



	Approved	Denied
Date Action Taken:	6/14/2010	
Other:		
Verified by:	<i>[Signature]</i>	

WASILLA CITY COUNCIL ACTION MEMORANDUM

AM No. 10-14

TITLE: NOTICE OF APPEAL AND APPOINTMENT OF HEARING OFFICER IN ACCORDANCE WITH WASILLA MUNICIPAL CODE 16.36.020.

Agenda of: June 14, 2010
Originator: Deputy City Clerk

Date: May 25, 2010

Route to:	Department	Signature/Date
	Chief of Police	
	Recreational and Cultural Services Manager	
	Director of Public Works	
X	Finance Director	<i>[Signature]</i> 6/1/10
X	Deputy Administrator	<i>[Signature]</i>
X	City Clerk	<i>[Signature]</i>

REVIEWED BY MAYOR VERNE E. RUPRIGHT: *[Signature]*

FISCAL IMPACT: yes\$ or no

Funds Available yes no

Account name/number: 001-4110-411.30-37

Attachments:

SUMMARY STATEMENT: In accordance with WMC 16.36.070.B, please be advised that on May 25, 2010, two appeal applications were filed in the Office of the City Clerk. The first was filed by Mr. Kevin Baker and 13 other parties (Appeal Case No. 10-01), and the second was filed by Mr. Brad Laybourn and 4 other parties (Appeal Case No. 10-02).

The appeals were filed regarding the following decision of the Planning Commission: Resolution Serial No. 10-02 (Former Planning Case Number CU 09-01): Reaffirming the previous decision of the Planning Commission to approve the City of Wasilla's request to site an outdoor firing range in the Industrial (I) Zoning District; Lot 1, New

Wasilla Airport Addition No.1, generally located near the Curtis D. Menard Memorial Sports Center, after finding that the three conditions of the Administrative Hearing Officer have been met.

In 2009, Planning Commission Resolution Serial No. 09-13, approved this same conditional use permit (for a firing range near the Curtis D. Menard Memorial Sports Center) which was then appealed. After an appeal hearing the resolution was remanded to the Planning Commission for additional review. Resolution Serial No. 10-02 approves the conditional use permit for a firing range near the Curtis D. Menard Memorial Sports Center.

In accordance with WMC 16.36.020.C, it is being requested that the Council confirm the appointment of Eric Jensen, as Hearing Officer, to this case. Mr. Jensen is a resident of Wasilla, a practicing attorney, and meets all the qualifications required within WMC 2.76.020.

Additionally, Mr. Jensen presided over the original appeal of Planning Commission Resolution Serial No. 09-13 and set the points of consideration within the remanded resolution. For the sake of continuity it is being respectfully requested that Mr. Jensen be appointed as hearing officer in Appeal Case Nos. 10-01 and 10-02.

Mr. Jensen is unaware of any conflicts in relation to these cases.

STAFF RECOMMENDATION: Approve the appointment of Mr. Eric Jensen as hearing officer in Appeal Case Nos. 10-01 and 10-02 (Planning Commission Resolution Serial No. 10-09).



OFFICE OF THE CITY CLERK

City of Wasilla
290 E. Herning Ave.
Wasilla, AK 99654-7091
Phone: (907) 373-9090 / Fax: (907) 373-9092
E-mail: clerk@ci.wasilla.ak.us
www.cityofwasilla.com

RECEIVED

MAY 25 2010

OFFICE OF THE CITY CLERK
CITY OF WASILLA

APPLICATION FOR APPEAL
FOR A DECISION OR ORDER MADE BY THE
CITY OF WASILLA PLANNING COMMISSION

An "interested person" as defined in WMC 16.36.010, may appeal a decision or order of the Planning Commission within 15 calendar days of the action. This application along with a \$500 non-refundable filing fee and a \$500 deposit, total \$1,000, must be submitted to the City Clerk.

