

I. CALL TO ORDER; ROLL CALL

A meeting of the Matanuska-Susitna Borough Ethics Board was called to order at 5 P.m. by Chair David Wilson for the purpose of reviewing the request for an advisory opinion 15-02.

Board members present and establishing a quorum were:

Mr. David Wilson
Mr. Ryan McClure
Ms. Diana Straub
Ms. Athena Willis

Staff in attendance were:

Ms. Brenda J. Henry, CMC, Assistant Clerk

II. APPROVAL OF AGENDA

Chair Wilson queried if there were any changes to the agenda.

GENERAL CONSENT: The agenda was approved as presented without objection.

III. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Mr. Dan Kennedy, Chair of the Board of Ethics.

IV. APPROVAL OF MINUTES

A. August 27, 2015

Chair Wilson queried if there were any changes to the minutes of August 27, 2015.

GENERAL CONSENT: The minutes were approved as presented.

V. ITEMS OF BUSINESS

A. Request for Advisory Opinion – Case No. 15-02 – Stephen Edwards, Requestor

Ms. Henry advised that the Public Works Director, Mr. Terry Dolan was present should the Board have any questions.

Chair Wilson:

- noted that the Clerk had prepared a draft advisory opinion that is based on Borough Code; and
- requested Ms. Henry to read it into the record.

Ms. Henry read the draft advisory opinion into the record.

Chair Wilson queried if there was any objection to hearing from Mr. Dolan.

There was no objection noted.

The Board asked questions of Mr. Dolan.

The Board asked questions of Mr. Edwards.

Chair Wilson queried if there was any objection to approving the advisory opinion as read into the record by the Clerk.

GENERAL CONSENT: There were no objections noted and the advisory opinion was approved.

VI. AUDIENCE PARTICIPATION

(There was no one present who wished to testify.)

VII. BOARD COMMENTS

Mr. McClure stated that he is pleased to be a part of the Board.

Ms. Straub stated that she is happy to have the opportunity to be a member of the Board of Ethics.

Ms. Willis echoed the comments of the previous members.

Mr. Wilson:

- noted that this will be his last meeting as he has reached his term limits; and
- wished the members well.

VIII. ADJOURNMENT

The meeting adjourned at 5:55 p.m.

Brenda Henry

From: Bill Kendig <customfinancial@hotmail.com>
Sent: Thursday, September 01, 2016 11:58 AM
To: Brenda Henry
Subject: Bill Kendig
Attachments: Scan_20160901_110128.pdf; ATT00001.htm

Brenda, I need some help From the Ethics Board regarding Resolution 14-33 the Superior Court sent it back to the planing Commision I have attached a copy for your review what I need your help with is : I did Buisness with a LLC called CEI but the applicant is CMS two separate Corporations that have some of the same members. I am seeking guidance from the Ethics Board on this matter. Thanks Bill Kendig

Sent from my iPhone

Begin forwarded message:

From: "andy1@" <mtaonline.net andy1@mtaonline.net>
Date: September 1, 2016 at 11:01:28 AM AKDT
To: <customfinancial@hotmail.com>
Subject: Scanned image from 360 North Realty
Reply-To: <andy1@mtaonline.net>

Reply to: andy1@mtaonline.net <andy1@mtaonline.net>
Device Name: 360 North Realty
Device Model: MX-3610N
Location: Palmer, Alaska

File Format: PDF (Medium)
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

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MATANUSKA-SUSITNA BOROUGH

Board of Ethics

c/o Office of the Borough Clerk

350 E. Dahlia Avenue • Palmer, Alaska 99645-6488

Phone (907) 861-8684 • Fax (907) 861-7845

Advisory Opinion No. 15-01

August 27, 2015

On July 14, 2015, the Board of Ethics received a Request for an Advisory Opinion from Mr. Bill Kendig, who is a member of the Planning Commission. The Board of Ethics met in a special meeting at 5 p.m. on August 27, 2015, to consider the request of Mr. Kendig.

Specific Question for the Board of Ethics

Mr. Kendig has requested an Advisory Opinion from the Board on the following question:

Should Mr. Kendig recuse himself from discussion and voting on Planning Commission Resolution Serial No. 15-26?

Findings

The Board of Ethics finds that Per MSB 2.71.080 Mr. Kendig was recused from voting on Planning Commission Resolution No. 14-33 regarding a conditional use permit (CUP) as he had done business within the last 12-month period with a corporation that was related to Central Monofill Services (CMS), which is the company that applied for the CUP.

The Board of Ethics finds that Planning Commission Resolution No. 14-33 denied a conditional use permit for a monofill (private landfill) for CMS. The resolution failed with three Planning Commissioners voting in support and three voting opposed. Mr. Kendig was recused due to his prior business relations.

The Board of Ethics finds that CMS appealed the denial of the CUP to the Board of Adjustment and Appeals (BOAA); the BOAA unanimously affirmed the Planning Commissions' denial of the CUP.

The Board of Ethics finds that CMS appealed the BOAA decision to the Superior Court, which is current and ongoing.

The Board of Ethics finds that the Planning Commission currently has Planning Commission Resolution No. 15-26 before them, which would recommend that the Assembly adopt legislation that would prohibit private landfills within the core area.

Ethics Case 15-01
Request for Advisory Opinion
Bill Kendig, Requestor

The Board of Ethics finds that in his request, Mr. Kendig states "that it could be argued that [Planning Commission Resolution No.] 15-26 would affect the applicants [CMS] if they were to win there [sic] appeal."

The Board of Ethics finds that Mr. Kendig would like an advisory opinion on whether he should recuse himself from Planning Commission Resolution No. 15-26.

