



**MUNICIPALITY OF ANCHORAGE  
MEMORANDUM**

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DATE: August 14, 2017

TO: Planning and Zoning Commission

THRU:  Hal H. Hart, AICP, Planning Director

FROM:  Francis McLaughlin, Senior Planner

SUBJECT: Case 2017-0072, New Evidence – Changed Circumstances

This is a request for rehearing or reopening of Case 2017-0072 based on new evidence and changed circumstances, in accordance with AMCR 21.10.503. The applicant's new evidence is to offer a special limitation that requires no more than 24 residential lots in the district. This special limitation responds to one of the Commission's findings in Resolution 2017-021, which states:

“10. The proposed plan shows roughly 30 lots and the R-8 would allow 14 lots. The answer is somewhere in between because the topography would probably support a number between 14 and 30. The 30 lots is a higher density that is askew, but the Commission does not have a choice. By default, absent a development plan that bridges the gap, the R-8 district should remain.”

In addition to limiting the district to 24 residential lots, the applicant also wishes to clarify for the Commission that the petition site can be subdivided into 19 residential lots under the existing R-8 zoning. During discussion of this case, the Commission assumed that the rezoning would double the number of residential lots from 14 to 30. Therefore, a compromise on the number of lots should be between 30 lots and 19 lots, not 14. The applicant also provides evidence from a real estate firm showing that undeveloped large lots within the Anchorage Bowl are scarce, and, therefore, in demand.

The Municipal Legal Department provided a memo validating the petitioner's justification for a request for rehearing or reopening of the case based on findings made by the Commission. That is, a new special limitation offered by the applicant in response to statements made by the Commission is considered new evidence or changed circumstances. The Law Department concludes that:

“PZC may reopen a petition at its discretion when new evidence or changed circumstances are presented. Examples of such evidence or circumstances are: 1. Material changes that address the reasons for the initial denial; or 2. Material alterations made to initial design plans. Additionally, the PZC must find that the new evidence or changed circumstances would have had a material impact on the vote if it had been presented at the initial hearing.”

The applicants request is timely. Resolution 2017-021 was adopted on July 10<sup>th</sup> and the request for rehearing or reopening was submitted to the Clerk's Office on July 27<sup>th</sup>.

The Commission must decide whether to reopen the public hearing, rehear the case, or uphold the previous decision. The Commission should make a finding on whether the new evidence or changed circumstances would have had a material impact on the previous vote if it had been presented at the initial hearing. If the decision is to reopen or rehear the case, then the Commission must also determine the extent of the subject matter to be presented and shall indicate the limitations on the public hearing, as required by AMC 21.10.503. The relevant section of code is reprinted below.

**21.10.503 New evidence—Changed circumstances.**

- A. An allegation of new evidence or changed circumstances may be the basis for reopening the public hearing or a rehearing of a matter previously decided by the commission. Any such allegations shall be raised by written motion for rehearing or reopening the hearing, and shall be filed with the municipal clerk no later than twenty (20) days after the commission's initial decision becomes final pursuant to section 21.10.304D.
- B. Upon the filing of a motion under this section, the commission shall expedite its consideration of the motion and shall determine whether to rehear or reopen the matter. The commission shall reopen the public hearing or rehear the matter previously decided if the commission determines:
  - 1. If true, that the alleged new evidence or changed circumstances would substantially change the decision of the commission; and that
  - 2. The person alleging the new evidence or changed circumstances acted promptly and with diligence in bringing the information to the commission's attention.
- C. If the commission holds a rehearing, it shall determine the extent of the subject matter to be presented and shall indicate the limitations on the public hearing.
- D. A decision made by the commission, as the result of a motion or rehearing under this section, is not an initial decision pursuant to subsection A. above; subsequent motions alleging new evidence or changed circumstances shall be automatically rejected by the municipal clerk without hearing or reconsideration by the commission.

ASHBURN & MASON

LAWYERS

MATTHEW T. FINDLEY • EVA R. GARDNER • REBECCA E. LIPSON • DONALD W. MCCLINTOCK III  
JEFFREY W. ROBINSON • JESSICA J. SPÜHLER • THOMAS V. WANG  
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

M.O.A.

2017 JUL 27 PM 2:55

CLERK'S OFFICE

July 27, 2017

**Via Hand Delivery:**

Barbara A. Jones  
Municipal Clerk  
Municipality of Anchorage  
632 W. 6<sup>th</sup> Avenue Suite 250  
Anchorage, Alaska 99501

**RECEIVED**

JUL 31 2017

PLANNING DEPARTMENT

Re: Request for Rehearing and Reopening of Municipality of Anchorage  
Planning and Zoning Commission Resolution No. 2017-021  
Our File No.: 11558.001

Dear Ms. Jones:

Please find enclosed for filing with the Municipality of Anchorage clerk's office, a Request for Rehearing and Reopening (New Evidence) of Municipality of Anchorage Planning and Zoning Commission Resolution No. 2017-021.

Should there be any questions or concerns regarding this filing, please contact the undersigned at (907)276-4331 or [donald@anchorlaw.com](mailto:donald@anchorlaw.com).

Sincerely,

ASHBURN & MASON, P.C.



Donald W. McClintock

DWM:haw

1227 WEST 9TH AVENUE, SUITE 200, ANCHORAGE, AK 99501 • TEL 907.276.4331 • FAX 907.277.8235

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July 27, 2017

cc: Client (via electronic mail only)

Planning and Zoning Case No. 2017-0072  
Resolution No. 2017-021

to address its proposal for a 24 lot limit as a special limitation.<sup>3</sup> This information is being brought in a timely manner as the position of the Commission was not apparent until after the hearing had closed; and thus the evidence is both material to the decision of the Commission and timely presented.

Additionally, an opinion letter written by long-time Anchorage realtor, Beth Simpson, the broker in charge for Keller Williams Realty Alaska Group, is included with this request for rehearing to address new evidence relating to findings of fact No.2. Ms. Simpson notes that lots such as those proposed by the petitioner are actually relatively scarce in the market and R-6 housing would allow the costs of infrastructure to be defrayed among more lots, widening the type of housing that can be built.

A. The Commission should provide petitioner the same opportunities afforded to other applicants and allow rehearing so this new evidence can be made into special limitations to address concerns raised by the Commission.

