Municipality of Anchorage

MEMORANDUM

DATE: October 5, 2007

TO: Planning and Zoning Commissioners

FROM: Tom Nelson, Director

SUBJECT: Case #2007-151; Issue Response for Chapter 21.12 of Title 21 Rewrite

1. **Issue:** General comment on chapter
   Title 21 has been altered in recent years to reflect the public's concern that non-conformities should come into compliance when certain conditions or time periods are met. There is good reason that the public wants gradual compliance because it helps achieve a city that we envisioned when the 2020 Comp Plan was developed in 1999--with much citizen input.

   Below are instances (some conflicting) where Title 21 has already included conditions for bringing non-conformities into compliance, such as with signs and self-storage facilities. Yet the current chapter 12 revision does not contain strong enough language to move toward compliance with land and building non-conformities. It is very difficult for the public to know the correct language to request in order that a shift in the direction of this chapter occurs and that eventually non-conformities will be phased out.

   Please insert the appropriate language to ensure greater conformity over time when it is reasonable to expect non-conforming land and buildings to come into compliance, such as when the sale of land and buildings occurs.

   21.55.140 Self storage and vehicle storage operations.
   1. Any self-storage or vehicle storage operation existing prior to the adoption of this section, that does not comply with the requirements of subSections21.45.290 L.1, L.2., L.3., L.6. and L.7. for sight-obscuring fencing, required landscaping external to said fencing, and elimination of security razor or concertina security wire at the top of a fence, shall submit a site enhancement plan for the property, which is reviewed and approval determined by the Planning Director. The site enhancement plan shall be submitted to the Director within 9 years and 6 months. The plan shall be fully implemented within ten years of the date of the adoption of this section which is October 26, 2004. The intent of this site enhancement plan is to bring property as close as reasonably possible into compliance with the above noted subsections without impeding existing operations.

Staff Response: Recognizing that the creation of new development and design standards in the Title 21 rewrite has the potential to create a great number of nonconformities, staff has attempted to find a balance between allowing the continued existence of legally created development, and phasing out nonconformities. The new method for dealing with characteristics of use that are out of compliance with the new code requires developments to continually move toward compliance with the code as improvements are made to the property.

The requirements regarding self storage operations (quoted above) are included in the use-specific standards of chapter 21.05, rather than in the nonconformities chapter.

Staff Recommendation: No changes recommended.

2. **Issue:** 21.12.010B.3.a., *Conditional Uses and Site Plan Review*
Under proposed 21.12.010.B.3.a, there is reference to a use predating the effective date of the title "that is permitted as a conditional use.. . . . . ..but which lacks an approved conditional use permit." It is confusing to refer to a use as "permitted" but lacking a permit. It appears that sentence is meant to address a pre-existing use that is "allowable only as conditional use," but lacking a permit. The language should be revised for clarity.

   Under proposed 21.12.010.B.3.a, it also appears that a use that exists as of the effective date of the new title but that is allowable only on a conditional basis under the new title, is not to be considered a nonconforming use, but to be considered as if it existed as a conditional use. The language would appear to grant automatic conditional use approval even if the use was flatly prohibited in the district prior to the effective date of the new title. Is that the intent?

   Additionally, the "scope of such a conditional use" (considered as if permitted based on its pre-existence) is said to be governed by the same Chapter 12. However, throughout Chapter 12, reference is made only to nonconforming uses, not conditional uses. It's not clear how those rules, then, bear on the scope of a use explicitly declared not to be a nonconforming use. Neither is it clear which of the rules are to be considered to deal with "scope," and therefore is applicable to a "considered" conditional use and which do not apply since such use is not deemed "nonconforming."

   Staff Response: Concerning the first paragraph of the comment, staff agrees that the language is confusing and the suggested revision is sensible.

   Concerning the second paragraph, the language as written would grant conditional use or site plan approval to a use that was illegally established under the current code, but allowed (through some approval process) in the new code. Staff is proposing an amendment to clarify that this applies to legally established uses.

   Concerning the third paragraph, a nonconforming use that is subsequently allowed by conditional use approval may still have other nonconformities or characteristics of use that

are out of compliance. This section should be revised to clarify how this chapter could apply under this section.

Staff Recommendation: Page 2, lines 34-42, revise as follows:

"A use that lawfully existed as of [EXISTING PRIOR TO] the effective date of this title that is allowed by [PERMITTED AS A] conditional use or through an administrative or [SITE PLAN REVIEW , OR] major site plan review in the district in which it is located under this title, but which lacks a[N APPROVED] conditional use approval [PERMIT] or an approved site plan review, shall not be deemed a nonconforming use, but rather shall be considered to exist as a conditional use or to have an approved site plan. Associated nonconforming structures or lots and characteristics of use that are out of compliance with this title shall be governed by the provisions of this chapter, and if applicable, shall be modified under the provisions of this chapter. Other modifications shall be in accordance with the appropriate modification processes in chapter 21.03. [THE SCOPE OF SUCH A CONDITIONAL USE OR APPROVED SITE PLAN SHALL BE GOVERNED BY THE PROVISIONS OF THIS CHAPTER UNLESS MODIFIED BY THE DECISION-MAKING BODY IN ACCORDANCE WITH THE APPROPRIATE PROCESS IN CHAPTER 21.03.]"