Conclusions

1. The Board of Ethics concludes that Mr. Kendig is eligible to sit on the Planning Commission under MSB 4.10.030.
2. The Board of Ethics concludes that Mr. Kendig is subject to the Borough code, under MSB 4.10.030.
3. The Board of Ethics concludes that the code of ethics applies to Mr. Kendig as a municipal official under MSB 2.71.030.
4. The Board of Ethics concludes that as a Planning Commission Member Mr. Kendig does have the ability to take official action as he does vote in support or opposition of Planning Commission resolutions; however, the official action is advisory in nature only and does not provide him with a substantial financial interest.
5. The Board of Ethics concludes that MSB 2.71.080, Recusal, did apply in relation to Planning Commission Resolution No. 14-33, but that Mr. Kendig was properly recused and that resolution is not at issue for this request.
6. The Board of Ethics concludes that MSB 2.71.070, does not apply in relation to Planning Commission Resolution No. 15-26, because only the Borough's legislative body, which is the Borough Assembly, may take official legislative action that could potentially impact an appeal at the Superior Court level.

Summary of Opinion

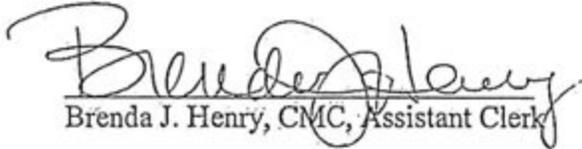
The Board of Ethics has determined that Mr. Kendig does not have a conflict under MSB 2.71.070, Conflict of Interest; Prohibited Acts, as it relates to Planning Commission Resolution No. 15-26.

MATANUSKA-SUSITNA BOROUGH
BOARD OF ETHICS



David Wilson, Chair

Attest:



Brenda J. Henry, CMC, Assistant Clerk

Ethics Case 15-01
Request for Advisory Opinion
Bill Kendig, Requestor

By: Susan Lee
Introduced: November 3, 2014
Public Hearing: December 1, 2014
Action: Failed

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. 14-33**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT UNDER MSB CODE 17.60 FOR THE OPERATION OF A MONOFILL FOR THE DISPOSAL OF INERT CONSTRUCTION AND DEMOLITION DEBRIS, INCLUDING REGULATED ASBESTOS-CONTAINING MATERIAL (RACM) AND NON-REGULATED ASBESTOS-CONTAINING MATERIAL (NON-RACM) AND AN OUTDOOR STORAGE YARD FOR THE SALE OF SALVAGEABLE/RECYCLABLE MATERIALS, LOCATED AT 2840 S. GLENN HIGHWAY (TAX ID: 17N02E18C010) AND 2560 S. GLENN HIGHWAY (TAX ID: 17N02E19B006); WITHIN TOWNSHIP 17 NORTH, RANGE 2 EAST, SECTIONS 18 AND 19, SEWARD MERIDIAN

WHEREAS, an application for a conditional use permit under MSB 17.60 has been received for the operation of a monofill for the disposal of inert construction and demolition debris and an outdoor storage yard for the sale of salvageable/recyclable materials at 2840 S. Glenn Highway (Tax ID: 17N02E18C010) and 2560 S. Glenn Highway (Tax ID: 17N02E19B006); and

WHEREAS, the planning commission reviewed this application, associated materials, and the staff report, with respect to standards set forth in MSB 17.60.100 and 1760.110; and

WHEREAS, findings of fact and conclusions of law have been listed in the staff report dated December 1, 2014; and

WHEREAS, the planning commission conducted a public hearing on December 1, 2014 on this matter; and

WHEREAS, in 2013 Borough staff documented trash and daily cover (screened fines) that had blown from the monofill site onto adjacent properties; and

WHEREAS, ADEC regulations (18 AAC 60.420(2)) state a monofill must be operated so that litter is controlled by fencing or other approved means, and is removed from access roadways and other areas in the facility; and

WHEREAS, this region experiences frequent multiple-day high-wind events each year since it is at the confluence of the Matanuska and Knik River valleys. Loose debris and dust from the fill has, and is, expected to continue to scatter beyond the boundaries of the site; and

WHEREAS, the 15' tall cell berms will be constructed prior to waste placement; and

WEHREAS, as the cells increase in height the sides will be built up with tire bales that will be covered with topsoil and seeded for revegetation; and

WHEREAS, the use of a large sheep's foot landfill compactor to place and immediately compact the waste in the cell is the next method to prevent loose and blowing debris; and

WHEREAS, regularly covering the waste with soil further prevents blowing debris; and

WHEREAS, the daily cover/screened fines consist of shredded materials that are less than three inches in size. Material this size is easily distributed by the wind; and

WHEREAS, the inert debris that will be deposited on the site will be shredded into pieces 12 inches or smaller. Material this size can also become windblown; and

WHEREAS, after the residual material is deposited and compacted it will be covered with the daily cover/screened fines, which will also be compacted. The monofill material will be covered with soil weekly; and

WHEREAS, the applicant has stated that a remote weather station will be placed on the site to monitor wind and when sustained wind conditions on the site exceed 20 mph, waste will not be unloaded without secondary containment in place; and

WHEREAS, secondary containment proposed by the applicant involves the use of portable catch fences up to 15' tall and of variable lengths. The catch fences are used to slow the wind down and catch blown debris downwind; and

WHEREAS, normal size opening on the catch fences is 2" x 2"; and

WHEREAS, the openings on the catch fences are still large enough that smaller pieces of material could still blow through them; and

