PLANNING DEPARTMENT
STAFF ANALYSIS
ZONING BOARD OF EXAMINERS AND APPEALS

DATE:	November 8, 2018
CASE:	2018-0099
REQUEST:	Appeal of the July 23, 2018 Director's Determination providing interpretation of general and use definitions pertaining to Planning and Zoning Case 2018-0052. This determination rescinded and replaced a previous June 11, 2018 Director's Determination.
PROPERTY LOCATION:	Generally located southeast of the intersection of Upper De Armoun Rd and Messina Rd in Anchorage.
ZONING & LAND USE:	R-8 (low density residential – 4 acres) Single-Family Residential/Vacant
SCOPE OF REVIEW:	The Zoning Board of Examiners and Appeals shall conduct a full evidentiary hearing on an appeal and make its decision on the basis of this title, the evidence, and the argument presented. AMC 21.03.050B.4.

BACKGROUND

Appellants request an appeal of the July 23, 2018 Planning Director's Determination.[1] Pursuant to Anchorage Municipal Code ("AMC") 21.14.010, any person may request an interpretation of a term used in AMC Title 21. On May 25, 2018, the applicant in rezone Case No. 2018-0052, through counsel, requested an interpretation of AMC 21.03.160D.10.

AMC 21.03.160D.10. prohibits applications for the same or substantially the same rezoning within two years of a previous application being denied. The Planning Director determined that the applicant's successive rezone applications (Case No. 2017-0072 & 2018-0052) did not request "substantially the same" rezoning. Thus, the applicant's most recent request for rezone, Case No. 2018-0052 was not barred by the two-year waiting period. Appellants appeal that determination.

HISTORY

This dispute started with an application for rezone of approximately 70 acres from R-8 (5 acres minimum lot size) zoning. The applicant, Big Country Enterprises, LLC, first applied for rezoning to R-6 (1 acre minimum lot size) in 2014, pursuant to "Old" Title 21. After the Anchorage Assembly indefinitely postponed consideration of that application, the applicant re-applied with a different application in 2017, pursuant to "New" Title 21. This successive application was not recommended for approval by the

[1] Planning Director's Determination, dated July 23, 2018, attached.

Planning & Zoning Commission. Finally, in 2018, the applicant requested rezoning to R-10 and the Planning & Zoning Commission recommended approval. More details of each of these cases can be found below.

- **Case:** 2014-0219
  - **Governing Title:** (Old) Title 21
  - **Request:** Re-zone from R-8 (5 acres minimum lot size) to R-6 (1 acre minimum lot size) with Special Limitations regarding soils, wells, on-site septic systems, a maximum of 30 lots, water run-off, and traffic
  - **Site Area:** 72.66 acres (the unsubdivided tract and Lot 1 Vergason-Jones Subdivision)
  - **Planning and Zoning Commission Decision:** DENIED.
    Public hearing was held on 4-6-15, Commission recommended DENIAL to the Anchorage Assembly on 6-1-15. Resolution 2015-026 (attached) adopted on 7-6-15.
  - **Assembly Decision:** POSTPONED INDEFINITELY.
    Forwarded to Municipal Assembly for approval via AO 2016-28, Postponed Indefinitely 4-26-2016; Reconsideration Failed 5-10-2016

*** Note:** The original application had no SLs, but after PZC recommended denial, the applicant offered many SLs to address PZC's concerns; Assembly Person Johnston introduced the AO with the SLs.

- **Case:** 2017-0072
  - **Governing Title:** (New) Title 21
  - **Request:** Re-zone from R-8 to R-6 w/Special Limitations
  - **Site Area:** 77.01 acres (the unsubdivided tract and Lots 1 and 2 Vergason-Jones Subdivision)
  - **Planning and Zoning Commission Decision:** DENIED.
    Public hearing was held on 6-12-17, Commission recommended DENIAL to the Anchorage Assembly on 6-12-17. Resolution 2017-021 (attached) was adopted on 7-10-17. A request for case 2017-0072 to be reheard went before the Commission on 8-14-2017. This request was denied by the Commission via Planning and Zoning Resolution 2017-028 (attached).
  - **Assembly Decision:** N/A
    This application was not forwarded to the Anchorage Assembly.

*** Note:** The original application offered special limitations requiring advanced on-site systems and a maximum of 30 lots. The request for rehearing changed one of the SLs to require a maximum of 24 lots.

- **Case:** 2018-0052
  - **Governing Title:** (New) Title 21
  - **Request:** Re-zone from R-8 to R-10
  - **Site Area:** 77.01 acres (the unsubdivided tract and Lots 1 and 2 Vergason-Jones Subdivision)
  - **Planning and Zoning Commission Decision:** APPROVED.

Public hearing was held on 6-11-18, Commission recommended APPROVAL with special limitations to the Anchorage Assembly. Resolution 2018-014 (attached) was adopted on 7-9-18.

- **Assembly Decision:** N/A
  This application has not been forwarded to the Anchorage Assembly.

* **Note:** PZC recommended approval with a special limitation requiring a maximum of 23 lots

- **Case:** S12388
  - **Governing Title:** (New) Title 21
  - **Request:** A conservation subdivision of one (1) tract into sixteen (16) lots and one (1) tract with variances from AMC 2108.030F.6.a Cul-De-Sac, and AMC 21.07.060D.3.b.ii. Internal Street Connectivity
  - **Site Area:** 70.05 acres
  - **Platting Board Decision:** APPROVED.
    Public hearing was held on 1-3-18, the Platting Board APPROVED the preliminary plat as applied for.

PUBLIC COMMENTS

On September 5, 2018, the Planning Department mailed 130 public hearing notices in accordance with AMC 21.03.020H. Additionally, public hearing notices were also mailed to the Hillside, Rabbit Creek, Bear Valley, and Glen Alps Community Councils, as well as, the Community Council Center. As of this writing, no public comments have been received.

STAFF ANALYSIS

Appellant raised the following eight points on appeal. Following each point is the Municipality's analysis.

1. ***Despite the July 23, 2018 Decision substantively interpreting AMC 21.03.160.D.10 and affecting future rezoning applications, the Planning Director failed to request either public comment or comment from interested parties affected by the Case No. 2018-0052 rezoning application.***

   Anchorage Municipal Code ("AMC") does not require the Planning Director to request comments, or provide notice, to the public or interested parties regarding directors' determinations. The Municipality is unsure who Appellant is referring to as "interested parties affected by the Case No. 2018-0052 rezoning application" but presumably, this could be adjacent property owners, or possibly any individual or group who has previously provided comments about the case. There is no AMC requirement that the Planning Director solicit further comment following developments in a rezoning case. There is no

requirement to even keep a register of who may be "interested" or "affected" by a particular rezoning application.

AMC 21.03.020 outlines the notice and comment requirements for development activity under Title 21. The Planning Department provides notice of an application for a rezoning under 21.03.160.[2] Also, the *applicant* is required to attend and present to the applicable community council at a regularly scheduled meeting or hold their own community meeting prior to submitting a rezone application.[3] However, there is no requirement under AMC 21.03.020 for any notice or comment period following a director's determination.

There is also no requirement under AMC 21.14.010 – Interpretations – to provide notice or an opportunity to comment when an interpretation is given by the Director. AMC 21.14.010A. states that the director needs to provide a written response to the person requesting the interpretation within 30 days. That requirement was met in this case.

> AMC 21.14.010 - Interpretations.
>
> A. *General.* The director has final authority to determine the interpretation or usage of terms used in this title, pursuant to this section. Any person may request an interpretation of any term by submitting a written request to the director, who shall respond in writing within 30 days. The director's interpretation shall be binding on all officers and departments of the municipality.
>
> B. *Record of interpretations.* The director shall maintain a file of all interpretations made pursuant to this subsection.
>
> C. *Appeal.* Any person may appeal an interpretation by the director regarding a term used in this title to the zoning board of examiners and appeals in accordance with subsection 21.03.050 B.

2. ***Despite Planning and Zoning Commission Resolution No. 2018-014 being adopted in reliance on the rescinded June 11, 2018 Planning Director Decision, the Planning Director failed to request rehearing based on the July 23, 2018 Decision.***

The Planning Director was not required to request a rehearing.

The Planning Director's rescinded June 11, 2018 Planning Director Determination stated that, for purposes of AMC 21.03.160D.10., the applicant's prior applications for rezoning (Case 2014-0219 and 2017-0072) were never

[2] AMC 21.03.160D.5.; AMC 21.03.020H.
[3] AMC 21.03.160D.3.; AMC 21.03.020C.

denied.[4] Thus, the applicant would not be barred from submitting a third application in 2018.

Through the July 23, 2018 Determination, the Planning Director rescinded the June 11, 2018 Determination. In this new July 23 Determination, the Planning Director determined that, contrary to the previous determination, AMC could be interpreted to provide that Case No. 2017-0072 was *denied* when the Planning and Zoning Commission *recommended denial.*

However, while the Planning Director's June 11, 2018 Decision was rescinded, there is an independent basis for allowing Case No. 2018-0052 to proceed. AMC 21.03.160D.10. states that no new application for "the same or substantially the same rezoning" shall be accepted if a prior application was denied within two years. In this scenario, a previous application was denied within two years (Case No. 2017-0072), but the Planning Director found that Case No. 2017-0072 and Case No. 2018-0052 were not for "the same or substantially the same rezoning." Because of this independent basis for review, the application was properly in front of the Planning and Zoning Commission for a hearing, despite the rescinded June 11, 2018 Planning Director Decision. A rehearing, based on the rescinded June 11, 2018 Planning Director Decision was not required.

3. ***The Planning Director's July 23, 2018 Decision failed to consider applicable Alaska Supreme Court authority construing "substantially the same" as used in AMC 21.03.160.D.10, including but not limited to, State v. Tr. the People, 113 P.3d 613 (Alaska 2005); Nerox Power Sys., Inc. v. M-B Contracting Co., 54 P.3d 791, 802 (Alaska 2002); and Warren v. Boucher, 543 P.2d 731, 732 (Alaska 1975). Per the Alaska Supreme Court, addressing whether actions are "substantially the same" requires comparison of the scope, general purpose, and means employed by the actions. In other words, despite the pronunciation to po-tah-toh being "substantially different, a potato remains "substantially the same" potato.***

The cases cited by Appellant are not binding on this Board, are not applicable, and thus, do not require a comparison of "scope, general purpose, and means..." The cases cited by Appellant analyze initiative & referendum petitions (*State v. Tr. the People & Warren v. Boucher*) and corporate shareholder liability. (*Nerox Power Sys., Inc. v. M-B Contracting Co.*).

The scope, purpose, and means test discussed by Appellant comes from an Alaska Supreme Court case where the Court considered whether a proposed ballot initiative was "substantially the same" as previously enacted legislation.[5] A ballot measure with substantially the same language as existing law will not

[4] Planning Director's Determination, dated June 11, 2018

[5] *Warren v. Boucher*, 543 P.2d 731, 735-37 (Alaska 1975); *see also State v. Tr. the People*, 113 P.3d 613,621 (Alaska 2005).

be accepted for presentation to the voters. The Court applied a three-part test, analyzing the similarities between the scope, the purpose, and the means for effectuating the initiative versus the legislation.[6] Recognizing that the term "substantially" is a "relative, inexact" term with an "elusive" meaning, the Court set out to interpret the phrase through a contextual analysis of Article XI of the Alaska Constitution.[7]

The Alaska Supreme Court's three-part test is not helpful here. The scope, purpose, and means of any two applications to rezone the same property will generally be identical. The scope of each application will generally be the same, as applicants are usually applying to rezone the same piece of land, give or take a few acres. The purpose of each and every rezoning is the same – to change the applicable zoning over a piece of property. And the means of effectuating the rezone, through Assembly approval, is always the same for any rezoning.

The Court's test in *Nerox Power Sys., Inc. v. M-B Contracting Co.* is equally unhelpful. In that case, the Court considered whether a corporate shareholder can be held personally liable for acts of the corporation because the shareholder is a "mere instrumentality" of the corporation. Presumably, Appellant is trying to argue that the analysis from the *Nerox* case – regarding whether the shareholder and the corporation are essentially the same – can be applied here. The analogy is too tenuous, and not supported by the case law.

A more detailed comparison of the features of each zoning district, as the Planning Director provided, is the better approach.[8] The Planning Director compared the AMC requirements for each zoning district, including the uses permitted in each zoning district, minimum lot size, and maximum lot coverage, as well as the stated purpose of each zoning district. The Planning Director concluded that, given the significant differences between the zoning districts, the new application did not request "the same or substantially the same rezoning."

4. ***The Planning Director's July 23, 2018 Decision failed to consider how the rezoning application of Case No. 2018-0052 was "substantially the same" as the rezoning application of Case No. Case No. 2017-0072, instead considering only the requested rezoning changing from R-6 to R-10, a difference without substance.***

AMC 21.03.160D.10. does not ask whether the *applications* are substantially the same, but rather, whether the *rezoning sought* is substantially the same.

AMC 21.03.160D.10 – Waiting period for reconsideration.

---

[6] *See Warren v. Boucher*, 543 P.2d 731 (Alaska 1975); *State v. Tr. the People*, 113 P.3d 613 (Alaska 2005).
[7] *Warren v. Boucher*, 543 P.2d 731, 736 (Alaska 1975).
[8] *See* Planning Director's Determination, dated July 23, 2018, p. 2-3.

> Following denial of a rezoning request, no new application for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

In this case, while the successive *applications* may have contained duplicative information, the *rezoning sought* in the second application was not substantially the same as the rezoning sought in the previous application.

5. ***The Planning Director's July 23, 2018 Decision failed to consider the prior rezoning applications denied in Case No. 2017-0072 and Case No. 2014-0219 and the approved R-8 Conservation Subdivision plat in Project Number S 12388, each of which sought permission for "substantially the same" 1.25- 2.5 acre lots of Case No. 2018-0052.***

This point was partially addressed in #4 above. AMC 21.03.160D.10. requires a comparison of the rezonings sought, not the applications.

Furthermore, the Planning Director was not required to consider Case No. 2014-0219 or the Conservation Subdivision platting case (Project Number S12388). The applicant's request for a Director's Determination did not ask the Planning Director to determine whether Case No. 2014-0219 or Platting Case S12388 were "the same or substantially the same" for purposes of AMC 21.03.160D.10. As these cases were not part of the Director's Determination, and the sole issue on appeal is interpretation of the Director's Determination, those cases are outside the scope of this appeal.[9]

6. ***The Planning Director's July 23, 2018 Decision failed to consider the substantial similarities within the rezoning applications of Case No. 18-0052, Case No. 2017-0072, Case No. 2014-0219, the approved R-8 Conservation Subdivision Plat in Project Number S 12388, and supporting statements made by the applicant and Planning Department Staff as to the scope, means, and general purpose or the rezoning application of Case No. 2018-0052.***

This point was previously addressed in #3, 4, & 5 above. The Planning Director's decision was based on an in-depth comparison of the different zoning classifications sought by the applicant.[10]

---

[9] With that said, it should be noted that the rezoning sought under Case No. 2014-0219 was not substantially the same as subsequent applications. In Case No. 2014-0219, the applicant applied for R-6 zoning under "Old" Title 21. The subsequent applications were for R-6 (with Special Limitations) and R-10 zoning under "New" Title 21. Additionally, AMC 21.03.160D.10. does not require consideration of a platting case (Project Number S12388). An application to plat a conservation subdivision is *not* an application for rezoning.

[10] *See also* Planning Director's Determination, dated July 23, 2018, p. 2-3.

7. ***The Planning Director's July 23, 2018 Decision failed to consider that rezoning applications could be "substantially the same" for purpose of the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10 despite seeking rezoning to different zoning districts.***

   This point was previously addressed in #3 above. The Planning Director's decision was based on an in-depth comparison of the different zoning classifications sought by the applicant.[11]

8. ***The Planning Director's July 23, 2018 Decision failed to consider that successive rezoning applications for the purpose of decreasing the minimum lot size required by existing R-8 zoning, increasing the number of lots permitted by existing R-8 zoning, and permitting lots of 1.25 and 2.5 acres are "substantially the same" rezoning applications with "substantially the same" scope, means, and general purpose.***

   This point was previously addressed in #3 above. The "scope, means, and general purpose" test is inapplicable and unhelpful to a comparison of successive rezoning applications. While each successive rezoning application sought a reclassification to allow additional lots with smaller lot sizes, the Planning Director explained, in detail, all of the reasons why the two rezonings sought were not the same or substantially the same.[12]

DEPARTMENT RECOMMENDATION

The Department recommends DENIAL of the appeal.

Reviewed by:

Michelle McNulty, AICP
Director

Prepared by:

Ryan Yelle
Senior Planner

Quincy Arms
Assistant Municipal Attorney

[11] *See also* Planning Director's Determination, dated July 23, 2018, p. 2-3.
[12] *See also* Planning Director's Determination, dated July 23, 2018, p. 2-3.

Case 2018-0099

Attachments:

1. Planning Director's Determinations
2. Request for Director's Determination
3. Appellant's Statements of Error
4. Appellant's October 25, 2018 Submittal
5. Supporting and Historical Documents

Planning Director's Determinations

MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: July 23, 2018

TO: Planning and Zoning Commission

FROM: Michelle J. McNulty, AICP, Director, Planning Department

SUBJECT: Case 2018-0052, Lewis and Clark Rezone, Director's Determination

This memo rescinds and replaces an earlier memo dated June 11, 2018, with the subject "Case 2018-0052, Supplemental Information."

In accordance with Anchorage Municipal Code (AMC) 21.14.010, *Interpretations*, the director determines that Case 2018-0052 is substantially different from the previous case (Case 2017-0072), and, therefore it shall continue to be processed by the department to the assembly.

On July 10, 2017, the Planning and Zoning Commission recommended denial of Case 2017-0072. AMC 21.03.160D.7.c. states:

> If the commission recommends denial, the amendment shall be deemed disapproved unless, within 15 days of the commission's written resolution recommending denial, the applicant files a written statement with the municipal clerk requesting that an ordinance amending the zoning map as set out in the application be submitted for action by the assembly. The draft ordinance shall be appended to an Assembly Informational Memorandum (AIM) for consideration by the assembly.

The applicant for Case 2017-0072 did not submit a written statement to the Municipal Clerk requesting that the rezoning case be submitted for action by the Assembly, and, therefore, the case is disapproved. AMC 21.03.160, *Waiting Period for Reconsiderations*, states:

> Following denial of a rezoning request, no new applications for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

The commission did not state their recommendation was made without prejudice. However, Case 2018-0052 is not required to wait two years because the petition is substantially different from the previous one. The differences between the two petitions are numerous. In short, the two cases are for different zoning districts, which have different allowed uses and different dimensional requirements. Case 2017-0072 requested rezoning to the R-6 (low density – 1 acre) district with special limitations limiting the number of lots to 30, and requiring the lots to utilize category III nitrate reducing wastewater systems. The subsequent application, Case 2018-0052, requests rezoning to the R-10 (low-density residential, alpine/slope) district. The following is a summary table of the two districts.

Zoning Comparison of R-6 vs R-10

R-6 Low Density Residential (1 acre) District	**R-10** Low Density Residential Alpine/Slope District
Purpose: The R-6 district is intended primarily for single- and two-family large-lot residential areas, with gross densities of up to one dwelling unit per acre. The R-6 is designed to encourage low-density residential development. This district is intended to protect and enhance those physical and environmental features that add to the desirability of large-lot residential living. The availability of infrastructure and municipal services is varied. **Uses allowed in the R-6 district, but prohibited in the R-10 district:** ◦ Duplex ◦ Assisted living facility (9 or more res.) ◦ Habilitative care facility, small ◦ Habilitative care facility, medium ◦ Habilitative care facility, large ◦ Roominghouse ◦ Neighborhood recreational center ◦ Elementary, Middle, or High School ◦ Instructional services ◦ Private airstrip ◦ Heliport ◦ Commercial horticulture ◦ Veterinary clinic ◦ Natural resource extraction ◦ Snow disposal site ◦ Stormwater sediment management facility	**Purpose:** The R-10 district is intended for use in those areas where natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development. Creative site design and site engineering are essential to ensure that the development of these lands will: a. Protect natural features such as ponds, streams, wetlands, and springs, and incorporate such features into the development of the site design; b. Ensure the use of site design techniques that take into consideration topographic constraints and other physical features; c. Avoid natural hazards including snow avalanche and mass wasting areas; d. Retain the natural flow and storage capacity of any watercourse and wetland, to minimize the possibility of flooding or alteration of water boundaries; e. Assure that soil and subsoil conditions are suitable for excavations, site preparation, and on-site waste water disposal; f. Provide adequate site drainage to avoid erosion and to control the surface runoff in compliance with the federal clean water act; g. Assure an adequate supply of potable water for the site development; and h. Minimize the grading operations, including cut and fill, consistent with the retention of the natural character of the site.

R-6 Low Density Residential (1 acre) District		**R-10** Low Density Residential Alpine/Slope District	
Minimum lot size: Single-Family: Two-Family: All other uses:	 43,560 SF 87,120 SF 43,560	**Minimum lot size:** All uses:	 1.25 ac. to 7.5 ac. depending on average slope of each lot
Minimum lot width: Single-Family: Two-Family: All other uses:	 150' 150' 150'	**Minimum lot width:**	 100' to 300' depending on average slope of each lot
Maximum lot coverage of all structures: Single-Family: Two-Family: All other uses:	 30% 30% 30%	**Maximum lot coverage of all structures:** **Maximum coverage of impervious surfaces:**	 3% to 10% 8% to 20% depending on average slope of each lot
Minimum Setback Requirement: <u>Front</u>: Single-Family: Two-Family: All other uses:	 50' 50' 50'	**Minimum Setback Requirement:** <u>Front</u>: All uses	 10'
<u>Side</u>: Single-Family: Two-Family: All other uses:	 25' 25' 25'	<u>Side</u>: All uses:	 25'; 50' if average slope exceeds 30%
<u>Rear:</u> Single-Family: Two-Family: All other uses:	 50' 50' 50'	<u>Rear:</u> All Uses:	 10'
Maximum Height: Principal: Garage/carport: Other accessory:	 35' 30' 25'	**Maximum Height:** Principal: Garage/carport: Other accessory:	 30' 25' 18'
Maximum Number of Principal Structures: Single-Family: Two-Family: All other uses:	 1 1 N/A	**Maximum Number of Principal Structures:** All Uses:	 1

MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: June 11, 2018

TO: Planning and Zoning Commission

THRU: Michelle McNulty, Director, Planning Department

FROM: Francis McLaughlin, Senior Planner

SUBJECT: Case 2018-0052, Supplemental Information

The purpose of this memo is to confirm that Case 2018-0052 does not violate AMC 21.03.160, *Waiting Period for Reconsiderations*, which states:

> Following denial of a rezoning request, no new applications for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

There have been two previous rezoning applications of the property, but neither of the applications was denied. In 2016, the Assembly postponed indefinitely Case 2014-0219. In 2017, the Commission recommended denial of Case 2017-0072, and the case went no further. Note that the Commission makes recommendations to the Assembly regarding rezoning cases, but does not have authority to decide them. Therefore, Case 2018-0052 may proceed as scheduled.

Request for Director's Determination

ASHBURN & MASON P.C.

LAWYERS

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

May 25, 2018

RECEIVED
MAY 25 2018
PLANNING DEPARTMENT

Via U.S. and Electronic Mail:

Francis McLaughlin
Municipality of Anchorage
Planning Department
4700 Elmore Road
Anchorage, Alaska 99507
McLaughlinFD@ci.anchorage.ak.us

Re: Lewis and Clark Proposed R-10 Rezone Subdivision
Case No. 2018-0052

Dear Mr. McLaughlin:

Our firm represents the petitioner in this matter. In his letter of May 14, 2018 to you, Marc June raises a legal question that should be addressed by the director in advance of the scheduled public hearing scheduled for June 11, 2018. Below, I outline the reasons I believe his legal objections are misplaced, but note that the issue for interpretation is for the director to decide. It will lead to a far better and more focused hearing on the 11th if this interpretation is provided to the Commission, rather than have it as a matter of debate at the hearing itself.

