Submitted by: VICE CHAIR OSSIANDER, on behalf of Title 21 Committee
Prepared by: Planning Department
For reading: October 28, 2008

CLERK'S OFFICE
APPROVED As Amended
Date: 2/3/09
The Substitue version; the Title 21 Assembly Committee's Recommended Amendments were approved 2-3-09

ANCHORAGE, ALASKA
AO NO. 2008-123

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY TO PROVISIONALLY ADOPT A NEW CHAPTER 21.03, REVIEW AND APPROVAL PROCEDURES, AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21 SUBJECT TO CONCURRENT FINAL PASSAGE AND APPROVAL OF ALL PROVISIONALLY ADOPTED CHAPTERS OF TITLE 21.

WHEREAS, AR 2007-83 addresses the status of Title 21 chapters as provisionally adopted by the Assembly; and

WHEREAS, provisional adoption is progressing as set out in AO 2006-172, as modified by AO 2007-82; and

WHEREAS, Title 21, Chapter 21.03, *Review and Approval Procedures*, reviewed by the Title 21 Committee, is attached for further action by the Assembly; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code (AMC) Chapter 21.03, *Review and Approval Procedures*, is hereby provisionally adopted, as set forth in the attachment, and as amended by action of the Assembly in this ordinance, following review and recommendations from the Planning & Zoning Commission, and subject to revision as the Assembly deems appropriate during concurrent final passage and approval of all provisionally adopted chapters of Title 21.

Section 2. In keeping with the purposes and intent set forth in AR 2007-83 and AO 2006-172 (as modified by AO 2007-82), Chapter 21.03, *Review and Approval Procedures*, as hereby provisionally adopted, shall not be deemed law of the Municipality nor applied to land use matters until concurrent final passage and approval of all provisionally adopted Title 21 chapters. Repeal of existing municipal code necessary to effectuate such final passage and approval shall be implemented as described by ordinance.

Section 3. This ordinance shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 3rd day of February, 2009.

Chair

ATTEST:

Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2008-123

Title: AN ORDINANCE TO PROVISIONALLY ADOPT NEW CHAPTER 21.03, REVIEW AND APPROVAL PROCEDURES, AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21 SUBJECT TO CONCURRENT FINAL PASSAGE AND APPROVAL OF ALL PROVISIONALLY ADOPTED CHAPTERS OF TITLE 21. (PZC Case No. 2007-153)

Sponsor: MAYOR
Preparing Agency: Planning Department
Others Impacted: None

CHANGES IN EXPENDITURES AND REVENUES: **(In Thousands of Dollars)**

	FY08	FY09	FY10	FY11	FY12
Operating Expenditures					
1000 Personal Services	$ -	$ -	$ -	$ -	$ -
2000 Non-Labor	-	-	-	-	-
3900 Contributions	-	-	-	-	-
4000 Debt Service	-	-	-	-	-
TOTAL DIRECT COSTS:	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
Add: 6000 Charges from Others	$ -	$ -	$ -	$ -	$ -
Less: 7000 Charges to Others	-	-	-	-	-
FUNCTION COST:	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**

REVENUES:

CAPITAL:

POSITIONS: FT/PT and Temp

PUBLIC SECTOR ECONOMIC EFFECTS:

The Planning Department has contracted to have an Economic Impact Analysis performed on the proposed code. As this chapter will not take effect until the remaining chapters are also adopted, any significant economic results produced by the Economic Impact Analysis will be factored in at a later date.

PRIVATE SECTOR ECONOMIC EFFECTS:

See above.

Prepared by: Erika McConnell Telephone: 343-7917

MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

No. AM 743-2008

Meeting Date: October 28, 2008

From: **MAYOR**

Subject: **AN ORDINANCE TO PROVISIONALLY ADOPT NEW CHAPTER 21.03, REVIEW AND APPROVAL PROCEDURES, AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21, SUBJECT TO CONCURRENT FINAL PASSAGE AND APPROVAL OF ALL PROVISIONALLY ADOPTED CHAPTERS OF TITLE 21**

In furtherance of the review and public hearing process for the ongoing re-write of Anchorage Municipal Code Title 21, this ordinance covers Chapters 21.03, *Review and Approval Procedures.* This chapter lays out the application, review, and approval processes for entitlements and other procedures of the Planning Department. Common procedures include conditional use requests, rezoning requests, and variance requests.

The attached public hearing draft of this chapter (Attachment 1), dated September 19, 2007, has been reviewed by the Assembly Title 21 Committee.

The Planning and Zoning Commission held public hearings on this chapter (along with chapters 7 and 14) in November 2007. The Commission's recommended amendments to Chapter 21.03 are Attachment A of Planning and Zoning Commission Resolution No. 2008-034 (Attachment 2).

Public hearing before the Assembly will provide the opportunity for additional public comment.

Adoption of this ordinance will add another chapter to the eight that have been provisionally adopted by the Assembly to date. All chapters provisionally adopted by the Assembly remain provisional until concurrent final passage and approval of all such provisionally adopted chapters of Title 21, when the on-going re-write of Title 21 is complete.

THE ADMINISTRATION RECOMMENDS APPROVAL OF AN ORDINANCE TO PROVISIONALLY ADOPT NEW CHAPTER 21.03, REVIEW AND APPROVAL PROCEDURES, AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21, SUBJECT TO CONCURRENT FINAL PASSAGE AND APPROVAL OF ALL PROVISIONALLY ADOPTED CHAPTERS OF TITLE 21, AS SHOWN IN ATTACHMENT 1 AND IN THE RECOMMENDED PLANNING AND ZONING

COMMISSION AMENDMENTS ATTACHED TO PLANNING AND ZONING COMMISSION RESOLUTION NO. 2008-034.

Prepared by:	Erika McConnell, Planning Department
Approved by:	Tom Nelson, Director, Planning Department
Concur:	Mary Jane Michael, Executive Director Office of Economic and Community Development
Concur:	James N. Reeves, Municipal Attorney
Concur:	Michael K. Abbott, Municipal Manager
Respectfully submitted:	Mark Begich, Mayor

Attachments:
1. Chapter 21.03, *Review and Approval Procedures* (Public Hearing Draft dated September 17, 2007)
2. Planning & Zoning Commission Resolution No. 2008-034 with Recommended Amendments
3. Planning and Zoning Commission Issue Response of March 17, 2008
4. Planning and Zoning Commission Issue Response of April 7, 2008
5. Planning and Zoning Commission Minutes of November 5, 2007
6. Planning and Zoning Commission Minutes of November 7, 2007
7. Planning and Zoning Commission Minutes of November 8, 2007
8. Planning and Zoning Commission Minutes of March 17, 2008
9. Planning and Zoning Commission Minutes of April 14, 2008
10. Agency and Public Comments Received

Content ID: 007035

Type: Ordinance - AO

Title: An Ordinance to Provisionally Adopt New Chapter 21.03, Review and Approval Procedures, Amending Anchorage Municipal Code Title 21, Subject to Concurrent Final Passage and Approval of All Provisionally Adopted Chapters of Title 21

Author: maglaquijp

Initiating Dept: Planning

Description: Title 21 Rewrite, Chapter 3, Review and Approval Procedures

Keywords: Title 21 Rewrite, Chapter 3

Date Prepared: 10/23/08 5:11 PM

Director Name: Tom Nelson

Assembly Meeting Date: 10/28/08

Public Hearing Date: 12/2/08

Workflow Name	Action Date	Action	User	Security Group	Content ID
Clerk_Admin_SubWorkflow	10/27/08 9:27 AM	Exit	Joy Maglaqui	Public	007035
MuniMgrCoord_SubWorkflow	10/27/08 9:27 AM	Approve	Joy Maglaqui	Public	007035
MuniManager_SubWorkflow	10/27/08 9:27 AM	Approve	Joy Maglaqui	Public	007035
MuniManager_SubWorkflow	10/27/08 8:24 AM	Checkin	Joy Maglaqui	Public	007035
Legal_SubWorkflow	10/24/08 11:36 AM	Approve	Rhonda Westover	Public	007035
Finance_SubWorkflow	10/24/08 11:06 AM	Approve	Sharon Weddleton	Public	007035
OMB_SubWorkflow	10/24/08 9:43 AM	Approve	Wanda Phillips	Public	007035
ECD_SubWorkflow	10/24/08 1:02 AM	Approve	Jennifer Allen	Public	007035
Planning_SubWorkflow	10/23/08 6:20 PM	Approve	Tom Nelson	Public	007035
AllOrdinanceWorkflow	10/23/08 5:17 PM	Checkin	Susan Perry	Public	007035

Municipality of Anchorage

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Matt Claman, Acting Mayor

Planning Department

January 26, 2009

To Assemblymembers:

Title 21 Rewrite, Chapter 21.03
Review and Approval Procedures

- Chapter 3 is on the Assembly Agenda for continued Public Hearing on February 3.

- Attached is the ***S Version***, the Title 21 Assembly Committee's Recommended Amendments.

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CHAPTER 21.03: REVIEW AND APPROVAL PROCEDURES

21.03.010 PURPOSE AND STRUCTURE OF THIS CHAPTER

This chapter describes the procedures for review and approval of all applications for development activity in the municipality. Common procedures, which are applicable to all or most types of development applications, are set forth in section 21.03.020. Subsequent sections set forth additional provisions that are unique to each type of application, including timetables, staff and review board assignments, review standards, and other information.

21.03.020 COMMON PROCEDURES

A. Applicability

The common procedures of this section 21.03.020 shall apply to all applications for development activity under this title unless otherwise stated. The word "director" means the director of the planning department or his or her designee.

B. Pre-Application Conferences

1. Purpose

The pre-application conference is an informal discussion to familiarize the applicant and the municipal staff with the applicable provisions of this title that are required to permit the proposed development.

2. Applicability

a. ***Required for New Applications***

A pre-application conference is required prior to submittal of the following types of applications:

i. Rezonings (Map Amendments) (section 21.03.160);

ii. Subdivisions, except for Abbreviated Plats (section 21.03.200);

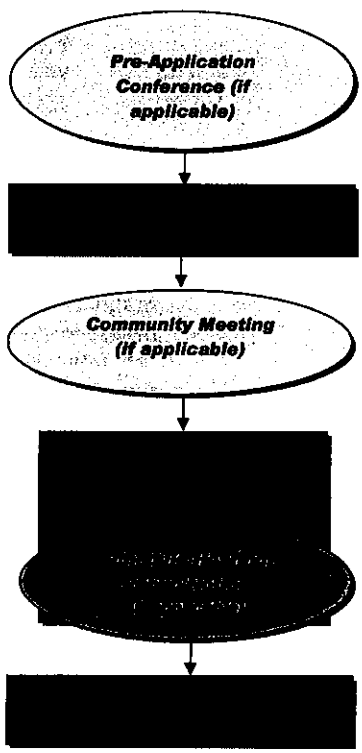
iii. Conditional Uses (section 21.03.080);

iv. Major Site Plan Review (section 21.03.180C);

v. Public Facility Site Selection (section 21.03.140); and

vi. Projects <u>including</u> [INVOLVING] Class A or B wetlands <u>within or adjacent to the application area</u>.

No application for these types of approvals shall be accepted until after the pre-application conference is completed and the applicant receives written notification of the conclusions.



Common Procedures

b. ***Exception for Some Changes to Already-Approved Applications***
Pre-application conferences are not required for minor amendments to already-approved conditional uses or site plans. All other changes to already-approved applications require a pre-application conference.

[PRE-APPLICATION CONFERENCES ARE NOT REQUIRED FOR CHANGES TO ALREADY-APPROVED CONDITIONAL USE PERMITS, MAJOR SITE PLANS, AND SUBDIVISION PLANS IF THE FOLLOWING CONDITIONS ARE MET:

i. FOR NON-RESIDENTIAL DEVELOPMENT, THE PROPOSED INCREASE IN BUILDING SQUARE FOOTAGE IS LESS THAN 25% OF THE APPROVED BUILDING SQUARE FOOTAGE.

ii. FOR RESIDENTIAL DEVELOPMENT, THE PROPOSED INCREASE IN THE NUMBER OF UNITS OR LOTS IS NOT MORE THAN 25% OF THE APPROVED NUMBER OF UNITS OR LOTS.]

c. ***Optional for All Other Applications***
A pre-application conference is optional prior to submittal of any other application under this title not listed in subsection 2.a. above.

d. ***Waiver***
The director may waive the pre-application requirement if the director finds that the projected size, complexity, anticipated impacts, or other factors associated with the proposed development clearly, in his or her judgment, make a pre-application conference unnecessary. The waiver shall be made in writing and shall become a part of the case record for the application.

3. **Initiation of Pre-Application Conference**
The potential applicant shall request a pre-application conference, in the manner prescribed in the user's guide, with the director. Prior to the pre-application conference, the applicant shall provide to the director a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, models, and the type of entitlement sought. It is the applicant's responsibility to provide sufficiently detailed plans and descriptions of the proposal to enable staff to make the informal recommendations discussed below.

4. **Pre-Application Conference Content**
a. The director shall schedule a pre-application conference after receipt of a proper request. At the conference, the applicant, the director, and any other persons the director deems appropriate and available to attend shall discuss the proposed development. Based upon the information provided by the applicant and the provisions of this title, the parties should discuss in general the proposed development and the applicable requirements and standards of this title.

b. The conference attendees shall discuss the desired development activities with respect to the following items:

i. Applicability of municipality policies, plans, and requirements as they apply to the proposed development.

ii. Appropriateness of the development with respect to the policies set forth in the comprehensive plan and the regulations in this title.

iii. Need, if any, to prepare a subdivision plat.

iv. Any site plan considerations or requirements.

v. Any concerns or requirements related to the anticipated impact upon public rights-of-way and public improvements, and appropriate requirements to mitigate those impacts, including but not limited to traffic impact analyses.

vi. Any concerns related to neighborhood impacts, land use, landscaping concepts, and overall project design.

vii. Possible alternatives or modifications related to the proposed application.

viii. Procedures that will need to be completed to review and act on the proposed change.

c. A checklist of discussion items indicating topics discussed at the pre-application conference shall be mailed to the applicant within ten days of the conference. The checklist shall be considered proprietary information until an application has been submitted.

5. Informal Review Comments Not Binding

The review comments of the director are not binding upon the applicant or the municipality, but are intended to serve as a guide to the applicant in making the application and to advise the applicant in advance of the formal application of any issues which will or may subsequently be presented to the appropriate decision-making body. Because a pre-application conference precedes the actual application, some key issues relating to a specific proposal may not be apparent at the pre-application conference.

6. Application Required Within Six Months

After a pre-application conference has been completed, an application must be submitted within six months, unless one extension is granted by the director not to exceed an additional six months. If a complete application is not submitted within six months or an extension has not been granted, a new pre-application conference shall be required prior to submitting an application.

C. Community Meetings

1. Purpose

The community meeting is an informal opportunity for the developer to inform the surrounding area residents and property owners of the details of a proposed development and application, how the developer intends to meet the standards contained in this title, and to receive public comment and encourage dialogue at an early time in the review process.

2. Applicability

a. ***Types of Applications***

The applicant shall hold a community meeting for any of the following types of applications, unless a waiver is granted by the director pursuant to subsection 2.b. below.

i. Rezonings (Zoning Map Amendments);

ii. Subdivisions, except for Abbreviated Plats;

iii. Conditional Uses;

iv. Institutional Master Plans;

v. Major Site Plan Review; and

vi. Public Facility Site Selection (including schools).

b. ***Waiver***
An applicant may request, with justification, a waiver of the community meeting along with his or her application. The director may waive the community meeting requirement if he or she determines that the proposed development or subdivision will not have significant community impacts in any of the areas listed below. The waiver shall be justified in writing, provided along with the verification of application completeness, and shall be included as part of the case record.

i. Traffic;

ii. Impacts upon natural resources protected under chapter 21.07 of this code;

iii. Provision of public services such as police and/or fire service, schools, or parks;

iv. Compatibility of building design or scale; or

v. Operational compatibility, such as lighting, hours of operation, odors, noise, litter, or glare.

3. **Timing and Number of Community Meetings**
When required, there shall be at least one community meeting held after the pre-application conference (if applicable), but prior to the submittal of an application.

4. **Notice of Community Meeting**
The applicant shall provide written (mailed) notice of the community meeting in accordance with subsection H.4. below, at least 21 days prior to the community meeting.

5. **Attendance at Community Meeting**
a. If a community meeting is required, the applicant or applicant's representative shall attend the community meeting. The applicant shall be responsible for scheduling the community meeting, coordinating the community meeting, and for retaining an independent facilitator if the applicant determines one is needed.

b. All community meetings shall be convened at a place in the vicinity of the proposed development.

6. **Summary of Community Meeting**
The applicant shall prepare a written summary of the community meeting(s), which shall be submitted to the director and the affected community council(s) no later than seven days after the date of the meeting. The written summary shall be included in the departmental report. At a minimum, the written summary shall include the following information:

a. Dates and locations of all meetings where citizens were invited to discuss the applicant's proposals;

b. Content, dates mailed, and number of mailings, including letters, meeting notices, and any other written material;

c. The number of people that participated in the meetings;

d. A summary of concerns, issues, and problems expressed during the meetings, including:

i. The substance of the concerns, issues, and problems;

ii. How the applicant has addressed or intends to address concerns, issues, and problems expressed at the meetings; and

iii. Concerns, issues, and problems the applicant is unwilling or unable to address and why.

D. Authority to File Applications

1. When an authorized agent files an application under this title on behalf of a property owner, the agent shall provide the municipality with written documentation that the owner of the property has authorized the filing of the application.

2. When a review or decision-making body initiates action under this title, it does so without prejudice toward the outcome.

E. Application Contents, Submittal Schedule, and Fees

1. **Title 21 User's Guide**
The director shall compile the requirements for application contents, forms, fees, and the submittal and review schedule (including typical time frames for review) in a user's guide, which shall be made available to the public. The director may amend and update the user's guide from time to time.

2. **Form of Application**
Applications required under this chapter shall be submitted in a form and in such number as required in the user's guide.

3. **Processing Fees**
Applications shall be accompanied by the fee amount established by the assembly and listed in the user's guide. Fees are not subject to waivers [AND ARE NON-REFUNDABLE].

4. **Waivers**
The director may waive certain submittal requirements in order to reduce the burden on the applicant and to tailor the requirements to the information necessary to review a particular application. The director may waive such requirements where he or she finds that the projected size, complexity, anticipated impacts, or other factors associated with the proposed development clearly, in his or her opinion, support such waiver. The waiver shall be made in writing and shall become a part of the case record for the application.

F. Verification of Application Completeness

1. The director shall only initiate the review and processing of an application if such application is complete. The director shall make a determination of application completeness and notify the applicant in writing within 15 days of application filing. If the application is determined to be complete, the application shall then be processed according to this title. If an application is determined to be incomplete, the director shall provide an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected.

2. An application shall be considered complete if it is submitted in the required form, includes all mandatory information, including all supporting materials specified in the title 21 user's guide, and is accompanied by the applicable fee. A pre-application conference shall have been held, if required, pursuant to section 21.03.020B, *Pre-Application Conferences*.

3. As a consequence for any false or misleading information submitted or supplied by an applicant on an application, that application shall be deemed incomplete.

G. Additional Information

1. Requested Information
Nothing in this section prohibits the department or the decision-making body on the application from requesting additional information deemed necessary for review, after the application is complete. Any supplemental technical reports, special studies, and/or revised application materials that are requested following the original application must be received at least thirty days prior to a public hearing. The municipality may postpone and reschedule a public hearing or approval deadline if such reports and studies are submitted less than thirty days prior to a public hearing, unless the applicable board or commission waives this time limit in a specific case for cause. Copies of such additional materials shall be delivered to all reviewers who received the original application packet.

2. Voluntary Information
Any supplemental information, such as revised application materials, that is voluntarily submitted by the applicant, should be submitted before the departmental report is finalized. Any such information submitted after the departmental report is finalized shall cause the application to be automatically postponed to the next regular meeting in order for the department to have time to review the new information, unless the board or commission determines that the new information does not significantly alter the application.

H. Notice

1. Content of Notices
Public notice required under this chapter shall, unless otherwise specified in this title:

a. Identify the date, time, and place of the public hearing, if applicable;

b. If applicable, describe the property involved in the application by street address or by legal description and nearest cross street;

c. Describe the nature, scope, and purpose of the proposed action;

d. If applicable, indicate that interested parties may appear at the hearing and speak on the matter; and

e. Indicate where additional information on the matter may be obtained.

2. Summary of Notice Requirements

The following table 21.03-1 summarizes the notice requirements of the procedures set forth in this chapter. Unless otherwise specified in this title, procedures not listed in this table have no public notice requirements.

TABLE 21.03-1: SUMMARY OF NOTICE REQUIREMENTS

		Notice Required			
Type of Application or Procedure	Section	Mailed	Published	Posted	Community Council
Alcohol—Special Land Use Permit	21.03.040	✓	✓	✓	✓
Appeals to Board of Adjustment	21.03.050A.	✓[-]	✓	-	-
Appeal of an Enforcement Order	21.13	-	-	✓	-
Appeals to ZBEA	21.03.050B.	✓	✓	-	✓
Comprehensive Plan Amendments, Substantive	21.03.070C.	-	✓	-	✓
Conditional Uses	21.03.080	✓	✓	✓	✓
Master Plan, Area	21.09.030E.	✓	✓	✓	✓
Master Plan, Development	21.09.030F.	✓	✓	✓	✓
Master Plan, Institutional	21.03.110	✓	✓	✓	✓
Neighborhood or District Plans	21.03.130	-	✓	-	✓
Nonconforming Uses of Land or Structures, Replication of	21.12.030C.	✓	✓	✓	✓
Nonconforming Structures, Replication of	21.12.040D.	✓	✓	✓	✓
Public Facility Site Selection [(EXCEPT SCHOOLS)]	21.03.140	✓	✓	✓	✓
Rezonings (Zoning Map Amendments)	21.03.160	✓	✓	✓	✓
Site Plan Review, Major	21.03.180C	✓	✓	✓	✓
Street and Trail Review	21.03.190	-	-[✓]	-	-
Subdivisions (with existing physical access)	21.03.200	✓	✓	✓	✓
Subdivisions (without existing physical access)	21.03.200	✓	✓	-	✓
Abbreviated Plats	21.03.200D.	-	✓	-	✓
Modification or Removal of Plat Notes	21.03.200G.	✓	✓	✓	✓

TABLE 21.03-1: SUMMARY OF NOTICE REQUIREMENTS					
		Notice Required			
Type of Application or Procedure	Section	Mailed	Published	Posted	Community Council
Title 21, Text Amendments	21.03.210	-	✓	-	✓
Vacation of Public and Private Interest in Land	21.03.230	✓	✓	✓	✓
Variances	21.03.240	✓	✓	✓	✓

3. Written (Mailed) Notice

When table 21.03-1 requires that written notice be provided, the director shall deposit such notice into first class mail at least 21 days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. Written notice shall be provided to the following persons or groups:

a. *Owners of Subject Property*

All persons listed on the records of the municipal assessor as owners of land subject to the application, at the mailing addresses of such persons in the records of the municipal assessor.

b. *Adjacent Property Owners*

All persons listed on the records of the municipal assessor as owners of any land within 500 feet of the outer boundary of the land subject to the application, or owners of the 50 parcels nearest to the outer boundary of the land subject to the application, whichever is the greater number of parcels, at the mailing addresses of such persons in the records of the municipal assessor.

c. *Additional Persons*

Such additional persons or geographic areas as the director may designate.

4. Published Notice

When table 21.03-1 requires that notice be published, the director shall cause a notice to be published in a newspaper having general circulation. The notice shall be published at least 21 days before the scheduled hearing date. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

5. Posted Notice

When table 21.03-1 requires that notice be posted, the applicant shall cause a notice(s), on a form(s) provided by the department, to be posted on the property, visible from each developed right-of-way adjacent to the property, for at least 21 days before the scheduled public hearing date. In computing such period, the day of posting shall not be counted, but the day of the public hearing shall be counted. If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way. Posted notices shall include all the content specified in subsection H.1. above except for the legal description. Before the public hearing, the applicant shall submit to the department an affidavit, signed by the person who did the posting or the person who caused the posting to be done, that notice was posted as required by this subsection. Posted notices shall be removed by the applicant within 30 days after the close of the public hearing on the application.

6. Community Councils

Any officially recognized community council whose boundary includes any part of the subject property, and any additional such council whose boundary lies within 1,000 feet of any part of the subject property shall receive written (mailed) notice in accordance with H.3. above. Furthermore, the department shall provide notice to additional community councils in the following instances:

a. Each recognized community council within the municipality shall receive written notice where the subject parcel is one of the following regional public lands or facilities: Ted Stevens Anchorage International Airport; Merrill Field Airport; Birchwood Airport; Far North/Bicentennial Park; Kincaid Park; Russian Jack Springs Park; Beach Lake Park; Edmonds Lake Park; Bird Creek Regional Park; Chugach State Park; Anchorage Coastal Wildlife Refuge; BLM tract(s) near Far North/Bicentennial Park.

b. If the subject parcel is a branch public facility that serves a specific delineated area, such as a public school or fire station, then any community council whose boundaries lie within the delineated district of service of a branch public facility shall receive written notice. This requirement shall only take effect after the municipality has established maps delineating areas of service for the type of branch facility, and has adopted procedures and responsibilities for updating service area boundaries.

c. Any community council whose boundaries lie beyond the minimum notification distance shall receive notice regarding proposals of potentially major scope or controversy that, in the opinion of the director, are likely to have a significant impact on the residents of the community council beyond the minimum notification distance.

d. All community councils shall receive notice of [SUBSTANTIVE AMENDMENTS TO THE COMPREHENSIVE PLAN] neighborhood or district plans, street and trail review, substantive amendments to the comprehensive plan, and amendments to the text of title 21.

7. Constructive Notice

Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to, errors in a legal description or typographical or grammatical errors that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall make a formal finding as to whether there was substantial compliance with the notice requirements of this title.

8. Presumption of Notice

When the records of the municipality document the publication, mailing, and posting of notices as required by this subsection, it shall be presumed that notice of a public hearing was given as required by this subsection.

I. Departmental Report

For every decision that requires a public hearing or where otherwise required by this title, the department shall prepare a report to be given to the decision-making body approximately one week before the initial public hearing on the application. The report shall include project background, public comments received, the summary of community meeting (if applicable), and the department's recommendation for action.

J. Referrals

The applicant, boards, commissions, or the municipal administration may request that government agencies, non-governmental agencies, and other boards and commissions besides the decision-making body review an application, but the final decision-making authority shall remain with the body identified in this chapter.

K. Concurrent Processing

1. Where possible without creating an undue administrative burden on the municipality's decision-making bodies and staff, this title intends to accommodate the simultaneous processing of applications for different permits and approvals that may be required for the same development project in order to expedite the overall review process. Review and decision-making bodies considering applications submitted simultaneously shall render separate reports, recommendations, and decisions on each application based on the specific standards applicable to each approval.

2. Some forms of approval depend on the applicant having previously received another form of approval, or require the applicant to take particular action within some time period following the approval in order to avoid having the approval lapse. Therefore, even though this title intends to accommodate simultaneous processing, applicants should note that each of the permits and approvals set forth in this title has its own timing and review sequence.

3. The expected time frame and approval process for a consolidated application shall follow the longest time frame and approval process required from among the joined application types.

L. Postponements

1. If only five or fewer board or commission members are in attendance at the hearing, the applicant may request a postponement of his or her case, and the fee for the first postponement request shall be waived.

2. The applicant may request a postponement of his or her case for any other reason, which he or she shall state to the commission. If the decision-making body grants the postponement request, the applicant shall pay the postponement fee listed in the user's guide, and a new hearing date shall be determined by the department.

a. If public notice pursuant to subsection H. above has not been given, the director is the decision-making body for the purpose of granting a postponement.

b. If public notice pursuant to subsection H. above has been given, the decision-making body is the board or commission identified in this chapter for the entitlement requested.

3. Re-notice of the new time for hearing is only required if the postponement is for more than 30 days, or if no date certain is set for the hearing at the time of postponement.

M. Conditions of Approval

1. The decision-making body is authorized to impose such conditions upon the entitlement as may be necessary to conform to the standards of this title, reduce or minimize any potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the comprehensive plan and this title. In such cases, any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development.

2. No conditions of approval, except for those attached to variance approvals, shall be less restrictive than the requirements of this title or applicable special limitations.

3. Unless there is a time schedule stated as part of the condition, all conditions of approval shall be met within one year of the date of approval (unless the condition is ongoing, such as a specification of hours of operation).

N. Decision

Recommendations and decisions shall be made in accordance with title 4.

O. Lapse of Approval

1. The lapse of approval time frames established by the procedures of this title may be extended only when all of the following conditions exist:

   a. The provisions of this title must expressly allow the extension;

   b. An extension request must be filed prior to the applicable lapse-of-approval deadline; and

   c. The extension request must be in writing and include justification.

2. Unless otherwise noted, authority to grant extensions of time shall rest with the decision-making body that granted the original approval (the one being extended).

P. New Application Required

If an application is inactive for one year awaiting action by the petitioner, the application shall be discarded and a new application shall be required.

21.03.030 ADMINISTRATIVE PERMITS

A. Applicability

It shall be a violation of law for any person to engage in a land use for which an administrative permit is required by this title without first obtaining such a permit.

B. Administrative Permits

Except as otherwise allowed in this title, a[A] permit issued by the director and pursuant to this section shall be valid between January 1 or the date of issuance and December 31 of the year in

which it is issued, except that permits for bed and breakfasts shall be valid between the date of issuance and December 31 of the year after the permit was issued. An application for renewal of a permit shall be submitted in the same manner as the original application and no later than December 1 immediately preceding the expiration date of that permit.

C. Regulations

The director may promulgate regulations to implement this section, as provided in AMC chapter 3.40. Permits shall be issued and renewed as outlined in the title 21 user's guide.

D. Appeals

Denial of an administrative permit may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

21.03.040 ALCOHOL—SPECIAL LAND USE PERMIT

A. Applicability

1. Any use that includes the retail sale of alcoholic beverages is subject to the review process set forth in this section. This process shall apply to such a use regardless of whether it is listed in the use tables in section 21.05.010 as being permitted as a matter of right or subject to site plan review or the conditional use process. The applicant shall be required to obtain approval through both the process in this section and the separate process referenced in the use table.

2. Notwithstanding A.1. above, catering and special event permits issued by the state Alcoholic Beverage Control Board[, AND HELD NO MORE THAN 12 TIMES IN A CALENDAR YEAR AT THE SAME PHYSICAL LOCATION,] are exempt from these approval requirements, but shall meet AMC title 10 requirements and the following:[.]

   a. When multiple permits are issued for the same location, the permits shall be for discreet events, and shall not be used to avoid the special land use permit process; and

   b. The catering and special event permit shall be reviewed by the chief of police in order to address any recurring problems at the site that have involved the police.

3. No modification of an existing special land use permit for alcohol shall be required for the first duplicate liquor license provided:

   a. There is no increase in the square footage of the premise licensed for the retail sale or dispensing of alcoholic beverages; or

   b. If there is an increase in the square footage of the licensed premise, such increase is five hundred square feet or less, whether or not the area of increase is used year-round. In such case the licensed business shall request a minor modification to their approval by submitting a site plan for department review, along with the fee specified in the user's guide. The department shall review the site plan for potential impacts including, but not limited to, parking, lighting, noise, and traffic.

B. General Standards

The following provisions apply to all uses, in all districts, involving the retail sale, dispensing, or service of alcoholic beverages including, but not limited to, liquor stores, restaurants, bars, dinner theaters, movie theaters, brew pubs, tearooms, and cafes.

1. Any use, whether principal or accessory, involving the retail sale or dispensing of alcoholic beverages is permitted only by approval of the assembly under this section. This requirement applies only to the retail sale or dispensing of alcoholic beverages and not to related principal or accessory uses.

2. Notwithstanding any other provision of this title to the contrary, an approval for uses involving the retail sale of alcoholic beverages shall only require the approval of the assembly.

C. Application and Review Procedure

1. **Application Submittal**
Applications for assembly alcohol approval shall be submitted to the director within seven days after application is made to the state alcoholic beverage control board for issue or transfer of location of a liquor license. Applications shall contain a zoning map showing the proposed location. The assembly may promulgate regulations concerning the mandatory information to be submitted with the application for a special land use permit for alcohol.

2. **Departmental Review**
The department shall prepare and submit a report and a list of all licenses located within a minimum of 1,000 feet of the proposed use to the assembly, and shall address the conformity of the proposed application with this title and AMC chapter 10.50. The department shall also submit a proposed resolution for assembly consideration in connection with liquor license applications.

3. **Public Notice**
Notice of all public hearings shall be provided in accordance with section 21.03.020H., *Notice*.

4. **[ASSEMBLY] Action**

a. The special land use permit for alcohol for any use that includes the retail sale of alcoholic beverages, with the exception of a restaurant or eating place licensed by the state Alcoholic Beverage Control Board to sell beer and wine for consumption only on the licensed premises, shall be considered by the assembly. After holding a public hearing, the assembly shall approve, approve conditionally, or deny the application. In considering action, the assembly shall apply the criteria set forth in this title for conditional uses in section 21.03.080C., *Approval Criteria*. The assembly shall not take into consideration the sum paid by any person to acquire the license for which a permit is requested.

b. The special land use permit for alcohol for a restaurant or eating place licensed by the state Alcoholic Beverage Control Board to sell beer and wine for consumption only on the licensed premises, shall be considered by the director. In considering whether to approve, approve conditionally, or deny the application, the director shall apply the criteria set forth in this title for conditional uses in section 21.03.080C., *Approval Criteria*. The director shall not take into

consideration the sum paid by any person to acquire the license for which a permit is requested. The director's decision may be appealed to the assembly.

5. Conditions of Approval

a. The assembly may, in connection with an approval under this section, impose such special terms and conditions or modify existing conditions governing operation of that license as are in the public interest, and are consistent with the purposes of this title.

b. Conditions of approvals under this section are enforceable under the provisions of this title. The assembly may revoke such an approval for failure to comply with conditions of the permit, provided a public hearing with notice to the owner affected is first held.

c. A copy of the conditions imposed by the assembly in connection with approval under this section shall be maintained on the premises involved at a location visible to the public.

6. Effect of Denial

An application for approval under this section that has been denied by the assembly shall not be accepted for rehearing for a period of one year following such denial if the director finds the proposed application is substantially the same as that denied by the assembly, and if no substantially new evidence or change in circumstances has occurred. This paragraph shall not apply to an application filed under assembly direction at a hearing at which a like application was considered. This paragraph does not apply if the alcoholic beverage control board remands a case that was previously denied by the assembly.

7. Expiration

An approval granted under this section shall expire:

a. One hundred twenty days after the transfer of the license to sell alcoholic beverages from the premises has been approved by the state Alcoholic Beverage Control Board, unless there is an application filed with the Control Board prior to the expiration of the 120 day period; [OR]

b. The use holding the permit has been discontinued, vacant, or inactive for a continuous period of at least one year; or

c. If the operation of the business becomes substantially different from the business and operation reviewed by the assembly when the alcohol approval was granted under this section, unless the licensee applies for and receives assembly approval for a modification of the existing alcohol approval to reflect the change.

For the purposes of this section, "substantially different" means any material change in the operation of the business which could result in significant impact on the use and enjoyment of adjacent properties by property owners or occupants. A material change includes, without limitation, an increase in the late night or early morning hours of operation; a change involving the type of entertainment presented which results in an increase in noise level at the property line; or a change from a business which meets the requirements of the state Alcoholic Beverage Control board statutes and regulations for a restaurant designation permit to a business which would not meet such requirements.

21.03.050 APPEALS

A. Appeals to Board of Adjustment

1. Jurisdiction of Board

The board of adjustment shall decide appeals:

a. From decisions regarding the approval or denial of a preliminary plat (subsection 21.03.200C.);

b. From decisions regarding the approval or denial of a variance from the provisions of subsection 21.05.040K, *Telecommunication Facilities*; section 21.07.050, *Utility Distribution Facilities*; chapter 21.08, *Subdivision Standards*; and chapter 21.11, *Signs*;

c. From decisions regarding the approval or denial of vacations of public and private interest in land where the platting board is the platting authority (section 21.03.230);

d. From decisions regarding the approval or denial of a development master plan (subsection 21.09.030F.);

e. From decisions regarding the approval or denial of applications for conditional uses (section 21.03.080); and

f. From decisions regarding the approval or denial of applications for major site plan reviews (subsection 21.03.180C).

2. Appellants Before Board [INITIATION OF APPEAL]

Decisions may be appealed to the board of adjustment by:

a. Any municipal [GOVERNMENTAL] agency [OR UNIT]; or

b. Any party of interest for the application, as defined in chapter 21.14.

3. Appellees Before Board

a. Appellees before the board may be: [AN APPELLEE BRIEF MAY BE FILED AS PROVIDED IN SECTION SUBSECTION A.7. BY:]

i. The party in whose favor the lower administrative body's decision was rendered.

ii. Any municipal agency.

iii. Any party of interest for the application, as defined in chapter 21.14.

b. An appellee shall file a notice of intent to file a brief with the municipal clerk's office on a form prescribed by the municipal clerk, within 10 days after the deadline for filing an appeal. The municipal clerk shall serve notice to such appellees in writing of the date the record is available and of the date the appellant's brief is filed. [APPELLEES WHO WISH TO BE NOTIFIED BY THE MUNICIPAL CLERK'S OFFICE OF THE DATE THE RECORD IS AVAILABLE AND OF THE DATE THE APPELLANT'S BRIEF IS FILED MUST FILE A NOTICE OF INTENT TO FILE A BRIEF WITH THE MUNICIPAL CLERK'S

OFFICE ON A FORM PRESCRIBED BY THE MUNICIPAL CLERK WITHIN 20 DAYS AFTER THE DECISION OF THE LOWER ADMINISTRATIVE BODY FROM WHICH THE APPEAL IS TAKEN. AN APPLICANT FOR A SITE PLAN, CONDITIONAL USE, OR SUBDIVISION, WHO IS NOT THE APPELLANT, MUST FILE A NOTICE OF INTENT TO FILE A BRIEF WITH THE MUNICIPAL CLERK'S OFFICE WITHIN SEVEN DAYS OF RECEIPT OF THE APPELLANT'S NOTICE OF APPEAL TO BECOME AN APPELLEE.]