3. **Issue:** 21.12.010B.3.b., Conditional Uses and Site Plan Reviews
What is the difference between a conditional use and a principal use? If a conditional use is null and void, are any conditions associated with that conditional use also null and void?

Staff Response: A conditional use refers to the review and approval process by which a use is allowed on a site. A use may be allowed on a site by four different approval processes: "by-right" means that a development can proceed with a building permit or land use permit issued by the development services department, with no planning department involvement; "by administrative site plan review" means that planning staff does a site plan review of the development and the director is the decision-maker; "by major site plan review" means that the site plan goes through a public hearing before the Urban Design Commission; or "by conditional use" means that the Planning and Zoning Commission reviews the application to determine if the use is appropriate at the proposed location.

A principal use is the main use on a site—the use that must go through the applicable review process. Some residential districts restrict the number of principal uses on a site to one—only accessory uses are also allowed on the site. Most commercial and industrial districts allow multiple principal uses on a site. If required by code, a principal use will go through the conditional use review and approval process.

If a conditional use becomes null and void, then any associated conditions are also null and void.

Staff Recommendation: No changes recommended.

4. **Issue:** 21.12.010C. and D., *Determination of Nonconformity Status and Government Agency Property Acquisitions*
   In section C., property owners are solely responsible for establishing rights to a nonconformity. Section 21.12.010.D states that a nonconformity resulting from the actions of a government agency the structure, use of land or structure or characteristic of use will be deemed conforming. However, Section 21.12.010.D is silent as to who is responsible to obtain the conforming designation.

   Given that land, buildings and their uses may go unaltered for a number of years it would seem prudent to have a determination, by the Municipality, at the time of acquisition and have such recorded against the property.

   Staff Response: Such a practice would indeed be prudent, but this would be a more appropriate matter for policy and regulation rather than code.

   Staff Recommendation: No changes recommended.

5. **Issue:** 21.12.010F.l.c., *Maintenance and Repair*
   Insert "and electrical" after "mechanical".

   Staff Response: The department has no objection to the suggested addition.

   Staff Recommendation: Page 3, line 27, insert “and electrical” after “mechanical”.

6. **Issue:** 21.12.010G., *Replacement Cost*
   Determination of replacement cost should allow an owner to get an independent appraisal or estimate which should be considered the replacement cost unless the municipality challenges the estimate with an independent estimate of their own. Replacement costs are influence by many factors including material costs, labor costs and productivity, insurance, bonding, and many other items. These factors are constantly changing. Just as contractors active in the business rarely agree on the total costs to undertake a renovation, it would be extremely difficult for a building official to have the current knowledge and expertise to properly estimate the replacement cost.

   Staff Response: Requiring the owner to provide an independent appraisal is an unnecessary burden on that owner. The development services department has a nationally accepted schedule of costs (with local adjustments) that they use to evaluate permit applications for the purposes of determining permit fees. Using this municipal schedule maintains consistency among various projects and does not unduly burden the property owner.

   Staff Recommendation: No changes recommended.

7. **Issue:** 21.12.020, *Single- and Two-family Structures and Mobile Homes*
   This section is confusing in that (D.3.) refers to mobile homes in nonconforming manufactured home communities. This seems to be the only place that manufactured homes are mentioned but the term normally refers to more than just mobile homes.

   Staff Response: Mobile homes are defined (in chapter 21.05) as "A transportable, factory-built dwelling unit designed and intended to be used as a year-round dwelling, and built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1976." Any type of transportable, factory-built dwelling unit constructed after that Act is considered a manufactured home. Those areas called "mobile home parks" in our current code were requested, by the Alaska Manufactured Home Association, to be called "manufactured home communities". Both mobile homes and manufactured homes are allowed in manufactured home communities, in accordance with the requirements for those communities.

   Staff Recommendation: No changes recommended.

8. **Issue:** 21.12.020D., *Mobile Homes*
   Please clarify the difference between a manufactured home and mobile home. Also, the two terms are used as interchangeable in sections of the code but in municipal work sessions the terms have been defined as different. Please clarify and define.

   Staff Response: Mobile homes are defined (in chapter 21.05) as "A transportable, factory-built dwelling unit designed and intended to be used as a year-round dwelling, and built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1976." Any type of transportable, factory-built dwelling unit constructed after that Act is considered a manufactured home.

   The use of "mobile homes" is restricted to the R-5 district and to manufactured home communities. "Manufactured homes" are considered to be dwelling units (usually single-family, but occasionally two-family) and may be located in any district that single-family dwellings are allowed, subject to the relevant design standards in chapter 21.07. Thus we have not used the two terms interchangeably, but have been very specific about each.

   Staff Recommendation: No changes recommended.