For information on the appeal process, please see Wasilla Municipal Code, 16.36. A copy of WMC Title 16, Land Development Code will be provided upon request.

Interested Person (Per WMC 16.36.010): Kevin Baker + Others
Mailing Address: 1670 W Lake Lucille Dr (see attached
Wasilla, AK 99654 Sheets)
Day Phone No.: 357-2000 Evening Phone No.: 357-2000
Cell Number: 373-8790 Fax Number: 357-2001
Email Address: Kevin@wasilla.biz
Planning Case Number: CUP 09-01 Planning Commission Resolution No. 10-09 + 09-13
Date of Decision or Order of the Planning Commission: May 11, 2010





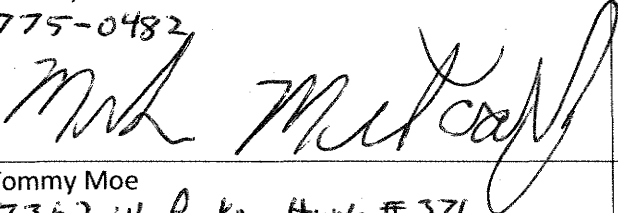

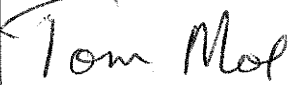
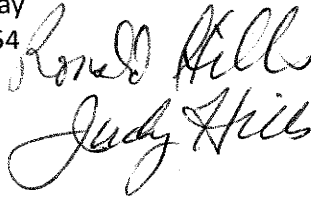
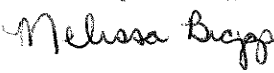


As stated above, you are required to pay a deposit in addition to the non-refundable filing fee. Provided you are entitled to a refund of a portion of the deposit, whom do you wish the refund check to be made payable to: Kevin Baker

In your cover letter, please clearly and concisely state with **specificity** the grounds of the appeal. If applicable, cite specific sections of the Wasilla Municipal Code, which you believe conflict with the decision or order of the Planning Commission.

Signature: Kevin S. Baker Date: 5-25-10
Printed Name: Kevin S. Baker

FOR OFFICE USE ONLY:
Accepted in Clerk's Office by: [Signature] Date: 5/25/10
Fees: \$500 non refundable filing fee (receipt attached) \$500 deposit paid (receipt attached)
Appeal Case No: 10-01

Appellant Sheet of Interested Persons

<p>Kevin Baker 1670 W. Lake Lucille Dr. Wasilla, AK. 99654 357-2000 Kevin@wasilla.biz</p> 	<p>Merle Frank 1780 W. Lake Lucille Dr. Wasilla, AK. 99654 373-5867 232-4928</p> 
<p>John Katkus 2552 W Bailey Ave Wasilla, AK. 99654 376-9229 355-6848</p> 	<p>John Metcalf 2332 Lake Lucille Dr. Wasilla, AK. 99654 775-0482</p> 
<p>Mike Metcalf 2332 Lake Lucille Dr. Wasilla, AK. 99654 775-0482</p> 	<p>Julie Hudson PO Box 834 Willow, AK 99688 841-9916</p> 
<p>Tommy Moe 7362 W Parks Hwy # 371 Wasilla, AK 99654 315-3355</p> 	<p>Ron & Judy Hills 980 S. Bettina Way Wasilla, AK. 99654 376-7668</p> 
<p>Melissa Biggs 1420 W. Foggy Dr. Wasilla, AK. 99654 982-1821 357-5539</p> 	<p>Josh Rogness 1748 Lake Lucille Dr. Wasilla, AK. 99654 357-8006</p> 
<p>John Maketa 376-8829 232-7242</p> 	<p>Kenny Petersen 1190 Conkey Street Wasilla, AK. 99654 376-0307</p> <p>(Duplicate)</p>

If a person listed above does not meet the City's definition of "interested person", the remainder 'Interested Persons' are still in affect and this Appeal is still valid.