4. Perfection of Appeal; Notice of Appeal; Appeal Fee

a. An appeal to the board of adjustment must be perfected by the appellant within [A PARTY OF INTEREST FOR THE APPLICATION NO LATER THAN] 20 days after [FROM] the date of service of the decision. [THE WRITTEN FINDINGS OF FACT AND DECISION OF THE ADMINISTRATIVE BODY FROM WHICH THE APPEAL IS TAKEN IS APPROVED, ON THE RECORD, AND BECOMES A FINAL, APPEALABLE DECISION, IS MAILED OR OTHERWISE DISTRIBUTED OR DELIVERED TO THE APPLICANT.] The appeal is perfected by the filing of a notice of appeal, appeal fee, and cost bond in accordance with this section.

b. The notice of appeal must be filed with the municipal clerk on a form prescribed by the municipality and must contain detailed and specific allegations of error. If the appellant is not the applicant, the appellant's notice of appeal shall include certificate of service on the applicant. [SHALL, WITHIN THREE DAYS AFTER FILING THE NOTICE OF APPEAL, SERVE A COPY OF THE NOTICE OF APPEAL ON THE APPLICANT BY CERTIFIED MAIL TO THE APPLICANT'S LAST KNOWN ADDRESS. PROOF THE NOTICE WAS SERVED SHALL BE PROVIDED TO THE MUNICIPAL CLERK.]

c. The appellant shall pay the current [AN] appeal fee [AS PROVIDED IN THE USER'S GUIDE]. In addition, the appellant shall file a cost bond equal to the estimated cost of preparation of the record. Following completion of the record, the actual cost thereof shall be paid by the appellant. All costs and fees shall be returned to the appellant if the decision of the lower body is reversed in whole or in part.

5. New Evidence or Changed Circumstances

a. Allegations of new evidence or changed circumstances shall not be considered or decided by the board of adjustment. Allegations of new evidence or changed circumstances shall be raised by written motion for rehearing, filed with the municipal clerk within [NO LATER THAN] 20 days after the date of service of the initial decision of the lower administrative body['S INITIAL DECISION BECOMES FINAL].

i. The municipal clerk shall [AUTOMATICALLY] reject any motion filed more than 20 days after the date of service of the initial decision of the lower administrative body['S INITIAL DECISION BECOMES FINAL], without hearing or reconsideration by the lower administrative body.

ii. A decision of the lower administrative body on any issues remanded from the board of adjustment is not an initial decision as described in subsection 5.a. above.

iii. The municipal clerk shall [AUTOMATICALLY] reject[, WITHOUT HEARING OR RECONSIDERATION,] any motion alleging new evidence

or changed circumstances filed in response to a lower administrative body's decision on any issue(s) presented on remand.

b. If the written motion for rehearing is filed in a timely manner, the administrative body from which the appeal is taken shall decide whether to reopen and rehear the matter. A rehearing shall be held if the lower administrative body determines:

i. If true, that the alleged new evidence or changed circumstances would substantially change the decision of the body, and

ii. The party alleging new evidence or changed circumstances acted promptly and with diligence in bringing the information to the body's attention.

6. Appeal Record

a. The appellant shall arrange for the preparation of the transcript of the board hearing by a court reporter or the [CURRENT] board and commission recording secretary and shall pay the cost of such preparation. The appellant shall file the transcript with the municipal clerk. If the appellant fails to file the transcript within 30 days after [OF] the filing of the notice of appeal, the municipal clerk shall reject the appeal [SHALL BE AUTOMATICALLY DENIED].

b. Upon timely perfection of an appeal to the board of adjustment, the municipal clerk shall assemble [PREPARE] an appeal record. The record shall contain:

i. A copy of the notice of appeal filed by the appellant.

ii. A verbatim transcript of the proceedings before the administrative body from which the appeal has been taken.

iii. Copies from the department of all documentary evidence, memoranda, exhibits, correspondence, and other written material submitted to the administrative body prior to the decision from which the appeal is taken.

iv. A copy from the department of the written decision of the administrative body, including its findings and conclusions.

c. Upon completion of the record, the municipal clerk shall serve notice on [NOTIFY] the appellant [BY CERTIFIED MAIL] of the cost of its preparation. If the appellant fails to pay the costs within seven days of receiving the notice, the appeal shall be rejected [AUTOMATICALLY DENIED]. Upon timely payment of costs, the municipal clerk shall[, BY CERTIFIED MAIL,] serve a copy of the record on the appellant. The municipal clerk shall also serve notice on [NOTIFY BY CERTIFIED MAIL] the appellees who have filed a notice of intent to file a brief that the record is available for pickup. Upon request, the municipal clerk shall provide a copy of the record to an appellee or the public. A copying cost for the record will be charged as set out in AMCR 3.90.002. The appellee shall also be charged any mailing costs[, INCLUDING THE COST OF MAILING THE NOTICE OF RECORD AVAILABILITY].

7. Written Arguments

a. ***Brief of Appellant***

The appellant [TO THE BOARD OF ADJUSTMENT] may file a written brief of points and authorities in support of those allegations of error specified in the

notice of appeal with the municipal clerk's office within [NOT LATER THAN] 15 days after service of the appeal record. If the appellant files a brief, allegations of error specified in the notice of appeal and not included in the appellant's brief may be deemed waived or abandoned. The municipal clerk shall deliver a copy of the appellant's brief to the municipal staff assigned responsibility for the appeal. The municipal clerk shall also serve notice on [NOTIFY BY CERTIFIED MAIL] those appellees who have filed a notice of intent to file a brief that the appellant's brief is available for pickup. Upon request, the municipal clerk shall provide a copy of the appellant's brief to appellees, who shall be charged copying costs as provided in AMCR 3.90.002 and any mailing costs applicable.

b. ***Brief of Appellee***

An appellee who has filed a notice of intent to file a brief may also file with the municipal clerk's office a written response (appellee's brief) [REPLY] to the notice of points on appeal and any brief in support thereof within 15 [NO LATER THAN 30] days after service of notice by the municipal clerk that the appellant's brief is available for pick-up. [THE SERVICE OF THE APPEAL RECORD.] The municipal clerk shall serve notice on [NOTIFY] the appellant [BY CERTIFIED MAIL] that appellee briefs have been filed. The director may prepare and submit to the municipal clerk a written response (staff's brief) [REPLY] to the notice of appeal and any brief in support thereof within 15 days after service of notice by the municipal clerk that the appellant's brief is available for pick-up. [NO LATER THAN 30 DAYS AFTER SERVICE OF THE APPEAL RECORD.]

c. ***Reply Brief***

An appellant may file a written reply brief to appellee briefs submitted pursuant to subsection 7.b. The appellant's reply brief is due within 15 [NO LATER THAN 10] days after service of notice by the municipal clerk that the appellee's brief is available for pick-up. [THAT THE APPELLEE BRIEFS HAVE BEEN FILED.]

[TIMING OF BRIEFS

IF A BRIEF IS NOT FILED WITHIN THE TIME PRESCRIBED ABOVE, THE MUNICIPAL CLERK SHALL NOTIFY THE BOARD OF ADJUSTMENT THAT THE BRIEF WAS FILED LATE. THE BOARD SHALL DETERMINE WHETHER TO ACCEPT A LATE BRIEF AND WHETHER TO ALLOW ADDITIONAL TIME FOR ANY QUALIFIED OPPOSING PARTY TO FILE REPLY OR REBUTTAL BRIEFS IF ALLOWED.]

d. ***Form of Briefs***

[ALL BRIEFS SHALL BE PREPARED TO SPECIFICATIONS SET FORTH IN THE TITLE 21 USER'S GUIDE.] The municipal clerk shall not accept a brief unless it is in the form prescribed by this subsection [THE USER'S GUIDE.]

i. *Required Attachments*

All briefs shall be filed with an attached copy of the ordinances and regulations principally relied upon, set out verbatim. All briefs shall also include an excerpt of record of the pages on which the brief relies.

ii. *Text of Brief, Exclusive of Attachments*

Briefs shall be typewritten on 8 ½- by 11-inch pages, double-spaced, wih quotations over two lines being single-spaced and indented.

iii. *Page Limitation*

The brief of appellant and the brief of appellee are each limited to 25 pages exclusive of exhibits and attachments. The reply brief is limited to 10 pages exclusive of exhibits.

8. Appeal Packet; Notice of Hearing

Following the time set for the municipal clerk's receipt of all written argument from the appellant, the appellee, and the municipal staff [UNDER THIS SUBSECTION], the municipal clerk shall prepare and distribute to the members of the board of adjustment an appeal packet containing only [THE NOTICE OF APPEAL,] the appeal record assembled by the clerk and any briefs filed in accordance with subsection A.7. above. The board of adjustment shall set a date [FOLLOWING DISTRIBUTION OF THE PACKETS, A DATE SHALL BE SET] for consideration of the issues on appeal. The municipal clerk shall publish n[N]otice of the date [CONSIDERATION ON THE APPEAL SHALL BE PUBLISHED] in a newspaper of general circulation and shall serve notice [BE SERVED] by mail on the appellant and those appellees who have submitted briefs. The municipal clerk shall make a[A]ppeal packets shall be made available to the public upon request [DEMAND] with costs payable by the public as provided in AMCR 3.90.002.

9. Procedural Changes

Upon timely application and for good cause shown, the board of adjustment may relax or modify the procedural rules or the rules relating to costs contained herein for the orderly transaction of appeals before the board.

10. Conduct of Hearing

a. The meeting at which the board of adjustment deliberates and decides an appeal shall be open to the public and a record of the hearing shall be made.

b. The board of adjustment shall not [MAY] hear [ORAL] argument nor take additional testimony or other evidence. The board of adjustment may consider only the material contained in the appeal packet. [FROM THE APPELLANT AND ANY OTHER PARTY WHO HAS SUBMITTED A BRIEF. THE BOARD OF ADJUSTMENT SHALL NOT TAKE TESTIMONY OR CONSIDER NEW EVIDENCE THAT WAS NOT INTRODUCED IN THE ORIGINAL PROCEEDING.]

11. Scope of Review

a. The board of adjustment shall consider [HEAR] an appeal solely on the basis of the record established before the lower administrative body, the notice of appeal, the briefs, and the law. [THE APPELLANT'S ARGUMENT, AND THE REPLY TO THAT ARGUMENT.]

b. The board of adjustment may exercise its independent judgment on legal issues raised by the appellant. The term "legal issues," as used in this section, means those matters that relate to the interpretation or construction of ordinances or other provisions of law.

c. The board of adjustment shall, unless it substitutes its independent judgment pursuant to subsection 11.d. below, defer to the judgment of the lower administrative body regarding factual [DISPUTED] issues [OR FINDINGS OF FACT]. Findings of fact adopted expressly or by necessary implication by the lower administrative body may be considered as true if they are supported in the record by substantial evidence. The term "substantial evidence," for the purpose of this section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If the record affords a substantial basis of

fact from which the fact in issue may be reasonably inferred, it shall be considered that the fact is supported by substantial evidence.

d. [NOTWITHSTANDING THE PROVISIONS OF SUBSECTION 10.C. ABOVE, T]The board of adjustment may, by unanimous vote [AN AFFIRMATIVE VOTE OF TWO-THIRDS OF THE FULLY CONSTITUTED BOARD], substitute its independent judgment for that of the lower administrative body on any disputed issues or findings of fact. such judgment must be supported on the record by substantial evidence. [FOR THE PURPOSE OF THIS SUBSECTION, THE FULLY CONSTITUTED BOARD OF ADJUSTMENT SHALL NOT INCLUDE THOSE MEMBERS WHO DO NOT PARTICIPATE IN THE APPEAL.]

12. Decision

a. The board of adjustment, by majority vote, may affirm, modify, or reverse the decision of the lower administrative body in whole or in part. [IT SHALL DECIDE AN APPEAL ON THE BASIS OF THE RECORD ON APPEAL AND THE BRIEFS OF THE PARTIES TO THE APPEAL. A MAJORITY VOTE OF THE FULLY CONSTITUTED BOARD IS REQUIRED TO REVERSE OR MODIFY THE DECISION APPEALED FROM. FOR THE PURPOSE OF THIS SECTION, THE FULLY CONSTITUTED BOARD SHALL NOT INCLUDE THOSE MEMBERS WHO DO NOT PARTICIPATE IN THE PROCEEDINGS.] A decision reversing or modifying the decision appealed from shall be in a form which finally disposes of the case on appeal except where the case is remanded in accordance with subsection 13[12].a. below.

b. Every decision of the board of adjustment to affirm, modify, or reverse the decision of the lower administrative body pursuant to subsection 12[11].a. above shall be based upon and include written findings and conclusions adopted by the board. Such findings must be reasonably specific so as to provide the community, and, where appropriate, reviewing authorities, a clear and precise understanding of the reason for the board's decision. The board may seek the assistance of legal counsel [THE MUNICIPAL STAFF] in the preparation of its decision [FINDINGS].

c. Every final decision of the board of adjustment shall clearly state on its face it is a final decision with respect to all issues involved in the case, and that the parties have 30 days from the date of service of the decision [MAILING, OR OTHER DISTRIBUTION OF THE DECISION,] to [FILE AN] appeal to the superior court.

13. Remand

a. [WHERE THE BOARD OF ADJUSTMENT REVERSES OR MODIFIES A DECISION OF THE LOWER ADMINISTRATIVE BODY IN WHOLE OR IN PART, ITS DECISION SHALL FINALLY DISPOSE OF THE MATTER ON APPEAL, EXCEPT THAT T]The case shall be remanded to the lower body where the board of adjustment determines any of the following [EITHER THAT]:

i. There is insufficient evidence in the record on an issue material to the decision of the case; [OR]

ii. There has been a substantial procedural error that requires further public hearing; or

iii. The lower administrative body has made a legal error that, in the opinion of the board of adjustment, warrants a remand.

b. If the board of adjustment remands a case to the lower administrative body, the board [A DECISION REMANDING A CASE] shall describe any issue upon which further evidence shall [SHOULD] be taken, and shall set forth any further directions the board deems appropriate for the guidance of the lower administrative body.

c. [THE LOWER ADMINISTRATIVE BODY SHALL ACT ON THE CASE UPON REMAND IN ACCORDANCE WITH THE DECISION OF THE BOARD OF ADJUSTMENT IN THE MINIMUM TIME ALLOWED BY THE CIRCUMSTANCES.] Cases on remand following a decision of the board shall take precedence over all other matters on the agenda of the lower administrative body.

d. A board of adjustment decision remanding a case on one or more issues is not a final decision with respect to any issues involved in the appeal. The board of adjustment's decision remanding the case is and shall state that it is [SHALL BE] the final decision with respect to all matters affirmed by the board of adjustment's decision, when, following service of the lower administrative body's decision on remand, no appeal is perfected within the period specified in subsection 21.03.050A.4. The decision shall also state that the parties have 30 days from the expiration of said period to appeal to the superior court.

e. [A BOARD OF ADJUSTMENT DECISION REMANDING A CASE ON ONE OR MORE ISSUES SHALL STATE THAT THE DECISION IS THE FINAL DECISION WITH RESPECT TO ALL MATTERS AFFIRMED THEREIN WHEN, FOLLOWING THE LOWER ADMINISTRATIVE BODY'S DECISION ON REMAND, NO APPEAL IS PERFECTED WITHIN THE TIME PERIOD SPECIFIED IN SECTION 21.03.050A. 6[4]., AND SHALL ALSO STATE THE PARTIES HAVE 30 DAYS FROM THE EXPIRATION OF SAID PERIOD TO APPEAL TO THE SUPERIOR COURT.]

B. Appeals to Zoning Board of Examiners and Appeals

1. Jurisdiction of Board

The zoning board of examiners and appeals shall hear appeals from decisions of the municipal staff regarding:

a. Enforcement orders issued under chapter 21.13, *Enforcement.*

b. Denial of an application for a flood hazard permit under section 21.03.090.

c. Denial of an application for a building or land use permit when such denial is based on the requirements of title 21.

d. Denial of an application for a sign permit when such denial is based on the requirements of title 21.

e. Denial of a minor modification under section 21.03.120 when the director is the decision-making body.

f. Denial of a verification of legal nonconforming status under section 21.03.250.

g. Denial of or imposition of conditions on a certificate for legalization of nonconforming dimensional setback encroachment under section 21.12.030, or a

certificate for legalization of lots created prior to September 16, 1975 under subsection 21.12.050C.

h. Interpretation of zoning district boundaries under subsection 21.01.050C.

i. Denial of a certificate of zoning compliance under section 21.03.060.

j. Denial of an administrative permit under section 21.03.030.

k. Denial of administrative approval to reinstate a damaged nonconforming use under subsection 21.12.030C., or to rebuild a damaged nonconforming structure under subsection 21.12.040D.1.a.

l. Overcoming presumption of abandonment under subsection 21.12.030E.

m. Compliance with an institutional master plan under subsection 21.03.110F.

n. Interpretation of general definitions and use definitions.

2. Initiation of Appeal

Appeals to the zoning board of examiners and appeals may be brought by any party of interest for the application.

3. Time Limit for Filing; Notice of Appeal; Appeal Fee

a. An appeal of an administrative decision to the zoning board of examiners and appeals, as set out in subsection B.1. above, must be filed no later than 20 days after the date of service [WRITTEN NOTIFICATION] of the decision.

b. Notice of appeal must be filed with the director [MUNICIPAL CLERK] on a form prescribed by the municipality and must contain detailed and specific allegations of error.

c. The appellant shall pay an appeal fee as set by the assembly, which shall accompany the filing of the notice of appeal. The appeal fee shall be returned to the appellant if the decision of the lower administrative body is reversed in whole, and one-half of the fee shall be returned if the decision is reversed in part.

4. Scope of Review

The zoning board of examiners and appeals shall conduct a full evidentiary hearing on an appeal and make its decision on the basis of this title, the evidence, and the argument presented.

5. Notice and Public Hearing

a. A public hearing shall be held within 60 days of the filing of a proper notice of appeal.

b. Notice of the appeal hearing shall be published in a newspaper of general circulation at least 14 days prior to the hearing, and, in addition, the appellant shall be sent a notice by mail at least 14 days prior to the hearing.

c. The zoning board of examiners and appeals may prescribe rules of procedure for additional notification in cases where a decision of the board would have a substantial effect on the surrounding neighborhood.

6. Decision

a. The zoning board of examiners and appeals may affirm or reverse the decision of the decision-making body in whole or in part. It shall require a majority of the full membership, minus those members who disqualify themselves with conflicts of interest in accordance with AMC title 4.

b. Every decision of the zoning board of examiners and appeals to affirm or reverse an administrative action shall be in writing and based on and include written findings and conclusions adopted by the board. Such findings must be reasonably specific so as to provide the community and, where appropriate, reviewing authorities, with a clear and precise understanding of the reasons for the board's decision.

c. Every final decision of the zoning board of examiners and appeals shall clearly state it is a final decision and that the parties have 30 days from the date of mailing, or other distribution of the decision to file an appeal to the superior court.

C. Judicial Appeals

1. Judicial Review Authorized

In accordance with Appellate Rule 601 et seq., of the *Alaska Rules of Court*, a municipal officer, a taxpayer, or a person jointly or severally aggrieved may appeal to the superior court:

a. A final decision of the board of adjustment on an appeal from a decision regarding the approval or denial of an application for a conditional use.

b. A final decision of the board of adjustment on an appeal from the platting board regarding an application for a subdivision.

c. A final decision of the zoning board of examiners and appeals.

d. Any final action or decision under this title that is appealable to the superior court under the *Alaska Rules of Court* and/or laws of the state of Alaska.

21.03.060 CERTIFICATE OF ZONING COMPLIANCE

A. Purpose

A certificate of zoning compliance shall be required at the completion of any development in the municipality for which a permit is required, to ensure that the development complies with all applicable standards of this title.

B. Applicability

A certificate of zoning compliance shall be required prior to the occupancy of any building, structure, or land, except that temporary uses and structures in accordance with section 21.05.080, *Temporary Uses and Structures*, shall be exempt from certificate of zoning compliance requirements. Where issued, a certificate of occupancy shall be considered the certificate of zoning compliance.

C. Issuance

1. Certificate

Upon approval by the director, the building official shall [MAY] issue a certificate of zoning compliance, which is valid as long as the conditions of the building or land use permit remain in effect.

2. Conditional Certificate

Upon approval by the director, the building official may issue a conditional certificate of zoning compliance[, WHICH SHALL BE VALID ONLY FOR THE PERIOD OF TIME STATED IN THE CERTIFICATE,] for a specified portion or portions of a building [THAT MAY SAFELY BE OCCUPIED] prior to final completion of the entire building and/or site. The conditional certificate shall be valid only for the period of time stated in the certificate, not to exceed 270 days. Conditions that are attached to the conditional certificate of zoning compliance must be completed prior to the expiration of the certificate. When such conditions have not been completed prior to the expiration date of the conditional certificate, the certificate of zoning compliance shall immediately expire. Upon receipt of a written application to the building official stating satisfactory reasons for the failure to complete work within the given time period, the building official may renew the certificate for a specified period of time, not to exceed 180 days. Only one renewal may be granted, except that single family homes and phased projects may be granted more than one renewal.

3. Inside the Building Safety Service Area

Inside the building safety service area, t[T]he building official shall issue a certificate of zoning compliance when, after examination of the building, structure, landscaping, and/or other improvements or changes to the property, the municipality finds that the property [BUILDING] complies with the applicable provisions of this title and other applicable ordinances and construction codes of the municipality. [THIS REVIEW SHALL INCLUDE, BUT IS NOT LIMITED TO: OFF-STREET PARKING, LANDSCAPING, AND OTHER DEVELOPMENT STANDARDS LISTED IN CHAPTER 21.07, *DEVELOPMENT AND DESIGN STANDARDS*.]

4. Outside the Building Safety Service Area

Outside the building safety service area, the building official shall issue a certificate of zoning compliance when the municipality finds that the property complies with the applicable provisions of this title. For all development except for single- and two-family development, such finding shall follow an examination of the building, structure, landscaping, and/or other improvements or changes to the property. Single- and two-family development shall provide a certified as-built to the building official. Provisions of this title that cannot be verified by a certified as-built may be subject to a physical examination of the property through a final zoning inspection.

5. Appeals

Denial of a certificate of zoning compliance may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

D. [STANDARDS]

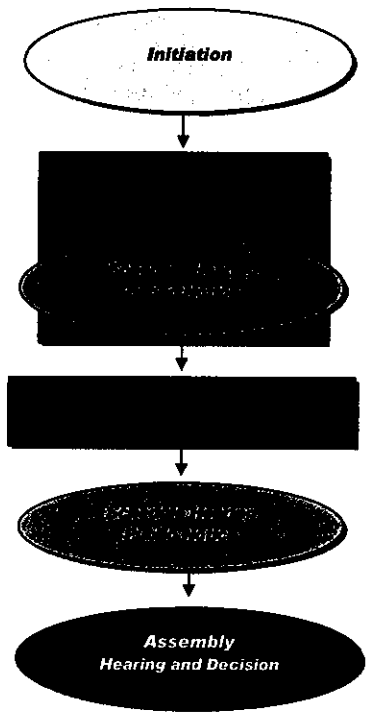
21.03.070 COMPREHENSIVE PLAN AMENDMENTS

A. Purpose and Scope

This section provides uniform procedures, schedules, and review criteria necessary for amendments to the comprehensive plan. It includes allowances for concurrent comprehensive plan map and zoning map amendments.

B. Levels of Plan Review

The comprehensive plan should be reviewed and reassessed regularly in order to evaluate its effectiveness and adequacy in guiding the growth of the municipality and to determine whether or not the plan continues to meet the long-term planning needs of the municipality. Because this review need not necessarily result in the complete revision of the plan, several levels of review are contemplated in this section.



Comprehensive Plan Amendments (Substantive)

1. Complete Plan Revision (20-year Intervals)
The director shall initiate a full review and complete revision of the comprehensive plan at least once every 20 years, preferably following the decennial census. As part of this review, the director shall provide the planning and zoning commission with an overall assessment of the adequacy and effectiveness of the existing plan, including identification of new issues not adequately addressed, issues which require further study and investigation, and suggested improvements. The planning and zoning commission shall consider the staff assessment and shall recommend amendments or issues that the commission feels should be pursued or investigated. Any amendments shall follow the procedures of subsections C. and D. below.

2. Targeted Plan Review (10-year Intervals)
The director shall initiate a targeted review of the plan at least once every 10 years, or in conjunction with an area-wide rezoning, in order to make it consistent with economic and demographic trends, recent and proposed land use decisions, and adopted studies and plans. Any amendments shall follow the procedures of subsections C. and D. below.

3. Other Plan Amendments
In addition to the regularly scheduled reviews described above, any review or decision-making body, or the director of any municipal department, may propose a plan amendment at any time. All such proposals shall be processed in accordance with the procedures in subsections C. and D. below.

C. Procedure for Substantive Amendments

1. Procedure

a. *Initiation*

A petition for amendment to the comprehensive plan may be initiated by any review or decision-making body, or, if accompanied by a rezone application, by a property owner.

b. ***Public Notice***
Notice of all public hearings shall be provided in accordance with section 21.03.020H.

c. ***Departmental Review***
The department shall review each proposed substantive amendment in light of the approval criteria set forth in subsection C.2. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission. This report shall include a discussion of all plans and policies that have been adopted by the municipality and are relevant to the proposed amendment.

d. ***Planning and Zoning Commission Action***
The planning and zoning commission shall hold a public hearing on the proposed amendment. Based on testimony received, the department's report, and the approval criteria in subsection C.2. below, the commission shall recommend that the assembly approve, approve with modifications, or deny the proposed amendment.

e. ***Assembly Action***
The assembly shall hold a public hearing on the proposed amendment. Based on the commission's recommendation, testimony received, and the approval criteria in subsection C.2. below, the assembly shall:

i. Approve the amendment by ordinance, either as submitted or with modifications suggested by staff, the planning and zoning commission, or the assembly;

ii. Reject the proposed amendment; or

iii. Refer the proposed amendment, and/or any substantial modifications proposed by the assembly, back to the planning and zoning commission or to a committee of the assembly for further consideration.

2. Approval Criteria
The planning and zoning commission may submit a recommendation for approval, and the assembly may approve an amendment [ONLY] if, in the judgment of the commission or the assembly, the amendment meets the following approval criteria:

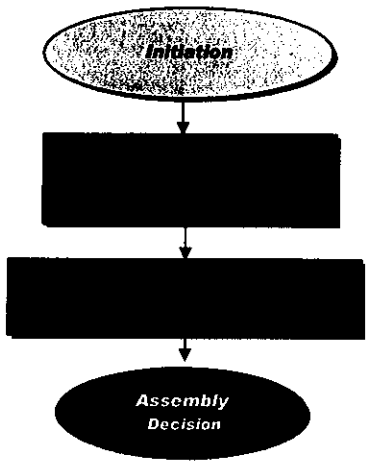
a. The proposed amendment is necessary in order to address one or more of the following:

i. A change in projections or assumptions from those on which the comprehensive plan is based;

ii. Identification of new issues, needs, or opportunities that are not adequately addressed in the comprehensive plan;

iii. A change in the policies, objectives, principles, or standards governing the physical development of the municipality or any other geographic areas addressed by the comprehensive plan; or

iv. Identification of errors or omissions in the comprehensive plan.



Comprehensive Plan Amendments (Cosmetic)

b. The proposed amendment maintains the internal consistency of the comprehensive plan, and is consistent with the other elements of the comprehensive plan without the need to change other components of the plan to maintain internal consistency.

c. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the community.

d. If the proposed amendment is to the comprehensive plan map, the requested land use designation is found to be equally or more supportive of the comprehensive plan goals, objectives, policies, and guidelines, than the old land use designation.

e. If the proposed amendment is to the comprehensive plan map, the subject site is consistent with the adopted description and locational criteria for the requested land use designation, and is physically suitable to accommodate the proposed designation, including but not limited to access, physical constraints, provision of utilities, and compatibility with surrounding designations and development patterns.

3. Concurrent Zoning Changes Allowed

a. Requests for rezonings (zoning map amendments) may be considered concurrently with a comprehensive plan map amendment. The zoning map amendment shall be to a zone corresponding to the requested comprehensive plan map designation. Concurrent zoning map amendments shall meet all of the approval criteria of subsection 21.03.170E.

b. The planning and zoning commission shall submit its report and recommendation regarding the comprehensive plan map amendment to the assembly at the same time it submits the report and recommendation on the rezoning case. The assembly and planning and zoning commission shall consider the plan amendment proposal and rezoning request separately, and shall act separately on the two items.

D. Procedure for Cosmetic Amendments

1. Initiation

Any review or decision-making body, or director of any municipal department, may, at any time on their own motion, request that the director investigate and evaluate a specific cosmetic amendment proposal. No public hearing or public notification is required.

2. Departmental Review
The department shall review each proposed cosmetic amendment and shall provide a report to the planning and zoning commission.

3. Planning and Zoning Commission Action
The planning and zoning commission shall submit, within a reasonable time, a report and recommendation to the assembly regarding whether or not the proposed amendment should be adopted as submitted, adopted with modifications, or rejected.

4. Assembly Action
The assembly shall consider the reports and recommendations of the planning and zoning commission and the director at a regularly scheduled assembly meeting, and will take action to either:

a. Approve or deny the amendment;

b. Approve the amendment with modifications; or

c. Refer the matter back to the planning and zoning commission for further consideration.

21.03.080 CONDITIONAL USES

A. Purpose

The conditional use approval procedure is intended for situations where a use may or may not be appropriate in a district, depending on the specific location, the use characteristics, and potential conditions to decrease the adverse impacts of the use on surrounding properties and/or the community-at-large. It also provides a discretionary review process for uses with unique or widely varying operating characteristics or unusual site development features. The procedure provides public review and evaluation of a use's operating characteristics and site development features through a public hearing process.

B. Procedure

1. Initiation
An application for a conditional use approval [PERMIT] shall be initiated by the owner(s) of the subject property.

2. Pre-Application Conference
Before filing an application, the applicant shall request a pre-application conference with the director, in accordance with subsection 21.03.020B.

3. Application Submittal
Applications for a conditional use approval shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

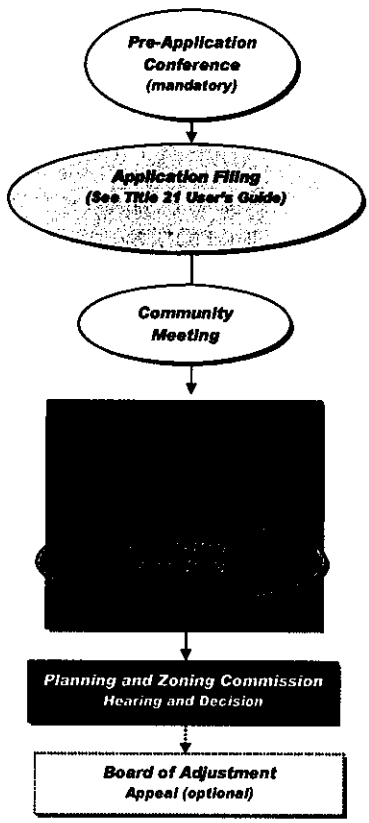
4. Community Meeting
A community meeting is required in accordance with subsection 21.03.020C[G].

5. Public Notice
Notice of all public hearings shall be provided in accordance with section 21.03.020H.

6. Departmental Review
The department shall review each proposed conditional use approval [PERMIT] application in light of the approval criteria of subsection C. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

7. Planning and Zoning Commission Action
The planning and zoning commission shall hold a public hearing on the proposed application and act to approve, approve with conditions, or deny the proposed conditional use [PERMIT], based on the approval criteria of subsection C. below.

8. Appeal
Decisions on conditional use approvals [PERMITS] may be appealed to the board of adjustment in accordance with subsection 21.03.050A.



Conditional Uses

C. Approval Criteria

The planning and zoning commission may approve a conditional use [PERMIT] application if, in the judgment of the commission, [ONLY UPON FINDING THAT] all of the following criteria have been met in all material matters:

1. The proposed use is consistent with the comprehensive plan and all applicable provisions of this title and applicable state and federal regulations;

2. The proposed use is consistent with the purpose and intent of the zoning district in which it is located, including any district-specific standards set forth in chapter 21.04;

3. The proposed use is consistent with any applicable use-specific standards set forth in chapter 21.05;

4. The site size, [AND] dimensions, shape, location, and topography are adequate for the needs of the proposed use and any mitigation needed to address potential impacts; [PROVIDE ADEQUATE AREA FOR THE NEEDS OF THE PROPOSED USE;]

5. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties of the permitted uses listed in the underlying zoning district;

6. The proposed use is compatible with uses allowed on adjacent properties, in terms of its scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);

[THE POTENTIAL IMPACTS OF THE PROPOSED USE OF THE SITE CAN BE ACCOMMODATED CONSIDERING SIZE, SHAPE, LOCATION, TOPOGRAPHY, AND NATURAL FEATURES;]

7. Any significant adverse impacts anticipated to result from the use will be mitigated or offset to the maximum extent feasible;

8. The proposed use is appropriately located with respect to the transportation system, including but not limited to existing and/or planned street designations and improvements, street capacity, access to collectors or arterials, connectivity, off-site parking impacts, transit availability, impacts on pedestrian, bicycle, and transit circulation, and safety for all modes; and

9. The proposed use is appropriately located with respect to existing and/or planned water supply, fire and police protection, wastewater disposal, storm water disposal, and similar facilities and services.

D. Amendments to Approved Conditional Uses [CHANGES TO TERMS AND CONDITIONS OF APPROVAL]

[ANY CHANGES TO THE TERMS AND CONDITIONS OF APPROVAL OF THE CONDITIONAL USE THAT CANNOT BE MADE USING THE MINOR MODIFICATION PROCESS (SEE SECTION 21.03.120) SHALL REQUIRE SEPARATE REVIEW AND APPROVAL BY THE PLANNING AND ZONING COMMISSION. ANY APPLICATION FOR APPROVAL OF SUCH CHANGES SHALL BE FILED, PROCESSED, REVIEWED, AND APPROVED OR DENIED IN THE MANNER SET FORTH IN THIS SECTION FOR THE ORIGINAL APPLICATION. THIS SECTION SHALL NOT APPLY, HOWEVER, TO MODIFICATIONS TO THE APPROVED SITE PLAN FOR THE CONDITIONAL USE, WHICH ARE GOVERNED BY SECTION 21.03.180G., *AMENDMENTS TO APPROVED SITE PLANS*.]

1. **Original Procedure Applies for Most Amendments**
Amendment of a conditional use approval shall follow the same process required for the original approval of a conditional use, unless the amendment is determined to be a minor amendment as described in subsection D.2. below.

2. **Administrative Approval of Minor Amendments**
The director may approve administratively minor amendments to any approved conditional use upon written application and documentation by the applicant, and upon the director's determination that the amendment is a minor amendment.

a. ***Procedure***

i. Upon receiving a written request from the applicant for a conditional use amendment, the director shall determine if the proposed amendment will be processed as a minor amendment or major amendment. The applicant may appeal the director's decision in writing to the zoning board of examiners and appeals within 10 days of the decision.

ii. Immediately following the director's determination that a proposed amendment is minor, the director shall:

(A) Issue a minor amendment affidavit, which shall be transmitted to the planning and zoning commission for their information; and

(B) Attach a form stating the nature of the modification, date of approval, and bearing the signature of the director to the conditional use on file in the department.

iii. If the original approval had been recorded, the amended plan shall be recorded by the municipality at the applicant's expense.

b. ***Types of Minor Amendments***
The following are amendments which the director may reasonably determine to be "minor":

i. Insubstantial changes to the text to add clarity or correct conflicting provisions.

ii. Changes in street alignment if such changes further the intent of the plan and this code, and are acceptable to the municipal engineer.

iii. Changes in building envelope, setback, and similar provisions of 10% or less.

iv. Incidental changes in landscaping, sign placement, lighting fixtures, etc. to further the intent of the plan and this code.

E. Platting for Conditional Uses

1. If development under an approval under this section creates a subdivision or requires the vacation of a dedicated public area, the approval is not effective until a final plat for the subdivision or vacation is approved and recorded in accordance with this title. A preliminary plat required under this section is subject to approval as required by section 21.03.200, *Subdivisions*.

2. Unless the planning and zoning commission directs in the final approval that it shall act as the platting authority, the platting board is the platting authority for subdivisions under this subsection.

3. The platting authority under this subsection may require that any street right-of-way, walkway, utility easement, or other public area designated under the final approval be dedicated to the public.

F. Conditional Use for a Residential Planned Unit Development

1. **Intent and Approval**
A residential planned unit development (PUD) is intended to allow flexibility for residential development in the zoning ordinance and to achieve the creation of a more desirable environment than [THAT] would be possible through a strict application of the zoning ordinance. The planning and zoning commission shall evaluate the proposed planned unit development in accordance with the conditional use approval criteria at C. above, and the following additional criteria:

a. Creative use of the land, imaginative architectural design, a consolidation of usable open space and recreation areas, and the preservation of natural features.

b. The mixing of compatible land uses, residential densities, and housing types within the neighborhood.

c. The efficiency of the configuration of utilities, vehicular circulation, and parking facilities.

d. Enhancing the surrounding environment.

e. Maintaining population densities and lot coverage that are consistent with available public services and the comprehensive plan.