9. **Issue:** 21.12.030B.1., *Change of Use*
   The statement reads "Any nonconforming use may be changed to another nonconforming use if both of the following criteria are met:" Three criteria are then listed. Does "both" mean all of the three criteria or two of the three, etc.? Please clarify; suggestion is to change "both" to "all".

   Change "both" to "all".

Staff Response: A typo.

Staff Recommendation: Page 5, line 20, replace “both” with “all”.

10. **Issue:** 21.12.030B.2., *Change of Use*
The statement reads "If a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed." Please define and clarify the degree and duration of "superseded". It appears that 21.12.030.B.2 can be deleted as it is covered by 21.12.030D.l .b.

If a nonconforming use is superseded by a permitted use even for an instant, the nonconforming use may not thereafter be resumed. Owners should be allowed a reasonable period of time to revert back to the nonconforming use before it is lost. This would allow owners to correct errors or misunderstandings and would also allow an owner to test a different business model to a conforming use to determine its viability. A period of at least one year would seem reasonable.

The statement reads “If a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.” Questions regarding this point:
- o Please define and clarify “superseded”. To what degree and duration?
- o This statement conflicts with 21.12.030(public hearing draft page 6, marked changes draft page 8) D. Abandonment or Cessation of Use 1d. “The use has been discontinued, vacant, or inactive for a continuous period of at lease one year.” Suggested change is to make the two consistent and set a time period of more than one year.
- o The point was raised about retail and wholesale businesses. If a retail business has a warehouse and decides to temporarily sell its stock at wholesale, is the use now nonconforming?

Staff Response: “Superseded” means to be removed so as to make way for another. Nonconformities are those things the community has judged to be incompatible or unacceptable, and over time, nonconformities are intended to go away. When a nonconforming use is discontinued, whether by being superseded by a new use, or by abandonment, it should not thereafter return. There are four different criteria by which to verify abandonment, and being superseded (replaced) by another use is one of the criteria. The one year period is a different method to substantiate the presumption of abandonment of a use that has been discontinued.

Staff Recommendation: No changes recommended.

11. **Issue:** 21.12.030C., *Damage or Destruction*
The sentence reads, “Any person wishing to replicate a nonconforming use that has been damaged or destroyed to an extent of more than 50 percent of the replacement cost at the time of destruction...” Clarify cost; is it structure or repair cost?

Staff Response: If repairing the damage would cost more than 50% of the cost of replacing the use/structure, then this section applies.

Staff Recommendation: No changes recommended.

12. **Issue:** 21.12.030C.2.a., *Approval Criteria*
What is the value in requiring that a use "can be made compatible" if there is no requirement to do so. Propose the language be changed to read "The nonconforming use is compatible, or can and is required to be made compatible, with uses. . . "

Staff Response: The intent is that the use be made compatible, but a technical reading of the language, as noted in the comment, does not require it.

Staff Recommendation: Page 6, line 15, replace “can be made compatible” with “is or shall be made compatible”.

13. **Issue:** 21.12.030C.2.c. and d., *Approval Criteria*
The approval criteria for uses subject to loss or damage of 50% or more include provision for development of off site impacts. This has the potential of creating exactions which may be prohibitive in nature and effectively stall or prohibit reconstruction of damaged homes and businesses. This is of major concern to all, in that municipal infrastructure may be forced upon citizens through the regulations of the land use process. There is further concern over adoption of regulations which would have economic impacts far beyond the coverage of home insurance policies.

Compulsory off site improvements, no matter their need, are a community responsibility. Forcing the individual property owner to solely bear the burden of any improvement is an exaction disproportionate to the impact of reconstruction. These provisions are an attempt to legalize regulatory takings and should be stricken from this section.

Staff Response: These provisions are an attempt to ensure that adequate infrastructure exists to support a use. This section gives the director the authority to require what he or she judges is necessary and appropriate to the situation in terms of off-site improvements, on a case by case basis, judging whether or not the needed improvements should be the responsibility of the entire community, or are triggered only by the use in question. If the applicant considers the requirements to be disproportionate to the situation, the applicant can appeal to the zoning board. It is not unknown for a single use to create off-site impacts, which should be mitigated by that use, rather than requiring all taxpayers to subsidize the mitigation, to the benefit of the use.

Staff Recommendation: No changes recommended.

14. **Issue:** 21.12.030C. and 21.12.040D., *Damage or Destruction*
Whatever distinction is intended and the differential applicability between 21.12.030.C (replication of a damaged or destroyed use) and 21.12.040.D (replication of damaged or destroyed structure) is not at all clear. Presumably the latter deals with nonconformity with such issues as setbacks that are unrelated to use. But it's not clear.

Staff Response: There are four potential types of nonconformities: nonconforming uses of land or structure (uses not allowed in zoning district); nonconforming structures (buildings that are in the setbacks, over the lot coverage, or too high); nonconforming lots (lots that don't meet the minimum required dimensions); and nonconforming characteristics of use (such as parking, landscaping, etc…which we are not considering a nonconformity under the rewrite). There are sections in chapter 21.12 to deal with each of these situations. The processes for replicating a damaged nonconforming use and a damaged nonconforming structure are quite similar.

