

**BEFORE THE HEARING OFFICER OF THE
CITY OF WASILLA, ALASKA**

290 E. Herning Avenue
Wasilla, Alaska 99654

IN THE MATTER OF THE APPEAL OF NOEL)
KOPPERUD AND ALEX KOPPERUD OF THE)
CITY OF WASILLA PLANNING) APPEAL CASE NO. 15-01
COMMISSION RESOLUTION)
SERIAL 15-10(AM))

**CITY OF WASILLA'S RESPONSE TO
APPELLANT'S REQUEST FOR PRODUCTION OF DOCUMENTS**

The City of Wasilla, by and through counsel, responds to Appellant's Request for Production of Documents. The City provides these documents and responses consistent with the Hearing Officer's Pre-Hearing Conference Order issued September 24, 2015, the Wasilla Municipal Code §§ 2.48 et seq., WMC § 2.48.130, and the State of Alaska Public Records Act § 40.25.110 et seq., specifically 40.25.122. The City's responses and the documents attached hereto are provided in good faith to the Appellant consistent with the discovery process but the City, by its production, does not waive any objections to relevance, admissibility, or inclusion in the Record on Appeal.

At the Pre-Hearing Conference on September 23, 2015, Mr. Kopperud requested a copy of Exhibit 7 from the public hearing at issue in this appeal. While not explicitly requested in his Request for Production, the City has included Exhibit 7 at COW 002261.

In re Appeal of Kopperud
City of Wasilla's Response to Appellant's Request for Production of Documents
Appeal Case No. 15-01

LANDY BENTNETT BLUMSTEIN LLP
701 WEST EIGHTH AVENUE, SUITE 1200
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 276-5152, FAX (907) 276-8433

GENERAL OBJECTIONS

The City objects to Appellant's use of "Instructions" and "Definitions" to the extent they require anything other than compliance with the procedures outlined in the City Code provisions regarding appeals, the City Code, commonly understood meanings of Appellant's request, State public records provisions cited above, and any applicable provisions of the Alaska Rules of Civil Procedure.

The City has provided relevant documents in the Planning Department's files. The City objects to all requests to the extent they ask the City to search all documents within all records retained by all City departments. In preparing its responses to the Requests from the Appellant, the City has searched all documents retained by the Planning Department. A request for a City-wide document search is overly broad, unduly burdensome, and not contemplated in the Hearing Officer's Pre-Hearing Conference Order or the Hearing Officer's instructions given on the record at the Pre-Hearing Conference.

Appellant's Request for Production is much broader than the Request described by Appellant on the record at the Pre-Hearing and much broader than the Request authorized by the Hearing Officer. Nonetheless, the City has, in good faith, endeavored to respond to Appellant's Requests, except where such a response is protected by privilege or is unduly burdensome.

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DOCUMENT REQUESTS

Please provide for inspection all documents, internal communications, records, written communication, written correspondence, and electronically stored information (ESI) as defined herein above, in possession of the City, of every type, that pertain in any manner to the following:

- Any documents, as defined herein, which pertain to the following properties
(Address/Tax ID#)

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701 WEST EIGHTH AVENUE, SUITE 1200
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 276-5152, FAX (907) 276-8433