2. Minimum Standards

All planned unit developments shall meet the following minimum standards. In addition, the planning and zoning commission may require compliance with such other design standards relating to the construction, design, and placement of buildings, landscaping, streets, roadways, walkways, drainageways, and other site design features as it may deem necessary. The user's guide may include guidelines to assist developers in meeting such standards.

a. ***Minimum Site Area***

The minimum site area for a PUD shall be 2.0 acres for PUDs located entirely in the R-2F, R-2M, R-3, and R-4[, AND R-4A] zoning districts. If any portion of a proposed PUD is located within the R-1, R-1A, R-2A, R-2D, R-5, or [R-6,] R-7[, R-8, OR R-9] zoning districts, the minimum site area shall be 5.0 acres. If any portion of a proposed PUD is located within the R-6, R-8, or R-9 zoning districts, the minimum site area shall be 10 acres.

b. ***Open Space***

A minimum of 30 percent [%] of the site shall be reserved as [USABLE] open space which shall meet the following standards:

i. At least one-half of such [USABLE] open space shall be contiguous;

ii. The open space shall not include public or private streets or rights of way; parking facilities, driveways, other motor vehicle circulation areas, loading areas, or refuse collection areas; slopes over 15 percent; 50 percent of designated snow storage areas; drainage easements, ditches, swales, or other areas intended to collect and channel water;

iii. In class A districts, n[N]o portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.iv. and b.v. below;

iv. In class B districts, no portion of the required open space shall be less than half of the minimum lot size of the underlying district in area, or less than 100 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.v. and b.vi. below;

v. A minimum of 12 percent [%] and a maximum of 50 percent [%] of required open space shall consist of yards which shall be reserved for the residents of individual dwelling units; and

vi. In multistory buildings, balconies or decks may be used in lieu of individual yards provided that the total area of all balconies or deck[E]s is not less than the total yard area otherwise required.

c. ***Design***

i. Any nonresidential use permitted in a PUD shall be compatible with the residential nature of the development. Parking areas which are intended

to serve nonresidential uses shall be separated from those designed to serve residential areas. Unless nonresidential and residential uses are combined within a single structure, nonresidential uses shall be separated from dwelling units by L3[4] buffer [SCREENING] landscaping.

ii. Pedestrian walkways shall connect residential and nonresidential uses within a PUD.

iii. Level 4[3] screening [BUFFER] landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district or a right-of-way designated for collector or greater capacity on the *Official Streets And Highways Plan*.

iv. Common open space with L4 screening landscaping shall be provided along any lot line abutting a residential neighborhood where any abutting lot is greater than 150 percent of the average lot size along that lot line of the PUD.

v. Any two adjacent buildings within a PUD shall be separated from each other by a distance equal to one-half the height of the taller building.

vi. Each unit shall be provided with either heated parking, or at least one electrical outlet that is convenient to the required parking space(s).

d. ***[TRAFFIC] Access and Connectivity***
PUDs shall comply with section 21.07.060, *Transportation and Connectivity*. [MAJOR INTERNAL STREETS WHICH ARE INTENDED TO SERVE A PUD SHALL BE FUNCTIONALLY CONNECTED TO EXISTING OR PROPOSED STREETS TO PROVIDE ADEQUATE INGRESS AND EGRESS.]

e. ***Utility Installation***
All new utilities shall be installed underground.

f. ***Homeowners' Agreements***
Any PUD which will involve the formation of a horizontal property regime under the terms of AS 34.07.010[030] et seq. or any mandatory homeowners' or similar association shall submit for review by the commission the articles of incorporation and bylaws of any such association prior to the sale of any property subject to the association. The commission may require any provisions necessary to ensure that the provisions and intent of this title are met.

3. **Development Options**
The following provisions allow the developer of the PUD to propose changes from the provisions of the underlying zoning district with regard to density, allowed uses, and dimensional standards. The extend of the changes to the standards shall be determined by the planning and zoning commission in accordance with the approval criteria of subsection F.1. above.

a. ***Density***
The number of dwelling units per acre allowable on the gross are of a PUD shall be determined by the planning and zoning commission. However, in no event shall the number of dwelling units per acre exceed the maximums established by the following schedule:

TABLE 21.03-2	
Zoning District	Dwelling Units per Acre (gross area)
R-1 and R-5	8
R-1A	6
R-2A	12
R-2D	15
R-2F and R-2M	22
R-3	55
R-4 [AND R-4A]	110
R-6	2
R-7	4.5
R-8	0.5
R-9	1.0

b. ***Uses***

The applicant may propose any residential use, and in class A zoning districts, may propose any commercial use that is allowed in the R-4 district in table 21.05-1. A PUD may not include the storage or use of mobile homes or quonset huts. Any nonresidential use must be specifically authorized as to its exact location, type, and size. In no event shall the total gross floor area of all nonresidential uses exceed 10% of the total gross floor area of the PUD.

c. ***Dimensional Standards***

i. Height limitations in the R-1, R-1A, R-2A, R-2D, R-2F, R-2M, R-6, R-7, R-8, or R-9 zoning districts may be exceeded by an additional five feet. Height limitations in the R-3[,] and R-4[, AND R-4A] districts may be exceeded by an additional 10 feet.

ii. The applicant may propose changes to minimum lot area, maximum lot coverage, and minimum setbacks for the PUD.

4. Planned Unit Developments in the Turnagain Arm District

PUDs in the TA district shall conform, with regard to uses and residential density, to the land use plans of the *Turnagain Arm Area Plan* and the standards of this section.

G. Abandonment of Conditional Use

An otherwise lawful conditional use approval [PERMIT] shall expire if:

1. For any reason the conditional use is abandoned in its entirety for a period of one year or longer; or

2. The property owner notifies the planning and zoning commission of the abandonment of the conditional use approval [PERMIT]. A conditional use shall not be abandoned under this subsection if the result of the abandonment is the creation of a nonconforming land use.

21.03.090 FLOOD HAZARD PERMITS

A. Applicability

Any use, structure, or activity listed in the floodplain regulations (section 21.04.060D., *Flood Hazard Overlay District*) as requiring a flood hazard permit is prohibited until the issuance of such permit. Applications for flood hazard permits shall be made to the municipal engineer.

B. Application Contents

Any application for a flood hazard permit shall contain the following material:

1. The elevation in relation to mean sea level of the lowest floor, including basement or crawl space, of all structures;

2. The elevation in relation to mean sea level to which any structure has been floodproofed;

3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 21.04.060D.7., *Construction Requirements (in Flood Hazard Overlay District)*; and

4. A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

C. Evaluation; Additional Information

Upon receipt of an application for a flood hazard permit, the municipal engineer shall transmit copies of the application, together with pertinent information, to interested and affected departments and agencies within the municipality, requesting technical assistance in evaluating the proposed application. The municipal engineer may require more detailed information from the applicant where special circumstances necessitate. Such additional information may include:

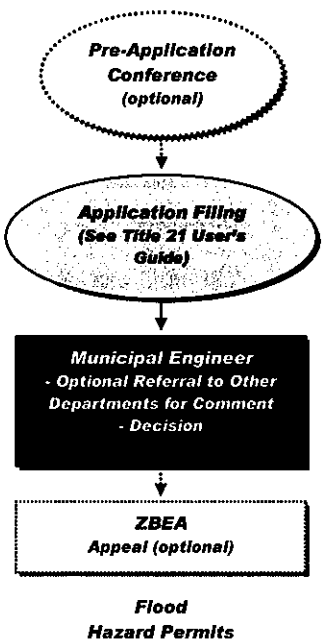
1. A valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development, and high water information.

2. Specification of proposed construction and materials, floodproofing, filling, dredging, grading, channel improvement, water supply, and sanitary facilities.

3. A profile showing the slope of the bottom of the channel or flow line of the stream.

4. A report of soil types and conditions.

5. Analysis of proximity to a dam break area.



Flood Hazard Permits

D. Criteria for Issuance

Permits shall be issued if the application and supporting material demonstrate that:

1. The proposed use or structure poses a minimal

increase in probable flood height or velocities caused by encroachment;

2. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions will not be impaired by flooding;

3. The susceptibility of the proposed facility and its contents to flood damage is minimal;

4. There will be adequate access to the property in times of flood for ordinary and emergency vehicles;

5. The proposed use, structure, or activity is in conformance with all applicable land use regulations; and

6. All necessary floodproofing will be provided.

E. Time for Acting on Application

The municipal engineer shall act on an application in the manner described in this section within 30 days from receiving the application, except that, where additional information is required, the official shall act within 30 days of the receipt of such additional requested information.

F. Notice on Subdivision Plats

Where any portion of a subdivision is situated within a flood hazard district, a note shall be placed on the plat that reads as follows: "Portions of this subdivision are situated within the flood hazard district as it exists on the date hereof. The boundaries of the flood hazard district may be altered from time to time in accordance with the provisions of section 21.04.060D.3., *Creation of Flood Hazard Overlay District; Official Flood Hazard Reports and Maps.* All construction activities and any land use within the flood hazard district shall conform to the requirements of section 21.04.060D., *Flood Hazard Overlay District.*"

G. Appeals

Denial of a flood hazard permit may be appealed to the zoning board of examiners and appeals in accordance with section 21.03.050B.

21.03.100 LAND USE PERMITS

A. Purpose

The land use permit process assures current and future property owners that the structures and land uses conform to the zoning code. Within the building safety service area, the land use permit also involves plan review and on-site inspections to insure that buildings meet the structural, plumbing, mechanical, electrical, and fire safety codes.

B. Applicability

1. In the Municipality

In the municipality, a land use permit shall be required prior to:

a. Construction or placement of a building or addition to an existing building whose floor area is 120 square feet or greater;

b. Installation of telecommunication towers;

c. Construction of a fence over eight feet in height;

d. Excavation of more than 50 cubic yards on any lot or tract;

e. Filling or grading more than 50 cubic yards on any lot or tract;

f. Changing the principal use of a building, as defined by "change of use" in chapter 21.14; or

g. Mechanized land c[C]learing of more than one [TWO] contiguous acre[S] (chainsaws excluded).

2. Inside Building Safety Service Area
Inside the building safety service area, a building permit shall be considered the land use permit and shall be required in accordance with B.1. above and title 23. The issuance of a building permit may also be subject to the improvement requirements referenced in subsection E. below.

C. Procedures

1. Application Submittal
Applications for land use permits shall be submitted to the building official on the form provided.

2. Approval Procedure

a. The building official shall review each application for a land use permit.

b. The building official shall determine whether the application complies with all requirements of title 23. The director shall determine whether the application complies with all requirements of title 21, and shall inform the building official of his or her determination.

c. The building official shall issue a land use permit upon finding that the application and the proposed work complies with the approval criteria of subsection D. below.

d. A land use permit shall become null and void unless the work approved by the permit is commenced (see "start of construction" in chapter 21.14) within 12 months after the date of issuance. [NO WORK SHALL BE CONSIDERED TO HAVE COMMENCED FOR THE PURPOSES OF THIS PARAGRAPH UNTIL AN INSPECTION HAS BEEN MADE AND RECORDED.] If after start of construction [COMMENCEMENT] the work is discontinued for a period of 12 months, the permit therefore shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a permit has been reinstated, or until a new permit has been secured.

3. Changes to Approved Permits

a. After a land use permit has been issued, no substantial changes or deviations from the terms of the permit or the application and accompanying plans and specifications shall be made without the specific written approval of such changes or deviations by the building official.

b. An amendment to a land use permit that requires payment of an additional fee, either because of an increase in the size of the buildings, a change in the scope

of work, or an increase in the estimated cost of the proposed work, shall not be approved until the applicant has paid the additional fees and the amendment has been properly reviewed and approved for conformance with applicable codes.

4. Revocation of Land Use Permit

The issuing department may revoke and require the return of any land use permit by notifying the permit holder in writing, stating the reason for such revocation. The issuing department shall revoke land use permits for any of the following reasons:

a. Any material departure from the approved application, plans, or specifications;

b. Refusal or failure to comply with the requirements of this title or any other applicable state or local laws;

c. False statements or misrepresentations made in securing such permit.

5. Appeals

a. Denials or revocations of a land use permit relating to title 21 compliance, with the exception of those relating to subsection 21.03.100E, may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

b. Denials or revocations of a land use permit relating to title 23 compliance may be appealed to the building board of examiners and appeals.

D. Approval Criteria

No land use permit shall be issued unless the building official determines that all required approvals have been granted and the plans comply with all applicable provisions of title 23, and the director determines the plans comply with all applicable provisions of this title.

E. Improvements Associated with Land Use Permits

1. Improvements Required

The issuance of a land use permit under this section for the construction of a residential, commercial, or industrial structure on a lot, shall be subject to the permit applicant providing the easements, dedications, and improvements required for a subdivision in the same improvement area under chapter 21.08, *Subdivision Standards*. In applying the provisions of chapter 21.08, *Subdivision Standards,* under this section, the term "lot" shall be substituted for the term "subdivision," the term "permit applicant" shall be substituted for the term "subdivider," and the term "municipal engineer" shall be substituted for the term "platting authority."

2. Exceptions

The requirements in subsection E.1. above shall not apply to a land use permit to the extent that:

a. All construction associated with a single dwelling unit is located on a single lot, tract, or parcel, regardless of zoning district.;

b. The traffic engineer determines that a street dedication or improvement is not required for traffic circulation;

c. A dedication or improvement has been provided to the applicable standard in chapter 21.08, *Subdivision Standards*;

d. A dedication or improvement will be provided under a subdivision agreement that has been entered into under section 21.08.060, *Subdivision Agreements*, or under an established assessment district;

e. The municipality has already appropriated funds to construct an improvement; or

f. The permit is for repairs, maintenance, emergencies, electrical, mechanical, or plumbing.

3. **Standards for Requiring Dedications and Improvements**
Where chapter 21.08, *Subdivision Standards,* grants discretion to determine whether a dedication or improvement will be required, or to determine the design standards for a dedication or improvement, the municipal engineer shall determine the requirement or standard that applies to a land use permit under this section by applying the following standards:

a. The dedication or improvement shall be reasonably related to the anticipated impact on public facilities and adjacent areas that will result from the use and occupancy of the structure that is the subject of the building or land use permit. Any required public use easement shall be removed when calculating density or lot coverage per the applicable zoning district. The municipal engineer may require the permit applicant to provide information or analyses to determine impacts as set out in the comprehensive plan's policies for transportation, transportation design and maintenance, and water resources on public facilities and adjacent areas, including without limitation the following:

i. A traffic impact analysis, or similar information. The traffic engineer may require a traffic impact analysis if the same would be required for approval of a subdivision, conditional use, or site plan for similar development under this title.

ii. A drainage study, or similar information. A drainage study may be required if the same would be required for approval of a subdivision, conditional use, or site plan for similar development under this title.

iii. An estimate of the financial costs of impacts on public facilities and adjacent areas without the required improvements, including without limitation continuity of improvements, maintenance costs of public facilities, parking, drainage, noise and dust control, pedestrian and vehicle safety and access, and emergency vehicle access and response time.

iv. Information concerning the consistency of the impacts of the proposed development with the comprehensive plan.

v. A design of internal streets and location of fire hydrants satisfactory to the fire marshal for purposes of fire protection within the development. Outside the Anchorage Fire Service Area, the state fire marshal's standards control.

b. The estimated cost of constructing the improvement shall be reasonable when compared to the estimated cost of the proposed development under the land use permit. The determination of reasonableness shall be based on cost estimates for the improvement and the proposed development that the permit applicant or applicant's agent submits under penalty of perjury. If the municipal engineer determines that the estimated cost to the applicant to complete all the improvements required by this section is unreasonable in relation to the estimated cost of the proposed development, the municipal engineer may reduce or eliminate required improvements as necessary to make the relationship between such costs reasonable.

c. The municipal engineer shall consider the potential development of all adjacent parcels, lots, or tracts under common ownership, in addition to the lot, parcel, or tract that is the subject of the permit application, and the impacts associated therewith, in applying the standards in this subsection.

d. The municipal engineer may approve adjustments to the improvement requirements under this section to the extent that compliance with the standards would result in an adverse impact on natural features such as wetlands, steep slopes, or existing mature vegetation; existing development; or public safety.

4. Phasing of Installation

Except as provided in this section, all required improvements shall be constructed and accepted by the municipality before any certificate of zoning compliance is issued for the permitted construction. If the municipal engineer determines that it is not reasonable to require compliance with the preceding sentence, no permit may be issued until the applicant enters into an agreement for construction of the required improvements, with performance guarantees, in the form required for subdivision improvements under section 21.08.050, *Improvements.*

5. Warranty

All improvements required under this section shall be subject to the warranty and guarantee of warranty requirements provided for subdivision improvements in section 21.08.050, *Improvements.*

6. Oversizing

If an improvement exceeding the requirements of this section is requested by the municipality and is necessary for the adequate and efficient development of surrounding areas, the municipality may require the applicant to install or accommodate oversizing. Inside the Anchorage Road and Drainage Service Area, i[I]n such event the municipality shall reimburse the applicant for the cost of the oversizing at least as soon as budgeted funds are available after completion and acceptance of the improvements. This subsection shall not be a limitation on the municipality's ability to require a utility to oversize its facilities or a limitation on the manner in which the municipality may pay its proportionate share of the costs of oversizing.

7. Fee in Lieu

A fee in lieu of the required improvements may be accepted if the municipal engineer determines:

a. That the improvements or construction activities associated therewith would create a potential undue safety hazard to motorists or pedestrians; or

b. Due to the nature of existing development on adjacent properties it is unlikely that improvements would be extended in the foreseeable future and the improvements associated with the development under review do not, by themselves, provide a sufficient improvement to safety or capacity or a sufficient benefit to the property to be developed under the building or land use permit to warrant construction.

c. Any fee paid pursuant to this section shall be accounted for separately, and the fee paid shall be dedicated and used only for the purpose of constructing the public facilities which were identified by the municipal engineer and for which the fee was paid.

8. Fee Amount

The amount of the fee in lieu shall be the full cost [LESSER OF 75% OF THE COST] of the improvements as estimated by an engineer registered as a professional engineer in Alaska [OR AS PROVIDED IN A FEE SCHEDULE ADOPTED BY REGULATION BY THE MUNICIPAL ENGINEER, WHICH FEE SCHEDULE MAY BE ADJUSTED BY REGULATION ANNUALLY TO ACCOUNT FOR INCREASES IN CONSTRUCTION COSTS IN THE ANCHORAGE AREA]. In the event the applicant or successor in interest later elects or is required to install improvements for which the fee was paid, the fee shall be refunded (without interest), so long as the claim for refund is filed within two years from the date of acceptance of the improvement [INITIAL PAYMENT].

9. Appeals of Improvement Standards

A permit applicant may appeal a decision of the municipal engineer concerning required improvements under this section to the platting board by filing a written notice of appeal with the secretary of the platting board not later than 10 days after receipt of written notice of the decision. The appeal shall be placed on the agenda of the next regularly scheduled platting board meeting that occurs not less than 60 days after the filing of the appeal. The platting board shall hear the appeal.

21.03.110 MASTER PLANNING, INSTITUTIONAL

A. Purpose

The institutional master plan review process provides a framework for development of large institutions, such as hospitals and universities, that control large land areas within the municipality, and are a source of substantial employment, and that may contain a greater density of development than surrounding areas. An institutional master plan is intended to permit flexibility for a large institution to have greater control over its own land use decisions, while providing a level of understanding to the surrounding community about the potential growth of the institution and the resultant impacts, and to the municipality about the public infrastructures and services that may be necessary to serve the planning area and adjacent neighborhoods. The process is specifically intended to:

1. Provide flexibility to institutions to carry out long-range building programs in accord with the institutional mission and objectives;

2. Provide a growing and continuing source of employment for the municipality that is easily accessible and well-integrated with surrounding neighborhoods and the local transportation system;

3. Create attractive and efficient urban areas that incorporate quality design and urban amenities;

4. Protect sensitive portions of the natural environment that are potentially affected by institutional development; and

5. Consider [PROTECT THE INTEGRITY OF ADJACENT NEIGHBORHOODS BY ADDRESSING] the impacts of institutional development on adjacent neighborhoods [AREAS].

B. Applicability

An institutional master plan may be submitted and approved, in accordance with the procedures of this section, for any multi-building development site of 25 contiguous acres or more in common ownership in any zoning district or combination of districts. The process provides an alternative to the procedures and development and design standards of this title for institutions seeking to develop large, complex sites with multiple buildings and uses following a contextually aesthetic [UNIFORM AND COHESIVE] design theme.

C. Institutional Master Plan Requirements

1. Planning Area

The planning area for the institutional master plan shall include all the areas that are under the ownership and control of the institution, and for which the institution wishes to establish independent design and development standards under this section.

2. Submittal Requirements

An institutional master plan shall, at a minimum, include the following information unless the director determines that such information is not necessary to evaluate the proposed institutional master plan and the institution's future impacts on surrounding neighborhoods. Specific requirements for the full institutional master plan shall be determined by the director following the pre-application conference.

a. *Boundaries*

At least one aerial photograph taken during the three-year period preceding submittal of the institutional master plan shall be submitted under this section. The aerial photo or some other map shall depict existing zoning districts and surrounding properties within 1,000 feet of the planning area boundaries.

b. *Mission and Objectives*

The institutional master plan shall include a statement that defines the organizational mission and objectives of the institution and description of how development contemplated or defined by the institutional master plan advances the goals and objectives of the institution. The statement should describe the number of people being served by the institution on the site, the number of people employed on the site, and the maximum number of people present on the site for any single event or activity. The statement should include any projected changes in the size of those populations, and how such projections were calculated. It should also specify any services to be provided to residents in adjacent neighborhoods and in other areas of the municipality.

c. *Existing Property and Uses*

The institutional master plan shall include a description of land, buildings, and other structures owned or occupied by the institution within the planning area boundaries as of the date of submittal of the institutional master plan. The following information shall be required:

i. Illustrative site plans showing the footprints of each building and structure, together with roads, sidewalks, parking, landscape features, and other significant site improvements;

ii. Land and building uses;

iii. Gross floor area in square feet of each individual building;

iv. Building height in stories and feet of each individual building; and

v. A description of parking and loading areas and facilities, including a statement of the approximate number of parking spaces in each area or facility.

d. ***Needs of the Institution***

The institutional master plan shall include a summary and projection of the institution's current and future land use needs within the planning area boundaries, such as, but not limited to, the following types of facilities:

i. Academic;

ii. Support services;

iii. Research;

iv. Office;

v. Housing;

vi. Patient care;

vii. Assembly for public events, worship, cultural events, and the like;

viii. Recreation and athletics;

ix. Transit;

x. Parking; and

xi. Commercial spaces, not including concessionaire space that is intended to serve the institutional community [AND/OR USES OVER 1,000 SQUARE FEET].

e. ***Ten-Year Development Envelope***

The institutional master plan shall include a description of the development expected to occur within the planning area boundaries within a 10-year time frame. The 10-year development description shall be the maximum amount of development proposed by the institution based on anticipated changes in total population and programs. The 10-year development description shall include the following:

i. General location of the institution's needs (as listed in 2.d. above) in potential development areas as depicted on a site functional use map; and

ii. Estimated total square footage of anticipated development in each development area.

f. ***Development and Design Standards***

The institutional master plan shall include the elements listed below. These elements may set different standards than those found in title 21. [CHAPTER 21.05, *USE REGULATIONS*; CHAPTER 21.06, *DIMENSIONAL STANDARDS AND MEASUREMENTS*; AND CHAPTER 21.07, *DEVELOPMENT AND DESIGN STANDARDS*.] The plan shall list the specific sections of title 21 for which different standards are to be established by the master plan, and provide rationale for any different standards proposed. Where different standards are approved in the institutional master plan, those standards shall be applied instead of the corresponding standards in title 21.

i. *Borders and Boundaries*
Treatment along public rights-of-way and boundaries with other landowners, with regard to building setbacks and landscape buffers.

ii. *Transportation and Parking Management*
A transportation and parking management plan including how additional parking demand and transit will be accommodated within the planning area.

iii. *Natural Resource Protection*
Identification of sensitive natural resources, including but not limited to wetlands and flood plain delineation maps, within the planning area, and the institution's plans for maintaining or mitigating impacts on those sensitive areas. The institutional master plan shall not reduce or otherwise weaken the natural resource protection standards of section 21.07.020.

iv. *Open Space and Pedestrian Circulation*
Open space and pedestrian circulation guidelines and objectives, including a description of the circulation system to be provided through the planning area, plans for ensuring the accessibility of pedestrian areas and open spaces, and links to surrounding community open space, where appropriate.

v. *Site and Building Design Standards*
Institutional design standards and objectives, identified through written and graphic materials, that address the following issues:

(A) Dimensional standards for building setbacks, height, and lot coverage;

(B) Site design and circulation;

(C) Landscaping and site amenities;

(D) Building orientation;

(E) Building massing and articulation;

(F) Building sustainability; and

(G) Northern climate design.

vi. *Wayfinding and Signage*
A wayfinding and signage plan including building, vehicular, and pedestrian signage.

vii. *Timing*
A conceptual development schedule and phasing plan.

g. ***Twenty Year Development Areas***
The institutional master plan shall include written and graphic materials identifying future development areas beyond those noted in the 10-year development description. This information shall include, at a minimum, the general location and approximate scale of anticipated development that may occur within a 20 year period.

D. Procedures for Master Plan Approval

1. Pre-Application Conference
Before filing an application, an applicant shall request a pre-application conference with the director. See section 21.03.020B.

2. Community Meeting
A community meeting is required in accordance with subsection 21.03.020C[G].

3. Initiation
An application for approval of an institutional master plan shall be initiated by the owner or managing agent of the subject property.

4. Application Submittal
Applications for institutional master plan approval shall contain all information and supporting materials specified in the title 21 user's guide and in subsection C.2. above, and shall be submitted to the director on a form provided by the department. The director may require the submittal of such other information as may be necessary to permit the informed exercise of judgment under the criteria for the review of the plan, as set out in subsection E. below.

5. Departmental Review
The department shall review the proposed institutional master plan in light of the approval criteria set forth in subsection E. below, and shall distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

6. Public Notice
Notice of all public hearings shall be provided in accordance with section 21.03.020H.

7. Planning and Zoning Commission Action

a. The planning and zoning commission shall hold a public hearing on the proposed institutional master plan and, at the close of the hearing, recommend that the assembly approve the plan as submitted, approve the plan subject to conditions or modifications, or deny the plan, based on the approval criteria of subsection E. below.

b. If the planning and zoning commission recommends that the assembly approve a plan as submitted or with conditions or modifications, within 60 days of the commission's action the director shall forward the recommendation to the assembly.

c. If the planning and zoning commission recommends denial of a plan, that action is final unless, within 20 days of the commission's action, the applicant files a written statement with the municipal clerk requesting that the proposed institutional master plan be submitted to the assembly.

8. Assembly Action

The assembly shall hold a public hearing on the proposed institutional master plan. At the close of the hearing, taking into account the recommendations of the director and the planning and zoning commission, any public comment, and based on the approval criteria of subsection E. below, the assembly shall, within 90 days, approve the plan, approve the plan with modifications or conditions, deny the plan, or refer the plan back to the planning and zoning commission.

9. Approval of Final Institutional Master Plan

a. The approval of an institutional master plan expires 12 months after the date of approval by the assembly unless, before the approval expires, the applicant files the final institutional master plan, including any modifications or conditions required by the assembly, with the director.

b. The director shall certify the final institutional master plan within 60 days of filing by the applicant, or if the plan is not in compliance with the assembly's approval, the director shall issue a detailed list of reasons and recommended amendments to the final institutional master plan to achieve compliance.

c. Until the approval of an institutional master plan by the assembly and the filing by the applicant of a final institutional master plan accepting the modifications or conditions required by the assembly, the affected institutional shall continue to be governed solely by the provisions of title 21 other than this section.

E. Approval Criteria

An institutional master plan may be approved if the assembly finds that it is consistent with the comprehensive plan[, COMPATIBLE WITH ANY ADOPTED NEIGHBORHOOD PLANS FOR ADJACENT AREAS,] and will achieve the following:

1. Provides flexibility to the institution to plan and implement long-range development programs to achieve its institutional mission and objectives;

2. Facilitates the continuation of the institution as a major source of service and employment that is easily accessible and well integrated with surrounding neighborhoods and the public transportation system;

3. Ensures that institutional facilities, especially those that are publicly funded, are well designed and constructed, include urban amenities, and are efficient to operate over their life-cycles;

4. Protects and mitigates effects of development on sensitive portions of the natural environment; and

5. Recognizes and addresses potential significant adverse impacts of institutional development on adjacent built environments, neighborhoods, and the community at large.

F. Compliance with Institutional Master Plan

1. Projects developed under the auspices of an approved institutional master plan are exempt from the review and approval procedures required in table 21.05-2.

2. Before a building permit or land use permit is issued for any project within an area covered by an approved institutional master plan, the director shall certify that the proposed project is consistent with the approved institutional master plan. The applicant shall submit a request for certification of consistency on a form provided by the department.

3. Such a certification shall be found if the proposed project is consistent or substantially consistent with the approved institutional master plan, or if the project is found to be not consistent with the approved institutional master plan, but the director finds the proposed project creates minimal impact according to the following criteria:

a. Not more than 25 percent [%] of the proposed project is located outside the development areas depicted on the site functional use map;

b. The proposed project does not result in the addition of more than 10 percent [%] additional square footage on a cumulative basis to the estimated total square footage of the affected site functional use category;

c. The project does not result in the creation of or the need for additional parking beyond that covered in the approved transportation and parking management element; and

d. The project does not result in the coverage of more than 25,000 square feet of site area.

4. A certification of consistency, finding of inconsistency, or finding of consistency subject to conditions, shall be issued within 45 days of receipt of an application for such certification.

5. If the director finds that a project is not consistent with the approved institutional master plan, the director shall issue a detailed list of reasons and recommended actions to achieve compliance.

6. The director may issue a finding of inconsistency, or a finding of consistency subject to conditions, only where the director finds that the matters resulting in the inconsistency, or the conditions to which the certification is made subject, are required by specific terms of the approved institutional master plan or any applicable title 21 provisions.

7. The director's decision may be appealed to the planning and zoning commission.

G. Modifications to Approved Institutional Master Plans

1. Minor Amendments
The director may administratively approve amendments to an approved institutional master plan upon written application, unless the assembly determines the amendment is

a major amendment. Minor amendments are defined generally as modifications to approved plans that do not affect land use or density in ways that would have significant adverse impacts on public facilities, utilities, traffic circulation, or other major infrastructure systems; or on surrounding neighborhoods or development.

2. Major Amendments
Major amendments of an approved institutional master plan shall follow the same process required for the original approval of an institutional master plan.

21.03.120 MINOR MODIFICATIONS

A. Purpose and Scope

This section sets out the required review and approval procedures for "minor modifications," which are minor deviations from otherwise applicable standards that may be approved by the director, [THE ASSEMBLY,] the planning and zoning commission, [THE PLATTING BOARD,] or the urban design commission. Minor modifications are to be used when the small size of the modification requested, and the unlikelihood of any adverse effects on nearby properties or the neighborhood, make it unnecessary to complete a formal variance process.

B. Applicability

1. Minor Modifications to General Development and Zoning District Standards
As part of the review and approval of any procedure set forth in this chapter, the director, [THE ASSEMBLY,] the planning and zoning commission, or [THE PLATTING BOARD, AND] the urban design commission may approve minor modifications of up to a maximum of five percent from the following general development and zoning district standards provided that the approval criteria of subsection D. below are met.

a. Minimum lot area or setback requirements set forth in chapter 21.06, *Dimensional Standards and Measurements*;

b. General development standards set forth in chapter 21.07, *Development and Design Standards*, except for the natural resource protection standards in subsection 21.07.020B.;

[SUBDIVISION STANDARDS SET FORTH IN CHAPTER 21.08, *SUBDIVISION STANDARDS*, EXCEPT FOR THE IMPROVEMENT STANDARDS IN SUBSECTION 21.08.050;]

c. The dimensional standards, site development and design standards, and building design standards set forth in chapter 21.09, *Girdwood Land Use Regulations* (sections 21.09.060, 21.09.070, and 21.09.080).

2. Exceptions to Authority to Grant Minor Modifications
In no circumstance shall any decision-making body approve a minor modification that results in:

a. An increase in overall project density;

b. A change in permitted uses or mix of uses;

c. A deviation from the district-specific standards set forth in chapter 21.04, *Zoning Districts*, or the use-specific standards set forth in chapter 21.05, *Use Regulations*; or

d. A change in conditions attached to the approval of any subdivision plan (section 21.03.200), site plan (section 21.03.180), or conditional use [PERMIT] (section 21.03.080).

C. Procedure

1. Limitation on Minor Modifications

a. An applicant may request application of the minor modification process to his or her development only once during the review process.

b. In no instance may an applicant use the minor modification process to obtain approval for adjustments to more than three standards applicable to the same development.

2. Minor Modifications Approved by Director

For uses allowed by-right or when he or she is the decision-maker, the director may approve a minor modification allowed under this section at any time prior to final decision.

3. Minor Modifications Approved by [ASSEMBLY,] Planning and Zoning Commission, [PLATTING BOARD] or Urban Design Commission

The [ASSEMBLY,] planning and zoning commission, [PLATTING BOARD,] or urban design commission may approve a minor modification allowed under this section at any time before taking action on a development application.

4. Written Findings Noted on Pending Application

Staff shall specify in writing any approved minor modifications and the finding supporting such modifications on the pending development application for which the modifications were sought, which shall be included as part of the case record.

5. Appeals

Denial of a minor modification [APPLICATION] may be appealed to the same body as an appeal of the underlying approval process. For instance, denial of a minor modification in a conditional use application may be appealed to the board of adjustment, as the board of adjustment hears appeals of conditional use approvals [ZONING BOARD OF EXAMINERS AND APPEALS IN ACCORDANCE WITH SUBSECTION 21.03.050B]. Denial of a minor modification associated with a permitted use may be appealed to the zoning board of examiners and appeals.

D. Approval Criteria

The decision-making body may approve the minor modification only if it finds that the modification meets all of the criteria below:

1. The requested modification is consistent with the comprehensive plan and the stated purpose of this title;

2. The requested modification meets all other applicable building and safety codes;

3. The requested modification does not encroach into a recorded easement;

4. The requested modification will have no significant adverse impact on the health, safety, or general welfare of surrounding property owners or the general public, or such impacts will be substantially mitigated; and

5. The requested modification is necessary to either: (a) compensate for some practical difficulty or some unusual aspect of the site of the proposed development not shared by landowners in general; or (b) accommodate an alternative or innovative design practice that achieves to the same or better degree the objective of the existing design standard to be modified. In determining if "practical difficulty" exists, the factors set forth in section 21.03.240G., *Approval Criteria (for Variances)* shall be considered.

21.03.130 NEIGHBORHOOD OR DISTRICT PLANS

A. Purpose and Authority

1. Purpose

a. The purpose of this section is to allow and facilitate the development of neighborhood or district plans by citizen groups that are approved by the assembly. Neighborhood and district plans that are developed by local government are not subject to this section, but rather follow the process of section 21.03.070C., *Comprehensive Plan Amendments, Substantive.*

b. Neighborhood or district plans shall be guided by the elements of the comprehensive plan, as defined in section 21.01.080. Neighborhood or district plans should give specificity to the goals, objectives, policies, and strategies of the comprehensive plan. These plans shall supplement and elaborate on the comprehensive plan. The goal of a neighborhood or district plan is to protect and promote the positive elements of neighborhood or district character and identity, while promoting [PROMOTE] the orderly growth, improvement, and future development of the neighborhood, community, or municipality.

2. Authority

a. These procedures and minimum standards are established for the creation and review of plans for the development, growth, and improvement of the municipality, and its neighborhoods and communities. The plans may be sponsored, [BY THE MAYOR, THE ASSEMBLY, THE PLANNING AND ZONING COMMISSION, THE DEPARTMENT, THE COMMUNITY DEVELOPMENT DIVISION, OR] upon express approval of the assembly by resolution, by any [COMMUNITY COUNCIL, GROUP OF COUNCILS, OR OTHER] group[S] or organization[S] representing the broad public interest, upon express approval by assembly resolution [RECOGNIZED BY THE ASSEMBLY TO SPONSOR A NEIGHBORHOOD OR DISTRICT PLAN] (hereafter called the "sponsor").

b. In order to obtain the approval of the assembly as a sponsor, any community council, group of councils, or other groups or organizations shall request a resolution from the assembly authorizing them to proceed with the development of a neighborhood or district plan. The group shall demonstrate, to the reasonable satisfaction of a majority of the assembly, that

i. They represent the broad public interest necessary to successfully develop a plan;

ii. They have read and understand the requirements of this ordinance; that their proposed plan will comply with the standards set forth in this ordinance; and

iii. They have sufficient financial resources and a sufficient level of knowledge and expertise to warrant the expenditure of public resources as provided herein.

3. Policy Guidance

An adopted plan shall be an element of the comprehensive plan and shall serve as a policy to guide subsequent actions by municipal agencies. The assembly and the planning and zoning commission shall consider adopted plans in review of land use, zoning actions, and capital improvement programs, where consideration is consistent with the charter, the comprehensive plan, and general law. Agencies shall consider adopted neighborhood or district plans as guidance for actions, whether or not actions are subject to commission review. The existence of an adopted neighborhood or district plan shall not preclude the assembly, any municipal department or agency, or any board or commission of the municipality from developing other plans or taking actions not contemplated in the neighborhood or district plan affecting the same geographic area or subject matter.

B. Plan Submittal

1. Initiation Meeting

The sponsor of a plan shall meet with the department at the initiation of the planning process to discuss and clarify content requirements, scheduling, and other relevant issues. Periodically, the department shall report to the commission, and to the assembly by an Assembly Information Memorandum (AIM) requiring no further action, on the progress of neighborhood or district plans underway.

2. Work Program

Following the initiation meeting, the sponsor shall prepare a work program which shall be submitted to the department for approval. The work program shall include a project schedule, a proposed table of contents, a proposed public participation plan, and at least three milestones at which times the sponsor shall meet with the department.

3. Submittal

Twenty-two printed copies along with an electronic version of all proposed plans shall be submitted to the department. The submittal shall include the name(s) and address(es) of the person(s) designated by the sponsor to be its representative(s) in any discussions of the plan.

C. Threshold Review and Determination

1. Department Review and Determination

Within 90 days of the submittal of a plan, the department shall review the plan and determine whether the plan meets the standards for form, content, and for consistency with sound planning, as set forth in subsection D. below.

a. If the department determines that the plan does meet the threshold standards of subsection D., the department shall distribute the plan for public review and commission public hearing as described in subsection E.

b. If the department determines the plan does not meet the threshold standards of subsection D., the staff shall provide written notification to the sponsor of all deficiencies with respect to form, content, process, and any changes, additions, or deletions which, in the opinion of staff, may correct such deficiencies. [THE SPONSOR MAY INDICATE ITS WILLINGNESS TO MAKE SUCH CHANGES, ADDITIONS, OR DELETIONS. ONLY IN SUCH EVENT MAY THE SPONSOR BE PERMITTED TO CONTINUE WITH THE PLAN.]

2. Coordination of Plan Review
The department may determine, despite a finding of appropriate form, content, and sound planning policy, a proposed plan should not immediately proceed, due to other municipal planning efforts underway which should be coordinated with the plan. In such a case, the department shall develop an appropriate timetable for distributing the plan for public review and commission public hearings.

