

APPELLEE-INTERVENORS' MOTION TO DISMISS THE APPEAL FILED BY
DICK AND LYNNE GREGG ON 09/05/01, CASE NO. 2001-03

The Appellee-Intervenors Move that the Greggs appeal of the Planning Commission's decision of 08/28/01, File No. USE2001-00030 be dismissed by the Presiding Officer for the Assembly of the City and Borough of Juneau, Alaska for failure of the Appellants of Record, Dick and Lynne Gregg to pursue their appeal with due diligence in accordance with CBJ Appeal Procedures or legally empower anyone else in a timely manner to do so on their behalf as discussed below:

The Greggs failed to appear at the appeal agency's Pre-hearing conference on their appeal, which was held on 08/28/01 and failed to request a continuance.

Mr. Duane Gates, one of the Hamilton Street Homeowners, alleged at the Conference that the Greggs were out of town and were withdrawing from their appeal in favor of the alleged Hamilton Street Homeowners' Association, but he did not have in his possession and still has not provided anything in writing, signed by the Greggs on or before the date of the Pre-hearing Conference, to substantiate that claim. Nor did he have in his possession and still has not provided anything in writing, signed by its alleged members, including the Greggs, on or before that date, to substantiate that such an association existed as of the date of the Pre-hearing Conference to act on the Greggs behalf.

Mr. Carl Ferlauto, a consultant, alleged at the Conference that he was representing the alleged Hamilton Street Homeowners' Association but did not have in his possession anything in writing, signed by the alleged members of such an association on or before that date, to substantiate that claim. Nor did he have in his possession and still has not provided anything in writing, signed by its alleged members, including the Greggs, on or before that date, to substantiate that such an association existed as of the date of the Pre-hearing Conference and therefore he had no legal basis for claiming that he was representing the Greggs, either directly or indirectly in this appeal at the Conference.

Subsequent to the Pre-hearing Conference Mr. Ferlauto did provide a copy of a Representation Agreement, signed by himself and Mr. Gates, as Acting President for the alleged Hamilton Street Homeowners' Association, on 10/27/01, two days after the Conference agreeing "to employ the firm of Ferlauto & Associates to provide general consulting and procedural representations, as necessary, for the [alleged] Hamilton Street Homeowners, an association of neighbors and homeowners in the Hamilton Street subdivision in Juneau, AK." It further states that Mr. Ferlauto will devote his best professional abilities in any CBJ appeal but makes no reference to the Greggs appeal.

We therefore submit that, in the absence of any agreement signed by the Greggs on or before the date of the Pre-hearing Conference, directly authorizing Mr. Ferlauto to represent them in their appeal and in the absence of any document signed by the Greggs on or before that date, agreeing to withdraw from their appeal in favor of the alleged Hamilton Street Homeowners' Association, that the Greggs, the Appellants of Record, forfeited their right to further consideration of their appeal in this case by their failure to

appear at the Pre-hearing Conference or request a continuance or legally empower anyone else to act on their behalf at that Conference or in subsequent proceedings.