END OF GASTINEAU SOCIETY (EGS)

APPEAL OF PLANNING COMMISSION APPROVAL

OF A STREET VACATION OF RODENBURG WAY,

A PUBLIC RIGHT-OF-WAY LOCATED

BETWEEN BOROFF WAY AND CARROLL WAY

IN THE 7A ADDITION TO THE TOWNSITE OF JUNEAU,

SUB2001-00025,

FOR CHANNEL VIEW INC., APPLICANT,

AND PROPERTY OWNERS:

TRUCANO CONSTRUCTION, INC.,

M. BONNET & D.J. WOODIE,

AND LARRY & ELOISE KNUDSEN

1/2/2002
Dear Assembly:

There are **six serious irregularities** in this application:

1) Wrongful use of name Channel View, Inc., a non-profit incorporated for the purpose of low income housing;

2) Misleading use of name Larry Knudson (deceased) as property owner; and failure to answer the question asked by the Planning Commission, "What's on Lot 2, and who owns it?"

3) Misrepresentation in Landvik's appearance as "representative of the applicant," rather than as owner of Lot 1—-a fact not revealed to the Planning Commission even when asked;

4) Substitution, unbenownst to the Planning Commission, of a different plat for Rodenberg Way, shorter and illegal in terms of frontage—-a lie and an attempted theft of public right of way and CBJ land.

5) Misrepresentation of access for landlocked residential lot (replat drawn to small set of steps which cannot be reconstructed for a landing);

6) The required public notice sign not visible.

I. **WHO IS THE APPLICANT?**

The applicant is shown to be Channel View, Inc. in the staff report and the notice of decision. (R1, 32) It is also on the very cover of the appeal record (see preceding page.) But Landvik did not have permission to use this name. When asked about it, two of the directors, including the president, had no knowledge of this application. Landvik's application is for a commercial building, but Channel View is a non-profit for low income housing:
II. WHO OWNS LOT 2?

Page 3 of the appendix, the text of Mr. Maguire's oral testimony, shows that the Planning Commission asked about the ownership of the land on which the apartment buildings sit. Mr. Landvik did not answer.

Larry Knudson is shown as a property owner requesting this ROW vacation (R1, 32, and the cover of the appeal record). But Larry Knudson died in November of 2000 (R16).

A truthful answer to the Planning Commission would have been that since the owner was recently deceased, the land was in probate—but that his ex-wife, Eloise, had arranged to sell Lot 8 to Landvik by means of a "quit claim."

The use of Larry Knudson's name as a property owner requesting the vacation implies that he is in favor of it. Many people have asked this writer why the owner of the apartments was not protesting.

Larry Knudson was a member of our last appeal group and strongly protested the sheetpiling beneath his property (R17). The reason he is not protesting now is that he is dead. That fact should have been revealed to the Planning Commission, especially when asked directly.

The final four irregularities are discussed in the following pages.

The Assembly may order a reconsideration, or a "stay of execution" or a "continuance," as shown by the appeals procedures:

01.50.160 EFFECTIVE DATE OF DECISION. (a) A decision becomes effective thirty days after it is delivered or mailed to the parties or their representatives unless:

(1) A reconsideration is ordered within that time; . . .

or

(3) A stay of execution is granted for a particular purpose and not to postpone judicial review.

(b) A stay of execution may be included in the decision, or if not included in it, may be granted by the appeal agency at any time before the decision becomes effective. The stay of execution may be accompanied by an express condition that the respondent comply with just and reasonable terms during the stay.

01.50.200 CONTINUANCES. The appeal agency or the hearing officer may grant continuances for good cause shown.

If any of these three things are done by Monday, January 14, this appeal will have succeeded. Thank you for this relief:

Page Bridges for EGS

Pie Bis
Dear Assembly Members:

We submitted to you an extremely thoughtful opening brief and reply brief. Our language and ideas have been so distorted and degraded by these findings that they bear almost no factual relationship to our carefully constructed work. Please take the time to read our briefs again, on the internet if you no longer have them. It is important to read our argument with an open mind, and not automatically believe the belittling and untrue version presented by either our opposition or these findings.

We believe that it is possible that after you read this rebuttal to the findings, you might choose to reconsider the appeal rather than approve them. The unlikelihood of that, however, makes our prime purpose in writing these objections to create a public record of this sorry and unfortunate situation and decision.

I. WHO OWNS LOT ONE?

At the hearing, Mr. Koelsch asked, "Why is it important who owns Lot 1?" This writer stumbled for an answer, trying, "It shows deceit," and hitting upon a lack of due process because neither the Planning Commission nor the public was truthfully informed. But the most potent reason, discovered after rereading the "appeal procedures," is that of misrepresentation.