AMC 21.14.010.A provides:

> A. *General.* The director has final authority to determine the interpretation or usage of terms used in this title, pursuant to this section. Any person may request an interpretation of any term by submitting a written request to the director, who shall

> respond in writing within 30 days. The director's interpretation shall be binding on all officers and departments of the municipality.

Mr. June suggests that AMC 21.03.160.D.10 precludes this application for a rezone to R-10 from being considered. That provision provides:

> *Waiting period for reconsideration.* Following denial of a rezoning request, no new application for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

Mr. June argues that because the Commission recommended against granting the application in the rezone to R-6 S, that the petitioner should be barred from applying for a R-10 rezone. However, Mr. June is wrong for 2 reasons: (i) the prior application was never denied as the petitioner never advanced the request to the Assembly, which is the entity with legal authority to approve and deny the rezone application; and (ii) the R-10 zone is not the "same or substantially the same" zoning as the R-6 zone.

As an initial matter, the interpretation that the denial refers to the action by the Assembly is consistent with the prior provision under the "Old Code." AMC 21.20.080 – provided:

> **Waiting period for reconsideration.** Neither the planning and zoning commission nor the assembly may consider or approve a zoning map amendment if it is substantially the same as any other zoning map amendment initiated within the past 12 months and not approved by the assembly. (Emphasis added).

Clearly under the Old Code a petitioner who received a negative recommendation from the Commission could elect not to advance the request to the Assembly and educated by the proceeding below, submit a new application. That application would not be barred by the waiting period by the clear language of the Old Code. The new language, although worded more simply, does not reflect the intent to depart from this practice, although the waiting period was extended to 2 years.

The language of AMC 21.03.160.D.10, fairly read, addresses the time as running from the "date of denial." The action of the commission is not a denial. The Planning Commission can *recommend* "denial" but only the Assembly has "denial as one of its options for resolution. [1] So that interpretation is the better one both as a matter of precedent and interpretation.

As a matter of this particular application, the R-10 zone is not "the same or substantially the same" rezoning and this determination is within the discretion afforded the Department. The only arguable similarity is both are rural zones. But that is not the litmus test applied by the ordinance, which requires zones be "substantially the same." The R-6 SL applied for in the prior 2017 rezone attempt relied upon the R-6 minimum lot size of one acre per du and provided specific proposed lot layouts for a 30 lot subdivision. The R-6 zone allows single and two family housing.[2] By contrast the R-10 zone is specifically intended to address the "natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development."[3] Table 21.04-2 dictates a range of lot sizes from 1.25 acres to 7.5 acres depending on the average slope and specific lot coverage and lot width requirements. The R-10 district only allows single family housing. [4]

These are distinct and significant differences that merit an interpretation that an R-6 SL rezone is not the same as an R-10 rezone.

---

[1] AMC 21.03.160.D.7.c ("If the commission recommends denial ...) and under AMC 21.03.160.D.8.c, "denial" is one of the three options available to the Assembly. Although an application that is not appealed to the Assembly is deemed" disapproved," it is significant, that that "denial" and not "disapproval" is the operative language at issue here. If disapproval was intended to be the operative word, it would have been a simple matter to use the same word choice in making the start of the waiting period, such as the "later date of disapproval or denial".

[2] AMC 21.40.020.L

[3] AMC 21.40.020.P

[4] Table 21.05-1

Although AMC 21.14.010 allows up to 30 days for an interpretation, it is requested that this interpretation be submitted in advance of the hearing so the Commission can focus on the pertinent matters before it and not be distracted by this issue. I apologize that we have not made this request earlier, but I only recently became aware of Mr. June's letter. Our assumption is that staff had already made this determination as the pre-application conference would have typically flagged these issues if there was any controversy.

We appreciate your time and request this question be forwarded to the director for resolution.

Sincerely,

ASHBURN & MASON, P.C.

Donald McClintock

{11558-001-00481225;2}

Appellant's Statements of Error

Appeal to the Zoning Board of Examiners and Appeals (ZBEA)

Municipality of Anchorage
Planning Division
Community Development Department
PO Box 196650
Anchorage, AK 99519-6650

APPELLANT*	APPELLANT REPRESENTATIVE (if any)
Name (last name first) JUNE, MARC	Name (last name first)
Mailing Address 8801 UPPER DEARMOUN RD	Mailing Address
Contact Phone – Day: 277-5234 Evening: 345-2726	Contact Phone – Day: Evening:
Fax: 277-9120	Fax:
E-mail: JUNELAWYER@CS.COM	E-mail:

*Report additional appellants on supplemental form.

APPEAL INFORMATION

Decision Being Appealed (include case or permit number if applicable):
SEE ATTACHED JULY 23, 2018 PLANNING DIRECTOR DECISION IN CASE 2018-0052 WITH ACCOMPANYING E-MAIL.

Date of Action: JULY 23, 2018

Legal Description of Property Involved:
N 1/2, SE 1/4, SEC. 25, TOWNSHIP 12N, RANGE 3W

Relationship of Appellant to Action: ☐ Petitioner ☐ Government Agency ☒ Other Party of Interest (see AMC 21.14.040)

Detailed and Specific Allegation(s) of Error: (use additional sheet(s) if necessary)
SEE ATTACHED STATEMENT OF ERROR

NOTE: PLANNING DIRECTOR DECISION SUBSTANTIALLY AFFECTS OTHER INTERESTED PARTIES AND REZONING APPLICATIONS IN GENERAL

RECEIVED
AUG 8 / 2018
PLANNING DIVISION

I hereby certify that (I am)(I have been authorized to act for) a party of interest in the decision being appealed in accordance with the definition in Title 21 of the Anchorage Municipal Code of Ordinances. I understand that the assigned hearing date is tentative and may have to be postponed by Planning Division staff or the Zoning Board of Examiners and Appeals for administrative reasons.

Signature ☒ Appellant ☐ Representative (Representatives must provide written proof of authorization) — Date: 8/8/18

MARC W. JUNE
Print Name

Accepted by:	Poster & Affidavit:	Fee:	Case Number:
DRW			2018-0099

ZBEA Appeal (Rev. 01/15) Front – "NEW" CODE

NOTICE OF ADDITIONAL APPELLANT

Robert Brown

13688 Canyon Road

Anchorage, AK 99516

(907) 868 1074

Robbrown1998@gmail.com

August 10, 2018

To: MOA City Clerk

To: Planning Dept.

I have seen the Notice of Appeal to the ZBEA filed by Marc June and Rob Brown. I want to join in the appeal and be an appellant.

Respectfully,

Gail Morrison

Gail Morrison

8600 Spendlove Dr.

Anchorage, AK 99516

RECEIVED
AUG 13 2018
PLANNING DEPARTMENT

August 10, 2018

To: MOA City Clerk

To: Planning Dept.

I have seen the Notice of Appeal to the ZBEA filed by Marc June and Rob Brown. I want to join in the appeal and be an appellant.

Respectfully,

Mark R. Morrison

Mark Morrison

8600 Spendlove Dr.

Anchorage, AK 99516

August 10, 2018

To: MOA City Clerk

To: Planning Dept.

I have seen the Notice of Appeal to the ZBEA filed by Marc June and Rob Brown. I want to join in the appeal and be an appellant.

Respectfully,

Bernard Davis

13101 Jeanne Rd

Anchorage, AK 99516

August 10, 2018

To: MOA City Clerk

To: Planning Dept.

I have seen the Notice of Appeal to the ZBEA filed by Marc June and Rob Brown. I want to join in the appeal and be an appellant.

Respectfully, Ralph Warren

7901 Upper De Armoun Rd.
Anchorage, AK 99516

Yelle, Ryan J

From: Yelle, Ryan J
Sent: Monday, August 13, 2018 4:36 PM
To: 'Marc June'
Subject: RE: Include additional appellants

Received. I will add the additional appellants to your application.

Respectfully,

Ryan Yelle
Senior Planner

From: Marc June [mailto:Marc@junelawyer.net]
Sent: Monday, August 13, 2018 4:44 PM
To: Yelle, Ryan J <YelleRJ@ci.anchorage.ak.us>
Subject: Re: Include additional appellants

Ryan, this is fine by me
Marc June

Get Outlook for iOS

On Mon, Aug 13, 2018 at 4:07 PM -0800, "Yelle, Ryan J" <YelleRJ@ci.anchorage.ak.us> wrote:

> Good Afternoon Marc,
>
> I apologize for the expediency of this request, but Mr. Bern Davis dropped off signed letters from four individuals who would like to be added to your appeal case. Mr. Davis submitted these letters to us at approximately 3:15pm. As you are aware, the 20 day timeline to submit an appeal to the July 23rd Director's Determination is **today by call of business**. Because of this, we will need authorization from you to include these additional appellants to your application **by call of business today**, if you are amenable to having them added to your appeal. A reply email stating your authorization to add these individuals to your appeal application will suffice.
>
> The four individuals who we have received letters from are:
>
> Gail Morrison
> 8600 Spendlove Dr.
> Anchorage, AK 99516
>
> Mark Morrison
> 8600 Spendlove Dr.
> Anchorage, AK 99516
>
> Bern Davis
> Anchorage, AK 99516
>
> Ralph Warren

Anchorage, AK 99516

If we do not receive authorization from you to include these additional appellants **by call of business today**, we will not be able to add them to the application. However, I would encourage them all to submit written comments and give oral testimony at the public hearing, so their comments are heard.

Respectfully,

Ryan Yelle
Senior Planner
Current Planning Division
Municipality of Anchorage
PH# 907-343-7935
Email: YelleRJ@muni.org

Yelle, Ryan J

From: Marc June <Marc@junelawyer.net>
Sent: Wednesday, August 8, 2018 4:32 PM
To: Yelle, Ryan J
Subject: 2018-0085 and 2018-0099

Hello Ryan,

This is to confirm that our conversation that the previously paid fee in Case No. 2018-0085 will be applied to the appeal filed in Case no. 2018-0099.

Thank you for your attention to this matter.

Marc June

STATEMENTS OF ERROR FOR PURPOSES OF APPEAL OF JULY 23, 2018 PLANNING DIRECTOR DECISION

This Notice of Appeal arises out of the Planning Director's July 23, 2018 Decision rescinding her prior June 11, 2018 Decision and deciding that the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10 does not apply to the rezoning application of Case No. 2018-0052 because it is "substantially different" from the rezoning application of Case No. 2017-0072 due to rezoning to an R-10 District, not an R-6 District.

The following acts are relevant to this Appeal:

1. A rezoning application, Case No. 2014-0219, under "Old Title 21" seeking R-6 rezoning of the same property for the purpose of increasing the permissible number of lots from 14 to 32 with lots approximately 2 acres in size. The rezoning application was denied based on Planning and Zoning Commission findings that the requested increase in housing density was unnecessary, that the land had largely marginal to impermeable soils, and that rezoning was inconsistent with Hillside District Plan requirements that current zoning to be maintained. Appeal to the Assembly was denied by indefinite tabling of review of Planning and Zoning Commission's actions;

2. A second rezoning application, Case No. 2017-0072, under "New Title 21" seeking R-6 Special Limitation rezoning of the same property for the purpose of permitting 30 lots approximately 2 acres in size denied by Planning and Zoning Commission Resolution 2017-0021.

3. A request for rehearing following Resolution 2017-0021 in Case No. 2017-0072 seeking R-6 Special Limitation rezoning for the purpose of permitting 24 lots of approximately 2 acres in size denied on October 22, 2017, by Resolution 2017-0028.

4. The Developer, Lewis and Clark's, failure to appeal Resolutions Nos. 2017-0021 and 2017-0028 to the Assembly, triggering the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10 for rezoning applications which are "substantially the same;"

5. Approval of an R-8 Conservation Subdivision Plat on the subject property of Case No. 2017-0072 in Project Number S12388 for 16 lots, with 15 lots averaging 1.4 acres in size.

6. A third rezoning application, Case No. 2018-0052, on the subject property of Case No. 2017-0072 seeking R-10 rezoning for the purpose of permitting up to 45 lots between 1.25 and 2.5 acres in size. May 14, 2018 public comment to the application specifically raised the fact that the rezoning application was prohibited by the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10.

7. Private correspondence/emails between the rezoning applicant and Planning Department Staff with no public notice to interested parties concluding in agreement that the Planning Director pursuant to AMC 21.14.010 would issue a decision declaring that the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10 to be inapplicable to Case No. 2018-0052.

8. The resulting Planning Director Decision, erroneously dated June 11, 2018 but published to the Planning and Zoning Commission on June 8, 2018.

9. The June 11, 2018 Planning and Zoning Commission Hearing during which Planning Department Staff presented the June 11, 2018 Planning Director Decision that the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10 did not apply to Case No. 2018-0052 as a matter of law because the Assembly had never acted upon Case No. 2017-0072 and because Case No. 2018-0052 was "substantially different" from Case No. 2017-0072 due to seeking R-10 rezoning, not the R-6 rezoning of Case No. 2017-0072.

10. Planning and Zoning Commission Resolution No. 2018-014 recommending, based in part on the June 11, 2018 Planning Director Decision and Planning Staff's presentation, that rezoning application, Case No. 2018-0052 seeking R-10 rezoning be granted permitting lots of 1.25 and 2.5 acres with a Special Limitation of 23 lots.

11. Appeal of the Planning Director's June 11, 2018 Decision in Case No. 2018-0085.

12. The Planning Director's July 23, 2018 Decision rescinding the June 11, 2018 Decision as erroneous in stating that Assembly action was required to trigger the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10 but inapplicable to Case No. 2018-0052 because the requested R-10 rezoning was "substantially different" from Case No. Case No. 2017-0072 request for R-6 rezoning with no consideration of the substantial similarities between the applications in seeking reduction of permitted lot size below the 4 acre minimums of existing R-8 zoning,

an increase in the number of lots beyond the number permitted by existing R-8 zoning, and lots of 1.25 and 2.5 acres in size.

13. July 25, 2018 Municipal Attorney e-mail correspondence that, because of the Planning Director's July 23, 2018 Decision, the Appeal of the Planning Director's June 11, 2018 Decision in Case No. 2018-0085 is moot.

The Planning Director's July 23, 2018 Decision commits the following error:

1. Despite the July 23, 2018 Decision substantively interpreting AMC 21.03.160.D.10 and affecting future rezoning applications, the Planning Director failed to request either public comment or comment from interested parties affected by the Case No. 2018-0052 rezoning application.

2. Despite Planning and Zoning Commission Resolution No. 2018-014 being adopted in reliance on the rescinded June 11, 2018 Planning Director Decision, the Planning Director failed to request rehearing based on the July 23, 2018 Decision.

3. The Planning Director's July 23, 2018 Decision failed to consider applicable Alaska Supreme Court authority construing "substantially the same" as used in AMC 21.03.160.D.10, including but not limited to, State v. Tr. the People, 113 P.3d 613 (Alaska 2005); Nerox Power Sys., Inc. v. M-B Contracting Co., 54 P.3d 791, 802 (Alaska 2002); and Warren v. Boucher, 543 P.2d 731, 732 (Alaska 1975). Per the Alaska Supreme Court, addressing whether actions are "substantially the same" requires comparison of the scope, general purpose, and means employed by the actions. In other words, despite the pronunciation to po-tah-toh being "substantially different, a potato remains "substantially the same" potato.

4. The Planning Director's July 23, 2018 Decision failed to consider how the rezoning application of Case No. 2018-0052 was "substantially the same" as the rezoning application of Case No. Case No. 2017-0072, instead considering only the requested rezoning changing from R-6 to R-10, a difference without substance.

5. The Planning Director's July 23, 2018 Decision failed to consider the prior rezoning applications denied in Case No. 2017-0072 and Case No. 2014-0219 and the approved R-8 Conservation Subdivision plat in Project

Number S12388, each of which sought permission for "substantially the same" 1.25- 2.5 acre lots of Case No. 2018-0052.

6. The Planning Director's July 23, 2018 Decision failed to consider the substantial similarities within the rezoning applications of Case No. 18-0052, Case No. 2017-0072, Case No. 2014-0219, the approved R-8 Conservation Subdivision Plat in Project Number S12388, and supporting statements made by the applicant and Planning Department Staff as to the scope, means, and general purpose or the rezoning application of Case No. 2018-0052.

7. The Planning Director's July 23, 2018 Decision failed to consider that rezoning applications could be "substantially the same" for purpose of the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10 despite seeking rezoning to different zoning districts.

8. The Planning Director's July 23, 2018 Decision failed to consider that successive rezoning applications for the purpose of decreasing the minimum lot size required by existing R-8 zoning, increasing the number of lots permitted by existing R-8 zoning, and permitting lots of 1.25 and 2.5 acres are "substantially the same" rezoning applications with "substantially the same" scope, means, and general purpose.

MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: July 23, 2018

TO: Planning and Zoning Commission

FROM: Michelle J. McNulty, AICP, Director, Planning Department

SUBJECT: Case 2018-0052, Lewis and Clark Rezone, Director's Determination

This memo rescinds and replaces an earlier memo dated June 11, 2018, with the subject "Case 2018-0052, Supplemental Information."

In accordance with Anchorage Municipal Code (AMC) 21.14.010, *Interpretations*, the director determines that Case 2018-0052 is substantially different from the previous case (Case 2017-0072), and, therefore it shall continue to be processed by the department to the assembly.

On July 10, 2017, the Planning and Zoning Commission recommended denial of Case 2017-0072. AMC 21.03.160D.7.c. states:

> If the commission recommends denial, the amendment shall be deemed disapproved unless, within 15 days of the commission's written resolution recommending denial, the applicant files a written statement with the municipal clerk requesting that an ordinance amending the zoning map as set out in the application be submitted for action by the assembly. The draft ordinance shall be appended to an Assembly Informational Memorandum (AIM) for consideration by the assembly.

The applicant for Case 2017-0072 did not submit a written statement to the Municipal Clerk requesting that the rezoning case be submitted for action by the Assembly, and, therefore, the case is disapproved. AMC 21.03.160, *Waiting Period for Reconsiderations*, states:

> Following denial of a rezoning request, no new applications for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

The commission did not state their recommendation was made without prejudice. However, Case 2018-0052 is not required to wait two years because the petition is substantially different from the previous one. The differences between the two petitions are numerous. In short, the two cases are for different zoning districts, which have different allowed uses and different dimensional requirements. Case 2017-0072 requested rezoning to the R-6 (low density – 1 acre) district with special limitations limiting the number of lots to 30, and requiring the lots to utilize category III nitrate reducing wastewater systems. The subsequent application, Case 2018-0052, requests rezoning to the R-10 (low-density residential, alpine/slope) district. The following is a summary table of the two districts.

Zoning Comparison of R-6 vs R-10

R-6 Low Density Residential (1 acre) District	**R-10** Low Density Residential Alpine/Slope District
Purpose: The R-6 district is intended primarily for single- and two-family large-lot residential areas, with gross densities of up to one dwelling unit per acre. The R-6 is designed to encourage low-density residential development. This district is intended to protect and enhance those physical and environmental features that add to the desirability of large-lot residential living. The availability of infrastructure and municipal services is varied. **Uses allowed in the R-6 district, but prohibited in the R-10 district:** • Duplex • Assisted living facility (9 or more res.) • Habilitative care facility, small • Habilitative care facility, medium • Habilitative care facility, large • Roominghouse • Neighborhood recreational center • Elementary, Middle, or High School • Instructional services • Private airstrip • Heliport • Commercial horticulture • Veterinary clinic • Natural resource extraction • Snow disposal site • Stormwater sediment management facility	**Purpose:** The R-10 district is intended for use in those areas where natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development. Creative site design and site engineering are essential to ensure that the development of these lands will: a. Protect natural features such as ponds, streams, wetlands, and springs, and incorporate such features into the development of the site design; b. Ensure the use of site design techniques that take into consideration topographic constraints and other physical features; c. Avoid natural hazards including snow avalanche and mass wasting areas; d. Retain the natural flow and storage capacity of any watercourse and wetland, to minimize the possibility of flooding or alteration of water boundaries; e. Assure that soil and subsoil conditions are suitable for excavations, site preparation, and on-site waste water disposal; f. Provide adequate site drainage to avoid erosion and to control the surface runoff in compliance with the federal clean water act; g. Assure an adequate supply of potable water for the site development; and h. Minimize the grading operations, including cut and fill, consistent with the retention of the natural character of the site.

R-6 Low Density Residential (1 acre) District		**R-10** Low Density Residential Alpine/Slope District	
Minimum lot size: Single-Family: Two-Family: All other uses:	 43,560 SF 87,120 SF 43,560	**Minimum lot size:** All uses:	 1.25 ac. to 7.5 ac. depending on average slope of each lot
Minimum lot width: Single-Family: Two-Family: All other uses:	 150' 150' 150'	**Minimum lot width:**	 100' to 300' depending on average slope of each lot
Maximum lot coverage of all structures: Single-Family: Two-Family: All other uses:	 30% 30% 30%	**Maximum lot coverage of all structures:** **Maximum coverage of impervious surfaces:**	 3% to 10% 8% to 20% depending on average slope of each lot
Minimum Setback Requirement: <u>Front</u>: Single-Family: Two-Family: All other uses:	 50' 50' 50'	**Minimum Setback Requirement:** <u>Front</u>: All uses	 10'
<u>Side</u>: Single-Family: Two-Family: All other uses:	 25' 25' 25'	<u>Side</u>: All uses:	 25'; 50' if average slope exceeds 30%
<u>Rear:</u> Single-Family: Two-Family: All other uses:	 50' 50' 50'	<u>Rear:</u> All Uses:	 10'
Maximum Height: Principal: Garage/carport: Other accessory:	 35' 30' 25'	**Maximum Height:** Principal: Garage/carport: Other accessory:	 30' 25' 18'
Maximum Number of Principal Structures: Single-Family: Two-Family: All other uses:	 1 1 N/A	**Maximum Number of Principal Structures:** All Uses:	 1

MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: July 23, 2018

TO: Planning and Zoning Commission

FROM: Michelle J. McNulty, AICP, Director, Planning Department

SUBJECT: Case 2018-0052, Lewis and Clark Rezone, Director's Determination

This memo rescinds and replaces an earlier memo dated June 11, 2018, with the subject "Case 2018-0052, Supplemental Information."

In accordance with Anchorage Municipal Code (AMC) 21.14.010, *Interpretations*, the director determines that Case 2018-0052 is substantially different from the previous case (Case 2017-0072), and, therefore it shall continue to be processed by the department to the assembly.

On July 10, 2017, the Planning and Zoning Commission recommended denial of Case 2017-0072. AMC 21.03.160D.7.c. states:

> If the commission recommends denial, the amendment shall be deemed disapproved unless, within 15 days of the commission's written resolution recommending denial, the applicant files a written statement with the municipal clerk requesting that an ordinance amending the zoning map as set out in the application be submitted for action by the assembly. The draft ordinance shall be appended to an Assembly Informational Memorandum (AIM) for consideration by the assembly.

The applicant for Case 2017-0072 did not submit a written statement to the Municipal Clerk requesting that the rezoning case be submitted for action by the Assembly, and, therefore, the case is disapproved. AMC 21.03.160, *Waiting Period for Reconsiderations*, states:

> Following denial of a rezoning request, no new applications for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

The commission did not state their recommendation was made without prejudice. However, Case 2018-0052 is not required to wait two years because the petition is substantially different from the previous one. The differences between the two petitions are numerous. In short, the two cases are for different zoning districts, which have different allowed uses and different dimensional requirements. Case 2017-0072 requested rezoning to the R-6 (low density – 1 acre) district with special limitations limiting the number of lots to 30, and requiring the lots to utilize category III nitrate reducing wastewater systems. The subsequent application, Case 2018-0052, requests rezoning to the R-10 (low-density residential, alpine/slope) district. The following is a summary table of the two districts.

