

Municipality of Anchorage



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OFFICE OF THE INTERNAL AUDITOR

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Internal Audit Report 97-05 Private Development Program Public Works Department

Introduction. Private developers may be required by the Platting Authority to construct certain public improvements such as storm drains, streets, sidewalks, curbs and gutter, street lights and street signs as a condition to subdivide unimproved land. To facilitate this process, developers are required to enter into a subdivision agreement with the Public Works Department (Public Works). The Private Development Section of Public Works administers the subdivision agreement and functions as the control point for working with the developers to accomplish the required improvements.

Developers are required by the Anchorage Municipal Code (AMC) 21.87.025 to pay for all work, labor and materials for the construction of the improvements including costs for administering the agreement, plan review, inspection, surveillance, testing, and overhead costs. The costs are tracked through cost centers and billed to the developer periodically. The Private Development Section administers each agreement and monitors the progress of each private development project. The improvements are the responsibility of the developer until they are accepted by the Private Development Section. Developers are required to warrant and guarantee the improvements for a two year period after construction is complete and the improvements are accepted by the Private Development Section. At the end of the two year warranty period, the Private Development Section conducts a warranty inspection to determine if there are any defects in design, workmanship, materials and any damage to improvements caused by the subdivider, his agents or others engaged in work to be performed under the subdivision agreement.

The subdivision agreement process consists of five main phases: application, plan review, construction, acceptance by the Municipality, and a two year warranty period. Once a project has been placed in warranty, the Municipality assumes responsibility for the maintenance of the streets, including snow plowing and street cleaning.

Scope. The objective of this audit was to determine the adequacy of procedures and controls for private development and to provide Public Works' management with recommendations to improve the administration of the subdivision agreement process. The audit focused on subdivision agreements entered into during 1996 wherever possible. The audit was conducted in accordance with generally accepted government auditing standards, except for the requirement of an external quality control review, and accordingly, included tests of records and such other auditing procedures as we considered necessary in the circumstances. The audit was performed during the period of August through November 1996. The audit was requested by the Administration.

Overall Evaluation. The procedures and controls for private development at Public Works were not adequate. Developers were not placed in default when the required public improvements were not constructed. The application process was not always followed and the plan review process was not always adequately documented. Deposits were not always collected as required. Authorization to start construction was given to developers before all required items had been received. The subdivision agreement files did not adequately document whether a performance guarantee was required and the value of deeds of trust accepted as a performance guarantee was not always determined. The Private Development Section was not actively working with developers to obtain all documentation required by the Subdivision Agreements before the projects could be placed into the warranty period. There was no effective system in place to track the current status of each subdivision agreement. Developers had free access to the Private Development Section offices during business hours without being required to make an appointment or being escorted into the area by an employee. In addition, Public Works was maintaining roads within subdivisions that had not been placed in warranty.

FINDINGS AND RECOMMENDATIONS

1. Action Not Taken When Developers Defaulted on Subdivision Agreement.

- a. **Finding.** The Private Development Section had not placed developers in default when the required public improvements were not constructed. Instead, the subdivision agreements have been kept open, some dating back to the 1970's. The subdivision agreement process includes performance guarantees to ensure that the public improvements are constructed in new subdivisions. However, because the developers were not placed in default, the guarantees were not used and the improvements have not been constructed. According to the supervisor of the Private Development Section, they have not been adequately staffed in the past to place the developer in default. This has resulted in over 70 open subdivision agreement files over six years old. Most of these old cases have expired subdivision agreements, expired performance guarantees, and/or expired warranty guarantees. Therefore, even if there was work still required to be done by the developer, Public Works does not have any means to pay for the work or force the developer to complete the work because the statute of limitations has expired.
- b. **Recommendation.** The Private Development Section should take immediate action to place a developer in default when the required improvements are not constructed. This action should be communicated to the developer, advising him that the guarantee being held will be utilized to complete the project.
- c. **Recommendation.** Public Works, in coordination with the Municipal Attorney, should close out all open subdivision agreements that have been in default for six or more years. In addition, all subdivision agreements which have been in default for

less than six years should be forwarded to the Municipal Attorney's Office for appropriate action.

- d. **Management Comments.** Management stated, "We have met with the Municipal Attorney's office concerning the closing out of the agreements where the improvements have not been completed. We also have been going through the files to determine the status of past agreements. We will be closing out all agreements that are in default for more than six years. For all agreements that are in default less than six years, we will be notifying the developer of the status of the agreement. If the developer will not complete the requirements of the agreement, the file will be submitted to the Municipal Attorney's office for further action. We also intend to establish a procedure to take immediate action once a developer has defaulted on the subdivision agreement. This will be accomplished through the use of tickler files and data bases to remind the Private Development staff of the nearing default time."
- e. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendations.