Under Title 21 of the Anchorage Municipal Code, following the close of a public hearing on a proposed rezoning, the Commission may “recommend approval, approval with special limitations or other modifications (at least as restrictive as submitted in the application), or denial.”<sup>4</sup> As demonstrated by the examples in the below footnote, the Commission frequently works with an applicant to create special limitations that bridge the gap between the requested development plan and what the Commission is willing to accept.<sup>5</sup> In some situations this requires the Commission to hold public work sessions, as

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commission shall reopen the public hearing or rehear the matter previously decided if the commission determines:

1. If true, that the alleged new evidence or changed circumstances would substantially change the decision of the commission; and that

2. The person alleging the new evidence or changed circumstances acted promptly and with diligence in bringing the information to the commission's attention.

C. If the commission holds a rehearing, it shall determine the extent of the subject matter to be presented and shall indicate the limitations on the public hearing.

<sup>3</sup> Notwithstanding the petitioner’s disagreement with several findings of the Commission, which directly contradict the scientific studies provided as part of the application, the new evidence and changed circumstances set forth below are limited to evidence and changed circumstances that the petitioner was unable to address before issuance of the Commission’s resolution No. 2017-021 on July 12, 2017.

<sup>4</sup> AMC 21.03.160.D.7.a.

<sup>5</sup> The following are examples of instances when, after public testimony was closed, the Commission requested additional information and/or worked with the petitioner to determine

in Case No. 2013-106, but special limitations are more frequently established simply by the Commission engaging in a dialogue with the applicant, *see* Case Nos. 2017-70 and 2016-157. This did not happen here and rehearing should be granted to allow that dialogue to occur.

B. Petitioner's willingness to accept a development plan with 24 lots is new evidence that can affect the Commissions' decision and is being presented diligently and promptly to allow rehearing.

In this case, after presentation of evidence was closed, Commissioner Strike stated that he would have supported a development proposal that bridged the gap between the number of lots permitted under present zoning and the number requested (30). These comments were incorporated into Resolution 2017-021 as Findings of Fact Number 10. Had the petitioner been asked, he would have been willing to agree to an additional special limitation on development that limited the maximum number of lots to twenty four (24), an increase of only five lots from the maximum number permitted for development.

Here, the Commission acknowledged that the "applicant presented a great case" and that "the topography would probably support a number between 14 and 30" yet denied the application without any attempt to engage with the applicant for the provision

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whether additional special limitations could be added to address Commission concerns in order for the Commission to recommend approval of the case.

- (1) Case No. 2017-70. The Commission heard this case on June 5, 2017, and following public hearing requested additional information for future deliberation. On July 10, 2017, the public hearing, the case was discussed by staff and the PZC members, the petitioner was brought up before the commission and agreed to additional SL's, and after much debate, the case was recommended for approval with the additional special limitations.
- (2) Case No. 2016-157. Rezoning presented to the Commission on September 12th, 2016. The MOA Planning department recommended the rezone with no special limitations, however, after the case was extensively discussed by the Commission, two special limitations were added.
- (3) Case No. 2013-106. This case was a rezoning of 107 acres into multiple zoning districts, first heard by the Commission on August 12th, 2013. At the August hearing the Commission members voted to postpone the case to a public work session, at which certain special limitations were discussed and agreed upon. The Commission then held a second public hearing and the case was recommended for approval.

of a development plan that bridges the gap.<sup>6</sup> Thus this new evidence “would substantially change the decision” and because it has been raised promptly after the issue was raised in post public testimony discussion and in the final resolution, it is being raised promptly and diligently. This meets the requirements for rehearing.<sup>7</sup>

Although that alone is sufficient for rehearing, petitioner also wishes to present additional new evidence --the testimony from Beth Simpson noting that there is actual demand for this type of lot in the Anchorage market place.

Buildable land to accommodate future growth of Anchorage is rapidly dwindling and the costs to develop the few remaining parcels into lots are rising. There are currently only 53 lots between 40,000 and 108,000SF for sale between Abbott Road through the Rabbit Creek area (Prominence Point lots excluded). 8 of those lots are above Potters Marsh in Potter Valley and have NO school bus service due to the length of steep grades. 17 are above the treeline high above Goldenview Drive in Shangri-la Estates. 5 are on busy main roads. 4 are in the Rabbit Creek Heights and Bear Valley area. Most of the balance have issues from steep slopes, inadequate access, and well depth or ground water issues<sup>8</sup>

As noted by Ms. Simpson, restricting the number of good buildable lots means the community is forced to resort to lots with topographical issues, “underutilization is also bad development.”<sup>9</sup>

This application required, appropriately, considerable effort and expense to create the necessary factual record for the Commission; and the Commission as a matter of policy should encourage those efforts. Allowing a rehearing for this new evidence would send a positive message to the public that such efforts will be met with a full hearing of all avenues to success.<sup>10</sup> If the Commission did not previously believe it had the choice to

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<sup>6</sup> Finding of Fact Nos. 1 and 10, Planning and Zoning Commission Resolution No. 2017-021 at 1-2.

<sup>7</sup> ACMR 21.10.503.B

<sup>8</sup> See Exhibit A attached letter of July 24, 2017 Simpson Co.

<sup>9</sup> Id.

<sup>10</sup> It is also petitioner’s hope that if the above special conditions do not address the Commission’s concerns, that the Commission will follow its customary procedure and engage with petitioner, either during the re-hearing, or if necessary, hold a public work session, in order to craft a development plan that bridges the gap and permits a rezone to R-6 with special limitations. R-6SL zoning is the appropriate zoning, because despite R-8 districts abutting the property, those

limit development to a lesser increase in the number of lots allowed as a special limitation,<sup>11</sup> then petitioner's submission of this new evidence that it will limit the maximum number of lots to 24 lots, is new evidence and changed circumstances that the Commission should consider under AMCR 21.10.503.B<sup>12</sup> Such action will give some assurance that such thorough presentations will be given full consideration.

The foregoing is sufficient as an initial matter to allow this matter to be reheard. If the Commission elects to rehear this matter, as it should, then one other matter deserves correction. Zoning presently permits development of 19 lots. Several of the Commission's findings of fact incorrectly stated that present zoning permits development of 14 lots.<sup>13</sup> Under AMC 21.09.070 a conservation subdivision would be able to create 19 lots considering that the total acreage less right of way would be divided by the 4 acre R-8 lot size (or about 74.42 acres divided by 4 equals 18.61 lots). Given the relatively small number of lots being discussed, a discrepancy of 5 lots is significant. To the extent the Commission based its denial on the presumed increase from 14 permitted lots to the 30 requested lots, that assumption is based on incorrect information. While the Commission may very well believe that an increase from 19 lots to 30 lots (rather than 14 lots to 30 lots) remains unacceptable, it is important for the Commission to use 19 lots as the baseline development number when considering the changed circumstances and new evidence presented below to evaluate the 24 lot proposal. This can be clarified at rehearing.