Zoning Comparison of R-6 vs R-10

R-6 Low Density Residential (1 acre) District	**R-10** Low Density Residential Alpine/Slope District
Purpose: The R-6 district is intended primarily for single- and two-family large-lot residential areas, with gross densities of up to one dwelling unit per acre. The R-6 is designed to encourage low-density residential development. This district is intended to protect and enhance those physical and environmental features that add to the desirability of large-lot residential living. The availability of infrastructure and municipal services is varied. **Uses allowed in the R-6 district, but prohibited in the R-10 district:** • Duplex • Assisted living facility (9 or more res.) • Habilitative care facility, small • Habilitative care facility, medium • Habilitative care facility, large • Roominghouse • Neighborhood recreational center • Elementary, Middle, or High School • Instructional services • Private airstrip • Heliport • Commercial horticulture • Veterinary clinic • Natural resource extraction • Snow disposal site • Stormwater sediment management facility	**Purpose:** The R-10 district is intended for use in those areas where natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development. Creative site design and site engineering are essential to ensure that the development of these lands will: a. Protect natural features such as ponds, streams, wetlands, and springs, and incorporate such features into the development of the site design; b. Ensure the use of site design techniques that take into consideration topographic constraints and other physical features; c. Avoid natural hazards including snow avalanche and mass wasting areas; d. Retain the natural flow and storage capacity of any watercourse and wetland, to minimize the possibility of flooding or alteration of water boundaries; e. Assure that soil and subsoil conditions are suitable for excavations, site preparation, and on-site waste water disposal; f. Provide adequate site drainage to avoid erosion and to control the surface runoff in compliance with the federal clean water act; g. Assure an adequate supply of potable water for the site development; and h. Minimize the grading operations, including cut and fill, consistent with the retention of the natural character of the site.

R-6 Low Density Residential (1 acre) District		**R-10** Low Density Residential Alpine/Slope District	
Minimum lot size:		**Minimum lot size:**	
Single-Family:	43,560 SF	All uses:	1.25 ac. to 7.5 ac. depending on average slope of each lot
Two-Family:	87,120 SF		
All other uses:	43,560		
Minimum lot width:		**Minimum lot width:**	100' to 300' depending on average slope of each lot
Single-Family:	150'		
Two-Family:	150'		
All other uses:	150'		
Maximum lot coverage of all structures:		**Maximum lot coverage of all structures:**	3% to 10%
Single-Family:	30%		
Two-Family:	30%	**Maximum coverage of impervious surfaces:**	8% to 20% depending on average slope of each lot
All other uses:	30%		
Minimum Setback Requirement:		**Minimum Setback Requirement:**	
Front:		Front:	
Single-Family:	50'	All uses	10'
Two-Family:	50'		
All other uses:	50'		
Side:		Side:	
Single-Family:	25'	All uses:	25'; 50' if average slope exceeds 30%
Two-Family:	25'		
All other uses:	25'		
Rear:		Rear:	
Single-Family:	50'	All Uses:	10'
Two-Family:	50'		
All other uses:	50'		
Maximum Height:		**Maximum Height:**	
Principal:	35'	Principal:	30'
Garage/carport:	30'	Garage/carport:	25'
Other accessory:	25'	Other accessory:	18'
Maximum Number of Principal Structures:		**Maximum Number of Principal Structures:**	
Single-Family:	1	All Uses:	1
Two-Family:	1		
All other uses:	N/A		

Marc June

From: Arms, Quincy H. <ArmsQH@ci.anchorage.ak.us>
Sent: Wednesday, July 25, 2018 4:19 PM
To: 'Marc June'
Subject: RE: Appeal to Zoning Board of Examiners and Appeals

That's correct; this is a new determination. I will check with Planning to fulfill the public records request. However, any correspondence with my office is protected by attorney-client privilege.

Ms. Quincy Arms
Assistant Municipal Attorney
Municipality of Anchorage
ArmsQ@muni.org
(907) 343 - 4574

From: Marc June [mailto:junelawyer@cs.com]
Sent: Wednesday, July 25, 2018 11:16 AM
To: Arms, Quincy H. <ArmsQH@ci.anchorage.ak.us>
Subject: RE: Appeal to Zoning Board of Examiners and Appeals

Hello Quincy,

Thanks for your email. It arrived after I had finalized my public comment/brief to the ZBEA (attached).

I continue to disagree with the Director's decision that, given the history and facts, the 2 rezoning applications are not substantially the same. Am I correct in understanding that this requires a new appeal?

Also, I think we can both agree that this has an unusual procedural history. If there is third correspondence/emails regarding the rescission, I would request copies as public records.

Thanks again.

Marc June

From: Arms, Quincy H. [mailto:ArmsQH@ci.anchorage.ak.us]
Sent: Wednesday, July 25, 2018 9:17 AM
To: 'Marc June' <junelawyer@cs.com>
Subject: RE: Appeal to Zoning Board of Examiners and Appeals

Hello Marc,

Please see the attached Memorandum rescinding Planning's earlier determination regarding AMC 21.03.160D.7. and providing an additional interpretation regarding "substantially the same." This new determination obviates the need for your appeal based on Planning's previous determination because that determination has been rescinded, so the hearing in front of the Zoning Board has been cancelled. Your appeal fee will be returned to you. Please contact me at the contact information below if you have questions.

Ms. Quincy Arms
Assistant Municipal Attorney
Municipality of Anchorage
ArmsQ@muni.org
(907) 343 - 4574

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2018-014

A RESOLUTION RECOMMENDING APPROVAL OF THE REZONING OF APPROXIMATELY 77 ACRES FROM R-8 (LOW DENSITY RESIDENTIAL, 4 ACRES) TO R-10 SL (LOW DENSITY RESIDENTIAL, ALPINE/SLOPE) 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 VERAGASON-JONES SUBDIVISION (PLAT 98-178).

(Case: 2018-0052; Tax ID No. 017-073-06, 017-074-05, and -06)

WHEREAS, a petition has been received from the Big Country Enterprises, Inc. to rezone approximately 77 acres from R-8 (low density residential, 4 acres) to R-10 (low density residential, alpine/slope) 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 Veragason-Jones Subdivision (Plat 98-178); and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on June 4, 2018; and

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

A. The Commission makes the following findings of fact:

1. The application meets the approval criteria of rezonings, AMC 21.03.160E., and is consistent with *Anchorage 2020*, the *Anchorage 2040 Land Use Plan Map*, and the *Hillside District Plan*, especially in terms of residential density.

2. The special limitation restricts the site to a total of 23 lots, which is a compromise. West of the site is zoned R-9 and requires two-acre minimum lots. South of the site is zoned R-8 and requires four-acre minimum lots. The special limitation restricts the density to a number between the R-9 and the R-8 to make it more compatible. The R-10 district with this special limitation promotes the best use of the property and appropriately takes into account the natural environmental features in the area.

3. Dissenting members of the Commission felt that the special limitation was too restrictive and is not what is needed at this site. The platting process will determine the number of lots that is feasible and the Commission should not create a unique zoning district for this site.

4. This is the third public hearing that has come before the Commission. The issues are well known and the neighbors' concerns regarding drainage, traffic, and topography are understood. These issues can be overcome by good development that includes new advances in septic systems, and this will be assured through the municipal building permit review process. There will not be the impact that neighbors had expressed over the number of homes allowed. The issue of the road not being sufficient or adequate for the new development is not a concern. The number of new vehicle trips per day on this road is not going to be significant. The density the Commission is recommending is a good compromise and this area is surrounded by developments that are not much different from what is being proposed. The neighborhood will not notice an increased density as a result of this development and the character of the community is not going to be changed.

5. A lot of the commentary voiced by neighbors was about wells and water in the area. This issue will be adjudicated later during the building permit review. The R-10 district specifically calls out this issue and that is another reason why it is the right district for this location.

6. A rezone needs to be compatible in scale with the adjacent properties. The special limitation helps with compatibility. The Hillside was zoned with more residential density further down the hill and less density at higher elevations. This encourages a greater proportion of future growth to occur in the lower Hillside. The R-10 district is appropriate because of the geographical features affecting the site. The R-10 district determines minimum lot sizes by the average slope of each lot, which helps protect sensitive environmental features and reduces the likelihood water run-off issues.

B. The Commission recommends approval of the rezone, subject to a special limitation to restrict the district's total number of lots to 23.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission on the 11th day of June 2018.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 9th day of July, 2018.

Michelle J. McNulty, AICP
Secretary

Tyler P. Robinson
Chair

(Case 2018-0052; Tax ID No. 017-073-06, 017-073-05, and -06)

June 11, 2018

Municipality of Anchorage, Planning Department
Attention: Francis McClaughlin,
4700 Elmore Road
Anchorage, AK 99507

Re: Lewis and Clark Proposed R-10 Subdivision
Case No. 2018-0052

Dear Mr. McLaughlin:

On Friday, June 8, (possibly over the weekend) you provided additional materials to the Planning and Zoning Commission: previously undisclosed May 25 Developer lawyer correspondence requesting Planning Director agreement that their rezoning application not be barred by AMC 21.03.160.D.10's mandatory 2 year Waiting Period and your June 11 memo initialed by the newly-hired Planning Director granting the request. This last minute filing with no notice highlights the Developer's noncompliance with Title 21's community meeting requirements, the Planning Department's bias/lack of objectivity re the rezoning application, and AMC 21.03.160.D.3's mandatory 2 year Waiting Period barring the rezone application.

Failing to disclose the May 25 correspondence prejudices the public in violation of Due Process rights and, based on past history, appears intentional. Since the original Planning Staff was reassigned, there has been a pattern of Staff not being neutral professionals and, instead, advocating the Developer's position.

This letter is my attempt to respond. The Developer's arguments are belied by the history of rezoning rejections, the history of Title 21, the language of AMC 21.03.160.D.10, and applicable law.

Denial of Rezoning Due to Non-Compliance with Title 21 Procedures

AMC 21.03.160.D.3 requires a Community Meeting before filing a rezoning application. In this case, the "meeting" lasted 12 minutes before terminated by the Developers acting as Hillside Community Council officers.

I have repeatedly raised the issue of the prior Denial, not just in the 12 minutes Community Meeting but also in February 26 and March 1 emails to the Developer before and after the meeting. The Developer chose not to respond. See attached meeting minutes and emails. My May 14 correspondence raised the Denial issue a 4th time. Despite doing

so, the May 25 Staff Report, filed on the same date as the Developer's undisclosed correspondence was received, ignores the issue.

As conceded by the Developer, the 2 year Waiting Period as well as the number of estimated lots should have been addressed in the mandatory Title 21 Pre-Application Conference. However, Staff provides no materials indicating whether the conference even occurred, let alone whether the 2 year Waiting Period was discussed, or subsequent communications between Planning Department Staff and the Developer on the issue.

With the mandatory Community Meeting lasting only 12 minutes and issues as to whether there was compliance with Title 21's mandatory Pre-Application Conference, the rezoning application must be denied.

Rezoning Barred by AMC 21.03.160.D.10's Mandatory 2 Year Waiting Period Following Denial

The Developer's lawyer is correct that whether AMC 21.03.160.D.10's mandatory 2 year Waiting Period following Denial is purely a legal question. Just because the question can only be definitively answered by a court does not mean that the Commission should not make best efforts to answer the question correctly.

This is the Developer's 4th rezone request, with the most recent request denied in July, 2017. Each rezone request raised the identical issue: Will zoning be changed to allow lot sizes less than R8 zoning's required minimum 4 acre lots, an increased number of lots, and greater density. Lawyer arguments cannot change this conclusion that, if not literally identical, this application is, at a minimum, "substantially the same."

The Developer also cannot change this conclusion by not providing a preliminary plat or being specific about plans for size and number of lots. At the 12 minute Community Meeting, the Developer stated that lots would be 1.25 -2.5 acres depending on slope with as many as 45 lots. Relabelling the rezone request as an R-10 rezone subject to later platting does not change these facts, something emphasized by your emails stating there to have been no R-10 rezones or applications where the developer did not disclose the anticipated number of lots, whether by preliminary plat or otherwise. See attached e-mails.

Beyond the rezoning issue being identical, there is no legal basis for arguing that the AMC 21.03.160.D.10 Waiting Period can only be triggered by Assembly action. Ordinances are construed according to reason, practicality, and common sense. Unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, terms are construed according to their plain meaning and purpose. See Young v. Embley, 143 P.3d 936, 939 (Alaska 2006). The plainer the language, the more convincing contrary legislative history must be. In adopting new Title 21, the Assembly was fully aware of the procedures of the existing Title 21. Burke v. Raven Elec., Inc., 2018 WL 2173938 (June 6, 2018).

By eliminating the Waiting Period's reference to Assembly action, the Assembly intended to eliminate past abuses by Developers who, after testing the waters on an initial rezone application, would not appeal to the Assembly and, after the membership of the Commission or Assembly had changed, resubmit the same applications with different labels.[1] The Assembly corrected this abuse by deleting references to the Waiting Period only being triggered by Assembly action.

To the extent that the Developer chooses to rely on the newly hired Planning Director initialing Staff's memo, no deference is given to administrative interpretations conflicting with the plain meaning of an ordinance. Muller v. BP Expl. (Alaska) Inc., 923 P.2d 783 (Alaska 1996). To the contrary, courts presume that amendments to unambiguous laws indicate a substantive change. Kodiak Island Borough v. Exxon Corp., 991 P.2d 757 (Alaska 1999). Kodiak Island Borough v. Exxon Corp., 991 P.2d 757, 761 (Alaska 1999). The Developer's admission that AMC 21.03.160.D.10 was amended to omit reference to the Assembly demonstrates that the application is barred by the 2 year mandatory waiting period.

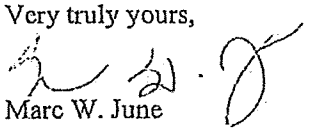
If the Developers wanted to repackage their previously rejected application again, the Developer should have asked that the July, 2017 denial be specifically "without prejudice" as allowed by AMC 21.03.160.D.10. Because they did not do so, the 2 year Waiting Period bars rezoning.

Please make certain Planning Director and the Planning and Zoning Commission is made aware of this response before tonight's hearing.

---

[1] Avoiding the mandatory Waiting Period under old Title 21 was the reason that the Developer did not oppose its being indefinitely tabled so that its second, unsuccessful rezone application would not be barred by the prior version of the Waiting Period, something that was explained to both parties at the time.

Very truly yours,



Marc W. June

cc: Michelle McNulty; Don McClintock

Land Surveying
Land Development Consultants
Subdivision Specialists
Construction Surveying

124 E 7th Avenue, Anchorage, Alaska 99501 www.S4AK.com 907-306-8104

Summary of Community Meeting

Date: 2/28/2018 at the HCC meeting.
Location: O'Malley Elementary School
Subject: Proposed Lewis & Clark R-10 Subdivision

251 mailers were mailed out on 1/31/2018 by first class mail. Presentation provided by S4 Group to provide information and take questions and comments from meeting attendees. There were approximately 30 attendees. Presentation began at approximately 8:43 PM and questioning was completed at approximately 8:55 PM. An invitation was extended for any additional questions to be sent to the S4 Group, LLC. The following is a brief summary of the questioning and discussion:

1) Steve MacDonald – 13130 Jeanne Road (1.03 Acre Lot – R-9 Zoning)
    a. Question: What is the slope of the property?
    b. Response: Slopes of the property vary from approximately 8% to 30%, with the majority of the property being between 9 – 10% to 15%.
2) Unknown Neighbor –
    a. Question: Was this issue brought before this Community Council before?
    b. Response: No. This particular piece of property has been brought before this Community Council, but this is a completely different application for a completely different request.
3) Marc June – 8801 Upper DeArmoun Road (1.14 Acre Lot – R-8 Zoning)
    a. Question: Was the R-6 rezone denied?
    b. Response: It was not approved
4) Tom Dreyer provides contact information for additional questions / comments that might arise.
5) Joan Priestley – 13101 Jeanne Road (1.13 Acre Lot – R-6 Zoning)
    a. Question: You have an R-8 Plat. Has that been abandoned?
    b. Response: The Plat and the Rezone Application are separate paths.
    c. Question: You had 20+ acres of open space set aside in R-8 Plat. Will you have that in the R-10?
    d. Response: This application is for a rezone to R-10. Those types of questions would be addressed at the platting level.
6) Bruce Vergason (HCCC Chair) indicates 2-minute warning because of time limit strictly enforced by O'Malley Elementary School.
7) Joan Priestley – 13101 Jeanne Road (1.13 Acre Lot – R-6 Zoning)
    a. Question: How many lots are you contemplating?
    b. Response: The number of lots would be judged by the slope of the lot. It could be between 5 and 45 depending on several factors.
8) Mark Morrison – 8600 Spendlove Drive (1.03 Acre Lot – R-6 Zoning)
    a. Question: Can you change the grade with a bulldozer to make it flatter?
    b. Response: No. There are several requirements for slope basis determination as well as requirements for clearing.
9) Bruce Vergason indicates that meeting has to be closed. He says that HCCC can invite S4 Group back to a future meeting and reminds that additional questions that may arise can be directed to the S4 Group. Meeting adjourned at 8:55 PM.

Thank you,
Tom Dreyer, PLS, S4 Group

Marc June

From:	Marc June <junelawyer@cs.com>
Sent:	Thursday, March 01, 2018 9:30 AM
To:	tom@s4ak.com
Cc:	Marc June
Subject:	FW: Lewis and Clark Subdivision

Hello Mr. Dreyer,

Am resending this because of no response to my last email.

Wanted to ask you last night about whether, practically speaking, the same number of lots is ultimately being envisioned or a different number.

Also wanted to ask why you believe the Rezone Application is not precluded by Ordinance 21.03.160.D.10

Would appreciate your response to the above questions as well.

Thanks.

Marc June

From: Marc June [mailto:junelawyer@cs.com]
Sent: Monday, February 26, 2018 9:28 AM
To: 'tom@s4ak.com' <tom@s4ak.com>
Cc: Marc June (Junelawyer@cs.com) <Junelawyer@cs.com>
Subject: Lewis and Clark Subdivision

Hello Mr. Dreyer:

Am not understanding reasoning behind most recent rezone application as I believed you were proceeding forward with Plat as approved by Platting Board and further rezone application precluded by Title 21 for 2 years from date of denial.

Could you please send the proposed R10 rezone and any supporting materials for review prior to 2/28 Community Council meeting?

Has R-10 Rezone application been filed?

Has Pre-Application meeting been held?

Thank you for consideration.

Marc June

Marc June

From: McLaughlin, Francis D. <McLaughlinFD@ci.anchorage.ak.us>
Sent: Monday, May 07, 2018 9:21 AM
To: 'Marc June'
Subject: RE: Lewis and Clark Subdivision

Hi Marc,

Thanks for your email. I could not find any cases that involved an R-8 rezone.

Francis

Francis McLaughlin
Planning Department
343-8003

From: Marc June [mailto:junelawyer@cs.com]
Sent: Friday, May 4, 2018 9:28 AM
To: McLaughlin, Francis D. <McLaughlinFD@ci.anchorage.ak.us>
Cc: Marc June <Junelawyer@cs.com>
Subject: RE: Lewis and Clark Subdivision

Francis,

You have been good on responding to all of my emails which have gone on longer than I had hoped.

I understand:

1. The number of lots is necessary to calculate density.
2. Density is measured by DUA (Dwelling Unit per Acre).
3. R-8 requires a 4 acre minimum lot size which is a DUA of 0-.25.
4. The HDP Land Use Map identifies the Upper Dearmoun Neighborhood as "Limited intensity, 0-1 DUA" without reference to underlying zoning

Other than the Lewis and Clark Subdivision, are you able to provide another example in which the Planning Department recommended against a rezone from R-8?

Thanks.

Marc June

From: McLaughlin, Francis D. [mailto:McLaughlinFD@ci.anchorage.ak.us]
Sent: Thursday, May 03, 2018 3:29 PM
To: 'Marc June' <junelawyer@cs.com>
Subject: RE: Lewis and Clark Subdivision

Hi Marc,

The residential density is, of course, important in evaluating the approval criteria for a rezone. In this case, the Hillside District Plan identifies the petition site as "Limited intensity, 0-1 dua." Topography, streams, drainageways, wetlands,

roads, availability of water, soils for on-site septic systems, and the zoning district minimum lot size requirement will all ensure that development of the property will have less than one dwelling unit per acre gross residential density.

Francis

Francis McLaughlin
Planning Department
343-8003

From: Marc June [mailto:junelawyer@cs.com]
Sent: Thursday, May 3, 2018 9:57 AM
To: McLaughlin, Francis D. <McLaughlinFD@ci.anchorage.ak.us>
Subject: RE: Lewis and Clark Subdivision

No worries. This is not an ASAP
Thank you for acknowledging
Marc June

From: McLaughlin, Francis D. [mailto:McLaughlinFD@ci.anchorage.ak.us]
Sent: Thursday, May 03, 2018 9:19 AM
To: 'Marc June' <junelawyer@cs.com>
Subject: RE: Lewis and Clark Subdivision

Marc – I got your email and I will respond. I'm just very busy today – Assembly committee meeting this morning and meetings at City Hall this afternoon. I will respond asap.

Thank you,
Francis

Francis McLaughlin
Planning Department
343-8003

From: Marc June [mailto:junelawyer@cs.com]
Sent: Wednesday, May 2, 2018 2:50 PM
To: McLaughlin, Francis D. <McLaughlinFD@ci.anchorage.ak.us>
Subject: RE: Lewis and Clark Subdivision

Francis,

Understood re absence of preliminary plat or draft/concept subdivision.
Are you saying the anticipated number of lots is not relevant?

Marc June

From: McLaughlin, Francis D. [mailto:McLaughlinFD@ci.anchorage.ak.us]
Sent: Wednesday, May 02, 2018 2:28 PM
To: 'Marc June' <junelawyer@cs.com>
Subject: RE: Lewis and Clark Subdivision

Hi Marc,

I too am sorry that I am not able to give you the answer that you want. I wish that I could. I did looked at rezones from the last couple years and I didn't see any that included a draft/concept subdivision. Usually, they won't go through the work of designing a subdivision until after the rezone is adopted. It is atypical for a rezone application to include a draft subdivision. It is a distraction from the merits of the rezone because the developer is under no obligation to follow the drawing as shown. It would have marginally usefulness even if the developer intended to submit that exact drawing because plats usually go through changes before they are finally approved. In the case of the R-10, it is very difficult to design a subdivision because the lot sizes are based on the average slope of each lot.

Francis

Francis McLaughlin
Planning Department
343-8003

From: Marc June [mailto:junelawyer@cs.com]
Sent: Wednesday, May 2, 2018 2:17 PM
To: McLaughlin, Francis D. <McLaughlinFD@ci.anchorage.ak.us>
Subject: RE: Lewis and Clark Subdivision

Francis,
Thanks again.
My apologies for repeated requests but are you able to say how many times a rezone application has been submitted without a preliminary plat or without representation the anticipated number of lots, lets say within the last 2 years.
(I realize a preliminary plat is not required. I am trying to understand how often this happens). If there have been times, I would appreciate the project number/name.
Marc June

From: McLaughlin, Francis D. [mailto:McLaughlinFD@ci.anchorage.ak.us]
Sent: Wednesday, May 02, 2018 11:15 AM
To: 'Marc June' <junelawyer@cs.com>
Subject: RE: Lewis and Clark Subdivision

Hi Marc,

I looked back 9 years and did not find any cases involving a rezone to R-10.