Staff Recommendation: No changes recommended.

15. **Issue:** 21.12.30D.l.b., *Abandonment or Cessation of Use*
The abandonment standard of 21.12.030D.1.b. is unclear as to whether an interim or transitory use constitutes abandonment, and assuming not, what is the threshold if the one year continuous discontinuation of 1.d. has not run? Does not the one year period of 1.d. suggest that a discontinued use may be restored within that year despite an interim replacement use? A similar question arises from 1.c., concerning removal of a structure given that 21.12.040 allows damaged structures to be replaced.

Staff Response: Any conforming interim or transitory use that operates after the discontinuation of a nonconforming use would trigger the criteria of 1.b., and would extinguish the nonconforming rights. The one year period of 1.d. is to substantiate the presumption of abandonment.

Staff Recommendation: Page 6, lines 31-32, It is unclear who determines what a "less intensive nonconforming use" is in D.1.b. Revise as follows: "A conforming <u>use,</u> or <u>a</u> less intensive nonconforming use <u>approved by the zoning board,</u> has replaced the nonconforming use."

16. **Issue:** 21.12.030E.1., *Overcoming Presumption of Abandonment*
By stating that the owner must have maintained the land and structure in accordance with "all" applicable regulations then drawing attention to building and fire codes becomes a redundancy and is unnecessary.

Staff Response: While technically redundant, the specific mention of building and fire codes is to clarify that "all applicable regulations" does not just refer to title 21.

Staff Recommendation: No changes recommended.

17. **Issue:** 21.12.030E.4.a., *Overcoming Presumption of Abandonment*
Revise to read: "Has been engaged in activities that would prove there was no intent to abandon, such as actively and continuously marketing the land or structure for sale or lease." and delete 21.12.030.E.4.b.

    Staff Response: No objection.

    Staff Recommendation: Page 7, lines 11-15, revise 4.a. and b. to read "4. The owner has been engaged in activities that would affirmatively prove there was in intent to abandon, such as actively and continuously marketing the land or structure for sale or lease."

18. **Issue:** 21.12.040A.l., *Continuation of Nonconforming Structures Generally*
In the first sentence, replace "may be enlarged" with "may be enlarged, except as provided in 21.12.040.B.2."

    Staff Response: The suggested addition adds clarity to the section; staff has no objection.

    Staff Recommendation: Page 7, lines 20-21, revise to read "No nonconforming structure may be enlarged or altered in a way that increases its nonconformity, except as allowed pursuant to B.2. below."

19. **Issue:** 21.12.040A.l., *Continuation of Nonconforming Structures Generally*
The meanings of the phrases "increases its nonconformity" and "intensify the nonconformity" are not clear, nor are they consistent.

    Staff Response: "Increasing" the nonconformity has different meanings depending on the type of nonconformity. For nonconforming uses, it means either making the use larger or adding additional capacity to the use. For a nonconforming structure, it could mean adding to an encroachment into a setback, enlarging the footprint of a building that is already over the allowed lot coverage, or increasing the height of a building that is already over the height limit (except as specifically allowed in this chapter). For a nonconforming lot, it would mean reducing the size or width of a lot that is already too small or too narrow. For the characteristics of use, increasing the problem could mean removing landscaping or parking spaces from a site that already doesn't have enough landscaping or parking.

    The concept and language of "increasing" or "decreasing" a nonconformity has worked successfully in the current code for many years.

    As the commenter has not explained why they see the phrases as inconsistent, staff is unable to address that specific issue.

    Staff Recommendation: No changes recommended.

20. **Issue:** 21.12.040A.2., *Continuation of Nonconforming Structures Generally*
The sentence reads "Should a nonconforming structure be moved for any reason for any distance whatever, it shall therefore conform to the regulations for the district in which it is located after it is moved." There are a couple of questions regarding this statement:
    - o This seems to discourage the act of moving a container to a more discrete location, buffered from adjacent uses.
    - o The Anchorage School District used the example of moving a storage container for the purpose of construction. Would that container now have to conform?

    Staff Response: If a container is allowed in a certain use district, it can be moved in accordance with applicable setback regulations. If it was originally placed in a nonconforming location, such as in a setback, any movement would have to be to a place that conforms. If a container is not allowed in a certain use district, moving it would trigger the loss of nonconforming rights, and the container would have to be removed. Containers used as waste receptacles for construction projects are exempt from the district prohibitions.

    Staff Recommendation: No changes recommended.

21. **Issue:** 21.12.040A.2., *Continuation of Nonconforming Structures Generally*
Moving a nonconforming structure on a property to allow maintenance, reduce a visual eyesore, or a similar reason would seem to be in the best interest of the community but would be disallowed or penalized by this section. The section should be rewritten.

    Staff Response: Nonconformities are those things the community has judged to be incompatible, and over time, nonconformities are intended to go away. The more allowances that are permitted to accommodate a nonconformity and make it more useful, the longer it will take to go away.

    Staff Recommendation: No changes recommended.