### Conclusion

We appreciate the Commission's consideration of the new evidence. As the Commission noted in its findings of fact, the petitioner "presented a great case." It would truly be an unfortunate waste of Commission, staff, and petitioner's time and resources were the Commission to turn down the opportunity to modify the application to craft a development plan that bridges the gap between the present underutilization of the acreage and the number of lots originally requested. Indeed, the only thing that refusal to permit a limited number of increased dwellings on the property—above the 19 lots already allowed—will ensure is that the property is developed with the very type of large-lot

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R-8 districts were *built as* R-6 districts. The housing to be built here will, at worst complement and at best improve on the appearance of the adjacent housing stock.

<sup>11</sup> Finding of Fact 10.


<sup>12</sup> See Note 2*supra*.

<sup>13</sup> Finding of Fact Nos. 1, 4, and 10, Planning and Zoning Commission Resolution No. 2017-021 at 1-2.

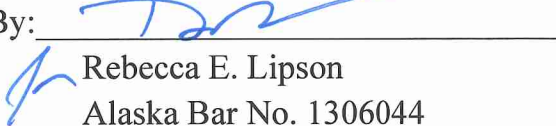
housing that community members complained was unaffordable for most Alaskans and will push housing onto lots less suitable for development.

ASHBURN & MASON, P.C.  
Attorneys for Petitioner

DATED: 7-27-2017

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DATED: 7-27-2017

By:   
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July 24, 2017

RE: CASE 2017-0072

PETITIONER: Big Country Enterprises, LLC

REQUEST: Rezone of approximately 80 acres from R-8 Low-density residential (4 acres) to R-6SL Low-density residential (1 acre)

Since 1974 I have been actively involved in residential real estate sales. Currently I am a partner in Keller Williams Realty Alaska Group, am the Broker-in-Charge with 414 Realtors, and actively sell. From 1974-1984 I represented 5 builders who built 50 houses on the hillside annually and found their lots for them.

Buildable land to accommodate future growth of Anchorage is rapidly dwindling and the costs to develop the few remaining parcels into lots is rising. There are currently only 53 lots between 40,000 and 108,000SF for sale between Abbott Road through the Rabbit Creek area (Prominence Point lots excluded). 8 of those lots are above Potters Marsh in Potter Valley and have **NO** school bus service due to the length of steep grades. 17 are above the treeline high above Goldenview Drive in Shangri-la Estates. 5 are on busy main roads. 4 are in the Rabbit Creek Heights and Bear Valley area. Most of the balance have issues from steep slopes, inadequate access, and well depth or ground water issues. You can review the attached list of those parcels available to verify this information. I know this as I have been working with a couple who grew up on the mid-hillside between Huffman and DeArmoun and have been raising their young family in the same location. Their family has outgrown their home; they love their current lifestyle and have been extremely disappointed with options for replacing it.

The costs that would be incurred to develop this land with the R-8 requirements would require more McMansions be built due to the price point of the land and would price mid-buyers out of the subdivision. *I attended a Community Council meeting and was startled at how vicious many community members were; nobody wants land developed that they've been accustomed to treating as their park but we desperately need development.*

I beg to differ with the comment made during the hearing that "currently Anchorage does not need that much more large lot housing so an up-zoning here does not seem to be necessary." I agree with the statement from the hearing that "underutilization is also bad development." It appears to me that a very fine professional team was put together after a new developer learned how much complexity is involved. My opinion is this subdivision would be a gift to the community.

Sincerely,









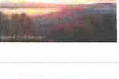




























Beth Simpson, CRS, Realtor  
Partner, Broker-in-Charge  
Keller Williams Realty Alaska Group  
907-727-2384

# Vacant land

57 Properties

		Price / Status / MLS #	Listing Office	Agent	Days on Market	Street #	Street	Grid # (Muni Anch)	Property Type	Area
1		<b>\$215,000</b> L3 B2 Potter Valley Road Anchorage, AK 99516 Active / 15-1759	Dwell Realty (1061)		895	L3 B2	Potter Valley	SW3538	Vacant Land	25
2		<b>\$174,000</b> L2 B4 Potter Highlands Drive Anchorage, AK 99516 Active / 15-1782	Dwell Realty (1061)		896	L2 B4	Potter Highlands	SW3538	Vacant Land	25
3		<b>\$174,000</b> L4 B4 Potter Highlands Drive Anchorage, AK 99516 Active / 15-1784	Dwell Realty (1061)		896	L4 B4	Potter Highlands	SW3538	Vacant Land	25
4		<b>\$174,000</b> L5 B4 Potter Highlands Drive Anchorage, AK 99516 Active / 15-1785	Dwell Realty (1061)		897	L5 B4	Potter Highlands	SW3538	Vacant Land	25
5		<b>\$169,000</b> L1 B2 Potter Valley Road Anchorage, AK 99516 Active / 15-2056	Dwell Realty (1061)		890	L1 B2	Potter Valley	SW3538	Vacant Land	25
6		<b>\$179,000</b> L2 B2 Potter Valley Road Anchorage, AK 99516 Active / 15-2057	Dwell Realty (1061)		890	L2 B2	Potter Valley	SW3538	Vacant Land	25
7		<b>\$99,900</b> L1 B2 Snow Bear Drive Anchorage, AK 99516 Active / 15-5746	RE/MAX Dynamic Properties (85)		824	L1 B2	Snow Bear	SW3243	Vacant Land	25
8		<b>\$150,000</b> L14A B1V Leo Circle Anchorage, AK 99516 Active / 16-1026	Keller Williams Realty Alaska Group (955)		545	L14A B1V	Leo	SW3241	Vacant Land	25
9		<b>\$219,500</b> 8320 E 130th Avenue Anchorage, AK 99516 Active / 16-4580	RE/MAX Dynamic Properties (85)		481	8320	130th	SW2841	Vacant Land	30
10		<b>\$149,950</b> 6601 Rockridge Drive Anchorage, AK 99516 Active / 16-8187	RE/MAX Dynamic Properties (85)		429	6601	Rockridge	SW2639	Vacant Land	30
11		<b>\$205,000</b> NHN Virgo Avenue Anchorage, AK 99516 Active / 16-8652	RE/MAX Dynamic Properties (85)		420	NHN	Virgo	SW3337	Vacant Land	25
12		<b>\$175,000</b> L3 Birch Road Anchorage, AK 99516 Active / 16-11672	RE/MAX Dynamic Properties (85)		373	L3	Birch	SW2537	Vacant Land	30
13		<b>\$55,000</b> L19B-1 BIV Francesca Drive Nickleen Dr Anchorage, AK 99516 Active / 16-14962	Herrington and Company, LLC (1042)		313	L19B-1 BIV	Francesca	SW3241	Vacant Land	25
14		<b>\$159,000</b> L2A Birch Road Anchorage, AK 99507 Active / 16-17508	RE/MAX Dynamic Properties (85)		251	L2A	Birch	SW2437	Vacant Land	30
15		<b>\$43,000</b> L3A B6V No Road Anchorage, AK 99516 Active / 16-17519	Keller Williams Realty Alaska Group (955)		254	L3A B6V	No Road	SW3341	Vacant Land	25
16		<b>\$47,000</b> L4A B6V No Road Anchorage, AK 99516 Active / 16-17520	Keller Williams Realty Alaska Group (955)		254	L4A B6V	No Road	SW3341	Vacant Land	25
17		<b>\$185,000</b> 12801 Midori Drive Anchorage, AK 99516 Active / 17-401	Jack White Real Estate (208)		195	12801	Midori	SW2840	Vacant Land	30