Francis

Francis McLaughlin
Planning Department
343-8003

From: Marc June [mailto:junelawyer@cs.com]
Sent: Wednesday, May 2, 2018 10:56 AM
To: McLaughlin, Francis D. <McLaughlinFD@ci.anchorage.ak.us>
Subject: RE: Lewis and Clark Subdivision

Francis,
Thanks.
Understand that rezone applications might not include a draft/concept preliminary plat. My question was more specific.

How common is this in R-10 rezone applications? (Over last 2 years, how many R-10 rezone applications have there been and how many have not included a draft/concept preliminary plat)

Of those R-10 rezone applications that do not include a draft/concept preliminary plat, how many include the anticipated number of lots?

If you have examples of other R-10 applications that do not include draft/concept preliminary plats or anticipated number of lots, I would appreciate your sharing this information.

Marc June

From: McLaughlin, Francis D. [mailto:McLaughlinFD@ci.anchorage.ak.us]
Sent: Wednesday, May 02, 2018 10:15 AM
To: 'Marc June' <junelawyer@cs.com>
Subject: RE: Lewis and Clark Subdivision

Hi Marc,

There are no policies/procedures regarding the R-10. Yes, it is common for rezoning applications to not include a draft/concept preliminary plat.

Francis

Francis McLaughlin
Planning Department
343-8003

From: Marc June [mailto:junelawyer@cs.com]
Sent: Wednesday, May 2, 2018 10:24 AM
To: McLaughlin, Francis D. <McLaughlinFD@ci.anchorage.ak.us>
Subject: RE: Lewis and Clark Subdivision

Hello Francis,

Can you advise whether there are any written policies/procedures re R-10 approval beyond Title 21?
Have other rezone applications been granted where the applicant does not disclose the number of lots?
Thanks.

Marc June

MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: June 11, 2018

RECEIVED
MAY 30 2018
PLANNING DEPARTMENT

TO: Planning and Zoning Commission

THRU: Michelle McNulty, Director, Planning Department

FROM: Francis McLaughlin, Senior Planner

SUBJECT: Case 2018-0052, Supplemental Information

The purpose of this memo is to confirm that Case 2018-0052 does not violate AMC 21.03.160, *Waiting Period for Reconsiderations*, which states:

> Following denial of a rezoning request, no new applications for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

There have been two previous rezoning applications of the property, but neither of the applications was denied. In 2016, the Assembly postponed indefinitely Case 2014-0219. In 2017, the Commission recommended denial of Case 2017-0072, and the case went no further. Note that the Commission makes recommendations to the Assembly regarding rezoning cases, but does not have authority to decide them. Therefore, Case 2018-0052 may proceed as scheduled.

From: "McLaughlin, Francis D." <McLaughlinFD@ci.anchorage.ak.us>
To: "'Donald W. McClintock'" <don@anchorlaw.com>, "'Heidi A. Wyckoff'" <heidi@anchorlaw.com>
Cc: "'Becky Lipson'" <becky@anchorlaw.com>
Bcc:
Date: Thu, 31 May 2018 17:35:25 +0000
Subject: RE: Lewis & Clark Proposed R-10 Rezone Subdivision

Heidi, Don, and Becky,

Attached is a short memo from the Planning Dept to the Planning and Zoning Commission clarifying that previous rezones at the Lewis and Clark site were not denied. Therefore, the new rezone case may proceed.

It's easy to get the old code and new code confused. The first rezone case was submitted under the old code. The last rezone and the latest one were submitted under the new code.

Francis

Francis McLaughlin

Planning Department

343-8003.

. . . .

From: "Donald W. McClintock" <don@anchorlaw.com>
To: "McLaughlin, Francis D." <McLaughlinFD@ci.anchorage.ak.us>, "Heidi A. Wyckoff" <heidi@anchorlaw.com>
Cc: Becky Lipson <becky@anchorlaw.com>
Bcc:
Date: Fri, 25 May 2018 22:19:18 +0000
Subject: RE: Lewis & Clark Proposed R-10 Rezone Subdivision

Thank-you for your quick attention.

Have a great weekend.

Don

Donald W. McClintock

Ashburn & Mason, P.C.

1227 W. 9th Ave. Ste. 200

Anchorage, AK 99501

(907) 276-4331 (voice)

(907) 277-8235 (fax)

www.ashburnandmason.com

. . . .

From: McLaughlin, Francis D. [mailto:McLaughlinFD@ci.anchorage.ak.us]
Sent: Friday, May 25, 2018 1:52 PM
To: Heidi A. Wyckoff
Cc: Donald W. McClintock; Becky Lipson
Subject: RE: Lewis & Clark Proposed R-10 Rezone Subdivision

Thank you for this. I'll have the director sign a memo defining that this application is substantially different from previous application to put this question to rest. Also, the PZC meeting will be on June 11, not what I said in my previous email.

Francis

Francis McLaughlin

Planning Department

343-8003

. . . .

From: "McLaughlin, Francis D." <McLaughlinFD@ci.anchorage.ak.us>
To: "'Heidi A. Wyckoff'" <heidi@anchorlaw.com>
Cc:
Bcc:
Date: Fri, 25 May 2018 19:31:19 +0000
Subject: RE: Lewis & Clark Proposed R-10 Rezone Subdivision

Hi Heidi,

Planning agrees that the R-10 is a different rezone application than previous ones. Many of Mr. June's statements are misinterpretations of municipal code, not just this one. Planning would not have accepted and processed the latest rezone application if it was substantially the same as the previous ones. I will make this clear to PZC at the June 4th meeting. In short, this is a "no brainer", but thank you for the well written explanation and articulation of the correct interpretation of code. I will include your comments in the rezone packet for PZC.

Thank you,

Francis

Francis McLaughlin

Planning Department

343-8003

From: Heidi A. Wyckoff [mailto:heidi@anchorlaw.com]
Sent: Friday, May 25, 2018 11:20 AM
To: McLaughlin, Francis D.
Cc: Donald W. McClintock ; Becky Lipson
Subject: Lewis & Clark Proposed R-10 Rezone Subdivision

Mr. McLaughlin: Please find attached correspondence from Donald McClintock. The original follows via U.S. mail.

Heidi Wyckoff

Ashburn & Mason, P.C.

1227 W. 9th Ave. Ste. 200

Anchorage, AK 99501

(907) 276-4331 (voice)

(907) 277-8235 (fax)

www.ashburnandmason.com

ASHBURN & MASON P.C.

LAWYERS

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

May 25, 2018

Via U.S. and Electronic Mail:

Francis McLaughlin
Municipality of Anchorage
Planning Department
4700 Elmore Road
Anchorage, Alaska 99507
McLaughlinFD@ci.anchorage.ak.us

Re: Lewis and Clark Proposed R-10 Rezone Subdivision
Case No. 2018-0052

Dear Mr. McLaughlin:

Our firm represents the petitioner in this matter. In his letter of May 14, 2018 to you, Marc June raises a legal question that should be addressed by the director in advance of the scheduled public hearing scheduled for June 11, 2018. Below, I outline the reasons I believe his legal objections are misplaced, but note that the issue for interpretation is for the director to decide. It will lead to a far better and more focused hearing on the 11th if this interpretation is provided to the Commission, rather than have it as a matter of debate at the hearing itself.

AMC 21.14.010.A provides:

> A. *General.* The director has final authority to determine the interpretation or usage of terms used in this title, pursuant to this section. Any person may request an interpretation of any term by submitting a written request to the director, who shall

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

> respond in writing within 30 days. The director's interpretation shall be binding on all officers and departments of the municipality.

Mr. June suggests that AMC 21.03.160.D.10 precludes this application for a rezone to R-10 from being considered. That provision provides:

> *Waiting period for reconsideration.* Following denial of a rezoning request, no new application for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

Mr. June argues that because the Commission recommended against granting the application in the rezone to R-6 S, that the petitioner should be barred from applying for a R-10 rezone. However, Mr. June is wrong for 2 reasons: (i) the prior application was never denied as the petitioner never advanced the request to the Assembly, which is the entity with legal authority to approve and deny the rezone application; and (ii) the R-10 zone is not the "same or substantially the same" zoning as the R-6 zone.

As an initial matter, the interpretation that the denial refers to the action by the Assembly is consistent with the prior provision under the "Old Code." AMC 21.20.080 – provided:

> **Waiting period for reconsideration.** Neither the planning and zoning commission nor the assembly may consider or approve a zoning map amendment if it is substantially the same as any other zoning map amendment initiated within the past 12 months and not approved by the assembly. (Emphasis added).

Clearly under the Old Code a petitioner who received a negative recommendation from the Commission could elect not to advance the request to the Assembly and educated by the proceeding below, submit a new application. That application would not be barred by the waiting period by the clear language of the Old Code. The new language, although worded more simply, does not reflect the intent to depart from this practice, although the waiting period was extended to 2 years.

The language of AMC 21.03.160.D.10, fairly read, addresses the time as running from the "date of denial." The action of the commission is not a denial. The Planning Commission can *recommend* "denial" but only the Assembly has "denial as one of its options for resolution. [1] So that interpretation is the better one both as a matter of precedent and interpretation.

As a matter of this particular application, the R-10 zone is not "the same or substantially the same" rezoning and this determination is within the discretion afforded the Department. The only arguable similarity is both are rural zones. But that is not the litmus test applied by the ordinance, which requires zones be "substantially the same." The R-6 SL applied for in the prior 2017 rezone attempt relied upon the R-6 minimum lot size of one acre per du and provided specific proposed lot layouts for a 30 lot subdivision. The R-6 zone allows single and two family housing.[2] By contrast the R-10 zone is specifically intended to address the "natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development."[3] Table 21.04-2 dictates a range of lot sizes from 1.25 acres to 7.5 acres depending on the average slope and specific lot coverage and lot width requirements. The R-10 district only allows single family housing. [4]

These are distinct and significant differences that merit an interpretation that an R-6 SL rezone is not the same as an R-10 rezone.

---

[1] AMC 21.03.160.D.7.c ("If the commission recommends denial ...) and under AMC 21.03.160.D.8.c, "denial" is one of the three options available to the Assembly. Although an application that is not appealed to the Assembly is deemed" disapproved," it is significant, that that "denial" and not "disapproval" is the operative language at issue here. If disapproval was intended to be the operative word, it would have been a simple matter to use the same word choice in making the start of the waiting period, such as the "later date of disapproval or denial".

[2] AMC 21.40.020.L

[3] AMC 21.40.020.P

[4] Table 21.05-1

Although AMC 21.14.010 allows up to 30 days for an interpretation, it is requested that this interpretation be submitted in advance of the hearing so the Commission can focus on the pertinent matters before it and not be distracted by this issue. I apologize that we have not made this request earlier, but I only recently became aware of Mr. June's letter. Our assumption is that staff had already made this determination as the pre-application conference would have typically flagged these issues if there was any controversy.

We appreciate your time and request this question be forwarded to the director for resolution.

Sincerely,

ASHBURN & MASON, P.C.

Donald McClintock

{11558-001-00481225;2}

May 14, 2018

Municipality of Anchorage, Planning Department
Attention: Francis McClaughlin,
4700 Elmore Road
Anchorage, AK 99507

Re: Lewis and Clark Proposed R-10 Subdivision
Case No. 2018-0052

Dear Mr. McLaughlin:

I am a homeowner at 8801 Upper Dearmoun, land directly across from the proposed Lewis and Clark Subdivision.

This is Petitioners' third rezone application. Like the others, it seeks rezoning to avoid the 4 acre minimum lot requirements of the existing R-8 zoning and create 1.25 and 2.5 acre lots. Because Petitioners' last rezone application was denied in July, 2017, Ordinance 21.3.160.D.10 bars rezoning for 2 years as a matter of law. Because Petitioners have failed to establish that R10 rezoning is necessary to make development feasible and failed to provide the information necessary to meet the criteria required by Ordinance 21.03.160, the application must be denied.

Three Previous Rezoning Rejections

Beginning shortly after their purchase of the land at a price reflecting the minimum 4 acre lot requirements of the existing R-8 zoning, Petitioners over the last 4 years have been repackaging their same development plan. Each application seeks permission for smaller lots substantially less than 4 acres, an increased number of lots, and envisions stacking the smallest lots along Upper Dearmoun Road. Proposed lots have been as small as an acre in size.

In 2014, Petitioner applied for R-6 rezoning with 32 lots. Planning Department Staff recommended that the application be denied and the application did not gain a single supporting vote from the Planning and Zoning Commission. Specific factual findings included the fact that increased housing density on this site was unnecessary, (Finding of Fact 1), most of the property has marginal to impermeable soils (Finding of Fact 2), and the rezoning request was inconsistent with the Hillside District Plan requirement that current zoning to be maintained (Finding of Fact 5). Because there was no support at the Assembly level for the rezone application, Petitioners' appeal to the Assembly appeal was denied by being tabled indefinitely.

In 2017, Petitioners filed a second rezoning application under New Title 21 from R-8 to R-6SL, this time with 30 lots. Without explanation, the Planning Department assigned a new staff member who, since that time, has championed every proposal submitted by Petitioners and never acknowledged, or attempted to reconcile prior staff's negative recommendation. When this second application was denied by the Planning and Zoning Commission, new staff filed a request for rehearing to permit 24 lots. In July, 2017, the application was denied by the Planning and Zoning Commission for the third time.

Most recently, the Petitioners, with the support of the same Planning Department staff member, obtained Platting Board approval of an Ordinance 21.08.070 Conservation Subdivision plat for 16 lots, with the median average size of 2.16 acres and the smallest lot 1.16 acres. Another adjoining landowner has appealed this approval and, through the grapevine, the word is that this rezone application is in response to this exercise of Municipal Code due process rights.

R-10 Rezoning Application

Permitting rezoning this fourth time requires finding that the Planning and Zoning Commission was wrong by a lot-- not just once, but 3 separate times. Just like the past applications, this R-10 rezoning application is for the purpose of allowing smaller lots of 1.25 and 2.5 acres below the 4 acre minimum size required by existing R8 zoning depending on slope. If a Construction Subdivision is again proposed, lot sizes could potentially be even much smaller.

Unlike the 3 previously occasions when rezoning was denied, this rezoning application, itself, provides no indication as to the number of lots. In a 12 minute community meeting, the Petitioners represented this number to be between 5 and 45 lots with no response to subsequent emails. Without this information, the Commission cannot make the necessary findings for rezoning.

Finally, this 4th request for rezoning makes no reference to the Platting Board's approval of a 16 lot subdivision, whether Petitioners intend to continue proceeding with this approved plat, or the reasons for proceeding with 2 simultaneous development projects. Without this important information, the Commission cannot make the necessary findings for rezoning.

One would normally expect this information to be provided through the Community Council process, in this case the Hillside Community Council. In this case, however, Petitioners Bruce Vergason and Todd Brownson serve on the Hillside Community Council Board and their presentation was scheduled for the end of the March meeting. The presentation ended at Mr. Vergason's direction after 12 minutes. Followup emails to Petitioners' representative, Tom Dreyer at the S4 group were not returned. The

following meeting of the Hillside Community Council was cancelled. Petitioners never advised as to how their conflict of interest between being Petitioners and being Board members would be addressed.

Requests for further information from Planning Department Staff also did not provide further information. While Staff was unable to provide an example of another rezoning application in which a preliminary plat setting forth the number of lots was not provided, it is Staff's position that this is not required. According to Staff, there have been no prior R10 rezone applications, at least within the last 2 years. Staff also could not provide an example of another instance in which the Planning Department recommended denial of an R8 rezone application. With the history of 3 previous denials of rezoning, the Commission cannot make necessary findings to support rezoning with this history.

The R10 rezone application continues the previously rejected argument that rezoning is justified because some adjoining landowners occupy 1 acre lots. In doing so, Petitioners continue to ignore the fact that these lots were subdivided in the 1970's before there was meaningful zoning, that R8 zoning was adopted in recognition that these smaller lot sizes were a mistake, and that they were aware of these facts when they purchased the land.

Petitioners also argue that rezoning is somehow suggested by the Anchorage 2040 Land Use Plan. The 2040 Land Use Plan makes clear on page 32 that the Hillside District Plan controls. Page 36 further states that the requirements of the 2040 Land Use Plan are "subject to the Hillside District Plan."

Similarly, the R10 rezone application continues Petitioners' practice of relying on maps within the Hillside District Plan to argue that, notwithstanding R8 zoning, densities shown are 0-1 Dwelling Units per Acre (DUA). Once again, this is not the case and the maps do not even reference R8 zoning. Instead, HDP Policy 1-A states that it is intended to:

> Encourage a greater proportion of future Hillside growth to occur in the lower Hillside, in areas located closer to existing services and infrastructure; to a limited degree reduce the amount of future development in the southeast Hillside.

HDP Policy 1-B also specifically establishes that the Policy is to:

> Maintain policies for the amount of development as allowed under current land use designations.

In short, per the Hillside District Plan, existing R8 zoning is to be maintained.

Reasons for Denial

Objections to the past rezoning applications consistently focused on the smallest lots being stacked along the Upper Dearmoun Road boundary, the substandard condition of Upper Dearmoun Road with an absence of adequate shoulders for a collector road, the dangers resulting from increased traffic, the unsuitability of large areas of the tract for development, and the specific statements within the 2010 Hillside District Plan that existing zoning was to be maintained with larger lot zoning in the areas closest to Chugach Park. With these conditions remaining, the R10 rezoning applications does not address these objections.

1. Ordinance 21.3.160.D.10 requires denial.

After a rezone application is denied, Ordinance 21.03.160.D.10 imposes a 2 year waiting period on new applications for substantially the same rezoning. Attempts to suggest that R-10 rezoning is different from rejected past R-6 rezoning application fail because the purpose of each application has been to achieve the identical goal of lot sizes below 4 acres with lot sizes of 2.5 acres, 1.25 acres and even smaller if a Construction Subdivision is attempted.

With Petitioners' most recent denial occurring in July, 2017, no further rezone application can be considered until July 2019 as a matter of law. To the extent that Petitioner disagrees, this pure question of law can only be resolved by court decision.

2. Per Ordinance 21.04.020.P, R10 zoning is inappropriate.

Ordinance 21.04.020.P states that R10 zoning is intended only for "those areas where natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development.

The rezone application makes no attempt to argue why R10 zoning is required. When the Platting Board has approved a plat under existing zoning, R10 zoning is not necessary for development a conclusion not changed by another landowner exercising appellate rights under the Municipal Code.

3. Petitioner has not established each Approval Criteria required by Ordinance 21.3.160.E.

In order to grant the application for R-10 rezoning, the Commission is required to find that the Application satisfies all approval criteria set forth in Ordinance 21.3.160.E. Because the application does not address the number of lots or provide other necessary information, this cannot be done.

Ordinance 21.03.160.E.1 requires a finding that rezoning be in the best interests of Anchorage and promote the public health safety, and general welfare. The representation that Petitioners have suggested there could be as many as 45 lots provides further proof that this criterion has not been met. Together with the history of 3 rezoning denials based on the number of lots, this cannot be done.

Ordinance 21.03.160.E.2 requires a finding of compliance with the comprehensive plan. In that regard, the 2040 Land Use Plan specifically identifies this neighborhood on Map 1-2 as an area of little housing growth. The Land Use Plan has a specific Goal 7 of making any rezoning compatible with existing zoning, i.e., R-8, and expressly states on page 75 that it is not a recommendation for rezoning. If Petitioners believed that R10 rezoning complied with the 2040 Land Use Plan and could truly justify R-10 rezoning, Petitioners would be addressing how 1.25 acre lots are compatible with the existing R8 zoning requirements of 4 acre lots, how storm water evaluation is being conducted (as required by Goal 5-6 at page 88), and how the necessary Upper Dearmoun Road infrastructure will be provided, as required on page 72 of the 2040 Land Use Plan. Because the application makes no attempt to address these issues, it is not possible to find that these criteria have been met, and the application must be denied. If seriously considered, the proposed rezoning would require amendment of the Hillside District Plan, iteself.

Ordinance 21.03.160.E.3 requires that rezoning be consistent with the purpose of existing R8 zoning. With the purpose of the rezone being to change minimum 4 acre minimum lot sizes down to 2.5 acres, 1.25 acres, and possibly even smaller lots, this criterion has not been met.

Ordinance 21.03.160.E.5 requires that roads be capable of supporting the new uses while maintaining adequate levels of service to existing development. With all parties recognizing the substandard condition of Upper Dearmoun Road and Petitioners seeking as many as 45 individual lots, this criterion has not been met.

Ordinance 21.03.160.E.7 requires that rezoning not result in adverse impacts upon adjacent land uses. With Petitioners not identifying the number of lots they seek, but representing that it may be as many as 45, this criterion has not been met. 45 new homes relying upon an existing substandard road is absolutely an adverse impact.

Ordinance 21.03.160.E.8 requires that the rezone not extend or exacerbate a land use pattern that is inconsistent with the comprehensive plan. With the purpose of R8 zoning in the first place being recognition of that 1 acre lots were unreasonable, this cannot be done. If anything, rezoning this parcel will lead to rezoning of other uphill parcels in the neighborhood, creating a domino effect. With Petitioners making no effort

to distinguish the effect of their rezone application on future rezone applications of these parcels, this criterion has not been met.

Conclusion

The Landowner simultaneously pursuing Platting Approval and Rezoning is inappropriate. This R10 Rezone application should be denied as barred by 21.3.160.D, unnecessary for feasibility of development as required by Ordinance 21.04.020.P, and for failing to establish compliance with each of the necessary criteria required by Ordinance 21.3.160.E. Ultimately, the application simply rehashes previously rejected arguments, with no attempt to address the status of the currently pending Conservation Subdivision Plat.

Very truly yours,

Marc W. June

MWJ/wws
cc: David Whitfield

Municipality of Anchorage
Planning Division
4700 Elmore Rd.
Anchorage, AK 99507

Project Name: Lewis + Clark Re-Zone Case No --

Meeting Type: ☐Concept ☒Pre-Application ☐Post-Application ☐Other

Meeting Requested by: Tom Dreyer - 54 Date: 2-12-18
Lead MOA Planner: Francis M. Time: 2:00 pm

	NAME (please print)	COMPANY	PHONE	E-MAIL
1	Ryan Yelle	MOA - Planning	343-7935	YelleRJ@muni.org
2	Francis McLaughlin	MOA current Planning	343-8002	mclaughlinf@muni.org
3	CHRIS SCHUTTE	MOA - OECD	343-7144	SCHUTTECM@MUNI.ORG
4	Carol Wong	MOA - LR Planning	343-7920	wongcl@muni.org
5	Todd Brownson	Big Country	406-0792	todd@bigcountryak.com
6	Tom Dreyer	54 GROUP	227-1847	tom@54NL.com
7	Dave Whitfield	MOA - Planning	8329	whitfieldda@muni.org
8	BRANDON TELFORD	MOA - PRIVATE DEVELOPMENT	343-8443	TELFORDBS@MUNI.ORG
9	RANDY RIBBLE	MOA - TRAFFIC	343-8415	RIBBLERA@MUNI.ORG
10	Jason Mouricheff	MOA - Priv. Dev.	343-8310	Mouricheffjm@muni.org
11				
12				
13				
14				
15				
16				

Notes:

MUNICIPALITY OF ANCHORAGE
Community Development Department/Planning Division
4700 Elmore Road, Anchorage, AK 99502
Phone: 907-343-7901; Fax: 907-343-7927

Pre-Application Meeting Checklist

Project Name: Lewis + Clark Re-Zone Meeting Date: 2-12-18

☐ Concerns raised at Community Meeting:

☑ Zoning/Platting: Justify R-10 in application

☐ AWWU:

☐ Building Safety:

☐ DOT&PF:

☐ Fire:

☐ Health Department:

☑ Long Range Planning: Address HRP in application

Non-motorized Coordinator:

☐ OSWW:

☐ Parks and Rec:

☒ Private Development: No comment, except that road review for the Subdivision agreement is continuing.

