

Date Presented to Council: <i>Presented</i>	
Approved <input type="checkbox"/>	Denied <input type="checkbox"/> <i>6/9/14</i>
By: <i>K. Smith</i>	

**CITY COUNCIL INFORMATIONAL MEMORANDUM**

**IM No. 14-09:** Providing the Hearing Officer's Decision on Appeal for Appeal Case No. 13-01, Matanuska Electric Association (MEA).

Originator: Sarah Whiteley, Deputy Clerk *(W)*  
 Date: 5/12/2014

Agenda of: 6/9/2014

Route to:	Department Head	Signature	Date
X	Finance Director	<i>[Signature]</i>	5-28-14
X	Deputy Administrator	<i>[Signature]</i>	5-28-14
X	City Clerk	<i>K. Smith</i>	5/28/14

Reviewed by Mayor Verne E. Rupright: *[Signature]*

Fiscal Impact:  yes or  no

Attachments: Decision on Appeal (26 pages)

**Summary Statement:** On March 24, 2014, a hearing was held regarding Appeals to a Hearing Officer, Appeal Case No. 13-01. The decision was appealed from: *Planning Commission Resolution Serial No. 13-06: A Resolution of the Wasilla Planning Commission approving administrative approval A13-027 and use permit number UP13-02 to allow Matanuska Electric Association to construct new 115 KV double circuit transmission lines on new 80-100 foot tall transmission towers along the north side of the Parks Highway right-of-way beginning at the eastern city boundary, then crossing to the south side of the Parks Highway at the east end of the Creekside Plaza shopping center, then extending westerly behind the shopping center and adjoining properties, then crossing to the north side of the Palmer-Wasilla Highway extension right-of-way at the light at Home Depot, then continuing southwest along the north side of the Palmer-Wasilla Highway extension right-of-way to approximately Glenwood Avenue, then heading north to the existing Herning Substation (Planning Case Nos. A13-027; UP13-02).*

On April 28, 2014, Hearing Officer Joseph Levesque rendered his decision. His decision upheld the decision of the Planning Commission stating in part...“The Commission duly considered all evidence before it, took a ‘hard look’ at the issues, and based its decision entirely on its reasonable interpretations of the Comprehensive Plan and Land Development Code,” and “The Commission acted just as it was supposed to act and did not act in an arbitrary or capricious manner.” The Decision on Appeal is attached for your review.

The costs associated with this appeal are on the following page.

## Associated Costs for Appeal Case No. 13-01

<b><u>Transcription Costs</u></b>	
Public Hearings 5/13/13	\$125.00
Public Hearings 5/14/13	\$800.00
Public Hearings 5/21/13	\$390.00
Public Hearings 7/09/13	\$375.00
Postage & Handling	\$5.00
<b>Total</b>	<b>\$1,695.00</b>
<b><u>Advertising</u></b>	
Hearing Notice 2/18/14	\$106.50
Hearing Notice 3/18/14	\$106.50
<b>Total</b>	<b>\$213.00</b>
<b><u>Mailing Costs</u></b>	
Notice of Appeal 9/9/13	\$35.26
Notice of Hearing Date 12/10/13	\$18.40
Notice of Rescheduled Dates for Hearing	\$18.40
Notice of Hearing Officer's Decision	\$79.80
<b>Total</b>	<b>\$151.86</b>
<b><u>Hearing Officer</u></b>	
Invoice No. 11223 - Oct. 2013	\$1,213.10
Invoice No. 11274 - Nov. 2013	\$7,766.90
Invoice No. 11332 - Dec. 2013	\$3,168.20
Invoice No. 11402 - Jan. 2014	\$3,505.35
Invoice No. 11476 - Feb. 2014	\$1,709.00
Invoice No. 11543 - Mar. 2014	\$2,514.20
Invoice No. 11632 - Apr. 2014	\$7,594.09
Invoice No. 11658 - May 2014	\$15,260.51
<b>Total</b>	<b>\$42,731.35</b>
<b><u>Copies (Valley Business Machines)</u></b>	
Copies & Scanning	\$151.98
<b>TOTAL COST FOR APPEAL</b>	<b>\$44,943.19</b>

**BEFORE THE HEARING OFFICER OF THE  
CITY OF WASILLA, ALASKA**  
290 E. Herning Avenue  
Wasilla, Alaska 99654

IN THE MATTER OF THE APPEAL OF  
MATANUSKA ELECTRIC ASSOCIATION  
OF CITY OF WASILLA PLANNING  
COMMISSION RESOLUTION  
SERIAL NO. 13-06

Appeal Case No. 13-01

**DECISION ON APPEAL**

**Introduction**

Appellant Matanuska Electric Association ("MEA") appeals the City of Wasilla ("City") Planning Commission's ("Commission") Resolution Serial No. 13-06 ("Resolution"), which was approved and issued by the Commission on August 16, 2013. The Resolution addressed two land use applications submitted by MEA to the City for consideration and approval: (1) Administrative Approval No. A13-027; and, (2) Use Permit No. U13-02 (collectively, "Applications"). Both Applications sought City approval "to construct new 115 kV double circuit transmission lines" along the Parks Highway corridor within the City limits.<sup>1</sup> The Commission's Resolution approved MEA's Applications, but conditioned that approval on the placement of the proposed transmission lines underground.<sup>2</sup>

A Pre-Hearing Conference Scheduling Order was issued providing for the submission of written briefs by the parties and interested persons, as defined by Wasilla Municipal Code ("WMC") 16.36.010 (hereafter referred to as "Interested Persons").<sup>3</sup> The Pre-Hearing Scheduling Conference Order was subsequently amended to provide for supplementation of the record and specific participation by Interested Persons.<sup>4</sup> Written

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<sup>1</sup> Resolution, at 2.

<sup>2</sup> *Id.* at 6.

<sup>3</sup> See Pre-Hearing Conference Scheduling Order dated October 22, 2013.

<sup>4</sup> See Amended Pre-Hearing Conference Scheduling Order dated December 13, 2013.

briefs were submitted by MEA, the City Planner, and Interested Person Gloria Powell, trustee of the Leo J. Demers Testamentary Trust (“Gloria Powell”), along with reply briefs by MEA to both the City Planner’s brief and the brief submitted by Gloria Powell.

Written comments were also submitted from other Interested Persons.

