Planning and Zoning Commission

June 11, 2018

Case #: 2018-0052

Case Title: Request to Rezone three parcels from R-8 Low-Density Residential (4 acres) District to R-10 Low-Density Residential, Alpine/Slope District.

Agenda Item #: G.2 **Supplementary Packet #: 2**

☐ Comments submitted after the packet was finalized

X Additional information

☐ Other:

Sent by email: **X** yes no

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MUNICIPALITY OF ANCHORAGE
MEMORANDUM

DATE: June 11, 2018

RECEIVED
MAY 30 2018
PLANNING DEPARTMENT

TO: Planning and Zoning Commission

THRU: Michelle McNulty, Director, Planning Department

FROM: Francis McLaughlin, Senior Planner

SUBJECT: Case 2018-0052, Supplemental Information

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

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

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

ASHBURN & MASON P.C.

LAWYERS

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May 25, 2018

Via U.S. and Electronic Mail:

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

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

Dear Mr. McLaughlin:

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

AMC 21.14.010.A provides:

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

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

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

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

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

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

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

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

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

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

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

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

[2] AMC 21.40.020.L

[3] AMC 21.40.020.P

[4] Table 21.05-1

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

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

Sincerely,

ASHBURN & MASON, P.C.

Donald McClintock