

**HAINES BOROUGH PLANNING COMMISSION  
REGULAR MEETING MINUTES  
DECEMBER 9, 2004**

12. **CALL TO ORDER:** 6:03 pm by chair **STANFORD**.
13. **PLEDGE TO FLAG:**
14. **ROLL CALL:**

Present: Jim **STANFORD**, Rob **GOLDBERG**, Lee **HEINMILLER**, Bob **CAMERON**, Bill **STACY**

Absent: Harriet **BROUILLETTE**, Lynda **WALKER**

Staff Present: Administrative Assistant Scott **HANSEN**

Visitors: Jim **STUDLEY** (representing Green Dolphin Corporation and Southeast Roadbuilders), Anna **JURGELEIT**, Frankie **PILLIFANT** (Sheinberg Associates), Gail **GILBERT**, Joan **WAGNER**

**15. APPROVAL OF AGENDA**

**M/S STACY/GOLDBERG** to approve the agenda.

Motion carried unanimously.

**16. APPROVAL OF MINUTES - November 18, 2004**

**M/S GOLDBERG/HEINMILLER** to approve the above minutes, with amendments on pages 3 and 6.

Motion carried unanimously as amended.

**17. PRESIDING OFFICER REPORT:**

**STANFORD** said that he had comments about the Haines Coastal Management Plan (HCMP) and the previous hour's meeting with Sheinberg Associates consultant **PILLIFANT**, but that will be addressed later in the agenda.

**18. PUBLIC HEARINGS:**

**a. Variance Request - From Minimum Lot Size - Jim STUDLEY**

**STUDLEY**, representing the Green Dolphin Corporation, said that he had communicated with Administration staff, and his variance request had been approved to move from the application status to the Planning Commission for review. He is requesting a subdivision to split a 12,739 square foot lot into two lots with

4326 and 8413 square feet, respectively. The lots are below the allowed minimum lot size, but he wants to be able to split up two separate commercial buildings for sale on the one existing lot. He cited density regulations and said that parking issues are not compromised. The property split would be ideal for a small business.

**GOLDBERG** noted several fundamental code problems with this application. Variances are limited to specific instances and are not categorically acceptable.

12. HC 18.100.085(B) Lot Dimensions/size. "Unless otherwise provided, lots shall in no instance be less than 10,000 square fee in total area." **GOLDBERG** said that **STUDLEY** is asking the commission to break the law to allow this subdivision by quite a bit - from ¼ acre to 1/10 acre.
13. HC 18.80.050(C) Variance Standards. There must be something specific about this property that separates it from all other properties so that a variance will allow something that otherwise would render development on the lot impossible (wetlands, cliff, stream, etc.). This property does not have that distinction. The only oddity referenced is that fact that two building were built on it, and the subdivider wants to make a sale.

**GOLDBERG** said that all variance standards must be satisfied, or the variance cannot be granted. He read through the six variance criteria and said that five, and possibly six, of the six criteria are not satisfied by this request. The "hardship" of the buildings was created by a predecessor in interest. Cannot be granted. The request is made solely to relieve financial hardship or inconvenience. Cannot be granted. This variance request does not meet very specific criteria. It is very clear that all the requirements were not met.

**GOLDBERG** also said that if the Commission were to approve this variance then any rejection of a lot size below the allowed minimum would be unsupportable. The precedent would affect everyone. This variance request doesn't meet the necessary legal criteria and cannot be approved.

**STUDLEY** said that he's not trying to break the law at all but to go through the legal process. Variances cannot be breakings of the law. He also said that **HANSEN** and Borough Manager **VENABLES** went over the application, including all six variance requirements, and the application was approved to go before the Commission. He said that he wouldn't have brought the application forward if he'd known the money would be wasted. A different interpretation of the process was given him, but a

denial from the Commission would be acceptable. He said he is only asking for an approval of a smaller lot size than allowed.

**HEINMILLER** agreed with **GOLDBERG** and also noted that the Significant Structures Area (SSA) zone is more restrictive due to viewshed issues, and this location is directly adjacent to that zone. To approve either lot size will allow future density and viewshed problems for the SSA. These areas also had buildings connected to the Fort going all the way down to the waterfront, but the zoning allowed the property in question to be outside the SSA. **GOLDBERG** described his experience in the former Mud Bay Service Area as an example of how significant, but difficult, lot sizes are to the "look" of an area.