A hearing was conducted on March 24, 2014, at which time the parties and Interested Persons were afforded the opportunity to make arguments in support of their respective positions. At the hearing, attorney Thomas Klinkner argued on behalf of the City Planner; attorney Lawrence V. Albert on behalf of Appellant MEA; attorney Ronald Baird appeared on behalf of Interested Person Gloria Powell; and Robert Schmidt, an Interested Person and business owner, provided his comments.<sup>5</sup>

The Hearing Officer has reviewed the complete record on appeal, all briefing and comments submitted, along with all testimony provided at the hearing conducted, and accordingly issues this Decision on Appeal.

#### **I. AUTHORITY OF THE HEARING OFFICER**

The City Code provides that, “Any interested person adversely affected by a decision or order of the commission, other than a recommendation to the council regarding a rezoning or an amendment to this title, may appeal the decision or order....”<sup>6</sup> Appeals arising from land use decisions made by the Commission pursuant to WMC Chapter 16.36 are decided by a hearing officer appointed by the City,<sup>7</sup> based solely “upon the record and argument presented at the hearing.”<sup>8</sup> The City Code authorizes the hearing officer to “affirm, reverse, or modify the decision or order of the commission in whole or in part.”<sup>9</sup> The Hearing Officer’s decision must include findings of fact and conclusions of law.<sup>10</sup>

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<sup>5</sup> At the hearing, MEA requested to further supplement the record with two reports referenced in footnote 28 of its Reply to the Brief of the City Planner. The Hearing Officer took the request under advisement and now determines that the reports do not represent legal authority and may not be considered in rendering this Decision because they were not presented to the Commission and the Hearing Officer’s decision is limited to the Record before the Commission.

<sup>6</sup> WMC 16.36.060(A).

<sup>7</sup> WMC 16.36.020(A).

<sup>8</sup> WMC 16.36.090(A).

<sup>9</sup> WMC 16.36.090(A).

<sup>10</sup> WMC 16.36.090.

Pursuant to AM No. 13-30, the Wasilla City Council approved at its August 26, 2013 meeting the appointment of attorney Joseph N. Levesque as the Administrative Hearing Officer for this appeal (“Hearing Officer”).

## **II. ISSUES PRESENTED FOR REVIEW**

MEA has presented six general issues (with sub-issues) for appeal, arguing that each presents independent grounds for invalidating Resolution 13-06, namely:

(1) That there are prima facie deficiencies in both the City's Comprehensive Plan and the Code as they both pertain to utility projects and regional scale infrastructure;

(2) That the Commission used an ad hoc regulatory process exceeding the City's land use authority;

(3) That the Commission's findings are based upon standard-less authority, as well as arbitrary and capricious decision making on the subjects of aesthetics or visual, and fiscal and economic impact;

(4) That the Commission's authority to regulate landscaping in utility easements is preempted;

(5) That the Commission's authority to require underground transmission lines is preempted; and

(6) That several of the findings of fact in the Resolution are not supported by substantial evidence.

## **III. STANDARD OF REVIEW**

Both MEA and the City Planner are in substantial agreement regarding the general standard of review that must be applied to the decisions of local zoning bodies. In their briefing, the parties recognize that the Alaska Supreme Court has consistently held that “review of zoning board decisions is narrow and...a presumption of validity is accorded those decisions.”<sup>11</sup>

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<sup>11</sup> *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993). See also *Luper v. City of Wasilla*, 215 P.3d 342, 345 (Alaska 2009); *Pruitt v. City of Seward*, 152 P.3d 1130, 1139 (Alaska 2007); *Griswold v. City of Homer*, 55 P.3d 64, 67-68 (Alaska 2002); *Village of Eklutna v. Bd. of Adjustment*, 995 P.2d 641, 643 (Alaska 2000).

The parties also agree that the Commission’s findings of fact are reviewed according to the substantial evidence test.<sup>12</sup> According to that test, the decision of a local municipal “zoning body shall not be reversed if it is supported by substantial evidence.”<sup>13</sup> Substantial evidence is that which ““a reasonable mind might accept as adequate to support a conclusion.””<sup>14</sup> Although addressed by neither party in their briefing, the Hearing Officer takes notice that, under Alaska law, a reviewing body may “not evaluate the strength of the evidence, but merely note[s] its presence.”<sup>15</sup>

Where the decision of a local zoning body requires the interpretation of a zoning ordinance, that interpretation is granted broad deference whenever it does not present a question of simple statutory construction, but instead involves application of the agency’s specialized expertise.<sup>16</sup> Deference is also warranted when a zoning authority’s interpretation represents the formulation or application of fundamental policy.<sup>17</sup> Thus, when a zoning authority’s permitting decision implicates such expertise or policymaking, the determination as to whether that decision was in error is made according to the reasonable basis standard, and the reviewing body will “defer to the agency’s interpretation unless it is ‘plainly erroneous and inconsistent with the regulation.’”<sup>18</sup>

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

##### **A. The City’s Authority to Regulate Land Uses.**

1. The Alaska Legislature has delegated to municipalities the authority and the duty to “provide for planning, platting, and land use regulation.”<sup>19</sup> In turn, cities within Boroughs may consent to the delegation of local land use regulation by the municipality

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<sup>12</sup> *Luper*, 215 P.3d at 345; *Griswold*, 55 P.3d at 67; *Balough v. Fairbanks North Star Borough*, 995 P.2d 245, 254 (Alaska 2000).

<sup>13</sup> *Griswold*, 55P.3d at 67-68.

<sup>14</sup> *Id.*, at 67 (quoting *DeYonge v. NANA/Marriott*, 1 P.3d 90, 94 (Alaska 2000) (citations omitted)).

<sup>15</sup> *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 179 n. 26 (Alaska 1986).

<sup>16</sup> *Balough*, 995 P.2d at 254.

<sup>17</sup> *Id.*

<sup>18</sup> *Luper*, 215 P. 3d at 345.

<sup>19</sup> A.S. 29.40.010(a).

within which it is situated.<sup>20</sup> In 1991, the City requested from the Matanuska-Susitna Borough delegation of land use regulation authority.<sup>21</sup> The Matanuska-Susitna Borough properly delegated such authority to the City in 1992.<sup>22</sup>

2. Pursuant to A.S. 29.40.020(a)-(b), the City established the Commission. By law, the Commission is required to “prepare and submit” a proposed comprehensive plan for adoption by the municipality, so as to provide “for the [City’s] systematic and organized development,” and to “review, recommend, and administer measures necessary to implement the comprehensive plan....”