2. **Application Process Not Always Followed.**

- a. **Finding.** The application process for subdivision agreements during 1996 was not always followed as required by AMC 21.87 and the Subdivision Agreement Handbook. Our review of applications for 10 subdivision agreements entered into during 1996 revealed the following:
 - 1) The date the Private Development Section received the application for a subdivision agreement was not documented. (6 instances)

- 2) The Title Report or Certificate to Plat did not always show the developer as the owner of the property which was to be developed. Further, authorization was not found from the owner allowing the developer to develop their land. (2 instances)
 - 3) The files did not contain corporate authority letters. These letters indicate who in the developer's company is authorized to sign documents and make decisions for the company. (7 instances)
 - 4) The files did not contain the tentative schedule of construction. (10 instances)
- b. **Recommendation.** The Private Development Section should ensure that all required items are submitted by developers when applying for a subdivision agreement. The applications should not be processed or accepted until all required items have been submitted.
- c. **Recommendation.** The application process should be reviewed by the Private Development Section staff to determine which items are valid requirements. AMC 21.87 and the Subdivision Agreement Handbook should be revised to delete requirements if they are not required.
- d. **Management Comments.** Management stated, "We are in the process of revising our operations hand book to specifically reflect each step of the subdivision process and define who is responsible for each action. Developers will be informed as to what is required from them as they progress through the agreement to completion of the subdivision. They will be given the contact name and phone number of the private development staff personnel responsible for each step. We are establishing a sheet on each subdivision to track the significant events in the life of the agreement.

This will specifically include the date the application was received from the developer. We have implemented a policy effective 1/1/97 requiring the developer to make an appointment to start the agreement. All of the requirements for application are reviewed at this meeting and if anything is inaccurate or incomplete, the developer is notified what is lacking and is asked to resubmit the package when complete. This action has been helpful in making sure the title reports are current and accurately reflect ownership of the property to be developed. In this meeting the corporate authority letters are reviewed to identify proper authority for signature of the agreement.

“When a developer enters into a subdivision agreement, they have two years to complete the improvements. A tentative schedule of construction is not necessarily pertinent information but is currently required by the ordinance. We believe the ordinance needs to be changed in this regards.”

- e. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendations.

3. **Plan Review Process Not Always Adequately Documented.**

- a. **Finding.** The plan review process for subdivision agreements was not always followed. The subdivision agreement required Public Works to review the subdivision plans and either approve the plans or communicate the need for modifications to the plans to the developer within three weeks from when the plans were submitted or when the plan review deposit was paid by the developer, whichever was later. The plans required approval prior to the commencement of construction. Our review of nine 1996 subdivision plans revealed that authorization was given to the developer to proceed with construction prior to the final approval

of the plans in three instances. In addition, four files did not document the date the plans (and revised plans) were received by Public Works. Therefore, it was not possible to determine whether the plan review process was performed timely.

- b. **Recommendation.** The Private Development Section should not authorize developers to commence construction until the plans have been approved. In addition, the dates when plans and revised plans are received from the developer and approved should be documented.
- c. **Management Comments.** Management stated, "Some partial authorization was granted to developers to commence work on subdivisions prior to the plans being approved. This work typically involved clearing and grubbing only and/or installation of utility mains prior to placement of any fill within the proposed right-of-way. This was done to facilitate a timely beginning of construction during a short construction season at the strong urging of the developer or his engineer.

"Notice-to-proceed will not be issued for any work on any subdivision development prior to the plans being approved.

"Plan review files were kept separate from the subdivision files in the Private Development Engineer's office for easy reference and were not obvious during the audit. Plan reviews have typically been completed as required in the Subdivision Agreement.

"Plan review file folders are now kept in the main subdivision files. A summary of the plan review progress will now be jointly kept in the plan review file and on a running 'Plan Review Control Sheet' in the Private Development Engineer's office."

- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

4. **Deposits Not Always Paid As Required.**

- a. **Finding.** The Private Development Section did not ensure that deposits were always paid as required. AMC 24.20.040 requires the developer to pay the actual cost associated with administering the subdivision agreements. The developer is required to pay a deposit ranging from \$300 to \$13,000 depending on the estimated cost of the required improvements. The deposit is paid in three increments: \$300 when a subdivision agreement application is submitted; the greater of .5 percent of the estimated cost or \$150 at the time plans are submitted for review; and the remainder prior to authorizing the start of construction. Our review of 11 deposits in 1996 revealed that the required deposit was not obtained prior to authorizing the start of construction for two agreements, and the deposit for plan review was less than the required amount for three agreements.
- b. **Recommendation.** The Private Development Section should ensure that deposits are collected timely and in the proper amount. To facilitate this, a system should be implemented to track all required deposits.
- c. **Management Comments.** Management stated, "We are creating a form to be placed in the agreement file indicating when deposits are received and the amount of the required deposits. The \$300 application fee is received at the application appointment. The plan review fees are sometimes brought to this meeting. The developer bases the plan review fee on the engineers estimate at that time. Normally, private development will go over the estimate and make revisions if necessary. When the agreement is completed, the total amount is established within the

agreement. A letter is sent with the 3 copies of the agreement for the developer to sign. This letter indicates the amount needed for the balance of plan review and also advises the developer of the amount needed for a performance guarantee if one is required.