**STANFORD** said that not only does the variance request fail Borough code it also would violate AS 29.40.040 state statutes. State statutes require that

12. the person who caused the problem cannot solve the problem through a variance
13. a prohibited use cannot be allowed with a variance
14. the variance cannot be used to relieve financial hardship or inconvenience

**STANFORD** noted that two, and possibly three, of these state statutes will be violated if the variance request is granted. He said that there is a process to bring minimum lot sizes below the current minimum: a code language change proposal, which reviews the proposal using the public hearing process.

**GOLDBERG**, reading from the state-published Planning Commissioner's Handbook, pointed out that variances are violations of the law, but the variance exists to allow a lot to be used where it would be impossible without the variance.

**STUDLEY** said that the commercial zone is so small that it is impossible to find developable commercial properties. He said that all the requirements are met, and there should not be a problem with the request. The buildings, parking, and setback issues aren't changed.

**CAMERON** said the application should be denied. **STACY** agreed. He asked **HANSEN** if the process had involved him, and what the decision had been. **HANSEN** said that he and the Manager had met with **STUDLEY** over the issue, and **HANSEN** had gone through the six variance requirements relative to the development. However, he holds no authority to approve or deny permit applications. The Manager holds this authority, and regardless of **HANSEN'S**

interpretation the Manager had allowed the application to be placed on the Commission agenda.

**GOLDBERG** said that the new Manager has not had much exposure to land use code up to this point and shouldn't have allowed the application to have come this far. Based on this procedural breach he suggested waiving fees, as the administration should've stopped the application. **STACY** agreed, saying that the advice against carrying further should've been heeded.

**M/S GOLDBERG/HEINMILLER** to deny the variance request based on the above interpretation of Borough Title 18 code and also an understanding of Title 29 state statutes.

**STACY** and agreed that fees should be refunded.

Motion carried unanimously.

**M/S GOLDBERG/STACY** to refund the \$150.00 fee for the variance application.

Motion carried unanimously.

**19. STAFF REPORT:**

- a. Land Use Permits: NONE**
- b. Enforcement: NONE**
- c. Comprehensive Plan Comment Period**

**HANSEN** said that the Comp Plan comment period closes December 31. To date there have been several responses since advertised in October.

**20. COMMUNICATION:**

**HANSEN** explained the pile of communication on each Commissioner's desk as an example of many last-minute issues and suggested that adequate time be given to investigate each issue.

**21. OLD BUSINESS**

- a. Schnabel Rock Pit CU Permit**

**HANSEN** explained that the issue is up for administrative review based on the approval letter October 11, 2001, memo attachment, which did not require the developer to purchase a separate permit and hold a second public hearing. The permit decision was already made by a prior Commission, and in lieu of approving the permit indefinitely the Commission at that time determined

that a three-year review for compliance was acceptable. **STANFORD** said that a public hearing was necessary to hear this issue because residents needed to be part of the evaluation whether or not there was compliance. **STACY** suggested that if the Commission is to err it should be on the safe side by having a public notice period.

**M/S STANFORD/GOLDBERG** to table both Turner and Schnabel permits until a public hearing is set.

**HANSEN** asked who would cover the cost of the public hearing. There is a \$150.00 fee for every new conditional use permit public hearing so that costs will be covered. For every public hearing there is a newspaper advertisement, letter mailout to landowners within 200 feet away, and staff time to field all the public input - copies, communication, and details. **HEINMILLER** said that permit fees are a cost of doing business. **GOLDBERG** agreed. **STACY** suggested that the Borough should pay since our process didn't leave room for residents to state whether there was a violation or not. The commission directed staff to assign fees to the developers whose permits are coming up for review from now on.

Motion passed unanimously.

**M/S HEINMILLER/STACY** to require a \$150.00 fee for "renewing" a Conditional Use permit in the future.

Motion withdrawn.

**M/S STANFORD/GOLDBERG** to amend Title 18 adding Conditional Use "reconsiderations" to the list of activities requiring a \$150.00 fee.

Motion carried unanimously.

**STANFORD** noted that this issue will be on the January agenda.

**b. Turner Rock Pit CU Permit**

Tabled until a public hearing is arranged, as per the motion in the above agenda item.