The appellate code allows new evidence to rebut or impeach or to disclose "fraud, misrepresentation or other misconduct of an opposing party:"

(2) Fraud, misrepresentation, or other misconduct of an opposing party.

(f) The prohibition of subsection (e) of this section does not apply to evidence offered solely to rebut or impeach.

Misrepresentation is here defined as "misconduct." Misrepresentation is a serious offense. In any public hearing, one must come clean with the facts. If one is not honest and forthcoming, one is in contempt of the public, and in this case the Planning Commission.

A Planning Commission member asked Mr. Landvik to explain who owned Lot 1 and which lots he represented. He explained that he represented Lot 2. In actual fact, he came to the meeting as owner or prospective owner of Lot 1, which came out in the appeal hearing only because this writer asked for the answer he had not given the Planning Commission.

(And according to the cover page of this appeal record itself, he came also as representative for Lots 3A and 2Al.)

Ms. Gladziszewski asked what was on Lot 2, Lot 8 and Lot 1 and who owns them. She also asked Mr. Landvik to clarify what lots he represents before the Planning Commission. Mr. Landvik said he represented Lot 2 and he has an option to purchase Lot 8. Lot 1 is not a part of tonight's discussion.
"Lot 1 is not a part of tonight's discussion" is a curious statement when the reason for the request for the ROW vacation had been a "more buildable site" or "larger building site" for Lot 1.

II. LEGAL FRONTAGE ON A RIGHT OF WAY

Another misrepresentation in the record is possibly even more serious. The record shows that not only did the written staff report, but also the oral testimony of staff, explain that the proposed replat of the ROW would go behind both small houses, Lots 3A and 2A1. (OB19, RB5)

The same information was given to CBJ employees by staff (R9-12):

Vacating Rosenberg Way will land lock Lot 2A. According to the platting code all lots must have frontage on a public right of way. To meet this requirement the applicants are platting a new 5-foot wide right of way on the uphill side of Lots 2A and 3, that will start from from Carroll Way but will not extend to Boroff Way (See Rodenburg 3.)

Any objection or comments on this proposed right of way vacation and replat?

A diagram showing the replat was included in the Planning Commission packet:

![Diagram showing the replat]  

Please note that this proposed new ROW behind both Lots 2A and 3A is shown on this first diagram as being 110 square feet. But that square footage, if one does the math, represents only the area behind Lot 3A.

At the Planning Commission hearing, a new diagram and map were given to the Commission. As shown by the diagram, the new ROW would extend only behind Lot 3A, not behind both.
The record shows that staff did not call the new diagram to the attention of the Commission, or explain that there was a change (R25):

Mr. Maguire called commissioner's attention to the revised development permit application in their Blue Folders. This replaces the application No. 2 of 3 that was provided as an attachment to the staff report.

The tape of the meeting reveals that the minutes are correct in this regard. No mention was made of the change to the Planning Commission, who believed, along with the public, that the application request was to replat the portion of the right of way behind both houses.

The request for a replat behind just one house was not only concealed as much as possible, but it was also illegal. The staff report discusses the need for access and a code requirement for frontage on a right of way.

It occurred to this writer only after the appeal hearing (in response to seeing Mr. Walsh mention a requirement for frontage while waving his hand generally behind the houses, not pointing at a specific area) to look up the code requirement for frontage. It is found at 49.15.460, 5A:

(A) All lots shall have at least thirty feet of frontage on a dedicated right-of-way.

Not only does this misrepresentation conceal a private financial gain to Landvik or Trucano Construction (OB19), but it is illegal.

An illegal request in which the facts were misrepresented is not a request that should be honored at all. All applicants must be honest and forthcoming with the Planning Commission, and if not, should at the very least be turned away and denied the request in any form, now or later. Misrepresentation is serious misconduct.

III. ACCESS AND THE CARROL WAY LANDING

Regardless of the applicants' (including Bonnet-Woodie) discussion of the maintenance of access to Lot 2A1 with the new ROW, it would not provide access. There is no landing on Carrol Way at that spot. No landing could be constructed, because the two ends of that short set of steps are fixed at the apartments' walkway and the entrances to 334 Carrol Way.

This is another problem of misrepresentation in the application. The City Attorney's Draft Findings say this was not told to the Planning Commission, but it was (OB3, excerpt from Bridges testimony):

If you're going to have to grant this replatting, it should go all the way across the top. Now, this is really important. I'm really asking you to listen to me on this, because I'm not sure I'm always getting through, but this is really important. Where they want to replat this right-of-way to is at the top of the property, and right there Carrol Way comes down as a staircase. Then it levels out into a landing which goes into my house and also into Rodenberg Way. So it's reasonable to put a right-of-way off a landing. But you really can't put a public right-of-way off of a little staircase. I mean, it would never be useful.
IV. REQUIRED PUBLIC NOTICE SIGN NOT VISIBLE

One of the required procedures of the Planning Commission application process is that nearby residents be given notice.

