



Municipality of Anchorage
Community Development Department
Planning Division



MEMORANDUM

Date: May 4, 2012
To: Planning and Zoning Commission
From:  Jerry T. Weaver, Jr., Director
Subject: Case 2011-104 – Proposed Amendments to Provisionally Adopted Title 21:
Public Comment Issue-Response for Chapter 8

Following is the second installment of issues and Department responses and recommendations regarding Case 2011-104, the provisionally adopted Title 21 and proposed amendments. These issues were raised at the March 12 and 19, 2012 public hearings and from written public comments received by the Planning Division or submitted to the Planning and Zoning Commission during the public hearings.

This memorandum covers issues and comments pertaining to chapter 8, Subdivision Standards, of the provisionally adopted draft title 21. A previous memorandum dated April 19 covered chapters 1-3. Subsequent memoranda will cover remaining chapters. All memoranda and exhibits are posted on the title 21 rewrite web page as they are completed.

The issue-responses reference the Provisionally Adopted Title 21 with Technical Edits dated 12-12-2011 and the Consolidated Table of Proposed Amendments dated 3-12-2012. They also reference the applicable public comments in the following Exhibit D, which the Commission received with the April 19 issue-response memorandum:

Exhibit D. Comments Received for PZC Case 2011-104.

Any substantive recommended amendments to Chapter 8 must also be reviewed by the Platting Board. AMC 21.10.020 (A) (4) regarding the powers and duties of the Platting Board states:

“Review and make recommendations to the assembly regarding, all proposed amendments to chapters 21.75 through 21.87 and all proposed regulations to implement, interpret or make specific chapters 21.75 through 21.87. The assembly shall not adopt such an amendment or regulation until it has been reviewed by the platting board.”

Please also note that section 21.08.060, Subdivision Agreements, was adopted by the Assembly on December 11, 2006 and is currently in effect. Any substantive recommended amendments to this section would require re-advertisement and a new public hearing by the Planning and Zoning Commission, since the public hearings held in March 2012 were only on the provisionally adopted chapters.

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A. Deleting Urban Standards for Dedicated Public Streets, Sidewalks, and Walkways

► Sections 21.08.030F, 21.08.040A, and 21.080.040C of Provisionally Adopted Title 21

Issue: Shall Anchorage continue its existing dedication requirements or should the dedications section allow private streets, exempt all cul de sacs from any walkway dedication, and replace walkway standards of title 21 with a discretionary, case-by-case review decision process?

Public comment: Most future subdivision development will occur not in urban areas but rather in non-urban parts of Hillside and in Chugiak-Eagle River. However, unfortunately the draft code requires subdivision development standards that reflect Anchorage Bowl urban style residential development. Therefore, amend the dedications section to allow private streets, require no sidewalks in any cul-de-sac, and allow the platting authority to determine when and where walkways need to be incorporated in a subdivision. (Dan Coffey page 213 in Exhibit D)

Response: The Department disagrees. First, the subdivisions chapter makes a distinction between Class A (more urban) and Class B (more rural) street and walkway improvements. For example, see table 21.08-2 in section 21.08.040B (page 422) of the provisionally adopted Title 21.

Second, despite the claims by the commenter, most future housing development and subdivisions will in fact continue to occur in the more urbanized areas. Within Chugiak-Eagle River, the majority of future housing capacity lies within the urbanizing portions of Eagle River, the Powder Reserve, and the Eklutna 770 tract. Eklutna, Inc. has indicated its intent to develop its lands in these areas efficiently, at urban densities, in a phased development that expands with urban infrastructure and services.

The dedications provisions are longstanding in existing title 21 and should continue to apply in the Anchorage Bowl. Subdivision capacity still exists in the urbanized parts of Anchorage. The Bowl will continue to see new short plats and subdivisions as it enters its second century of development. These new infill subdivisions and redevelopments should be consistent with the surrounding urban context.

All public streets need to be dedicated and constructed to Municipal standards. Private streets should not be permitted in the development of new subdivisions. Standardization of the public transportation system is essential for a growing metropolitan city such as Anchorage.

Private streets are not maintained by the Municipality. Frequently homebuyers do not realize the Municipality will not maintain the private roads in their subdivision. This is borne out by the number of calls received from homeowners asking why the Municipality is not plowing snow and providing maintenance for deteriorating roads along their private roads.

Public streets constructed to municipal standards provides for uniformity in the snow plowing and maintenance operations. The snow plowing and road maintenance is not uniform along streets within Limited Road Service Areas (LRSA). LRSAs range in size and not all LRSAs have sufficient membership to provide the funds for adequate snow removal and road maintenance.