<p>954 E. Westpoint Drive / 5224B01L014 972 E. Westpoint Drive / 5224B01L013 990 E. Westpoint Drive / 5224B01L012 1000 E. Westpoint Drive / 5224B01L011 1018 E. Westpoint Drive / 5224BOIL010 1036 E. Westpoint Drive / 5224B01L009 Lakeridge Condos 1072 E. Westpoint Drive #1-7 / 9014000UOO I - U007 1090 E. Westpoint Drive / 5224BO I L006 1100 E. Westpoint Drive / 5224BOIL005 1144 E. Westpoint Drive / 5224B01L004 1166 E. Westpoint Drive / 5224B01L003 1168 E. Westpoint Drive / 5224801L002 1190 E. Westpoint Drive / 5224801LOO I 1220 E. Westpoint Drive / 1037T02POOI 1220 E. Westpoint Drive / 1037T02P002</p>	<p>1191 E. Westpoint Drive / 5225802LOOI 1167 E. Westpoint Drive / 5225B02L002 1165 E. Westpoint Drive / 5225B02L003 401 N. Westcove Drive / 2253B02L004A 445 N. Westcove Drive / 2253B02L005B 491 N. Westcove Drive / 2246B02L007 501 N. Westcove Drive / 5225B02L008 523 N. Westcove Drive / 5225B02L009 545 N. Westcove Drive / 52258021010 567/571 N. Westcove Drive / 5225B02L011 IOI8 E. Lakeshore Ave. / 5225802L012 1090 E. Lakeshore Ave. / 5225B02LOI3 I I 90 E. Lakeshore Ave. / 17NO I W1OAOO I 1210 E. Lakeshore Ave. / 5225B05L001</p> <p>And the property referenced by Commissioner</p>
<p>1240 E. Westpoint Drive / 1037T02P003A 1260 E. Westpoint Drive / 1037T02P003B 1245 E. Westpoint Drive / 1037T01 P003 1225 E. Westpoint Drive / 1037TO I P002</p>	<p>Means at time code 181 during the 7/14/2015 Planning Commis. meeting - it received a variance earlier / was located "behind the fitness club."</p>

RESPONSE: All relevant information within the possession of the Planning Department is included with these Responses at COW 000001-000848. There are no documents in the City's planning files regarding the following properties: 5224B01L014, 5224B01L013, 5224B01L004, 5224B01L002, 5224B01L001, 5225B02L001, 5225B02L002, 5225B02L003, 5225B02L008, 5225B02L009, and 1037T01P002.

Document Request, continued

Please provide for inspection all documents, internal communications, records, written communication, written correspondence, and electronically stored information (ESI) as defined herein above, in possession of the City, of every type, that pertain in any manner to the following:

2. Code enforcement on the properties at 1260 E. Westpoint Drive and 1245 E. Westpoint Drive, and code enforcement actions taken by City to enforce 75-foot shoreline setback provision on other properties in City.

RESPONSE: The City of Wasilla Police Department maintains all official records for WMC Code enforcement actions. To the extent copies are included in the relevant property files referenced in the Response to Request Number 1 above, Appellant is referred to COW 000001-000848.

3. All variance applications acted upon by the City pertaining to the 75-foot shoreline setback provision.

RESPONSE: Relevant information within the possession of the Planning Department is included with these Responses at COW 000001-000848 and COW 000849-000855.

4. Every City of Wasilla Letter of Certification of Legal Non-Conforming Setbacks which pertains to the 75-foot shoreline setback provision.

RESPONSE: Any relevant information within the possession of the Planning Department would be included with these Responses at COW 000001-000848.

5. Any document, as defined herein, pertaining to the water quality, fish, wildlife, and recreational aspects of all waterbodies within the City of Wasilla, including but not limited to Wasilla Lake, Lake Lucille, Jacobsen Lake, Lucille Creek, and Cottonwood Creek. The requested production should include correspondence, studies, and other documents as defined herein to or from City and Matanuska-Susitna Borough, Alaska Department of Environmental Conservation, Alaska Department of Fish and Game, Natural Resource Conservation Service/Soil and Water Conservation, US Corps of Engineers, and US Environmental Protection Agency.

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RESPONSE: The City objects to requests for documents related to Jacobsen Lake, Lucille Creek, and Cottonwood Creek. Such a request is overly broad, unduly burdensome, and not contemplated in the Hearing Officer's Pre-Hearing Conference Order or the Hearing Officer's instructions given on the record at the Pre-Hearing conference. Relevant documents relating to water quality, fish, wildlife, and recreational aspect information relevant specifically to the properties discussed in Request Number 1 above and found at COW 000001-000848. The Record on Appeal also contains any relevant water quality, fish, wildlife, and recreational aspect information relevant specifically to the property that is the subject of this Appeal. Other information in the possession of the Planning Department regarding water quality, fish, wildlife, and recreational aspect information for Wasilla Lake and Lucille Lake is included with these Responses at COW 000856-001086.