WHEREAS, the previous use of this site was for earth materials extraction. There are pre-existing legal nonconforming use rights for earth materials extraction for this property, which means that the industrial use was not approved under the current regulatory structure or evaluated for compatibility with surrounding land uses; and

WHEREAS, the surrounding land uses include earth material extraction sites to the north and on the south side of the Glenn Highway; residential subdivisions to the west and northeast; and agricultural uses to the east of the site; and

WHEREAS, the site is required to be visually screened on a year round basis from the view of any traveled or public right-of-way. The site must be screened from the Glenn Highway and from the section line easement on the west side of the property and the east-west section line running through the middle of the property. Staff is recommending the site also be screened from the residential properties on the west side; and

WHEREAS, the proposed monofill is an industrial use. The monofill can be screened with existing berms and by building up the berms and constructing site obscuring fencing. Screening from the western properties will have to be developed as the site is built up; and

WHEREAS, salvageable/recyclable materials that are stored outside must also be screened from the Glenn Highway and section line easements on the property; and

WHEREAS, the maximum finished elevation of the monofill will be 162 feet Above Sea Level. The adjacent Glenn Highway has an average finished elevation of 117 feet Above Sea Level, so the maximum height will be a little more than 40 feet above the Glenn Highway. The existing tree covered berm along the highway has an average elevation of 130 feet Above Sea Level. The finished revegetated height of the monofill will be above the berm on the south side, adjacent to the Glenn Highway. The maximum depth of the monofill will be 75 feet with an average depth of 50 feet; and

WHEREAS, should the site be modified as a result of the Glenn Highway Reconstruction Project, an updated site plan and plan of operations will need to be submitted to the Borough; and

WHEREAS, conditions can be set to prevent material from blowing off-site; and

WHEREAS, documentation has been provided demonstrating that the monofill operation does not have the potential for groundwater contamination that could have negative effects on drinking water and surface water quality; and

WHEREAS, the monofill can be developed with proper engineering and operational controls to protect the natural resources and public health and safety; and

WHEREAS, with conditions, the proposed conditional use is consistent with the goals and policies of the Borough-Wide Comprehensive Plan (2005 Update) and the Core Area Comprehensive Plan (2007 Update); and

WHEREAS, the proposed monofill will preserve and will not detract from the value, character and integrity of the surrounding area as the monofill will be screened from the Glenn Highway, section line easements, and residential properties. Conditions will be set to address trash and debris containment on the site. Documentation has been provided showing that the proposed monofill will not contaminate the groundwater or have negative effects on drinking water or surface water quality; and

WHEREAS, comments received regarding the proposed monofill raised the following concerns: dumping of material without MSB or ADEC permits; dumping of hazardous waste; trash in the water; water pollution; health problems; pollution of surrounding lakes; protection of watershed and aquifer; compromising the aquifer; windblown unhealthy dust and particulates from the monofill; contamination of water wells; windblown materials/debris onto surrounding properties; previous problems with gravel extraction on this property and rising water table;

breaching of berm between two of the manmade lakes and impact on surrounding water levels; lack of oversight and planning; applicants disregard for regulations; lack of CMS's ability to manage and provide oversight of the facility; concerns about reclamation of the property; contamination of soil; lowering of property values; the Glenn Highway is a Scenic Byway; threat to migratory and breeding birds; how the redesign of the Glenn Highway will affect this site; rising water levels of nearby lakes; improper handling and disposal of asbestos; concerns about lead based paint, mercury and heavy metals deposited in the monofill; too close to residential area; contamination of fish in Canoe, Kepler-Bradley Lake system; inconsistent with comprehensive plans, and highway safety and access issues; and

WHEREAS, there have been many concerns and comments regarding the potential for groundwater contamination that could have negative effects on drinking water and surface water quality. The applicant has provided documentation from four consultants that this will not be the case: Groundwater data has been collected. Based on the groundwater data the monofill will be designed to be at least 10 feet above groundwater. Water level data is continually being collected. The water table generally fluctuates less than one foot. The water that supplies the unconfined aquifer that underlies the proposed monofill is primarily through infiltration from the Matanuska

River. The bottom of the monofill cells will be established based on all of the water data that is collected up to the time of construction of that cell. On-site groundwater monitoring wells were installed. Three wells lie under the footprint of the proposed monofill, which can be utilized to indicate the depth of water beneath the refuse. Historical groundwater levels will be used to determine the historical high groundwater levels beneath the proposed monofill site. If there is any leachate at all, the monofill is designed to minimize the moisture levels in the material, so that the rate of decay and rot will not significantly impact any leachate that leaves the monofill. The monofill is designed so that waste will not stay in a saturated condition. CMS submitted a groundwater monitoring plan with their application. Subsequently CMS withdrew the plan after their consultant EMI found that the probability of creating a leachate that would impact the groundwater is so low. The proposed monofill is located in a semi-arid climate where the balance between the annual precipitation and the annual evaporation precludes the formation of any significant volume of leachate. The average annual precipitation rate in the area of the proposed monofill is approximately 15 inches. Under these climatic conditions, particularly when the precipitation is less than 15.75 inches per year, leachate is not formed in a landfill. Material brought to the facility is sorted, screened

and processed to ensure that the material is free of hazardous waste and putrescible material and/or liquids. CRS removes large quantities of drywall from the waste stream for recycling. No significant water will be available to percolate through the inert waste, nor to "pond" at any level within the refuse mass. ADEC requirements are met for an inert landfill with respect to the 10' minimum separation distance between the bottom of the refuse and the recorded historic high water table and no liner is required. Testing for potential contamination from the waste has occurred. EMI tested the residual material using the Synthetic Precipitation Leaching Procedures (SPLP) to check for potential contaminants of concern from the waste. This method is not used to test water for drinking water standards. It is designed to identify contaminants that may be of potential concern in waste water. Modeling results have indicated that there will be no contaminant plume extending down gradient from the landfill mass. Leachate modeling identified two potential contaminants of concern: sulfate and manganese. The results predict that the analytes will likely comply with ADEC's drinking water standards. The development of a vegetative cover will result in increased evaporation (evapotranspiration) and the minimal infiltration will be reduced as the landfill evolves, cell by cell. Establishment of the native ground cover

on the final cap of each cell will result in increased evapotranspiration and reduced potential for infiltration; and