22. **Issue:** 21.12.040B.2., *Overheight Buildings*
The sentence reads: "Where a lawful structure, existing on [date of passage], is engineered and constructed for enlargement by the addition of one or more stories, such structure may be enlarged within the full plan dimensions of the existing structure by the addition of not more than two stories." What about Downtown? Please define and specific "full plan dimensions". Suggested change, replace "by the addition of not more than two stories" with "to the building height allowed in zoning, or not more than two stories, whichever is greater."

    Staff Response: This section applies to the whole municipality (although the application to Chugiak-Eagle River is unclear until chapter 21.10 is completed), including downtown. The full plan dimensions would be the maximum build out proposed by the original plans.

    The title of this section implies that the provision only applies to buildings that already exceed the height limit of their zoning district. However, buildings that are under the

maximum height but are engineered and constructed for additional height should also be allowed the additional two stories. A revision is suggested below.

"Full plan dimensions" refer to the horizontal dimensions of a structure.

Staff Recommendation: Page 7, lines 32-35, revise as follows:

"Where a lawful building [STRUCTURE], existing on [date of passage], is engineered and constructed for enlargement by the addition of one or more stories, such structure may be enlarged within the full plan dimensions of the existing structure by the addition of not more than two stories. This provision shall apply to buildings that conform to the height limitations as well as to overheight buildings."

23. **Issue:** 21.12.040D.1.b.iii., *Conditional Use Approval*
Allowing one year for construction to start after approval from the planning and zoning commission does not recognize the time to design and permit projects prior to initiating construction. This section should be lengthened or eliminated.

The code provides one year for planning and start of construction after an approved replication conditional use, or that use will expire. It is questionable if one year is do-able. There are legal issues, permits to acquire design work that needs to be done. Furthermore, what is the start of construction? Is demolition considered the start of construction? Make provisions for reasonable extensions.

Suggest defining what constitutes start of construction and to provide for a reasonable extension of the one year period.

Staff Response: Property owners have one year from the time of damage or destruction to file for approval to replicate their structure. After receiving an approval, they have one year to begin construction. While staff considers two years (plus the application review time) to be sufficient, an extension provision is proposed below.

"Start of construction" is defined in chapter 21.14 as "Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers or foundation, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure."

Staff Recommendation: Page 9, lines 1-6, revise as follows:

"An approved replication conditional use shall expire if start of construction has not begun within one year of the planning and zoning commission's approval. The director may approve an extension of up to one year upon written request showing cause. For the purposes of this section…"

24. **Issue:** 21.12.040D.2.a., *Approval Criteria*
The wording of this paragraph should be consistent with 21.12.030.C.2.a

Staff Response: No objection.

Staff Recommendation: Page 9, line 11, amend to be as proposed in issue #12.

25. **Issue:** 21.12.040D.2.c., *Approval Criteria*
The meaning of the phrase "moving towards conformity" is not clear.

Staff Response: If a building extends six feet into the setback, and it is moved to extend only four feet into the setback, that is moving towards conformity. If a development is 20 parking spaces short of their minimum requirement, and they provide 10 additional spaces, that is moving towards conformity.

Staff Recommendation: No changes recommended.

26. **Issue:** 21.12.040D.2.d., *Approval Criteria*
Structures subject to damage or loss in excess of 50% or more are required to upgrade municipal infrastructure. As in Section 21.12.030C.2.c and d, this will result in regulatory takings and should be stricken from this section.

Staff Response: See issue #13. It is an exaggeration to imply that in all cases damaged structures will be required to upgrade municipal infrastructure.

Staff Recommendation: No changes recommended.

27. **Issue:** 21.12.040E., *Legalization of Nonconforming Dimensional Setback Encroachments*
Set-back encroachments have long been regulated by airports rather than Title 21. Without waiving the disclaimer stated above, 21.12.040E. should acknowledge that history with a blanket exemption for airport lease lots from any registration procedure for nonconforming setback encroachments.

Staff Response: Lease lots at TSAIA typically don't have a platted boundary from which to measure a setback. This provision has been in the code since 1999 and to our knowledge has not caused any problems at the airport.

Staff Recommendation: No changes recommended.

28. **Issue:** 21.12.040E.2., *Procedures for Registration*
There were a couple of questions regarding this section:
    - o Requiring an as-built places an undue burden on the property owner.
    - o The code also requires the "structure and encroachments were constructed prior to January 1, 1986." What is the significance of that day?
    - o There are no established criteria for the application and gives discretion to the director. That raises too many questions. This concern continues into section b. The "director" is given a lot of leeway and authority with no criteria for acceptance or denial written in the code.

    While these requirements are probably reasonable, they place an additional responsibility and cost on a property owner. Requiring an as-built merely provides a base line for future monitoring but imposes a cost on property owners. How do you deal with property owners that are ignorant of this requirement and fail to file the application? Can the director impose any conditions they wish prior to approving the application? Shouldn't the director's authority be limited or defined?

