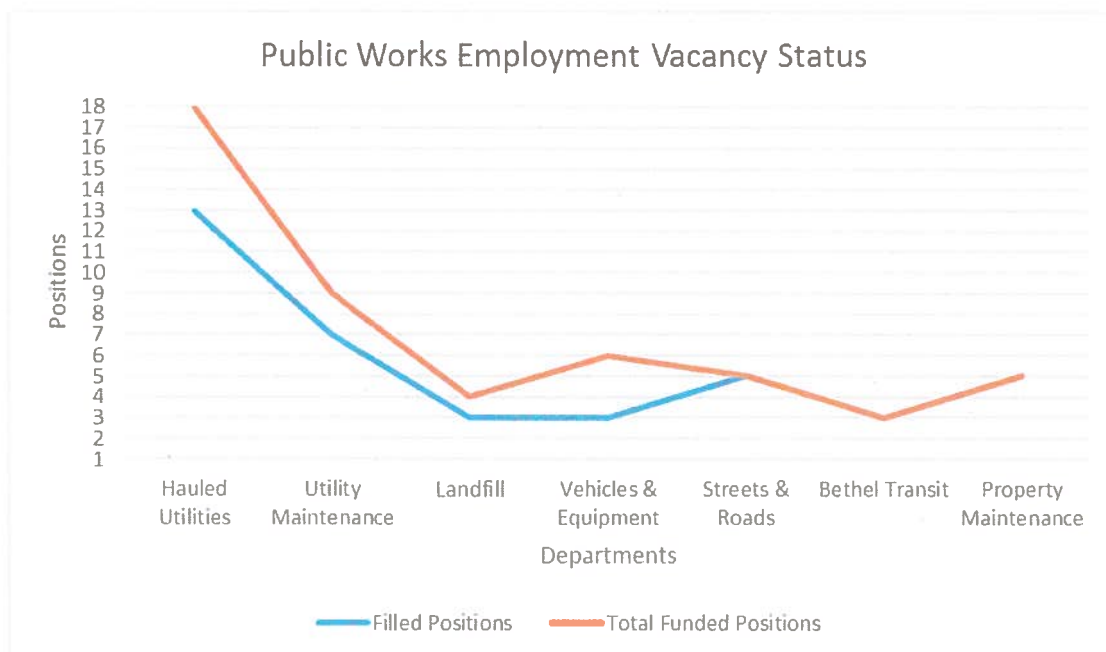
Water Plant Operations:

- Bethel Heights Water plant
 - Electrical contractor reviewing future SCADA system, 52 foot tower installed for SCADA commutation to City Sub main computer .Winter heated loops turned on and inspected.
 - Boilers inspected and came on online for winter season.
- City Sub Water Plant, electrical contractor installed 52 foot tower for future new SCADA system.
- A/B loop glycol lines charged and new air relief valves installed.

Institutional Corridor Update: No new service connections. 1In ball valve broke and leaked. Repaired.

Staffing Issues/Concerns/Training:

Chart updated: 10/31/2019



CITY OF BETHEL POLICE DEPARTMENT



October, 2019 Monthly Report

Personnel:

Our recruit attending the Department of Public Safety Academy in Sitka, Alaska is continuing to do well and is on track to graduate November 15. Once he graduates he will begin his field training with a certified Field Training Officer. Our new CSP's are on their own and are doing great. We have one dispatcher who is almost completed with her field training and will be going on her own in November. Our two new Investigators are all settled in and have been doing a great job. We have a lateral officer who will be joining our team mid-November. We have one patrol applicant who has been given a conditional offer of employment and has accepted. The applicant will now start our testing process. If the applicant successfully passes our testing process Bethel Police Department will be fully staffed with patrol officers.

We currently have our WAANT Investigator position open internally and have some candidates in house that have expressed interest.

We will be starting oral boards in November for the Chief of Police candidates.

All administrative, CSO, CSP, and dispatch positions are fully staffed.

Operations:

There were approximately 1,558 calls for service the month of October, an increase of approximately 236 cases from September and down approximately 69 cases from the same period in 2018. The number of calls requiring investigative reports was at 114, down 9 from September and down 13 from 2018. There were 422 intoxicated pedestrian calls compared to 442 for the same period last year. The number of domestic violence

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arrests was 32 this month compared to 43 for the same period in 2018 and 35 in September. There were 3 DUI arrests compared to 11 for the same period last year and 9 arrest in August. There was 1 death investigations in October, compared to 1 for the same period last year.

This month we've seen an increase of stolen vehicles. We would like to remind the community of Bethel not to leave keys anywhere inside of the vehicles and also to lock your vehicle. Most of the vehicles stolen in Bethel have had the keys left inside of the vehicle.

Bethel Police Department teamed up with LKSD to provide some extra presence inside of the high school for a couple of weeks following a report of a possible threat to the school. We enjoyed spending the extra time at the school getting to know the staff and students. Bethel Police Department staff also participated in the dunk booth at the Halloween carnival this year. Everyone who participated had a great time.

Bethel Police Department and Bethel Fire Department are working together to create a joint Arson Task Force.

Animal Control:

There were 38 animal control calls for service for the month with no reported dog bites. Our CSOs work closely with Bethel Friends of Canine to take care of the pound. Bethel Friends of Canine are doing a great job getting the animals into foster homes or adopted out. We appreciate the assistance we are getting from Bethel Friends of Canine.

City of Bethel, Board of Adjustment Appeal Hearing
Dan and Dawn Hackney, Appeal No. 20-01
December 9, 2021

Link to Audio Records

Copy and paste the link into your browser or right click and open hyperlink.

11-14-2019 Planning Commission Hearing-Jumper Testimony

https://www.cityofbethel.org/vertical/sites/%7B86032ACB-92B0-4505-919A-3F45B84FECD9%7D/uploads/08-19-2021_A_Planning_Commission_Remand_Hearing.WMA

08-19-2021 A Planning Commission Remand Hearing

https://www.cityofbethel.org/vertical/sites/%7B86032ACB-92B0-4505-919A-3F45B84FECD9%7D/uploads/08-19-2021_B_Planning_Commission_Remand_Hearing.WMA

08-19-2021 B Planning Commission Remand Hearing

https://www.cityofbethel.org/vertical/sites/%7B86032ACB-92B0-4505-919A-3F45B84FECD9%7D/uploads/09-02-2021_Planning_Commission_Remand_Hearing_Continuation.m4a

08-26-2021 Planning Commission Remand Hearing

https://www.cityofbethel.org/vertical/sites/%7B86032ACB-92B0-4505-919A-3F45B84FECD9%7D/uploads/Jumper_Testimony_Planning_Commission_Hearing_11-14-2019.WMA