WHEREAS, a total of ten cells will be constructed over the life of the monofill. The working face receiving the inert materials will comprise, at any one time, an area measuring 120' x 50'. Therefore, the surface of the monofill most vulnerable to infiltration by precipitation at any one time will be kept to a minimum; and

WHEREAS, the monofill is designed to minimize the moisture levels in the material so that the rate of decay and rot will be very slow and will not significantly impact any leachate, if there is any leachate at all that leaves the monofill; and

WHEREAS, ADEC regulations state that an unlined landfill may not be located closer than 10 feet above the highest measured level of an aquifer of resource value unless the landfill is constructed two feet or more above the natural ground surface (18 AAC 60.217); and

WHEREAS, under Alaskan administrative regulations, this proposed monofill is exempt from providing groundwater monitoring and corrective action to state agencies, as it is located in an area with 25 inches or less in total precipitation each year, per ADEC regulations (18 AAC 60.820(a)(8)); and

WHEREAS, CMS withdrew their groundwater monitoring plan from the application material. Staff is recommending that a

groundwater monitoring plan be required by the Borough Planning Commission and implemented in the conditional use permit; and

WHEREAS, the monofill is being designed so that a significant amount of leachate will not be produced; the groundwater level has been determined; no contaminant plume will extend down gradient from the monofill; and there will be minimal infiltration. A condition will be set to implement a groundwater monitoring plan at this site; and

WHEREAS, materials brought to the facility that have not been previously inspected will be deposited onto an impermeable pad for inspection, recyclable materials removed and the remaining non-recyclable material placed in the active monofill cell; and

WHEREAS, the applicant states that the following material will not be accepted at this monofill: PCBs or other hazardous wastes, household waste, putrescible waste, liquids, compressed gas cylinders, batteries, appliances with CFC/HCFC, animal carcasses, and petroleum contaminated materials; and

WHEREAS, Alaska Statutes 46.03.900(1) - defines "hazardous waste" as "A waste or combination of waste that because of quantity, concentration, or physical, chemical, or infectious characteristics may: cause or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present

or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed of"; and

WHEREAS, material haulers transporting any demolition and/or renovation material to a CRS facility or this monofill must provide the following documentation: (1) A copy of all Hazardous Building Material Surveys for each project that will be bringing their demolition and/or renovation material to the facility. Should the Survey indicate the presence of any hazard materials, then (2) a letter from the Contractor of each project is also submitted to CRS stating that all hazardous material has been properly removed from the project and there is no hazardous material being brought to the CRS facility. For their operations, CRS defines hazardous material as a material containing any percentage of asbestos; and

WHEREAS, Regulated Asbestos Containing Material (RACM) and Non-RACM will be accepted for disposal at the monofill in accordance with all applicable federal and state regulations for packaging, labeling, transport handling and disposal; and

WHEREAS, materials that can be accepted at this monofill are described in the State of Alaska's Solid Waste Regulations, 18 AAC 60; and

WHEREAS, the Plan of Operations submitted to ADEC will prevent hazardous waste, as defined by the Federal government (40 CFR 261.3) from being placed in the monofill; and

WHEREAS, testing for potential contaminants from the waste has occurred; and

WHEREAS, leachate modeling identified two potential contaminants of concern: sulfate and manganese. The results predict that the analytes will likely comply with the ADEC's drinking water standards; and

WHEREAS, baseline data for water quality has been provided; and

WHEREAS, the site is less than one mile from the Palmer Hay Flats Refuge, which is a major migratory bird refuge in Southcentral Alaska; and

WHEREAS, with conditions, the proposed monofill should not be harmful to the public health, safety, convenience, and welfare; and

WHEREAS, ADEC regulations require that monofill waste be set back a minimum of 50 feet from all property lines; and

WHEREAS, no material will be placed or stockpiled within 25 feet of the industrial ponds on the site; and

WHEREAS, no waste will be placed within 100 feet of the industrial ponds on the site; and

WHEREAS, in addition to the monofill, two storage or shop buildings, a scale house, and field office are proposed for the site; and

WHEREAS, the site plan depicts the proposed structures in compliance with setback requirements; and

WHEREAS, the operation will be required to comply with the maximum permissible sound level limits in MSB Code, per the requirements of MSB 17.61.080 - Noise Standards and MSB 8.52 - Noise, Amplified Sounds, and Vibration; and

WHEREAS, the driveway to the site will be secured with a locked gate; and

WHEREAS, the site is monitored with camera security systems; and

WHEREAS, only approved contractors will be allowed to bring material to the facility. This is controlled by gates and on-site personnel that will inspect all loads delivered to the facility; and

WHEREAS, the public will not be allowed to drop off or dispose of material at the monofill; and