		Price / Status / MLS #	Listing Office	Agent Days on Market	Street #	Street	Grid # (Muni Anch)	Property Type	Area
18		<b>\$118,000</b> 5146 E 98th Avenue Anchorage, AK 99507 Active / 17-721	RE/MAX Dynamic Properties (85)	188	5146	98th	SW2437	Vacant Land	30
19		<b>\$200,000</b> 6701 Paula Place Anchorage, AK 99507 Active / 17-1260	The Kristan Cole Team Branch Office Keller Williams Realty - Alaska Group (2955)	174	6701	Paula	SW2439	Vacant Land	30
20		<b>\$204,000</b> L3 B1 Sandpiper Drive Anchorage, AK 99516 Active / 17-1446	RE/MAX Dynamic Properties (85)	172	L3 B1	Sandpiper	SW3239	Vacant Land	25
21		<b>\$214,000</b> L7 B1 Sandpiper Drive Anchorage, AK 99516 Active / 17-1447	RE/MAX Dynamic Properties (85)	172	L7 B1	Sandpiper	SW3239	Vacant Land	25
22		<b>\$204,000</b> L5 B1 Sandpiper Drive Anchorage, AK 99516 Active / 17-1449	RE/MAX Dynamic Properties (85)	172	L5 B1	Sandpiper	SW3239	Vacant Land	25
23		<b>\$195,000</b> L8 B1 Mountain Breeze Drive Anchorage, AK 99516 Active / 17-1450	RE/MAX Dynamic Properties (85)	172	L8 B1	Mountain Breeze	SW3239	Vacant Land	25
24		<b>\$204,900</b> L11 B1 Mountain Breeze Drive Anchorage, AK 99516 Active / 17-1451	RE/MAX Dynamic Properties (85)	172	L11 B1	Mountain Breeze	SW3239	Vacant Land	25
25		<b>\$195,000</b> L12 B1 Mountain Breeze Drive Anchorage, AK 99516 Active / 17-1452	RE/MAX Dynamic Properties (85)	172	L12 B1	Mountain Breeze	SW3239	Vacant Land	25
26		<b>\$195,000</b> L13 B1 Mountain Breeze Drive Anchorage, AK 99516 Active / 17-1453	RE/MAX Dynamic Properties (85)	172	L13 B1	Mountain Breeze	SW3239	Vacant Land	25
27		<b>\$175,000</b> L14 B1 Mountain Breeze Drive Anchorage, AK 99516 Active / 17-1454	RE/MAX Dynamic Properties (85)	172	L14 B1	Mountain Breeze	SW3239	Vacant Land	25
28		<b>\$170,500</b> L4 B2 Mountain Air Drive Anchorage, AK 99516 Active / 17-1455	RE/MAX Dynamic Properties (85)	172	L4 B2	Mountain Air	SW3239	Vacant Land	25
29		<b>\$182,500</b> L2 B3 Mountain Air Drive Anchorage, AK 99516 Active / 17-1456	RE/MAX Dynamic Properties (85)	172	L2 B3	Mountain Air	SW3239	Vacant Land	25
30		<b>\$194,950</b> L6 B3 Mountain Air Drive Anchorage, AK 99516 Active / 17-1460	RE/MAX Dynamic Properties (85)	172	L6 B3	Mountain Air	SW3239	Vacant Land	25
31		<b>\$185,675</b> L7 B3 Sandpiper Drive Anchorage, AK 99516 Active / 17-1462	RE/MAX Dynamic Properties (85)	117	L7 B3	Sandpiper	SW3239	Vacant Land	25
32		<b>\$203,500</b> L8 B3 Sandpiper Drive Anchorage, AK 99516 Active / 17-1463	RE/MAX Dynamic Properties (85)	172	L8 B3	Sandpiper	SW3239	Vacant Land	25
33		<b>\$217,315</b> L2 B4 Mountain Breeze Drive Anchorage, AK 99516 Active / 17-1464	RE/MAX Dynamic Properties (85)	172	L2 B4	Mountain Breeze	SW3239	Vacant Land	25
34		<b>\$220,500</b> L4 B4 Mountain Breeze Drive Anchorage, AK 99516 Active / 17-1467	RE/MAX Dynamic Properties (85)	172	L4 B4	Mountain Breeze	SW3239	Vacant Land	25