☒ Traffic: No comment unless the location of future roads change

☐ Watershed Management:

☐ Other:

☐ Other:

☐ Other:

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2017-028

A RESOLUTION DENING A REQUEST TO REHEAR CASE 2017-0072 BASED ON NEW EVIDENCE OR CHANGED CIRCUMSTANCES, IN ACCORDANCE WITH AMCR 21.10.503.

(Case 2017-0072)

WHEREAS, Todd Brownson, Big Country Enterprises, LLC submitted a request to rehear Case 2017-0072 based on new evidence or changed circumstances, in accordance with AMC 21.10.503; and

WHEREAS, the Planning and Zoning Commission recommended denial of Case 2017-0090 on June 12, 2017, which was a request to rezone approximately 77 acres from R-8 to R-6 SL.

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

A. The Commission makes the following findings of fact:

1. The alleged new evidence or changed or changed circumstances would not substantially change the initial decision of the Commission, in accordance with AMCR 21.10.503B.1.

2. The realtor's research showing that large-lot residential is in short supply does not correspond to the recently published Land Use Plan Map study, which did extensive analysis of all residential land in order to assess the balance between supply and demand for housing.

3. The *Hillside District Plan* and *Anchorage 2020* do not recommend increasing residential land density in this part of the Hillside. Increasing density at this site is contrary to the public interest. Any increase in density would also increase traffic and impact the sensitive environmental features of the land. These issues were thoroughly discussed at the original hearing and the new information provided would not change the Commission's decision. A rehearing or reopening of the case is not warranted.

4. The basis for the petitioner's request to reopen the case does not prove to be new information. The petitioner's new information was already known during the initial hearing. The argument for reopening the case is not convincing.

5. Dissenting Commissioners stated that Canyon Road Trailhead probably causes a lot more traffic than this rezone would. Also, there is market

demand for large-lot single-family homes and rezoning to the R-6 district would make development costs more affordable.

B. The Commission DENIED the request for rehearing of Case 2017-0072 based on new evidence or changed circumstances, in accordance with AMC 21.10.503.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission on the 14th day of August, 2017.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 2nd day of October, 2017.

Hal H. Hart, AICP
Secretary

Tyler Robinson
Chair

(Case 2017-0072)

fm

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)

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)

fm

Appellant's October 25, 2018 Submittal

MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: October 26, 2018

TO: Zoning Board of Examiners and Appeals

THRU: Michelle McNulty, Director, Planning Department

FROM: Ryan Yelle, Senior Planner, Planning Department RY

SUBJECT: 2018-0099 Marc June Appeal – Additional Information Submitted

Appellant filed his appeal with a "Statement of Error" on August 8, 2018. The Municipality drafted and finalized the staff report in response to the Appellant's Statement of Error. On October 25, 2018, Planning received additional information and arguments from the Appellant, after the staff report had been finalized and prepared for distribution to the Board. To ensure the Board has adequate time to review both the Appellant's case and the Municipality's report, the Municipality must issue the staff packet without a written rebuttal to Appellant's late-filed submission. However, the Municipality will be prepared to address any questions about this new material at the public hearing.

October 25, 2018

Municipality of Anchorage
Zoning Board of Examiners and Appeals
Attention: Ryan Yelle,
4700 Elmore Road
Anchorage, AK 99507

Re: Appeal to ZBEA of Director's Interpretation of Definitions re Lewis & Clark Rezone

Case No. 2018-0099

Members of the Zoning Board of Examiners and Appeals:

This Appeal seeks to enforce the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.3 in rezoning application, Case No. 2018-0052. In a June 11, 2018 Memorandum,[1] subsequently rescinded and replaced by a July 23, 2018 Memorandum,[2] the Planning Director, pursuant to AMC 21.14.010 issued the decision that the Mandatory 2 Year Waiting Period did not bar the application.

The Memoranda Decisions were an improper exercise of the Planning Director's authority AMC 21.14.010 and, as a matter of law, asserted an erroneous construction of AMC 21.03.160.D.3. The rezoning that is the subject of Case No. 2018-0052 is "substantially the same" rezoning that was the subject of both Case No. 2017-0072, denied in July 2017, and rezoning that was the earlier subject of Case No. 2014-0219, also denied by the Planning and Zoning Commission: rezoning to change the minimum 4 acre lot size of existing R-8 zoning to zoning permitting lots approximately 2 acres in size.

The ZBEA should rule that the Planning Director's decisions were an improper exercise of authority under AMC 21.14.010, that the Planning Director's interpretation of AMC 21.03.160.D.3 is erroneous and that successive rezoning applications, each seeking to change existing zoning's 4 acre minimum lot size requirement to zoning permitting lots 2 acres in size, are "substantially the same" despite seeking R-10, not R-6 rezoning. Ultimately, Case No. 0052 is barred by the Mandatory 2 Year Waiting Period AMC 21.03.160.D.3.

[1] See Exhibit A.
[2] See Exhibit B.

ZBEA JURISDICTION

Pursuant to AMC 21.14.010.A, the Petitioner in Case No. 2018-0052, Lewis and Clark, asked the Planning Director to decide that the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.3 did not apply. Pursuant to AMC 21.14.010.C, the Planning Director's decisions are subject to review by the ZBEA.

STATEMENT OF FACTS

Previous Denial of Rezoning Applications To Change 4 Acre Minimum Lot Size Requirements of Existing R-8 Zoning

On October 22, 2017, in Resolution 2017-0028, the Planning and Zoning Commission denied Case No. 2017-0072, a rezoning application by the Lewis and Clark Petitioner seeking rezoning of real property from R-8 zoning requiring 4 acre minimum lot size allowing a maximum of 14 lots to R-6 SL zoning allowing 24 proposed lots averaging approximately 2 acres in size.[3] While Lewis and Clark had the right to appeal this Denial to the Assembly as provided by AMC 21.03.160.C.7.c, the decision was made not to do so.

The Denial was the 4th time that requested changes to existing R-8 zoning on this land had been rejected. Previously, in Case No. 2014-0219, the Planning and Zoning Commission had unanimously denied a substantially similar application seeking a change to R-6 SL zoning with 32 proposed lots averaging approximately 2 acres in size, issuing findings of fact that the proposed increased housing density was unnecessary, that the land had largely marginal to impermeable soils, and that rezoning was inconsistent with Hillside District Plan requirements that current zoning to be maintained.[4] The Petitioner's subsequent appeal to the Assembly was unsuccessful.[5]

Petitioner Lewis and Clark subsequently filed a second rezoning application in Case No. 2017-0072[6] again seeking a change to R-6 SL rezoning but with 30 proposed lots averaging approximately 2 acres in size. The Planning and Zoning

---

[3] See Exhibit C.
[4] See Exhibit D.
[5] Never formally rejected, the appeal was "indefinitely tabled." Per Assembly Rules, this constitutes denial.
[6] Because Case No. 2014-0219 had been filed under "old" Title 21, AMC 21.03.160.D.3 did not apply.

Commission again denied the application, first, in Resolution 2017-0021[7] and, later, in Resolution 2017-0028's Denial of the Planning Department's Request for Rehearing.

Within 6 months, Petitioner Lewis and Clark filed a new rezoning application in Case No. 2018-0052, this time seeking R-10 rezoning for the purposes of permitting 1.25 and 2.5 acre lots depending on slope. At the Mandatory Pre-Application Community Meeting, Lewis and Clark represented there would be as many as 45 lots. Later, at the June 11, 2018 Planning and Zoning Commission hearing, this was changed to 25 proposed lots. In Resolution 2018-014, the Commission ultimately granted rezoning restricted to 23 permitted lots.[8]

Planning Director Actions re the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.3

In accepting the rezoning application in Case No. 2018-0052, the Planning Department made no attempt to enforce the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10. Notes of the Mandatory Pre-Application Meeting[9] show that neither the Ordinance not the Mandatory 2 Year Waiting Period were raised or discussed.

I raised the issue at the mandatory Pre-Application Community Meeting, in February 26/March 1, 2018 emails to Lewis and Clark, and, finally, in May 14, 2018 public comments to the Planning and Zoning Commission.[10] The Planning Department's subsequent May 25 Report to the Planning and Zoning Commission in preparation for the scheduled June 11 Hearing once again neither raised nor discussed the Mandatory 2 Year Waiting Period.

Subsequently, a series of private letters/emails between the Lewis and Clark rezoning applicant and Planning Department Staff, Francis McLaughlin,[11] culminated in the Planning Director's decision. May 25, 2018 correspondence from the Petitioner to McLaughlin requested that the Planning Director issue a decision that the Mandatory 2 Year Waiting Period was inapplicable based on 2 grounds: Resolution 2017-0028 not being appealed to the Assembly and theoretical differences between R-10 and R-6 zoning. Consistent with his past support of the rezoning request, McLaughlin

---

[7] See Exhibit E.
[8] See Exhibit F.
[9] See Exhibit G.
[10] See Exhibit H.
[11] Following rejection of the rezoning application in Case No. 2014-0219, responsibility was transferred to McLaughlin who since that time has consistently advocated for rezoning.

immediately agreed and caused the Planning Director to issue the June 11, 2018 memorandum decision.[12] Not addressed was Petitioners' alternate contention that R-10 rezoning applications, by definition, cannot be substantially the same as R-6 rezoning applications.

At the June 11 PZC Hearing, McLaughlin told the Planning and Zoning Commission that the Mandatory 2 Year Waiting Period had been decided by the Planning Director and that R-10 rezoning applications were substantially different from R-6 rezoning applications.

The Mandatory 2 Year Waiting Period was not addressed in Commission Resolution 2018-014.

Pursuant to AMC 21.14.010.C, the Planning Director's June 11, 2018 Decision was appealed.[13] That appeal was mooted by Planning Director rescission of the June 11, 2018 memorandum decision and replacement by her July 23, 2018 Decision[14] finding that, due to theoretical differences between R-6 and R-10 zoning districts, the rezoning applications are "substantially different" and, thus, the Mandatory 2 Year Waiting Period does not apply. It is this July 23, 2018 Planning Director Decision that is the subject of this Appeal.

Because the previous June 11, 2018 Decision presented the Planning and Zoning Commission with 2 bases for AMC 21.03.160.D.10 inapplicability and the July 23, 2018 Planning Director Decision was never shared with the Commission, it is not known whether the July 23, 2018 Decision would be grounds for the Commission changing its decision.

DISCUSSION OF ERROR

While the June 11, 2018 and July 23, 2018 Planning Director Decisions were the result of private communications between the rezoning applicant and Planning Department Staff supporting rezoning is worrisome, this Appeal demonstrates that neither Decision should have been issued by the Planning Director and that the conclusion that the 2 Year Mandatory Waiting Period was factually and legally erroneous.

---

[12] See Exhibit I. The Planning Department filed the June 11, 2018 memorandum, Exhibit A, on June 8 and has never explained the discrepancy. At the time, the Planning Director was new to the position and had only been working a matter of days.
[13] ZBEA Case No. 2018-0085.
[14] See Exhibit B.

1. **The July 23, 2018 Decision is an improper exercise of Planning Director Authority under AMC 21.14.010.**

As part of "new" Title 21, AMC 21.14.010 authorizes the Planning Director to determine the interpretation or usage of terms of art within Title 21. Typically, these interpretations are broad statements as to broad policy issues, not decisions resolving specific matters.[15] Prior to the Decisions discussed in this Appeal, the Planning Director had only issued one interpretation. The Planning Director has not issued any other decision directed to a pending rezoning application. Significantly, unlike other Planning Director interpretations, the Planning Director has not published the July 23, 2018 Decision. If the Mandatory 2 Year Waiting Period can be circumvented by changing the zoning district requested, one would expect that other property owners and the public have the right to know.

The June 11, 2018 and July 23, 2018 Decisions are inappropriate actions by the Planning Director because neither is an "interpretation or usage of terms under Title 21. Instead, the Decisions resolved disputed factual issues in a pending rezoning application within the exclusive authority of the Planning and Zoning Commission. There is nothing about "substantially the same" that suggests it is a term of art requiring interpretation beyond its plain meaning.

2. **The Planning Director's construction of AMC 21.03.160.D.10 is erroneous as a matter of law.**

AMC 21.03.160.D.10 provides:

> Following denial of a rezoning request, no new application for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice. (emphasis added)

The Planning Director erred by applying a different statutory test, i.e., whether the rezoning sought was "substantially different" from previously rejected rezoning. This error was compounded by the Planning Director's failure to consider the 4 years of rezoning history unsuccessfully seeking to avoid the 4 acre minimum lot size requirements of existing R-8 zoning and permitting of 2 acre lots.

With a 4 year history of Lewis and Clark rezoning applications seeking lot sizes lower than the 4 acre minimum lot size required by existing R-8 zoning and proposed subdivision plats with average 2 acre lot sizes, a reasonable Anchorage citizen would

---

[15] For examples, see: http://www.muni.org/Departments/OCPD/Planning/zoning/Pages/DirectorsPoliciesandInterpretations.aspx.

only conclude that the applications, if not literally identical, are "substantially the same" and Case No. 2018-0052 is barred by the mandatory 2 Year Waiting Period.

If Lewis and Clark had wanted to repackage their previously rejected application again, the Petitioner should have asked that the July, 2017 denial be specifically "without prejudice" as allowed by AMC 21.03.160.D.10. A logical explanation for the Petitioner not doing so is the appreciation that, at least as the Commission and Assembly were currently constituted, the request would be denied.

Construction of AMC 21.03.160.D.10

The Planning Director changing the legal/factual issue from whether a rezoning application is "substantially the same" to "substantially different" is an error that changes the answer. In other contexts, one can easily imagine persons arguing the dramatic differences between Coke and Pepsi, Ford and Chevrolets, and Apple and Hewlett Packard products despite these products also being substantially the same.

Construction of Title 21 is governed by Chapter 21.14. Per AMC 21.14.020.I, with the exception of technical words and phrases having a peculiar meaning, words are to be construed according to their common and approved usage. Not included within AMC 21.14.040's definitions of technical terms is the phrase, "substantially the same." Before Petitioners' correspondence to the Planning Department, no one had ever suggested "substantially the same" was somehow a term of art unique to "new" Title 21, that the plain meaning of the term justified resubmitting unsuccessful rezoning applications by asking for a change to a different zoning district.

The Alaska Supreme Court has adopted a 3 part test for deciding whether two successive actions are "substantially the same:"

> A three-part test is used . . . : the court first determines the scope of the subject matter, . . . the court next considers whether the general purpose . . . is the same . . . , and finally, the court must consider whether the means by which that purpose is effectuated are the same. . .[16]

Deciding whether two successive actions are "substantially the same" requires consideration of the underlying circumstances.[17] It is not necessary that the two "substantially the same" successive actions be identical. As the Alaska Supreme Court, the context of legislative action, states:

---

[16] See State v. Tr. the People, 113 P.3d 613 (Alaska 2005)(addressing whether initiatives are "substantially the same.").

[17] State v. Tr. the People, 113 P.3d 613, 621 (Alaska 2005); see also Warren v. Boucher, 543 P.2d 731, 736 (Alaska 1975).

> If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features.[18]

If the Assembly intended some other application of the "substantially the same" test, it could have so provided.[19]

Case No. 2018-0052 Compared to Previously Rejected Rezoning Applications

Applying this "same general purpose/comparable means" test, review of rezoning applications in Case No. 2018-0052, Case No. 2017-0072, and Case No. 2014-0219 demonstrate substantial similarities:

1. The purpose of both rezoning applications is the change in existing R-8 zoning requiring lots to be a minimum of 4 acres to zoning permitting lots averaging 2 acres in size;
2. The means of doing so, whether by R-6 or R-10 zoning is comparable.
3. Differences in the details of R-6 and R-10 zoning are minor particulars.

Immateriality of R-6 and R-10 Zoning Descriptions

As the Alaska Supreme Court recognizes, successive rezoning applications that are "substantially the same" may differ in minor particulars and even major features. An example of this is the Planning Director's reference to the potentially different purposes, uses, and other attributes between R-10 and R-6 zoning.

In this case, the rezoning Petitioner has been intentionally silent as to future plans for the property.[20] If the anticipated development is different from previous rezoning applications, the Petitioner has not said so. Most important, the Petitioner has not identified any intended development permitted by R-6 zoning that is prohibited by R-10 zoning.

---

[18] Warren v. Boucher, 543 P.2d 731, 736 (Alaska 1975)(emphasis added).
[19] State v. Marshall, 633 P.2d 227, 236 (Alaska 1981).
[20] For example, unlike Case No. 2017-0072, the Petitioner never disclosed a proposed plat of lots.

As is apparent to any person familiar with Petitioners' rezoning history, Case No. 2018-0052 is substantially the same rezoning application as Case No. 2017-0072, i.e., a change from R-8 zoining requiring 4 acre lots to different zoning permitting lots averaging 2 acres with a different label, R-10 instead of R-6. Theoretical differences between the zoning districts are purely cosmetic differences for the purpose of circumventing the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10.

CONCLUSION

Citizens expect the Planning Department to know the Code. In this case, the Planning Department never even identified AMC 21.03.160.D.10 as potentially applicable.

Citizens expect the Planning Department to enforce the Code. In this case, the Planning Department made no attempt to even raise AMC 21.03.160.D.10 as an issue.

Citizens expect the Planning Department to reach decisions in a transparent public process. In this case, the Planning Director's decision resulted from private communications between the applicant and Planning Staff already committed to supporting rezoning.

Citizens expect the Planning Department to correctly apply Title 21. In this case, the Planning Director made no attempt to apply the established "substantially the same" test.

For the above reasons, the Appeal should be granted. The Planning Director's July 23, 2018 decision should be vacated. The ZBEA should hold that the Mandatory 2 Year Waiting Period of AMC 21.03.160.D.10 bars Case No. 2018-0052.

Very truly yours,

Marc W. June

cc: Michelle McNulty; Don McClintock

EXHIBIT A

MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: June 11, 2018

RECEIVED
MAY. 3 0 2018
PLANNING DEPARTMENT

TO: Planning and Zoning Commission

THRU: Michelle McNulty, Director, Planning Department

FROM: Francis McLaughlin, Senior Planner

SUBJECT: Case 2018-0052, Supplemental Information

The purpose of this memo is to confirm that Case 2018-0052 does not violate AMC 21.03.160, *Waiting Period for Reconsiderations*, which states:

> Following denial of a rezoning request, no new applications for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

There have been two previous rezoning applications of the property, but neither of the applications was denied. In 2016, the Assembly postponed indefinitely Case 2014-0219. In 2017, the Commission recommended denial of Case 2017-0072, and the case went no further. Note that the Commission makes recommendations to the Assembly regarding rezoning cases, but does not have authority to decide them. Therefore, Case 2018-0052 may proceed as scheduled.

EXHIBIT B

MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: July 23, 2018

TO: Planning and Zoning Commission

FROM: Michelle J. McNulty, AICP, Director, Planning Department

SUBJECT: Case 2018-0052, Lewis and Clark Rezone, Director's Determination

This memo rescinds and replaces an earlier memo dated June 11, 2018, with the subject "Case 2018-0052, Supplemental Information."

In accordance with Anchorage Municipal Code (AMC) 21.14.010, *Interpretations*, the director determines that Case 2018-0052 is substantially different from the previous case (Case 2017-0072), and, therefore it shall continue to be processed by the department to the assembly.

On July 10, 2017, the Planning and Zoning Commission recommended denial of Case 2017-0072. AMC 21.03.160D.7.c. states:

> If the commission recommends denial, the amendment shall be deemed disapproved unless, within 15 days of the commission's written resolution recommending denial, the applicant files a written statement with the municipal clerk requesting that an ordinance amending the zoning map as set out in the application be submitted for action by the assembly. The draft ordinance shall be appended to an Assembly Informational Memorandum (AIM) for consideration by the assembly.

The applicant for Case 2017-0072 did not submit a written statement to the Municipal Clerk requesting that the rezoning case be submitted for action by the Assembly, and, therefore, the case is disapproved. AMC 21.03.160, *Waiting Period for Reconsiderations*, states:

> Following denial of a rezoning request, no new applications for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

The commission did not state their recommendation was made without prejudice. However, Case 2018-0052 is not required to wait two years because the petition is substantially different from the previous one. The differences between the two petitions are numerous. In short, the two cases are for different zoning districts, which have different allowed uses and different dimensional requirements. Case 2017-0072 requested rezoning to the R-6 (low density – 1 acre) district with special limitations limiting the number of lots to 30, and requiring the lots to utilize category III nitrate reducing wastewater systems. The subsequent application, Case 2018-0052, requests rezoning to the R-10 (low-density residential, alpine/slope) district. The following is a summary table of the two districts.

Zoning Comparison of R-6 vs R-10

R-6 Low Density Residential (1 acre) District	**R-10** Low Density Residential Alpine/Slope District
Purpose: The R-6 district is intended primarily for single- and two-family large-lot residential areas, with gross densities of up to one dwelling unit per acre. The R-6 is designed to encourage low-density residential development. This district is intended to protect and enhance those physical and environmental features that add to the desirability of large-lot residential living. The availability of infrastructure and municipal services is varied. **Uses allowed in the R-6 district, but prohibited in the R-10 district:** • Duplex • Assisted living facility (9 or more res.) • Habilitative care facility, small • Habilitative care facility, medium • Habilitative care facility, large • Roominghouse • Neighborhood recreational center • Elementary, Middle, or High School • Instructional services • Private airstrip • Heliport • Commercial horticulture • Veterinary clinic • Natural resource extraction • Snow disposal site • Stormwater sediment management facility	**Purpose:** The R-10 district is intended for use in those areas where natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development. Creative site design and site engineering are essential to ensure that the development of these lands will: a. Protect natural features such as ponds, streams, wetlands, and springs, and incorporate such features into the development of the site design; b. Ensure the use of site design techniques that take into consideration topographic constraints and other physical features; c. Avoid natural hazards including snow avalanche and mass wasting areas; d. Retain the natural flow and storage capacity of any watercourse and wetland, to minimize the possibility of flooding or alteration of water boundaries; e. Assure that soil and subsoil conditions are suitable for excavations, site preparation, and on-site waste water disposal; f. Provide adequate site drainage to avoid erosion and to control the surface runoff in compliance with the federal clean water act; g. Assure an adequate supply of potable water for the site development; and h. Minimize the grading operations, including cut and fill, consistent with the retention of the natural character of the site.

R-6 Low Density Residential (1 acre) District		**R-10** Low Density Residential Alpine/Slope District	
Minimum lot size: Single-Family: Two-Family: All other uses:	 43,560 SF 87,120 SF 43,560	**Minimum lot size:** All uses:	 1.25 ac. to 7.5 ac. depending on average slope of each lot
Minimum lot width: Single-Family: Two-Family: All other uses:	 150' 150' 150'	**Minimum lot width:**	100' to 300' depending on average slope of each lot
Maximum lot coverage of all structures: Single-Family: Two-Family: All other uses:	 30% 30% 30%	**Maximum lot coverage of all structures:** **Maximum coverage of impervious surfaces:**	3% to 10% 8% to 20% depending on average slope of each lot
Minimum Setback Requirement: Front: Single-Family: Two-Family: All other uses:	 50' 50' 50'	**Minimum Setback Requirement:** Front: All uses	 10'
Side: Single-Family: Two-Family: All other uses:	 25' 25' 25'	Side: All uses:	25'; 50' if average slope exceeds 30%
Rear: Single-Family: Two-Family: All other uses:	 50' 50' 50'	Rear: All Uses:	10'
Maximum Height: Principal: Garage/carport: Other accessory:	 35' 30' 25'	**Maximum Height:** Principal: Garage/carport: Other accessory:	 30' 25' 18'
Maximum Number of Principal Structures: Single-Family: Two-Family: All other uses:	 1 1 N/A	**Maximum Number of Principal Structures:** All Uses:	 1

EXHIBIT C

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2017-028

A RESOLUTION DENING A REQUEST TO REHEAR CASE 2017-0072 BASED ON NEW EVIDENCE OR CHANGED CIRCUMSTANCES, IN ACCORDANCE WITH AMCR 21.10.503.