Appellant Sheet of Interested Persons

<p>Michael Dault 1101 LOBO ST WASILLA, AK 373-6466</p> <p><i>Michael J Dault</i></p>	<p>Dave Klein 1100 Conkey Street Wasilla, AK. 99654 707-7458</p> <p><i>Dave Klein 5-24-10</i></p>
<p>Dave L Tuttle 1764 W. Lake Lucille Dr. Wasilla, AK 99654 376-4739</p> <p><i>David L. Tuttle</i></p>	
<p><i>Ken Peterson</i> 1190 CONKEY ST WASILLA, AK 99654 376-0307</p>	

If a person listed above does not meet the City's definition of "interested person", the remainder 'Interested Persons' are still in affect and this Appeal is still valid.

Appeal of Planning Commission Conditional Use Permit #09-01
Appeal Case #09-02, 8-14-09

Appellant: John Katkus (Interested Person)
2652 W. Bailey Ave., Wasilla, AK 99654

Applicant: City of Wasilla
290 E. Herning Ave.
Wasilla, AK 99654

I wish to appeal the decision of the Planning Commission's vote May 11th, 2010 regarding Wasilla Planning Commission Resolution Serial No. 10-09 for the following reasons:

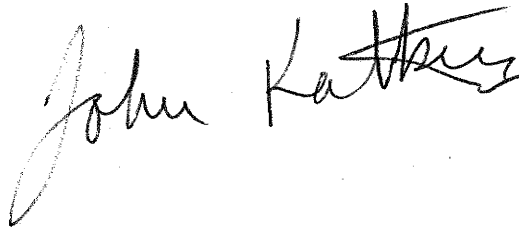
- 1) The Commission failed to establish any facts or information regarding the requirement of the Hearing Officer to validate the 20 acre requirement needed by city code. The city of Wasilla has adopted word for word Anchorage's code regarding outdoor ranges, (except of course the part requiring noise mapping), but has no idea as to why that amount of acreage was established in the first place. Perhaps it's intent was to make for a greater buffer with adjoining property, but the city does not seem to see that need.
- 2) Their response to use of a vegetative buffer also was not properly addressed since they are relying on questionable results on the "sound testing" they contracted for. Staff finding #20 is clearly not met since it is impossible to have a 100' vegetative buffer to the south because there is only 60' from the edge of the Sports Complex parking lot to the private property line there. A wide open parking lot is not a buffer in any way, shape, or form.
- 3) There has been no accountability of the Planning Commission, in that it makes no sense to send it back for them to review their decision. At the bare minimum, the Hearing Officer needs to review their findings and decide if the questions were answered adequately..
- 4) The Planning Commission misrepresented adjoining property as being "Industrial" to the south. This is absolutely not true, since our property is directly south and is zoned RR (rural residential). One adjacent property to the southwest is still RR, awaiting rezone to Industrial.
- 5) Planning Commissioners repeatedly stated that a shooting range is harmonious with the neighborhood. Nothing could be further from the truth since the noise of gunfire will not be contained on the city's property. The purpose of reviewing and approving planned developments and activities is to ensure that one entity's actions DO NOT interfere with their neighbors.
- 6) The introduction of "sound testing", is absolutely unreliable since there was no testing at all. The standards used, US Army, seems unrealistic for a comparison in a civilian and urban setting. Everything stated by the contractor was "predicted", "estimated", "expected". These findings were only introduced to the public, and no questions or means to refute his "facts" were allowed. Public scrutiny was not permitted. This so called "expert", has his professional history in residential

construction and mitigating noise in household plumbing. Hardly enough of a background to place full trust in results such as that. However, he did state that the noise from this range will be heard over a mile away. If that be the case, how many residents have been notified that they will be subjected to hearing this range constantly. He also tried to convince the audience that the sound is comparable to "bouncing a nickel off the table from 24"". Even if that were true, there are 18 shooting stations planned, and the hours of operation are 8am to 10pm (see Item #28 Staff Finding). That is unhealthy and damaging to expect anybody to tolerate that sort of abuse. Eighteen people, nor a single person, are going to "bounce a nickel of the table" ALL DAY LONG!