D. Standards

1. Form and Content
The form and content of all proposed plans shall be consistent with the following:

a. The plan shall state its sponsoring entity or entities and the names of the individuals who participated in the development of the plan.

b. A plan shall enhance or implement goals, objectives, policies, and/or strategies of the comprehensive plan and provide further detail and specificity. A plan may take the form of a master plan or targeted plan.

i. A master plan for a neighborhood, district, or other geographic area of the municipality may combine elements related to housing, industrial and commercial uses, transportation, land use regulation, open space, recreation, cultural features, health, economic vitality, community facilities, and other infrastructure.

ii. A targeted plan may consider one or a small number of elements of neighborhood, district, or municipal-wide problems or needs, and shall focus on issues related to the use, development, and improvement of land within the plan study area.

c. A plan shall not be limited to a single zoning district or a specific parcel in private ownership. A plan shall cover an identifiable, cohesive geographic area or neighborhood.

d. Plans shall be presented in clear language and coherent form with elements, chapters, or sections organized in logical sequence.

e. Plans shall state goals, objectives, or purposes clearly and succinctly. Policy statements or recommendations shall contain documentation and explanation of the data, analysis, or rationale underlying each. Plans shall analyze and propose policies to address identified problems.

f. A plan shall contain, as applicable:

i. Inventories or description and analysis of existing conditions, problems, or needs; projections of future conditions, problems, or needs; and

recommended goals and strategies to address those conditions, problems, or needs.

ii. Alternatively, or concomitantly with the elements described above, a plan may also contain a vision for a future end state and a strategy(ies) for achieving it.

The level of detail and analysis shall be appropriate to the goals and recommendations presented in the plan. The information and analysis relied upon to support the recommendations shall be sufficiently identified to facilitate later plan review, including accuracy and validity of the information and analysis. Supporting information may be contained in the form of narrative, maps, charts, tables, technical appendices, or the like.

g. A plan shall contain a land use plan map for the geographic area encompassed by the plan. The land use plan map shall propose appropriate land use categories, which generally include: residential, commercial, industrial, institutional, transportation, community facilities, parks, and natural open space. The land use plan map may provide more specificity than the general categories.

h. Plans shall be accompanied by documentation showing public participation in the plan formulation and preparation. Public outreach, such as surveys, workshops, hearings, or technical advisory committees, is recommended as a tool for community support and consensus, in addition to department, commission, and assembly approval.

2. **Sound Planning Policy**

a. Every plan, regardless of form and content, shall include discussion of:

i. Its long-range consequences;

ii. Impact on economic and housing opportunity for all persons, particularly low- and moderate-income, and persons with disabilities;

iii. Provision of future growth and development opportunities;

iv. Ability to improve the physical environment; and

v. Effect on the geographic distribution of municipal facilities.

b. A plan shall set forth goals, objectives, purposes, policies, strategies, and/or recommendations within the legal authority of the municipality.

c. A plan considering issues under the jurisdiction of specific municipal or state agencies shall disclose all agency comments.

d. A plan shall analyze its relationship to applicable policy documents, including all adopted elements of the comprehensive plan, as well as its relationship to adjoining neighborhoods and other areas.

e. A plan shall solicit input from residents, local businesses, agencies, and non-profit organizations local to the neighborhood, and demonstrate it has considered these comments on their merits.

E. Plan Distribution and Review

1. Plan Distribution

When, pursuant to subsection C. above, a plan is ready for public review, the department shall, within 30 days of its determination, provide copies of the plan simultaneously to all municipal and state agencies with jurisdiction over elements of the plan, and to all community councils. The department shall also make copies available to the general public at city hall and the planning and development center, and post the plan on the department website.

2. Public, Agency, and Community Council Review

a. Each community council may conduct its own review of the plan. Within a period of 120 days following receipt of the plan, the community council may provide written recommendation(s) to the department and the sponsor.

b. Members of the public and other municipal or state agencies may provide written comments to the department during the 120 day review period.

3. Department Review

When the department is not the sponsor of a plan, it shall review the plan during the 120 day review period, and prepare a staff report and recommendation for the commission. The department shall consider the neighborhood, community, and municipal-wide impacts and the long-term effects of the actions or policies recommended by the plan. The department shall also consider the impact of the plan on economic and housing opportunity, future growth and development, and the physical environment, including consistency of the plan with other adopted plans.

F. Planning and Zoning Commission Review

1. Schedule for Review

[AT THE CONCLUSION OF THE 120 DAY REVIEW PERIOD, T]The commission shall schedule a public hearing within 60 days following the final day of the public review period.

2. Public Notice

Notice of all public hearings shall be provided in accordance with section 21.03.020H.

3. Planning and Zoning Commission Action

The commission shall vote, within 60 days following the close of the public hearing to recommend approval, approval with modifications, remand to the sponsor, or disapproval of the plan. In reviewing the substance of the plan, the commission shall consider the neighborhood, community, and municipal-wide impacts and the potential long-term effects from the actions or policies recommended by the plan. The commission shall consider the impact of the plan on economic and housing opportunity, future growth and development, and the physical environment, including consistency of the plan with other adopted plans, and any other pertinent adopted neighborhood or district plans. Any modifications recommended by the commission shall be consistent with the standards for form, content, and sound planning policy, as set out in subsection D. above.

4. Commission Findings

The commission's recommendation shall include findings describing its considerations and providing explanation for its determination. The findings may include recommendations for the implementation of plan elements. The recommendation shall be transmitted to the assembly for final approval.

G. Assembly Adoption

1. Transmission to Assembly
The commission's recommendation shall be transmitted to the assembly for introduction within 45 days of the commission recommendation. The assembly shall schedule a public hearing not more than 45 days after introduction.

2. Public Notice
Notice of all public hearings shall be provided in accordance with subsection 21.03.020H.

3. Assembly Action
Within 45 days of the close of the public hearing, the assembly shall either:

a. Adopt the plan;

b. Adopt the plan with modifications;

c. Remand the plan to the commission; or

d. Not adopt the plan.

If the assembly adopts the plan with modifications, the modifications shall be consistent with the standards for form, content, and sound planning policy, as set out in subsection D. above. If the plan is adopted, either as proposed or with modifications, it shall become an element of the comprehensive plan as described in section 21.01.080.

H. Review and Revision

A plan shall be reviewed by the department concurrent with the review of the comprehensive plans as otherwise provided in this title to determine if the plan is consistent with the comprehensive plan. If the sponsor shows a major change of circumstances in the neighborhood or district, the sponsor may request a review of the plan before the end of any 10 year period. Any revisions shall be presented for adoption as an amendment to the plan, in accordance with the procedures set forth herein.

21.03.140 PUBLIC FACILITY SITE SELECTION

A. Purpose

This section sets forth a process by which the municipality [PLANNING AND ZONING COMMISSION] shall review and decide upon selection [ACQUISITION] of sites[, INCLUDING ACQUISITION BY LEASE,] before certain public facilities may be authorized, or publicly owned land is designated as the site for certain public facilities.

B. Applicability

1. Unless exempted by subsection B.2. below, this section shall apply to [THE PLANNING AND ZONING COMMISSION SHALL REVIEW AND DECIDE THE SELECTION OF SITES FOR ANY OF] the following government facilities that are [TO BE OWNED, OR LEASED BY A GOVERNMENT AGENCY] not exempt by law from municipal land use regulation:

a. Any newly constructed building or buildings and any existing building acquired by purchase or lease, in which government operations or activities occupy more than a total of 50,000 [100,000] square feet of gross floor area [ON THE SITE];

b. Any use of land over 20 acres in area (not including projects covered under section 21.03.190[200]);

c. Public schools;

d. Fire stations, unless such station is determined by the director not to have impacts on the surrounding neighborhood;

e. Any sports, entertainment, or civic center designed for more than 1,500 spectators; [AND]

f. Any public snow disposal or landfill site; and

g. A facility that, in the judgment of the director, warrants a public process for site selection due to the potential for significant impacts on surrounding properties.

2. This section shall not apply to the following:

a. Any site that is

i. Designated for the subject use on a municipal plan adopted by the assembly;

ii. Part of an area, development, or institutional master plan;

iii. Determined by a dedication to the municipality on a final plat approved and recorded in accordance with this title; or

iv. Subject to approval of a conditional use under this title.

[THE SELECTION OF SITES FOR PUBLIC SCHOOLS, WHICH SHALL INSTEAD BE UNDERTAKEN PURSUANT TO AMC CHAPTER 25.25.]

b. Any facility site selection reviewed by the commission or approved by the assembly before [*the effective date of this title*];

c. Any facility site selection for [UNDER] which over $500,000 has been expended for design or construction before [*the effective date of this title.*]

C. Required Information

The agency proposing a site selection shall submit to the commission all information identified in the user's guide. This information shall include, but need not be limited to, an evaluation of alternative sites, or an explanation why no alternative sites were considered.

D. Community Meeting

A community meeting is required in accordance with subsection 21.03.020C[G].

E. Public Notice

Notice of all public hearings shall be provided in accordance with subsection 21.03.020H.

F. Departmental Review

1. The department shall review each proposed site selection application in light of the approval criteria set forth in subsection I.[H.] below, and distribute the application to other reviewers as deemed necessary.

2. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

3. For school site sections, the department shall also provide the report to the Anchorage school board for its review and recommendation.

G. Planning and Zoning Commission [ACTION]

1. The commission shall review the RFP criteria (or similar guidelines) or the site alternatives for any applicable facility.

2. The commission shall hold a public hearing [ON ANY SITE SELECTION THAT IS SUBJECT TO REVIEW UNDER THIS SECTION].

3. For school site selections, the school board and the commission may meet in a joint public hearing; however, the school board and the commission shall separately consider and make recommendations to the assembly. Both recommendations shall then be forwarded as a package to the assembly for approval.

4. For site selections of municipal facilities, [AT THE CLOSE OF THE HEARING,] the commission shall make a recommendation to the assembly, [DECIDE ON THE PROPOSED SITE] based on the approval criteria of subsection I.[H.] below.

5. For all other site selections, the commission shall decide on the proposed site based on the approval criteria of subsection I. below.

H. Assembly Action

For municipal facilities, upon receipt of the recommendations from the commission (and the Anchorage school board if applicable), the assembly may, based on the criteria of subsection I. below and at its discretion, hold a public hearing and take one of the following actions:

1. Approve a specific recommended site;

2. Approve a specific evaluated site;

3. Reject some or all recommended sites; or

4. Remand the evaluated and recommended sites to the commission (and the school board if applicable) for further investigation, review, and evaluation.

I. Approval Criteria

The commission shall review the proposed site for consistency with the goals, policies, and land use designations of the comprehensive plan and other municipal plans adopted by the assembly, conformity to the requirements of this title, and the effects of the proposal on the area surrounding the site. The following specific criteria shall be considered:

1. Whether the site will allow development that is compatible with current and projected land uses;

2. Whether the site is large enough to accommodate the proposed use and future additions or another planned public facility;

3. Whether adequate utility and transportation infrastructure is available to the site;

4. Whether the site is located near a transit route, if applicable;

5. Whether there are existing or planned walkways connecting the site to transit stops and surrounding residential areas, where applicable;

6. The environmental suitability of the site;

7. The financial feasibility of the site, including maintenance and operations; and

8. Major municipal, state, and federal administrative offices shall locate in the Central Business District. Satellite government offices and other civic functions are encouraged to locate in regional or town centers if practicable.

J. Request for Assembly Hearing [APPEAL]

1. Decisions by the planning and zoning commission are final unless, within 20 days of the date of service, any party of interest requests an assembly hearing in a letter sent to the director.

2. The assembly may hold a public hearing on the case at its discretion.

[DECISIONS ON PUBLIC FACILITY SITE SELECTIONS MAY BE APPEALED TO THE ASSEMBLY.]

21.03.150 RECORD OF SURVEY MAPS

A. Purpose and Authorization

The purpose of this section is to provide for the approval of record of survey maps to be filed with the district recorder for the state. Record of survey maps shall be reviewed and approved in accordance with this section.

B. Use of Record of Survey Maps

1. A record of survey map is a map depicting the exterior boundaries of a legally created lot, parcel, or tract, and includes a correction to a record of survey map.

2. A record of survey map shall not be used to depict the boundaries of a lot, parcel, or tract, which lot, parcel, or tract was created or subdivided contrary to law. A record of survey map shall not subdivide property or recombine lots into acreage, and any record of survey map purporting to do so shall be null and void.

C. Application Submittal

Applications for approval of a record of survey map shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

D. Monuments

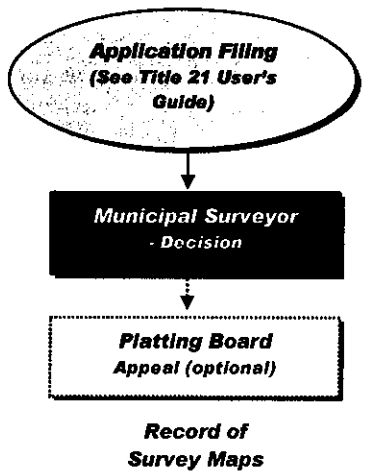
Monuments set for the survey shall conform to the standards of the department of project management and engineering.

E. Approval

A record of survey map is subject to approval by the municipal surveyor, who shall approve a record of survey map if it conforms to this section.

F. Appeals

All decisions of the municipal surveyor under this section shall be final unless appealed to the platting board within 15 days of the date of approval.



21.03.160 REZONINGS (ZONING MAP AMENDMENTS)

A. Purpose and Scope

The boundaries of any zone district in the municipality may be changed or the zone classification of any parcel of land may be changed pursuant to this section. This section states the procedures and approval criteria necessary to process an amendment to the official zoning map. Zoning is not effective if it is too easily or frequently changed. Zoning is intended to provide a degree of certainty that is important for long-term investment and neighborhood cohesion and stability. The purpose of rezoning is not to relieve particular hardships, nor to confer special privileges or rights on any person, but to make adjustments to the official zoning map that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the municipality. Rezonings shall not be used as a way to legitimize nonconforming uses or structures, and should not be used when a conditional use, variance, or minor modification could be used to achieve the same result.

B. Minimum Area Requirements

A rezoning shall only be considered for properties totaling 1.75 acres (76,230 square feet) or more (excluding rights-of-way), except for:

1. A rezoning extending the boundaries of an existing zoning district; or
2. A rezoning initiated by the municipal administration to place municipally owned land in a PLI, PR, or DR zoning district.
3. A rezoning into the B-1A [NC] district.

C. When a Comprehensive Plan Map Amendment is Required

Zoning map amendments may also require an amendment to the comprehensive plan map. Determination of whether the comprehensive plan map must also be amended is based upon whether the proposed zoning map amendment is to a zone consistent with the comprehensive plan map. If an amendment to the comprehensive plan map is required, the zoning map amendment can only be made if the amendment to the comprehensive plan map is approved first. Both amendments may be processed concurrently, as provided in subsection 21.03.070C.3.

D. General Procedure

1. Initiation

a. A rezoning may be initiated by the assembly, the planning and zoning commission, or by the director of any municipal department.

b. In addition, any person may initiate a rezoning by submitting a petition favoring the rezoning signed by the owners of at least 51 percent [%] of the area within the property to be rezoned. For the purposes of this subsection, an owner of property subject to the Horizontal Property Regimes Act (A.S. 34.07) owns a percentage of the appurtenant common areas equal to the percentage for that property stated in the recorded declaration committing the property to the Horizontal Property Regimes Act.

c. A rezoning application shall expire one year after submittal unless a public hearing on the application has been held by the assembly on or before that date; provided, however, that the director or designee may extend the application for six months if the reason for the delay was due to circumstances beyond the control of the applicant.

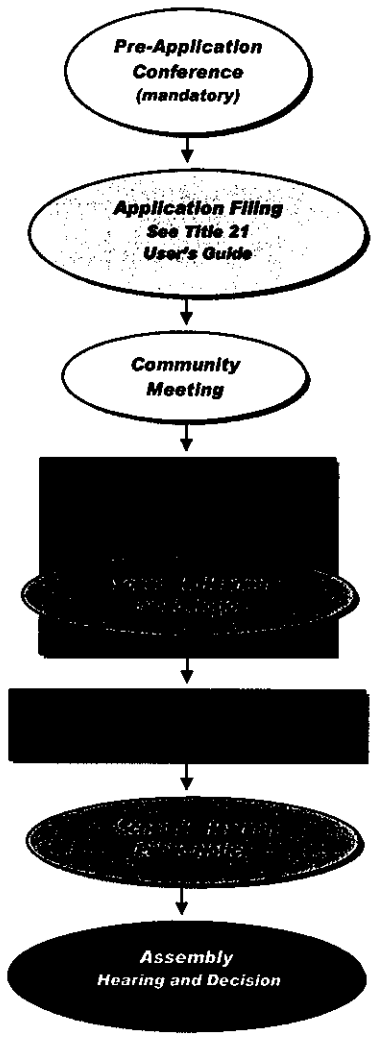
d. Rezonings shall precede corps of engineers wetland permit applications.

2. Pre-Application Conference

Before filing an application, a private-party applicant shall request a pre-application conference with the director, in accordance with subsection 21.03.020B.

3. Application Submittal

Applications for a rezoning shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department. Additional materials may be required for certain types of rezoning, such as rezoning with special limitations.



Rezonings (Map Amendments)

4. Community Meeting
A community meeting is required in accordance with subsection 21.03.020C[G].

5. Public Notice
Notice of all public hearings shall be provided in accordance with section 21.03.020H. In addition, the published and written (mailed) notice for the public hearing before the assembly shall list the protest provisions set forth in subsection D.9. below.

6. Departmental Review
The department shall review each proposed rezoning in light of the approval criteria in subsection E. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

7. Planning and Zoning Commission Action

a. The planning and zoning commission shall hold a public hearing on the proposed rezoning and, at the close of the hearing, taking into account the recommendations of the department and public input, and based upon the approval criteria of subsection E. below, shall recommend approval, approval with special limitations or other modifications (at least as restrictive as submitted in the application), or denial. The commission shall [BASE ITS RECOMMENDATION ON THE APPROVAL CRITERIA IN SUBSECTION E. BELOW, AND SHALL] include written findings based on each of the approval criteria.

b. If the commission recommends approval or approval with special limitations or other modifications, within 60 days of the commission's written resolution, the director shall forward the recommendation to the assembly with an ordinance to amend the official zoning map in accordance with the recommendation.

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

8. Assembly Action
The assembly shall hold a public hearing on the proposed rezoning and shall, at the close of the hearing, taking into account the recommendations of the department [DIRECTOR], planning and zoning commission, and public input, and based upon the approval criteria of subsection E. below:

a. Approve the zoning map amendment as submitted in the application to the planning and zoning commission;

b. Approve the zoning map amendment [BY ORDINANCE] with special limitations (see subsection G.) or other modifications at least as restrictive as those submitted in the application, provided that an ordinance approving an amendment initiated under this section shall become effective only with the written consent of the property owner(s) to the special limitations or other modifications [RECOMMENDED BY THE PLANNING AND ZONING COMMISSION];

c. Deny the amendment; or

d. Remand the proposed amendment to the planning and zoning commission or to a committee of the assembly for further consideration.

9. Protests

a. Any owner of property subject to a proposed rezoning may protest the rezoning by filing a written protest with the clerk pursuant to this subsection.

b. Any owner of property within 300 feet of the outer boundary of the land to which the amendment applies may protest the rezoning by filing a written protest with the clerk that is signed by the owners of at least one-third of the property, excluding rights-of-way, of:

i. The land to which the amendment applies; or

ii. The land within 300 feet of the outer boundary of the land to which the amendment applies;

excluding land owned by the municipality, except where the municipality joins in the protest.

c. To be valid, the protest shall state the factual and/or legal basis for the protest, contain a legal description of the property on behalf of which the protest is made, be signed by the owner of that property, and be received by the municipal clerk after notice of a public hearing before the assembly on a zoning map amendment and at least three business days before the time set for the assembly public hearing on the amendment.

d. Assembly approval of a rezoning subject to a valid protest under this subsection shall require an affirmative vote of eight assembly members.

10. 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 <u>two</u> [ONE] <u>years</u> of the date of denial, unless denial is made without prejudice.

11. Form of Amending Ordinance

An ordinance amending the zoning map shall contain the following:

a. The names of the current and the requested zoning districts;

b. The legal description of the subject property;

c. Any special limitations being applied to the subject property; and

d. An effective clause.

E. Approval Criteria

The planning and zoning commission may recommend approval, and the assembly may approve a rezoning, if the rezoning meets all of the following criteria:

1. The rezoning shall be in the best interest of the citizens of Anchorage and shall promote[S] the public health, safety, and general welfare;

2. The rezoning complies with and conforms to the comprehensive plan and the purposes of this title;

3. The proposed rezoning conforms to the comprehensive plan map, as follows:

a. The rezoning shall be to a zone corresponding to the comprehensive plan map, including the zoning consistency table, except as provided in F. below.

b. When the comprehensive plan map designation has more than one corresponding zone, it shall be shown that the proposed zone is the most appropriate, taking into consideration the purposes of each zone and the zoning pattern of surrounding land.

4. The rezoning is consistent with the stated purpose of the proposed zoning district and the applicable portions of the comprehensive plan;

5. Facilities and services (including roads and transportation, water, gas, electricity, police and fire protection, and sewage and waste disposal, as applicable) are capable of supporting the uses allowed by the zone or will be capable by the time development is complete, while maintaining adequate levels of service to existing development;

6. The rezoning is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts shall [WILL] be substantially mitigated;

7. The proposed rezoning is not likely to result in significant adverse impacts upon adjacent land uses, or such impacts shall be mitigated through stipulations [OTHER PROPERTY IN THE VICINITY OF THE SUBJECT TRACT];

8. [THE REZONING DOES NOT RESULT IN A SPLIT-ZONED LOT;]
The applicant [HAS] demonstrates[D,] to the satisfaction of the planning commission and the assembly[,] that the supply of land in the desired zoning district [IN THE GENERAL AREA] is insufficient or inadequate for the stated [INTENDED] purpose[,] and that sufficient land of the existing zoning district remains in the area to meet the needs of the community; [AND]

9. The rezone does not initiate, continue, or exacerbate a pattern that is inconsistent with the comprehensive plan;

10. The proposed rezoning maintains and preserves the compatibility of surrounding zoning and development, and protects areas designated for specific uses on the zoning map from incompatible land uses or development intensities; and[.]

11. The rezoning does not result in a split-zoned lot.

F. Flexibility of Interpretation

The comprehensive plan map and the approval criteria of subsection E. above may be interpreted with flexibility within the following parameters:

1. A proposed rezoning that is to a district that does not correspond to the comprehensive plan map may be considered if processed concurrently with a related amendment to the comprehensive plan map following the procedures of subsection 21.03.070, *Comprehensive Plan Amendments*.

2. Where the location of comprehensive plan map designation boundaries appear generalized or uncertain, proposed zoning amendments on or near the boundaries shall be treated as follows:

   a. Areas clearly within a particular comprehensive plan map designation shall follow the standards of that designation.

   b. The designation of areas at or near boundaries on the comprehensive plan map shall be interpreted in accordance with the goals, objectives, policies, and guidelines of the comprehensive plan, including locational criteria for designations on the comprehensive plan map.

3. Interpretation shall not be a basis for cumulative encroachment by incompatible land uses.

G. Rezonings with Special Limitations

Pursuant to this subsection, a rezoning may include special limitations that restrict some aspects of development, to a greater degree than otherwise provided for a zoning district applied by the rezoning.

1. Purposes

A rezoning may include special limitations for one or more of the following purposes:

   a. To prohibit structures, or uses of land or structures, that would adversely affect the surrounding neighborhood or conflict with the comprehensive plan; or

   b. To conform the zoning map amendment to the comprehensive plan, or to further the goals and policies of the comprehensive plan; or

   c. To conform development under the zoning map amendment to existing patterns of development in the surrounding neighborhood; or

   d. To mitigate the adverse effects of development under the zoning map amendment on the natural environment, the surrounding neighborhood, and on public facilities and services.

2. Types of Limitations

A special limitation shall do one or more of the following:

   a. Limit residential density; or prohibit structures, or uses of land or structures, otherwise permitted in a zoning district;

   b. Require compliance with design standards for structures and other site features;

   c. Require compliance with a site plan approved under this title;

   d. Require the construction and installation of improvements, including public improvements; or

e. Impose time limits for taking subsequent development actions.

3. Effect of Approval

a. A zoning district subject to special limitations shall be identified on the zoning map by the suffix "SL," and the number of the ordinance applying the special limitations shall be printed on the zoning map.

b. Where a special limitation in a zoning map amendment conflicts with any less restrictive provision of this title, the special limitation governs.

H. Rezonings to Create, Alter, or Eliminate Overlay Districts

1. Purpose and Applicability

The assembly may, through the rezoning process, establish overlay districts that supplement the requirements of the underlying base zoning districts, in order to address special land use needs, to meet an objective of the comprehensive plan or neighborhood plan, or other specific planning objective. A rezoning for an overlay district may be applied to the zoning map in order to:

a. Permit, require, prohibit, or restrict structures or the use of land or structures;

b. Alter the provisions of the use-specific requirements as applied to property within the overlay district;

c. Require new development or attributes of new development to conform to a specific architectural or design theme;

d. Require a design review approval process; and/or

e. Alter the development standards of the underlying district by decreasing or increasing the requirements with regard to building height, setbacks, lot area, lot width, lot coverage, and lot densities of the underlying district.

2. Minimum Area Requirements

No overlay district zoning map amendment shall be considered or approved that applies an overlay district to an area less than 1.75 acres, excluding rights-of-way, except for an amendment extending the boundaries of an existing overlay district.

3. General Procedure for Creating, Altering, or Eliminating Overlay Districts

Overlay districts shall be established, altered, or eliminated using the general rezoning procedure set forth in subsection D. above, *General Procedure*, except as modified by the following provisions:

a. ***Contents of Adopting Ordinance***

An ordinance amending the zoning map for an overlay district shall contain the following:

i. The name of the overlay district that the ordinance applies;

ii. The legal description of the land within the overlay district applied by the ordinance; and

iii. All standards of development to be governed by the overlay district.

b. ***Effect of Approval***

i. Where a specification in an overlay zoning map amendment conflicts with any provision of this title, the overlay zoning map amendment shall govern.

ii. An overlay district adopted in the same manner as the original ordinance remains effective until repealed or amended. The assembly may set a time for the overlay district to expire if it finds the planning objectives will be met or completed within a specific time period.

c. ***Map of Overlay Districts***

i. Each overlay district shall be annotated on the zoning map with a symbol unique to the overlay district and shall be identified on the zoning map by the suffix "OV" and the number of the ordinance applying the overlay district shall be printed on the zoning map within the boundaries of the overlay district.

ii. The department shall maintain, for inspection by the public, maps showing the location of the overlay districts and records of the assembly's purpose and intent in establishing each district.

4. Establishment or Modification of Airport Height Overlay Districts

In addition to the standard submittals required to initiate an overlay map amendment, establishment of an Airport Height Overlay District also shall require preparation of an airport height map as set forth in section 21.04.060C.

I. Rezoning to Planned Community Development District (PCD)

1. Purpose

The assembly may, through the rezoning process, adopt a regulatory zoning strategy that is customized for a specific property or group of properties. The zoning strategy may substitute, alter, or adopt the specific requirements of chapters 21.05, 21.06, and 21.07 (see subsection I.4. below) in order to allow the development to achieve the goals of the comprehensive plan and title 21 in a unique way. [MEET THE UNIQUE NEEDS OF THE DEVELOPMENT.] The assembly must find that the proposed strategy will result in development that is compatible with that which would occur with conventional application of the requirements of chapters 21.05, 21.06, and 21.07.

2. Procedure

Rezoning to PCD districts shall follow the general rezoning procedure set forth in section D. above, except as modified by this section.

3. Minimum Area Requirements

No PCD district zoning map amendment shall be considered or approved that is equal to an area of less than 30 acres. These limits exclude rights-of-way and do not apply to amendments that extend the boundaries of an existing PCD district.

4. In-Lieu Standards Allowed

a. The use of standards that are different from standards stated in title 21 is intended to allow a developer some flexibility and creativity in meeting the intents and purposes of the code.

b. In-lieu standards for the following sections may be proposed for the PCD district:

i. Chapter 21.05, *Use Regulations*;

ii. Chapter 21.06, *Dimensional Standards*;

iii. Subsection 21.07.020C., *Steep Slope Development*;

iv. Section 21.07.030, *Open Space*;

v. Section 21.07.060, *Transportation and Connectivity*;

vi. Section 21.07.080, *Landscaping, Screening, and Fencing*;

vii. Section 21.07.090, *Off-Street Parking and Loading*;

viii. Section 21.07.100, *Residential Design Standards*;

ix. Section 21.07.110, *Public/Institutional and Commercial Design Standards*;

x. Section 21.07.120, *Large Commercial Establishments*;

xi. Section 21.07.130, *Exterior Lighting*; and

xii. Subsection 21.08.050D., *Interior Streets*.

c. Along with the application and documentation information required in I.5. below, the applicant must also submit the following information with regard to any proposed in-lieu standards.

i. Clear specification of the proposed in-lieu standards, and the title 21 standards for which the proposed in-lieu standards are a substitute. Any title 21 standards that are not replaced with approved in-lieu standards shall apply in the PCD district.

ii. A statement of why compliance with title 21 standards would interfere with the goals, purposes, or functions of development in the proposed PCD district.

iii. A demonstration of how the proposed in-lieu standards would be at least as effective as the title 21 standards in fulfilling the intents and purposes of title 21, and furthering the goals and policies of the comprehensive plan, including any applicable neighborhood or district plans.

iv. A statement of the expected benefits of the proposed in-lieu standards.

d. The planning and zoning commission may recommend approval, and the assembly may approve a rezone to the PCD district with in-lieu standards if they find that the in-lieu standards will result in development that is compatible with the intents and purposes of title 21 and the goals and policies of the comprehensive plan, and do not compromise public health, safety, or welfare.

5. Application and Documentation

Applications for rezoning to a PCD district shall contain the information specified in the title 21 user's guide, and the following:

a. If proposing in-lieu standards for subsection 21.07.020C., *Steep Slope Development*, the information required in subsection 21.07.020C.;

b. Development Areas: a PCD district that proposes to segregate differing land uses and/or different project phases shall provide and maintain a map that clearly distinguishes the boundaries of each development area. The development areas shall be identified with an alpha, numeric, or alphanumeric coding system to allow for easy identification of each area. Different in-lieu standards may be proposed for each development area.

c. Table of allowed uses and use definitions:

i. The PCD district shall establish a table of allowed uses and a table of accessory uses. The table shall be formatted in the same manner as the tables depicted in chapter 21.05 listing the land use, and if development areas are proposed, noting each with its designated land uses. The table abbreviations set forth at 21.05.010A. shall be used.

ii. The land uses listed in the table of allowed uses or the table of accessory uses shall be defined in chapter 21.05, or the PCD district shall provide a use definition for those uses not listed in sections 21.05.020 through 21.05.080.

d. Dimensional standards and measurements:

i. The PCD district shall establish a table of dimensional standards. The table shall be formatted in the same manner as the tables depicted in chapter 21.06 listing the dimensional standards, and if development areas are proposed, noting each with its designated dimensional standards.

ii. Unless specifically provided otherwise (see subsection I.4. above), the measurements and exceptions section 21.06.030 shall apply.

6. Relationship to Other Requirements

When there is a conflict between the PCD district requirements and other requirements of this title, the PCD district requirements control. The specific requirements of this title apply unless the PCD district provides other requirements for the same specific topic.

7. Changes to an Approved PCD District

a. ***Approval by Assembly***

Approval of a zoning map amendment in accordance with section 21.03.160 is required for the following amendments to the PCD district:

i. Any increase in the total number of authorized dwelling units;

ii. Any decrease in the total open space acreage;

iii. Any increase in the total gross building area of commercial or industrial structures;

iv. Any addition or deletion of any permitted principal use, conditional use, or accessory use;

v. Any changes in the development standards;

vi. Any density transfer between development areas that will result in a 25 percent [%] or greater cumulative increase or decrease in the number of dwelling units in any development area; or

vii. Any change in the acreage of a development area equal to or more than 25 percent [%] of the total acreage of the development area.

b. ***Approval by the Planning and Zoning Commission***
Approval by the planning and zoning commission is required for the following amendments to the PCD district:

i. Any density transfer between development areas that will result in a cumulative increase or decrease of more than 10 percent [%] but less than 25 percent [%] in the number of dwelling units in any development area; or

ii. Any change in the acreage of a development area of more than 10 percent [%] but less than 25 percent [%] of the total acreage of the development area.

c. ***Approval by the Director***
Approval by the director is required for the following amendments to the PCD district:

i. Any density transfer between development areas that will result in a cumulative increase or decrease of 10 percent [%] or less in the number of dwelling units in any development area; or

ii. Any change in the acreage of a development area of 10 percent [%] or less of the total acreage of the development area.

21.03.170 SIGN PERMITS

A. Applicability

No person shall erect, locate, move, alter, or replace any sign or cause a sign to be located or maintained, unless all applicable provisions of this section and chapter 21.11, *Signs*, have been met.

B. Approval Requirements for Signs

Proposed signs shall be required to receive a permit from the building official as set forth in the table below.

TABLE 21.03-3: SIGN PERMIT REQUIREMENTS

	Permit required by Title 21	No permit required by Title 21; permit may be required by Title 23
Sign Plate		X
Permanent Building Sign	X	

TABLE 21.03-3: SIGN PERMIT REQUIREMENTS		
	Permit required by Title 21	No permit required by Title 21; permit may be required by Title 23
Permanent Freestanding Sign	X	
Entrance/Exit		X
Instructional		X
Temporary – on a parcel		X
Temporary – for a business		X
Construction signs		X
Temporary for any Residential Unit		X

C. Application Submittal

An application for a sign permit shall be made to the building official on the form provided. When any person other than the owner of the property submits a sign application, the owner of the property or a designated agent for the owner shall also sign such application.

D. Review and Approval

Sign permit applications shall be reviewed and approved pursuant to the procedure outlined in 21.03.100C.2, *Approval Procedure (for Land Use Permits)*.

E. Appeals

1. Denial of a sign permit relating to title 21 compliance may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

2. Denial of a sign permit relating to title 23 compliance may be appealed to the building board of examiners and appeals.

21.03.180 SITE PLAN REVIEW

A. Purpose

The purpose of the site plan review process is to ensure compliance with the development and design standards and provisions of this title, and to encourage quality development in the municipality reflective of the goals, policies, and objectives of the comprehensive plan. For land uses requiring a site plan review, such uses may be established in the municipality, and building or land use permits may be issued, only after a site plan showing the proposed development has been approved in accordance with the procedures and requirements of this title.

B. Administrative Site Plan Review

1. **Applicability**
   Land uses requiring administrative site plan review are identified in section 21.05.010, *Tables of Allowed Uses.*

2. **Procedure**
   a. ***Application Submittal***

Applications for an administrative site plan review shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

b. ***Departmental Review and Director's Action***
The department shall review each proposed administrative site plan application in light of the approval criteria of subsection E. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the director shall take final action on the site plan application and approve, approve with conditions, or deny the application. The department's review and the director's action, including referral to other agencies and bodies, shall be completed within 60 days of verification of a complete application.

c. ***Appeals***
Denial of an administrative site plan may be appealed to the urban design commission, in which case it shall be treated as a major site plan review application under subsection C. below.

C. Major Site Plan Review

1. Applicability
Land uses requiring major site plan review are identified in section 21.05.010, *Tables of Allowed Uses.*

2. Procedure

a. ***Pre-Application Conference***
Before filing an application, the applicant shall request a pre-application conference with the director, in accordance with subsection 21.03.020B.

b. ***Application Submittal***
Applications for a major site plan review shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

c. ***Community Meeting***
A community meeting is required in accordance with subsection 21.03.020C[G].

d. ***Public Notice***
Notice of all public hearings shall be provided in accordance with subsection 21.03.020H.

e. ***Departmental Review***
The department shall review each proposed major site plan application in light of the approval criteria of subsection E. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the urban design commission.

f. ***Urban Design Commission Action***
The urban design commission shall hold a public hearing on the proposed application and, taking into account the recommendations of the department and public input, shall act to approve, approve with conditions, or deny the proposed major site plan, based on the approval criteria of subsection E. below.

g. ***Appeals***

Denial of a major site plan may be appealed to the board of adjustment in accordance with subsection 21.03.050A.

D. Expiration

1. General

A site plan approval shall automatically expire at the end of 24 months after the effective date unless a building or land use permit for at least one building in the development proposed in the site plan is approved and construction has begun (see the definition of "start of construction" in chapter 21.14). A change in ownership of the property does not affect this time frame.

2. Extension

a. ***First Extension***

Upon written application submitted by the applicant at least 30 days prior to the expiration of the permit period and upon a showing of good cause, the director may grant one extension not to exceed 12 months. The approval shall be deemed extended until the director has acted upon the request for extension. Failure to submit an application for an extension within the time limits established by this section shall render the site plan approval void.

b. ***Further Extensions***

Upon written application submitted at least 30 days prior to the expiration of the previous extensions and upon a showing of good cause, the urban design commission, without a public hearing, may grant additional extensions, each one not to exceed 12 months. The approval shall be deemed extended until the commission has acted upon the request for extension.

E. Approval Criteria

An application for administrative or major site plan review shall be approved upon a finding that the site plan meets all of the following criteria:

1. The site plan is consistent with any previously approved subdivision plat, planned development master plan, or any other precedent plan or land use approval;

2. The site plan complies with all applicable development and design standards set forth in this title, including but not limited to the provisions in chapter 21.04, *Zoning Districts*, chapter 21.05, *Use Regulations*, chapter 21.06, *Dimensional Standards and Measurements,* and chapter 21.07, *Development and Design Standards*;

3. The site plan addresses any significant adverse impacts that can reasonably be anticipated to result from the use, by mitigating or offsetting those impacts to the maximum extent feasible; and

4. The development proposed in the site plan is consistent with the goals, objectives, and policies of the comprehensive plan.

F. Platting for Site Plans

1. If development under an approval under this section will create a subdivision or requires the vacation of a dedicated public area, the approval is not effective until a final plat for the subdivision or vacation is approved and recorded in accordance with this title. A

preliminary plat required under this section is subject to approval as required by section 21.03.200, *Subdivisions*.

2. Unless the authority granting approval directs in the approval that it shall act as the platting authority, the director is the platting authority for subdivisions under this subsection.

G. Amendments to Approved Site Plans

1. Original Procedure Applies for Most Amendments
Amendment of a site plan shall follow the same process required for the original approval of a site plan, unless the amendment is determined to be a minor amendment as described in subsection G.2. below.