3. In addition to the Commission’s express statutory duties, A.S. 29.40.020(b) provides that the City may by ordinance prescribe additional duties. Among other things, the Commission is charged with hearing and deciding “...all permit applications that require a public hearing...and other procedures that may be required by the land development code.”<sup>23</sup>

4. When, as was the case here, an application has been elevated to the Commission, the application “must receive approval by the commission prior to commencement.”<sup>24</sup> City ordinance grants the Commission broad authority “to deny, approve or approve with conditions” any application that has been elevated for its review.<sup>25</sup> While the Commission is required to issue a decision as to each application submitted for its review, the ordinances prescribe no specific timeframe in which that decision must be rendered.<sup>26</sup>

5. The City Code provides 21 general criteria that must be met before the Commission may approve elevated administrative approval and use permit applications. However, even if the Commission determines that all such criteria have been met with

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<sup>20</sup> A.S. 29.40.010(b).

<sup>21</sup> City of Wasilla Ordinance 91-37.

<sup>22</sup> MSB Ordinance Serial No. 92-079.

<sup>23</sup> WMC 2.60.010(B)(6).

<sup>24</sup> WMC 16.16.030.

<sup>25</sup> WMC 16.16.040(A)(6).

<sup>26</sup> WMC 16.16.040(A)(6). This section also grants the Commission the discretion to issue a decision “immediately following the public hearing portion of the commission meeting.”

respect to an application, it retains complete discretion to deny it. This is made clear by WMC 16.16.050(A), which provides that, “An administrative approval, use permit, elevated administrative approval, elevated use permit or conditional use *may* be granted” if the applicant meets its burden of proof of showing that the proposed use meets all applicable criteria for approval.

6. Thus, as was noted by the Alaska Supreme Court in *South Anchorage Concerned Coalition, Inc. v. Coffey*, “By its plain language, the ordinance requires that the Commission deny permit applications if it finds that any standard is not met. However, the use of the terms ‘may approve’ indicates that the Commission also has discretion to deny the permit even if it finds that the standards are met.”<sup>27</sup>

7. Should the Commission decide to approve an elevated application, it is required to “include a written finding that the proposed use can occur consistent with the comprehensive plan, harmoniously with other activities allowed in the district and will not disrupt the character of the neighborhood.”<sup>28</sup> Further, “Such findings and conditions of approval shall be in writing and become part of the record and the case file.”<sup>29</sup>

#### **B. Procedural History.**

8. On April 3, 2013, MEA submitted to the City of Wasilla (“City”) land use permit Applications for the construction of a proposed 115 kV overhead transmission line on 80-100 foot towers on a route through the City’s Rural Residential, R2 Residential and Commercial zoning districts. [R. 1-25]

9. MEA’s proposed project is a “utility facility” as defined by WMC 16.04.070, in that it would be for “a use either public or private...used to treat, condition or convey...energy [or] electricity...services.”<sup>30</sup>

10. The City has codified a district use chart at WMC 16.20.020, which provides that utility facilities such as the one proposed by MEA, must obtain administrative approval for the portion of the project within the City’s commercial zoning district, and a

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<sup>27</sup> *Coffey*, 862 P.2d at 173 n.13.

<sup>28</sup> WMC 16.16.050(A).

<sup>29</sup> *Id.*

<sup>30</sup> WMC 16.04.070.



use permit for the portion within the City's residentially zoned areas.<sup>31</sup>

11. Although the City Planner ("Planner") is authorized under WMC 16.12.020(A) to grant administrative approval or use permits for utility facilities, the Planner "elevated" the review of the application to the Commission following MEA's request, and pursuant to WMC Sections 16.12.020(A)(2) and 16.12.040. [Tr. 11:18-12:1 (5/14/13); Resolution, at 2]

12. The Commission set three (3) public hearing dates regarding MEA's applications, provided notice to the public as required by WMC 16.16.020, and held the hearings on May 14, 2013, May 21, 2013, and July 9, 2013. [R. 857-881; R. 1261-1262.]

13. The May 14, 2013 public hearing included a presentation by MEA to the Commission regarding its proposed plan, during which Commissioners were permitted to ask questions regarding the proposal. [Tr. 28-90 (May 14, 2013)] In addition, more than ten members of the public presented public testimony to the Commission objecting to MEA's proposed plan. [Tr. 91-132 (May 14, 2013)]

14. The Commission reconvened its public hearing on May 21, 2013, during which MEA representatives were permitted to further justify its preferred route selection as the sole proposal submitted for approval. During the hearing, MEA representatives submitted additional testimony supporting MEA's preferred plan, answered questions posed by the Commissioners, and responded to testimony submitted by reviewing parties in attendance. [Tr. 2-76 (May 21, 2013)]

15. At the May 21, 2013 public hearing, the Commission voted to close the public hearing, and to permit the City Planning Department to conduct a work session between "MEA, City of Wasilla staff, Matanuska-Susitna Borough staff, the Alaska Railroad, and the Alaska Department of Transportation and Public Facilities to identify additional routes that are consistent with the City's Comprehensive Plan and other applicable policies and codes and that minimize impacts to residents and business owners." [R. 1156; Tr. 63-76]

16. The Commission met again on July 9, 2013, and decided to reopen public

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<sup>31</sup> WMC. 16.20.020.

testimony regarding MEA's applications. [Tr. 3 (July 9, 2013)]

17. At its August 13, 2013 meeting, the Commission by a vote of five to one, adopted Resolution 13-06. The approved Resolution approved MEA's Applications (i.e. the proposed route) subject to the condition that the transmission lines must be installed underground. [R.1264]

18. The Resolution includes two exhibits in support: (1) Exhibit A, the Commission's Findings of Fact Administrative Approval No. 13-027 and Use Permit No 13-02; and (2) Exhibit B, which consists of plan drawings depicting the approved route for the land use applications. [R. 1259-1280]

19. After the appeal was filed on August 30, 2013, pursuant to WMC 16.36.060(A), a pre-hearing conference was held on October 15, 2013 to discuss the process and the procedure the parties would use and the adjudication of the appeal.

