



	Presented
Comment:	11/24/08
Verified by:	<i>Kristie Smithers</i>

**WASILLA CITY COUNCIL INFORMATION MEMORANDUM**

**IM No. 08-27**

**TITLE: LETTER FROM SUSITNA INVESTMENTS, LLC IN REGARD TO APPEAL CASE 08-02**

Agenda of: November 24, 2008  
 Originator: Kristie Smithers, City Clerk

Date: November 7, 2008

Route to:	Department	Signature/Date
X	Finance, Risk Management & MIS Director Purchasing	
X	Deputy Administrator Planning, Economic Development, Human Resources	<i>Margaret L. Gale</i>
X	City Clerk	<i>Kristie Smithers</i>

**REVIEWED BY MAYOR VERNE E. RUPRIGHT:**

*Verne E. Rupright*

**FISCAL IMPACT:**  yes\$ or  no      Funds Available  yes  no

Account name/number:

Attachments: Letter from Susitna Investments, LLC dated November 5, 2008; and Letter from Friends of Mat-Su dated November 4, 2008

**SUMMARY STATEMENT:**

In May, the Planning Commission issued a decision for a request from Fred Meyers to expand their parking area. In June, the City Clerk received two appeals based on the decision of the Planning Commission: one from the Friends of Mat-Su, Appeal Case No. 08-01, and another from Susitna Investments, LLC, Appeal Case No. 08-02.

In September the hearing officer, Robert A. (Bert) Hall, reversed the decision of the Planning Commission's decision in both cases.

At the time of filing the appeal, pursuant to WMC 16.36.060, both parties paid a \$500 appeal filing fee, and in addition paid a \$500 deposit to cover the costs of the transcript, advertising and mailing. In September the City Clerk reimbursed each party the remaining balance of their deposit (\$155.53 to Friends of Mat-Su and \$155.52 to Susitna Investments, LLC).

The attached letters were received by the City Clerk from Susitna Investments, LLC, and Friends of Mat-Su in regard to reimbursement of fees.

At this time there are no provisions in the Wasilla Municipal Code that allow for reimbursement to the appellant when the Hearing Officer reverses the decision of the Planning Commission's decision.

# **SUSITNA INVESTMENTS, LLC**

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November 5, 2008

Kristie L. Smithers, MMC  
City Clerk  
City of Wasilla  
290 E. Earning Ave.  
Wasilla, AK 99654-7091

**RECEIVED**

NOV 06 2008

OFFICE OF THE CITY CLERK  
CITY OF WASILLA

RE: Appeal Case No. 08-02 Susitna Investments vs. Fred Meyer

Dear Ms. Smithers,

We are writing to you in the wake of Susitna Investment's successful appeal against the Fred Meyer expansion project. As you know, the appeal from Susitna Investments came into play only after learning that the Wasilla City Planning Commission had ruled in favor of Fred Meyer's expansion plans which allowed them to include the parking spaces of the outlying properties to satisfy the city's parking requirements.

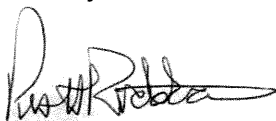
Fred Meyer failed to perform their due diligence with respect to surveying and assessing the current number of parking spaces available on their own property to satisfy the need for additional parking required as part their expansion plans. The City of Wasilla also failed to provide sufficient notice to property owners in the Fred Meyer tract that Fred Meyer was expanding their store and planned on using outlying privately owned tracts to satisfy its need for additional parking spaces. In the end, the City Planning Commission ruled in favor of Fred Meyer's expansion thus encumbering our property by allowing Fred Meyer to include our parking spaces in their count to meet city requirements. The City of Wasilla did not have the legal right to allow this decision.

We were only made aware of the last meeting which ruled in Fred Meyers favor because our surveyor happened to be sitting in on the meeting and called us to attend what was left of the decision making process. Since no additional public comment was allowed at that point our only means to having a say in this ruling was to file an appeal.

While this appeal came about through no fault of Susitna Investments, it cost us \$4300.00 to protect our property ownership rights and win this appeal. Of that cost, \$1000.00 was paid to the City of Wasilla for application fees, \$2300 went to attorney fees and \$1000 to consulting fees. This does not include any costs for Susitna Investments time in this appeal process, nor are we asking for any. It is in the opinion of Susitna Investments that these costs should be reimbursed to us by the City of Wasilla. The City's decision to allow Fred Meyer to include our parking spaces in the count was in violation of the current code and should therefore shoulder the burden of this misruling by reimbursing us for our costs.

We would appreciate a careful review of this by the City of Wasilla, and will be happy to answer any questions which may arise from this request.

Sincerely,



Preston Rudderow  
Susitna Investments, LLC

*community planning*



**Friends of Mat-Su**

*community building*

November 4, 2008

Kristie L. Smithers, MMC  
City of Wasilla Clerk  
290 E. Herning Ave.  
Wasilla, AK 99654-7091

**RECEIVED**

NOV 07 2008

OFFICE OF THE CITY CLERK  
CITY OF WASILLA

RE: Appeal Case No. 08-01 Friends of Mat-Su vs. Fred Meyer

Dear Ms. Smithers,

Friends of Mat-Su (FoMS) would like to request that the City of Wasilla consider reimbursing FoMS for the appeal filing fee of \$1,000 that was required for this process. As you know, the hearing officer ruled in our favor on this appeal and overturned the planning commission decision to grant the conditional use permit for the Fred Meyer expansion.

As strong proponents of the public process, we felt it necessary to file the appeal as the City of Wasilla's Planning Commission approved the permit based on an incomplete application. The lack of information in this case put the public at a distinct disadvantage in being able to comment in a comprehensive manner on the application. It was well documented in our testimony at the appeal hearing based on correspondence from Fred Meyer throughout the appeal process that the application was incomplete. Fred Meyer submitted information after the fact during the appeal and not at the planning commission public hearing. The Planning Commission did not receive an accurate and complete application. Nor were they advised that the application was incomplete. So, the commission was forced to have confusing and lengthy discussions and to make an uninformed decision based on bad information or a complete lack of information. Will the appeal process become the public's only guarantee of a complete application for conditional use permits?

The conditional use permit is in place to give rules and guidelines to the applicant and protection to the public. If FoMS had not stepped up to make the case that this permit should have been denied by the planning commission the public would have lost the protection the permit process is intended by law to provide. Our organization spent an inordinate amount of staff time at a cost of \$2600 to work on this appeal and while we are not asking for the City of Wasilla to reimburse those costs, we feel that the cost of filing fees for the appeal should be returned to us. FoMS should not have had to spend this time and expense representing the public interest because the planning commission did not have complete and accurate information.

We would appreciate a careful review and consideration of this request by the City of Wasilla, and will be available to answer any questions.

Sincerely,

A handwritten signature in black ink that reads "Kathy Wells". The signature is fluid and cursive.

Kathy Wells  
Executive Director