    Staff Response: This provision, added to the code in 1999, provides an avenue for relief for property owners who have illegally encroached into their setbacks before 1986. Without this avenue, they could be required to remove the encroachment. This provision allows them to keep the encroaching portion of the structure, which becomes a nonconformity. Since 1999, this helpful provision has satisfactorily provided relief to many property owners.

    Without an as-built, there is no way to accurately document the dimensions of the encroachment. January 1, 1986 was the day that the municipality began requiring as-builts in order to get a certificate of occupancy. The criteria for the director are 1) the encroachment can't be a life safety hazard; and 2) the general welfare must be protected.

    Such an illegal encroachment would likely come to the attention of the property owner in one of three ways: a complaint made by a citizen; during the sale of the property; or during a home remodeling or addition project that triggers a permit. Absent one of these situations, neither the property owner nor the municipality will likely be aware of the illegality of the encroachment.

    Staff Recommendation: No changes recommended.

29. **Issue:** 21.12.040F., *Preexisting Tower and Antennas*
The first sentence allows preexisting towers to be replaced with a new one of like construction and height, presumably even if the height and construction do not conform to Title 21, but the last sentence requires new construction to comply with the requirements of Title 21. These sentences appear to be in conflict. Any tower or antenna in an Airport Height Overlay District or that otherwise penetrates a Federal Airport Regulation Part 77 imaginary

surface with respect to an airport, or that would penetrate such a surface if reconstructed, should be excepted from the automatic allowance for rebuilding a preexisting tower or antenna. Otherwise, the requirement to obtain a permit within 180 days from date the facility is damaged or destroyed seems far too short.

This section requires a permit be obtained within 180 days from the date the facility is damaged or destroyed. This is an unreasonable time amount. Earlier in the section, one year is given after damage or destruction. The code should be consistent and allow for more time.

A time limit of 180 days from the date the facility is damaged or destroyed seems unreasonable since section 21.12.040D. allows one years from the approval from planning and zoning. The time lines in this entire section should be consistent.

Staff Response: The commenter is correct that the first and last sentences are contradictory. Since towers built after the adoption of this code should comply with this code, the last sentence is the correct sentence. And since new construction (after the adoption of this code) must comply with the code, stating the last sentence is unnecessary.

Staff Recommendation: Page 10, lines 12-19, delete section 21.12.040F.

30. **Issue:** 21.12.050, *Nonconforming Lots of Record*
ANC comprises some 4,600 acres under single ownership by the State of Alaska, but is composed of a great many individual platted parcels, which are, in turn, overlain with ANC's Airport Information Maps (AIMS) describing the ANC's lot and block plan of lease lot configuration. ANC has historically exercised exclusive jurisdiction over lease lot configuration within ANC's boundaries. To try to apply proposed 21.12.050, dealing with lot conformity, on ANC, with its multiplicity of platted and AIMS lots, would be extremely confusing and serve no beneficial purpose. Without waiving the general disclaimer stated above, the ANC should be exempted completely from 21.12.050.

Staff Response: This provision has been in the code since borough days, and to the knowledge of staff, has not created a problem for the airport.

Staff Recommendation: No changes recommended.

31. **Issue:** 21.12.050A.2., *Nonconforming Lots*
What is the intent of this section?

Staff Response: This section explains what is allowed on a nonconforming lot (too small and/or too narrow) in a nonresidential zoning district. Current code addresses what can happen on nonconforming lots "in any zoning district in which dwellings are permitted"—dwellings and customary accessory buildings may be placed. However, the code does not address what is allowed on a nonconforming lot in a zoning district in which dwellings are not permitted. And the question is raised—if the nonconforming lot is in a commercial

district, are only dwellings allowed and is that appropriate? Sections 21.12.050A.1. and 2. clarify what is allowed on nonconforming lots in any district.

Upon review of this section, it was noted that some uses have a greater minimum lot size in their use-specific standards and should not be allowed on nonconforming lots. Staff proposes a revision to clarify this.

Staff Recommendation: Page 10, lines 34-41, amend 21.12.050A.2. to read:

"In any nonresidential zoning district, notwithstanding limitations imposed by other provisions of this title, any use allowed in the district by table 21.05-2 may be erected on [ANY] lots that fail to meet the requirements for minimum area and/or width, provided all of the following conditions are met:

a. The review and approval process indicated in table 21.05-2 is applied;
b. The use does not have a minimum lot size greater than the minimum lot size required by the underlying zoning district;
c. Any district-specific standards, use-specific standards, and dimensional and design standards, such as setbacks, parking, open space, landscaping, etc. are met; and
d. The lot is of record at the effective date of the original adoption or amendment of applicable regulations, except as restricted in subsection B. below.