Dedication and construction of roads to municipal standards is also a public life safety issue. Substandard roads can delay response time in the event of an emergency. In responding to an emergency, it is essential that roads are constructed to a grade and standard that can support emergency response equipment and to ensure that the equipment can reach the location of the emergency. It has occurred that a fire truck has been bogged down to its axels in mud attempting to reach the location of the emergency.

In the past, subdivisions were recorded with no requirement to improve subdivision roads. Many of these roads, especially in the Hillside area remain unimproved to this day. The result is that there are many substandard roads and major drainage problems on the Hillside. Roads are iced over making winter driving treacherous. Ice dams impede the flow of drainage and results in drainage being re-routed onto private property which can adversely impact on-site septic systems.

It is unclear why Mr. Coffey is focusing on cul-de-sacs in this section. The dedications section does not address or determine what are the walkway requirements for different kinds of streets. His proposal would roll back even current standards for urban areas. The issue of walkways in cul-de-sacs will be addressed in the issue-response for Chapter 21.07. Likewise, Mr. Coffey's proposal to allow the platting authority to determine when and where walkways need to be incorporated into a subdivision would roll back current title 21, render the pedestrian facility requirements in chapter 7 pointless, and conflict with the Comprehensive Plan. It would also thwart a primary objective of the title 21 rewrite to provide clear and consistent standards for the development community: "Please tell me what the rules are."

Recommendation: No changes; forward the provisionally adopted dedications section. Continue to address pedestrian facility standards for streets and cul-de-sacs in chapter 7 section 21.07.060.

B. Deleting Vehicular Right-of-way Dedications for Accessing Chugach State Park, Community Use Areas, and Natural Resource Use Areas

▶ **Section 21.08.040D.1., page 418 of Provisionally Adopted Title 21**

Issue: Should dedication of a vehicular right-of-way be required for public access to trails and access points identified in an adopted plan, or should the public compensate for the dedication?

Public comment: Requiring a road versus just a trail dedication puts a more substantial burden on homeowners who live in the subdivision where the vehicular right-of-way is required. It diminishes their property value and creates traffic and public parking issues. The public not the private property owners should pay the price for such access, otherwise it is a taking of property without compensation. (Dan Coffey page 214 of Exhibit D)

Response: Dedication of street (and trails) rights-of-way for a public purpose is a standard, lawful, and appropriate type of subdivision requirement. Street dedications commonly implement public priorities and needs established in the Comprehensive Plan including its various plan elements. Overall connectivity is a major theme of Anchorage 2020. Subdivision regulations achieve public benefit objectives such as a well-connected city street network for pedestrian access, more distributed traffic flow, or faster emergency service responses. Either case could be argued to increase vehicle traffic into a neighborhood, or potentially affect property value (arguable either way – but not proven). How from the standpoint of takings law is a required dedication of a road right-of-way to a designated park access area different from other required kinds of street right-of-way connections? The city has an obligation to support the public's interest to maintain or enhance public access to its parks and trails.

The purpose of the local subdivision regulations is typical in that it establishes that, “The subdivision should provide safe, efficient, and convenient movement to points of destination or collection.” If subdivision regulations cannot require dedication of public streets, how do they achieve their basic purpose? Public access is implemented in part via dedications in subdivision regulations.

Vehicular access to parks or major trailheads designated in a city's adopted comprehensive plan must occur at the time of subdivision, especially of large properties. Otherwise, subdivision will create a lotting pattern that for all practical purposes makes it impossible to make way for vehicular access later. It would effectively thwart the comprehensive plan. The history in Anchorage has been that it is difficult obtain funds to retrofit access points to parks or trailheads after new subdivisions are constructed.

Recommendation: No changes; forward the provisionally adopted section regarding dedicated vehicular access to park access points such as in Chugach State Park designated by adopted plan.

C. Warranties for Subdivision Agreements

► Section 21.08.060H, page 436 of Provisionally Adopted Title 21

Issue: Shall deficiencies in public infrastructure found by MOA inspectors only after the initial inspection be the sole cause for delaying commencement of the warranty?

Public comment: Once a public infrastructure is completed, inspected, and any deficiencies corrected, the project goes on warranty. But there appears to be practice by the MOA of repeatedly finding deficiencies and delaying the commencement of the warranty. Delaying commencement of the warranty allows for continued inspection fees and leaves maintenance costs to the developer. Amend this section so that the warranty period begins after correction of deficiencies noted in the initial inspection. Deficiencies found after initial inspection should not be cause for delaying commencement of the warranty. New language is proposed. (Dan Coffey pages 215-217 of Exhibit D)

Response: Section 21.08.060, Subdivision Agreements, was adopted by the Assembly in 2006, implemented (effective) June 12, 2007, and is currently in effect.¹ Any substantive amendments to this section that the Planning and Zoning Commission would recommend would require re-advertisement and a new public hearing by the Planning and Zoning Commission, since the public hearings held in March 2012 were only on the provisionally adopted chapters.