		Price / Status / MLS #	Listing Agent	Agent Day	Map	Street #	Street	Grid # (Muni Anch)	Property Type	Area
35		<b>\$193,000</b> L6 B4 Mountain Breeze Drive Anchorage, AK 99516 Active / 17-1468	RE/MAX Dynamic Properties (85)		172	L6 B4	Mountain Breeze	SW3239	Vacant Land	25
36		<b>\$750,000</b> 9841 Reliance Drive Anchorage, AK 99507 Active / 17-2515	Gold Key Real Estate (851)		148	9841	Reliance	SW2333	Vacant Land	30
37		<b>\$139,500</b> 12400 Hillside Drive Anchorage, AK 99516 Active / 17-2821	Keller Williams Realty Alaska Group (955)		146	12400	Hillside	SW2839	Vacant Land	30
38		<b>\$197,500</b> TR 8C Village Scenic Parkway Anchorage, AK 99516 Active / 17-2931	RE/MAX Dynamic Properties (85)		142	TR 8C	Village Scenic	SW3637	Vacant Land	25
39		<b>\$250,000</b> L2 B1 Sourthpointe Ridge Drive Anchorage, AK 99516 Active / 17-3481 <b>Price Reduced</b>	RE/MAX Dynamic Properties (85)		132	L2 B1	Sourthpointe Ridge	SW3738	Vacant Land	25
40		<b>\$105,000</b> L5 E 140th Avenue Anchorage, AK 99516 Active / 17-4006	Herrington and Company, LLC (1042)		123	L5	140th	SW2939	Vacant Land	25
41		<b>\$229,000</b> 9900 McCready Circle Anchorage, AK 99507 Active / 17-4705	Dwell Realty (1061)		111	9900	McCready	SW2440	Vacant Land	30
42		<b>\$130,000</b> L3 B2 Potter Heights Drive Anchorage, AK 99516 Active / 17-4755	RE/MAX Dynamic Properties (85)		110	L3 B2	Potter Heights	SW3639	Vacant Land	25
43		<b>\$150,000</b> 15151 Golden View Drive Anchorage, AK 99516 Active / 17-5458	RE/MAX Dynamic Properties (85)		21	15151	Golden View	SW3138	Vacant Land	25
44		<b>\$239,000</b> L1 B3 Southpointe Ridge Anchorage, AK 99516 Active / 17-5548	Keller Williams Realty Alaska Group (955)		98	L1 B3	Southpointe Ridge	SW3738	Vacant Land	25
45		<b>\$132,000</b> L2 B2 Mountainside Village Anchorage, AK 99516 Active / 17-5945	Keller Williams Realty Alaska Group of Eagle River (1019)		97	L2 B2	Mountainside Village	SW3439	Vacant Land	25
46		<b>\$215,000</b> 16851 Olena Point Circle Anchorage, AK 99516 Active / 17-5958	RE/MAX Dynamic Properties (85)		92	16851	Olena Point	SW3338	Vacant Land	25
47		<b>\$230,000</b> 17540 Mountainside Village Drive Anchorage, AK 99516 Active / 17-6657	Dwell Realty (1061)		82	17540	Mountainside Village	SW3439	Vacant Land	25
48		<b>\$140,000</b> L12 Snow Bear Circle Anchorage, AK 99516 Active / 17-6940	Dwell Realty (1061)		78	L12	Snow Bear	SW3243	Vacant Land	25
49		<b>\$141,000</b> L166A Loc Loman Lane Anchorage, AK 99516 Active / 17-7489	Jack White Real Estate (208)		70	L166A	Loc Loman	SW3135	Vacant Land	25
50		<b>\$125,000</b> 9820 Meadow Road Anchorage, AK 99516 Active / 17-8111	Keller Williams Realty Alaska Group of Eagle River (1019)		62	9820	Meadow	SW2943	Vacant Land	30
51		<b>\$54,000</b> L4 E 140th Avenue Anchorage, AK 99516 Active / 17-8434	RE/MAX Dynamic Properties (85)		61	L4	140th	SW2939	Vacant Land	25
52		<b>\$275,000</b> Lot 8 Olena Pointe Circle Anchorage, AK 99516 Active / 17-8734	Real Estate Brokers of Alaska (933)		56	Lot 8	Olena Pointe	SW3338	Vacant Land	25

		Price / Status / MLS #	Listir ce	Agent Day Ma.	Street #	Street	Grid # (Muni Anch)	Property Type	Area
53		<b>\$309,000</b> 12121 Ginami Street Anchorage, AK 99516 Active / 17-9929	Herrington and Company, LLC (1042)	38	12121	Ginami	SW2741	Vacant Land	30
54		<b>\$295,000</b> L22 Lost Horizon Drive Anchorage, AK 99516 Active / 17-10194	RE/MAX Dynamic Properties (85)	35	L22	Lost Horizon	SW3239	Vacant Land	25
55		<b>\$70,000</b> L3A B8H Byron Drive Anchorage, AK 99516 Active / 17-11630	Jack White Real Estate (208)	14	L3A B8H	Byron	SW3340	Vacant Land	25
56		<b>\$279,900</b> L9 B1 Prospect Drive Anchorage, AK 99507 Active / 17-12172	Jack White Real Estate (208)	7	L9 B1	Prospect	SW2541	Vacant Land	30
57		<b>\$145,000</b> Lot 4 Rabbit Creek Road Anchorage, AK 99516 Active / 17-12483	RE/MAX Dynamic Properties (85)	3	Lot 4	Rabbit Creek	SW3138	Vacant Land	25
	<b>New Listing</b>								

All information is deemed reliable, but is not guaranteed. Interested parties are advised to independently verify all information contained herein. © 2017 [MLS](#) and [FBS](#). Prepared by Beth Simpson, GRI, CRS on Tuesday, July 25, 2017 11:47 AM.

**MUNICIPALITY OF ANCHORAGE**  
**PLANNING AND ZONING COMMISSION RESOLUTION NO. 2017-021**

A RESOLUTION RECOMMENDING DENIAL OF THE REZONING OF APPROXIMATELY 77 ACRES FROM R-8 (LOW-DENSITY RESIDENTIAL, 4 ACRE) DISTRICT TO R-6 SL (LOW-DENSITY RESIDENTIAL, 1 ACRE) DISTRICT WITH SPECIAL LIMITATIONS FOR THE N ½ OF THE SE ¼ OF SECTION 25, T12N, R3W, S.M., ALASKA EXCEPTING THE NW ¼ OF THE NW ¼ OF THE SE ¼ OF SECTION 25, T12N, R3W, S.M., ALASKA AND LOTS 1 AND 2 OF VERGASON-JONES SUBDIVISION PER PLAT 98-178; GENERALLY LOCATED SOUTH OF UPPER DEARMOUN ROAD, WEST OF CANYON ROAD, AND EAST OF MESSINIA STREET, IN ANCHORAGE.

(Case 2017-0072)

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WHEREAS, a request has been received from Todd Brownson, Big Country Enterprises, LLC to rezone approximately 77 acres from R-8 (low-density residential, 4 acre) district to R-6 SL (low-density residential, 1 acre) district with special limitations for the N ½ of the SE ¼ of Section 25, T12N, R3W, S.M., Alaska excepting the NW ¼ of the NW ¼ of the SE ¼ of Section 25, T12N, R3W, S.M., Alaska and Lot 1 and 2 of Vergason-Jones Subdivision per Plat 98-178; generally located south of Upper DeArmoun Road, west of Canyon Drive, and east of Messinia Street, in Anchorage; and

WHEREAS, notices were published, posted, and mailed, and a public hearing was held on June 12, 2017.