**C. The Commission's Decision to Conditionally Approve MEA's Applications was a Proper Exercise of its Regulatory Authority.**

20. Resolution 13-06 approved MEA's Applications with the conditions that: (1) MEA install transmission lines underground; and, (2) that the underground transmission lines be installed within MEA's chosen route along the Parks Highway Corridor. [R. 1264]

21. The Commission's decision to approve the Applications with conditions was based first upon its determination that MEA's project, as proposed, was not consistent with the City's Comprehensive Plan or its Land Development Code, and did not meet all of the general criteria for approval required by WMC 16.16.050. [R. 1263]

22. The Commission's initial determination was supported by its conclusion "that the construction of 115 kV double circuit overhead transmission lines on 80-100 foot towers along the proposed route through the City...w[ould] have a significant negative impact on the [City's] visual appearance and scenic resources, property values of residential and commercial properties, and potential for future commercial development on vacant commercially-zoned properties along the proposed route...." [R. 1263]

23. Based upon the evidence before it, the Commission further concluded "that underground installation of the proposed 115 kV double circuit transmission lines within

the proposed route” would be consistent with the City Comprehensive Plan, and its Land Development Code, as it would not create any of the negative impacts that it found would result from above-ground installation of the transmission lines. [R. 1263]

24. The Commission supported its conclusions with extensive findings regarding the consistency of MEA’s Applications with the general approval criteria required by the City Code, attached as Exhibit A to Resolution 13-06. [R. 1265] The findings set forth at Exhibit A make it clear that the Commission concluded that MEA’s plan, as originally proposed, failed to meet 5 of the 21 required criteria.<sup>32</sup> [R. 1265-1274] The Resolution included the finding that, because of this, MEA did not meet its burden of proof. [R. 1274]

25. The Commission’s detailed findings also clearly communicate its conclusion that, if MEA’s plan was modified in such a way that the transmission lines were installed underground along the route proposed by MEA, the plan would meet each of the 21 required approval criteria. [R. 1265-1274]

26. Although the Commission is prohibited from approving applications that do not meet the general requirements of WMC 16.16.050(A), the City Code expressly authorizes the Commission to “deny, approve, or approve with conditions” elevated applications submitted for its approval.<sup>33</sup>

27. In light of these facts, and in recognition of the authority granted to the Commission, the Hearing Officer concludes that the Commission’s adoption of Resolution 13-06, approving MEA’s Applications with the conditions that transmission lines be installed underground, and along the route described in Exhibit B to the Resolution, was a proper exercise of the Commission’s regulatory authority.

**D. Substantial Evidence Supports the Commission’s Findings that the Proposed Transmission Lines are Substantially Inconsistent with City Plans.**

28. The findings that make up the Commission’s conclusion that MEA’s proposed plan did not substantially comply with the City Comprehensive Plan and Land

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<sup>32</sup> No party has appealed the Commission’s conclusions with respect to the remaining 16 required general approval criteria; consequently, the Hearing Officer restricts his discussion to the 5 areas of alleged noncompliance of MEA’s Applications.

<sup>33</sup> WMC 16.16.020(B).

Development Code, may be separated into three general categories. First, that MEA's proposed plan was inconsistent with the City's Comprehensive Plan goals, objectives and actions relating to the City's visual appearance and community identity. [R. 1265-1267] Second, that the project as proposed by MEA, was inconsistent with several of the commercial and economic goals and objectives of the City's Comprehensive Plan. Third, that the Applications did not comply with the City's Land Development Code.

29. Following a review of the evidence before the Commission during its deliberative process, the Hearing Officer concludes that substantial evidence supports the Commission's conclusion that MEA's proposal was not in substantial compliance with the City Comprehensive Plan goals, objectives, and actions related to the City's visual appearance, community identity, commercial development and economic priorities, and did not meet the standards and requirements for the approval of its applications set forth in the City's Land Development Code.

30. As was the case in *Coffey*, the documents provided to the Commission by MEA itself may present "[t]he clearest evidence of the incompatibility" between MEA's project proposal and the City Comprehensive Plan.<sup>34</sup> For example, in its Application, MEA stated:

MEA is aware that one objective of the City's Comprehensive Plan is to improve the visual appearance of the business district along the Parks Highway. *Placement of a transmission line in the business district will not contribute to this objective.* (emphasis added) [R. 8]<sup>35</sup>

Similarly, in an Executive Summary submitted to the City along with its Applications, MEA again specifically mentioned that its proposed project would have "aesthetic impacts to the view shed" along the Parks Highway corridor. [R. 53]

31. MEA also prepared a photo rendering that it submitted to the Commission, which simulated the visual impact of the proposed transmission lines on the Parks Highway corridor, and the City's business district. [R. 283] The City Planning Department

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<sup>34</sup> *Coffey*, 862 P. 2d at 175.

<sup>35</sup> The Hearing Officer finds that MEA conceded that its proposed plan would not meet the objectives of the City's Comprehensive Plan.

created photo renderings of its own which simulated the visual effect of aboveground transmission lines along MEA's chosen route. [R. 272-282]

32. The City Planning Department's Staff Report ("Staff Report"), which was also submitted to the Commission for its consideration of MEA's Applications, also supports the Commission's conclusion that MEA's proposed project was not substantially consistent with the City Comprehensive Plan. [R. 284-308]

33. The Staff Report stated that, "The proposed route is not substantially consistent with the City Comprehensive Plan." [R. 287] The Staff Report specifically indicated that MEA's proposed plan conflicted with several of the goals, objectives, and actions related to preserving and enhancing the City's aesthetic policies and both commercial and economic development. [R. 287-288] The reasoning supporting the City's conclusions was carefully laid out in the Staff Report. [*Id.*]

34. MEA argues that "any comments made by members of the public, local agencies, organizations or businesses are not entitled to due deference" because the Commission did not adopt a separate ordinance identifying each of them as reviewing parties, citing to WMC 16.08.040. [Opening Brief of Appellant Matanuska Electric Association, at 41-42)

35. The Hearing Officer finds MEA's proposed interpretation of WMC 16.08.040 presents a construction that is not only unreasonably rigid, but also ignores the clear evidence in the Record on Appeal. A plain reading of the Ordinance evinces no requirement that the Commission's identification of reviewing parties must be made by separate resolution. Moreover, Resolution 13-06 included a specific finding referencing the "numerous comments" received by the Commission by business owners and residents, staff members, and the Alaska Railroad. [R. 1268]

36. The Hearing Officer finds that the Commission properly granted due deference to individuals who submitted written comments and live testimony with respect to MEA's Applications. Nonetheless, even if the Commission committed error by affording due deference to commenting parties, such error was harmless. The grant of due deference in actuality supported the Commission's finding that MEA's Applications

satisfied the general approval requirement set forth at WMC 16.16.050(4). Further, as the City Planner has noted, “The recognized rule is that a planning board may always take evidence and testimony from community members into account in making its permitting decisions....” [City Planner Brief, at 19 [citing *Coffey*, 862 P.2d at 172 n. 11]]

37. The Hearing Officer identified over 40 residents, business owners, companies, religious organizations, and community groups who submitted public comments that opposed MEA’s proposal to install above-ground transmission lines within the Parks Highway corridor. These written comments were included in the packets provided to the Commission and are part of the record on appeal.