“We have assigned one person as a single point of contact for all deposits. This action will improve tracking.”

- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

5. **Authorization to Start Construction Given Before Prerequisites Met.**

- a. **Finding.** Authorization to start construction was given to developers before all required items had been received. Our review of 10 subdivision agreement files and discussions with Private Development Section personnel revealed two files that were missing the developer’s work schedule and quality control program. In addition, five files did not contain evidence of the insurance requirements specified in the Municipality of Anchorage Standard Specifications. Specifically, worker’s compensation, auto insurance and general liability insurance was not always listed on the certificate of insurance, the Municipality of Anchorage was not always listed as the certificate holder, and one certificate on file was not for the developer of the project.
- b. **Recommendation.** The Private Development Section should ensure that all construction prerequisites have been met prior to authorizing the commencement of construction.

- c. **Management Comments.** Management stated, "Some authorization was granted to developers to commence work on subdivisions prior to all the required items being received by the Private Development Section. The required items were typically submitted in a piecemeal fashion during and after pre-construction meetings with the developer.

"Required items will no longer be accepted in a piecemeal fashion from the developer. All required submittals are now to be delivered as a package at one time to insure receipt of all items. If they are not submitted as a complete package during the pre-construction meeting, a new appointment will be required."

- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

6. **Performance Guarantee Requirements Not Adequately Documented.**

- a. **Finding.** The subdivision agreement files did not adequately document whether a performance guarantee was required. Further, the Administrative Officer charged with maintaining files did not know when a performance guarantee was required. A performance guarantee is required when the developer requests a final plat and the required improvements are not finished to guarantee the completion of the required improvements should the developer not complete the project. The failure to adequately document whether a performance guarantee is required could result in a required guarantee not being obtained leaving Public Works with no funds to finish the project should the developer default on the agreement.
- b. **Recommendation.** The Private Development staff should develop a method to document in the subdivision agreement file whether a performance guarantee is

required. Because performance guarantees are required when the final plat is approved, the file should document whether a preliminary or final plat is involved. Further, as the final plat may be filed after a subdivision agreement is in process, the method should allow for the documentation of the final plat filing during the process.

- c. **Management Comments.** Management stated, "There is only one person responsible for signing off on the plat when the developer decides to file it. This persons primary responsibility is to determine if the subdivision agreement is signed, how much of the work has been completed and how much the performance/warranty guarantee is to be. These amounts will be determined by the appropriate provisions of Title 21. If the performance guarantee or warranty guarantee is not submitted in the proper amounts, the plat is not signed off and does not proceed to the platting board for approval. We have set up a file that will track this process and identify the proper amounts for each of these guarantees."

- d. **Evaluation of Management Comments.** Management comments werè responsive to the audit finding and recommendation.

7. **Value of Deed of Trust Not Determined.**

- a. **Finding.** The Private Development Section did not ascertain the value assigned to a deed of trust accepted as a performance guarantee. As a result, it could not be determined whether the amount of the guarantee was proper. The failure to determine the unencumbered value of a deed of trust could result in insufficient funds to complete the project should the developer default on the agreement.

- b. **Recommendation.** The Private Development Section should determine and document the value of deeds of trust provided by developers to ensure that the

amount is sufficient to cover the required performance guarantee. The determination should include a review of the title report evidencing the unencumbered amount of the property.

- c. **Management Comments.** Management stated, "We have implemented the recommendations as set forth in the report."
- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

8. **Required Documentation for Placing Projects into Warranty not Always Obtained.**

- a. **Finding.** The Private Development Section was not actively working with developers to obtain all documentation required by the Subdivision Agreements before the projects could be placed into the warranty period. There were at least 12 projects where the improvements had been completed that had not been placed into warranty pending receipt of such items as inspection reports, as-built drawings, acceptance letters from utility companies, and certificates of compliance. According to Private Development Section staff, they felt that they did not have any means of forcing the developers to comply with the administrative requirements. However, the AMC provides enforcement provisions for violation of AMC requirements. In addition, for the two projects that were placed into warranty during 1996 the required documents had not been submitted.
- b. **Recommendation.** The Private Development Section should not place projects into warranty until all required prerequisites have been met. The Private Development Section should consider using the enforcement provisions of the AMC to obtain the required prerequisites from developers. Further, we recommend that the developer

should be encouraged to submit all required information at one time to minimize the disruption to the Private Development Section staff.