(Case 2017-0072)

WHEREAS, Todd Brownson, Big Country Enterprises, LLC submitted a request to rehear Case 2017-0072 based on new evidence or changed circumstances, in accordance with AMC 21.10.503; and

WHEREAS, the Planning and Zoning Commission recommended denial of Case 2017-0090 on June 12, 2017, which was a request to rezone approximately 77 acres from R-8 to R-6 SL.

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

A. The Commission makes the following findings of fact:

1. The alleged new evidence or changed or changed circumstances would not substantially change the initial decision of the Commission, in accordance with AMCR 21.10.503B.1.

2. The realtor's research showing that large-lot residential is in short supply does not correspond to the recently published Land Use Plan Map study, which did extensive analysis of all residential land in order to assess the balance between supply and demand for housing.

3. The *Hillside District Plan* and *Anchorage 2020* do not recommend increasing residential land density in this part of the Hillside. Increasing density at this site is contrary to the public interest. Any increase in density would also increase traffic and impact the sensitive environmental features of the land. These issues were thoroughly discussed at the original hearing and the new information provided would not change the Commission's decision. A rehearing or reopening of the case is not warranted.

4. The basis for the petitioner's request to reopen the case does not prove to be new information. The petitioner's new information was already known during the initial hearing. The argument for reopening the case is not convincing.

5. Dissenting Commissioners stated that Canyon Road Trailhead probably causes a lot more traffic than this rezone would. Also, there is market

demand for large-lot single-family homes and rezoning to the R-6 district would make development costs more affordable.

B. The Commission DENIED the request for rehearing of Case 2017-0072 based on new evidence or changed circumstances, in accordance with AMC 21.10.503.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission on the 14th day of August, 2017.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 2nd day of October, 2017.

Hal H. Hart
Hal H. Hart, AICP
Secretary

Tyler Robinson
Chair

(Case 2017-0072)

fm

EXHIBIT D

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2015-026

A RESOLUTION RECOMMENDING DENIAL OF THE REZONE OF APPROXIMATELY 72.66 ACRES FROM R-8 (RURAL RESIDENTIAL – LARGE LOT) DISTRICT TO R-6 (SUBURBAN RESIDENTIAL – LARGE LOT) DISTRICT FOR PROPERTY DESCRIBED AS 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 2, VERGASON-JONES SUBDIVISION (PLAT 98-178); GENERALLY LOCATED SOUTH OF UPPER DE ARMOUN ROAD, WEST OF CANYON ROAD AND EAST OF MESSINIA STREET, IN ANCHORAGE.

(Case 2014-0219; Parcel ID Nos. 017-073-06 and 017-074-06)

WHEREAS, a request was received from Big Country Enterprises, LLC, to rezone approximately 72.66 acres from R-8 (rural residential – large lot) district to R-6 (suburban residential – large lot) district for property described as 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 2, Vergason-Jones Subdivision (Plat 98-178), generally located south of Upper De Armoun Road, west of Canyon Road and east of Messinia Street, in Anchorage; and

WHEREAS, public hearing notices were published, posted, and mailed, and a public hearing was opened on April 6, 2015; and

WHEREAS, all present wishing to testify had the opportunity to address the Commission on April 6, 2015; and

WHEREAS, the Chair, having called for anyone else wishing to testify and hearing no response, closed the public hearing on April 6, 2015; and

WHEREAS, the case was continued to the June 1, 2015 meeting at which time the Commissioners deliberated and decided the matter before the Commission.

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

A. The Commission makes the following findings of fact:

1. The request before the Commission is to rezone a 72.66-acre parcel and Lot 2, Vergason-Jones Subdivision from R-8 (rural residential – large lot) district that requires a minimum five acre lot size, to R-6 (suburban residential – large lot) district that requires a minimum 1.25 acre minimum lot size.

2. The Commission addressed the need for more housing in Anchorage, but found that an increase in density does not need to happen on this particular site with the proposed R-6 zoning. The 2012 Housing Study found that there is a need for more housing in Anchorage; however the

results of the study determined that there was an oversupply of large lot zoned land for single-family residential development. What the Anchorage community does not have enough of is small lot development served by public utilities and services.

3. The Commission could not support the rezone request based on the soils tests that were submitted and the comments from On-Site Services that some of the lots will not be able to support on-site septic systems. Soils tests have been performed, and the soils report indicates that most of the property has marginal to impermeable soils.

4. The Commission referenced comments from On-Site Water and Wastewater Services that stated further research on the dry drainageways is needed to determine if there is surface water, as septic tanks and drainfields are required to be at least 100 feet from surface water. There are elevated nitrates in neighboring wells and a nitrate study will be required prior to development of a subdivision.

5. The *Hillside District Plan*, which is the guiding comprehensive plan for this property, doesn't indicate that the rezone is inconsistent with the Land Use Plan Map in terms of density. However, one of the policies in the *Hillside District Plan* indicates that the same land use designations should be maintained in this area as were established prior to the beginning of this plan. In that respect, the rezone is not consistent with the *Hillside District Plan*.

6. From a general point of view, this proposal is not necessarily a good urban plan. It is not necessarily good to expand the low-density sprawl in the community throughout the Hillside. What is needed is more compact development concentrated near employment centers as the comprehensive plan recommends.

7. Adding more housing to the Hillside is clearly a risk with respect to the groundwater and the flow into Rabbit Creek. It would add more vehicle trips onto a substandard street which is strip paved without shoulders or sidewalks. This is not the right proposal at this particular site.

8. The issue is that this property is in an area where there are lots that are the same size as what is proposed to be developed with this rezone petition. However, those lots were platted and developed prior to the implementation of the current zoning. If the adjoining property were to be zoned today, the zoning would be reconsidered as public testimony has proved that there are some problems with some of those smaller lots.

9. With the R-8 zoning it is less likely that problems will be created with larger lot development in a fragile environment, and the R-8 zoning is the most appropriate zoning for this particular area.

B. The Commission recommends DENIAL to the Anchorage Assembly that approximately 77.62-acres be rezoned from R-8 (rural residential - large lot) district to R-6 (suburban residential - large lot) district by a vote of 8 nays and 1 abstention.

DENIED by the Anchorage Planning and Zoning Commission on June 1, 2015.

ADOPTED by the Anchorage Planning and Zoning Commission this 6th day of July, 2015.

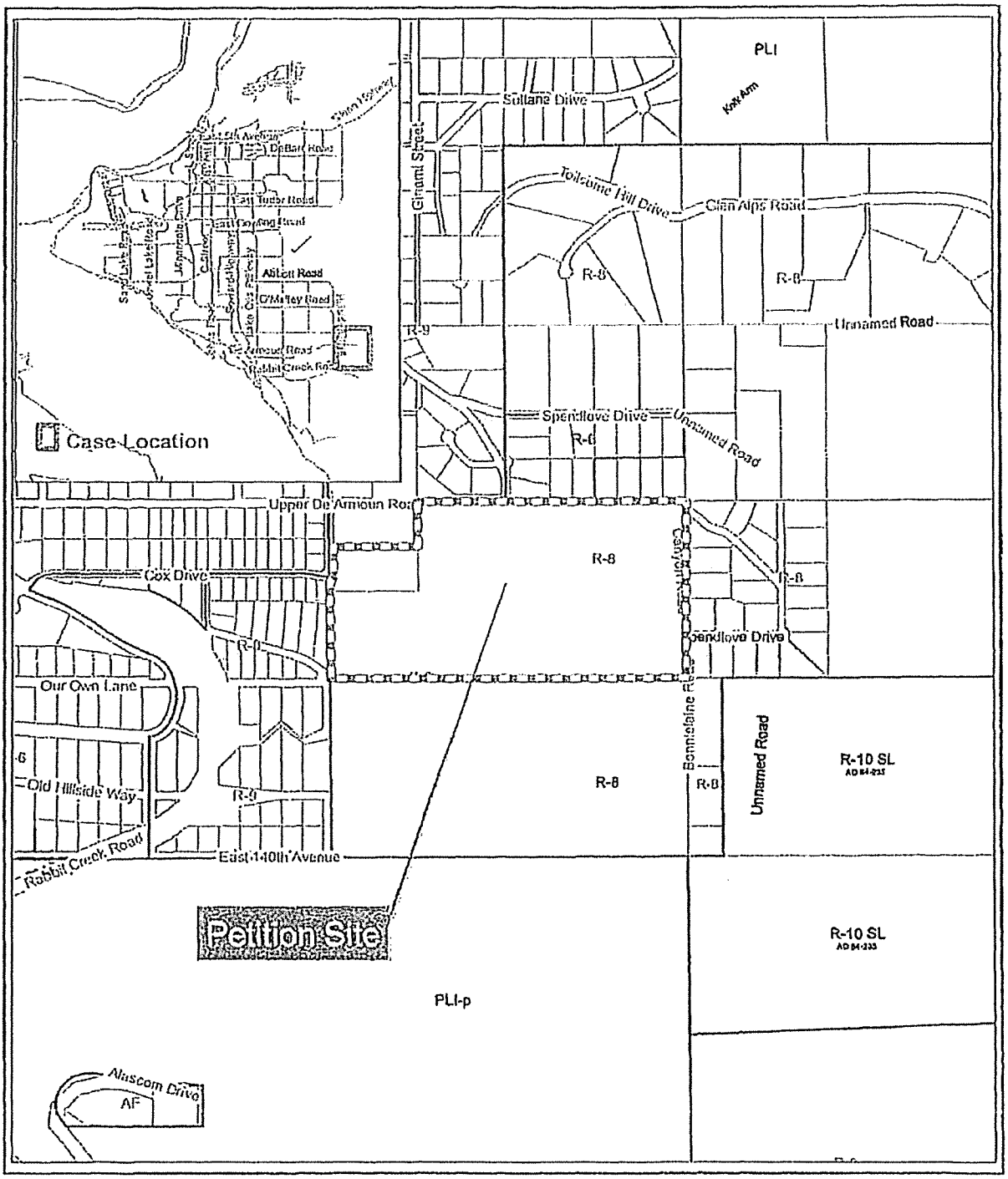
Jerry T. Weaver, Jr.
Secretary

J.A. Fergusson
Chair

(Case 2014-0219)
(Parcel ID Nos. 017-073-06 and 017-074-06)

mro

2014-0219



Municipality of Anchorage
Planning Department

Date: January 06, 2015

N

EXHIBIT E

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)

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)

fm

EXHIBIT F

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2018-014

A RESOLUTION RECOMMENDING APPROVAL OF THE REZONING OF APPROXIMATELY 77 ACRES FROM R-8 (LOW DENSITY RESIDENTIAL, 4 ACRES) TO R-10 SL (LOW DENSITY RESIDENTIAL, ALPINE/SLOPE) 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 VERAGASON-JONES SUBDIVISION (PLAT 98-178).

(Case: 2018-0052; Tax ID No. 017-073-06, 017-074-05, and -06)

WHEREAS, a petition has been received from the Big Country Enterprises, Inc. to rezone approximately 77 acres from R-8 (low density residential, 4 acres) to R-10 (low density residential, alpine/slope) 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 Veragason-Jones Subdivision (Plat 98-178); and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on June 4, 2018; and

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

A. The Commission makes the following findings of fact:

1. The application meets the approval criteria of rezonings, AMC 21.03.160E., and is consistent with *Anchorage 2020*, the *Anchorage 2040 Land Use Plan Map*, and the *Hillside District Plan*, especially in terms of residential density.

2. The special limitation restricts the site to a total of 23 lots, which is a compromise. West of the site is zoned R-9 and requires two-acre minimum lots. South of the site is zoned R-8 and requires four-acre minimum lots. The special limitation restricts the density to a number between the R-9 and the R-8 to make it more compatible. The R-10 district with this special limitation promotes the best use of the property and appropriately takes into account the natural environmental features in the area.

3. Dissenting members of the Commission felt that the special limitation was too restrictive and is not what is needed at this site. The platting process will determine the number of lots that is feasible and the Commission should not create a unique zoning district for this site.

4. This is the third public hearing that has come before the Commission. The issues are well known and the neighbors' concerns regarding drainage, traffic, and topography are understood. These issues can be overcome by good development that includes new advances in septic systems, and this will be assured through the municipal building permit review process. There will not be the impact that neighbors had expressed over the number of homes allowed. The issue of the road not being sufficient or adequate for the new development is not a concern. The number of new vehicle trips per day on this road is not going to be significant. The density the Commission is recommending is a good compromise and this area is surrounded by developments that are not much different from what is being proposed. The neighborhood will not notice an increased density as a result of this development and the character of the community is not going to be changed.

5. A lot of the commentary voiced by neighbors was about wells and water in the area. This issue will be adjudicated later during the building permit review. The R-10 district specifically calls out this issue and that is another reason why it is the right district for this location.

6. A rezone needs to be compatible in scale with the adjacent properties. The special limitation helps with compatibility. The Hillside was zoned with more residential density further down the hill and less density at higher elevations. This encourages a greater proportion of future growth to occur in the lower Hillside. The R-10 district is appropriate because of the geographical features affecting the site. The R-10 district determines minimum lot sizes by the average slope of each lot, which helps protect sensitive environmental features and reduces the likelihood water run-off issues.

B. The Commission recommends approval of the rezone, subject to a special limitation to restrict the district's total number of lots to 23.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission on the 11th day of June 2018.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 9th day of July, 2018.

Michelle J. McNulty, AICP
Secretary

Tyler P. Robinson
Chair

(Case 2018-0052; Tax ID No. 017-073-06, 017-073-05, and -06)

EXHIBIT G

Municipality of Anchorage
Planning Division
4700 Elmore Rd.
Anchorage, AK 99507

Project Name: Lewis + Clark Re-Zone Case No.

Meeting Type. ☐Concept ☒Pre-Application ☐Post-Application ☐Other

Meeting Requested by: Tom Dreyer - 54 Date 2-12-18
Lead MOA Planner: Francis M Time 2:00 pm

	NAME (please print)	COMPANY	PHONE	E-MAIL
1	Ryan Yelle	MOA - Planning	343-7935	YelleRJ@muni.org
2	Francis McLaughlin	MOA Current Planning	343-8003	mclaughlinf@muni.org
3	CHRIS SCHUTTE	MOA - OECD	343-7144	SCHUTTEC@MUNI.ORG
4	Carol Wong	MOA - LR Planning	343-7120	wongcl@muni.org
5	Tom Brownson	Big Country	406-0792	tombr@bigcountry.com
6	Tom Dreyer	54 Group	227-1847	tom@54nl.com
7	Dave Whitfield	MOA - Planning	8325	whitfieldd@muni.org
8	BRANDON TELFORD	MOA - PRIVATE DEVELOPMENT	343-8443	TELFORDBS@MUNI.ORG
9	RANDY RISSEL	MOA - TRAFFIC	343-8415	RISSELR+@MUNI.ORG
10	Jason Moncrieff	MOA - Priv. Dev.	343-8310	Moncrieffjm@muni.org
11				
12				
13				
14				
15				
16				

Notes:

MUNICIPALITY OF ANCHORAGE
Community Development Department/Planning Division
4700 Elmore Road, Anchorage, AK 99502
Phone: 907-343-7901; Fax: 907-343-7927

Pre-Application Meeting Checklist

Project Name: Lewis + Clark Re-Zone Meeting Date: 2-12-18

☐ Concerns raised at Community Meeting:

☑ Zoning/Platting: Justify R-10 in application

☐ AWWU:

☐ Building Safety:

☐ DOT&PF:

☐ Fire:

☐ Health Department:

☑ Long Range Planning: Address HRP in application

Non-motorized Coordinator: ____

☐ OSWW: ____

☐ Parks and Rec: ____

☒ Private Development: No comment, except that road review for the Subdivision agreement is continuing.

☒ Traffic: No comment unless the location of future roads change

☐ Watershed Management: ____

☐ Other: ____

☐ Other: ____

☐ Other: ____

EXHIBIT H

Land Surveying
Land Development Consultants
Subdivision Specialists
Construction Surveying

124 E 7th Avenue, Anchorage, Alaska 99501 www.S4AK.com 907-306-8104

Summary of Community Meeting

Date: 2/28/2018 at the HCC meeting.
Location: O'Malley Elementary School
Subject: Proposed Lewis & Clark R-10 Subdivision

251 mailers were mailed out on 1/31/2018 by first class mail. Presentation provided by S4 Group to provide information and take questions and comments from meeting attendees. There were approximately 30 attendees. Presentation began at approximately 8:43 PM and questioning was completed at approximately 8:55 PM. An invitation was extended for any additional questions to be sent to the S4 Group, LLC. The following is a brief summary of the questioning and discussion:

1) Steve MacDonald – 13130 Jeanne Road (1.03 Acre Lot – R-9 Zoning)
    a. Question: What is the slope of the property?
    b. Response: Slopes of the property vary from approximately 8% to 30%, with the majority of the property being between 9 – 10% to 15%.
2) Unknown Neighbor –
    a. Question: Was this issue brought before this Community Council before?
    b. Response: No. This particular piece of property has been brought before this Community Council, but this is a completely different application for a completely different request.
3) Marc June – 8801 Upper DeArmoun Road (1.14 Acre Lot – R-8 Zoning)
    a. Question: Was the R-6 rezone denied?
    b. Response: It was not approved
4) Tom Dreyer provides contact information for additional questions / comments that might arise.
5) Joan Priestley – 13101 Jeanne Road (1.13 Acre Lot – R-6 Zoning)
    a. Question: You have an R-8 Plat. Has that been abandoned?
    b. Response: The Plat and the Rezone Application are separate paths.
    c. Question: You had 20+ acres of open space set aside in R-8 Plat. Will you have that in the R-10?
    d. Response: This application is for a rezone to R-10. Those types of questions would be addressed at the platting level.
6) Bruce Vergason (HCCC Chair) indicates 2-minute warning because of time limit strictly enforced by O'Malley Elementary School.
7) Joan Priestley – 13101 Jeanne Road (1.13 Acre Lot – R-6 Zoning)
    a. Question: How many lots are you contemplating?
    b. Response: The number of lots would be judged by the slope of the lot. It could be between 5 and 45 depending on several factors.
8) Mark Morrison – 8600 Spendlove Drive (1.03 Acre Lot – R-6 Zoning)
    a. Question: Can you change the grade with a bulldozer to make it flatter?
    b. Response: No. There are several requirements for slope basis determination as well as requirements for clearing.
9) Bruce Vergason indicates that meeting has to be closed. He says that HCCC can invite S4 Group back to a future meeting and reminds that additional questions that may arise can be directed to the S4 Group. Meeting adjourned at 8:55 PM.

Thank you,
Tom Dreyer, PLS, S4 Group

Marc June

From: Marc June <junelawyer@cs.com>
Sent: Thursday, March 01, 2018 9:30 AM
To: tom@s4ak.com
Cc: Marc June
Subject: FW: Lewis and Clark Subdivision

Hello Mr. Dreyer,

Am resending this because of no response to my last email.

Wanted to ask you last night about whether, practically speaking, the same number of lots is ultimately being envisioned or a different number.

Also wanted to ask why you believe the Rezone Application is not precluded by Ordinance 21.03.160.D.10

Would appreciate your response to the above questions as well.

Thanks,

Marc June

From: Marc June [mailto:junelawyer@cs.com]
Sent: Monday, February 26, 2018 9:28 AM
To: 'tom@s4ak.com' <tom@s4ak.com>
Cc: Marc June (Junelawyer@cs.com) <Junelawyer@cs.com>
Subject: Lewis and Clark Subdivision

Hello Mr. Dreyer:

Am not understanding reasoning behind most recent rezone application as I believed you were proceeding forward with Plat as approved by Platting Board and further rezone application precluded by Title 21 for 2 years from date of denial.

Could you please send the proposed R10 rezone and any supporting materials for review prior to 2/28 Community Council meeting?

Has R-10 Rezone application been filed?

Has Pre-Application meeting been held?

Thank you for consideration.

Marc June

May 14, 2018

Municipality of Anchorage, Planning Department
Attention: Francis McClaughlin,
4700 Elmore Road
Anchorage, AK 99507

Re: Lewis and Clark Proposed R-10 Subdivision
Case No. 2018-0052

Dear Mr. McLaughlin:

I am a homeowner at 8801 Upper Dearmoun, land directly across from the proposed Lewis and Clark Subdivision.

This is Petitioners' third rezone application. Like the others, it seeks rezoning to avoid the 4 acre minimum lot requirements of the existing R-8 zoning and create 1.25 and 2.5 acre lots. Because Petitioners' last rezone application was denied in July, 2017, Ordinance 21.3.160.D.10 bars rezoning for 2 years as a matter of law. Because Petitioners have failed to establish that R10 rezoning is necessary to make development feasible and failed to provide the information necessary to meet the criteria required by Ordinance 21.03.160, the application must be denied.

Three Previous Rezoning Rejections

Beginning shortly after their purchase of the land at a price reflecting the minimum 4 acre lot requirements of the existing R-8 zoning, Petitioners over the last 4 years have been repackaging their same development plan. Each application seeks permission for smaller lots substantially less than 4 acres, an increased number of lots, and envisions stacking the smallest lots along Upper Dearmoun Road. Proposed lots have been as small as an acre in size.

In 2014, Petitioner applied for R-6 rezoning with 32 lots. Planning Department Staff recommended that the application be denied and the application did not gain a single supporting vote from the Planning and Zoning Commission. Specific factual findings included the fact that increased housing density on this site was unnecessary, (Finding of Fact 1), most of the property has marginal to impermeable soils (Finding of Fact 2), and the rezoning request was inconsistent with the Hillside District Plan requirement that current zoning to be maintained (Finding of Fact 5). Because there was no support at the Assembly level for the rezone application, Petitioners' appeal to the Assembly appeal was denied by being tabled indefinitely.

In 2017, Petitioners filed a second rezoning application under New Title 21 from R-8 to R-6SL, this time with 30 lots. Without explanation, the Planning Department assigned a new staff member who, since that time, has championed every proposal submitted by Petitioners and never acknowledged, or attempted to reconcile prior staff's negative recommendation. When this second application was denied by the Planning and Zoning Commission, new staff filed a request for rehearing to permit 24 lots. In July, 2017, the application was denied by the Planning and Zoning Commission for the third time.

Most recently, the Petitioners, with the support of the same Planning Department staff member, obtained Platting Board approval of an Ordinance 21.08.070 Conservation Subdivision plat for 16 lots, with the median average size of 2.16 acres and the smallest lot 1.16 acres. Another adjoining landowner has appealed this approval and, through the grapevine, the word is that this rezone application is in response to this exercise of Municipal Code due process rights.

R-10 Rezoning Application

Permitting rezoning this fourth time requires finding that the Planning and Zoning Commission was wrong by a lot-- not just once, but 3 separate times. Just like the past applications, this R-10 rezoning application is for the purpose of allowing smaller lots of 1.25 and 2.5 acres below the 4 acre minimum size required by existing R8 zoning depending on slope. If a Construction Subdivision is again proposed, lot sizes could potentially be even much smaller.

Unlike the 3 previously occasions when rezoning was denied, this rezoning application, itself, provides no indication as to the number of lots. In a 12 minute community meeting, the Petitioners represented this number to be between 5 and 45 lots with no response to subsequent emails. Without this information, the Commission cannot make the necessary findings for rezoning.

Finally, this 4th request for rezoning makes no reference to the Platting Board's approval of a 16 lot subdivision, whether Petitioners intend to continue proceeding with this approved plat, or the reasons for proceeding with 2 simultaneous development projects. Without this important information, the Commission cannot make the necessary findings for rezoning.