We argued in the briefs that since part of the grounds of the apartments was going to be changed as to use, the residents should have been informed in writing (as per CBJ code). In response to the opposition's argument that the use of the buildings themselves would not change, we offered another argument at the appeal hearing. We said that a son of Larry Knudson had told this writer that if the apartments had been condemned last winter, when the hill slipped, "they" would have had to buy them. The proposed new sheetpile wall, allowed to be bigger by this vacation, might bring about that condemnation, and then there would be a change in use.

That is clearly a debatable point. But not debatable is that the apartment residents under the law deserved notice, i.e., a sign.

The draft findings state the code requirement that a sign must be posted on the site clearly visible from a public right of way. They concur with the opposition that Lot 1 was part of the site, so that a sign on South Franklin Street was legal. (Actually staff said "off South Franklin Street" was the location. R27)

But Lot 8 was the lot that was going to change hands. Rodenberg Way was going to be replatted from the bottom to the top of Lot 8. Logically, the sign had to be on Lot 8 somewhere, visible from the windows and the stairs.

The practical purpose of the sign was to inform residents, as both the opposition and the findings concur. But the residents lived on Gastineau Avenue, facing Lot 8. Many of the residents never or rarely climb the staircase down to S. Franklin. Those who do, almost always turn right at Carrol Way towards town, so would not have seen the sign on South Franklin, because the new Fur Gallery building obliterated the view, even from across S. Franklin.

Neither the findings nor the opposition briefs rebut the point that the sign was not clearly visible. It was propped up on a rock at ground level at the back of a parking lot (OB8, RB87). There was much construction activity going on at the time on both sides of S. Franklin, and usually there were several vehicles parked obscuring the sign, so that even if one walked by, one would not see the sign.

The findings ridicule our discussion in the opening brief of Bill Zentner's having been in a truck in front of the sign and having told me that Mr. Landvik had just picked it up. The appellate code allows secondary hearsay evidence. We only put it in the brief to be prepared in case the opposition denied the location at the back of the parking lot. But they did not.

The findings also state that I only asked where the sign was at the hearing and did not protest (nor others either). Actually, I also said that I had not seen a sign (OB3):

I want to ask Tim a question. I didn't see a public notice at the site. You said there was a public notice at the site. Where was that?
The undeserved ridicule of our discussion of Bill Zentner as witness and the irrelevant allegation that we did not protest the sign location at the hearing both require a hearsay story, allowed by the code as supporting evidence.

No one in the neighborhood that I know of saw any public notice sign advertising the hearing. No one in the neighborhood that I know of is an activist who even reads the municipal listings in the Empire. I only found out shortly before the hearing because my eye happened to chance on a opened newspaper as I passed by a sunny window. As mentioned in the brief, my fear of what this vacation would mean was so great that I had no energy to inform anyone but the coappellants (and the neighbor Nancy Waterman). We all spent the time before the hearing worrying and trying to prepare something to say to the Planning Commission; and I wrote several letters to Larry Knudson's heirs to try to influence them not to sell.

The last thing on any of our minds was the public notice sign. I actually remember thinking that signs must not be required for small items such as vacations or variances. What alerted me to the problem was the staff report. At that time I turned to the co-appellants and asked quietly, "Did you see a sign?" They all replied no, and I made a note to ask where the sign had been posted.

When staff told me "off South Franklin" I was dumbfounded. I just stared at him momentarily while my mind started to register the situation. The neighbors did not protest either, because we all had just become aware of the sign requirement, had not had time to think about it and were nervously preparing our arguments as to the substance of the application.

The public is not required to understand all the intricacies of the application and reveal them to the Planning Commission. That takes very careful study and more time than any of us had.

When I returned from the hearing that night, I went to look for the sign. I had to walk to the back of the parking lot, because even at night a pickup truck was parked right in front of it! My camera was broken, so it took me time to borrow one. Early in the morning the day after the next day, I bicycled to get the camera. I saw Mr. Landvik talking to Mr. Zenter. Although I hurried, when I returned, the sign was gone. I believed that Mr. Zenter had picked it up, and I asked him to put it back for a minute so I could take a picture. At that time he told me that Mr. Landvik had just taken it away.

As stated above, this meeting with Mr. Zenter was put in the brief only as supporting evidence should the opposition deny that the sign was at the back of a parking lot on ground level.

No one has denied that the sign was often obscured by vehicles. This location was a serious violation of the code that requires a sign to be clearly visible.

This procedural violation (as well as inadequate finding) requires that the Assembly overturn this vacation of Rodenberg Way. The sign was neither in a location accessible to the residents who lived immediately adjacent to the site; nor was it even visible in its obscure location.