NOW, THEREFORE, BE IT RESOLVED, by the Municipal Planning and Zoning Commission that:

A. The Commission makes the following findings of fact:


1. The applicant presented a great case. In 2015, a very similar rezone was requested, if boiled down to just the bare bones. The zoning currently allows 14 lots and the developer would like 30 lots to be allowed. New soils information has been presented and it appears that the groundwater is not as bad and drains water better. The groundwater will vary from year to year based on snowfall. All other factors that were problems approximately two years ago with compatibility, environmental impacts to drainage, glaciation, and downstream watercourses, all seem to still be there.
2. There are concerning things about this case. Anchorage does not need more large-lot housing, so upzoning does not seem necessary.
3. There is strong community council and neighborhood objection to this rezone.

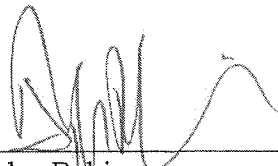
4. The rezone is not compatible with the *Comprehensive Plan* and while an increase of 0.25 DUA to 0.39 DUA does not sound like much, it results in a large increase (50%) in the number of dwelling units.
5. The Commission is unsure that the rezone is compatible with the surrounding zoning and while the R-6 district abuts the site, the zoning is predominately the R-8 district.
6. The Commission is unsure that DeArmoun Road can support this rezone because there is a lot of traffic from recreational users.
7. The applicant has done a very good job to ensure that this rezone will limit adverse impacts upon the natural environment, however, it is still a concern.
8. A dissenting commissioner stated that underutilization of property is bad development. Bigger lots are less likely to have good coordinated development than smaller lots because the cost of infrastructure is harder to distribute. Even though R-6 lots are being referred to as smaller lots, they are actually quite large. The Commission is not here to determine whether or not the site can sustain these on-site septic systems because the Municipality will ensure that the design is good. The Commission has to decide if the information provided is adequate enough to determine that this is a quality rezone and the answer is "yes." The *Design Criteria Manual*, which did not exist previously, will impose strict design standards to protect wetlands and create sustainable design in this area. In regards to the *Hillside District Plan*, Mr. McClintock's expansive letter convincingly stated that it is important for one to look at the entire *Plan*, not just a tiny piece of it, and manipulate that piece to make your point.
9. Another dissenting commissioner stated that 12 of 13 lots from a recent R-6 subdivision sold quickly, so there is huge demand for these lots. This rezone is supportable with a new special limitation requiring conservation of open space tracts. This may provide some balance for what was heard from the community.
10. The proposed plan shows roughly 30 lots and the R-8 would allow 14 lots. The answer is somewhere in between because the topography would probably support a number between 14 and 30. The 30 lots is a higher density that is askew, but the Commission does not have a choice. By default, absent a development plan that bridges the gap, the R-8 district should remain.

- B. The Commission recommends DENIAL to the Anchorage Assembly that approximately 77 acres be rezoned from R-8 district to R-6 SL district.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission on the 12th day of June, 2017.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 10th day of July, 2017.

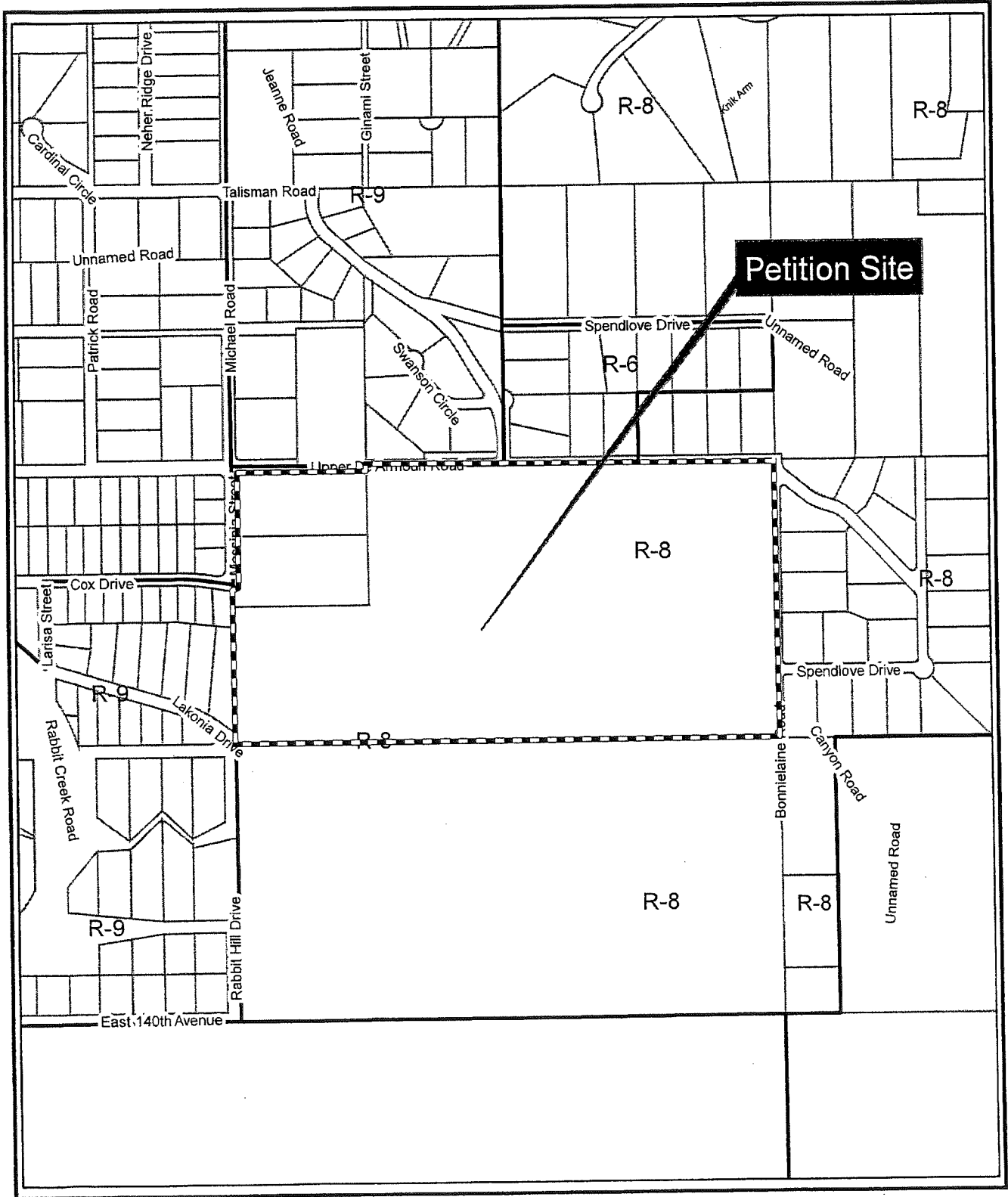
  
\_\_\_\_\_  
Hal H. Hart, AICP  
Secretary

  
\_\_\_\_\_  
Tyler Robinson  
Chair

(Case 2017-0072)