- 7) During public comment of this hearing, approximately 24 people offered comments. Of those testifying, 11 stated to be residents of Wasilla, 11 stated they lived outside the city limits, two people did not state where they lived. Those who lived in the city were unanimously opposed to the location of the proposed shooting range. Those who lived outside the city were split 1/3 for it as planned, the other 2/3 though it's a good idea, but the wrong location. All of those in support of the current plan have testified at previous hearings, also stating their support at those hearings. The point being, the Planning Commission is ignoring the very citizens they are supposed to represent and work for. At every public hearing, the citizens of Wasilla try to tell the Commission a resounding "**NO**" to a shooting range at the Sports Complex. And, it appears the Commission refuses to acknowledge it's own people's wishes, but instead caters to those who don't even live inside Wasilla city limits.
- 8) The Planning Commission has not even followed it's own original resolution by having the Parks and Recreation Committee review the proposal CUP 09-01.
- 9) With the amount of input from city residents against the proposed shooting range, the Planning Commission should have taken the reasonable course, (and they would have been within their power to do so), and reverse the prior decision of Resolution 09-01 so as to examine it closer. The Commissioners stated that "*they were instructed to only look at the three points of the appeal*". It appears the Commission is purposely kept in the dark, and is being "coached" by the city administration and not fully informed of all pertinent information regarding city planning, and the full authority they really have.
- 10) The city has no place to set itself up to compete with, or enhance, what should be a private industry venture.
- 11) This is a flawed process with no accountability or check on the City of Wasilla. It appears the city administration is the sole driving force behind this project. There is no group of RESIDENTS pushing for this. There is no identified person, proprietor, corporation, or non-profit association to run it if built. This seems ripe for abuse and corruption. If the city wants it, the city applies for the permit. The city reviews, and "Staff Findings" are all supportive of the project. It then goes to the city's Planning Commission, which seems to approve it without bringing up any issues on it's own. When questioned and appealed, it goes back to the Planning Commission to review they're own findings? How professional and responsible is that? That is definitely the fox guarding the hen house. The city is

way out of line in disregarding it's own residents and not having a truly independent review of this process.

Respectfully, John Katkus, city resident of Wasilla, Alaska

A handwritten signature in black ink that reads "John Katkus". The signature is written in a cursive style with a large, looping initial "J" and a stylized "K".



OFFICE OF THE CITY CLERK

City of Wasilla
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Wasilla, AK 99654-7091
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E-mail: clerk@ci.wasilla.ak.us
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RECEIVED

MAY 25 2010

**OFFICE OF THE CITY CLERK
CITY OF WASILLA**

**APPLICATION FOR APPEAL
FOR A DECISION OR ORDER MADE BY THE
CITY OF WASILLA PLANNING COMMISSION**

An "interested person" as defined in WMC 16.36.010, may appeal a decision or order of the Planning Commission within 15 calendar days of the action. This application along with a \$500 **non-refundable** filing fee and a \$500 deposit, total \$1,000, must be submitted to the City Clerk.

For information on the appeal process, please see Wasilla Municipal Code, 16.36. A copy of WMC Title 16, Land Development Code will be provided upon request.

Interested Person (Per WMC 16.36.010): Laurie J. Magiera Alan D. Laybourn
Bradley K Laybourn Douglas K. Laybourn
Diamond Laybourn

Mailing Address: PO Box 875486, Wasilla, AK 99687

Day Phone No.: 232-1586 Evening Phone No.: 232-1586

Cell Number: 232-1586 Fax Number: 376-4623

Email Address: _____

Planning Case Number: UP 09-01 Planning Commission Resolution No. 10-09

Date of Decision or Order of the Planning Commission: 05/11/10 05/12/10

As stated above, you are required to pay a deposit in addition to the non-refundable filing fee. Provided you are entitled to a refund of a portion of the deposit, whom do you wish the refund check to be made payable to: Bradley Laybourn

In your cover letter, please clearly and concisely state with **specificity** the grounds of the appeal. If applicable, cite specific sections of the Wasilla Municipal Code, which you believe conflict with the decision or order of the Planning Commission.