[(THROUGH THE APPROPRIATE REVIEW AND APPROVAL PROCEDURE), PROVIDED THE UNDERLYING ZONING DISTRICT AND DIMENSIONAL AND DESIGN STANDARDS, SUCH AS SETBACKS, PARKING, OPEN SPACE, LANDSCAPING, ETC. CAN BE MET, THAT IS OF RECORD AT THE EFFECT DATE OF THE ORIGINAL ADOPTION OR AMENDMENT OF APPLICABLE REGULATIONS, EXCEPT AS RESTRICTED IN SUBSECTION B. BELOW. THIS PROVISION SHALL APPLY EVEN IF THE LOT FAILS TO MEET THE REQUIREMENTS FOR THE AREA OR WIDTH, OR BOTH, THAT ARE APPLICABLE IN THE DISTRICT.]

32. **Issue:** 21.12.050C., *Legalization of Lots Created Prior to September 16, 1975*
Purports to "legalize" pre-existing lots under certain circumstances. The implication is that if the requirements are not met, the pre-existing lot is illegal and may not continue. There is, however, no procedure to accomplish that result, and if it is not clear the MOA may by fiat declare a 30+ year old lot "illegal." Neither is it clear what the impact would be on a lot that does not satisfy the legalization requirement. If the result would regulate the lot into uselessness, the owner would probably be due just compensation due to regulatory taking. Without waiving the disclaimers stated above, 21.12.050.C should exempt ANC from registration requirements for non-conforming lots.

Staff Response: This provision, adopted in 2005, has not caused any problems at the airport of which we are aware.

Staff Recommendation: No changes recommended.

33. **Issue:** 21.12.050C., *Legalization of Lots Created Prior to September 16, 1975*
Lots which fail to meet current standards created prior to 9/16/1975 are permitted to continue only through a process which seems to state that duly recorded BLM, Commissioner, Precinct, City and Borough plats are some how inherently deficient. Why must the property owner pay the Municipality fees and take the added time and frustration of having an official record of something which is on record with the State of Alaska District Recorders office? This is an unwarranted requirement. The Municipality is only increasing its own workload and that of the individual property owner. If a plat is recorded and is legally recognized by the State, why create a problem where one does not exist?

While these requirements are probably reasonable, they place an additional responsibility and cost on a property owner. Requiring an as-built merely provides a base line for future monitoring but imposes a cost on property owners. How do you deal with property owners that are ignorant of this requirement and fail to file the application? Can the director impose any conditions they wish prior to approving the application? Shouldn't the director's authority be limited or defined?

Staff Response: When Assemblymember Coffey proposed the language for this section in 2005, he wrote by way of explanation:

> The ordinance adds a new section AMC 21.55.020B. which will create a procedure whereby an illegal lot, for example, a lot that was created by illegal subdivision and does not meet lot area or the width to depth ratio, may become a legal nonconforming lot subject to all the rights, privileges and restrictions of AMC 21.55.020 if it meets the registration requirements.

The applicability should be clarified, as the language now states that <u>all</u> lots existing prior to 9/16/75 need to register for legalization.

Staff Recommendation: Page 11, lines 12-13, the language should be clarified to state that applicable lots are those that were not created in accordance with the regulations of the state and the municipality and that don't meet the district requirements for minimum area and width. Revise as follows:

> "Lots existing prior to September 16, 1975<u>, that do not meet the district requirements for minimum area and/or width, and that were not created in accordance with the regulations of the state and the municipality,</u> may continue in existence provided the following requirements are met:"

34. **Issue:** 21.12.050C., *Legalization of Lots Created Prior to September 16, 1975*
In the marked changes draft, a footnote symbol appears in the title, but it does not show what text or footnote it corresponds(ed). Also, what is the significance of the September 16 date?

Staff Response: The text of the footnote to be deleted is at the end of the marked changes draft. September 16, 1975 is the date of unification of the City of Anchorage and the Greater Anchorage Area Borough.

Staff Recommendation: No changes recommended.

35. **Issue:** 21.12.050C.3., *Legalization of Lots Created Prior to September 16, 1975*
What happens if the Municipality of Anchorage misses its deadline?

Staff Response: Staff has not missed a deadline for this provision yet, and don't anticipate missing any in the future.

Staff Recommendation: No changes recommended.

36. **Issue:** 21.12.060A.1., *Developments Are Conforming*
Why is 21.07.020B. exempted from this provision?

Staff Response: Section 21.07.020B. lays out the setbacks required from streams, wetlands, and water bodies. Structures that encroach into these setbacks are considered nonconforming structures rather than characteristics of use that are out of compliance.

Staff Recommendation: No changes recommended.

37. **Issue:** 21.12.060A.2., *Developments Are Conforming*
No change may be made to any development except in the direction of conformity. This is a new section and is unclear as to its application. Will this only apply to a specific parcel or is it also applicable to subdivisions? Will a nonconforming use in one phase of a development prohibit continued expansion in a second phase? Will this section be used to obtain exactions from property owners to improve off site infrastructure or garner favorable support for future Municipal projects? This section needs to be more specific as to its application.

Staff Response: Once right-of-way improvements are accepted by the municipality, the developer is no longer responsible for a subdivision and is not expected to correct any nonconformities that may arise with subsequent code amendments. The existence of a nonconforming use would not prohibit the development of a second phase of a project, but the use of the second phase would have to be conforming. Property owners will only contribute to off-site improvements as stated in section 21.12.060C.3. or 4. This section will not be used to "garner favorable support for future Municipal projects".