WHEREAS, the sale yard will be open to the public with controlled access; and

WHEREAS, with conditions, there will be adequate safeguards in place to prevent blowing debris and incidental trash onto adjacent properties and roadways. Additional conditions will be

set regarding the handling and storage of materials during wind events; and

WHEREAS, the application material adequately addresses the impacts of the climate, geology, hydrology and geography of the site and the impacts to surrounding land uses; and

WHEREAS, the conditional use does fulfill all other requirements of this chapter; and

WHEREAS, screening of the site will be accomplished by using the existing topography and berms, building up berms and installing site obscuring fencing.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby finds this application does meet the standards of MSB 17.60.100 and 17.60.110 and hereby approves the conditional use permit for the operation of a monofill for the disposal of inert construction and demolition debris, including Regulated Asbestos-Containing Material (RACM) and Non-Regulated Asbestos-Containing Material (Non-RACM) and an outdoor storage yard for the sale of salvageable/recyclable materials on parcels 17N02E18C010 and 17N02E19B006 with the following conditions:

1. It is the responsibility of the property owner and operator to identify and comply with all applicable local, state, and federal regulations applicable to

this development and obtain all necessary authorizations and permits and update as appropriate.

2. Upon issuance of a permit under MSB Chapter 17.60, the permittee shall provide and maintain all necessary documentation to demonstrate continued compliance with permit conditions.
3. The property owner and the permittee shall be responsible for maintaining all aspects of the operation, improvements, and development, and the site in compliance with the terms and conditions of the permit and all applicable local, state, and federal requirements.
4. Authorized representative of the borough shall be allowed to inspect the site at reasonable times for the purpose of monitoring compliance with all permit conditions. Upon reasonable notice from the Borough, the permittee shall provide necessary assistance to facilitate authorized inspections.
5. Except as otherwise specified by code, the privileges and requirements of a conditional use permit shall run with the land, subject to the following requirements: Within 90 days of recording the transfer of ownership of the subject land, the new owner shall provide written notification and a signed acknowledgement that

the new owner assumes responsibility for compliance with the requirements of the permit.

6. If the operation expands or alters, an amendment to the conditional use permit shall be required.
7. The operation shall be limited to what is described in the development plan submitted to the Matanuska-Susitna Borough and the Plan of Operations submitted to the Alaska Department of Environmental Conservation.
8. An area no larger than 120' x 50' shall remain uncompacted at any one time.
9. The maximum square footage that shall be exposed and not covered at any one time during the monofill operation shall be 25,000 square feet.
10. At a minimum, the monofill material shall be covered with soil weekly.
11. Immediately after the tire bales used for the side walls are installed they shall be covered with topsoil and seeded for revegetation.
12. A remote weather station shall be installed at the site to monitor wind speed. The weather station shall be set up where the wind flows freely and is not influenced by nearby objects or topography.

13. When sustained wind conditions on the site exceed 10 mph, waste material shall not be deposited at the site.
14. When sustained wind speeds exceed 15 mph, all open areas shall be covered with soil, secured with tarps, or other appropriate measures until sustained winds decrease to less than 10 mph.
15. The applicant shall install catch fences downwind of active monofill cells at all times. The fencing mesh shall be a maximum of one inch (1") in size.
16. At the end of each day the stockpiled daily cover shall either be contained within a covered trailer or completely covered with tarps that are secured to ensure that material does not become airborne.
17. The site shall be monitored daily for windblown material. If materials are found to have blown off-site a corrective measures plan shall be submitted to the Borough for approval.
18. If material is windblown onto adjacent properties, reasonable attempts shall be made to obtain permission to gain access to these properties for debris removal
19. The site shall be visually screened on a year round basis from all traveled or public rights-of-way and

from the residential properties on the west side of the property.

20. The maximum finished elevation of the monofill shall not exceed 162 feet Above Sea Level.
21. Upon completion, the monofill shall be covered with two feet of topsoil, seeded, and sloped as described in the development plan.
22. Should the operation be modified as a result of the Glenn Highway Reconstruction Project, an updated site plan and plan of operations shall be submitted to the Borough.
23. The bottom of the monofill shall not be located closer than 12 feet above the seasonal high water table.
24. If it is found that groundwater has been contaminated, a corrective measures plan shall be submitted to the Borough for approval.
25. The Groundwater Monitoring Plan prepared for this site by TERRASAT, Inc., dated May 17, 2013, shall be implemented and maintained, except that a final laboratory report resulting from a release investigation shall be submitted to the Borough within 48 hours of receiving the report.

26. Materials that can be accepted at this monofill are described in the State of Alaska Solid Waste Regulations, 18 AAC 60.
27. The following materials shall not be accepted at this monofill: PCBs or other hazardous wastes, household waste, putrescible waste, liquids, compressed gas cylinders, batteries, appliances with CFC/HCFC, animal carcasses, and petroleum contaminated materials.
28. Materials brought to the facility that have not been previously inspected by qualified personnel shall be deposited onto an impermeable pad for inspection prior to being deposited in the active monofill cell.
29. If prohibited materials are found, they shall be properly handled and disposed of in accordance with all state and federal laws.
30. Regulated Asbestos Containing Material (RACM) and Non-RACM shall be handled and disposed of at the site in accordance with state and federal regulations for packaging, labeling, transport handling and disposal.
31. Monofill waste shall be set back a minimum of 50 feet from all property lines.
32. No waste shall be placed or stockpiled within 100 feet of the industrial ponds on the site.