38. More than 20 of these comments may be reasonably interpreted as communicating the belief that the project would have a significant detrimental impact upon, and would thus degrade, the City’s visual appearance. [See, e.g., R. 318, 323, 324, 328, 335-36, 1006, 1034, 1049] One commentator specifically addressed the photo renderings of the proposed aboveground transmission lines submitted by the City and by MEA, stating that they demonstrated that MEA’s project, as proposed, would have a detrimental visual impact upon the City. [R. 1084] Another commentator expressly stated that the route along the Parks Highway was incompatible with the City Comprehensive Plan. [R. 1083]

39. In addition to the written public comments submitted to the City that oppose the approval of MEA’s Applications due to the negative impact of the installation of aboveground transmission lines along the proposed route, several additional public comments were submitted to MEA. [R. 969-1038] Even though comments submitted to MEA for the most part supported MEA’s proposal, there were many comments stating opinions that installation of aboveground transmission lines would have a significant detrimental impact along alternative routes considered . [R. 984, 990, 991, 1001, 1012] There were other comments also submitted to MEA in support of the proposed route, that stated that the City already significantly lacks aesthetic appeal. [R. 1019, 1023, 1062,1066]

40. The Hearing Officer finds that these comments, although reasonably

interpreted as supporting MEA's proposed route, in actuality constitute further substantial evidence that the project would have a significant detrimental impact on the City, and therefore is not substantially consistent with the City Comprehensive Plan.

41. Tina Crawford, the City Planner, provided extensive testimony before the Commission during its May 14, 2013 hearing explaining that MEA's Applications did not meet the requirements for approval under the City Land Development Code, and explained with specificity the grounds for the City's conclusions. [Tr. 6:14-25:10 (May 14, 2013)] Ms. Crawford stated during that testimony:

...[S]taff has found that the request, as it is currently submitted, is inconsistent with the comprehensive plan, the land development code. That it does not meet the general approval criteria in the land development code. [Tr. 22:19-23 (May 14, 2013)]

42. Ms. Crawford's testimony before the Commission during its May 21, 2013 public hearing also explained that negative impacts upon the City's visual and aesthetic attractiveness could have direct negative implications on its ability to attract new residents, achieve greater economic development, stating:

...if the route that's chosen or suggested, is developed, it's going to create a significant visual impact. Businesses are going to be impacted. Residences will be impacted. And the attractiveness for our city for tourism – and, again, our comprehensive plan says that we're supposed to be beautifying our city, not taking steps backwards to negatively impact that visual. And that's to encourage people to relocate here, who are necessary to support the businesses, so that we can get additional businesses [to] come. So it's circular. I mean, it feeds off of each other. [Tr. 31 (May 21, 2013)]

43. Several reviewing parties in attendance at the Commission's public hearings also submitted live testimony to the Commission, which revealed that MEA's proposal, as submitted, would result in significant negative impacts on the City's visual attractiveness. [Tr. 99-100, 104-114, 121-128 (May 14, 2013); Tr. 6, 55 (May 21, 2013)] One commentator specifically stated that, "...if I have to pay more to protect the viewshed, I am offering my own personal thought that I'm willing to do that." [Tr. 57-58 (May 21, 2013)] This sentiment was echoed by

another reviewing party's written testimony. [R. 1010]

44. The Hearing Officer further finds that this same substantial evidence regarding the negative visual impacts of the proposed above ground transmission lines supports the Commission's conclusion that the Applications did not meet the general approval criterion which requires:

The proposed use may be required to blend in with the general neighborhood appearance and architecture. Building spaces, setbacks, lot coverage, and height must be designed to provide adequate provisions for natural light and air.<sup>36</sup>

45. Reviewing parties also submitted both written and live testimony to the Commission tending to show that MEA's proposal, as submitted, could result in a reduction to their property values, not only because of its negative visual impact, but because of the size of the easement that would burden their residential and commercial properties. [R. 311, 312, 318, 323, 324, 1031, 1035, 1039-1041, 1048, 1049, 1122; Tr. 94-99, 104-106, 111-114, 121-128 (May 14, 2013); Tr. 6-7 (May 21, 2013)] One reviewing party testified that there was simply insufficient information to accurately predict the scope of the probable economic losses to property values if MEA's proposal were permitted to proceed, and that the true effects would not be known until after the project had been completed. [Tr. 61 (May 21, 2013)]

46. Several reviewing parties representing businesses located along MEA's proposed route, submitted written and live testimony to the Commission indicating that the easements that would burden their commercial properties would significantly prohibit their ability to expand their operations, and in some cases restrict their ability to employ additional area residents. [Tr. 121-128 (May 14, 2013)]

**E. Substantial Evidence Supports the Commission's Findings Regarding the Applications' Compliance with WMC 16.16.050(A)(8).**

47. WMC 16.16.050(A)(8) provides that an administrative approval or use permit may only be granted if the applicant meets its burden of proof to demonstrate that

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<sup>36</sup> WMC 16.16.050(A)(19).



its proposal complies with the dimensional requirements of WMC 16.24.010, which mandates compliance with the density, setback and height, and parking standards set forth in WMC 16.24.020-.040. In turn, WMC 16.24.030(C)(3) provides that, “No building or footing may be located closer than seventy-five (75) feet from the high-water mark of a water course or body of water ....”

48. The Resolution includes a finding that the City Land Development Code does not permit the construction of “any building or footings within 75 feet from the mean high-water mark of a water course or body, including lakes, streams, and rivers.” [R. 1269] Although the Commission did not find that MEA’s Applications, as submitted, failed to meet this general approval standard, it did find that the “criterion is met with the condition of approval that the transmission lines be installed underground.” [*Id.*] MEA argues that the Commission committed error by failing to specifically find that MEA’s Applications, as submitted, would not meet the requirements of WMC. [Opening Brief of Appellant Matanuska Electric Association, at 42] MEA also argues that the Commission’s finding is not supported by evidence. [*Id.*]

49. The Record on Appeal demonstrates in the Staff Report dated May 14, 2013, that the City Planning Department indicated that this general approval criterion had not been met. [R. 289] While MEA’s Applications indicated that its “proposed route crosses over Cottonwood Creek...the applicant did not provide any information regarding whether any transmission line poles would be installed within the setback area.” [*Id.*] WMC 16.16.050(A) expressly provides that, “The burden of proof is on the applicant to show that the proposed use meets these criteria and applicable specific criteria for approval.”

50. MEA did not supply the Commission with specific information or assurances that no transmission line poles would violate this setback requirement. MEA only indicated that, “Individual design details are not prepared for route selection studies....” [R. 59]

51. The Hearing Officer finds that MEA’s failure to present any evidence tending to show that the requirements of WMC 16.24.020-.040 would be met under the proposed plan, comprises substantial evidence supporting the inability of City Planning

Staff and the Commission to reach any reasonable conclusion as to whether the Applications, as submitted, complied with the setback requirement set forth at WMC 16.24.030(C)(3). Thus, the Commission committed no error by not including a specific finding in this regard.