Signature: Bradley Laybourn Date: 05/25/10

Printed Name: Bradley Laybourn

FOR OFFICE USE ONLY:	
Accepted in Clerk's Office by: _____	Date: _____
Fees: <input type="checkbox"/> \$500 non refundable filing fee (receipt attached)	<input type="checkbox"/> \$500 deposit paid (receipt attached)
Appeal Case No: _____	

DE NOBLE LAW OFFICES LLC

32323 Mount Korohusk Circle
Eagle River, Alaska 99577
Phone: 907.694.4345
Fax: 907.694.4346
Email: bdenoble@alaska.net

May 25, 2010

Office of the City Clerk
City of Wasilla
290 East Herning Avenue
Wasilla, Alaska 99654-7091

Re: Wasilla Planning Commission
Resolution Serial No. 10-09
Application for Appeal

Office of the City Clerk:

On behalf of my clients, Laurie Magiera, Bradley Laybourn, Alan Laybourn, Douglas Laybourn, and Diamond Laybourn, interested parties as that term is defined in Wasilla Municipal Code ("WMC") 16.36.010, I hereby notify you of their appeal of the Wasilla Planning Commission's May 11, 2010 approval of the City of Wasilla's request to site an outdoor firing range next to the Curtis D. Menard Memorial Sports Center. Enclosed herein is their Application for Appeal, \$500.00 filing fee and \$500.00 cost deposit.

The basis for my clients' appeal is as follows:

- 1) The Planning Commission violated WMC 16.16.040(A)(2)(e) concerning notification of its May 11, 2010 hearing;
- 2) The Planning Commission violated WMC 16.16.040(A)(5) concerning the May 11, 2010 hearing format;
- 3) The Planning Commission violated WMC 16.34.070(A) concerning its May 11, 2010 written decision and the basis thereof;
- 4) The Planning Commission violated WMC 16.34.070(B) concerning its May 11, 2010 written decision and the contents thereof;
- 5) The Planning Commission violated WMC 16.34.070(C) concerning notification of its May 11, 2010 written decision;
- 6) The Planning Commission violated their due process rights by failing to give adequate notice of the hearing, by not allowing adequate time to submit written

DE NOBLE LAW OFFICES LLC

testimony, by improperly limiting oral testimony at the hearing, and by precluding meaningful opportunity to review and comment upon the expert report which provided the basis of its decision;

7) The Planning Commission violated WMC 16.16.050(A) by failing to include the necessary written findings in its May 11, 2010 written decision;

8) The Planning Commission erred by approving the resolution without adequately addressing, considering and answering the Hearing Officer's remand instruction concerning the 20 acre requirement for a firing range and WMC 16.16.060(K);

9) The Planning Commission erred by approving the resolution without adequately addressing, considering and answering the Hearing Officer's remand instruction concerning the vegetative buffer;

10) The Planning Commission erred by determining the proposed use can occur harmoniously with other activities allowed in the district and it will not disrupt the character of the neighborhood in light of the criteria set forth in WMC 16.16.050, 16.16.060.

Given the Planning Commission's failure to include the language required by WMC 16.34.070(B) in its written decision and its failure to mail by regular mail or personally delivered by the city planner within ten days after the Planning Commission's decision was final to my clients and each interested person submitting written testimony at the hearing, we reserve the right to amend, revise or add to the foregoing points until such time as the Planning Commission includes the required language and provides the required notification as set forth in the WMC.

Yours very truly,



Brad D. De Noble

enc.

cc. Clients