One would normally expect this information to be provided through the Community Council process, in this case the Hillside Community Council. In this case, however, Petitioners Bruce Vergason and Todd Brownson serve on the Hillside Community Council Board and their presentation was scheduled for the end of the March meeting. The presentation ended at Mr. Vergason's direction after 12 minutes. Followup emails to Petitioners' representative, Tom Dreyer at the S4 group were not returned. The

following meeting of the Hillside Community Council was cancelled. Petitioners never advised as to how their conflict of interest between being Petitioners and being Board members would be addressed.

Requests for further information from Planning Department Staff also did not provide further information. While Staff was unable to provide an example of another rezoning application in which a preliminary plat setting forth the number of lots was not provided, it is Staff's position that this is not required. According to Staff, there have been no prior R10 rezone applications, at least within the last 2 years. Staff also could not provide an example of another instance in which the Planning Department recommended denial of an R8 rezone application. With the history of 3 previous denials of rezoning, the Commission cannot make necessary findings to support rezoning with this history.

The R10 rezone application continues the previously rejected argument that rezoning is justified because some adjoining landowners occupy 1 acre lots. In doing so, Petitioners continue to ignore the fact that these lots were subdivided in the 1970's before there was meaningful zoning, that R8 zoning was adopted in recognition that these smaller lot sizes were a mistake, and that they were aware of these facts when they purchased the land.

Petitioners also argue that rezoning is somehow suggested by the Anchorage 2040 Land Use Plan. The 2040 Land Use Plan makes clear on page 32 that the Hillside District Plan controls. Page 36 further states that the requirements of the 2040 Land Use Plan are "subject to the Hillside District Plan."

Similarly, the R10 rezone application continues Petitioners' practice of relying on maps within the Hillside District Plan to argue that, notwithstanding R8 zoning, densities shown are 0-1 Dwelling Units per Acre (DUA). Once again, this is not the case and the maps do not even reference R8 zoning. Instead, HDP Policy 1-A states that it is intended to:

> Encourage a greater proportion of future Hillside growth to occur in the lower Hillside, in areas located closer to existing services and infrastructure; to a limited degree reduce the amount of future development in the southeast Hillside.

HDP Policy 1-B also specifically establishes that the Policy is to:

> Maintain policies for the amount of development as allowed under current land use designations.

In short, per the Hillside District Plan, existing R8 zoning is to be maintained.

Reasons for Denial

Objections to the past rezoning applications consistently focused on the smallest lots being stacked along the Upper Dearmoun Road boundary, the substandard condition of Upper Dearmoun Road with an absence of adequate shoulders for a collector road, the dangers resulting from increased traffic, the unsuitability of large areas of the tract for development, and the specific statements within the 2010 Hillside District Plan that existing zoning was to be maintained with larger lot zoning in the areas closest to Chugach Park. With these conditions remaining, the R10 rezoning applications does not address these objections.

1. Ordinance 21.3.160.D.10 requires denial.

After a rezone application is denied, Ordinance 21.03.160.D.10 imposes a 2 year waiting period on new applications for substantially the same rezoning. Attempts to suggest that R-10 rezoning is different from rejected past R-6 rezoning application fail because the purpose of each application has been to achieve the identical goal of lot sizes below 4 acres with lot sizes of 2.5 acres, 1.25 acres and even smaller if a Construction Subdivision is attempted.

With Petitioners' most recent denial occurring in July, 2017, no further rezone application can be considered until July 2019 as a matter of law. To the extent that Petitioner disagrees, this pure question of law can only be resolved by court decision.

2. Per Ordinance 21.04.020.P, R10 zoning is inappropriate.

Ordinance 21.04.020.P states that R10 zoning is intended only for "those areas where natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development.

The rezone application makes no attempt to argue why R10 zoning is required. When the Platting Board has approved a plat under existing zoning, R10 zoning is not necessary for development a conclusion not changed by another landowner exercising appellate rights under the Municipal Code.

3. Petitioner has not established each Approval Criteria required by Ordinance 21.3.160.E.

In order to grant the application for R-10 rezoning, the Commission is required to find that the Application satisfies all approval criteria set forth in Ordinance 21.3.160.E. Because the application does not address the number of lots or provide other necessary information, this cannot be done.

Ordinance 21.03.160.E.1 requires a finding that rezoning be in the best interests of Anchorage and promote the public health safety, and general welfare. The representation that Petitioners have suggested there could be as many as 45 lots provides further proof that this criterion has not been met. Together with the history of 3 rezoning denials based on the number of lots, this cannot be done.

Ordinance 21.03.160.E.2 requires a finding of compliance with the comprehensive plan. In that regard, the 2040 Land Use Plan specifically identifies this neighborhood on Map 1-2 as an area of little housing growth. The Land Use Plan has a specific Goal 7 of making any rezoning compatible with existing zoning, i.e., R-8, and expressly states on page 75 that it is not a recommendation for rezoning. If Petitioners believed that R10 rezoning complied with the 2040 Land Use Plan and could truly justify R-10 rezoning, Petitioners would be addressing how 1.25 acre lots are compatible with the existing R8 zoning requirements of 4 acre lots, how storm water evaluation is being conducted (as required by Goal 5-6 at page 88), and how the necessary Upper Dearmoun Road infrastructure will be provided, as required on page 72 of the 2040 Land Use Plan. Because the application makes no attempt to address these issues, it is not possible to find that these criteria have been met, and the application must be denied. If seriously considered, the proposed rezoning would require amendment of the Hillside District Plan, iteself.

Ordinance 21.03.160.E.3 requires that rezoning be consistent with the purpose of existing R8 zoning. With the purpose of the rezone being to change minimum 4 acre minimum lot sizes down to 2.5 acres, 1.25 acres, and possibly even smaller lots, this criterion has not been met.

Ordinance 21.03.160.E.5 requires that roads be capable of supporting the new uses while maintaining adequate levels of service to existing development. With all parties recognizing the substandard condition of Upper Dearmoun Road and Petitioners seeking as many as 45 individual lots, this criterion has not been met.

Ordinance 21.03.160.E.7 requires that rezoning not result in adverse impacts upon adjacent land uses. With Petitioners not identifying the number of lots they seek, but representing that it may be as many as 45, this criterion has not been met. 45 new homes relying upon an existing substandard road is absolutely an adverse impact.

Ordinance 21.03.160.E.8 requires that the rezone not extend or exacerbate a land use pattern that is inconsistent with the comprehensive plan. With the purpose of R8 zoning in the first place being recognition of that 1 acre lots were unreasonable, this cannot be done. If anything, rezoning this parcel will lead to rezoning of other uphill parcels in the neighborhood, creating a domino effect. With Petitioners making no effort

to distinguish the effect of their rezone application on future rezone applications of these parcels, this criterion has not been met.

Conclusion

The Landowner simultaneously pursuing Platting Approval and Rezoning is inappropriate. This R10 Rezone application should be denied as barred by 21.3.160.D, unnecessary for feasibility of development as required by Ordinance 21.04.020.P, and for failing to establish compliance with each of the necessary criteria required by Ordinance 21.3.160.E. Ultimately, the application simply rehashes previously rejected arguments, with no attempt to address the status of the currently pending Conservation Subdivision Plat.

Very truly yours,

Marc W. June

MWJ/wws
cc: David Whitfield

EXHIBIT I

ASHBURN & MASON P.C.

LAWYERS

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

May 25, 2018

Via U.S. and Electronic Mail:

Francis McLaughlin
Municipality of Anchorage
Planning Department
4700 Elmore Road
Anchorage, Alaska 99507
McLaughlinFD@ci.anchorage.ak.us

Re: Lewis and Clark Proposed R-10 Rezone Subdivision
Case No. 2018-0052

Dear Mr. McLaughlin:

Our firm represents the petitioner in this matter. In his letter of May 14, 2018 to you, Marc June raises a legal question that should be addressed by the director in advance of the scheduled public hearing scheduled for June 11, 2018. Below, I outline the reasons I believe his legal objections are misplaced, but note that the issue for interpretation is for the director to decide. It will lead to a far better and more focused hearing on the 11th if this interpretation is provided to the Commission, rather than have it as a matter of debate at the hearing itself.

AMC 21.14.010.A provides:

> A. *General.* The director has final authority to determine the interpretation or usage of terms used in this title, pursuant to this section. Any person may request an interpretation of any term by submitting a written request to the director, who shall

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

> respond in writing within 30 days. The director's interpretation shall be binding on all officers and departments of the municipality.

Mr. June suggests that AMC 21.03.160.D.10 precludes this application for a rezone to R-10 from being considered. That provision provides:

> *Waiting period for reconsideration.* Following denial of a rezoning request, no new application for the same or substantially the same rezoning shall be accepted within two years of the date of denial, unless denial is made without prejudice.

Mr. June argues that because the Commission recommended against granting the application in the rezone to R-6 S, that the petitioner should be barred from applying for a R-10 rezone. However, Mr. June is wrong for 2 reasons: (i) the prior application was never denied as the petitioner never advanced the request to the Assembly, which is the entity with legal authority to approve and deny the rezone application; and (ii) the R-10 zone is not the "same or substantially the same" zoning as the R-6 zone.

As an initial matter, the interpretation that the denial refers to the action by the Assembly is consistent with the prior provision under the "Old Code." AMC 21.20.080 – provided:

> **Waiting period for reconsideration.** Neither the planning and zoning commission nor the assembly may consider or approve a zoning map amendment if it is substantially the same as any other zoning map amendment initiated within the past 12 months and not approved by the assembly. (Emphasis added).

Clearly under the Old Code a petitioner who received a negative recommendation from the Commission could elect not to advance the request to the Assembly and educated by the proceeding below, submit a new application. That application would not be barred by the waiting period by the clear language of the Old Code. The new language, although worded more simply, does not reflect the intent to depart from this practice, although the waiting period was extended to 2 years.

The language of AMC 21.03.160.D.10, fairly read, addresses the time as running from the "date of denial." The action of the commission is not a denial. The Planning Commission can *recommend* "denial" but only the Assembly has "denial as one of its options for resolution. [1] So that interpretation is the better one both as a matter of precedent and interpretation.

As a matter of this particular application, the R-10 zone is not "the same or substantially the same" rezoning and this determination is within the discretion afforded the Department. The only arguable similarity is both are rural zones. But that is not the litmus test applied by the ordinance, which requires zones be "substantially the same." The R-6 SL applied for in the prior 2017 rezone attempt relied upon the R-6 minimum lot size of one acre per du and provided specific proposed lot layouts for a 30 lot subdivision. The R-6 zone allows single and two family housing.[2] By contrast the R-10 zone is specifically intended to address the "natural physical features and environmental factors such as slopes, alpine and forest vegetation, soils, slope stability, and geologic hazards require unique and creative design for development."[3] Table 21.04-2 dictates a range of lot sizes from 1.25 acres to 7.5 acres depending on the average slope and specific lot coverage and lot width requirements. The R-10 district only allows single family housing. [4]

These are distinct and significant differences that merit an interpretation that an R-6 SL rezone is not the same as an R-10 rezone.

---

[1] AMC 21.03.160.D.7.c ("If the commission recommends denial ...) and under AMC 21.03.160.D.8.c, "denial" is one of the three options available to the Assembly. Although an application that is not appealed to the Assembly is deemed" disapproved," it is significant, that that "denial" and not "disapproval" is the operative language at issue here. If disapproval was intended to be the operative word, it would have been a simple matter to use the same word choice in making the start of the waiting period, such as the "later date of disapproval or denial".

[2] AMC 21.40.020.L

[3] AMC 21.40.020.P

[4] Table 21.05-1

Although AMC 21.14.010 allows up to 30 days for an interpretation, it is requested that this interpretation be submitted in advance of the hearing so the Commission can focus on the pertinent matters before it and not be distracted by this issue. I apologize that we have not made this request earlier, but I only recently became aware of Mr. June's letter. Our assumption is that staff had already made this determination as the pre-application conference would have typically flagged these issues if there was any controversy.

We appreciate your time and request this question be forwarded to the director for resolution.

Sincerely,

ASHBURN & MASON, P.C.

Donald McClintock

June 11, 2018

Municipality of Anchorage, Planning Department
Attention: Francis McClaughlin,
4700 Elmore Road
Anchorage, AK 99507

Re: Lewis and Clark Proposed R-10 Subdivision
Case No. 2018-0052

Dear Mr. McLaughlin:

On Friday, June 8, (possibly over the weekend) you provided additional materials to the Planning and Zoning Commission: previously undisclosed May 25 Developer lawyer correspondence requesting Planning Director agreement that their rezoning application not be barred by AMC 21.03.160.D.10's mandatory 2 year Waiting Period and your June 11 memo initialed by the newly-hired Planning Director granting the request. This last minute filing with no notice highlights the Developer's noncompliance with Title 21's community meeting requirements, the Planning Department's bias/lack of objectivity re the rezoning application, and AMC 21.03.160.D.3's mandatory 2 year Waiting Period barring the rezone application.

Failing to disclose the May 25 correspondence prejudices the public in violation of Due Process rights and, based on past history, appears intentional. Since the original Planning Staff was reassigned, there has been a pattern of Staff not being neutral professionals and, instead, advocating the Developer's position.

This letter is my attempt to respond. The Developer's arguments are belied by the history of rezoning rejections, the history of Title 21, the language of AMC 21.03.160.D.10, and applicable law.

Denial of Rezoning Due to Non-Compliance with Title 21 Procedures

AMC 21.03.160.D.3 requires a Community Meeting before filing a rezoning application. In this case, the "meeting" lasted 12 minutes before terminated by the Developers acting as Hillside Community Council officers.

I have repeatedly raised the issue of the prior Denial, not just in the 12 minutes Community Meeting but also in February 26 and March 1 emails to the Developer before and after the meeting. The Developer chose not to respond. See attached meeting minutes and emails. My May 14 correspondence raised the Denial issue a 4th time. Despite doing

so, the May 25 Staff Report, filed on the same date as the Developer's undisclosed correspondence was received, ignores the issue.

As conceded by the Developer, the 2 year Waiting Period as well as the number of estimated lots should have been addressed in the mandatory Title 21 Pre-Application Conference. However, Staff provides no materials indicating whether the conference even occurred, let alone whether the 2 year Waiting Period was discussed, or subsequent communications between Planning Department Staff and the Developer on the issue.

With the mandatory Community Meeting lasting only 12 minutes and issues as to whether there was compliance with Title 21's mandatory Pre-Application Conference, the rezoning application must be denied.

Rezoning Barred by AMC 21.03.160.D.10's Mandatory 2 Year Waiting Period Following Denial

The Developer's lawyer is correct that whether AMC 21.03.160.D.10's mandatory 2 year Waiting Period following Denial is purely a legal question. Just because the question can only be definitively answered by a court does not mean that the Commission should not make best efforts to answer the question correctly.

This is the Developer's 4th rezone request, with the most recent request denied in July, 2017. Each rezone request raised the identical issue: Will zoning be changed to allow lot sizes less than R8 zoning's required minimum 4 acre lots, an increased number of lots, and greater density. Lawyer arguments cannot change this conclusion that, if not literally identical, this application is, at a minimum, "substantially the same."

The Developer also cannot change this conclusion by not providing a preliminary plat or being specific about plans for size and number of lots. At the 12 minute Community Meeting, the Developer stated that lots would be 1.25 -2.5 acres depending on slope with as many as 45 lots. Relabelling the rezone request as an R-10 rezone subject to later platting does not change these facts, something emphasized by your emails stating there to have been no R-10 rezones or applications where the developer did not disclose the anticipated number of lots, whether by preliminary plat or otherwise. See attached e-mails.

Beyond the rezoning issue being identical, there is no legal basis for arguing that the AMC 21.03.160.D.10 Waiting Period can only be triggered by Assembly action. Ordinances are construed according to reason, practicality, and common sense. Unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, terms are construed according to their plain meaning and purpose. See Young v. Embley, 143 P.3d 936, 939 (Alaska 2006). The plainer the language, the more convincing contrary legislative history must be. In adopting new Title 21, the Assembly was fully aware of the procedures of the existing Title 21. Burke v. Raven Elec., Inc., 2018 WL 2173938 (June 6, 2018).

By eliminating the Waiting Period's reference to Assembly action, the Assembly intended to eliminate past abuses by Developers who, after testing the waters on an initial rezone application, would not appeal to the Assembly and, after the membership of the Commission or Assembly had changed, resubmit the same applications with different labels.[1] The Assembly corrected this abuse by deleting references to the Waiting Period only being triggered by Assembly action.

To the extent that the Developer chooses to rely on the newly hired Planning Director initialing Staff's memo, no deference is given to administrative interpretations conflicting with the plain meaning of an ordinance. Muller v. BP Expl. (Alaska) Inc., 923 P.2d 783 (Alaska 1996). To the contrary, courts presume that amendments to unambiguous laws indicate a substantive change. Kodiak Island Borough v. Exxon Corp., 991 P.2d 757 (Alaska 1999). Kodiak Island Borough v. Exxon Corp., 991 P.2d 757, 761 (Alaska 1999). The Developer's admission that AMC 21.03.160.D.10 was amended to omit reference to the Assembly demonstrates that the application is barred by the 2 year mandatory waiting period.

If the Developers wanted to repackage their previously rejected application again, the Developer should have asked that the July, 2017 denial be specifically "without prejudice" as allowed by AMC 21.03.160.D.10. Because they did not do so, the 2 year Waiting Period bars rezoning.

Please make certain Planning Director and the Planning and Zoning Commission is made aware of this response before tonight's hearing.

[1] Avoiding the mandatory Waiting Period under old Title 21 was the reason that the Developer did not oppose its being indefinitely tabled so that its second, unsuccessful rezone application would not be barred by the prior version of the Waiting Period, something that was explained to both parties at the time.

Very truly yours,

Marc W. June

cc: Michelle McNulty; Don McClintock

From: "McLaughlin, Francis D." <McLaughlinFD@ci.anchorage.ak.us>
To: "'Donald W. McClintock'" <don@anchorlaw.com>, "'Heidi A. Wyckoff'" <heidi@anchorlaw.com>
Cc: "'Becky Lipson'" <becky@anchorlaw.com>
Bcc:
Date: Thu, 31 May 2018 17:35:25 +0000
Subject: RE: Lewis & Clark Proposed R-10 Rezone Subdivision

Heidi, Don, and Becky,

Attached is a short memo from the Planning Dept to the Planning and Zoning Commission clarifying that previous rezones at the Lewis and Clark site were not denied. Therefore, the new rezone case may proceed.

It's easy to get the old code and new code confused. The first rezone case was submitted under the old code. The last rezone and the latest one were submitted under the new code.

Francis

Francis McLaughlin

Planning Department

343-8003.

From: "Donald W. McClintock" <don@anchorlaw.com>
To: "McLaughlin, Francis D." <McLaughlinFD@ci.anchorage.ak.us>, "Heidi A. Wyckoff" <heidi@anchorlaw.com>
Cc: Becky Lipson <becky@anchorlaw.com>
Bcc:
Date: Fri, 25 May 2018 22:19:18 +0000
Subject: RE: Lewis & Clark Proposed R-10 Rezone Subdivision

Thank-you for your quick attention.

Have a great weekend.

Don

Donald W. McClintock

Ashburn & Mason, P.C.

1227 W. 9th Ave. Ste. 200

Anchorage, AK 99501

(907) 276-4331 (voice)

(907) 277-8235 (fax)

www.ashburnandmason.com

. . . .

From: McLaughlin, Francis D. [mailto:McLaughlinFD@ci.anchorage.ak.us]
Sent: Friday, May 25, 2018 1:52 PM
To: Heidi A. Wyckoff
Cc: Donald W. McClintock; Becky Lipson
Subject: RE: Lewis & Clark Proposed R-10 Rezone Subdivision

Thank you for this. I'll have the director sign a memo defining that this application is substantially different from previous application to put this question to rest. Also, the PZC meeting will be on June 11, not what I said in my previous email.

Francis

Francis McLaughlin

Planning Department

343-8003

. . . .

From: "McLaughlin, Francis D." <McLaughlinFD@ci.anchorage.ak.us>
To: "'Heidi A. Wyckoff" <heidi@anchorlaw.com>
Cc:
Bcc:
Date: Fri, 25 May 2018 19:31:19 +0000
Subject: RE: Lewis & Clark Proposed R-10 Rezone Subdivision

Hi Heidi,

Planning agrees that the R-10 is a different rezone application than previous ones. Many of Mr. June's statements are misinterpretations of municipal code, not just this one. Planning would not have accepted and processed the latest rezone application if it was substantially the same as the previous ones. I will make this clear to PZC at the June 4th meeting. In short, this is a "no brainer", but thank you for the well written explanation and articulation of the correct interpretation of code. I will include your comments in the rezone packet for PZC.

Thank you,

Francis

Francis McLaughlin

Planning Department

343-8003

From: Heidi A. Wyckoff [mailto:heidi@anchorlaw.com]
Sent: Friday, May 25, 2018 11:20 AM
To: McLaughlin, Francis D.
Cc: Donald W. McClintock ; Becky Lipson
Subject: Lewis & Clark Proposed R-10 Rezone Subdivision

Mr. McLaughlin: Please find attached correspondence from Donald McClintock. The original follows via U.S. mail.

Heidi Wyckoff

Ashburn & Mason, P.C.

1227 W. 9th Ave. Ste. 200

Anchorage, AK 99501

(907) 276-4331 (voice)

(907) 277-8235 (fax)

www.ashburnandmason.com

Supporting and Historical Information

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2015-026

A RESOLUTION RECOMMENDING DENIAL OF THE REZONE OF APPROXIMATELY 72.66 ACRES FROM R-8 (RURAL RESIDENTIAL – LARGE LOT) DISTRICT TO R-6 (SUBURBAN RESIDENTIAL – LARGE LOT) DISTRICT FOR PROPERTY DESCRIBED AS 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 2, VERGASON-JONES SUBDIVISION (PLAT 98-178); GENERALLY LOCATED SOUTH OF UPPER DE ARMOUN ROAD, WEST OF CANYON ROAD AND EAST OF MESSINIA STREET, IN ANCHORAGE.

(Case 2014-0219; Parcel ID Nos. 017-073-06 and 017-074-06)

WHEREAS, a request was received from Big Country Enterprises, LLC, to rezone approximately 72.66 acres from R-8 (rural residential – large lot) district to R-6 (suburban residential – large lot) district for property described as 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 2, Vergason-Jones Subdivision (Plat 98-178), generally located south of Upper De Armoun Road, west of Canyon Road and east of Messinia Street, in Anchorage; and

WHEREAS, public hearing notices were published, posted, and mailed, and a public hearing was opened on April 6, 2015; and

WHEREAS, all present wishing to testify had the opportunity to address the Commission on April 6, 2015; and

WHEREAS, the Chair, having called for anyone else wishing to testify and hearing no response, closed the public hearing on April 6, 2015; and

WHEREAS, the case was continued to the June 1, 2015 meeting at which time the Commissioners deliberated and decided the matter before the Commission.

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

A. The Commission makes the following findings of fact:

1. The request before the Commission is to rezone a 72.66-acre parcel and Lot 2, Vergason-Jones Subdivision from R-8 (rural residential – large lot) district that requires a minimum five acre lot size, to R-6 (suburban residential – large lot) district that requires a minimum 1.25 acre minimum lot size.

2. The Commission addressed the need for more housing in Anchorage, but found that an increase in density does not need to happen on this particular site with the proposed R-6 zoning. The 2012 Housing Study found that there is a need for more housing in Anchorage; however the

results of the study determined that there was an oversupply of large lot zoned land for single-family residential development. What the Anchorage community does not have enough of is small lot development served by public utilities and services.

3. The Commission could not support the rezone request based on the soils tests that were submitted and the comments from On-Site Services that some of the lots will not be able to support on-site septic systems. Soils tests have been performed, and the soils report indicates that most of the property has marginal to impermeable soils.