- c. **Management Comments.** Management stated, "We have implemented a policy, effective 1/1/97, requiring the engineer to set up an appointment with the Private Development Coordinator. The purpose of this meeting is to have all of the necessary paperwork, for placing a subdivision on warranty, submitted as a complete package. No project will be placed on warranty until all the required items have been received."
- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

9. **No System to Track Current Status of Subdivision Agreements.**

- a. **Finding.** There was no effective system in place to track the current status of each subdivision agreement. Private Development Section staff had to review up to eight separate files for each agreement to determine what phase the project was in and what action was required. As a result, considerable time could be spent reviewing files.
- b. **Recommendation.** The Private Development Section should consider the use of status sheets for each active subdivision agreement. This status sheet should document the entire subdivision agreement step by step though the entire process and contain a space for all pertinent information as the project progresses through the process. This would allow an efficient method for determining the current status of the project and the next required course of action.

- c. **Management Comments.** Management stated, "We are currently working on a status form to reflect each step in the subdivision agreement process as recommended in the audit."
- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

10. **Policy and Procedures Had Not Been Established.**

- a. **Finding.** The Private Development Section did not have written policy and procedures for the subdivision agreement process. Written policy and procedures formalize management directives, are the foundation for internal control, and provide consistency in performing routine tasks. Our review and observations revealed that this lack of direction has contributed to the current condition of the Private Development Section. Currently, there are 192 subdivision agreements that are considered active. Some of these agreements date back to the 1970's. The Private Development Section staff have to manage these active agreements as well as plan and prepare for the next construction season. Further, two of the three employees have been in the Private Development Section for less than six months.

In our opinion, providing employees with standard procedures and clear direction on how to accomplish the organizations mission is a proven method of increasing the efficiency and effectiveness of the organization.

- b. **Recommendation.** Standard written policy and procedures should be developed and implemented for the Private Development Section. The procedures should provide clear and uniform direction for accomplishing assigned tasks and prioritizing work to be performed.

- c. **Management Comments.** Management stated, "We are starting to develop these written policies and we will have them established for both our employees and for the people we do business with. It will include estimated time lines so that they will have an idea how much time the process will take so that they can schedule their projects."
- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

11. **Developers Had Free Access to the Private Development Section Offices.**

- a. **Finding.** Developers had free access to the Private Development Section offices during business hours without being required to make an appointment or being escorted into the area by an employee. This free access has caused disruption of the Private Development staff during the day. It has also resulted in documents and sometimes payments being left in the offices without the staff knowing they were left there. In contrast, other Municipal offices such as Zoning and Platting and Property Appraisal utilize public counters to control access and provide service to the public.
- b. **Recommendation.** Public Works should consider establishing a public counter to service all offices interacting with the public.
- c. **Management Comments.** Management stated, "This recommendation will be reviewed further. However, during the audit it was decided that when developers or their engineers wanted to initiate an agreement that an appointment was required and all necessary documents were to be supplied at that time or another time was set up when the complete submittal is ready. The same will be established for the pre-construction meeting."

- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

12. **Public Works Maintaining Roads in Subdivisions Where Improvements Had Not Been Accepted.**

- a. **Finding.** Public Works was maintaining roads within subdivisions where the Private Development Section had not accepted the improvements. The Subdivision Agreement Article 2.24 "Maintenance" states, "Until the Municipality accepts the improvements, the developer shall maintain all existing roads within the subdivision that are necessary for access to property not owned by the developer. The maintenance required by the subsection includes, cleaning, effective dust control measures, snow removal, and similar activities, but does not include repair, replacement, or reconstruction." Our review and discussions with Public Works employees revealed that snow removal was being performed in subdivisions where the improvements had not been accepted into warranty. Maintaining roads in subdivisions that have not been accepted into the two year warranty period provides a disincentive to developers to provide the required prerequisites required for acceptance into warranty. As a result, improvements were not accepted and placed into warranty in a timely manner.
- b. **Recommendation.** Public Works should comply with the requirements of the subdivision agreement or change the requirements to agree with current practice.
- c. **Management Comments.** Management stated, "In subdivisions where the developer has completed all of the required improvements but is only lacking the necessary paperwork to document the project, Public Works will issue a conditional acceptance to provide snow removal only. This will only be done at the written

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request of the developer and the conditional acceptance will only be given for one winter season. All other maintenance will be the responsibility of the developer until such time as the improvements have been fully accepted.”

- d. **Evaluation of Management Comments.** Management comments were responsive to the audit finding and recommendation.

Discussion With Responsible Officials. The results of this audit were discussed with appropriate Municipal officials on January 23, 1997.

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