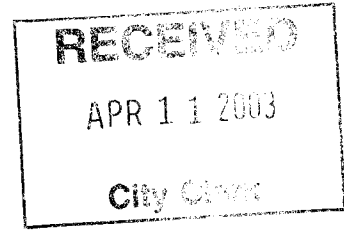


BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

MARCIANO DURAN,)
dba DURAN CONSTRUCTION)
Appellant,)
v.)
CBJ PLANNING COMMISSION,)
Appellee.)



MOTION TO STRIKE

Marciano Duran by and through counsel, moves to strike portions of Shawn Willie's brief because it introduces new evidence which was not part of the record before the Planning Commission.

Duran seeks to strike:

1. The first sentence of paragraph 2 found on page 2 of Willie's Opposing Brief which makes factual assertions concerning what is the standard (CDD) notice of decision. There is no evidence in the record going to what constitutes the standard CDD notice of decision, hence it is new evidence which must be stricken.

2. The first two sentences of the second full paragraph of page 3 of Willie's Opposing Brief concerning what the neighbors would testify to concerning the continuity of activity. What the neighbors might testify to is not part of the record. Mr. Willie may cite to the record for what was testified to at the Planning Commission but he cannot introduce new evidence as to what his neighbors might

Motion to Strike

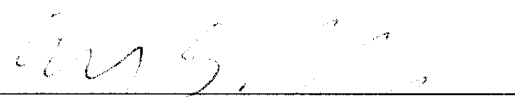
testify to concerning continuity of use. This new evidence concerning what the neighbors would testify to concerning continuity of use must be stricken.

CBJ code section 01.50.110(e) is clear that no new evidence may be advanced or introduced before the Assembly unless it is newly discovered or the result of fraud, misrepresentation or other misconduct of the opposing party. None of the exceptions apply here. Further the Prehearing Order requires a motion to authorize the submission of supplemental materials. Willie has made no such motion.

The indicated materials should be stricken for the reasons set forth herein.

DATED this April 11, 2003, at Juneau, Alaska.

GRUENING & SPITZFADEN, APC
Attorneys for Duran

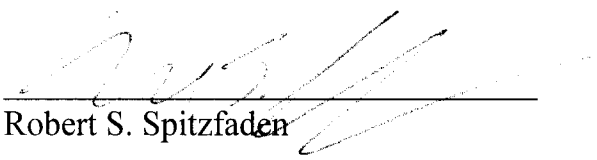


Robert S. Spitzfaden
AK Bar No. 7710171

CERTIFICATION

I HEREBY CERTIFY that on April 11, 2003, the original and five true and correct copies of the foregoing were delivered to:

City Clerk Laurie Sica
City and Borough of Juneau
155 S. Seward
Juneau, AK 99801



Robert S. Spitzfaden