6. Any document, as defined herein, pertaining to the floodplain of Wasilla Lake, including also any documents referring to FEMA-designated Special Floodplain Hazardous Areas and/or required permits for development therein.

RESPONSE: The Matanuska-Susitna Borough has the authority regarding flood plain determinations and permitting. The City does not possess information specific to the Matanuska-Susitna Borough's determinations of issues within its purview. However, copies of information provided to the City by the Matanuska-Susitna Borough regarding the property that is the subject of this Appeal is included

in the Record on Appeal. Some information relevant to this request and specific to the properties listed in Request Number 1 above, to the extent such information exists, would be included at COW 000001-000848.

7. Any document, as defined herein, regarding the interpretation of the shoreline setback provision or intergovernmental management or dual management of Wasilla Lake by the City and the Matanuska-Susitna Borough.

RESPONSE: The Matanuska-Susitna Borough Code and the City Code (Title 16) contain shoreline setback provisions. Both Codes are available online for Appellant's review. Documents relevant to instances where the Borough delegates planning authority to the City are included with these Responses at COW 001087-001300.

8. Any document, as defined herein, that describes the authority of the City to enforce, repeal, or modify the shoreline setback provision as contained in MSB 17.55.020 or WMC 16.24.030 (C)(3).

RESPONSE: The Matanuska-Susitna Borough Code and the City Code (Title 16) contain shoreline setback provisions. Both Codes are available online for Appellant's review. Documents relevant to instances where the Borough grants the City planning authority are included with these Responses at COW 001087-001300.

9. Any document, as defined herein, that pertains to a City taking or condemnation of a property right, as a result of denial or granting of a variance.

RESPONSE: The City does not possess any documents responsive this request.

10. Any documents, internal communications, records, written communication, written correspondence, and electronically stored information, as defined herein above, between City and its attorneys or other legal representatives, whether in possession of the City or its attorneys, legal representatives, agents, or consultants, created at any time prior to the time of appeal, July 29, 2015, that pertain in any manner to Variance 15-01, including all parties and issues of every type and nature related thereto.

RESPONSE: Objection. Documents responsive to this request are privileged attorney-client communication.

11. All documents and ESI, as defined herein, including log notes or other documents of the City Planning Director or other City employees, and any notes or sketches made by or given to the Commissioners during any hearing which pertains in any manner to Variance 15-01 or Appeal Case 15-01. Appellants also request a copy of all communications or documents or ESI of every type and nature as defined herein between City and Planning Commissioners which pertain to Variance 15-01

or Appeal 15-01. Such request shall include all documents, communications, and ESI between City legal representatives and Commission members.

RESPONSE: There are no sketches or notes in the City records responsive to this request. A sketch was shown to the Planning Commission at the second meeting for the limited purpose of helping the Commission visualize the available building footprint if a reduced shoreline setback was approved. It was not introduced into the Record. The City did not retain the sketch because it was not a part of the Record.

12. A copy of all documents that were obtained and provided to Commissioner Means in response to his email request to the Planning Director dated June 2, 2015, and a copy of all other documents of every type provided to the Commissioners at any time during the pendency of Variance 15-01.

RESPONSE: These documents are included in the Record on Appeal. The documents requested for Commissioner Means are at pp. 164-166 of the Record.

13. All documents and electronically stored information between the City and any Interested Parties as defined in the Wasilla Municipal Code as pertains to Parcel 3, Tract 1, Lakeshore Subdivision (1245 E. Westpoint Drive).

RESPONSE: Copies of documents received prior to the filing of the Appeal, to the extent they exist, are included in the property file at for 1245 E. Westpoint Drive included COW 000001-000848.