52. The Hearing Officer further finds that substantial evidence supports the Commission's finding that WMC 16.16.050(A)(8) would be met by the imposition of the condition that MEA underground the transmission lines. It is clear from the Staff Report that, according to the information submitted by MEA, the only perceivable risk to compliance with the setback requirement was the placement of aboveground transmission line poles. [R. 289] Because of this substantial evidence, the Commission reasonably concluded that removal of that component of MEA's proposal would moot any concerns regarding the setback requirement, thereby satisfying MEA's burden of proof with respect to this criterion.

**F. Substantial Evidence Supports the Commission's Findings Regarding the Applications' Compliance with WMC 16.16.050(A)(15).**

53. WMC 16.16.050(A)(15) provides that the Commission may only approve administrative use permit applications if it finds that:

The proposed use shall be designed in a manner that minimizes the removal of trees and vegetative cover, and shall conform to the standards in this title concerning the provision and maintenance of landscaping, and any landscaping, and any landscaping plan that is required for the proposed use under this title.

The City Code further expressly mandates that:

Except as provided in subsection B of this section, every administrative approval, use permit and conditional use permit approved under this title shall be conditioned upon compliance with an approved landscaping plan that conforms to the requirements of this chapter.<sup>37</sup>

Although the City's landscaping ordinance prescribes general requirements, utilities are excepted from some by WMC 16.33.030(F), which provides:

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<sup>37</sup> WMC 16.33.020(A).

Landscaping within public utility easements is encouraged but shall be limited to topsoil, seed, flower plantings, small shrub plantings or native vegetation.

54. Resolution 13-06 specifically found that MEA's Applications, which requested a 100-foot right-of-way, did not comply with WMC 16.16.050(A)(15). [R. 1271] The Commission reasoned that the Applications did not comply because MEA's vegetation rules and clearance policies required that it ensure that its utility easements remain "clear[] of vegetation, shrubs, landscaping features, [and] trees...." [*Id.*]

55. MEA objects to this finding by the Commission on two primary grounds. First, MEA argues that the City's landscaping ordinances are preempted, and lack force of law with respect to MEA's utility easements. [Opening Brief of Appellant Matanuska Electric Association, at 35-37] Second, MEA argues that the Commission's decision is unreasonable in light of the City Code's grant of certain exceptions to the City's general landscaping requirements. [*Id.*, at 37-38]

56. As a preliminary matter, the Hearing Officer finds that MEA's arguments with respect to preemption of the City's landscaping requirements have been rendered moot by the Commission's decision to approve MEA's Applications with the condition that transmission lines be installed underground; therefore, those arguments will not be addressed.

57. With respect to MEA's argument that the Commission's decision is unreasonable due to the exceptions to the City's general landscaping requirements, the Hearing Officer finds that there exists substantial evidence in the record to support the Commission's findings. There is substantial evidence in the record showing that MEA's Applications were premised upon a 100-foot-wide right-of-way for its proposed aboveground electric transmission lines. [R. 53, 437, 778] A brochure by MEA that is cited by the Commission in support of its decision, broadly states, "For an overhead line, trees, shrubs and other vegetation in the ROW will be cleared." [R. 721]

58. Based upon this evidence, the Hearing Officer concludes that it was reasonable for the Commission to conclude that MEA's policy of clearing all "trees, shrubs

and other vegetation” within its rights-of-way was inconsistent with the City Code’s requirement that all proposed uses approved by the Commission “be designed in a manner that minimizes the removal of trees and vegetative cover”<sup>38</sup> that may be properly considered “flower plantings, small shrub plantings or native vegetation.”<sup>39</sup>

**G. MEA’s Remaining Arguments Alleging Legal Grounds for Invalidating Resolution 13-06.**

In its Opening Brief, MEA presents various additional arguments in support of its position that Resolution 13-06 is invalid. Those arguments not previously addressed in this Decision, are addressed below as follows:

**59. MEA asserts that there are prima facie deficiencies in both the City's Comprehensive Plan and the Code as they pertain to utility projects and regional scale infrastructure.**

59.1 MEA asserts that both the Comprehensive Plan and the City Code are deficient in regards to threshold standards, thereby failing to provide guidance for proper Commission discretion and making judicial review impossible. While the principle of the non-delegation doctrine provides a legal basis for nullifying the City Code or Resolution 13-06, the argument is not persuasive to the case at hand.

59.2 First, Alaska Constitution Article X, Sec. 1 provides that “[a] liberal construction shall be given to the powers of local government.” According to the minutes of the Alaska Constitutional Convention Proceedings, the purpose of this constitutional provision is intended to give municipal governments maximum flexibility and maximum powers to effectuate the powers of local government.<sup>40</sup>

59.3 Secondly, when reviewing Comprehensive Plans in Alaska, the courts have explained:

The planning and zoning process as enacted by the Alaska Legislature is typical of most state zoning statutes. It envisions a hierarchical process in which the comprehensive plan serves as a 'long-range policy guide for

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<sup>38</sup> WMC 16.16.050(A)(15).

<sup>39</sup> WMC 16.33.030(F).

<sup>40</sup> *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978).

development of the [municipality] as a whole. The plan is then implemented through zoning decisions.<sup>41</sup>

AS 29.40.030(a) provides a definition of 'comprehensive plan' as:

[A] compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public . . . and may include, but is not limited to, the following:

- (1) statements of policies, goals and standards;
- (2) a land use plan;
- (3) a community facilities plan;
- (4) a transportation plan; and
- (5) recommendations for implementation of the comprehensive plan.

59.4 As stated by the Court in *Lazy Mountain Land Club*, the language “may include, but is not limited to” is intended to

[leave]... it within the Borough's [City's] discretion what elements to include within the plan. This allows planners to fashion the plan to the needs of the community, which in turn will be affected by such factors as population density, topography, and the local economy.<sup>42</sup>

59.5 It is reported that the City of Wasilla is currently "one of the fastest growing cities in the United States."<sup>43</sup> As such, the City experiences significant growing pains. Because of this reality, the Court has adopted a realistic approach by expressly approving the concept of "piecemeal adoption of the comprehensive plan." According to the Court:

[s]uch an approach recognizes the limited budgets of municipal entities, the ongoing nature of the planning process, and the fact that in certain instances different elements of the plan are dependent on each other and therefore that sequential enactment might be desirable.<sup>44</sup>

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<sup>41</sup> *Lazy Mountain Land Club v. Matanuska-Susitna Borough Board of Adjustment and Appeals*, 904 P.2d 373, 376 (Alaska 1995).