2. Administrative Approval of Minor Amendments
The director may approve administratively minor amendments to any approved site plan upon written application and documentation by the applicant, and upon the director's determination that the amendment is a minor amendment.

a. ***Procedure***

i. Upon receiving a written request from the applicant for a site plan amendment, the director shall determine if the proposed amendment will be processed as a minor amendment or major amendment. The applicant may appeal the director's decision, in writing to the zoning board of examiners and appeals within 10 days of the decision.

ii. Immediately following the director's determination that a proposed amendment is minor, the director shall:

(A) Issue a minor amendment affidavit, which shall be transmitted to the urban design commission for their information; and

(B) Attach a form stating the nature of the modification, date of approval, and bearing the signature of the director to the site plan mylar on file in the department.

iii. If the original approval had been recorded, the amended plan shall be recorded by the municipality at the applicant's expense.

b. ***Types of Minor Amendments***
The following are amendments which the director may reasonably determine to be "minor":

i. Insubstantial changes to the text to add clarity or correct conflicting provisions.

ii. Changes in street alignment if such changes further the intent of the plan and this code, and are acceptable to the municipal engineer.

iii. Changes in building envelope, setback, and similar provisions of 10 percent [%] or less.

iv. Incidental changes in landscaping, sign placement, lighting fixtures, etc. to further the intent of the plan and this code.

21.03.190 STREET AND TRAIL REVIEW

[RESERVED]

A. [PURPOSE

STREETS ARE A SIGNIFICANT INVESTMENT IN THE MUNICIPALITY'S INFRASTRUCTURE AND ESTABLISH LONG-TERM LAND USE IMPACTS ON NEARBY PROPERTIES AND THE COMMUNITY AT LARGE. STREETS AND TRAILS ARE NOT ONLY UTILITARIAN, BUT ALSO CONVEY THE IMAGE OF THE MUNICIPALITY TO ALL USERS. THESE IMPORTANT PARTS OF THE MUNICIPALITY'S FABRIC BENEFIT BY OVERSIGHT AND CONCURRENCE IN THE DESIGN DECISIONS BY CITIZEN BODIES THAT ARE REPRESENTED BY THE PLANNING AND ZONING COMMISSION AND THE URBAN DESIGN COMMISSION.

B. PLANNING AND ZONING COMMISSION REVIEW AND RECOMMENDATION

1. APPLICABILITY

THE PLANNING AND ZONING COMMISSION SHALL REVIEW NEW CONSTRUCTION AND RECONSTRUCTION STREET AND INTERSECTION PROJECTS INVOLVING STREETS OF COLLECTOR CLASSIFICATION OR GREATER IN THE *OFFICIAL STREETS AND HIGHWAYS PLAN*, AND PUBLIC TRAIL PROJECTS INVOLVING ALL TRAILS THAT ARE OVER ONE-HALF MILE IN LENGTH AND ANY PORTION OF WHICH UTILIZES PUBLICLY-OWNED LAND, EASEMENTS, OR RIGHT-OF-WAY.

2. REVIEW

a. THE PLANNING AND ZONING COMMISSION SHALL REVIEW THE DESIGN-STUDY REPORT OR EQUIVALENT DOCUMENT, FOR ALL APPLICABLE STREET AND TRAIL PROJECTS, AND SHALL ISSUE A RECOMMENDATION TO THE APPROPRIATE AGENCY. A PUBLIC HEARING IS NOT REQUIRED BUT MAY BE HELD AT THE COMMISSION'S DISCRETION.

b. AS APPLICABLE, THE COMMISSION'S REVIEW OF THE PROJECT SHALL INCLUDE BUT NOT BE LIMITED TO:

i. COMPLIANCE WITH THE COMPREHENSIVE PLAN AND ITS ELEMENTS;

ii. COMPLIANCE WITH THIS TITLE;

iii. LONG-TERM IMPACT ON EXISTING AND PROJECTED ADJACENT LAND USES;

iv. PREFERRED ROUTE SELECTION;

v. SHORT-TERM AND LONG-TERM IMPACT OF PROPERTY ACQUISITION FOR RIGHT-OF-WAY; AND

vi. IMPACTS ON UTILITIES INCLUDING UNDERGROUNDING OF OVERHEAD UTILITIES.

c. THE COMMISSION MAY REQUEST THAT SUBSEQUENT DESIGN DOCUMENTS BE RETURNED TO THE COMMISSION FOR REVIEW. ANY SUCH REQUESTED DESIGN DOCUMENTS SHALL BE PRESENTED TO THE COMMISSION AT THE EARLIEST OPPORTUNITY THAT PERMITS ANY

ADDITIONAL COMMISSION RECOMMENDATIONS TO BE IMPLEMENTED IN DESIGN REVISIONS.

C. URBAN DESIGN COMMISSION REVIEW AND ACTION

1. APPLICABILITY

THE URBAN DESIGN COMMISSION SHALL REVIEW AND APPROVE ALL LANDSCAPING AND STREETSCAPE AND PEDESTRIAN FACILITIES FOR STREETS OF COLLECTOR CLASSIFICATION OR GREATER IN THE *OFFICIAL STREETS AND HIGHWAYS PLAN*, AND FOR TRAIL PROJECTS INVOLVING ALL TRAILS THAT ARE OVER ONE-HALF MILE IN LENGTH AND ANY PORTION OF WHICH UTILIZES PUBLICLY-OWNED LAND, EASEMENTS, OR RIGHT-OF-WAY.

2. REVIEW AND ACTION

a. THE URBAN DESIGN COMMISSION SHALL APPROVE, APPROVE WITH CONDITIONS, OR REJECT THE LANDSCAPING, STREETSCAPE, AND PEDESTRIAN DESIGN PLANS AT A STAGE NO GREATER THAN 65% DESIGNED, FOR ALL APPLICABLE STREET AND TRAIL PROJECTS. A PUBLIC HEARING IS NOT REQUIRED BUT MAY BE HELD AT THE COMMISSION'S DISCRETION.

b. AS APPLICABLE, THE COMMISSION'S ACTION SHALL BE BASED ON, BUT IS NOT LIMITED TO, THE FOLLOWING CONSIDERATIONS:

i. COMPLIANCE WITH THIS TITLE;

ii. CONTEXT OF THE AREA AND THE LONG-TERM IMPACT ON EXISTING AND PROJECTED ADJACENT LAND USES;

iii. INITIAL COST OF MATERIALS INCLUDING INSTALLATION;

iv. LONG TERM COSTS ASSOCIATED WITH OPERATION AND MAINTENANCE;

v. ADHERENCE TO A DESIGN THEME ESTABLISHED THROUGH LOCAL AREA PLANS OR PRIOR PUBLIC IMPROVEMENTS;

vi. EFFECTIVENESS IN MEETING COMMUNITY DESIGN GOALS; AND

vii. ACCOMMODATION OF PEDESTRIANS.

c. THE COMMISSION MAY REQUEST THAT SUBSEQUENT DESIGN DOCUMENTS BE RETURNED TO THE COMMISSION FOR REVIEW. ANY SUCH REQUESTED DESIGN DOCUMENTS SHALL BE PRESENTED TO THE COMMISSION AT THE EARLIEST OPPORTUNITY THAT PERMITS ANY ADDITIONAL COMMISSION RECOMMENDATIONS TO BE IMPLEMENTED IN DESIGN REVISIONS.

3. APPEAL

DECISIONS MAY BE APPEALED TO THE PLANNING AND ZONING COMMISSION, WHICH SHALL BE REQUIRED TO HOLD A PUBLIC HEARING ONLY IF THE URBAN DESIGN COMMISSION DID NOT HOLD A PUBLIC HEARING.]

21.03.200 SUBDIVISIONS

A. Purpose

The purpose of the subdivision review process is to ensure compliance with the subdivision standards and requirements set forth in chapter 21.08, *Subdivision Standards*, which are designed to ensure quality development in the municipality consistent with the comprehensive plan.

B. Applicability

1. General

The procedures of this section, and the standards and requirements set forth in chapter 21.08, *Subdivision Standards*, shall apply to all subdivisions or resubdivisions that result in the portioning, dividing, combining, or altering of any lot, parcel, or tract of land, including subdivisions or resubdivisions created by an exercise of the power of eminent domain by an agency of the state or municipality. All subdivisions applications shall be reviewed according to the process set forth in subsection C. below, unless they qualify for the abbreviated plat procedure.

2. Abbreviated Plat

Certain subdivisions may follow the streamlined procedure set forth in subsection D. below. Eligible preliminary plats are those plats where the applicant is not an agency of the municipal, state, or federal governments, and are:

a. A movement or elimination of lot lines that does not:

i. Result in an increase in the permitted density of residential units within the area being subdivided or resubdivided.

ii. Allow a change in the permitted use to which the lot or tract may be devoted under existing zoning.

iii. Deny adequate access to and from all lots or tracts created by the subdivision or those adjacent to it.

b. The subdivision of a single tract, parcel, or lot into no more than three tracts or eight lots, provided that the subdivision does not:

i. Allow a change in the permitted use to which the lot or tract may be devoted under existing zoning.

ii. Deny adequate access to and from all lots or tracts created by the subdivision or those adjacent to it.

iii. Divide a tract, parcel or lot:

(A) Created within the previous 48 months pursuant to the approval of a preliminary plat under this section;

(B) Contiguous to or having an owner either in an individual capacity or as an owner of a corporation, partnership, or other legal entity of a preliminary plat approved within the previous 48 months; or

(C) That is 10 acres or more in the R-6, R-7, R-8, R-9, and R-10 zoning districts or that is governed by AO 84-21 (G-5 areawide rezoning).

c. Vacations and relocations under section 21.03.230.C.1.

d. Subdivision of a cemetery into burial plots.

e. A plat required by section 21.03.080F. for approval of a conditional use, or section 21.03.180F. for approval of a site plan.

f. A plat depicting the creation of two attached single-family lots.

3. Subdivision Approval is Prerequisite to Other Approvals

a. No building permit, land use permit, certificate of zoning compliance, or certificate of occupancy may be issued for any building, structure, or improvement located within a subdivision, and no plat for a subdivision may be recorded with the state of Alaska, until all required dedications of land have been made, and all required improvements have been installed in accordance with the procedures and requirements of this section, or an approved subdivision agreement is in place pursuant to section 21.08.060, *Subdivision Agreements.*

b. The municipality shall not accept or maintain any street, and shall not extend or connect any street lighting, water service, or sanitary sewer service to any subdivision of land, until and unless a plat for the subdivision has been approved and recorded in accordance with the requirements set forth in this section.

4. Restriction on Sale or Transfer of Subdivided Land Without Approved Plat

Any person who transfers or sells any land located within the municipality by reference to a plat that has not been approved by the municipality and recorded by the state of Alaska shall be guilty of a violation of this title. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The municipality also may enjoin such transfer or sale by filing an action for an injunction.

5. Existing Lots of Record

No provision of chapter 21.08, *Subdivision Standards,* applies to any lot of record in a subdivision legally created and filed before the effective date of this title, unless the lot is further subdivided or resubdivided.

C. Review and Approval of Subdivision Plans

1. Applicability

This section shall apply to all subdivisions not meeting the eligibility criteria for the abbreviated plat procedure.

2. Pre-Application Conference

Before filing an application for a new subdivision or a modification of an already-approved subdivision, the applicant shall request a pre-application conference with the director, in accordance with subsection 21.03.020B.

3. Application Submittal

a. Unless waived by the director, a preliminary plat shall include all land under contiguous ownership, unless separate legal descriptions exist as a matter of

record. If only a portion of the land is intended for immediate development, the remaining portion shall be given a tract number and shall be part of the preliminary and final plat. Requirements for surveying this remaining tract may be waived at the discretion of the municipal surveyor. By plat note, development shall not be allowed on the remaining tract until approved under this section.

b. Applications for a preliminary plat shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

c. For subdivision plats that have A or B wetlands, the applicant shall have initiated corps of engineers wetland permitting prior to submitting the preliminary plat.

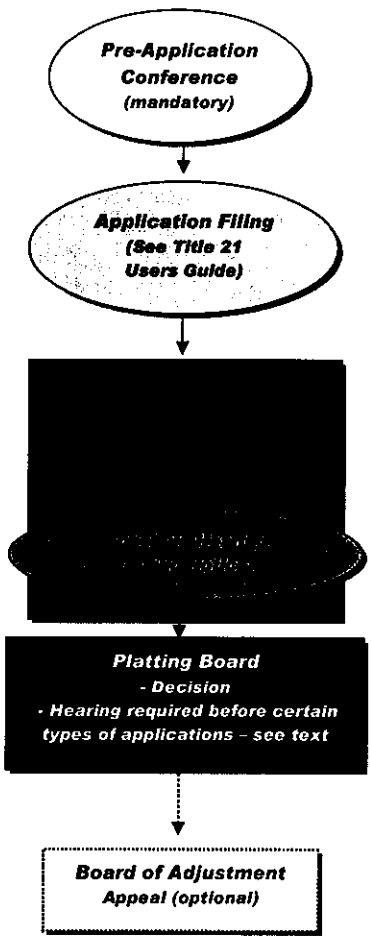
4. Community Meeting
A community meeting is required in accordance with subsection 21.03.020C[G].

5. Public Notice
Notice of all public hearings shall be provided in accordance with subsection 21.03.020H.

6. Departmental Review
The department shall review each proposed preliminary plat in light of the approval criteria of subsection C.9. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the platting board.

7. Action on Preliminary Plat

a. ***Platting Authority***
The platting board is the platting authority for preliminary plats, except as provided in subsection 21.03.080F. for conditional uses, and subsection 21.03.180F. for site plans.



Preliminary Plat

b. ***Action by Platting Authority***
Subject to paragraph 7.c. below, the platting authority shall, based on the approval criteria of subsection C.9. below, take action on the preliminary plat within 90 days after the submittal date, or shall return the plat to the applicant for modification or correction. The reasons for denial of a plat shall be stated in the records of the platting authority.

c. ***Referral to Other Agency***
If the platting authority finds that:

i. It cannot determine whether a preliminary plat conforms to the approval criteria of subsection C.9. below, because a specific controlling land use, public facility, or other public policy issue has not been resolved; and

ii. An official board, commission or legislative body of the municipality or another government has been identified as being responsible for resolving that issue;

then, upon a majority vote, the platting authority may refer the issue to the responsible official, board, commission, or legislative body and postpone action on the plat for a period not exceeding 90 days or to its next regular meeting after the responsible official, board, commission, or legislative body responds to the referral, whichever occurs first.

d. ***Public Hearing***

The platting authority shall hold a public hearing before action on the following types of subdivision applications:

i. Approval of a preliminary plat, except applications allowed to use the abbreviated plat procedure;

ii. Approval of a final plat that differs from the preliminary plat (see section 21.03.200C.8.b.);

iii. Modification or deletion of a condition of plat approval;

iv. Granting of a variance from the provisions of chapter 21.08, *Subdivision Standards*; and

v. Vacation of dedicated right-of-way; BLM and section line easements; or platted landscape, drainage, slope, or protective well radii easements.

e. ***Approval Period; Time Extensions***

i. Notwithstanding any subsequent change in the subdivision regulations, zoning regulations, and zoning districts, the approval of the preliminary plat shall be effective:

(A) For at least 24 months and up to 60 months from the date of approval, when it pertains to a development of no less than 10 acres and includes a phasing plan. The length of the approval period shall be based upon the platting board's evaluation of the size, complexity, and phasing elements of the development.

(B) For 24 months from the date of approval when it pertains to a development of less than 10 acres or does not include a phasing plan.

ii. The preliminary plat shall become null and void after the approval period unless an extension of time is granted by the platting authority. A request for a time extension must be made in writing by the subdivider. The extension request must be received by the director prior to the expiration of the preliminary plat to be eligible for consideration by the platting authority.

iii. Such a time extension shall be granted only if the authority finds that current conditions are substantially the same as those that existed when the preliminary plat was originally approved. The director shall conduct the reevaluation for every extension request that does not raise the total

time of extension for a particular plat beyond 24 months and present his or her findings to the authority. Every extension request that raises the total time of extension for a particular plat beyond 24 months shall be evaluated in the same manner as an original plat application, including payment of the applicable fee.

iv. Only two time extensions may be approved for a preliminary plat approved by the platting authority. Approval of the second extension shall require a noticed public hearing.

v. Preliminary plats being finalized in portions or phases shall not be construed to automatically extend the original approval period. Such an extension may only be granted by the platting authority in accordance with the procedures set out in this subsection.

f. ***Appeals***
All decisions as to approval or denial of a preliminary plat by the platting authority shall be final unless appealed to the board of adjustment.

g. ***Resubmittal Following Denial***
No new application for the same or substantially the same preliminary plat shall be accepted by the platting authority within one year of denial of the original application. The waiting period required by this section may be waived in an individual case, based upon new evidence or changed circumstances, by the affirmative vote of a majority of the platting authority.

8. **Final Plat**

a. ***Procedure When Final Plat Corresponds to Preliminary Plat as Approved***

i. A hearing on the final plat shall not be required when such plat essentially conforms to the preliminary plat approved by the platting board. The final plat shall, in addition, meet all conditions imposed by the board in approving the preliminary plat.

ii. The final plat map shall constitute only that portion of the approved preliminary plat that is proposed to be recorded and developed at the time. If only a portion of the approved preliminary plat is proposed for final plat approval, such portions shall conform to all requirements of this section and chapter 21.08, *Subdivision Standards*.

iii. The following procedure shall be followed for the final plat:

(A) The final plat shall be submitted to the department for examination as to compliance with all terms of the preliminary plat as approved by the platting authority. If all conditions have been met, a statement to that effect, appearing on the final plat, shall be signed by the platting authority. The final plat shall not be signed until the documents described in paragraph a.iv. and a.v. below have been received.

(B) Upon acceptance of the final plat, the department shall forward the final plat to the project management and engineering department for final checking and inspection before final approval is given. If requested, a subdivision survey shall be submitted to the project management and engineering

department with a complete set of field and computation notes showing the original or reestablished corners of the plat and of lots within the plat. Traverse sheets and work sheets showing the closure within the allowable limits of error of the exterior boundaries of each irregular block and lot of the subdivision may also be required. Final approval by the project management and engineering department shall be indicated by a statement appearing on the plat.

iv. Final approval by the platting board shall be dependent upon receipt of the following material:

(A) A statement from the development services department stating that all conditions imposed by the department on the preliminary plat and approved by the platting board have been met. This approval by the development services department shall not affect any subsequent requirements relating to sewage disposal and water supply as they apply to any lots within the plat.

(B) A certificate from the tax collecting official or a note on the face of the plat stating that all municipal real property taxes levied against the property are paid in full, or, if approval is sought between January 1 and the tax due date, that there is on deposit with the chief fiscal officer an amount sufficient to pay estimated real property tax for the current year.

(C) A certificate to plat showing the legal and equitable owners, including mortgagees, contract purchasers and fee owners, of the land to be platted, plus all grants, reservations, covenants, deed restrictions, and easements of record which may condition the use of the property.

v. If the subdivision is to be served by a community water or sewer system, the development services department may require the subdivider to provide the following before the platting board finally approves the plat:

(A) Any approvals or certificates required by the state departments of environmental conservation and natural resources.

(B) An agreement under the standards and procedures set out in section 21.08.060, *Subdivision Agreements*, to ensure that the system installed will be compatible with existing public water and sewer systems.

(C) Approval of the plans, specifications, and installation and operating procedures for the system by the municipal water and wastewater utility pursuant to chapter 21.08, *Subdivision Standards,* and regulations promulgated thereunder.

vi. Final plats affecting land neither supplied, nor under subdivision agreement to be supplied, both with public water and public sewer, shall be submitted to the development services department for a determination that all lots and proposed water and wastewater facilities conform to AMC chapter 15.65 at the time of determination.

b. ***Procedure When Final Plat Differs from Preliminary Plat***
When the final plat differs from the preliminary plat, the plat shall be considered a new application for preliminary plat approval under this subsection C., except that all decisions as to approval or denial of this plat by the platting board as submitted under this section shall be final unless appealed to superior court.

c. ***Requirements for Final Plat***
The final plat shall be prepared to the technical specifications, and shall be accompanied by appropriate supporting materials, as specified in the title 21 user's guide.

d. ***Subdivision Agreements and Cost Estimates***
All final plats requiring public improvements, except those requiring monumentation only, shall be accompanied by a subdivision agreement between the subdivider and the municipality and an engineer's estimate of the cost of all required public improvements. Requirements for such an agreement are further described in section 21.08.060, *Subdivision Agreements*.

e. ***Notes, Restrictions, and Covenants***
The platting board may place such conditions upon granting of final plat approval as are necessary to preserve the public welfare in accordance with the subdivision regulations. (See section 21.03.020M.) When such a condition of approval entails a restriction upon the use of all or part of the property being subdivided, a note specifying such restrictions shall be placed on the face of the plat. Such note shall constitute a restrictive covenant in favor of the municipality and the public and shall run with the land, enforceable against all subsequent owners. Any such restrictive covenant may be enforced against the subdivider or any subsequent owner by the municipality or by any specifically affected member of the public.

9. **Approval Criteria**
The platting board may approve a preliminary or final plat only if it finds that the plat conforms to chapters 21.06, *Dimensional Standards and Measurements*, 21.07, *Development and Design Standards*, and 21.08, *Subdivision Standards*, and, to the maximum extent feasible:

a. Promotes the public health, safety, and welfare;

b. Mitigates the effects of incompatibilities between the land uses or residential densities in the subdivision and the land uses and residential densities in the surrounding neighborhood, including but not limited to visual, noise, traffic, and environmental effects;

c. Provides for the proper arrangement of streets in relation to existing or proposed streets;

d. Provides for adequate and convenient open space;

e. Provides for the efficient movement of vehicular and pedestrian traffic;

f. Ensures adequate and properly placed utilities;

g. Provides access for firefighting apparatus;

h. Provides opportunities for recreation, light, and air, and avoids congestion;

i. Facilitates the orderly and efficient layout and use of the land;

j. Does not create a split-zoned lot; and

k. Furthers the goals and policies of the comprehensive plan and conforms to the comprehensive plan in the manner required by section 21.01.080, *Comprehensive Plan.*

D. Abbreviated Plat Procedure

1. Authorization

Except for preliminary plats where the applicant is an agency of the municipal, state, or federal governments, the preliminary plats described in subsection B.2.b. above are subject to approval under the abbreviated procedure in this subsection instead of the procedure in subsection C. above. Preliminary plats described in B.2.b., where the applicant is an agency of the municipal, state, or federal governments, are subject to approval under the procedure in subsection C. above.

2. Application Submittal

Applications for abbreviated plats shall contain all of the submittal requirements that are listed in the title 21 user's guide. Applications shall be submitted to the director on a form provided by the department.

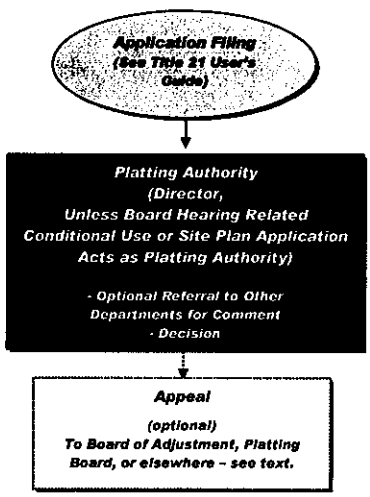
3. Public Notice

Before acting on an abbreviated plat application under this section, the director shall provide notice in accordance with section 21.03.020H.

4. Action on Plat

a. ***Platting Authority***

The director is the platting authority for abbreviated plats, except as provided in section 21.03.230 for vacation or relocation of certain dedicated public areas. The director may refer any application to the platting board that he or she deems may need further or more extensive analysis and public comment concerning access into adjacent property.



Abbreviated Plats

b. ***Review and Decision***

The platting authority shall review each proposed subdivision in light of the approval criteria of subsection C.9. above and shall consult other municipal offices or agencies as necessary. Based on the results of that review, the platting authority shall act to approve, approve with conditions, or deny the plat.

c. ***Variances***

i. When acting as the platting authority under this section, the director may not grant variances from the provisions of chapter 21.08, *Subdivision Standards.*

ii. When acting as the platting authority under section 21.03.080F., *Platting for Conditional Uses*, or 21.03.180F., *Platting for Site Plans*, the board or commission hearing an application for conditional use or site plan approval may grant variances from the provisions of chapter 21.08, *Subdivision Standards*, in accordance with section 21.03.240, *Variances*.

d. ***Duration of Preliminary Approval***
Abbreviated plat approval expires after 24 months; provided that the board hearing an application for conditional use or site plan approval may extend the expiration of abbreviated plat approval in conjunction with extending the time for implementing the conditional use or site plan.

e. ***Time Extensions***
The abbreviated plat shall become null and void after the preliminary approval period unless an extension of time is granted by the director. A request for a time extension must be made in writing by the subdivider. Such a time extension shall be granted only if the director finds that current conditions are substantially the same as those that existed when the preliminary plat was approved. Only one extension of no more than 24 months may be approved.

f. ***Appeals***
Decisions of the director under this section are final unless appealed within 15 days to the platting board, in which case the appeal shall be treated as an application for preliminary plat approval pursuant to subsection 21.03.200C.

g. ***Approval of Final Plat***
A final plat submitted pursuant to the approval of an abbreviated plat under this section is subject to approval in accordance with subsection C.8. above, provided that the municipal surveyor may waive a field survey for a final plat that merely eliminates interior lot lines.

E. Commercial Tract Plats

1. Applicability
A commercial tract may be created and divided into fragment lots in order to facilitate construction of commercial developments requiring multiple phases of construction. Designation of commercial tracts shall be allowed only in the B-3, RO, NMU, CMU, RMU, MT-1, MT-2, I-1, I-2, PCD, MC, and MI zoning districts.

2. Platting Authority
The urban design commission shall be the platting authority for a commercial tract whose site plan includes a large commercial establishment. The platting board shall be the platting authority for all other commercial tracts.

3. Review, Approval, and Modification of Commercial Tract Plats

a. ***Application Submittal***
Applications for a commercial tract plat shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department. An application for approval of a commercial tract shall be signed by the owners of the property involved.

b. ***Action by Platting Authority***

i. The platting authority shall act upon the application for approval of a commercial tract whose site plan includes a large commercial

establishment as part of the major site plan review for the large commercial establishment under subsection 21.03.180C.

ii. Except as provided in E.3.b.i. above, the platting authority shall act upon the application for commercial tract approval following the review and approval procedures of a preliminary plat in accordance with subsection 21.03.200C.7.

c. ***Recording of Site Plan***
Upon approval of a commercial tract under subsection E.3.b. above, the director shall, after notice to the petitioner, record the commercial tract site plan as approved, together with any declarations, covenants, and restrictions, with the district recorder's office.

d. ***Conformance with Site Plan***
It shall be unlawful for any person to construct, erect, or maintain any structure, building, fence, or improvement, including landscaping, parking, and other facilities, on property designated as a commercial tract, unless such improvements are constructed or reconstructed in a manner consistent with the approved commercial tract site plan.

e. ***Alteration of Boundaries***
The process for amending or altering the boundaries of an approved commercial tract shall be the same process as that of the original approval of the commercial tract plat.

f. ***Amendment of Site Plan***
Any amendment or alteration of an approved commercial tract site plan shall be made only upon approval of the platting authority as provided in this section.

4. **Division of Tract**
The owner of a commercial tract may divide the tract into fragment lots provided that such division is consistent with the approved commercial tract site plan and recorded declarations, covenants, and restrictions applicable to the commercial tract. Any property description used to divide an area of the commercial tract into a fragment lot shall not be considered a lot or tract under the terms of this title or title 23, but shall be otherwise a lawful lot or tract. Any fragment lot created under this section shall contain the minimum area, width, and depth otherwise required for lots in the zoning district in which the fragment lot is located.

F. Right-of-Way Acquisition Plat

1. **Generally**
A plat for a subdivision created by a government agency's acquisition of a street or trail right-of-way is subject to approval under this section and is not subject to any other approval procedure for plats under this title.

2. **Application Submittal**
Applications for a right-of-way acquisition plat shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

3. **Applicability of Requirements**
a. A right-of-way acquisition plat is not subject to section 21.08.050, *Improvements*.

b. Survey requirements for a right-of-way acquisition plat shall be established by agreement between the municipal surveyor and the government agency applying for plat approval, or, if there is no such agreement, by the provisions of this title.

4. Action

a. ***Platting Authority***
The director shall act as the platting authority unless the government agency applying for plat approval requests a public hearing before the platting board.

b. ***Duration of Approval***
The preliminary approval of the right-of-way acquisition plat shall be for a period of 60 months; provided, however, that the director may grant an extension of time for filing the final plat upon a finding that it is in the public interest to do so.

c. ***Appeals***
All decisions of the director under this section shall be final unless appealed to the platting board within 15 days. An appeal under this subsection shall be treated as an application for preliminary plat approval pursuant to section 21.03.200C.

5. Requirements for Final Plat
Requirements for final right-of-way acquisition plats shall be established by agreement between the director and the government agency applying for plat approval, or, if there is no such agreement, by the provisions of this title.

G. Modification or Removal of Plat Notes

1. Purpose
This section sets forth a process by which the platting board may modify or remove plat notes from recorded plats.

2. Initiation
Applications for modifying or removing a plat note(s) may be initiated by the owner(s) of land encumbered by the plat note. If the applicable plat note encumbers more than one lot, the owners of all encumbered lots shall be a party to the application.

3. Application
Applications for modifying or removing a plat note(s) shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

4. Public Notice
Notice of all public hearings shall be provided in accordance with section 21.03.020H.

5. Departmental Review
The department shall review the proposed modification or removal of a plat note(s) in light of the approval criteria of subsection G.9. below and distribute to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the platting board.

6. Action by the Platting Board
The platting board shall hold a public hearing on the proposed application and act to approve, approve with alterations, or deny the proposed modification or removal of a plat note(s), based on the approval criteria of subsection G.9. below.

7. Recordation
Once approved by the platting board, a plat with modified or deleted plat notes shall be re-recorded in accordance with the procedures of the district recorder's office.

8. Appeal
Decisions on modifying or removing a plat note(s) may be appealed to the board of adjustment in accordance with subsection 21.03.050A.

9. Approval Criteria
Plat note modifications or deletions may be approved if the platting board finds that all of the following approval criteria have been met:

a. Conditions that required the plat note(s) on the original plat have changed and the need for the plat note has been negated;

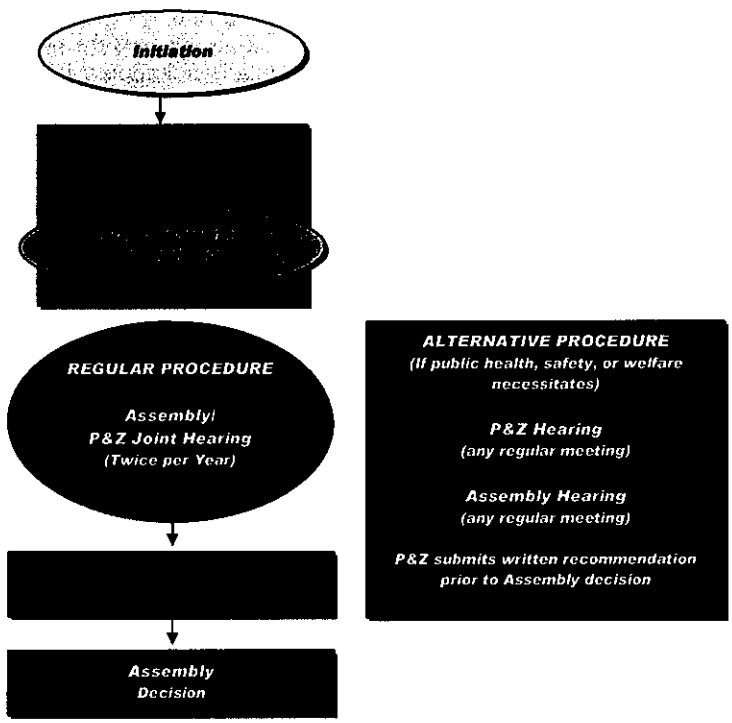
b. Modification or removal of the plat note(s) will not have a negative impact on adjacent or nearby properties; and

c. Despite modification or removal of the plat note(s), the plat continues to meet the approval criteria of subsection 21.03.<u>200</u>[210]C.9.

21.03.210 TITLE 21 – TEXT AMENDMENTS

A. Purpose and Scope

The assembly may amend the text of this title in accordance with the procedures set forth in this section. The purpose of text amendments is not to relieve particular hardships, nor to confer special privileges or rights on any person, but rather to make adjustments to text that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the municipality.



Amendments to Text of Title 21

B. Procedure

1. Initiation
A petition for amendment to the text of this title may be initiated by any review or decision-making body.

2. Application Submittal
<u>Proposals</u> [PETITIONS] for text amendments shall be <u>in ordinance form and shall be</u> filed with the director [IN A FORM ESTABLISHED IN THE TITLE 21 USER'S GUIDE].

3. Departmental Review

The department shall review each proposed text amendment in light of the approval criteria of subsection C. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission. A positive recommendation shall be accompanied by a draft ordinance reflecting the recommendation.

4. Review by Other Boards or Commissions

a. Any text amendments proposed that amend the powers and duties of any board or commission shall be reviewed by that board or commission, which shall forward a recommendation to the assembly.

b. In addition, if any text amendments are proposed in chapter 21.08, *Subdivision Standards*, the platting board shall review such proposed amendments and forward a recommendation to the planning and zoning commission and the assembly.

5. Notice and Frequency of Amendments [JOINT PUBLIC HEARING]

a. Written and published notice of public hearings on text amendments shall be provided pursuant to the general notice provisions of section 21.03.020H.

b. Starting on [*two years after the effective date*], t[T]ext amendments shall be considered no more than two times per year [AT A JOINT PUBLIC HEARING OF THE PLANNING AND ZONING COMMISSION AND THE ASSEMBLY]. However, where the assembly determines by a majority vote that the public health, safety, or welfare necessitates, text amendments may be considered at any regularly scheduled meeting of the assembly, provided that the assembly holds a public hearing on the proposed amendment and the planning and zoning commission holds a public hearing and provides a written report and recommendation on the proposed amendment prior to the assembly's decision.

6. Planning and Zoning Commission Action

a. As soon as possible after the public hearing, but no later than 60 days, the planning and zoning commission shall make a recommendation to the assembly to approve or deny the text amendment based on the approval criteria of subsection C. below.

b. If the commission recommends approval of the amendment, the director shall submit the draft ordinance to the assembly.

c. If no recommendation is made within 60 days, then the planning and zoning commission may request an extension of time from the assembly. If no recommendation is made and no extension is granted, then the assembly may act on the proposed amendment without a recommendation from the planning and zoning commission.

7. Assembly Action

After a public hearing and reviewing the reports and recommendations of the director and the planning and zoning commission, the assembly shall vote to approve, approve with amendments, or deny the proposed amendment, based on the approval criteria of subsection C. below. The assembly also may refer the proposed amendment back to the planning and zoning commission or to a committee of the assembly for further consideration. Text amendments shall be approved in the form of ordinances.

C. Approval Criteria

Text amendments may be approved if the assembly finds that all of the following approval criteria have been met:

1. The proposed amendment will promote the public health, safety, and general welfare;

2. The proposed amendment is consistent with the comprehensive plan and the stated purposes of this title; and

3. The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions.

[SUCCESSIVE APPLICATIONS

FOLLOWING DENIAL OF A TEXT AMENDMENT REQUEST, NO NEW APPLICATION FOR THE SAME OR SUBSTANTIALLY THE SAME AMENDMENT SHALL BE ACCEPTED WITHIN ONE YEAR OF THE DATE OF DENIAL. THIS PROVISION MAY BE WAIVED IN AN INDIVIDUAL CASE, FOR GOOD CAUSE SHOWN, BY THE AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS OF THE ASSEMBLY.]

21.03.220 USE CLASSIFICATION REQUESTS

A. Purpose and Applicability

1. The use classifications set forth and defined in chapter 21.05, *Use Regulations*, describe one or more uses having similar characteristics, but do not list every use or activity that may fall within the classification. This section shall be used to determine all questions or disputes whether a specific use is deemed to be within a use classification permitted in a zoning district.

2. The provisions of this section shall not apply to permit any specific use that is expressly prohibited in a zoning district.

B. Procedures for Use Classification Request

The procedure for an application to determine a use classification shall be as follows:

1. Application Submittal and Action
An application for a use classification shall be submitted to the director on a form provided by the department. Within 30 days from the date a complete application is submitted, the director shall review the application according to the standards set forth in this section; consult with the municipal attorney and other staff, as necessary; and make a final determination as to whether the subject use shall be deemed to be within a use classification set forth in this title and whether such use shall be allowed in the applicable zoning district.

2. Appeals
Appeals from the director's determination on a use classification request shall be made to the zoning board of examiners and appeals, pursuant to section 21.03.050B.

3. Form of Determination
All final determinations by the director shall be provided to the applicant in writing and shall be filed in the official record of use classification determinations.

C. Standards for Review

In evaluating a use classification request, the director shall consider whether the proposed use has an impact that is similar in nature, function, and duration to the other uses allowed in a specific zoning district. The director shall give due consideration to the intent of this title concerning the district(s) involved, the character of the uses specifically identified, and the character of the use(s) in question. The director shall assess all relevant characteristics of the proposed use, including but not limited to the following:

1. The primary activity of the establishment and its relationship to existing use categories and use types. The primary activity may be the principal product or group of products produced or distributed, or services rendered. It may be the share of production costs, capital investment, revenue, shipments, or employment, if evaluating the relative significance of multiple activities;

2. The volume and type of sales (retail or wholesale) on the premises, and the size and type of items sold and nature of inventory on the premises;

3. Any processing done on the premises, including assembly, manufacturing, final production, warehousing, shipping, and distribution;

4. Any dangerous, hazardous, toxic, or explosive materials used in the processing on the premises;

5. The nature and location of storage and outdoor display of merchandise (enclosed, open, inside or outside the principal building); and predominant types of items stored (such as business vehicles, work-in-process, inventory and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders);

6. The type, size, height, and nature of buildings and structures;

7. The number and density of employees and customers per unit area of site in relation to business hours and employment shifts;

8. Transportation requirements, including the modal split for people and freight, by volume type and characteristic of traffic generation to and from the site, trip purposes, and whether trip purposes can be shared by other uses on the site;

9. Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses;

10. The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes;

11. Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water output, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities; and

12. The impact on adjacent properties created by the proposed use will not be greater than that of other uses in the zoning district.