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14. Any document, legal correspondence, or ESI, as defined herein, that interprets or discusses in any manner a provision of City law, other policy, or "rule of thumb" which specifies that every platted lot in Wasilla is entitled to have one house built thereon.

RESPONSE: Objection. Legal correspondence is privileged attorney-client communication. With respect to the remaining requests, the City does not possess any documents responsive this request.

15. Any document, legal correspondence, or ESI, as defined herein, that interprets or discusses in any manner a provision of City law or other policy which references the proposition that blocking a landowner's view does not "significantly adversely affect" another property within the meaning of variance ordinance WMC 16.28.110 (D)(5).

RESPONSE: Objection. Legal correspondence is privileged attorney-client communication. With respect to the remaining requests, the City does not possess any documents responsive this request.

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16. Any document, legal correspondence, or ESI, as defined herein, that interprets or discusses in any manner a provision of City law or other policy which interprets the term "no more than is necessary to permit reasonable use" as it pertains to WMC 16.28.110 (D)(1).

RESPONSE: Objection. Legal correspondence is privileged attorney-client communication. With respect to the remaining requests, the only documents responsive to this request are contained in the City Staff Report found in the Record on Appeal at pp. 17-21, 168-172, and in the Planning Commission findings of fact in adopted Resolution Serial No. 15-10(AM) at p. 252 of the Record.

17. Any document, legal correspondence, or ESI, as defined herein, that interprets in any manner any of the other provisions of WMC 16.28.110. Appellants also request a copy of any City policy statement or document that applies in any manner to the granting or rejecting of variances or the standards and conditions specified in the ordinance.

RESPONSE: Objection. Legal correspondence is privileged attorney-client communication. With respect to the remaining requests, the City does not possess any documents responsive this request.

18. Any document, as defined herein, pertaining to a minimum house size ordinance in the City.

RESPONSE: The City does not possess any documents responsive this request.

19. Resumes or completed applications for the Wasilla Planning Commission members who participated in Variance 15-01, providing their background information to City.

RESPONSE: These documents are available on the City of Wasilla website (www.cityofwasilla.com) under the City Council adopted Action Memorandums. See AM #15-02 for Jessica Dean and Debra Barrett, AM #14-04 for Claudia Pinard, AM #13-40 for Loren Means, and AM #12-50 for Glenda Ledford.

20. Any comprehensive plan, recreation plan, waterbody plan, shoreline use plan, US Corps of Engineers study or plan, salmon/habitat/wildlife management plan or study which pertains in any manner to Wasilla Lake.

RESPONSE: The City of Wasilla 2011 Comprehensive Plan and Title 16 are available on the City's website. Any other plans adopted by any other governmental agency are maintained by that entity and are not in the City's possession.

21. All documents and communications, including all ESI, between the City and H&M Court Reporters.

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RESPONSE: Documents responsive to this request are included with these Responses at COW 001301-002260.

DATED this 6th day of October, 2015, at Anchorage, Alaska.

LANDYE BENNETT BLUMSTEIN LLP
Attorneys for CITY OF WASILLA



Leslie R. Need
Alaska Bar No. 0712113

Certificate of Service

On October 6th, 2015, a true and correct copy of the foregoing document was sent by e-mail or hand-delivery for distribution to the following:

Sarah Whiteley
Deputy City Clerk
City of Wasilla
swhiteley@ci.wasilla.ak.us

Electronic copies of the referenced discovery documents were provided to the parties by email at the following addresses:

Kristie Smithers, City Clerk: KSmithers@ci.wasilla.ak.us
Sarah Whiteley, Deputy City Clerk: swhiteley@ci.wasilla.ak.us
Noel and Alex Kopperud: kopp907@gmail.com
Nancy Starn: gstarn@gci.net
William Starn: MTNSTAR@MTAONLINE.NET
Tina Crawford, City Planner: tcrawford@ci.wasilla.ak.us



Cheri Tabor

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