4. The Commission referenced comments from On-Site Water and Wastewater Services that stated further research on the dry drainageways is needed to determine if there is surface water, as septic tanks and drainfields are required to be at least 100 feet from surface water. There are elevated nitrates in neighboring wells and a nitrate study will be required prior to development of a subdivision.

5. The *Hillside District Plan*, which is the guiding comprehensive plan for this property, doesn't indicate that the rezone is inconsistent with the Land Use Plan Map in terms of density. However, one of the policies in the *Hillside District Plan* indicates that the same land use designations should be maintained in this area as were established prior to the beginning of this plan. In that respect, the rezone is not consistent with the *Hillside District Plan.*

6. From a general point of view, this proposal is not necessarily a good urban plan. It is not necessarily good to expand the low-density sprawl in the community throughout the Hillside. What is needed is more compact development concentrated near employment centers as the comprehensive plan recommends.

7. Adding more housing to the Hillside is clearly a risk with respect to the groundwater and the flow into Rabbit Creek. It would add more vehicle trips onto a substandard street which is strip paved without shoulders or sidewalks. This is not the right proposal at this particular site.

8. The issue is that this property is in an area where there are lots that are the same size as what is proposed to be developed with this rezone petition. However, those lots were platted and developed prior to the implementation of the current zoning. If the adjoining property were to be zoned today, the zoning would be reconsidered as public testimony has proved that there are some problems with some of those smaller lots.

9. With the R-8 zoning it is less likely that problems will be created with larger lot development in a fragile environment, and the R-8 zoning is the most appropriate zoning for this particular area.

B. The Commission recommends DENIAL to the Anchorage Assembly that approximately 77.62-acres be rezoned from R-8 (rural residential - large lot) district to R-6 (suburban residential - large lot) district by a vote of 8 nays and 1 abstention.

DENIED by the Anchorage Planning and Zoning Commission on June 1, 2015.

ADOPTED by the Anchorage Planning and Zoning Commission this 6th day of July, 2015.

Jerry T. Weaver, Jr.
Secretary

J.A. Fergusson
Chair

(Case 2014-0219)
(Parcel ID Nos. 017-073-06 and 017-074-06)

mro

Submitted by: ASSEMBLY MEMBER JOHNSTON
Prepared by: Dept. of Law
For reading: February 23, 2016

POSTPONED INDEFINITELY 4-26-2016
NOTICE OF RECONSIDERATION WAS GIVEN BY MR. STARR 4-27-2016
RECONSIDERATION FAILED 5-10-2016

ANCHORAGE, ALASKA
AO No. 2016-28

AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING THE ZONING MAP AND APPROVING THE REZONING OF 72.66 ACRES OF LAND FROM R-8 (RURAL RESIDENTIAL - LARGE LOT) DISTRICT TO R-6 (SUBURBAN RESIDENTIAL - LARGE LOT) DISTRICT FOR PROPERTY DESCRIBED AS 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 2, VERGASON-JONES SUBDIVISION (PLAT 98-178); GENERALLY LOCATED SOUTH OF UPPER DEARMOUN ROAD, WEST OF CANYON ROAD AND EAST OF MESSINIA STREET, IN ANCHORAGE.

(Hillside East Community Council) (Planning and Zoning Commission Case 2014-0219)

WHEREAS, the Planning and Zoning Commission passed Resolution 2015-026 denying an application to amend the zoning map to rezone 72.66 acres located on the upper hillside from R-8 zoning district to R-6;

WHEREAS, pursuant to Anchorage Municipal Code (old code) section 21.20.100D, the applicant requested an ordinance approving the rezone be submitted to the Assembly for approval;

WHEREAS, Anchorage Municipal Code (old code) section 21.20.120A.3 authorizes the Assembly to approve the proposed ordinance with or without the addition of special limitations or other modifications;

Now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. The Assembly finds the recommended zoning map amendment described herein satisfies the criteria of Anchorage Municipal Code (old code) section 21.20.090 and is hereby approved. The zoning map shall be amended by designating the following described property as R-6 (suburban residential - large lot) district:

> 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 2, Vergason-Jones Subdivision (Plat 98-178)

Section 2. This zoning map amendment is subject to the following special limitations, which must be addressed by the Platting Board:

a) The issue of marginal to impermeable soils. (See AIM 137-2015, page 2, lines 1 through 9).

i) The Applicant shall submit to the Platting Board in its application that no lots will be platted for residential development that do not meet current codes in regards to well installations; and

b) The issue of on-site septic systems. (See AIM, page 2, line 7).

i) The Applicant shall submit to the Platting Board in its application that no lots will be platted for residential development that do not meet current codes in regards to on-site septic systems; and

ii) As a warranty against septic system failure, the Applicant shall establish a Trust Account funded at Ten Thousand Dollars ($10,000.00) per lot. In the event of a failure of any septic system within five (5) years of the septic systems construction, the Applicant will pay to the home owner from the Trust Account Fund up to Ten Thousand Dollars ($10,000.00) for the installation of an advanced waste management system; and

c) The issue of the number of permitted lots. (See AIM, page 2, lines 11 through 25).

i) The Applicant shall apply for a maximum of thirty (30) lots in this subdivision all of which shall meet current platting requirements.

d) The issue of surface water run-off. (See AIM, page 3, lines 17 & 18).

i) The Platting Board will require a drainage plan that will address down grade drainage appropriately.

ii) The Applicant will construct no residences closer than One Hundred feet (100') to any surface run-off area.

e) The issue related to the Hillside District Plan (See AIM, page 2, lines 27 through 32 and page 3, lines 10 through 15). The Hillside District Plan provides that "For the most part, retain the status quo in land use designations" (See page 2-1 of the Plan). Staff notes this same policy on page 3 of the AIM. The term "designation" is not used in Municipal Code. Instead the term "classification" is used to describe land uses. The classifications in code are residential commercial, industrial, commercial-industrial, environmentally sensitive land, mixed use and commercial recreation (See AMC 21.05.050-Land use classifications).

i) This project shall not provide for any change in the existing land use "classification" which is residential.

f) The issue of traffic and vehicle trips on adjacent roads as the result of approval of this application. (See AIM, page 3, Lines 18 & 19). Upper DeArmoun is classified as a neighborhood collector (See the Official Streets and Highways Plan, Appendix "A"). A neighborhood collector

"collects traffic from local streets and then conducts it to arterials or to local traffic generators..." (See OSHP page 6). A neighborhood collector is designed to handle 2,000 to 10,000 vehicles per day (See OSHP, page 10). The traffic volume on Upper DeArmoun is far less than the maximum for a neighborhood collector.

i) The Platting Board may require a traffic impact analysis if the Board determines that such an analysis is necessary and appropriate.

Section 3. This ordinance shall become effective 10 days after the Director of the Planning Department has received the written consent of at least 51 percent of the owners of the property within the area described in Section 1 above to any special limitations contained herein. The rezone approval contained herein shall automatically expire, and be null and void, if the written consent is not received within 120 days after the date on which this ordinance is passed and approved. In the event no special limitations are contained herein, this ordinance is effective immediately upon passage and approval. The Director of the Planning Department shall change the zoning map accordingly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2016.

_____
Chair of the Assembly

ATTEST:

_____
Municipal Clerk

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 219-2016

Meeting Date: March 22, 2016

From: ASSEMBLY MEMBER JOHNSTON

Subject: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING THE ZONING MAP AND APPROVING THE REZONING OF 72.66 ACRES OF LAND FROM R-8 (RURAL RESIDENTIAL - LARGE LOT) DISTRICT TO R-6 (SUBURBAN RESIDENTIAL - LARGE LOT) DISTRICT FOR PROPERTY DESCRIBED AS 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 2, VERGASON-JONES SUBDIVISION (PLAT 98-178); GENERALLY LOCATED SOUTH OF UPPER DEARMOUN ROAD, WEST OF CANYON ROAD AND EAST OF MESSINIA STREET, IN ANCHORAGE.

The Planning and Zoning Commission passed Resolution 2015-026 denying an application to amend the zoning map to rezone 72.66 acres located on the upper Hillside from R-8 zoning district to R-6. Pursuant to Anchorage Municipal Code (old code) section 21.20.100D, the applicant requested an ordinance approving the rezone be submitted to the Assembly for approval. AO 2015-102 was introduced along with AIM 137-2015, however both were "postponed indefinitely" on September 29, 2015. With the rezoning request being submitted to the Assembly now, AIM 137-2015 is appended here as a historical document because it is necessary to the overall understanding and also because it is referenced in the AO. The Planning Department's and the Planning and Zoning Commission's positions laid out in AIM 137-2015 are unchanged and attached hereto, including the PZC's resolution and packet related to the application.

I RECOMMEND ASSEMBLY CONSIDERATION OF THIS REZONE REQUEST.

Prepared by: Department of Law
Respectfully submitted: Jennifer Johnston, Assembly Member
District 6, South Anchorage

POSTPONED INDEFINITELY 9-29-2015

MUNICIPALITY OF ANCHORAGE
ASSEMBLY INFORMATION MEMORANDUM

No. AIM 137-2015

Meeting Date: September 29, 2015

From: Mayor

Subject: PLANNING AND ZONING COMMISSION DENIAL OF A REZONING APPLICATION AND THE APPLICANT'S REQUEST FOR ASSEMBLY CONSIDERATION OF THE ATTACHED DRAFT ORDINANCE AMENDING THE ZONING MAP AND APPROVING THE REZONING OF 72.66 ACRES OF LAND FROM R-8 (RURAL RESIDENTIAL – LARGE LOT) DISTRICT TO R-6 (SUBURBAN RESIDENTIAL – LARGE LOT) DISTRICT FOR PROPERTY DESCRIBED AS 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 2, VERGASON-JONES SUBDIVISION (PLAT 98-178); GENERALLY LOCATED SOUTH OF UPPER DE ARMOUN ROAD, WEST OF CANYON ROAD AND EAST OF MESSINIA STREET, IN ANCHORAGE.

The Planning Department recommended disapproval of an application to amend the zoning map, and the Planning and Zoning Commission denied the application by unanimous vote. Pursuant to Anchorage Municipal Code (old code) section 21.20.100D. the applicant requested the application be submitted to the Assembly. Accordingly, attached is a draft ordinance for consideration by the Assembly, the Planning and Zoning Commission's resolution denying the application and the packet presented to the Commission. To take action on the attached ordinance will require an Assembly sponsor.

The property owners of two parcels totaling 72.66 acres have submitted a request to rezone this property from R-8 (rural residential – large lot) district to R-6 (suburban residential – large lot) district (PZC Case 2014-0219). The property is located south of Upper De Armoun Road between Messinia Street to the west and Canyon Road to the east. The application included a proposed plat of a 32 lot subdivision that could be created under the R-6 zoning district. Under the R-8 district, a 14 lot subdivision could be developed.

On April 6, 2015, the Planning and Zoning Commission opened and closed the public hearing. Twenty people testified in opposition to the rezone petition. Due to time constraints and missing information, action on the case was postponed to the June 1, 2015, Planning and Zoning Commission meeting.

In the interim, missing maps from the wetlands report and a Soils Investigation Report prepared by Garness Engineering Group Ltd. were submitted. The soils report found that "the average slopes (of the property) range from 5 to 20 percent running generally from northwest to south east." Thirty-eight test holes were performed on the proposed subdivision. "The majority of the proposed subdivision has marginal to impermeable soils (soils that have a percolation rate of >120 minutes/inch) at a depth of four (4) feet." Several lots were determined to be unsuitable for onsite septic systems. The soils report summary is included in this packet; soil logs are available on request to the Planning Department.

A revised proposed plat under the R-6 district regulations was submitted that would allow for 32 lots with a minimum lot size of one acre; two wetland tracts were also proposed. Development under the R-8 district regulations would allow approximately 14 residential lots with a minimum lot size of four acres. An estimated 127% percent increase in density would result from rezoning the property to R-6.

The applicant asserts that one reason this rezone is appropriate is that subdivisions in the surrounding area have been developed with one acre lots. Review of adjacent subdivisions revealed that the development patterns were established prior to the implementation of the Areawide Rezoning Program for Area G-1. During the areawide rezoning in the 1980s, it was determined that the R-6 district was most appropriate for those areas which were already developed at a greater density even though the individual lot sizes did not meet the minimum 1.25-acre lot size required in the R-6 district. Property that was subdivided subsequent to the implementation of zoning has met the minimum lot size of the applicable zoning district.

As noted in the Planning and Zoning Commission's findings, excerpted below, the *Hillside District Plan* land use plan map does not differentiate between densities of less than one dwelling unit per acre, which includes both the R-6 and R-8 zoning districts. The plan does include Policy 1-C that states, "Maintain the same land use designations and zoning in this area [Central Hillside Residential] as were established prior to the beginning of this plan."

The Commission considered the information presented, both written and oral, and recommended denial of the petition to rezone the property from R-8 to R-6 finding that:

1. Soils tests have been performed and the soils report indicates that most of the property has marginal to impermeable soils.

2. Comments from On-Site Water and Wastewater Services stated further research on the dry drainageways is needed to determine if there is surface water as septic tanks and drainfields are required to be at least 100 feet from surface water.

3. There are elevated nitrates in neighboring wells and a nitrate study will be required prior to development of a subdivision.

4. The 2012 housing study found that there is a need for more housing in Anchorage; however the results of the study determined that there was an oversupply of large lot zoned land for single-family residential development. What the Anchorage community does not have enough of is small lot development served by public utilities and services.

5. The *Hillside District Plan*, which is the guiding comprehensive plan element for this property, doesn't indicate that the rezone is inconsistent with the Land Use Plan Map in terms of density. However, one of the policies in the *Hillside District Plan* indicates that the same land use designations should be maintained in this area as were established prior to the beginning of this plan. In that respect, the rezone is not consistent with the *Hillside District Plan*.

6. Adding more housing to the Hillside is clearly a risk with respect to the groundwater and the flow into Rabbit Creek. It would add more vehicle trips onto a substandard street which is strip paved without shoulders or sidewalks. This is not the right proposal at this particular site.

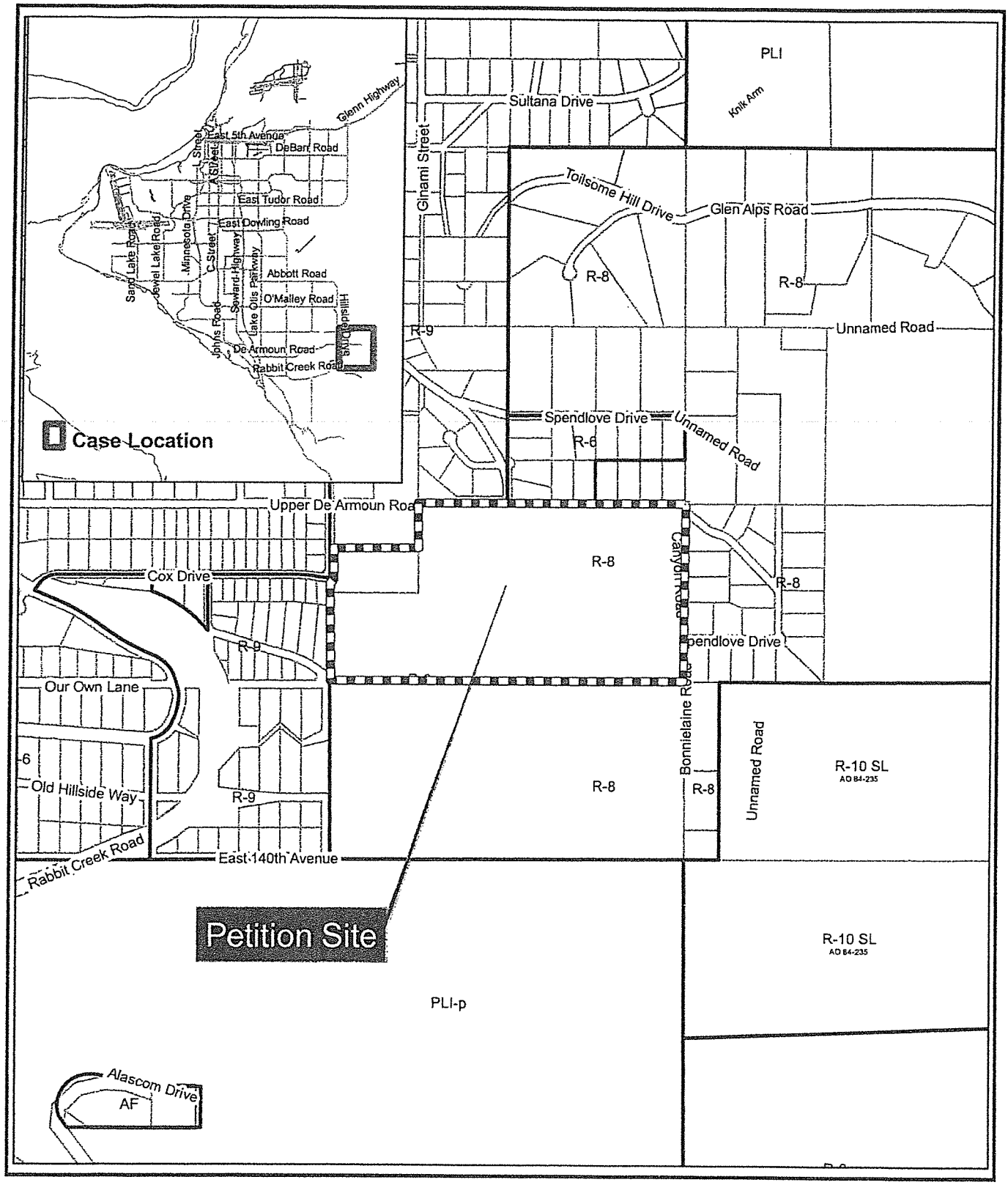
7. With the R-8 zoning it is less likely that problems will be created with larger lot development in a fragile environment, and the R-8 zoning is the most appropriate zoning for this particular area.

The applicant has requested that the zoning change application be submitted for consideration by the Assembly in accordance with AMC (old code) 21.20.100D. Accordingly, attached to this AIM is a draft ordinance for the rezoning request and the Planning and Zoning Commission's resolution and packet related to this application.

THE ADMINISTRATION RECOMMENDS DENIAL OF THE REZONING REQUEST.

Prepared by:	Erika McConnell, Manager, Current Planning Section
Approved by:	Hal H. Hart, AICP, Director, Planning Department
Concur:	Lance Wilber, Director, Office of Management and Budget
Concur:	Christopher Schutte, Director of Economic and Community Development
Concur:	William D. Falsey, Municipal Attorney
Concur:	Michael K. Abbott, Municipal Manager
Respectfully submitted:	Ethan Berkowitz, Mayor

2014-0219



Municipality of Anchorage
Planning Department

Date: January 06, 2015

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)

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)

fm

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2017-028

A RESOLUTION DENING A REQUEST TO REHEAR CASE 2017-0072 BASED ON NEW EVIDENCE OR CHANGED CIRCUMSTANCES, IN ACCORDANCE WITH AMCR 21.10.503.

(Case 2017-0072)

WHEREAS, Todd Brownson, Big Country Enterprises, LLC submitted a request to rehear Case 2017-0072 based on new evidence or changed circumstances, in accordance with AMC 21.10.503; and

WHEREAS, the Planning and Zoning Commission recommended denial of Case 2017-0090 on June 12, 2017, which was a request to rezone approximately 77 acres from R-8 to R-6 SL.

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

A. The Commission makes the following findings of fact:

1. The alleged new evidence or changed or changed circumstances would not substantially change the initial decision of the Commission, in accordance with AMCR 21.10.503B.1.

2. The realtor's research showing that large-lot residential is in short supply does not correspond to the recently published Land Use Plan Map study, which did extensive analysis of all residential land in order to assess the balance between supply and demand for housing.

3. The *Hillside District Plan* and *Anchorage 2020* do not recommend increasing residential land density in this part of the Hillside. Increasing density at this site is contrary to the public interest. Any increase in density would also increase traffic and impact the sensitive environmental features of the land. These issues were thoroughly discussed at the original hearing and the new information provided would not change the Commission's decision. A rehearing or reopening of the case is not warranted.

4. The basis for the petitioner's request to reopen the case does not prove to be new information. The petitioner's new information was already known during the initial hearing. The argument for reopening the case is not convincing.

5. Dissenting Commissioners stated that Canyon Road Trailhead probably causes a lot more traffic than this rezone would. Also, there is market

demand for large-lot single-family homes and rezoning to the R-6 district would make development costs more affordable.

B. The Commission DENIED the request for rehearing of Case 2017-0072 based on new evidence or changed circumstances, in accordance with AMC 21.10.503.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission on the 14th day of August, 2017.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 2nd day of October, 2017.

Hal H. Hart, AICP
Secretary

Tyler Robinson
Chair

(Case 2017-0072)

fm

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2018-014

A RESOLUTION RECOMMENDING APPROVAL OF THE REZONING OF APPROXIMATELY 77 ACRES FROM R-8 (LOW DENSITY RESIDENTIAL, 4 ACRES) TO R-10 SL (LOW DENSITY RESIDENTIAL, ALPINE/SLOPE) 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 VERAGASON-JONES SUBDIVISION (PLAT 98-178).

(Case: 2018-0052; Tax ID No. 017-073-06, 017-074-05, and -06)

WHEREAS, a petition has been received from the Big Country Enterprises, Inc. to rezone approximately 77 acres from R-8 (low density residential, 4 acres) to R-10 (low density residential, alpine/slope) 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 Veragason-Jones Subdivision (Plat 98-178); and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on June 4, 2018; and

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

A. The Commission makes the following findings of fact:

1. The application meets the approval criteria of rezonings, AMC 21.03.160E., and is consistent with *Anchorage 2020*, the *Anchorage 2040 Land Use Plan Map*, and the *Hillside District Plan,* especially in terms of residential density.

2. The special limitation restricts the site to a total of 23 lots, which is a compromise. West of the site is zoned R-9 and requires two-acre minimum lots. South of the site is zoned R-8 and requires four-acre minimum lots. The special limitation restricts the density to a number between the R-9 and the R-8 to make it more compatible. The R-10 district with this special limitation promotes the best use of the property and appropriately takes into account the natural environmental features in the area.

3. Dissenting members of the Commission felt that the special limitation was too restrictive and is not what is needed at this site. The platting process will determine the number of lots that is feasible and the Commission should not create a unique zoning district for this site.

4. This is the third public hearing that has come before the Commission. The issues are well known and the neighbors' concerns regarding drainage, traffic, and topography are understood. These issues can be overcome by good development that includes new advances in septic systems, and this will be assured through the municipal building permit review process. There will not be the impact that neighbors had expressed over the number of homes allowed. The issue of the road not being sufficient or adequate for the new development is not a concern. The number of new vehicle trips per day on this road is not going to be significant. The density the Commission is recommending is a good compromise and this area is surrounded by developments that are not much different from what is being proposed. The neighborhood will not notice an increased density as a result of this development and the character of the community is not going to be changed.

5. A lot of the commentary voiced by neighbors was about wells and water in the area. This issue will be adjudicated later during the building permit review. The R-10 district specifically calls out this issue and that is another reason why it is the right district for this location.

6. A rezone needs to be compatible in scale with the adjacent properties. The special limitation helps with compatibility. The Hillside was zoned with more residential density further down the hill and less density at higher elevations. This encourages a greater proportion of future growth to occur in the lower Hillside. The R-10 district is appropriate because of the geographical features affecting the site. The R-10 district determines minimum lot sizes by the average slope of each lot, which helps protect sensitive environmental features and reduces the likelihood water run-off issues.

B. The Commission recommends approval of the rezone, subject to a special limitation to restrict the district's total number of lots to 23.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission on the 11th day of June 2018.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 9th day of July, 2018.

Michelle J. McNulty, AICP
Secretary

Tyler P. Robinson
Chair

(Case 2018-0052; Tax ID No. 017-073-06, 017-073-05, and -06)