33. Only previously approved haulers shall be allowed to bring material to the facility.
34. The operation shall comply with the maximum permissible sound level limits allowed in MSB Code, per the requirements of MSB 17.61.080 - Noise Standards and MSB 8.52 - Noise, Amplified Sounds, and Vibration.
35. The site shall be gated and locked when not in operation. All visitors to the site must check in with personnel.
36. Hours of operation shall be limited to 7 a.m. to 7 p.m., Monday through Saturday, May through September and 8 a.m. to 5 p.m., Monday through Saturday, October through April.
37. Environmental and Pollution Insurance shall be maintained in the amount of \$1 million single with a minimum \$5 million aggregate.
38. This conditional use permit shall expire December 31, 2020.
39. The owner shall provide copies of all permits issued by state and federal agencies to the Matanuska-Susitna Borough prior to commencement of the permitted use. The owner shall also provide to the borough a copy of

every application for an amendment to any such permit at the time the application is filed with the permitting agency, and a copy of any amendment approved by the permitting agency shall be provided to the borough within five days of issuance.

40. This permit has been approved by the Matanuska-Susitna Borough Planning Commission. The decision may be appealed within 21 days of the date of approval by the Planning Commission in accordance with MSB 15.39 - Board of Adjustment and Appeals.

ADOPTED by the Matanuska-Susitna Borough Planning Commission this ___ day of ___, 2014.

JOHN KLAPPERICH, Chair

ATTEST

MARY BRODIGAN, Planning Clerk

(SEAL)

YES: Klapperich, Walden, and Rauchenstein.

NO: Endle, Healy, and Adams.

Planning Commission Resolution 14-33
Adopted: FAILED

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

CENTRAL MONOFILL SERVICES,)
 INC.)
)
 Appellant,)
 vs.)
)
 MATANUSKA-SUSITNA BOROUGH)
 BOARD OF ADJUSTMENTS,)
)
 Appellee.)
 _____)

CASE NO. 3PA-15-01925 CI

ORDER

The Matanuska-Susitna Borough Board of Adjustments filed a Limited Motion to Reconsider, asking the court to reconsider its July 5, 2016 order as to the number of votes necessary for a motion to recuse. Because the court mistakenly stated that the necessary vote to recuse an individual under Robert's Rules was a two-thirds vote rather than a majority vote, the court will grant the motion and issue an amended order.

As the Borough correctly indicates, motions for recusal are not included in the list of motions which require a two-thirds vote according to Robert's Rules of Order, Newly Revised (11th ed.). Absent a rule that provides otherwise, the basic requirement for approval of an action by the assembly is a majority vote. RONR (11th ed.), § 44. Under MSB 15.08.075, "the majority vote required shall be four." Therefore, the correct

vote required for recusal is a majority vote, which here, is four votes.

For the foregoing reasons, it is ORDERED that the Matanuska-Susitna Borough Board of Adjustments Limited Motion to Reconsider is GRANTED. The court will issue an amended order with the correct voting requirement.

Dated at Palmer, Alaska, this 8th day of July, 2016.

Eric Smith
ERIC SMITH
SUPERIOR COURT JUDGE

I certify that on 7/8/16
a copy of this document was sent to
 (CNSI) Attorney(s) of record
 Plaintiff Defendant Other
At the address(es) of record:
Eric D. Jnl
Deputy Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

CENTRAL MONOFILL SERVICES,)
 INC.)
)
 Appellant,)
 vs.)
)
 MATANUSKA-SUSITNA BOROUGH)
 BOARD OF ADJUSTMENTS,)
)
 Appellee.)
 _____)

CASE NO. 3PA-15-01925 CI

AMENDED ORDER

Central Monofill Services ("CMS"), a corporation, appeals the denial of a conditional use permit by the Matanuska-Susitna Board of Adjustment and Appeals ("BOAA"). Because the Commission did not follow the proper procedures governing recusal, the court will reverse the denial of the permit and remand the case for further proceedings.

I. Facts and Proceedings

CMS applied for a conditional use permit for the operation of an inert monofill on two Mat-Su Borough land parcels totaling 118 acres in size. The Matanuska-Susitna Borough Planning Commission held a public hearing on the permit on December 1, 2014. In response to an inquiry from the Commission Chairman as to whether any of the Commissioners in attendance had any potential conflicts of interest, Commissioner Kendig disclosed that his business had sold scrap to Central Environmental, Inc.

("CEI"), a corporation owned by the same individuals as the ones who own CMS. Kendig stated that the most recent sale occurred in late summer or early fall of 2014, but prior to that transaction, he had not done business with CEI in "four or five years." Appellant's Excerpt of Record, p. 168. He further stated that he was "confident in saying that I can be impartial" with respect to CMS's application, and that he did not view occasional sales to CEI to constitute a conflict of interest. Id., p. 172.

The Deputy Borough Attorney informed the Commissioners that Kendig's sale of scrap to CEI raised the question of whether he should recuse himself under MSB 2.71.080, which provides that an official must recuse himself from acting in any proceeding "that involves any person who is, or has been, a client of the official or the official's firm or partnership within the 12-month period immediately preceding the date of the action." The Borough Clerk advised the Commission in this respect that "it's up to the Commission to determine whether or not [Kendig] can stay," thereby framing the issue before the Commission as requiring the Commission to determine whether to allow Kendig to participate in the permit application hearing and voting. Counsel for CMS and the Deputy Borough Attorney informed the Commission that the vote should address whether Kendig should be required to recuse himself, as opposed to whether he could stay.