Also, AO 2012-7(S) is currently before the Assembly for action on July 10, 2012 which provides for changes to the enacted Section 21.08.060H. Some of the changes in AO 2012-7(S) address some of the concerns raised in the public comment, others address other public concerns.

Department staff evaluation finds no objection to Mr. Coffey's proposed clarifications in subsections 1 and 2 and substantive amendments to subsection 3. The changes to subsection 3 would establish that the warranty period begins after correction of deficiencies identified in the initial inspection.

The commenter's new subsection 4, which establishes that new deficiencies found in subsequent inspections after the initial inspection shall not delay the start of the warranty period, is also acceptable, with an important exception. An exception must be made in the case of new deficiencies resulting from the subdivider's activities correcting a deficiency identified in the initial inspection. The warranty period should not begin until such a deficiency is corrected.

AO 2012-7(S) recommends further changes to section 21.08.060. If the Planning and Zoning Commission does recommend amendments to the section addressing the public comments by Mr.

¹ AMC: *"*Editor's note: AMC Section 21.08.060 is effective June 12, 2007 and published below, but the cross-references to other sections are modified pending the conclusion of the Title 21 rewrite of the remainder of Chapter 21.08.*

The remainder of Chapter 21.08 is effective at a future unspecified date when the Assembly adopts and repeals other chapters at the conclusion of the rewrite of Title 21 as stated in AO 2006-172, §§ 3 and 5, 4-10-2007. The chapter will be published when it becomes effective." (Ref: AO 2007-82 / AM 370-2007)

Coffey, then those should be proposed in a composite with the changes already reviewed by the Platting Board and now before Assembly in AO 2012-7(S).

Recommendation: If it is the decision of the Planning and Zoning Commission to recommend changes to Section 21.08.060H. for a public hearing, then the Department offers the following language for consideration, to address the public concerns as well as other public concerns being addressed in AO 2012-7(S),. It is a composite of all suggested changes to the section currently in effect.

H. Release of Guarantee of Improvements

1. Inspection will be made by the municipality prior to acceptance of the improvements for warranty. The municipality shall have 14 days to complete the inspection and provide a list of deficiencies, except that the building official[MUNICIPAL ENGINEER] may extend the 14 day period for unusual circumstances such as extreme weather. The 14 day period shall begin on the day the municipality receives written notice from the subdivider that the subdivider's own[HIS OR HER] comprehensive inspection has confirmed that construction of all required improvements is complete, all applicable subdivision agreement requirements are fulfilled, and the project is ready for municipal inspection.
2. After the initial municipal inspected provided for in subsection H.1. has been completed, and[WHEN] all listed deficiencies noted in the initial municipal inspection and provided in writing to the subdivider have been corrected, the subdivider shall notify the municipality in writing and the municipality shall perform a final inspection of the listed deficiencies within 7 days of receiving the notification, except that the municipal engineer may extent the 7 day period for unusual circumstances such as extreme weather.
3. If the final inspection reveals uncorrected listed deficiencies identified in the initial inspection that were provided to the subdivider in writing prior to the final inspection, this procedure shall be repeated until all deficiencies noted in the initial inspection have been corrected. The warranty period shall begin after all the deficiencies in the initial inspection have been corrected.
4. Excepting any new deficiency or deficiencies resulting from the subdivider's activities correcting the deficiency or deficiencies identified above, any new deficiencies that were not discovered and identified in writing and delivered to the subdivider during the initial inspection, but are found in the final or any continuing inspection shall be noted and corrected by the subdivider during the warranty period. However, these deficiencies shall not delay the commencement of the warranty period.
5. In addition to correcting deficiencies in the work, and prior to being placed on warranty, the subdivider shall also submit:
 - a. A complete record of engineer's daily inspection reports
 - b. Copies of test results
 - c. Reproducible mylar record drawings of the facilities constructed
 - d. Acceptance letters from electric and telephone utilities that all lots have service available

- e. As applicable, acceptance letters from gas, water, and wastewater utilities that all lots have service available
 - f. Certificate of Monumentation
 - g. Certificate of Compliance that all suppliers and subcontractors have been paid
 - h. Payment in full for municipal billings associated with the subdivision agreement
 - i. A deposit as required by AMC 24.20.040.D to cover administrative and inspection costs during the warranty period
6. When all deficiencies in the work have been corrected and all items listed in paragraph 3. have been submitted, reviewed, and accepted, the project shall be eligible to be placed on warranty.
- 7[5]. The municipality shall release the obligation for performance guarantees upon the acceptance of the improvements for warranty, together with the posting of adequate security for warranty.
- 8[6]. The municipality may refuse to release the obligation for any particular public improvement if the subdivider or contractor is in present or imminent default in whole or in part on the completion of any public improvement or warranty covered by the subdivision agreement.