Staff Recommendation: No changes recommended.

38. **Issue:** 21.12.060B., *Parking Out of Compliance*
Please explain the example more clearly.

Staff Response: If a development doesn't have the required amount of parking, and additional floor area is added to the development that triggers the need for five more parking spaces, the development must add five more parking spaces at the time of the addition of the floor area. The development is not required to address the original lack of parking, but may address it if the addition of floor area triggers this section, requiring 10% of project costs to be spent on bringing characteristics of use towards compliance.

Current code is not clear on this point, but this has been standard practice for some time.

Staff Recommendation: No changes recommended.

39. **Issue:** 21.12.060B., *Parking Out of Compliance*
This is a new section allowing for upgrades to existing nonconforming parking. This sets a reasonable standard for parking upgrades. The question which comes to mind is will this be used as a test of proportionality for other characteristics of use?

Staff Response: No.

Staff Recommendation: No changes recommended.

40. **Issue:** 21.12.060C.1., *Applicability*
Define a development project. Would a new roof count? Would adding insulation and replacing light fixtures with efficient bulbs count? Would adding a fire suppression system count? All of those cost more than the threshold.

Staff Response: Any project that requires a permit, costs more than 2.5% of the assessed value of the structure, and is happening on a site that is out of compliance with any characteristics of use would fall under this section. If the examples above meet all three of the applicability requirements, then they would "count".

Staff Recommendation: No changes recommended.

41. **Issue:** 21.12.060C.l., *Applicability*
It is not clear what "development project" means as used in this provision. Is this only expansion or alteration, or could it mean repairs? Don't think it was intended to apply to repair projects, so that probably should be clarified.

Staff Response: It is intended to apply to repair projects, as long as they meet all three of the applicability requirements.

Staff Recommendation: No changes recommended.

42. **Issue:** 21.12.060C.2., *Standard*
It is not clear that an exaction under 21.12.060C.3 of 10% of project costs to be paid to the MOA is justified. It may be appropriate to apply the 10% to benefit the facilities, such as appearance. That would be particularly true if applied on a Federally-funded airport-including Merrill Field-where an exaction that goes into the municipal general fund would violate FAA revenue diversion policy. Moreover, it appears the same exaction could be required again and again for a whole series of projects. Yet once a payment is made, it seems that in exchange the nonconformity would have to be deemed cured and not subject to payment again under a subsequent project. Indeed, multiple 10% exactions would actually make resolution of the nonconformity even less likely, as the municipality's 10% "hits" would prevent an owner from building the resources to do the job.

Staff Response: A property owner who is unable to bring his or her property into compliance with the code without complete redevelopment of the site must continue to contribute the 10% every time he or she does an applicable project, until the site is brought into compliance with the code.

Staff Recommendation: No changes recommended.

43. **Issue:** 21.12.060C.2.e., *Standard*
This paragraph implies that the UDC will have decision making authority on appeals. It is our understanding that the UDC has been stripped of its decision making authority and will be an advisory group only.

Staff Response: The planning department supports the role of the UDC as proposed throughout the rewrite. Specifically, the department supports giving the UDC decision-making authority over major site plan reviews, as well as occasional variance and appeal authority.

Staff Recommendation: No changes recommended.

44. **Issue:** 21.12.060C.4., *No Applicable Characteristics*
Requiring that at least ten percent of a project cost be used to move a nonconforming structure toward conformity seems reasonable but should have a minimum threshold prior to implementation. Further the ten percent should not be levied as a penalty as it apparently is in this section. Instead the money might better be required to approve the appearance of the property, because if it is viewed as being punitive, the property owner might allow the property to deteriorate rather than improve it.

This section requires “the applicant shall place the required 10 percent of project costs in a municipal account dedicated to public improvements”. What is the rationale? It seems like a hidden tax and the money might be better applied to improve appearance. It seems counterproductive.

Staff Response: The minimum threshold is laid out in the applicability section of 21.12.060C.1. This section is responding to the possibility that the only out-of-compliance characteristics of a site are not fixable without a complete redevelopment of the site. Property owners in that situation should not be "off the hook" completely. Until such time (if ever) the site is redeveloped and brought into full compliance with the code, the property owner can assist with improving the public right-of-way near his or her property, thus improving the general area and benefiting the development itself.

The suggestion that the money be used to approve the appearance of the site is not practical, as it is an aesthetic judgment whether or not there is something wrong the with appearance of the site.

Any method of addressing nonconformities could cause an owner to avoid making improvements and allow a site to deteriorate. The community can only hope that property owners take pride in their properties and want to invest in improvements to enhance the site and meet community standards.

Staff Recommendation: No changes recommended.

45. **Issue:** 21.12.070, *Nonconforming Signs*
There is another footnote mark on the marked changes draft. What text or deleted footnote does this correspond to?

Staff Response: The text of the footnote to be deleted is at the end of the marked changes draft.

Staff Recommendation: No changes recommended.