The Commission decided to follow the Clerk's advice. It also concluded that Kendig should not be allowed to vote on the question of whether he would be allowed to participate. The Chair accordingly called for and received a motion "to allow Mr. Kendig to remain in the discussion [of] Resolution 14-33." Four affirmative votes are required to pass a motion. MSB 15.08.075 ("All board actions shall be by vote of a majority of the board's authorized membership; the majority vote required shall be four."); Appellant's Excerpt of Record, pp. 197, 200. When the motion in question was heard, there were five commissioners of seven in attendance. One of those present was Kendig, who was not allowed to participate. Of the four participants deemed eligible to vote, three voted to allow Kendig to participate and one voted against Kendig's participation.¹ Kendig therefore was precluded from participating in discussing and voting on CMS's permit application.

The Commission then proceeded with the December 1, 2014 public hearing regarding CMS's application, but was unable to complete the hearing on that date. It held a second hearing on December 15, 2014. At the beginning of the December 15th hearing, counsel for CMS re-raised the issue that the motion regarding Kendig's participation had been improperly framed and that recusal was not required under MSB 2.71.080. Counsel also

¹ Commissioner Endle dissented.

called attention to an email from the Borough Clerk to the Commission in which she had stated that the vote should instead have been properly framed as "does Mr. Kendig have a conflict of interest." The Chair declined to revisit the issue.

At the conclusion of the December 15, 2014 hearing, the Commission voted on whether to pass the resolution to approve CMS's conditional use permit. The vote was three in favor and three against², which meant that the permit application was denied after it did not receive the four favorable votes required to pass.

After the vote, the Deputy Borough Attorney advised the Commission that it was required to issue written findings and conclusions, and that because the application was denied based on a 3-3 vote, both those in favor and those against should submit proposed findings and conclusions. At a January 5, 2015 hearing, the Commission voted to adopt and approve the findings of fact and conclusions of law to support the Commission's denial of CMS's application, with four votes in favor and two opposed.³ The Commission did not present for adoption any findings of fact and conclusions of law in support of the vote to approve CMS's application.

² Commissioners Kapperich, Rauehnstein and Walden voted in favor of the resolution, and Commissioners Endle, Adams, and Healy voted against it.

³ Commissioner Walden voted to approve the findings and conclusions supporting the denial of the conditional use permit, even though he had voted to approve the permit.

CMS timely appealed to the Board of Adjustment and Appeals ("BOAA"). On March 31, 2015, BOAA issued its Notice of Right to Appeal and Final Decision, unanimously affirming the Commission's denial of CMS's application. CMS timely filed this appeal on April 30, 2015.

II. Standard of Review

AS 22.10.020(d) provides this court with jurisdiction over appeals from administrative agency decisions. The court applies the "substitution of judgment standard to questions of law where no agency expertise is involved," Davis Wright Tremaine LLP v. State, Dep't of Admin., 324 P.3d 293, 299 (Alaska 2014), or "where the agency's specialized knowledge and experience would not be particularly probative as to the meaning of the statute." Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 903 (Alaska 1987). Under the substitution of judgment standard, the court may "substitute [its] own judgment for that of the agency even if the agency's decision had a reasonable basis in law." Id. (internal citations omitted). Courts also "review an agency's application of its own regulations for whether the agency's decision was 'arbitrary, unreasonable, or an abuse of discretion,'" which "requires [courts] to give deference to an administrative determination 'if it has a reasonable basis in law and fact.'" Alaska Cmty. Action on Toxics

v. Hartig, 321 P.3d 360, 366 (Alaska 2014) (internal citations omitted).

The initial issue to be resolved in this appeal is whether the Commission properly followed its own procedures for recusal of a board member. This is a question of law to which no deference is required. The Borough's decision to deny the permit is subject to the more deferential standard of review.

III. Analysis

A. The Motion Presented to the Commission on Commissioner Kendig's Recusal Was Improperly Framed

A key issue raised by CMS is that the Commission improperly framed the motion before it when it voted on Kendig's recusal. According to CMS, the proper motion would have been a motion to disallow Kendig's participation in the hearing, as opposed to whether Kendig should be allowed to participate in the hearing. CMS further claims that the Commission should have presumed as true Kendig's own conclusion that he could be fair and impartial when voting on CMS's permit application, unless they decided that, based on the evidence in the record, a vote on recusal was necessary. And CMS argues that Kendig should have been allowed to vote on his recusal because Robert's Rules of Order ("Robert's Rules") specifically allows a member to vote on questions affecting himself, including whether that member should be recused.

The Borough responds that the court should refrain from addressing whether the Commission properly followed its own parliamentary procedures preceding Kendig's recusal because "parliamentary rules are merely procedural and not substantive" and "[h]ence, they may be waived or disregarded by the legislative body." Appellee's Brief, pp. 41-42 (citing 59 Am. Jur. 2d Parliamentary Law § 5). The Borough also relies on Jefferson v. City of Anchorage, 513 P.2d 1099 (Alaska 1973) (finding that the city council could, by its customary practice, waive a procedural requirement) in support of this claim.

Contrary to the Borough's claim, the court has jurisdiction to address the procedures used by the Commission in voting on the recusal issue. Courts typically and properly review decisions of administrative agencies to determine whether the agency followed its own procedures. See, e.g., Copeland v. Ballard, 210 P.3d 1197, 1201 (Alaska 2009); In re Hanson, 532 P.2d 303, 305 (Alaska 1975). The authority cited by the Borough, by contrast, involved procedural decisions by legislative and municipal bodies, not executive branch agencies. In particular, the Am. Jur. treatise cited by the Borough states:

The courts will not annul an act of a legislature or an ordinance of a municipal council, merely because one or the other was enacted in disregard of the rules that the legislature or the municipal council...had prescribed for its own government...unless they have proceeded in

violation of the law of the land, or of the charter of the municipality, which is their organic law.