D. Effects of Findings by the Director

1. Typical Uses: Amendment to this Title
If the director finds that the particular use or category of use(s) that was the subject of the use classification request is likely to be common or to recur frequently, or that omission from this title is likely to lead to public uncertainty and confusion, the director shall initiate an amendment to this title under section 21.03.210, *Title 21-Text Amendments*. The determination of the director shall be binding on all officers and departments of the municipality.

2. Atypical Uses: Determination Binding
If the director finds that the particular use or category of use(s) that was the subject of the use classification request is of an unusual or transitory nature, or is unlikely to recur frequently, the director may approve the use without initiating an amendment to this title. However, the director's determination shall thereafter be binding on all officers and departments of the municipality.

E. Official Record of Use Classification Determinations

An official record of use classification determinations and related zoning board actions shall be kept on file in the department and shall be available for public inspection in the department during normal business hours.

21.03.230 VACATION OF PUBLIC AND PRIVATE INTEREST IN LANDS

A. Authority

The platting authority shall consider the merits of each vacation request, and in all cases the platting authority shall deem the area being vacated to be of value to the municipality unless proven otherwise. The burden of proof shall lie entirely with the petitioner. The presumption contained herein does not apply to vacations of private easements where the beneficiaries have provided written concurrence.

B. Application Submittal

Applications for vacation requests shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

C. Decision-Making Responsibilities for Vacations

1. The director is the platting authority for applications to vacate the following platted interests:

a. Drainage easements granted under section 21.08.050M.

b. Zero lot line maintenance easements.

c. Public utility easements.

d. Private easements, but only upon the written concurrence of the beneficiaries.

e. Relocation of any of the above-described interests.

2. The platting board is the platting authority for all other applications to vacate a dedicated public area.

D. Action

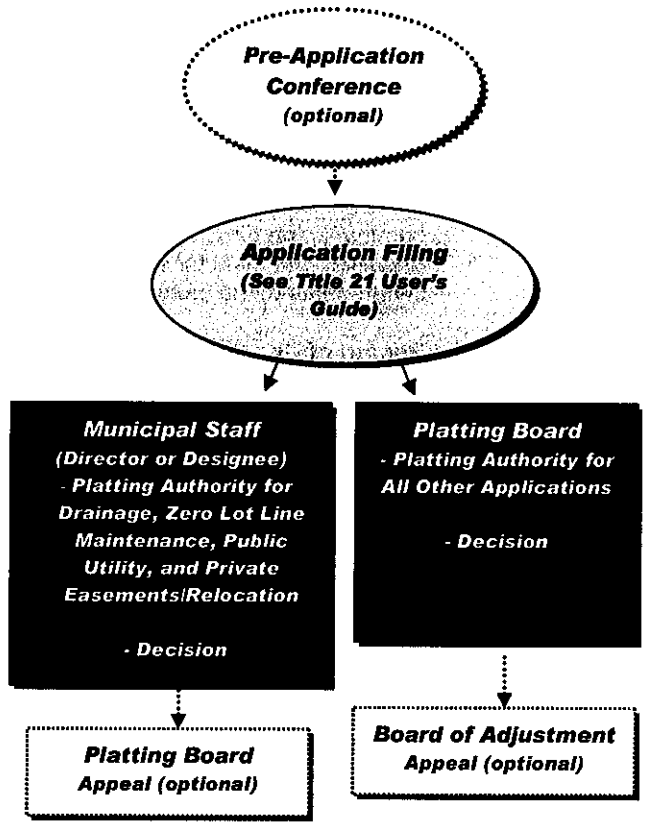
The director or platting board shall take action on the vacation application within 60 days after the submittal date. The reasons for the approval of the vacation shall be stated upon the case record.

E. Approval Period

The approval of a vacation expires 24 months after the date of approval unless, before its approval expires, a conveyance of the vacated interest is approved in accordance with law and a final plat depicting the vacation is approved and filed in accordance with this title. A street right-of-way or easement whose vacation is finally approved under this section is a right-of-way or easement without substantial value to the municipality and is conveyed upon the filing of a final plat depicting the vacation.

F. Appeals

Appeals of the director's decision on a vacation under his or her jurisdiction shall be treated as an application for preliminary plat approval pursuant to section 21.03.200C. Appeals of the platting board's decision on a vacation under its jurisdiction shall be to the board of adjustment.



Vacation of Public and Private Interest in Lands

G. Title to Vacated Area

1. The title to the street or other public right-of-way vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that, if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square[1] is vacated, the title to it vests in the municipality.

2. If the municipality acquired the street or other public area vacated for legal consideration before the final act of vacation, the fair market value of the street or public area shall be deposited with the municipality. Title transferred under this subsection shall be warranted by the municipality in the same manner as it was received.

3. The provisions of paragraph G.1. of this section notwithstanding, the platting board may determine that all or a portion of the area vacated should be devoted to another public

purpose and, if so, title to the area vacated and held for another public purpose does not vest as provided in paragraph G.1. but remains in the municipality.

21.03.240 VARIANCES

A. Purpose and Scope

The variance process is intended to provide limited relief from the requirements of this title in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the reasonable use of land in a manner otherwise allowed under this title. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this title may impose on property owners in general. Rather, it is intended to provide relief where the requirements of this title render the land difficult or impossible to use because of some unique physical attribute of the property itself. State and/or federal laws or requirements may not be varied by the municipality. Variances are not intended to allow things that are otherwise prohibited in this title.

B. Decision-Making Bodies Authorized to Consider Variance Requests

1. The platting authority [BOARD] shall be authorized to review and consider all requests for variances to standards of the following sections:

   a. Chapter 21.08, *Subdivision Standards*;

   b. Subsection 21.07.020C., *Steep Slope Development*; and

   c. Section 21.07.060, *Transportation, Connectivity, and Pedestrian Facilities*;

2. The planning and zoning commission shall be authorized to review and consider all requests for variances of standards of the following sections:

   a. Section 21.07.050, *Utility Distribution Facilities* ; and

   b. Subsection 21.05.040K., *Telecommunication Facilities.*

3. Requests for variances from the airport height zoning regulations set forth in section 21.04.060C. shall be referred to the Federal Aviation Administration.

4. The urban design commission shall be authorized to review and consider all requests for variances to standards of the following sections:

   a. Chapter 21.11, *Signs*; [AND]

   b. District-specific standards of chapter 21.04, *Zoning Districts*;

   c. Use-specific standards of chapter 21.05, *Use Regulations*;

   d. Chapter 21.07, *Development and Design Standards* [SECTION 21.07.080, *LANDSCAPING].*

5. The zoning board of examiners and appeals shall be authorized to review and consider variance requests from chapter 21.06, Dimensional Standards and Measurements. [ALL OTHER PROVISIONS OF THIS TITLE.] The zoning board may only grant variances from dimensional standards.

6. No variance may be granted from the definitions set forth in chapter 21.14.

C. Application Submittal

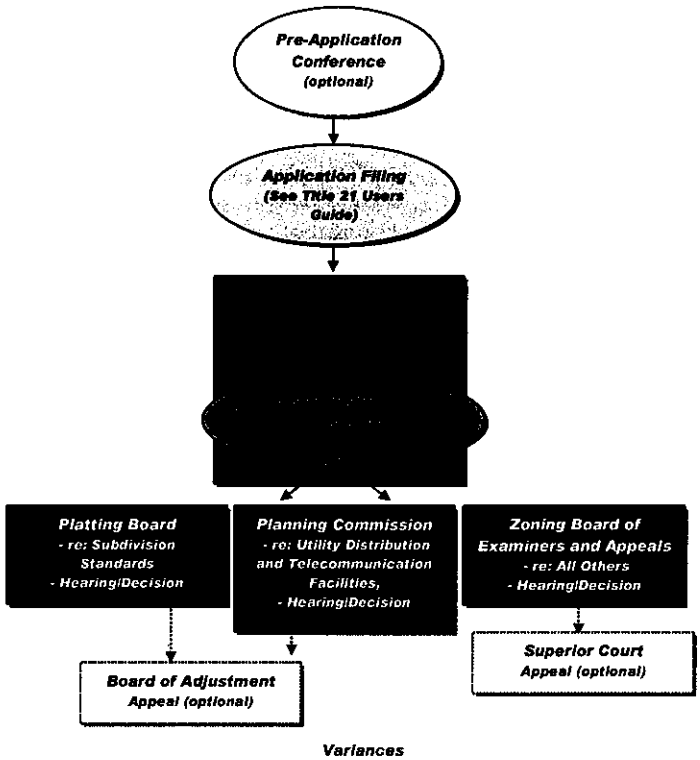
Applications for a variance shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

D. Public Notice

Notice of all public hearings shall be provided in accordance with section 21.03.020H.

E. Departmental Review

The department shall review each proposed variance in light of the approval criteria of subsection G. below and distribute to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the decision-making body.



Variances

F. Action by the Decision-Making Body

1. Once the application is complete, the director shall schedule the application for consideration at a public hearing, and shall transmit to the appropriate decision-making body all applications and other records pertaining to the variance prior to the hearing. Upon receiving the application materials from the director, the decision-making body shall hold a public hearing on the proposed variance.

2. In considering the application, the decision-making body shall review the application materials, the approval criteria of subsection G., and all testimony and evidence received at the public hearing.

3. After conducting the public hearing, the decision-making body may: deny the application; conduct an additional public hearing on the application; or grant the minimum required variance. Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the applicable criteria set forth in subsection G., stating the reasons for such findings. A concurring vote of a majority of the fully constituted membership of the entity, minus those excused by conflicts of interest, shall be required to grant a variance.

4. Under no circumstances shall the decision-making body grant a variance to allow a use not permitted in the zoning district containing the property for which the variance is sought.

5. Under no circumstances shall the decision-making body grant a variance from any written conditions attached by another decision-making body to the approval of a conditional use [PERMIT], subdivision plat, or site plan.

G. Approval Criteria

The application must state with particularity the relief sought and must specify the facts or circumstances that are alleged to show that the application substantially meets the following standards:

1. **Variances from the District-Specific Standards of Chapter 21.04, *Zoning Districts*, the Use-Specific Standards of Chapter 21.05, *Use Regulations*, and Chapter 21.07, *Development and Design Standards***

a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard;

b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard;

c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard;

d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code;

e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies; and

f. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.

2. **Variances from Chapter 21.06, *Dimensional Standards and Measurements* [THIS TITLE OTHER THAN THE SUBDIVISION REGULATIONS OR AIRPORT HEIGHT ZONING REGULATIONS]**

a. There exist exceptional or extraordinary physical circumstances of the subject property including, but not limited to, streams, wetlands, or slope, and those circumstances are not applicable to other land in the same zoning district;

b. Because of these physical circumstances, the strict application of the code creates an exceptional or undue hardship upon the property owner, and would [STRICT INTERPRETATION OF THE PROVISIONS OF THE ZONING ORDINANCE] deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance;

c. The hardship is not self-imposed, special conditions and circumstances do not result from the actions of the applicant, and such conditions and circumstances do not merely constitute inconvenience;

d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code [HAS NO ADVERSE AFFECT ON THE USE OF ADJACENT OR NEARBY PROPERTY];

e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and [GRANTING THE VARIANCE] does not permit a use not otherwise permitted in the district in which the property lies;

f. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality; and

g. The variance granted is the minimum variance that will make possible a reasonable use of the land.

3. Variances from Chapter 21.08, *Subdivision Standards* [REGULATIONS]

a. There are special circumstances or conditions affecting the property such that the strict application of the provisions of the subdivision regulations would clearly be impractical, unreasonable, or undesirable to the general public;

b. The granting of the specific variance will not be detrimental to the public welfare or injurious to other property in the area in which such property is situated;

c. Such variance will not have the effect of nullifying the intent and purpose of the subdivision regulations or the comprehensive plan of the municipality; and

d. Undue hardship would result from strict compliance with specific provisions or requirements of the subdivision regulations. The applicant may supplement the form with supporting documents.

4. Variances from Airport Height Zoning Regulations

The Federal Aviation Administration shall complete an airspace determination that concludes that the proposed variance would not create a hazard.

H. Lapse of Approval

Any variance granted shall become null and void if:

1. The variance is not exercised within one year of the date it is granted, or

2. Any building, structure, or characteristic of use permitted by variance is moved or altered so as to enlarge the variance or discontinue it.

I. Appeals

1. An appeal from a decision of the platting board or the urban design commission shall be brought to the board of adjustment in accordance with sections 21.03.050A.

2. An appeal from a decision of the planning and zoning commission or the zoning board of examiners and appeals shall be brought in accordance with section 21.03.050C.

J. Administrative Variances from Occupancy Limits For Assisted Living Facilities

1. Intent

The intent of this section is to provide a procedure to allow persons with disabilities and assisted living providers to request reasonable accommodation from the department when access to decent safe, accessible and affordable housing with assisted living would not be available absent a reasonable accommodation. This administrative variance

procedure is available to address application for minor variance in dimensional and setback requirements to accommodate special needs of persons with disabilities and to address application for variance in occupancy limits of no more than three persons.

2. Application

Application for minor variance in dimensional and setback requirements to accommodate special needs of persons with disabilities and application for variance in occupancy limits of no more than three persons shall be made to the director on a form provided by the department, shall be executed by or on behalf of the person with disabilities seeking the reasonable accommodation, or the owner of the real property, or the lessee with proof of the owner's consent, and shall be complete in all respects prior to review under this section.

3. Public Notice Of Application For Variance In Occupancy Limits

Notice shall be provided in accordance with section 21.03.020H.

4. Time for approval

The department shall make a determination on an application within 60 days of submittal. Notification of approval or denial shall be posted electronically on the department's municipal web site and furnished in writing to the applicant by mail or delivered by electronic means.

5. Standards.

In deciding to approve or deny an application, the department shall review the application and written comments addressing factors relevant to the request for reasonable accommodation, including but not limited to, the extent to which the application demonstrates the following, as related to the particular request of the applicant:

a. For administrative variance applications to increase occupancy limits in R-1, R-1A, R-2A and R-2D districts, the extent to which the accommodation and the assisted living provider seek to protect and preserve the primarily residential character of the district. Factors may include traffic patterns, on-street parking patterns, the control exercised by the assisted living provider to mitigate environmental disturbance associated with ingress and egress of facility staff workers at shift change, and any other measures taken by the assisted living provider to ensure the commercial aspects of the facility do not detract from its residential purpose and the primarily residential character of the district. An example of a commercial aspect is if residential trash containers were standard in the neighborhood and the assisted living provider used one or more dumpsters due to volume. An example of a mitigation measure for this aspect the assisted living provider might take is to screen the dumpster.

b. For administrative variance applications to increase occupancy limits, economic hardship on the intended occupants if the variance is denied. Cost and availability of other housing alternatives may be addressed in preparation and review of the application.

c. Whether the requested accommodation and the assisted living provider are implementing accident prevention and safety measures specific to the needs of the residents, including but not limited to safety measures in state law and regulation, and in municipal fire code adopted under title 23.

d. Whether the accommodation requested is advancing housing opportunities for disabled individuals in a residential community without jeopardizing residential aspects of the neighborhood with commercial aspects of operation.

e. For administrative variance applications to increase occupancy limits, whether the proposed size of the facility is necessary for the facility's financial viability.

f. External characteristics and impacts of the proposed facility, including without limitation appearance, projected contribution to traffic volumes and on-street parking within the neighborhood, available street lighting and sidewalks.

g. Quantifiable risks to the health, safety, and quality of life of area residents and users.

h. Administrative and economic burden on the municipality, in either approval or denial of the variance.

i. Other factors deemed relevant to the applicant or the department in review of the application.

6. Conditions
In approving a variance, the department may impose reasonable conditions designed to address the standards in subsection J.5. or mitigate impacts created by the variance.

7. Appeal
All decisions of the department under this section shall be final unless an appeal is filed in a timely manner. Appeals of the decision to approve or deny a variance under this section shall be to the zoning board of examiners and appeals, pursuant to the provisions of subsection 21.03.050B., except an appeal may be brought by any person with standing to request reasonable accommodation under the Fair Housing Act, 42 U.S.C. § 3604(f).

21.03.250 VERIFICATION OF NONCONFORMING STATUS

A. Process

Owners of lots, uses, or structures that may not conform to the requirements of this title may request a verification of nonconforming status by filing an application with the director in accordance with this section. Owners of signs that do not conform to the requirements of this title shall comply with section 21.12.070, *Nonconforming Signs.*

1. The application shall be accompanied by documentation that establishes the approximate date that the lot, use, or structure was established; proof that the lot, use, or structure was lawfully established at the time it became nonconforming; and proof that the use has not been discontinued or abandoned, except as provided in subsection B. below. The director shall require additional information if deemed necessary to permit an accurate determination.

2. Such verifications shall run with the land, and their status shall not be affected by changes of tenancy, ownership, or management.

3. A verification of nonconforming status shall not be required for continued daily operation or maintenance of a nonconforming lot, use, or structure.

B. Exceptions

Notwithstanding subsection A. above:

1. Where the contention for nonconforming use is raised in a court in any action brought to enforce this title before an application for determination has been filed under this section, this section shall not be applicable and the court shall have jurisdiction to determine the issue.

2. Nothing in this section shall be construed to deprive the director the right to make a decision regarding a claimed nonconforming use or status as incident to a valid pending application for a land use permit.

C. Appeals

Denial of the director's decision on nonconforming status may be appealed to the zoning board of examiners and appeals pursuant to subsection 21.03.050B.

[1] PRD#2 NOTE: This provision is in state law. There is no definition of "public square" in state law.

CONT TO 11/6/09 1/20/09 2/3/09 CLERK

Addendum

Ref. AO 2008-123



For Intro
November 3, 2008

Title 21 Rewrite, Chapter 3

Attachments

PLEASE SAVE FOR MEETING OF 12-2-08

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CHAPTER 21.03: REVIEW AND APPROVAL PROCEDURES

21.03.010 PURPOSE AND STRUCTURE OF THIS CHAPTER

This chapter describes the procedures for review and approval of all applications for development activity in the municipality. Common procedures, which are applicable to all or most types of development applications, are set forth in section 21.03.020. Subsequent sections set forth additional provisions that are unique to each type of application, including timetables, staff and review board assignments, review standards, and other information.

21.03.020 COMMON PROCEDURES

A. Applicability

The common procedures of this section 21.03.020 shall apply to all applications for development activity under this title unless otherwise stated. The word "director" means the director of the planning department or his or her designee.

B. Pre-Application Conferences

1. Purpose

The pre-application conference is an informal discussion to familiarize the applicant and the municipal staff with the applicable provisions of this title that are required to permit the proposed development.

2. Applicability

a. ***Required for New Applications***

A pre-application conference is required prior to submittal of the following types of applications:

i. Rezonings (Map Amendments) (section 21.03.160);

ii. Subdivisions, except for Abbreviated Plats (section 21.03.200);

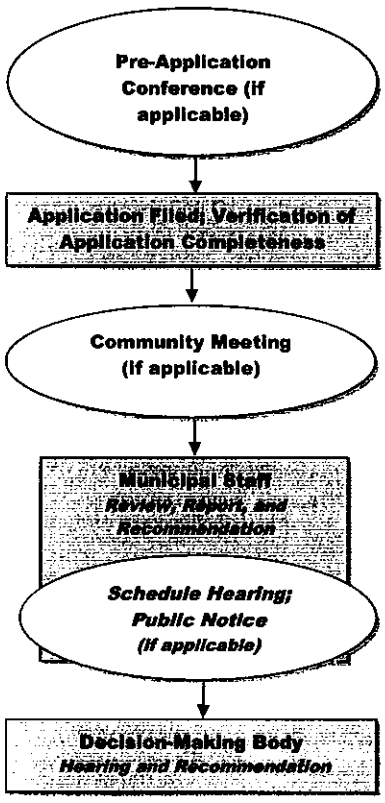
iii. Conditional Uses (section 21.03.080);

iv. Major Site Plan Review (section 21.03.180C);

v. Public Facility Site Selection (section 21.03.140); and

vi. Projects involving Class A or B wetlands.

No application for these types of approvals shall be accepted until after the pre-application conference is completed and the applicant receives written notification of the conclusions.



Common Procedures

b. ***Exception for Some Changes to Already-Approved Applications***
Pre-application conferences are not required for changes to already-approved conditional use permits, major site plans, and subdivision plans if the following conditions are met:

i. For non-residential development, the proposed increase in building square footage is less than 25% of the approved building square footage.

ii. For residential development, the proposed increase in the number of units or lots is not more than 25% of the approved number of units or lots.

c. ***Optional for All Other Applications***
A pre-application conference is optional prior to submittal of any other application under this title not listed in subsection 2.a. above.

d. ***Waiver***
The director may waive the pre-application requirement if the director finds that the projected size, complexity, anticipated impacts, or other factors associated with the proposed development clearly, in his or her judgment, make a pre-application conference unnecessary. The waiver shall be made in writing and shall become a part of the case record for the application.

3. **Initiation of Pre-Application Conference**
The potential applicant shall request a pre-application conference, in the manner prescribed in the user's guide, with the director. Prior to the pre-application conference, the applicant shall provide to the director a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, models, and the type of entitlement sought. It is the applicant's responsibility to provide sufficiently detailed plans and descriptions of the proposal to enable staff to make the informal recommendations discussed below.

4. **Pre-Application Conference Content**

a. The director shall schedule a pre-application conference after receipt of a proper request. At the conference, the applicant, the director, and any other persons the director deems appropriate and available to attend shall discuss the proposed development. Based upon the information provided by the applicant and the provisions of this title, the parties should discuss in general the proposed development and the applicable requirements and standards of this title.

b. The conference attendees shall discuss the desired development activities with respect to the following items:

i. Applicability of municipality policies, plans, and requirements as they apply to the proposed development.

ii. Appropriateness of the development with respect to the policies set forth in the comprehensive plan and the regulations in this title.

iii. Need, if any, to prepare a subdivision plat.

iv. Any site plan considerations or requirements.

v. Any concerns or requirements related to the anticipated impact upon public rights-of-way and public improvements, and appropriate requirements to mitigate those impacts, including but not limited to traffic impact analyses.

vi. Any concerns related to neighborhood impacts, land use, landscaping concepts, and overall project design.

vii. Possible alternatives or modifications related to the proposed application.

viii. Procedures that will need to be completed to review and act on the proposed change.

c. A checklist of discussion items indicating topics discussed at the pre-application conference shall be mailed to the applicant within ten days of the conference. The checklist shall be considered proprietary information until an application has been submitted.

5. Informal Review Comments Not Binding
The review comments of the director are not binding upon the applicant or the municipality, but are intended to serve as a guide to the applicant in making the application and to advise the applicant in advance of the formal application of any issues which will or may subsequently be presented to the appropriate decision-making body. Because a pre-application conference precedes the actual application, some key issues relating to a specific proposal may not be apparent at the pre-application conference.

6. Application Required Within Six Months
After a pre-application conference has been completed, an application must be submitted within six months, unless one extension is granted by the director not to exceed an additional six months. If a complete application is not submitted within six months or an extension has not been granted, a new pre-application conference shall be required prior to submitting an application.

C. Authority to File Applications

1. When an authorized agent files an application under this title on behalf of a property owner, the agent shall provide the municipality with written documentation that the owner of the property has authorized the filing of the application.

2. When a review or decision-making body initiates action under this title, it does so without prejudice toward the outcome.

D. Application Contents, Submittal Schedule, and Fees

1. Title 21 User's Guide
The director shall compile the requirements for application contents, forms, fees, and the submittal and review schedule (including typical time frames for review) in a user's guide, which shall be made available to the public. The director may amend and update the user's guide from time to time.

2. Form of Application
Applications required under this chapter shall be submitted in a form and in such number as required in the user's guide.

3. **Processing Fees**
Applications shall be accompanied by the fee amount established by the assembly and listed in the user's guide. Fees are not subject to waivers and are non-refundable.

4. **Waivers**
The director may waive certain submittal requirements in order to reduce the burden on the applicant and to tailor the requirements to the information necessary to review a particular application. The director may waive such requirements where he or she finds that the projected size, complexity, anticipated impacts, or other factors associated with the proposed development clearly, in his or her opinion, support such waiver. The waiver shall be made in writing and shall become a part of the case record for the application.

E. Verification of Application Completeness

1. The director shall only initiate the review and processing of an application if such application is complete. The director shall make a determination of application completeness and notify the applicant in writing within 15 days of application filing. If the application is determined to be complete, the application shall then be processed according to this title. If an application is determined to be incomplete, the director shall provide an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected.

2. An application shall be considered complete if it is submitted in the required form, includes all mandatory information, including all supporting materials specified in the title 21 user's guide, and is accompanied by the applicable fee. A pre-application conference shall have been held, if required, pursuant to section 21.03.020B, *Pre-Application Conferences*.

3. As a consequence for any false or misleading information submitted or supplied by an applicant on an application, that application shall be deemed incomplete.

F. Additional Information

1. **Requested Information**
Nothing in this section prohibits the department or the decision-making body on the application from requesting additional information deemed necessary for review, after the application is complete. Any supplemental technical reports, special studies, and/or revised application materials that are requested following the original application must be received at least thirty days prior to a public hearing. The municipality may postpone and reschedule a public hearing or approval deadline if such reports and studies are submitted less than thirty days prior to a public hearing, unless the applicable board or commission waives this time limit in a specific case for cause. Copies of such additional materials shall be delivered to all reviewers who received the original application packet.

2. **Voluntary Information**
Any supplemental information, such as revised application materials, that is voluntarily submitted by the applicant, should be submitted before the departmental report is finalized. Any such information submitted after the departmental report is finalized shall cause the application to be automatically postponed to the next regular meeting in order for the department to have time to review the new information, unless the board or commission determines that the new information does not significantly alter the application.

G. Community Meetings

1. Purpose

The community meeting is an informal opportunity for the developer to inform the surrounding area residents and property owners of the details of a proposed development and application, how the developer intends to meet the standards contained in this title, and to receive public comment and encourage dialogue at an early time in the review process.

2. Applicability

a. *Types of Applications*

The applicant shall hold a community meeting for any of the following types of applications, unless a waiver is granted by the director pursuant to subsection 2.b. below.

i. Rezonings (Zoning Map Amendments);

ii. Subdivisions, except for Abbreviated Plats;

iii. Conditional Uses;

iv. Major Site Plan Review; and

v. Public Facility Site Selection (including schools).

b. *Waiver*

An applicant may request, with justification, a waiver of the community meeting along with his or her application. The director may waive the community meeting requirement if he or she determines that the proposed development or subdivision will not have significant community impacts in any of the areas listed below. The waiver shall be in writing, provided along with the verification of application completeness, and shall be included as part of the case record.

i. Traffic;

ii. Impacts upon natural resources protected under chapter 21.07 of this code;

iii. Provision of public services such as police and/or fire service, schools, or parks;

iv. Compatibility of building design or scale; or

v. Operational compatibility, such as lighting, hours of operation, odors, noise, litter, or glare.

3. Timing and Number of Community Meetings

When required, there shall be at least one community meeting held after the pre-application conference (if applicable), but prior to the submittal of an application.

4. Notice of Community Meeting

The applicant shall provide written (mailed) notice of the community meeting in accordance with subsection H.4. below, at least 21 days prior to the community meeting.

5. **Attendance at Community Meeting**

a. If a community meeting is required, the applicant or applicant's representative shall attend the community meeting. The applicant shall be responsible for scheduling the community meeting, coordinating the community meeting, and for retaining an independent facilitator if the applicant determines one is needed.

b. All community meetings shall be convened at a place in the vicinity of the proposed development.

6. **Summary of Community Meeting**

The applicant shall prepare a written summary of the community meeting(s), which shall be submitted to the director no later than seven days after the date of the meeting. The written summary shall be included in the departmental report. At a minimum, the written summary shall include the following information:

a. Dates and locations of all meetings where citizens were invited to discuss the applicant's proposals;

b. Content, dates mailed, and number of mailings, including letters, meeting notices, and any other written material;

c. The number of people that participated in the meetings;

d. A summary of concerns, issues, and problems expressed during the meetings, including:

i. The substance of the concerns, issues, and problems;

ii. How the applicant has addressed or intends to address concerns, issues, and problems expressed at the meetings; and

iii. Concerns, issues, and problems the applicant is unwilling or unable to address and why.

H. Notice

1. **Content of Notices**

Public notice required under this chapter shall, unless otherwise specified in this title:

a. Identify the date, time, and place of the public hearing, if applicable;

b. If applicable, describe the property involved in the application by street address or by legal description and nearest cross street;

c. Describe the nature, scope, and purpose of the proposed action;

d. If applicable, indicate that interested parties may appear at the hearing and speak on the matter; and

e. Indicate where additional information on the matter may be obtained.

2. Summary of Notice Requirements

The following table 21.03-1 summarizes the notice requirements of the procedures set forth in this chapter. Unless otherwise specified in this title, procedures not listed in this table have no public notice requirements.

TABLE 21.03-1: SUMMARY OF NOTICE REQUIREMENTS

Type of Application or Procedure	Section	Notice Required		
		Mailed	Published	Posted
Alcohol—Special Land Use Permit	21.03.040	✓	✓	✓
Appeals to Board of Adjustment	21.03.050A.	-	✓	-
Appeal of an Enforcement Order	21.13	-	-	✓
Appeals to ZBEA	21.03.050B.	✓	✓	-
Comprehensive Plan Amendments, Substantive	21.03.070C.	-	✓	-
Conditional Uses	21.03.080	✓	✓	✓
Master Plan, Institutional	21.03.110	✓	✓	✓
Neighborhood or District Plans	21.03.130	-	✓	-
Public Facility Site Selection (except schools)	21.03.140	✓	✓	✓
Rezonings (Zoning Map Amendments)	21.03.160	✓	✓	✓
Site Plan Review, Major	21.03.180C	✓	✓	✓
Street and Trail Review	21.03.190	-	✓	-
Subdivisions (with existing physical access)	21.03.200	✓	✓	✓
Subdivisions (without existing physical access)	21.03.200	✓	✓	-
Abbreviated Plats	21.03.200D.	-	✓	-
Modification or Removal of Plat Notes	21.03.200G.	✓	✓	✓
Title 21, Text Amendments	21.03.210	-	✓	-
Vacation of Public and Private Interest in Land	21.03.230	✓	✓	✓
Variances	21.03.240	✓	✓	✓

3. Written (Mailed) Notice

When table 21.03-1 requires that written notice be provided, the director shall deposit such notice into first class mail at least 21 days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. Written notice shall be provided to the following persons or groups:

a. ***Owners of Subject Property***
All persons listed on the records of the municipal assessor as owners of land subject to the application, at the mailing addresses of such persons in the records of the municipal assessor.

b. ***Adjacent Property Owners***
All persons listed on the records of the municipal assessor as owners of any land within 500 feet of the outer boundary of the land subject to the application, or owners of the 50 parcels nearest to the outer boundary of the land subject to the application, whichever is the greater number of parcels, at the mailing addresses of such persons in the records of the municipal assessor.

c. ***Community Councils***
Any officially recognized community council whose boundary includes any part of the subject property, and any additional such council whose boundary lies within 1,000 feet of any part of the subject property. Furthermore, the department shall provide notice to additional community councils in the following instances:

i. Each recognized community council within the municipality shall receive written notice where the subject parcel is one of the following regional public lands or facilities: Ted Stevens Anchorage International Airport; Merrill Field Airport; Far North/Bicentennial Park; Kincaid Park; Chugach State Park; Anchorage Coastal Wildlife Refuge; BLM tract(s) near Far North/Bicentennial Park.

ii. If the subject parcel is a branch public facility that serves a specific delineated area, such as a public school or fire station, then any community council whose boundaries lie within the delineated district of service of a branch public facility shall receive written notice. This requirement shall only take effect after the municipality has established maps delineating areas of service for the type of branch facility, and has adopted procedures and responsibilities for updating service area boundaries.

iii. Any community council whose boundaries lie beyond the minimum notification distance shall receive notice regarding proposals of potentially major scope or controversy that, in the opinion of the director, are likely to have a significant impact on the residents of the community council beyond the minimum notification distance.

iv. All community councils shall receive notice of substantive amendments to the comprehensive plan and amendments to the text of title 21.

d. ***Additional Persons***
Such additional persons or geographic areas as the director may designate.

4. **Published Notice**
When table 21.03-1 requires that notice be published, the director shall cause a notice to be published in a newspaper having general circulation. The notice shall be published at least 21 days before the scheduled hearing date. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

5. Posted Notice

When table 21.03-1 requires that notice be posted, the applicant shall cause a notice(s), on a form(s) provided by the department, to be posted on the property, visible from each developed right-of-way adjacent to the property, for at least 21 days before the scheduled public hearing date. In computing such period, the day of posting shall not be counted, but the day of the public hearing shall be counted. If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way. Posted notices shall include all the content specified in subsection H.1. above except for the legal description. Before the public hearing, the applicant shall submit to the department an affidavit, signed by the person who did the posting or the person who caused the posting to be done, that notice was posted as required by this subsection. Posted notices shall be removed by the applicant within 30 days after the close of the public hearing on the application.

6. Constructive Notice

Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to, errors in a legal description or typographical or grammatical errors that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall make a formal finding as to whether there was substantial compliance with the notice requirements of this title.

7. Presumption of Notice

When the records of the municipality document the publication, mailing, and posting of notices as required by this subsection, it shall be presumed that notice of a public hearing was given as required by this subsection.

I. Departmental Report

For every decision that requires a public hearing or where otherwise required by this title, the department shall prepare a report to be given to the decision-making body approximately one week before the initial public hearing on the application. The report shall include project background, public comments received, the summary of community meeting (if applicable), and the department's recommendation for action.

J. Referrals

The applicant, boards, commissions, or the municipal administration may request that government agencies, non-governmental agencies, and other boards and commissions besides the decision-making body review an application, but the final decision-making authority shall remain with the body identified in this chapter.

K. Concurrent Processing

1. Where possible without creating an undue administrative burden on the municipality's decision-making bodies and staff, this title intends to accommodate the simultaneous processing of applications for different permits and approvals that may be required for the same development project in order to expedite the overall review process. Review and decision-making bodies considering applications submitted simultaneously shall render separate reports, recommendations, and decisions on each application based on the specific standards applicable to each approval.

2. Some forms of approval depend on the applicant having previously received another form of approval, or require the applicant to take particular action within some time period following the approval in order to avoid having the approval lapse. Therefore, even though this title intends to accommodate simultaneous processing, applicants should note that each of the permits and approvals set forth in this title has its own timing and review sequence.

3. The expected time frame and approval process for a consolidated application shall follow the longest time frame and approval process required from among the joined application types.

L. Postponements

1. If only five or fewer board or commission members are in attendance at the hearing, the applicant may request a postponement of his or her case, and the fee for the first postponement request shall be waived.

2. The applicant may request a postponement of his or her case for any other reason. If the decision-making body grants the postponement request, the applicant shall pay the postponement fee listed in the user's guide, and a new hearing date shall be determined by the department.

   a. If public notice pursuant to subsection H. above has not been given, the director is the decision-making body for the purpose of granting a postponement.

   b. If public notice pursuant to subsection H. above has been given, the decision-making body is the board or commission identified in this chapter for the entitlement requested.

3. Re-notice of the new time for hearing is only required if the postponement is for more than 30 days, or if no date certain is set for the hearing at the time of postponement.

M. Conditions of Approval

1. The decision-making body is authorized to impose such conditions upon the entitlement as may be necessary to conform to the standards of this title, reduce or minimize any potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the comprehensive plan and this title. In such cases, any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development.

2. No conditions of approval, except for those attached to variance approvals, shall be less restrictive than the requirements of this title or applicable special limitations.

3. Unless there is a time schedule stated as part of the condition, all conditions of approval shall be met within one year of the date of approval (unless the condition is ongoing, such as a specification of hours of operation).

N. Decision

Recommendations and decisions shall be made in accordance with title 4.

O. Lapse of Approval

1. The lapse of approval time frames established by the procedures of this title may be extended only when all of the following conditions exist:

   a. The provisions of this title must expressly allow the extension;

   b. An extension request must be filed prior to the applicable lapse-of-approval deadline; and

   c. The extension request must be in writing and include justification.

2. Unless otherwise noted, authority to grant extensions of time shall rest with the decision-making body that granted the original approval (the one being extended).

P. New Application Required

If an application is inactive for one year awaiting action by the petitioner, the application shall be discarded and a new application shall be required.

21.03.030 ADMINISTRATIVE PERMITS

A. Applicability

It shall be a violation of law for any person to engage in a land use for which an administrative permit is required by this title without first obtaining such a permit.

B. Administrative Permits

A permit issued by the director and pursuant to this section shall be valid between January 1 or the date of issuance and December 31 of the year in which it is issued, except that permits for bed and breakfasts shall be valid between the date of issuance and December 31 of the year after the permit was issued. An application for renewal of a permit shall be submitted in the same manner as the original application and no later than December 1 immediately preceding the expiration date of that permit.

C. Regulations

The director may promulgate regulations to implement this section, as provided in AMC chapter 3.40. Permits shall be issued and renewed as outlined in the title 21 user's guide.

D. Appeals

Denial of an administrative permit may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

21.03.040 ALCOHOL—SPECIAL LAND USE PERMIT

A. Applicability

1. Any use that includes the retail sale of alcoholic beverages is subject to the review process set forth in this section. This process shall apply to such a use regardless of whether it is listed in the use tables in section 21.05.010 as being permitted as a matter of right or subject to site plan review or the conditional use process. The applicant shall

be required to obtain approval through both the process in this section and the separate process referenced in the use table.

2. Notwithstanding A.1. above, catering and special event permits issued by the state Alcoholic Beverage Control Board, and held no more than 12 times in a calendar year at the same physical location, are exempt from these approval requirements, but shall meet AMC title 10 requirements.

3. No modification of an existing special land use permit for alcohol shall be required for the first duplicate liquor license provided:

   a. There is no increase in the square footage of the premise licensed for the retail sale or dispensing of alcoholic beverages; or

   b. If there is an increase in the square footage of the licensed premise, such increase is five hundred square feet or less, whether or not the area of increase is used year-round. In such case the licensed business shall request a minor modification to their approval by submitting a site plan for department review, along with the fee specified in the user's guide. The department shall review the site plan for potential impacts including, but not limited to, parking, lighting, noise, and traffic.