**c. Modular Homes in SR Zone**

**GOLDBERG** said that in his opinion there is still a loophole for "mobile homes" that masquerade as "modular homes".

**M/S GOLDBERG/STANFORD** to place in the zoning use chart the following:

Add Modular Home in the use column. Modular homes would be allowed in all zones that "single unit dwellings" are allowed but with an asterisk. The asterisk would say "modular homes must be constructed of more than one unit, and to a minimum combined width of 20 feet." The only zones in which this condition would not apply are the Multiple Use zone and General Use zone, where mobile homes are permitted.

**STACY** said that this really doesn't solve the deeper issue that neighborhoods should define and exercise their own standards. **GOLDBERG** said that neighborhood associations are good as long as wealthy landowners don't hire lawyers and push the majority with litigation - at this point most people don't have the money and time to fight a legal battle, so they end up not enforcing their own neighborhood association codes. Borough code can be enforced by the authority of the municipality, backed by the state. **HANSEN** agreed, saying that zoning is the best avenue for local residents' consensus to be put into a manageable, enforceable law. Residents create the law, and the Borough will enforce the law. With a rezoning the residents make the zone. The Borough is not creating areawide laws to solve regional problems - the majority of the region makes the zone laws, and the Borough backs up the resident majority. **STACY** encouraged the Commission to not make areawide laws unless absolutely necessary - Alaska has unique, desirable freedoms. He agreed that zoning is more desirable than areawide code changes to satisfy regional complaints. **GOLDBERG** agreed, saying that if areawide rules are requested they should be areawide.

Motion carried unanimously.

#### **d. Borough Lands PC Policy Summary**

**GOLDBERG** read his proposed summary of the Commission's Borough land disposal rationale. **STACY** noted that **WALKER** is not in attendance, and her desire was greatest to review the document. He suggested that **GOLDBERG** add a note saying that when the document was submitted to the Assembly **WALKER** was not in attendance to comment on the document.

#### **e. HCMP Consultant**

Based on the 5:00 pm meeting consensus **PILLIFANT** will work with Borough staff to create a draft map designating specific areas

referenced in the existing plan and adding proposed areas, and will bring that draft to the Commission. At that time the Commission will mark up the draft so Sheinberg can propose possible enforceable policies for the draft plan, due for public hearing March 7, 2005.

**12. NEW BUSINESS:**

**1. Zoning Protest Charter Language**

**STANFORD** noted that sometimes procedures are used inappropriately to "kill" proposals by sending them to committee, from which they do not return. Another problem is when a subcommittee attempts to make a policy decision without returning the issue to the public body holding authority. It appears that the proposed charter changes about the zoning protest have fallen by the wayside because no Assembly consensus was reached about what to do - instead, the subcommittee, with no authority, gave the Commission direction. **STANFORD** offered to draft a letter explaining the issue and requesting that the Assembly work within the most proper procedures when directing the Commission.

**M/S STANFORD/STACY** to that **STANFORD** draft a letter to the Assembly requesting a clarification of process regarding the proposed charter language.

**STACY** agreed that if a subcommittee directs the Commission there is only confusion if the Assembly does not agree by consensus.

Motion passed unanimously.

**m. University of Alaska Land Sale Public Comments**

**HANSEN** directed Commissioners to the packet, where a University of Alaska mailout shows portions of Alaska UA properties for sale, but the mailout did not include Haines on the list of subdivided properties. This is different that one year ago, when they'd advertised their plans for a residential subdivision near the steel bridge at 25 mile. He summarized a conversation with University of Alaska staff who confirmed this, saying that the subdivision in Haines is on the "back burner." **STUDLEY** said that he had heard that 150 lots or so will be sold, despite what the University might say. The whole area was flagged up and had been surveyed - it's almost through the platting process. **STANFORD** said that he lives out there but hadn't seen the survey evidence. **STUDLEY** said that even though he profits from land sales when public entities sell property they undercut private

landowners' ability to make a profit selling land and recommended discouraging the state or borough from selling land.

**12. PUBLIC COMMENT: NONE**

**13. TITLE 18 REVISIONS: NONE**

**14. NEXT MEETING DATE**

a. Regular meeting - Thursday, January 13, 2005, at 6:00 pm  
in the Assembly Chambers

**15. ADJOURNMENT**

**M/S STACY/CAMERON** to adjourn.

Motion carried.

The meeting adjourned at 8:52 pm.

Respectfully submitted:

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Scott **HANSEN**, Haines Borough Administrative Assistant