59 Am. Jur. 2d Parliamentary Law § 5 (emphasis added). And Jefferson, the Alaska Supreme Court was asked to review a procedural action of the Anchorage City Council, again, a legislative body.

The Commission is an executive branch agency and by the Borough's own admission, a quasi-judicial body. The procedural decisions of the Commission may thereby properly be reviewed by the court. (The Court also notes that unlike Jefferson, there is no indication from the record that the Commission voted in this instance (nor was it the Commission's regular practice) to suspend the applicability of Robert's Rules when voting on Kendig's recusal.)

The Commission consists of seven members who are registered to vote on matters before it. MSB 15.08.010. Four votes, which constitutes a majority of the seven members, are required for the Commission to take action. MSB 15.08.075. In the absence of a majority of the number of authorized board seats (defined as a "quorum") present at a meeting, any business transacted is null and void. MSB 4.05.080(B).

When voting on a matter before the Commission, a Commissioner may not take or withhold an official action in order to affect a matter in which the municipal officer has a

substantial financial interest, MSB 2.71.070(A)(2)(d), or "participate in deliberation or vote on question if the commission member...has a substantial financial interest in any property affected by the decision...or could foreseeably profit in any material way through a favorable or unfavorable decision." MSB 15.08.150(A). If the specific conflict of interest involves a person who has been a "client" of one of the officials in the past year, MSB 2.71.080(a) requires that that official recuse himself:

"A municipal officer shall recuse himself from acting on any matter or proceeding coming before a borough-elected body, board, commission, or committee of which the official is a member when the matter or proceeding involves any person who is, or has been, a client of the official or the official's firm or partnership within the 12-month period immediately preceding the date of the action."

MSB 4.05.080(A) provides that "[a]ll meetings shall be conducted in accordance with the current edition of Robert's Rules of Order, Newly Revised." See also MSB 15.080100 ("Meetings shall be conducted under the current edition of Robert's Rule of Order Newly Revised, and such modified or amended rules as may be adopted by the commission."). As to whether a commissioner may vote on matters that involve potential conflicts of interest, Robert's Rules states: "It is a general rule that no one can vote on a question in which he has a direct personal or pecuniary interest." RONR (11th ed.), Ch. 46. However, Robert's Rules provides limited exceptions to this

rule, such as matters that affect more than one person at a time, like salary increases of board members. Id. It is in the context of these limited exceptions that Robert's Rules states: "If a member could in no case vote on a question affecting himself, it would be impossible...for a legislature to vote salaries to members, or for the majority to prevent a small minority from preferring charges against them and suspending or expelling them." Id. Finally, Robert's Rules reiterates: "A sense of delicacy usually prevents a member from exercising this right of voting in matters affecting himself except where his vote might affect the result." Id.

The plain language of MSB 2.71.080 requires the Commission to determine whether a Commissioner should be recused from participating in a proceeding. This requires an affirmative vote on recusal by the Commission, not an indirect vote on whether the Commissioner may remain. In other words, the issue properly framed for the Commission's vote was whether Kendig should be recused. Instead, as stated earlier, the Commission improperly framed the issue as whether to allow Kendig to participate in deliberations, which thereby allowed one vote to prevent Kendig's participation in the hearing on CMS's permit application, rather than the majority vote required by Robert's Rule's. RONR (11th ed.), Ch. 48.

The Commission did, however, properly decide that Kendig could not vote on his own recusal. Kendig clearly has a direct personal interest in his recusal, for as an active, appointed commissioner, Kendig certainly has a personal interest in his own involvement via continued participation and deliberation on matters before the Commission. Nor is the issue one that, despite Kendig's own personal or pecuniary interest, affects more than just him. Kendig therefore should not vote on the issue of his recusal. Cf. AS 22.20.020(c) (another judge must review a judge's decision to deny recusal).

B. Relief

CMS requests that the court simply order the Commission to hold a vote on the recusal issue, and if Kendig is allowed to participate, to have him vote based on the record developed at the December 2014 hearings. The Borough contends that if the court decides that the Commission failed to follow the correct procedure on remand, then the overall decision must be vacated and a new hearing held.

The court agrees with the Borough. The Commission voted 3-3 on the permit application, which means that the Commission's procedurally incorrect decision on Kendig's recusal had a significant effect on the outcome. This requires the permit decision to be vacated altogether, which in turn entails that all of the other challenges raised by CMS to the permit denial

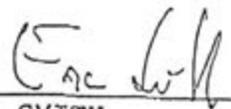
are moot and need not be addressed by this court. The court notes in this respect that the CMS permit was very controversial - if CMS' proposed procedure were to be followed, then if Kendig were allowed to participate, he may well vote to grant the permit, which would raise serious and substantial legal issues regarding whether anyone opposed to the permit would have an opportunity to challenge that decision either before the BOAA or in court.

The court accordingly will remand this case to the Commission with an order that it revisit the recusal issue in a manner consistent with this order and then revisit CMS's permit application. The Commission should prepare findings of fact and conclusions of law as to any recusal decision it may make, as well as on the merits of CMS' permit application.

IV. Conclusion

For the foregoing reasons, it is ORDERED that the Borough's decision to deny CMS's permit is REVERSED and this case is remanded to the Commission for further proceedings consistent with this order.

Dated at Palmer, Alaska this 8th day of July, 2016.


 ERIC SMITH
 SUPERIOR COURT JUDGE

I certify that on 7/8/16
 a copy of this document was sent to
 CSSD Attorney(s) of record
 Plaintiff Defendant Other
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 Deputy Clerk [Signature]

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