B. General Standards

The following provisions apply to all uses, in all districts, involving the retail sale, dispensing, or service of alcoholic beverages including, but not limited to, liquor stores, restaurants, bars, dinner theaters, movie theaters, brew pubs, tearooms, and cafes.

1. Any use, whether principal or accessory, involving the retail sale or dispensing of alcoholic beverages is permitted only by approval of the assembly under this section. This requirement applies only to the retail sale or dispensing of alcoholic beverages and not to related principal or accessory uses.

2. Notwithstanding any other provision of this title to the contrary, an approval for uses involving the retail sale of alcoholic beverages shall only require the approval of the assembly.

C. Application and Review Procedure

1. **Application Submittal**
   Applications for assembly alcohol approval shall be submitted to the director within seven days after application is made to the state alcoholic beverage control board for issue or transfer of location of a liquor license. Applications shall contain a zoning map showing the proposed location. The assembly may promulgate regulations concerning the mandatory information to be submitted with the application for a special land use permit for alcohol.

2. **Departmental Review**
   The department shall prepare and submit a report and a list of all licenses located within a minimum of 1,000 feet of the proposed use to the assembly, and shall address the conformity of the proposed application with this title and AMC chapter 10.50. The department shall also submit a proposed resolution for assembly consideration in connection with liquor license applications.

3. Public Notice

Notice of all public hearings shall be provided in accordance with section 21.03.020H., *Notice*.

4. Assembly Action

After holding a public hearing, the assembly shall approve, approve conditionally, or deny the application. In considering action, the assembly shall apply the criteria set forth in this title for conditional uses in section 21.03.080C., *Approval Criteria*. The assembly shall not take into consideration the sum paid by any person to acquire the license for which a permit is requested.

5. Conditions of Approval

a. The assembly may, in connection with an approval under this section, impose such special terms and conditions or modify existing conditions governing operation of that license as are in the public interest, and are consistent with the purposes of this title.

b. Conditions of approvals under this section are enforceable under the provisions of this title. The assembly may revoke such an approval for failure to comply with conditions of the permit, provided a public hearing with notice to the owner affected is first held.

c. A copy of the conditions imposed by the assembly in connection with approval under this section shall be maintained on the premises involved at a location visible to the public.

6. Effect of Denial

An application for approval under this section that has been denied by the assembly shall not be accepted for rehearing for a period of one year following such denial if the director finds the proposed application is substantially the same as that denied by the assembly, and if no substantially new evidence or change in circumstances has occurred. This paragraph shall not apply to an application filed under assembly direction at a hearing at which a like application was considered. This paragraph does not apply if the alcoholic beverage control board remands a case that was previously denied by the assembly.

7. Expiration

An approval granted under this section shall expire:

a. One hundred twenty days after the transfer of the license to sell alcoholic beverages from the premises has been approved by the state Alcoholic Beverage Control Board, unless there is an application filed with the Control Board prior to the expiration of the 120 day period; or

b. If the operation of the business becomes substantially different from the business and operation reviewed by the assembly when the alcohol approval was granted under this section, unless the licensee applies for and receives assembly approval for a modification of the existing alcohol approval to reflect the change.

For the purposes of this section, "substantially different" means any material change in the operation of the business which could result in significant impact on the use and enjoyment of adjacent properties by property owners or occupants. A material change includes, without limitation, an increase in the late night or early morning hours of operation; a change involving the type of entertainment presented which results in an increase in noise level at the property line; or a change from a business which meets the

requirements of the state Alcoholic Beverage Control board statutes and regulations for a restaurant designation permit to a business which would not meet such requirements.

21.03.050 APPEALS

A. Appeals to Board of Adjustment

1. Jurisdiction of Board

The board of adjustment shall decide appeals:

a. From decisions regarding the approval or denial of a preliminary plat (subsection 21.03.200C.);

b. From decisions regarding the approval or denial of a variance from the provisions of subsection 21.05.040K, *Telecommunication Facilities*; section 21.07.050, *Utility Distribution Facilities*; chapter 21.08, *Subdivision Standards*; and chapter 21.11, *Signs*;

c. From decisions regarding the approval or denial of vacations of public and private interest in land where the platting board is the platting authority (section 21.03.230);

d. From decisions regarding the approval or denial of a development master plan (subsection 21.09.030F.);

e. From decisions regarding the approval or denial of applications for conditional uses (section 21.03.080); and

f. From decisions regarding the approval or denial of applications for major site plan reviews (subsection 21.03.180C).

2. Initiation of Appeal

Decisions may be appealed to the board of adjustment by:

a. Any governmental agency or unit; or

b. Any party of interest for the application.

3. Appellees Before Board

a. An appellee brief may be filed as provided in section subsection A.7. by:

i. The party in whose favor the lower administrative body's decision was rendered.

ii. Any municipal agency.

iii. Any party of interest for the application, as defined in chapter 21.14.

b. Appellees who wish to be notified by the municipal clerk's office of the date the record is available and of the date the appellant's brief is filed must file a notice of intent to file a brief with the municipal clerk's office on a form prescribed by the municipal clerk within 20 days after the decision of the lower administrative body from which the appeal is taken. An applicant for a site plan, conditional use, or subdivision, who is not the appellant, must file a notice of intent to file a brief with

the municipal clerk's office within seven days of receipt of the appellant's notice of appeal to become an appellee.

4. Perfection of Appeal; Notice of Appeal; Appeal Fee

a. An appeal to the board of adjustment must be perfected by a party of interest for the application no later than 20 days from the date the written findings of fact and decision of the administrative body from which the appeal is taken is approved, on the record, and becomes a final, appealable decision, is mailed or otherwise distributed or delivered to the applicant. The appeal is perfected by the filing of a notice of appeal, appeal fee, and cost bond in accordance with this section.

b. The notice of appeal must be filed with the municipal clerk on a form prescribed by the municipality and must contain detailed and specific allegations of error. If the appellant is not the applicant, the appellant shall, within three days after filing the notice of appeal, serve a copy of the notice of appeal on the applicant by certified mail to the applicant's last known address. Proof the notice was served shall be provided to the municipal clerk.

c. The appellant shall pay an appeal fee as provided in the user's guide. In addition, the appellant shall file a cost bond equal to the estimated cost of preparation of the record. Following completion of the record, the actual cost thereof shall be paid by the appellant. All costs and fees shall be returned to the appellant if the decision of the lower body is reversed in whole or in part.

5. New Evidence or Changed Circumstances

a. Allegations of new evidence or changed circumstances shall not be considered or decided by the board of adjustment. Allegations of new evidence or changed circumstances shall be raised by written motion for rehearing, filed with the municipal clerk no later than 20 days after the lower administrative body's initial decision becomes final.

i. The municipal clerk shall automatically reject any motion filed more than 20 days after the lower administrative body's initial decision becomes final, without hearing or reconsideration by the lower administrative body.

ii. A decision of the lower administrative body on any issues remanded from the board of adjustment is not an initial decision as described in subsection 5.a. above. The municipal clerk shall automatically reject, without hearing or reconsideration, any motion alleging new evidence or changed circumstances filed in response to a lower administrative body's decision on any issue(s) presented on remand.

b. If the written motion is filed in a timely manner, the administrative body from which the appeal is taken shall decide whether to reopen and rehear the matter. A rehearing shall be held if the lower administrative body determines:

i. If true, that the alleged new evidence or changed circumstances would substantially change the decision of the body, and

ii. The party alleging new evidence or changed circumstances acted promptly and with diligence in bringing the information to the body's attention.

6. **Appeal Record**

a. Upon timely perfection of an appeal to the board of adjustment, the municipal clerk shall prepare an appeal record. The record shall contain:

i. A verbatim transcript of the proceedings before the administrative body from which the appeal has been taken.

ii. Copies of all documentary evidence, memoranda, exhibits, correspondence, and other written material submitted to the administrative body prior to the decision from which the appeal is taken.

iii. A copy of the written decision of the administrative body, including its findings and conclusions.

b. The appellant shall arrange for the preparation of the transcript of the board hearing by a court reporter or the current board and commission recording secretary and shall pay the cost of such preparation. The appellant shall file the transcript with the municipal clerk. If the appellant fails to file the transcript within 30 days of the filing of the notice of appeal, the appeal shall be automatically denied.

c. Upon completion of the record, the municipal clerk shall notify the appellant by certified mail of the cost of its preparation. If the appellant fails to pay the costs within seven days of receiving the notice, the appeal shall be automatically denied. Upon timely payment of costs, the municipal clerk shall, by certified mail, serve a copy of the record on the appellant. The municipal clerk shall also notify by certified mail the appellees who have filed a notice of intent to file a brief that the record is available for pickup. Upon request, the municipal clerk shall provide a copy of the record to an appellee or the public. A copying cost for the record will be charged as set out in AMCR 3.90.002. The appellee shall also be charged any mailing costs, including the cost of mailing the notice of record availability.

7. **Written Arguments**

a. ***Brief of Appellant***

The appellant to the board of adjustment may file a written brief of points and authorities in support of those allegations of error specified in the notice of appeal with the municipal clerk's office not later than 15 days after service of the appeal record. The municipal clerk shall deliver a copy of the appellant's brief to the municipal staff assigned responsibility for the appeal. The municipal clerk shall also notify by certified mail those appellees who have filed a notice of intent to file a brief that the appellant's brief is available for pickup. Upon request, the municipal clerk shall provide a copy of the appellant's brief to appellees, who shall be charged copying costs as provided in AMCR 3.90.002 and any mailing costs applicable.

b. ***Brief of Appellee***

An appellee who has filed a notice of intent to file a brief may also file with the municipal clerk's office a written reply to the notice of points on appeal and any brief in support thereof no later than 30 days after the service of the appeal record. The municipal clerk shall notify the appellant by certified mail that appellee briefs have been filed. The director may prepare and submit to the municipal clerk a written reply to the notice of appeal and any brief in support thereof no later than 30 days after service of the appeal record.

c. ***Reply Brief***
An appellant may file a written reply brief to appellee briefs submitted pursuant to subsection 7.b. The appellant's reply brief is due no later than 10 days after service of notice that the appellee briefs have been filed.

d. ***Timing of Briefs***
If a brief is not filed within the time prescribed above, the municipal clerk shall notify the board of adjustment that the brief was filed late. The board shall determine whether to accept a late brief and whether to allow additional time for any qualified opposing party to file reply or rebuttal briefs if allowed.

e. ***Form of Briefs***
All briefs shall be prepared to specifications set forth in the title 21 user's guide. The municipal clerk shall not accept a brief unless it is in the form prescribed by the user's guide.

8. **Appeal Packet; Notice of Hearing**
Following the time set for the receipt of written argument from the appellant, the appellee, and the municipal staff under this subsection, the municipal clerk shall prepare and distribute to the members of the board of adjustment an appeal packet containing only the notice of appeal, the appeal record and any briefs filed in accordance with subsection A.7. above. Following distribution of the packets, a date shall be set for consideration of the appeal. Notice of consideration on the appeal shall be published in a newspaper of general circulation and shall be served by mail on the appellant and those appellees who have submitted briefs. Appeal packets shall be made available to the public upon demand with costs payable by the public as provided in AMCR 3.90.002.

9. **Conduct of Hearing**
a. The meeting at which the board of adjustment deliberates and decides an appeal shall be open to the public and a record of the hearing shall be made.

b. The board of adjustment may hear oral argument from the appellant and any other party who has submitted a brief. The board of adjustment shall not take testimony or consider new evidence that was not introduced in the original proceeding.

10. **Scope of Review**
a. The board of adjustment shall hear an appeal solely on the basis of the record established before the lower administrative body, the notice of appeal, the appellant's argument, and the reply to that argument.

b. The board of adjustment may exercise its independent judgment on legal issues raised by the appellant. The term "legal issues," as used in this section, means those matters that relate to the interpretation or construction of ordinances or other provisions of law.

c. The board of adjustment shall, unless it substitutes its independent judgment pursuant to subsection d. below, defer to the judgment of the lower administrative body regarding disputed issues or findings of fact. Findings of fact adopted expressly or by necessary implication by the lower administrative body may be considered as true if they are supported in the record by substantial evidence. The term "substantial evidence," for the purpose of this section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If the record affords a substantial basis of fact from which the fact in

issue may be reasonably inferred, it shall be considered that the fact is supported by substantial evidence.

d. Notwithstanding the provisions of subsection 10.c. above, the board of adjustment may, by an affirmative vote of two-thirds of the fully constituted board, substitute its independent judgment for that of the lower administrative body on any disputed issues or findings of fact. Such judgment must be supported on the record by substantial evidence. For the purpose of this subsection, the fully constituted board of adjustment shall not include those members who do not participate in the appeal.

11. Decision

a. The board of adjustment may affirm or reverse the decision of the lower administrative body in whole or in part. It shall decide an appeal on the basis of the record on appeal and the briefs of the parties to the appeal. A majority vote of the fully constituted board is required to reverse or modify the decision appealed from. For the purpose of this section, the fully constituted board shall not include those members who do not participate in the proceedings. A decision reversing or modifying the decision appealed from shall be in a form which finally disposes of the case on appeal except where the case is remanded in accordance with subsection 12.a. below.

b. Every decision of the board of adjustment to affirm or reverse the decision of the lower administrative body pursuant to subsection 11.a. above shall be based upon and include written findings and conclusions adopted by the board. Such findings must be reasonably specific so as to provide the community, and, where appropriate, reviewing authorities, a clear and precise understanding of the reason for the board's decision. The board may seek the assistance of the municipal staff in the preparation of findings.

c. Every final decision of the board of adjustment shall clearly state on its face it is a final decision with respect to all issues involved in the case, and that the parties have 30 days from the date of mailing, or other distribution of the decision, to file an appeal to the superior court.

12. Remand

a. Where the board of adjustment reverses or modifies a decision of the lower administrative body in whole or in part, its decision shall finally dispose of the matter on appeal, except that the case shall be remanded to the lower body where the board of adjustment determines either that:

i. There is insufficient evidence in the record on an issue material to the decision of the case; or

ii. There has been a substantial procedural error that requires further public hearing.

A decision remanding a case shall describe any issue upon which further evidence should be taken, and shall set forth any further directions the board deems appropriate for the guidance of the lower administrative body.

b. The lower administrative body shall act on the case upon remand in accordance with the decision of the board of adjustment in the minimum time allowed by the circumstances. Cases on remand following a decision of the board shall take

precedence over all other matters on the agenda of the lower administrative body.

c. A board of adjustment decision remanding a case on one or more issues is not a final decision with respect to any issues involved in the appeal. The board of adjustment's decision remanding the case shall be the final decision with respect to all matters affirmed by the board of adjustment's decision, when, following the lower administrative body's decision on remand, no appeal is perfected within the period specified in subsection 21.03.050A.4.

d. A board of adjustment decision remanding a case on one or more issues shall state that the decision is the final decision with respect to all matters affirmed therein when, following the lower administrative body's decision on remand, no appeal is perfected within the time period specified in section 21.03.050A.4., and shall also state the parties have 30 days from the expiration of said period to appeal to the superior court.

B. Appeals to Zoning Board of Examiners and Appeals

1. Jurisdiction of Board

The zoning board of examiners and appeals shall hear appeals from decisions of the municipal staff regarding:

a. Enforcement orders issued under chapter 21.13, *Enforcement.*

b. Denial of an application for a flood hazard permit under section 21.03.090.

c. Denial of an application for a building or land use permit when such denial is based on the requirements of title 21.

d. Denial of an application for a sign permit when such denial is based on the requirements of title 21.

e. Denial of a minor modification under section 21.03.120.

f. Denial of a verification of legal nonconforming status under section 21.03.250.

g. Denial of or imposition of conditions on a certificate for legalization of nonconforming dimensional setback encroachment under section 21.12.030, or a certificate for legalization of lots created prior to September 16, 1975 under subsection 21.12.050C.

h. Interpretation of zoning district boundaries under subsection 21.01.050C.

i. Denial of a certificate of zoning compliance under section 21.03.060.

j. Denial of an administrative permit under section 21.03.030.

k. Denial of administrative approval to reinstate a damaged nonconforming use under subsection 21.12.030C., or to rebuild a damaged nonconforming structure under subsection 21.12.040D.1.a.

l. Overcoming presumption of abandonment under subsection 21.12.030E.

m. Compliance with an institutional master plan under subsection 21.03.110F.

n. Interpretation of general definitions and use definitions.

2. Initiation of Appeal

Appeals to the zoning board of examiners and appeals may be brought by any party of interest for the application.

3. Time Limit for Filing; Notice of Appeal; Appeal Fee

a. An appeal of an administrative decision to the zoning board of examiners and appeals, as set out in subsection B.1. above, must be filed no later than 20 days after written notification of the decision.

b. Notice of appeal must be filed with the municipal clerk on a form prescribed by the municipality and must contain detailed and specific allegations of error.

c. The appellant shall pay an appeal fee as set by the assembly, which shall accompany the filing of the notice of appeal. The appeal fee shall be returned to the appellant if the decision of the lower administrative body is reversed in whole, and one-half of the fee shall be returned if the decision is reversed in part.

4. Scope of Review

The zoning board of examiners and appeals shall conduct a full evidentiary hearing on an appeal and make its decision on the basis of this title, the evidence, and the argument presented.

5. Notice and Public Hearing

a. A public hearing shall be held within 60 days of the filing of a proper notice of appeal.

b. Notice of the appeal hearing shall be published in a newspaper of general circulation at least 14 days prior to the hearing, and, in addition, the appellant shall be sent a notice by mail at least 14 days prior to the hearing.

c. The zoning board of examiners and appeals may prescribe rules of procedure for additional notification in cases where a decision of the board would have a substantial effect on the surrounding neighborhood.

6. Decision

a. The zoning board of examiners and appeals may affirm or reverse the decision of the decision-making body in whole or in part. It shall require a majority of the full membership, minus those members who disqualify themselves with conflicts of interest in accordance with AMC title 4.

b. Every decision of the zoning board of examiners and appeals to affirm or reverse an administrative action shall be in writing and based on and include written findings and conclusions adopted by the board. Such findings must be reasonably specific so as to provide the community and, where appropriate, reviewing authorities, with a clear and precise understanding of the reasons for the board's decision.

c. Every final decision of the zoning board of examiners and appeals shall clearly state it is a final decision and that the parties have 30 days from the date of mailing, or other distribution of the decision to file an appeal to the superior court.

C. Judicial Appeals

1. Judicial Review Authorized

In accordance with Appellate Rule 601 et seq., of the *Alaska Rules of Court*, a municipal officer, a taxpayer, or a person jointly or severally aggrieved may appeal to the superior court:

a. A final decision of the board of adjustment on an appeal from a decision regarding the approval or denial of an application for a conditional use.

b. A final decision of the board of adjustment on an appeal from the platting board regarding an application for a subdivision.

c. A final decision of the zoning board of examiners and appeals.

d. Any final action or decision under this title that is appealable to the superior court under the *Alaska Rules of Court* and/or laws of the state of Alaska.

21.03.060 CERTIFICATE OF ZONING COMPLIANCE

A. Purpose

A certificate of zoning compliance shall be required at the completion of any development in the municipality for which a permit is required, to ensure that the development complies with all applicable standards of this title.

B. Applicability

A certificate of zoning compliance shall be required prior to the occupancy of any building, structure, or land, except that temporary uses and structures in accordance with section 21.05.080, *Temporary Uses and Structures*, shall be exempt from certificate of zoning compliance requirements. Where issued, a certificate of occupancy shall be considered the certificate of zoning compliance.

C. Issuance

1. Certificate

Upon approval by the director, the building official may issue a certificate of zoning compliance, which is valid as long as the conditions of the building or land use permit remain in effect.

2. Conditional Certificate

Upon approval by the director, the building official may issue a conditional certificate of zoning compliance, which shall be valid only for the period of time stated in the certificate, for a specified portion or portions of a building that may safely be occupied prior to final completion of the entire building and/or site. Conditions that are attached to the conditional certificate of zoning compliance must be completed prior to the expiration of the certificate. When such conditions have not been completed prior to the expiration date of the conditional certificate, the certificate of zoning compliance shall immediately expire. Upon receipt of a written application to the building official stating satisfactory reasons for the failure to complete work within the given time period, the building official may renew the certificate for a specified period of time, not to exceed 180 days.

3. **Appeals**
Denial of a certificate of zoning compliance may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

D. Standards

The building official shall issue a certificate of zoning compliance when, after examination of the building, structure, landscaping, and/or other improvements or changes to the property, the municipality finds that the building complies with the applicable provisions of this title and other applicable ordinances and construction codes of the municipality. This review shall include, but is not limited to: off-street parking, landscaping, and other development standards listed in chapter 21.07, *Development and Design Standards*.

21.03.070 COMPREHENSIVE PLAN AMENDMENTS

A. Purpose and Scope

This section provides uniform procedures, schedules, and review criteria necessary for amendments to the comprehensive plan. It includes allowances for concurrent comprehensive plan map and zoning map amendments.

B. Levels of Plan Review

The comprehensive plan should be reviewed and reassessed regularly in order to evaluate its effectiveness and adequacy in guiding the growth of the municipality and to determine whether or not the plan continues to meet the long-term planning needs of the municipality. Because this review need not necessarily result in the complete revision of the plan, several levels of review are contemplated in this section.

1. **Complete Plan Revision (20-year Intervals)**
The director shall initiate a full review and complete revision of the comprehensive plan at least once every 20 years, preferably following the decennial census. As part of this review, the director shall provide the planning and zoning commission with an overall assessment of the adequacy and effectiveness of the existing plan, including identification of new issues not adequately addressed, issues which require further study and investigation, and suggested improvements. The planning and zoning commission shall consider the staff assessment and shall recommend amendments or issues that the commission feels should be pursued or investigated. Any amendments shall follow the procedures of subsections C. and D. below.

2. **Targeted Plan Review (10-year Intervals)**
The director shall initiate a targeted review of the plan at least once every 10 years, or in conjunction with an area-wide rezoning, in order to make it consistent with economic and demographic trends, recent and proposed land use decisions, and adopted studies and plans. Any amendments shall follow the procedures of subsections C. and D. below.

3. **Other Plan Amendments**
In addition to the regularly scheduled reviews described above, any review or decision-making body, or the director of any municipal department, may propose a plan amendment at any time. All such proposals shall be processed in accordance with the procedures in subsections C. and D. below.

C. Procedure for Substantive Amendments

1. Procedure

a. *Initiation*

A petition for amendment to the comprehensive plan may be initiated by any review or decision-making body, or, if accompanied by a rezone application, by a property owner.

b. *Public Notice*

Notice of all public hearings shall be provided in accordance with section 21.03.020H.

c. *Departmental Review*

The department shall review each proposed substantive amendment in light of the approval criteria set forth in subsection C.2. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission. This report shall include a discussion of all plans and policies that have been adopted by the municipality and are relevant to the proposed amendment.

d. *Planning and Zoning Commission Action*

The planning and zoning commission shall hold a public hearing on the proposed amendment. Based on testimony received, the department's report, and the approval criteria in subsection C.2. below, the commission shall recommend that the assembly approve, approve with modifications, or deny the proposed amendment.

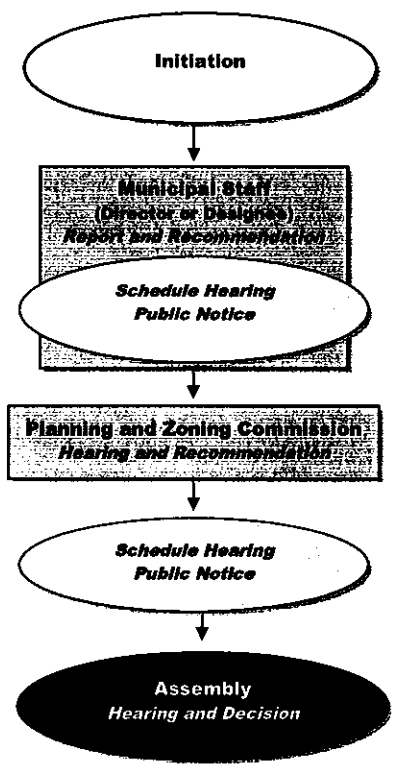
e. *Assembly Action*

The assembly shall hold a public hearing on the proposed amendment. Based on the commission's recommendation, testimony received, and the approval criteria in subsection C.2. below, the assembly shall:

i. Approve the amendment by ordinance, either as submitted or with modifications suggested by staff, the planning and zoning commission, or the assembly;

ii. Reject the proposed amendment; or

iii. Refer the proposed amendment, and/or any substantial modifications proposed by the assembly, back to the planning and zoning commission or to a committee of the assembly for further consideration.



Comprehensive Plan Amendments (Substantive)

2. Approval Criteria

The planning and zoning commission may submit a recommendation for approval, and the assembly may approve an amendment only if the amendment meets the following approval criteria:

a. The proposed amendment is necessary in order to address one or more of the following:

i. A change in projections or assumptions from those on which the comprehensive plan is based;

ii. Identification of new issues, needs, or opportunities that are not adequately addressed in the comprehensive plan;

iii. A change in the policies, objectives, principles, or standards governing the physical development of the municipality or any other geographic areas addressed by the comprehensive plan; or

iv. Identification of errors or omissions in the comprehensive plan.

b. The proposed amendment maintains the internal consistency of the comprehensive plan, and is consistent with the other elements of the comprehensive plan without the need to change other components of the plan to maintain internal consistency.

c. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the community.

d. If the proposed amendment is to the comprehensive plan map, the requested land use designation is found to be equally or more supportive of the comprehensive plan goals, objectives, policies, and guidelines, than the old land use designation.

e. If the proposed amendment is to the comprehensive plan map, the subject site is consistent with the adopted description and locational criteria for the requested land use designation, and is physically suitable to accommodate the proposed designation, including but not limited to access, physical constraints, provision of utilities, and compatibility with surrounding designations and development patterns.

3. Concurrent Zoning Changes Allowed

a. Requests for rezonings (zoning map amendments) may be considered concurrently with a comprehensive plan map amendment. The zoning map amendment shall be to a zone corresponding to the requested comprehensive plan map designation. Concurrent zoning map amendments shall meet all of the approval criteria of subsection 21.03.170E.

b. The planning and zoning commission shall submit its report and recommendation regarding the comprehensive plan map amendment to the assembly at the same time it submits the report and recommendation on the rezoning case. The assembly and planning and zoning commission shall consider the plan amendment proposal and rezoning request separately, and shall act separately on the two items.

D. Procedure for Cosmetic Amendments

1. Initiation

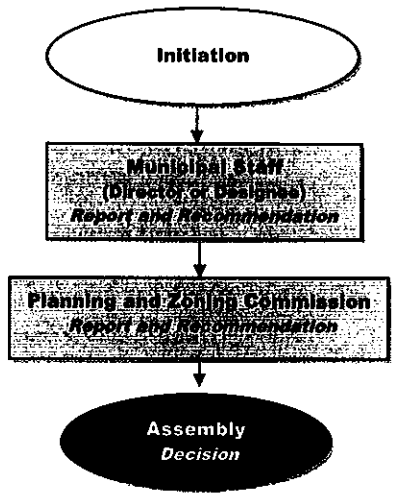
Any review or decision-making body, or director of any municipal department, may, at any time on their own motion, request that the director investigate and evaluate a specific cosmetic amendment proposal. No public hearing or public notification is required.

2. Departmental Review

The department shall review each proposed cosmetic amendment and shall provide a report to the planning and zoning commission.

3. Planning and Zoning Commission Action

The planning and zoning commission shall submit, within a reasonable time, a report and recommendation to the assembly regarding whether or not the proposed amendment should be adopted as submitted, adopted with modifications, or rejected.



Comprehensive Plan Amendments (Cosmetic)

4. Assembly Action

The assembly shall consider the reports and recommendations of the planning and zoning commission and the director at a regularly scheduled assembly meeting, and will take action to either:

a. Approve or deny the amendment;

b. Approve the amendment with modifications; or

c. Refer the matter back to the planning and zoning commission for further consideration.

21.03.080 CONDITIONAL USES

A. Purpose

The conditional use approval procedure is intended for situations where a use may or may not be appropriate in a district, depending on the specific location, the use characteristics, and potential conditions to decrease the adverse impacts of the use on surrounding properties and/or the community-at-large. It also provides a discretionary review process for uses with unique or widely varying operating characteristics or unusual site development features. The procedure provides public review and evaluation of a use's operating characteristics and site development features through a public hearing process.

B. Procedure

1. Initiation

An application for a conditional use permit shall be initiated by the owner(s) of the subject property.

2. Pre-Application Conference

Before filing an application, the applicant shall request a pre-application conference with the director, in accordance with subsection 21.03.020B.

3. Application Submittal
Applications for a conditional use approval shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

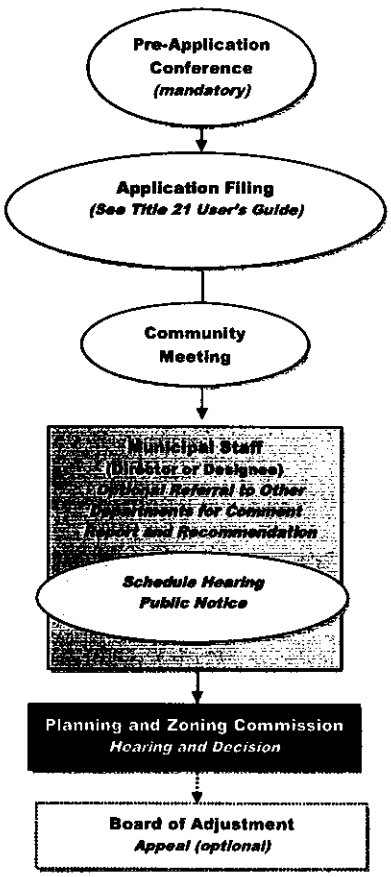
4. Community Meeting
A community meeting is required in accordance with subsection 21.03.020G.

5. Public Notice
Notice of all public hearings shall be provided in accordance with section 21.03.020H.

6. Departmental Review
The department shall review each proposed conditional use permit application in light of the approval criteria of subsection C. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

7. Planning and Zoning Commission Action
The planning and zoning commission shall hold a public hearing on the proposed application and act to approve, approve with conditions, or deny the proposed conditional use permit, based on the approval criteria of subsection C. below.

8. Appeal
Decisions on conditional use permits may be appealed to the board of adjustment in accordance with subsection 21.03.050A.



Conditional Uses

C. Approval Criteria

The planning and zoning commission may approve a conditional use permit application only upon finding that all of the following criteria have been met:

1. The proposed use is consistent with the comprehensive plan and all applicable provisions of this title and applicable state and federal regulations;

2. The proposed use is consistent with the purpose and intent of the zoning district in which it is located, including any district-specific standards set forth in chapter 21.04;

3. The proposed use is consistent with any applicable use-specific standards set forth in chapter 21.05;

4. The site size and dimensions provide adequate area for the needs of the proposed use;

5. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties of the permitted uses listed in the underlying zoning district;

6. The proposed use is compatible with uses allowed on adjacent properties, in terms of its scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);

7. The potential impacts of the proposed use of the site can be accommodated considering size, shape, location, topography, and natural features;

8. Any significant adverse impacts anticipated to result from the use will be mitigated or offset to the maximum extent feasible;

9. The proposed use is appropriately located with respect to the transportation system, including but not limited to existing and/or planned street designations and improvements, street capacity, access to collectors or arterials, connectivity, off-site parking impacts, transit availability, impacts on pedestrian, bicycle, and transit circulation, and safety for all modes; and

10. The proposed use is appropriately located with respect to existing and/or planned water supply, fire and police protection, wastewater disposal, storm water disposal, and similar facilities and services.

D. Changes to Terms and Conditions of Approval

Any changes to the terms and conditions of approval of the conditional use that cannot be made using the minor modification process (see section 21.03.120) shall require separate review and approval by the planning and zoning commission. Any application for approval of such changes shall be filed, processed, reviewed, and approved or denied in the manner set forth in this section for the original application. This section shall not apply, however, to modifications to the approved site plan for the conditional use, which are governed by section 21.03.180G., *Amendments to Approved Site Plans*.

E. Platting for Conditional Uses

1. If development under an approval under this section creates a subdivision or requires the vacation of a dedicated public area, the approval is not effective until a final plat for the subdivision or vacation is approved and recorded in accordance with this title. A preliminary plat required under this section is subject to approval as required by section 21.03.200, *Subdivisions*.

2. Unless the planning and zoning commission directs in the final approval that it shall act as the platting authority, the platting board is the platting authority for subdivisions under this subsection.

F. Conditional Use for a Residential Planned Unit Development

1. Intent and Approval

A residential planned unit development (PUD) is intended to allow flexibility for residential development in the zoning ordinance and to achieve the creation of a more desirable environment that would be possible through a strict application of the zoning ordinance. The planning and zoning commission shall evaluate the proposed planned unit

development in accordance with the conditional use approval criteria at C. above, and the following additional criteria:

a. Creative use of the land, imaginative architectural design, a consolidation of usable open space and recreation areas, and the preservation of natural features.

b. The mixing of compatible land uses, residential densities, and housing types within the neighborhood.

c. The efficiency of the configuration of utilities, vehicular circulation, and parking facilities.

d. Enhancing the surrounding environment.

e. Maintaining population densities and lot coverage that are consistent with available public services and the comprehensive plan.

2. Minimum Standards

All planned unit developments shall meet the following minimum standards. In addition, the planning and zoning commission may require compliance with such other design standards relating to the construction, design, and placement of buildings, landscaping, streets, roadways, walkways, drainageways, and other site design features as it may deem necessary. The user's guide may include guidelines to assist developers in meeting such standards.

a. ***Minimum Site Area***

The minimum site area for a PUD shall be 2.0 acres for PUDs located entirely in the R-2F, R-2M, R-3, R-4, and R-4A zoning districts. If any portion of a proposed PUD is located within the R-1, R-1A, R-2A, R-2D, R-5, R-6, R-7, R-8, or R-9 zoning districts, the minimum site area shall be 5.0 acres.

b. ***Open Space***

A minimum of 30% of the site shall be reserved as usable open space which shall meet the following standards:

i. At least one-half of such usable open space shall be contiguous;

ii. No portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension;

iii. A minimum of 12% and a maximum of 50% of required open space shall consist of yards which shall be reserved for the residents of individual dwelling units; and

iv. In multistory buildings, balconies or decks may be used in lieu of individual yards provided that the total area of all balconies or deckes is not less than the total yard area otherwise required.

c. ***Design***

i. Any nonresidential use permitted in a PUD shall be compatible with the residential nature of the development. Parking areas which are intended to serve nonresidential uses shall be separated from those designed to serve residential areas. Unless nonresidential and residential uses are

combined within a single structure, nonresidential uses shall be separated from dwelling units by L4 screening landscaping.

ii. Pedestrian walkways shall connect residential and nonresidential uses within a PUD.

iii. Level 3 buffer landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district or a right-of-way designated for collector or greater capacity on the *Official Streets And Highways Plan.*

iv. Any two adjacent buildings within a PUD shall be separated from each other by a distance equal to one-half the height of the taller building.

v. Each unit shall be provided with either heated parking, or at least one electrical outlet that is convenient to the required parking space(s).

d. ***Traffic Access***
Major internal streets which are intended to serve a PUD shall be functionally connected to existing or proposed streets to provide adequate ingress and egress.

e. ***Utility Installation***
All new utilities shall be installed underground.

f. ***Homeowners' Agreements***
Any PUD which will involve the formation of a horizontal property regime under the terms of AS 34.07.030 et seq. or any mandatory homeowners' or similar association shall submit for review by the commission the articles of incorporation and bylaws of any such association prior to the sale of any property subject to the association. The commission may require any provisions necessary to ensure that the provisions and intent of this title are met.

3. **Development Options**
The following provisions allow the developer of the PUD to propose changes from the provisions of the underlying zoning district with regard to density, allowed uses, and dimensional standards. The extend of the changes to the standards shall be determined by the planning and zoning commission in accordance with the approval criteria of subsection F.1. above.

a. ***Density***
The number of dwelling units per acre allowable on the gross are of a PUD shall be determined by the planning and zoning commission. However, in no event shall the number of dwelling units per acre exceed the maximums established by the following schedule:

TABLE 21.03-2

Zoning District	Dwelling Units per Acre (gross area)
R-1 and R-5	8
R-1A	6
R-2A	12

TABLE 21.03-2	
Zoning District	Dwelling Units per Acre (gross area)
R-2D	15
R-2F and R-2M	22
R-3	55
R-4 and R-4A	110
R-6	2
R-7	4.5
R-8	0.5
R-9	1.0

b. ***Uses***

The applicant may propose any residential use and any commercial use that is allowed in the R-4 district in table 21.05-1. A PUD may not include the storage or use of mobile homes or quonset huts. Any nonresidential use must be specifically authorized as to its exact location, type, and size. In no even shall the total gross floor area of all nonresidential uses exceed 10% of the total gross floor area of the PUD.

c. ***Dimensional Standards***

i. Height limitations in the R-1, R-1A, R-2A, R-2D, R-2F, R-2M, R-6, R-7, R-8, or R-9 zoning districts may be exceeded by an additional five feet. Height limitations in the R-3, R-4, and R-4A districts may be exceeded by an additional 10 feet.

ii. The applicant may propose changes to minimum lot area, maximum lot coverage, and minimum setbacks for the PUD.

4. Planned Unit Developments in the Turnagain Arm District

PUDs in the TA district shall conform, with regard to uses and residential density, to the land use plans of the Turnagain Arm Area Plan and the standards of this section.

G. Abandonment of Conditional Use

An otherwise lawful conditional use permit shall expire if:

1. For any reason the conditional use is abandoned in its entirety for a period of one year or longer; or

2. The property owner notifies the planning and zoning commission of the abandonment of the conditional use permit. A conditional use shall not be abandoned under this subsection if the result of the abandonment is the creation of a nonconforming land use.

21.03.090 FLOOD HAZARD PERMITS

A. Applicability

Any use, structure, or activity listed in the floodplain regulations (section 21.04.060D., *Flood Hazard Overlay District*) as requiring a flood hazard permit is prohibited until the issuance of such permit. Applications for flood hazard permits shall be made to the municipal engineer.