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# 2017-0072 Exhibit A



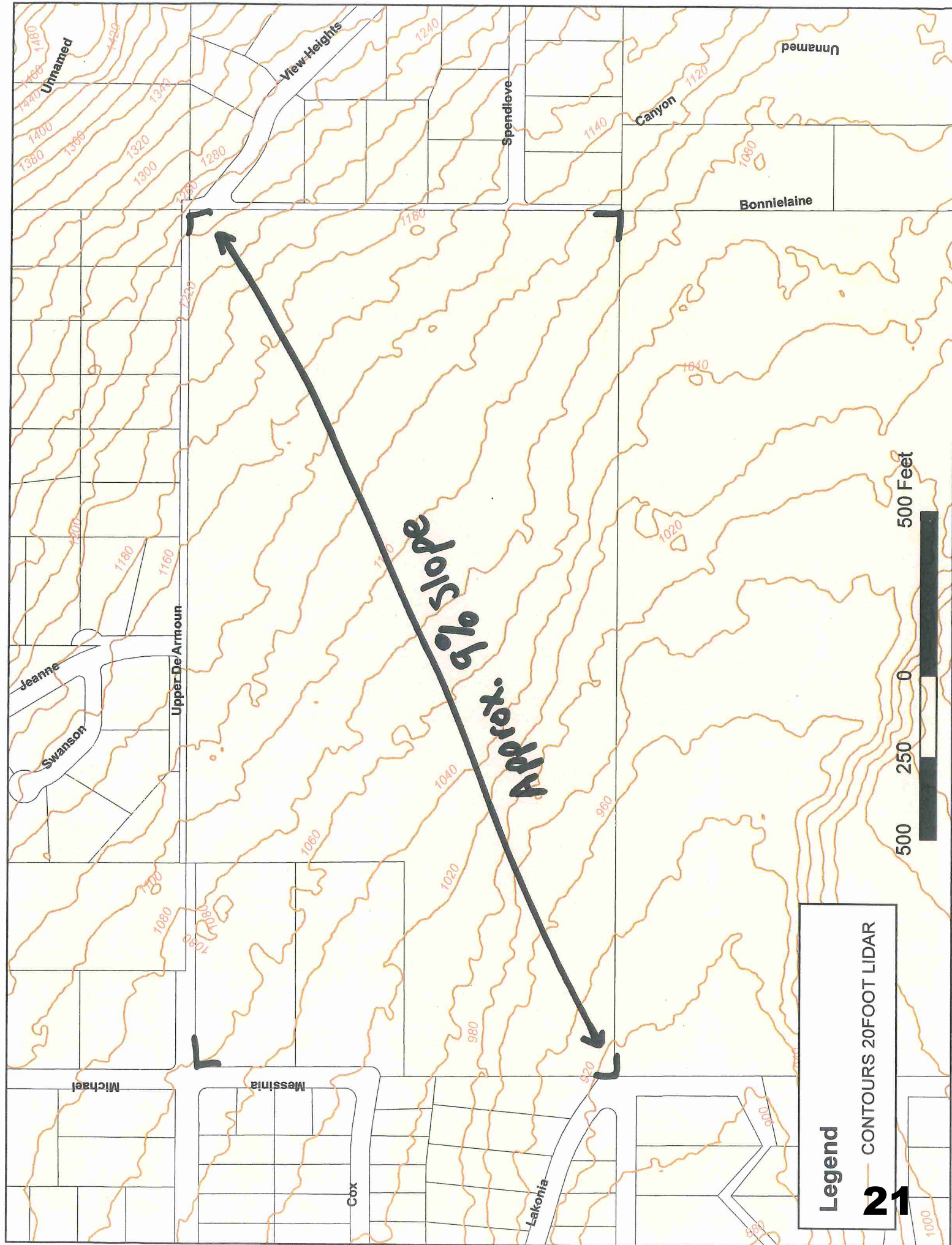
Municipality of Anchorage  
Planning Department

Date: April 24, 2017



2017-0072





Legend

CONTOURS 20FOOT LIDAR



**Municipality of Anchorage**  
**Office of the Municipal Attorney**

**Memorandum**

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**DATE:** JULY 31, 2017

**TO:** PLANNING AND ZONING COMMISSION

**THRU:** WILLIAM D. FALSEY, MUNICIPAL ATTORNEY WDF

**FROM:** QUINCY ARMS, ASSISTANT MUNICIPAL ATTORNEY QA

**SUBJECT:** PLANNING AND ZONING COMMISSION HEARINGS ON NEW EVIDENCE OR  
CHANGED CIRCUMSTANCES  
DEPT OF LAW GENERAL MATTER 0089

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**QUESTION:** What constitutes “new evidence or changed circumstances” when the Planning and Zoning Commission (“PZC” or “Commission”) is asked to rehear a case pursuant to Anchorage Municipal Code of Regulations (“AMCR”) 21.10.503?

**BRIEF ANSWER:** New evidence or changed circumstances are material changes or alterations that would have had a material impact on the vote had they been presented at the initial hearing.

**BACKGROUND:** On June 12, 2017, the Planning and Zoning Commission (PZC) heard Case 2017-0072 at a public hearing for the rezoning of approximately 77 acres from low-density residential, 4 acre (R-8) to low-density residential, 1 acre (R-6 SL) with special limitations. The Commission made specific findings of fact regarding the rezoning and issued a denial to the petitioner. The petitioner has since moved for a rehearing. Based on the petitioner’s application for rehearing, the question above was presented to the law department for clarification on the meaning of AMCR 21.10.503.