The lack of a sign was a major breach of due process. Many residents did not find out about the hearing, and the ones that did had no time to submit written testimony or put together photographs.
V. CONCLUSION

The loss of the hearing tape is another procedural and due process violation. The testimony of the appellants was much more voluminous than reflected in the minutes. We could not afford a transcript, so we felt that if there any points that did not appear in the minutes, we could self-transcribe them, and play them to the Assembly if necessary.

It is not a moot point because we happened to have obtained a copy early in the process. What if we had not?

We will, by Friday of this week give a copy of the tape to the City Clerk, as well as a tape of a few important excerpts, to be placed in the appeal folder. The Assembly may verify any of our transcriptions they wish to.

As to the rest of the findings that we have not yet rebutted. Most of the statements attributed to us have been restated to show them in a negative light. For instance, we never said the vacation "would promote development" or talked about "favoritism", or several other things alleged by the findings.

The author of the findings is an attorney, and it is an attorney's tactic when the issues are clear and right, to distort and deride the language of the opposition. The opposition in this case are artists. This writer, an artist as well as educated on the graduate level in literature, is trained in critical reading as well as the honest use of expression.

Please do not automatically believe our opposition. A decision of this importance should not be based on quirks of language.

Finally, our neighbors Michelle and Woodie request several things which they could have anyway without this vacation. They have room to build a small retaining wall on their present property. Larry Knudson built one already up above them. They could build a deck and have a garden on Lot B (though there is also a little room for those on their present property.) The statement that "no harm and considerable good will come of this action" is false.

Very truly yours,

Page Bridges for EGS

*(and on the 110 sq. ft. of Rodenberg way behind their present property)*

*Appendix follows: A text of excerpts from tape and Attachment B, showing 110 sq. ft. Row behind both houses, and "as-built", with 110 sq. ft. Row behind one house.*
Oral Staff Report

Mr. Maguire:

"It should be noted that vacating Rodenberg Way would land-lock Lot 2A1. To meet the code requirement, the applicants are platting a new 5-foot access to the site directly from Carrol Way on the uphill side of Lots 2A1 and 3A."

"The Land Use Code according to section 49.15.460(5)(A) requires all lots have frontage on a public right of way. The requested vacation and this code requirement can be accommodated with the condition of approval for recording the proposed replat."

"We recommend that the Planning Commission adopt the director's findings and approve the request to vacate Rodenberg Way, a public right of way located between Boroff Way to Carrol Way in the 7A Addition to the Townsite of Juneau, subject to the following conditions:

One, that the applicant completes the replatting process according to the replat proposed in Attachment B."

"One note—in your blue file there is a developer-revised development permit application and that replaces the application number two of the three applications that are in the—attached with the staff report."

Mr. Dybdahl:

"Thank you. Any questions from the Commission?"
The following two exchanges took place at the very end of the hearing, during the applicant's second appearance before the Planning Commission.

Mr. Kendziorek:

"You're saying that as the applicant's representative that you would be supportive of a condition that extends that suggested right of way across somewhere—across the top, probably of Lot 8 connecting Carrol Way to Boroff Way? Is that...

Mr. Landvik:

That's correct. It would run between Lot 2 and Lot 8.

Mr. Kendziorek:

But basically connecting what is shown on Attachment B as the proposed new access of 110 square feet, that would extend in some line across so that they would not be contiguous?

Mr. Landvik:

That's correct."
Ms. Gladziszewski:

"I have a question for staff, and then probably for you, Mr. Landvik. Can you catch me up here. What's on Lot 2, and who owns it, and what's on Lot 8 and what's on Lot 1?"

Mr. Maguire:

I've got an as-built that shows the location of the walkway, so I'd like to hand that out to you.

Ms. Gladziszewski:

Mr. Landvik, you are representing Lot 8 and Lot 1, is that right?

Mr. Landvik:

I am... (break while tape turned over)... 2

Ms. Gladziszewski:

... A...

Mr. Landvik:

... and I have an option to purchase Lot 8, so yes, I guess I am representing both of those.

Ms. Gladziszewski:

And Lot 1 is not... the discussion right now?

Mr. Landvik:

No.

Mr. Maguire:

Lot 2 is the location of the apartment building and also includes the walkway—the constructed walkway that you can go between Carroll Way and Boroff Way. Lot 8 is owned by the owners of Lot 2 as well, but that is vacant currently."
This blow-up of the hand-out was not given to the P.C. It serves in the record to imply to anyone looking at the approved application that this replat was the one approved, because a reader would naturally look at the biggest diagram.

LOT 3A
AREA = 1,158 S.F.

LOT 2A1
AREA = 1,525 S.F.

Additional Handout at Planning Commission Meeting