

1 BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

2 BERNARD BACHOURA,  
3 Appellant,

4 vs.

5 CBJ PLANNING COMMISSION,  
6 Appellee.

USE 2010-0009



8  
9 **ORDER**

10 **Background**

11 Bernard Bachoura applied for, and was granted, an allowable use permit to operate a boarding  
12 house at 306 West Eighth Street.<sup>1</sup> Mr. Bachoura then filed a timely appeal of the decision of the  
13 Planning Commission regarding a condition that was added to the permit. Appellant is represented  
14 by counsel, attorney Dan Bruce of Baxter, Bruce & Sullivan.

15 The appealed condition provides:

16 Per CBJ 49.15.320(f)(8), the Allowable Use will automatically be revoked if  
17 either of the following occur: The property owner is convicted of a violation of  
18 CBJ 36.30 Litter; or an occupant of the premises is convicted of a violation of  
19 CBJ 42.20.095 Disturbing the Peace.

19 In a letter to the City Attorney dated June 24, 2010, Mr. Bruce argues that:

- 20 (1) The condition is a misapplication of the allowable use permit ordinance; and  
21 (2) That application of the condition would violate his client's due process rights.

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23 **Discussion - Argument (1)**

24 Allowable use permits are governed by CBJ 49.15.320. Specifically, CBJ 49.15.320(a) limits  
25 the conditions that can be imposed. ("Conditions that may be attached to the permit are limited to

26  
27 <sup>1</sup> Due to the development location close to his residence, Assemblymember Bush took no part  
in consideration of this matter.

1 those listed in subsection (f) of this section.”) In this matter, the Planning Commission has used an  
2 enforcement section, CBJ 49.15.320(f)(8), to attach a condition regarding garbage and disturbing the  
3 peace convictions. This type of condition is not included on the list of possible conditions. Applied  
4 in this manner, the ordinance would be internally inconsistent; the enforcement condition would  
5 provide a mechanism for addition of types of conditions not included in the limited list of possible  
6 conditions.

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8 Discussion - Argument (2)

9 Development permits comprise valuable property which a government cannot take without due  
10 process. The appealed condition provides that the permit will be *automatically revoked* if either: 1)  
11 the property owner is convicted of violating the garbage ordinance, or 2) if an occupant of the premises  
12 (not the owner) is convicted of disturbing the peace. This condition allows the building owner to  
13 automatically lose his valuable permit, if an occupant of the premises, without notice to him, and  
14 without an opportunity to defend, is convicted of an infraction. As the condition was drafted, the  
15 building owner could lose his development permit with no notice or opportunity to be heard. The  
16 condition fails to provide due process.

17  
18 Conclusion

19 The Assembly remands this matter to the Planning Commission for further consideration  
20 consistent with this order.

21 IT IS SO ORDERED.

22 DATED this 10<sup>th</sup> day of July, 2010.

23 ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

24 

25 By: Mayor Bruce Botelho  
26 Presiding Officer on Appeal