**DISCUSSION:** AMCR 21.10.503A reads, in part: “An allegation of new evidence or changed circumstances may be the basis for reopening the public hearing or a rehearing of a matter previously decided by the commission.” Further, the Commission is directed to determine if the new evidence or changed circumstances, if true, “would substantially change the decision of the commission...”<sup>1</sup>

In general, the doctrine of *res judicata* acts to bar relitigation of matters already adjudged

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1 AMCR 21.10.503B.1.

and decided.<sup>2</sup> However, as administrative or quasi-judicial bodies, planning and zoning boards are given latitude to allow rehearings if certain conditions are met.<sup>3</sup> For example, in Anchorage, AMCR lays out the conditions which must be met for a case to be open for rehearing.<sup>4</sup>

Even so, in the interest of “finality of decisions,” motions for rehearing should not be granted lightly.<sup>5</sup> In jurisdictions where rehearings are granted, the general rule is that the applicant must show there has been a substantial change of conditions between the first and second application, and that the change in conditions materially affects the merits of the application.<sup>6</sup> The Alaska Supreme Court has considered whether a court could rehear an application for a rezone, but we have not found an Alaska case where the court considered whether a board or commission could rehear a case.<sup>7</sup> As explained above, boards and commissions are given more latitude.

Courts in other jurisdictions have provided further clarification, however. In *Mitchell Land Co. v. Planning and Zoning Board of Appeals of Town of Greenwich*, the Connecticut Supreme Court found that material alterations to the applicant’s development plans were significant enough to warrant a rehearing on the petitioner’s application for a special exception.<sup>8</sup> In that case, the petitioner sought a special exception to local zoning for his proposed asphalt mixing plant.<sup>9</sup> The board initially denied the exception, but when the petitioner returned to the board with a new plan that mitigated many of the reasons for the board’s initial denial, they approved the plan.<sup>10</sup> The reviewing court held that when a change in conditions has occurred since the prior decision of the board, or other considerations affecting the merits of the subject matter have intervened, the zoning board may reconsider a case it previously denied.<sup>11</sup> Thus, material alterations made to the initial design plans may be significant enough to warrant the reconsideration of a board or commission’s decision.<sup>12</sup>

Similarly, the court in *Rosedale-Skinner Improvement Association v. Board of Adjustment* ruled that a board may reopen a hearing in cases where new conditions materially

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2 8A McQuillin Mun. Corp. § 25:297 (3d ed.).

3 *Id.*; see also *Hilltop Terrace Homeowner’s Ass’n v. Island County*, 891 P.2d 29, 32-4 (Wash. 1995)(“[t]he use of res judicata principles in administrative actions therefore yields to applicable statutes or ordinances.”)(internal citations omitted).

4 AMCR 21.10.503B.

5 *Id.*

6 *Id.*

7 *Griswold v. City of Homer*, 34 P.3d 1280 (Alaska 2001)(petitioner did not present material change in circumstances to avoid application of *res judicata* and warrant relitigation of previously decided rezoning case.)

8 102 A.2d 316, 320 (Conn. 1953).

9 *Id.* at 317.

10 *Id.* at 317.

11 *Id.* at 319.

12 *But see In re McGrew*, 974 A.2d 619 (Vt. 2009)(principle of *res judicata* barred relitigation of application for development project when applicant could have presented supporting evidence of different alternatives upon first application.)

affect the case, as long as none of the parties' rights would be injured by reopening.<sup>13</sup> In that case, the petitioner sought an exception to local zoning to expand their building by adding an additional floor.<sup>14</sup> At the initial hearing, the exception was denied as it would violate both the building height code, and require parking in excess of that available.<sup>15</sup> Following the denial, the petitioner then purchased additional land adjacent to the building to provide for the necessary parking the expansion would entail.<sup>16</sup> The board then reheard the case and granted the exception.<sup>17</sup> The court ruled that the rehearing was within the board's discretion decision of the board was valid, and that the exception should be granted.<sup>18</sup>

In addition to the case law cited above, the Commission may be aided by reviewing one of the Commission's previous cases. On January 11, 2016, the Planning and Zoning Commission decided whether to rehear Case 2016-0021 based on new evidence or changed circumstances. In that case, the petitioner claimed that he was entitled to a rehearing because: (1) the PZC failed to provide an accurate, complete, or unbiased review of the law and facts pertaining to the rezone application; (2) the PZC misinterpreted the applicable development strategy through an inference that only those lots identified as 'transition' could be considered for rezoning; (3) the PZC did not correctly interpret and report to the Commission the application of the "new Title 21" to the property; (4) the PZC did not fully review and consider the impact of aircraft noise on the property; (5) the PZC did not fully review or consider the import of a roadway corridor technical report on the property; and (6) the PZC did not have the opportunity to review a detailed development plan for the property.<sup>19</sup>

The Commission disagreed that the petitioner presented new evidence or changed circumstances, stating that new evidence or changed circumstances must have had a material impact on how the result of the vote at the time of the original hearing.<sup>20</sup> Specifically, as to points (1)-(3), the Commission found that it had not misinterpreted the development strategy language, and affirmed that the decision to reopen lied solely with the Commission. As to point (4), the Commission found that the information regarding airport noise had not initially been presented to the commission, and that even had it been, it would not have impacted the vote. As to point (5), the Commission found the information in the roadway corridor technical report was only background information. Finally, as to point (6), it stated that the lack of a review was due to petitioner's failure to submit a development plan as part of his application, and that the failure to do so does not mean a case requires rehearing.<sup>21</sup> Thus the Commission has demonstrated that, in line with the case law discussed above, a petitioner seeking rehearing must show that: (1) any new evidence would have a material impact on the vote at the initial hearing; and (2) the

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13 425 S.W.2d 929, 932 (Mo. 1968).

14 *Id.* at 934.

15 *Id.* at 931.

16 *Id.* at 931.

17 *Id.* at 931.

18 *Id.* at 938.

19 Planning & Zoning Comm'n, *Meeting Minutes of January 11, 2016*, 3-4 (2016).

20 *Id.* at 2.

21 *Id.* at 4.

failure to submit a development plan is not automatic grounds for a rehearing.

**CONCLUSION:** Based on the foregoing analysis, the Commission may reopen a petition at its discretion when new evidence or changed circumstances are presented. Examples of such evidence or circumstances are:

1. Material changes that address the reasons for the initial denial; or
2. Material alterations made to initial design plans.

Additionally, the PZC must find that the new evidence or changed circumstances would have had a material impact on the vote if it had been presented at the initial hearing.