<sup>42</sup> *Lazy Mountain Land Club*, 904 P.2d at 380.

<sup>43</sup> [www.cityofwasilla.com/departments-divisions/economicdevelopment](http://www.cityofwasilla.com/departments-divisions/economicdevelopment) (accessed on 4/23/2014).

<sup>44</sup> *Id.* The Hearing Officer understands that standards of a Comprehensive Plan may encompass a broad spectrum depending upon the needs of the community. This broad spectrum includes both general and specific standards and the standards may be both objective and subjective. *Wireless Towers, LLC v. City of Jacksonville, Florida*, 712 F.Supp. 2d 1294, 1305 (U.S. Dist. Ct. M.D. Fla. 2010).

59.6 In answering the question, “what comprises a sufficient comprehensive plan?” the Court has further stated:

The legal question of what comprises a sufficient comprehensive plan requires an evaluation of the specific planning needs of the municipality. This judgment is within the sphere of expertise of the Planning Commission and the BOAA and therefore is entitled to considerable deference.<sup>45</sup>

59.7 The Hearing Officer finds that based upon the definition of “Comprehensive Plan,” the broad powers of municipalities in Alaska, and the “broad discretion left to the municipality in the composition of the plan,” MEA's attack against the Plan as being deficient, thereby triggering the ‘non-delegation doctrine,’ fails. The Commission, through its existing Comprehensive Plan and Land Development Code, has established standards and criteria for determining permit applications. The Commission’s use of its Comprehensive Plan and Land Use Development Code is constitutionally adequate.

59.8 A similar analysis can be used regarding the City's Code. The Code provisions, as applied to land use, although not expressly addressing the type of utility project proposed by MEA, are adequate to address the decision to adopt and properly exercise its land use authority.

**60. MEA asserts that the Commission used an *ad hoc* regulatory process exceeding the City's land use authority.**

60.1 MEA asserts that the Commission used an *ad hoc* regulatory process in reviewing MEA's Applications.<sup>46</sup> Essentially, MEA's argument is that the City's land use laws do not address a major utility project like the one submitted by MEA. To the extent that MEA’s arguments pertains to the Comprehensive Plan and the City land use development Code have already been addressed above, there is no need to repeat the analysis here. Alaska law leaves the subject of the Comprehensive Plan to the broad discretion of the Commission and anticipates that Comprehensive Plans are constantly changing.

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<sup>45</sup> *Lazy Mountain Land Club*, 904 P.2d at 379 (citation omitted).

<sup>46</sup> One definition of *ad hoc* is “without any underlying principle that can be consistently applied.” Bryan A. Garner, *A Dictionary of Modern Legal Usage*, 2nd Ed, 1995.

60.2 MEA incorporates into its argument the premise that because the Comprehensive Plan fails to include a section on utility projects such as the MEA Utility Project, the Commission is without authority to regulate, thereby exceeding its authority and rendering the decision *Ultra Vires*. The Hearing Officer finds this argument non-persuasive given the Commission's express authority to regulate land use issues for the City. (See pages 4-6 above.)

**61. MEA argues that the Commission's findings are based upon standard-less authority, as well as arbitrary and capricious decision-making on the subjects of aesthetics or visual, and fiscal and economic impact.**

61.1 Arbitrary and capricious decision-making generally means that the decision-making authority ruled “contrary to the evidence or established law” and that the decision was “founded on prejudice or preference rather than on a reason or fact.”<sup>47</sup>

61.2 The evidence in the record shows that the Commission duly considered all evidence before it, took a “hard look” at the issues, and based its decision entirely on its reasonable interpretations of the Comprehensive Plan and Land Development Code. The Hearing Officer finds that the Commission acted just as it was supposed to act and did not act in an arbitrary or capricious manner. The Alaska Supreme Court has stated (citing another court) that:

Zoning authorities are bound by the terms and standards of the applicable zoning ordinance, and are not at liberty to either grant or deny conditional use permits in derogation of legislative standards. Within the boundaries of such standards, however, the zoning authority is afforded a broad latitude of discretion.<sup>48</sup>

61.3 The Commission’s actions clearly do not constitute arbitrary and capricious decision-making. The Alaska Supreme Court has specifically held that use of a comprehensive plan to make land use decisions guards against arbitrary decision-making, stating:

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<sup>47</sup> *Black’s Law Dictionary*, Ninth Ed. (2009).

<sup>48</sup> *Coffey*, 862 P.2d at 175 (citations and footnote omitted).

.... the existence of a comprehensive plan helps to ‘guard against prejudice, arbitrary decision-making, and improper motives’ by providing substantive standards against which to measure individual zoning decisions.<sup>49</sup>

61.4 To the extent that MEA has argued that the City’s grant of permits for the construction of cell towers within the City limits demonstrates that the Commission’s decision may have been arbitrary, the Hearing Officer finds that cell towers and transmission lines are not the same (i.e., not comparable) and that the permitting of either is to be done on a case-by-case basis.

**62. MEA argues that the Commission wrongly referred to the City’s Mission Statements and Goals.**

62.1 MEA argues that the City’s Mission Statements and Goals are not officially adopted elements of the Comprehensive Plan. The Hearing Officer finds that it was reasonable for the Commission to refer to the City’s “Mission Statement” and “Goals” in Resolution 13-06.<sup>50</sup>

**63. MEA argues that Resolution 13-06 is invalid as a regulation of aesthetics or visual impact.**

63.1 MEA asserts that Resolution 13-06 is invalid as a regulation of aesthetics or visual impact. The Court has established that in Alaska “... the government’s interest in aesthetics is substantial and should be accorded respect.”<sup>51</sup> Obviously, as long as the Record shows that substantial evidence regarding aesthetic concerns and visual impact exists to support the Commission’s decision, then Resolution 13-06 is not invalid as a regulation of aesthetic and visual impact. The Hearing Officer finds that substantial evidence does exist in the Record. [See pages 9-11].

63.2 Further, in regards to whether the regulation of aesthetic and visual impact is objective or subjective, one court has expressed the following:

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<sup>49</sup> *Lazy Mountain Land Club*, 904 P.2d, 377-378.

<sup>50</sup> *Coffey* 862 P.2d at 175 (Court concluded that the Commission properly referred to a neighborhood redevelopment plan even though it was not part of the comprehensive plan).

<sup>51</sup> *Barber v. Municipality of Anchorage*, 776 P.2d 1035, 1077 (Alaska 1989) (footnote omitted); *Griswold v. City of Homer*, 925 P.2d 1015, 1022 (Alaska 1996) (citations and footnote omitted).



This Court is not unsympathetic to the difficult an applicant has meeting the aesthetic standard of §656.1506, especially where opinions as to ‘adverse impact’ and ‘compatibility’ can differ. However, subjective though the standard may be, it is similar to other subjective determinations that local zoning and land use bodies routinely make.<sup>52</sup>

**64. MEA argues that the Commission's authority to require under-ground transmission lines is preempted.**

64.1 Resolution 13-06 granted MEA's proposed route with the condition that the transmission lines be installed underground. However, the condition attaches only if MEA decides to follow the route for which it submitted its Application. In other words, the Commission did not state that any and all transmission lines are required to be installed underground. Moreover, neither the State Statutes, nor the Regulatory Commission of Alaska (“RCA”) provide a pre-emption for all municipal regulation of public utilities. The Court has stated “Alaska law does not presume state immunity to local zoning.”<sup>53</sup>

64.2 Furthermore, the fact that MEA has been issued a Certificate of Public Convenience and Necessity from the RCA provides no pre-emption against the Commission regulating land use within its jurisdiction. In *B-C Cable Co., Inc. v. City and Borough of Juneau*<sup>54</sup> the Court held:

While the APUC Act pre-empts a large portion of the regulatory authority of municipalities over utility companies, it does not pre-empt all such authority. For example, AS 42.05.641, quoted above, states that “in the event of a conflict between a certificate, order, decision or regulation of the commission” and, inter alia, a municipal “franchise,” the former shall prevail. Had the legislature intended to void all municipal franchises by passage of the APUC Act, there would have been no need to provide for the supremacy of the Act over a conflicting municipal franchise provision.<sup>55</sup>

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<sup>52</sup> *Wireless Towers, LLC v. City of Jacksonville, Florida*, 712 F. Supp. 2d 1294, 1305 2d 1294, 1305 (U.S. Dist. Ct. M.D. Fla. 2010).

<sup>53</sup> *Native Village of Eklutna v. Alaska Railroad Corp.*, 87 P.3d 41, 45 (Alaska 2004).

<sup>54</sup> 613 P.2d 616, 618 (Alaska 1980)

<sup>55</sup> *Id.*

64.3 Put another way, the RCA is vested with only the power granted by the legislature.<sup>56</sup> The law on this issue is made clear in the following excerpt:

The essence of the administrative power conferred upon the PUC is regulatory; the Commission's empowered to set rates, promulgate regulations, collect information, process complaints against utilities and the like. The statutory framework, however, does not grant unlimited adjudicatory authority to the PUC. The agency is not empowered to decide disputes between municipalities over the control of construction activities within rights of way belonging to one of the disputants. The City's reliance on AS 42.05.221(d) is misplaced, in that the 'matter' which was referred to the PUC was not a question of duplication of electrical services or facilities and did not involve the interpretation of a utility's certificate of public convenience and necessity. Further, the controversy in the instant case does not involve competing utilities seeking to provide the same service to a single consumer. By stipulation, the dispute concerns the Borough's authority to control construction work and other activities which take place within the Borough's rights of way. In short, the Alaska Public Utilities Commission Act simply does not contemplate the establishment of an administrative body with the authority to adjudicate such disputes.<sup>57</sup>

64.4 The Hearing Officer finds that in order for the RCA to trump the Commission's land regulating authority, an actual "conflict between a certificate, order, decision, or regulation" and the Commission's decision, would have to exist. The record does not reveal any such conflict.

**H. Issues Raised by Interested Party Gloria Powell as Trustee for Leo J. Demers Testamentary Trust.**

65. As referenced above, briefing regarding this appeal was also submitted by Gloria Powell. The primary arguments submitted by the Gloria Powell appear to attack MEA's process for determine the route to be used for the transmission lines, asserting that the process was fatally flawed from the start.

66. The Hearing Officer finds that this issue is outside the scope of this appeal. This appeal is concerned with the Commission's process only. The Hearing Officer does

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<sup>56</sup> *Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1033 n. 19 (Alaska 1972).

<sup>57</sup> *Greater Anchorage Area Borough*, 504 P.2d at 1033-1034.

find that MEA did not fully cooperate with the Commission during the administrative process. First, MEA's General Manager advised the Commission that all MEA wanted was an "up or down vote" on the Applications. [Tr. 147:4-12 5/14/13)] Secondly, MEA refused to participate in Commission workshops intended to review alternative routes. [R. 1139].

67. MEA argues that it was not required to: 1) analyze and assess route alternatives; 2) respond to requests for further information; 3) participate in the June 2013 workshops; 4) perform cost analysis or assess financial impacts associated with the project; or 5) respond to criticism from City staff, residents and businesses regarding alleged negative impacts. The Hearing Officer finds that the City Code does not require an applicant to do any of the above-listed items.

### Conclusion

The Commission has the proper delegated authority to "provide for planning, platting, and land use regulation," including the granting or denying of permit applications. The Commission did not act in an arbitrary or capricious manner in issuing its Resolution 13-06 and the Commission's decision in issuing its decision was a proper exercise of regulatory authority.

Substantial evidence exists supporting the Commission's Findings and Decision. The City's Comprehensive Plan and Land Development Code provide adequate standards and are not deficient. The process used by the Commission was not an *ad hoc* regulatory process. The Commission's decision-making authority is not preempted.

Accordingly, the Commission's Decision as set forth in Resolution 13-06 is affirmed.

### Notice of Right to Appeal

This Decision constitutes the final decision of the Hearing Officer of the City of Wasilla in this matter. This Decision may be appealed within 30 days of the date of the Certificate of Distribution of the Decision, in accordance with Wasilla Municipal Code

Section 16.36.100, AS Section 22.10.020 (d) and Alaska Rule of Appellate Procedure 602  
(a)(2).

Dated this 28<sup>th</sup> day of April, 2014.

By: Joseph N. Levesque  
Joseph N. Levesque  
Administrative Hearing Officer

**CERTIFICATE OF DISTRIBUTION**

I certify that on April 28<sup>th</sup>, 2014 a copy of this decision was posted on the website of the City of Wasilla, [www.cityofwasilla.com/government/pending-appeals](http://www.cityofwasilla.com/government/pending-appeals) and distributed by Electronic mail and First Class Mail to each of the following:

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All "Interested Persons as Defined by WMC 16.36.010.

Kristie Smithers  
Kristie Smithers, Clerk  
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