B. Application Contents

Any application for a flood hazard permit shall contain the following material:

1. The elevation in relation to mean sea level of the lowest floor, including basement or crawl space, of all structures;

2. The elevation in relation to mean sea level to which any structure has been floodproofed;

3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 21.04.060D.7., *Construction Requirements (in Flood Hazard Overlay District)*; and

4. A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

C. Evaluation; Additional Information

Upon receipt of an application for a flood hazard permit, the municipal engineer shall transmit copies of the application, together with pertinent information, to interested and affected departments and agencies within the municipality, requesting technical assistance in evaluating the proposed application. The municipal engineer may require more detailed information from the applicant where special circumstances necessitate. Such additional information may include:

1. A valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development, and high water information.

2. Specification of proposed construction and materials, floodproofing, filling, dredging, grading, channel improvement, water supply, and sanitary facilities.

3. A profile showing the slope of the bottom of the channel or flow line of the stream.

4. A report of soil types and conditions.

5. Analysis of proximity to a dam break area.

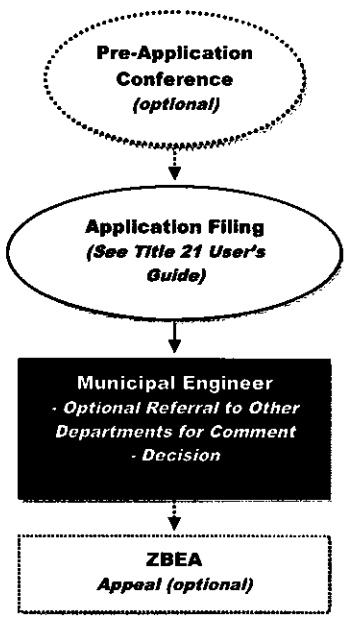
D. Criteria for Issuance

Permits shall be issued if the application and supporting material demonstrate that:

1. The proposed use or structure poses a minimal increase in probable flood height or velocities caused by encroachment;

2. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions will not be impaired by flooding;

3. The susceptibility of the proposed facility and its



Flood Hazard Permits

contents to flood damage is minimal;

4. There will be adequate access to the property in times of flood for ordinary and emergency vehicles;

5. The proposed use, structure, or activity is in conformance with all applicable land use regulations; and

6. All necessary floodproofing will be provided.

E. Time for Acting on Application

The municipal engineer shall act on an application in the manner described in this section within 30 days from receiving the application, except that, where additional information is required, the official shall act within 30 days of the receipt of such additional requested information.

F. Notice on Subdivision Plats

Where any portion of a subdivision is situated within a flood hazard district, a note shall be placed on the plat that reads as follows: "Portions of this subdivision are situated within the flood hazard district as it exists on the date hereof. The boundaries of the flood hazard district may be altered from time to time in accordance with the provisions of section 21.04.060D.3., *Creation of Flood Hazard Overlay District; Official Flood Hazard Reports and Maps*. All construction activities and any land use within the flood hazard district shall conform to the requirements of section 21.04.060D., *Flood Hazard Overlay District*."

G. Appeals

Denial of a flood hazard permit may be appealed to the zoning board of examiners and appeals in accordance with section 21.03.050B.

21.03.100 LAND USE PERMITS

A. Purpose

The land use permit process assures current and future property owners that the structures and land uses conform to the zoning code. Within the building safety service area, the land use permit also involves plan review and on-site inspections to insure that buildings meet the structural, plumbing, mechanical, electrical, and fire safety codes.

B. Applicability

1. In the Municipality

In the municipality, a land use permit shall be required prior to:

a. Construction or placement of a building or addition to an existing building whose floor area is 120 square feet or greater;

b. Installation of telecommunication towers;

c. Construction of a fence over eight feet in height;

d. Excavation of more than 50 cubic yards on any lot or tract;

e. Filling or grading more than 50 cubic yards on any lot or tract;

f. Changing the principal use of a building, as defined by "change of use" in chapter 21.14; or

g. Clearing more than two contiguous acres.

2. Inside Building Safety Service Area
Inside the building safety service area, a building permit shall be considered the land use permit and shall be required in accordance with B.1. above and title 23. The issuance of a building permit may also be subject to the improvement requirements referenced in subsection E. below.

C. Procedures

1. Application Submittal
Applications for land use permits shall be submitted to the building official on the form provided.

2. Approval Procedure

a. The building official shall review each application for a land use permit.

b. The building official shall determine whether the application complies with all requirements of title 23. The director shall determine whether the application complies with all requirements of title 21, and shall inform the building official of his or her determination.

c. The building official shall issue a land use permit upon finding that the application and the proposed work complies with the approval criteria of subsection D. below.

d. A land use permit shall become null and void unless the work approved by the permit is commenced within 12 months after the date of issuance. No work shall be considered to have commenced for the purposes of this paragraph until an inspection has been made and recorded. If after commencement the work is discontinued for a period of 12 months, the permit therefore shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a permit has been reinstated, or until a new permit has been secured.

3. Changes to Approved Permits

a. After a land use permit has been issued, no substantial changes or deviations from the terms of the permit or the application and accompanying plans and specifications shall be made without the specific written approval of such changes or deviations by the building official.

b. An amendment to a land use permit that requires payment of an additional fee, either because of an increase in the size of the buildings, a change in the scope of work, or an increase in the estimated cost of the proposed work, shall not be approved until the applicant has paid the additional fees and the amendment has been properly reviewed and approved for conformance with applicable codes.

4. Revocation of Land Use Permit
The issuing department may revoke and require the return of any land use permit by notifying the permit holder in writing, stating the reason for such revocation. The issuing department shall revoke land use permits for any of the following reasons:

a. Any material departure from the approved application, plans, or specifications;

b. Refusal or failure to comply with the requirements of this title or any other applicable state or local laws;

c. False statements or misrepresentations made in securing such permit.

5. Appeals

a. Denials or revocations of a land use permit relating to title 21 compliance, with the exception of those relating to subsection 21.03.100E, may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

b. Denials or revocations of a land use permit relating to title 23 compliance may be appealed to the building board of examiners and appeals.

D. Approval Criteria

No land use permit shall be issued unless the building official determines that all required approvals have been granted and the plans comply with all applicable provisions of title 23, and the director determines the plans comply with all applicable provisions of this title.

E. Improvements Associated with Land Use Permits

1. Improvements Required

The issuance of a land use permit under this section for the construction of a residential, commercial, or industrial structure on a lot, shall be subject to the permit applicant providing the easements, dedications, and improvements required for a subdivision in the same improvement area under chapter 21.08, *Subdivision Standards.* In applying the provisions of chapter 21.08, *Subdivision Standards,* under this section, the term "lot" shall be substituted for the term "subdivision," the term "permit applicant" shall be substituted for the term "subdivider," and the term "municipal engineer" shall be substituted for the term "platting authority."

2. Exceptions

The requirements in subsection E.1. above shall not apply to a land use permit to the extent that:

a. All construction associated with a single dwelling unit is located on a single lot, tract, or parcel, regardless of zoning district.;

b. The traffic engineer determines that a street dedication or improvement is not required for traffic circulation;

c. A dedication or improvement has been provided to the applicable standard in chapter 21.08, *Subdivision Standards*;

d. A dedication or improvement will be provided under a subdivision agreement that has been entered into under section 21.08.060, *Subdivision Agreements*, or under an established assessment district;

e. The municipality has already appropriated funds to construct an improvement; or

f. The permit is for repairs, maintenance, emergencies, electrical, mechanical, or plumbing.

3. **Standards for Requiring Dedications and Improvements**

Where chapter 21.08, *Subdivision Standards,* grants discretion to determine whether a dedication or improvement will be required, or to determine the design standards for a dedication or improvement, the municipal engineer shall determine the requirement or standard that applies to a land use permit under this section by applying the following standards:

a. The dedication or improvement shall be reasonably related to the anticipated impact on public facilities and adjacent areas that will result from the use and occupancy of the structure that is the subject of the building or land use permit. Any required public use easement shall be removed when calculating density or lot coverage per the applicable zoning district. The municipal engineer may require the permit applicant to provide information or analyses to determine impacts as set out in the comprehensive plan's policies for transportation, transportation design and maintenance, and water resources on public facilities and adjacent areas, including without limitation the following:

i. A traffic impact analysis, or similar information. The traffic engineer may require a traffic impact analysis if the same would be required for approval of a subdivision, conditional use, or site plan for similar development under this title.

ii. A drainage study, or similar information. A drainage study may be required if the same would be required for approval of a subdivision, conditional use, or site plan for similar development under this title.

iii. An estimate of the financial costs of impacts on public facilities and adjacent areas without the required improvements, including without limitation continuity of improvements, maintenance costs of public facilities, parking, drainage, noise and dust control, pedestrian and vehicle safety and access, and emergency vehicle access and response time.

iv. Information concerning the consistency of the impacts of the proposed development with the comprehensive plan.

v. A design of internal streets and location of fire hydrants satisfactory to the fire marshal for purposes of fire protection within the development.

b. The estimated cost of constructing the improvement shall be reasonable when compared to the estimated cost of the proposed development under the land use permit. The determination of reasonableness shall be based on cost estimates for the improvement and the proposed development that the permit applicant or applicant's agent submits under penalty of perjury. If the municipal engineer determines that the estimated cost to the applicant to complete all the improvements required by this section is unreasonable in relation to the estimated cost of the proposed development, the municipal engineer may reduce or eliminate required improvements as necessary to make the relationship between such costs reasonable.

c. The municipal engineer shall consider the potential development of all adjacent parcels, lots, or tracts under common ownership, in addition to the lot, parcel, or tract that is the subject of the permit application, and the impacts associated therewith, in applying the standards in this subsection.

d. The municipal engineer may approve adjustments to the improvement requirements under this section to the extent that compliance with the standards would result in an adverse impact on natural features such as wetlands, steep slopes, or existing mature vegetation; existing development; or public safety.

4. Phasing of Installation

Except as provided in this section, all required improvements shall be constructed and accepted by the municipality before any certificate of zoning compliance is issued for the permitted construction. If the municipal engineer determines that it is not reasonable to require compliance with the preceding sentence, no permit may be issued until the applicant enters into an agreement for construction of the required improvements, with performance guarantees, in the form required for subdivision improvements under section 21.08.050, *Improvements.*

5. Warranty

All improvements required under this section shall be subject to the warranty and guarantee of warranty requirements provided for subdivision improvements in section 21.08.050, *Improvements.*

6. Oversizing

If an improvement exceeding the requirements of this section is requested by the municipality and is necessary for the adequate and efficient development of surrounding areas, the municipality may require the applicant to install or accommodate oversizing. In such event the municipality shall reimburse the applicant for the cost of the oversizing at least as soon as budgeted funds are available after completion and acceptance of the improvements. This subsection shall not be a limitation on the municipality's ability to require a utility to oversize its facilities or a limitation on the manner in which the municipality may pay its proportionate share of the costs of oversizing.

7. Fee in Lieu

A fee in lieu of the required improvements may be accepted if the municipal engineer determines:

a. That the improvements or construction activities associated therewith would create a potential undue safety hazard to motorists or pedestrians; or

b. Due to the nature of existing development on adjacent properties it is unlikely that improvements would be extended in the foreseeable future and the improvements associated with the development under review do not, by themselves, provide a sufficient improvement to safety or capacity or a sufficient benefit to the property to be developed under the building or land use permit to warrant construction.

c. Any fee paid pursuant to this section shall be accounted for separately, and the fee paid shall be dedicated and used only for the purpose of constructing the public facilities which were identified by the municipal engineer and for which the fee was paid.

8. **Fee Amount**
The amount of the fee in lieu shall be the lesser of 75% of the cost of the improvements as estimated by an engineer registered as a professional engineer in Alaska or as provided in a fee schedule adopted by regulation by the municipal engineer, which fee schedule may be adjusted by regulation annually to account for increases in construction costs in the Anchorage area. In the event the applicant or successor in interest later elects or is required to install improvements for which the fee was paid, the fee shall be refunded (without interest), so long as the claim for refund is filed within two years from the date of initial payment.

9. **Appeals of Improvement Standards**
A permit applicant may appeal a decision of the municipal engineer concerning required improvements under this section to the platting board by filing a written notice of appeal with the secretary of the platting board not later than 10 days after receipt of written notice of the decision. The appeal shall be placed on the agenda of the next regularly scheduled platting board meeting that occurs not less than 60 days after the filing of the appeal. The platting board shall hear the appeal.

21.03.110 MASTER PLANNING, INSTITUTIONAL

A. Purpose

The institutional master plan review process provides a framework for development of large institutions, such as hospitals and universities, that control large land areas within the municipality, and are a source of substantial employment, and that may contain a greater density of development than surrounding areas. An institutional master plan is intended to permit flexibility for a large institution to have greater control over its own land use decisions, while providing a level of understanding to the surrounding community about the potential growth of the institution and the resultant impacts, and to the municipality about the public infrastructures and services that may be necessary to serve the planning area and adjacent neighborhoods. The process is specifically intended to:

1. Provide flexibility to institutions to carry out long-range building programs in accord with the institutional mission and objectives;

2. Provide a growing and continuing source of employment for the municipality that is easily accessible and well-integrated with surrounding neighborhoods and the local transportation system;

3. Create attractive and efficient urban areas that incorporate quality design and urban amenities;

4. Protect sensitive portions of the natural environment that are potentially affected by institutional development; and

5. Protect the integrity of adjacent neighborhoods by addressing the impacts of institutional development on adjacent areas.

B. Applicability

An institutional master plan may be submitted and approved, in accordance with the procedures of this section, for any multi-building development site of 25 contiguous acres or more in common ownership in any zoning district or combination of districts. The process provides an alternative to the procedures and development and design standards of this title for institutions seeking to

develop large, complex sites with multiple buildings and uses following a uniform and cohesive design theme.

C. Institutional Master Plan Requirements

1. Planning Area

The planning area for the institutional master plan shall include all the areas that are under the ownership and control of the institution, and for which the institution wishes to establish independent design and development standards under this section.

2. Submittal Requirements

An institutional master plan shall, at a minimum, include the following information unless the director determines that such information is not necessary to evaluate the proposed institutional master plan and the institution's future impacts on surrounding neighborhoods. Specific requirements for the full institutional master plan shall be determined by the director following the pre-application conference.

a. *Boundaries*

At least one aerial photograph taken during the three-year period preceding submittal of the institutional master plan shall be submitted under this section. The aerial photo or some other map shall depict existing zoning districts and surrounding properties within 1,000 feet of the planning area boundaries.

b. *Mission and Objectives*

The institutional master plan shall include a statement that defines the organizational mission and objectives of the institution and description of how development contemplated or defined by the institutional master plan advances the goals and objectives of the institution. The statement should describe the number of people being served by the institution on the site, the number of people employed on the site, and the maximum number of people present on the site for any single event or activity. The statement should include any projected changes in the size of those populations, and how such projections were calculated. It should also specify any services to be provided to residents in adjacent neighborhoods and in other areas of the municipality.

c. *Existing Property and Uses*

The institutional master plan shall include a description of land, buildings, and other structures owned or occupied by the institution within the planning area boundaries as of the date of submittal of the institutional master plan. The following information shall be required:

i. Illustrative site plans showing the footprints of each building and structure, together with roads, sidewalks, parking, landscape features, and other significant site improvements;

ii. Land and building uses;

iii. Gross floor area in square feet of each individual building;

iv. Building height in stories and feet of each individual building; and

v. A description of parking and loading areas and facilities, including a statement of the approximate number of parking spaces in each area or facility.

d. ***Needs of the Institution***
The institutional master plan shall include a summary and projection of the institution's current and future land use needs within the planning area boundaries, such as, but not limited to, the following types of facilities:

i. Academic;

ii. Support services;

iii. Research;

iv. Office;

v. Housing;

vi. Patient care;

vii. Assembly for public events, worship, cultural events, and the like;

viii. Recreation and athletics;

ix. Transit;

x. Parking; and

xi. Commercial spaces and/or uses over 1,000 square feet.

e. ***Ten-Year Development Envelope***
The institutional master plan shall include a description of the development expected to occur within the planning area boundaries within a 10-year time frame. The 10-year development description shall be the maximum amount of development proposed by the institution based on anticipated changes in total population and programs. The 10-year development description shall include the following:

i. General location of the institution's needs (as listed in 2.d. above) in potential development areas as depicted on a site functional use map; and

ii. Estimated total square footage of anticipated development in each development area.

f. ***Development and Design Standards***
The institutional master plan shall include the elements listed below. These elements may set different standards than those found in chapter 21.05, *Use Regulations*; chapter 21.06, *Dimensional Standards and Measurements*; and chapter 21.07, *Development and Design Standards*. The plan shall provide rationale for any different standards proposed. Where different standards are approved in the institutional master plan, those standards shall be applied instead of the corresponding standards in title 21.

i. *Borders and Boundaries*
Treatment along public rights-of-way and boundaries with other landowners, with regard to building setbacks and landscape buffers.

ii. *Transportation and Parking Management*
A transportation and parking management plan including how additional parking demand and transit will be accommodated within the planning area.

iii. *Natural Resource Protection*
Identification of sensitive natural resources, including but not limited to wetlands and flood plain delineation maps, within the planning area, and the institution's plans for maintaining or mitigating impacts on those sensitive areas. The institutional master plan shall not reduce or otherwise weaken the natural resource protection standards of section 21.07.020.

iv. *Open Space and Pedestrian Circulation*
Open space and pedestrian circulation guidelines and objectives, including a description of the circulation system to be provided through the planning area, plans for ensuring the accessibility of pedestrian areas and open spaces, and links to surrounding community open space, where appropriate.

v. *Site and Building Design Standards*
Institutional design standards and objectives, identified through written and graphic materials, that address the following issues:

(A) Dimensional standards for building setbacks, height, and lot coverage;

(B) Site design and circulation;

(C) Landscaping and site amenities;

(D) Building orientation;

(E) Building massing and articulation;

(F) Building sustainability; and

(G) Northern climate design.

vi. *Wayfinding and Signage*
A wayfinding and signage plan including building, vehicular, and pedestrian signage.

vii. *Timing*
A conceptual development schedule and phasing plan.

g. ***Twenty Year Development Areas***
The institutional master plan shall include written and graphic materials identifying future development areas beyond those noted in the 10-year development description. This information shall include, at a minimum, the general location and scale of anticipated development that may occur within a 20 year period.

D. Procedures for Master Plan Approval

1. Pre-Application Conference
Before filing an application, an applicant shall request a pre-application conference with the director. See section 21.03.020B.

2. Community Meeting
A community meeting is required in accordance with subsection 21.03.020G.

3. Initiation
An application for approval of an institutional master plan shall be initiated by the owner or managing agent of the subject property.

4. Application Submittal
Applications for institutional master plan approval shall contain all information and supporting materials specified in the title 21 user's guide and in subsection C.2. above, and shall be submitted to the director on a form provided by the department. The director may require the submittal of such other information as may be necessary to permit the informed exercise of judgment under the criteria for the review of the plan, as set out in subsection E. below.

5. Departmental Review
The department shall review the proposed institutional master plan in light of the approval criteria set forth in subsection E. below, and shall distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

6. Public Notice
Notice of all public hearings shall be provided in accordance with section 21.03.020H.

7. Planning and Zoning Commission Action
a. The planning and zoning commission shall hold a public hearing on the proposed institutional master plan and, at the close of the hearing, recommend that the assembly approve the plan as submitted, approve the plan subject to conditions or modifications, or deny the plan, based on the approval criteria of subsection E. below.

b. If the planning and zoning commission recommends that the assembly approve a plan as submitted or with conditions or modifications, within 60 days of the commission's action the director shall forward the recommendation to the assembly.

c. If the planning and zoning commission recommends denial of a plan, that action is final unless, within 20 days of the commission's action, the applicant files a written statement with the municipal clerk requesting that the proposed institutional master plan be submitted to the assembly.

8. Assembly Action
The assembly shall hold a public hearing on the proposed institutional master plan. At the close of the hearing, taking into account the recommendations of the director and the planning and zoning commission, any public comment, and based on the approval criteria of subsection E. below, the assembly shall, within 90 days, approve the plan, approve the plan with modifications or conditions, deny the plan, or refer the plan back to the planning and zoning commission.

E. Approval Criteria

An institutional master plan may be approved if the assembly finds that it is consistent with the comprehensive plan, compatible with any adopted neighborhood plans for adjacent areas, and will achieve the following:

1. Provides flexibility to the institution to plan and implement long-range development programs to achieve its institutional mission and objectives;

2. Facilitates the continuation of the institution as a major source of service and employment that is easily accessible and well integrated with surrounding neighborhoods and the public transportation system;

3. Ensures that institutional facilities, especially those that are publicly funded, are well designed and constructed, include urban amenities, and are efficient to operate over their life-cycles;

4. Protects and mitigates effects of development on sensitive portions of the natural environment; and

5. Recognizes and addresses potential significant adverse impacts of institutional development on adjacent built environments, neighborhoods, and the community at large.

F. Compliance with Institutional Master Plan

1. Projects developed under the auspices of an approved institutional master plan are exempt from the review and approval procedures required in table 21.05-2.

2. Before a building permit or land use permit is issued for any project within an area covered by an approved institutional master plan, the director shall certify that the proposed project is consistent with the approved institutional master plan. The applicant shall submit a request for certification of consistency on a form provided by the department.

3. Such a certification shall be found if the proposed project is consistent or substantially consistent with the approved institutional master plan, or if the project is found to be not consistent with the approved institutional master plan, but the director finds the proposed project creates minimal impact according to the following criteria:

   a. Not more than 25% of the proposed project is located outside the development areas depicted on the site functional use map;

   b. The proposed project does not result in the addition of more than 10% additional square footage on a cumulative basis to the estimated total square footage of the affected site functional use category;

   c. The project does not result in the creation of or the need for additional parking beyond that covered in the approved transportation and parking management element; and

   d. The project does not result in the coverage of more than 25,000 square feet of site area.

4. A certification of consistency, finding of inconsistency, or finding of consistency subject to conditions, shall be issued within 45 days of receipt of an application for such certification.

5. If the director finds that a project is not consistent with the approved institutional master plan, the director shall issue a detailed list of reasons and recommended actions to achieve compliance.

6. The director may issue a finding of inconsistency, or a finding of consistency subject to conditions, only where the director finds that the matters resulting in the inconsistency, or the conditions to which the certification is made subject, are required by specific terms of the approved institutional master plan or any applicable title 21 provisions.

7. The director's decision may be appealed to the planning and zoning commission.

G. Modifications to Approved Institutional Master Plans

1. Minor Amendments
The director may administratively approve amendments to an approved institutional master plan upon written application, unless the assembly determines the amendment is a major amendment. Minor amendments are defined generally as modifications to approved plans that do not affect land use or density in ways that would have significant adverse impacts on public facilities, utilities, traffic circulation, or other major infrastructure systems; or on surrounding neighborhoods or development.

2. Major Amendments
Major amendments of an approved institutional master plan shall follow the same process required for the original approval of an institutional master plan.

21.03.120 MINOR MODIFICATIONS

A. Purpose and Scope

This section sets out the required review and approval procedures for "minor modifications," which are minor deviations from otherwise applicable standards that may be approved by the director, the assembly, the planning and zoning commission, the platting board, or the urban design commission. Minor modifications are to be used when the small size of the modification requested, and the unlikelihood of any adverse effects on nearby properties or the neighborhood, make it unnecessary to complete a formal variance process.

B. Applicability

1. Minor Modifications to General Development and Zoning District Standards
As part of the review and approval of any procedure set forth in this chapter, the director, the assembly, the planning and zoning commission, the platting board, and the urban design commission may approve minor modifications of up to a maximum of five percent from the following general development and zoning district standards provided that the approval criteria of subsection D. below are met.

a. Minimum lot area or setback requirements set forth in chapter 21.06, *Dimensional Standards and Measurements*;

b. General development standards set forth in chapter 21.07, *Development and Design Standards*, except for the natural resource protection standards in subsection 21.07.020;

c. Subdivision standards set forth in chapter 21.08, *Subdivision Standards*, except for the improvement standards in subsection 21.08.050;

d. The dimensional standards, site development and design standards, and building design standards set forth in chapter 21.09, *Girdwood Land Use Regulations* (sections 21.09.060, 21.09.070, and 21.09.080).

2. Exceptions to Authority to Grant Minor Modifications
In no circumstance shall any decision-making body approve a minor modification that results in:

a. An increase in overall project density;

b. A change in permitted uses or mix of uses;

c. A deviation from the district-specific standards set forth in chapter 21.04, *Zoning Districts*, or the use-specific standards set forth in chapter 21.05, *Use Regulations*; or

d. A change in conditions attached to the approval of any subdivision plan (section 21.03.200), site plan (section 21.03.180), or conditional use permit (section 21.03.080).

C. Procedure

1. Limitation on Minor Modifications

a. An applicant may request application of the minor modification process to his or her development only once during the review process.

b. In no instance may an applicant use the minor modification process to obtain approval for more than three standards applicable to the same development.

2. Minor Modifications Approved by Director
For uses allowed by-right or when he or she is the decision-maker, the director may approve a minor modification allowed under this section at any time prior to final decision.

3. Minor Modifications Approved by Assembly, Planning and Zoning Commission, Platting Board or Urban Design Commission
The assembly, planning and zoning commission, platting board, or urban design commission may approve a minor modification allowed under this section at any time before taking action on a development application.

4. Written Findings Noted on Pending Application
Staff shall specify in writing any approved minor modifications and the finding supporting such modifications on the pending development application for which the modifications were sought, which shall be included as part of the case record.

5. Appeals
Denial of a minor modification application may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

D. Approval Criteria

The decision-making body may approve the minor modification only if it finds that the modification meets all of the criteria below:

1. The requested modification is consistent with the comprehensive plan and the stated purpose of this title;

2. The requested modification meets all other applicable building and safety codes;

3. The requested modification does not encroach into a recorded easement;

4. The requested modification will have no significant adverse impact on the health, safety, or general welfare of surrounding property owners or the general public, or such impacts will be substantially mitigated; and

5. The requested modification is necessary to either: (a) compensate for some practical difficulty or some unusual aspect of the site of the proposed development not shared by landowners in general; or (b) accommodate an alternative or innovative design practice that achieves to the same or better degree the objective of the existing design standard to be modified. In determining if "practical difficulty" exists, the factors set forth in section 21.03.240G., *Approval Criteria (for Variances)* shall be considered.

21.03.130 NEIGHBORHOOD OR DISTRICT PLANS

A. Purpose and Authority

1. **Purpose**
Neighborhood or district plans shall be guided by the elements of the comprehensive plan, as defined in section 21.01.080. Neighborhood or district plans should give specificity to the goals, objectives, policies, and strategies of the comprehensive plan. These plans shall supplement and elaborate on the comprehensive plan. The goal of a neighborhood or district plan is to promote the orderly growth, improvement, and future development of the neighborhood, community, or municipality.

2. **Authority**
   a. These procedures and minimum standards are established for the creation and review of plans for the development, growth, and improvement of the municipality, and its neighborhoods and communities. The plans may be sponsored by the mayor, the assembly, the planning and zoning commission, the department, the community development division, or upon express approval of the assembly by resolution, any community council, group of councils, or other groups or organizations representing the broad public interest recognized by the assembly to sponsor a neighborhood or district plan (hereafter called the "sponsor").

   b. In order to obtain the approval of the assembly as a sponsor, any community council, group of councils, or other groups or organizations shall request a resolution from the assembly authorizing them to proceed with the development of a neighborhood or district plan. The group shall demonstrate, to the reasonable satisfaction of a majority of the assembly, that

      i. They represent the broad public interest necessary to successfully develop a plan;

ii. They have read and understand the requirements of this ordinance; that their proposed plan will comply with the standards set forth in this ordinance; and

iii. They have sufficient financial resources and a sufficient level of knowledge and expertise to warrant the expenditure of public resources as provided herein.

3. Policy Guidance

An adopted plan shall be an element of the comprehensive plan and shall serve as a policy to guide subsequent actions by municipal agencies. The assembly and the planning and zoning commission shall consider adopted plans in review of land use, zoning actions, and capital improvement programs, where consideration is consistent with the charter, the comprehensive plan, and general law. Agencies shall consider adopted neighborhood or district plans as guidance for actions, whether or not actions are subject to commission review. The existence of an adopted neighborhood or district plan shall not preclude the assembly, any municipal department or agency, or any board or commission of the municipality from developing other plans or taking actions not contemplated in the neighborhood or district plan affecting the same geographic area or subject matter.

B. Plan Submittal

1. Initiation Meeting

The sponsor of a plan shall meet with the department at the initiation of the planning process to discuss and clarify content requirements, scheduling, and other relevant issues. Periodically, the department shall report to the commission, and to the assembly by an Assembly Information Memorandum (AIM) requiring no further action, on the progress of neighborhood or district plans underway.

2. Work Program

Following the initiation meeting, the sponsor shall prepare a work program which shall be submitted to the department for approval. The work program shall include a project schedule, a proposed table of contents, a proposed public participation plan, and at least three milestones at which times the sponsor shall meet with the department.

3. Submittal

Twenty-two printed copies along with an electronic version of all proposed plans shall be submitted to the department. The submittal shall include the name(s) and address(es) of the person(s) designated by the sponsor to be its representative(s) in any discussions of the plan.

C. Threshold Review and Determination

1. Department Review and Determination

Within 90 days of the submittal of a plan, the department shall review the plan and determine whether the plan meets the standards for form, content, and for consistency with sound planning, as set forth in subsection D. below.

a. If the department determines that the plan does meet the threshold standards of subsection D., the department shall distribute the plan for public review and commission public hearing as described in subsection E.

b. If the department determines the plan does not meet the threshold standards of subsection D., the staff shall provide written notification to the sponsor of all deficiencies with respect to form, content, process, and any changes, additions, or deletions which, in the opinion of staff, may correct such deficiencies. The sponsor may indicate its willingness to make such changes, additions, or deletions. Only in such event may the sponsor be permitted to continue with the plan.

2. Coordination of Plan Review

The department may determine, despite a finding of appropriate form, content, and sound planning policy, a proposed plan should not immediately proceed, due to other municipal planning efforts underway which should be coordinated with the plan. In such a case, the department shall develop an appropriate timetable for distributing the plan for public review and commission public hearings.

D. Standards

1. Form and Content

The form and content of all proposed plans shall be consistent with the following:

a. The plan shall state its sponsoring entity or entities and the names of the individuals who participated in the development of the plan.

b. A plan shall enhance or implement goals, objectives, policies, and/or strategies of the comprehensive plan and provide further detail and specificity. A plan may take the form of a master plan or targeted plan.

i. A master plan for a neighborhood, district, or other geographic area of the municipality may combine elements related to housing, industrial and commercial uses, transportation, land use regulation, open space, recreation, cultural features, health, economic vitality, community facilities, and other infrastructure.

ii. A targeted plan may consider one or a small number of elements of neighborhood, district, or municipal-wide problems or needs, and shall focus on issues related to the use, development, and improvement of land within the plan study area.

c. A plan shall not be limited to a single zoning district or a specific parcel in private ownership. A plan shall cover an identifiable, cohesive geographic area or neighborhood.

d. Plans shall be presented in clear language and coherent form with elements, chapters, or sections organized in logical sequence.

e. Plans shall state goals, objectives, or purposes clearly and succinctly. Policy statements or recommendations shall contain documentation and explanation of the data, analysis, or rationale underlying each. Plans shall analyze and propose policies to address identified problems.

f. A plan shall contain, as applicable:

i. Inventories or description and analysis of existing conditions, problems, or needs; projections of future conditions, problems, or needs; and

recommended goals and strategies to address those conditions, problems, or needs.

ii. Alternatively, or concomitantly with the elements described above, a plan may also contain a vision for a future end state and a strategy(ies) for achieving it.

The level of detail and analysis shall be appropriate to the goals and recommendations presented in the plan. The information and analysis relied upon to support the recommendations shall be sufficiently identified to facilitate later plan review, including accuracy and validity of the information and analysis. Supporting information may be contained in the form of narrative, maps, charts, tables, technical appendices, or the like.

g. A plan shall contain a land use plan map for the geographic area encompassed by the plan. The land use plan map shall propose appropriate land use categories, which generally include: residential, commercial, industrial, institutional, transportation, community facilities, parks, and natural open space. The land use plan map may provide more specificity than the general categories.

h. Plans shall be accompanied by documentation showing public participation in the plan formulation and preparation. Public outreach, such as surveys, workshops, hearings, or technical advisory committees, is recommended as a tool for community support and consensus, in addition to department, commission, and assembly approval.

2. **Sound Planning Policy**

a. Every plan, regardless of form and content, shall include discussion of:

i. Its long-range consequences;

ii. Impact on economic and housing opportunity for all persons, particularly low- and moderate-income, and persons with disabilities;

iii. Provision of future growth and development opportunities;

iv. Ability to improve the physical environment; and

v. Effect on the geographic distribution of municipal facilities.

b. A plan shall set forth goals, objectives, purposes, policies, strategies, and/or recommendations within the legal authority of the municipality.

c. A plan considering issues under the jurisdiction of specific municipal or state agencies shall disclose all agency comments.

d. A plan shall analyze its relationship to applicable policy documents, including all adopted elements of the comprehensive plan, as well as its relationship to adjoining neighborhoods and other areas.

e. A plan shall solicit input from residents, local businesses, agencies, and non-profit organizations local to the neighborhood, and demonstrate it has considered these comments on their merits.

E. Plan Distribution and Review

1. Plan Distribution

When, pursuant to subsection C. above, a plan is ready for public review, the department shall, within 30 days of its determination, provide copies of the plan simultaneously to all municipal and state agencies with jurisdiction over elements of the plan, and to all community councils. The department shall also make copies available to the general public at city hall and the planning and development center, and post the plan on the department website.

2. Public, Agency, and Community Council Review

a. Each community council may conduct its own review of the plan. Within a period of 120 days following receipt of the plan, the community council may provide written recommendation(s) to the department and the sponsor.

b. Members of the public and other municipal or state agencies may provide written comments to the department during the 120 day review period.

3. Department Review

When the department is not the sponsor of a plan, it shall review the plan during the 120 day review period, and prepare a staff report and recommendation for the commission. The department shall consider the neighborhood, community, and municipal-wide impacts and the long-term effects of the actions or policies recommended by the plan. The department shall also consider the impact of the plan on economic and housing opportunity, future growth and development, and the physical environment, including consistency of the plan with other adopted plans.

F. Planning and Zoning Commission Review

1. Schedule for Review

At the conclusion of the 120 day review period, the commission shall schedule a public hearing within 60 days following the final day of the public review period.

2. Public Notice

Notice of all public hearings shall be provided in accordance with section 21.03.020H.

3. Planning and Zoning Commission Action

The commission shall vote, within 60 days following the close of the public hearing to recommend approval, approval with modifications, remand to the sponsor, or disapproval of the plan. In reviewing the substance of the plan, the commission shall consider the neighborhood, community, and municipal-wide impacts and the potential long-term effects from the actions or policies recommended by the plan. The commission shall consider the impact of the plan on economic and housing opportunity, future growth and development, and the physical environment, including consistency of the plan with other adopted plans, and any other pertinent adopted neighborhood or district plans. Any modifications recommended by the commission shall be consistent with the standards for form, content, and sound planning policy, as set out in subsection D. above.

4. Commission Findings

The commission's recommendation shall include findings describing its considerations and providing explanation for its determination. The findings may include recommendations for the implementation of plan elements. The recommendation shall be transmitted to the assembly for final approval.

G. Assembly Adoption

1. Transmission to Assembly
The commission's recommendation shall be transmitted to the assembly for introduction within 45 days of the commission recommendation. The assembly shall schedule a public hearing not more than 45 days after introduction.

2. Public Notice
Notice of all public hearings shall be provided in accordance with subsection 21.03.020H.

3. Assembly Action
Within 45 days of the close of the public hearing, the assembly shall either:

a. Adopt the plan;

b. Adopt the plan with modifications;

c. Remand the plan to the commission; or

d. Not adopt the plan.

If the assembly adopts the plan with modifications, the modifications shall be consistent with the standards for form, content, and sound planning policy, as set out in subsection D. above. If the plan is adopted, either as proposed or with modifications, it shall become an element of the comprehensive plan as described in section 21.01.080.

H. Review and Revision

A plan shall be reviewed by the department concurrent with the review of the comprehensive plans as otherwise provided in this title to determine if the plan is consistent with the comprehensive plan. If the sponsor shows a major change of circumstances in the neighborhood or district, the sponsor may request a review of the plan before the end of any 10 year period. Any revisions shall be presented for adoption as an amendment to the plan, in accordance with the procedures set forth herein.

21.03.140 PUBLIC FACILITY SITE SELECTION

A. Purpose

This section sets forth a process by which the planning and zoning commission shall review and decide upon acquisition of sites, including acquisition by lease, before certain public facilities may be authorized, or publicly owned land is designated as the site for certain public facilities.

B. Applicability

1. Unless exempted by subsection B.2. below, the planning and zoning commission shall review and decide the selection of sites for any of the following facilities that are to be owned, or leased by a government agency not exempt by law from municipal land use regulation:

a. Any newly constructed building or buildings and any existing building acquired by purchase or lease, in which government operations or activities occupy more than a total of 100,000 square feet on the site;

b. Any use of land over 20 acres in area (not including projects covered under section 21.03.200);

c. Any sports, entertainment, or civic center designed for more than 1,500 spectators; and

d. Any public snow disposal or landfill site.

2. This section shall not apply to the following:

a. Any site that is

i. Designated for the subject use on a municipal plan adopted by the assembly;

ii. Part of an area, development, or institutional master plan;

iii. Determined by a dedication to the municipality on a final plat approved and recorded in accordance with this title; or

iv. Subject to approval of a conditional use under this title.

b. The selection of sites for public schools, which shall instead be undertaken pursuant to AMC chapter 25.25.

c. Any facility site selection reviewed by the commission or approved by the assembly before [the effective date of this title.];

d. Any facility site selection under which over $500,000 has been expended for design or construction before [the effective date of this title.]

C. Required Information

The agency proposing a site selection shall submit to the commission all information identified in the user's guide. This information shall include, but need not be limited to, an evaluation of alternative sites, or an explanation why no alternative sites were considered.

D. Community Meeting

A community meeting is required in accordance with subsection 21.03.020G.

E. Public Notice

Notice of all public hearings shall be provided in accordance with subsection 21.03.020H.

F. Departmental Review

The department shall review each proposed site selection application in light of the approval criteria set forth in subsection H. below, and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

G. Planning and Zoning Commission Action

The commission shall hold a public hearing on any site selection that is subject to review under this section. At the close of the hearing, the commission shall decide on the proposed site based on the approval criteria of subsection H. below.

H. Approval Criteria

The commission shall review the proposed site for consistency with the goals, policies, and land use designations of the comprehensive plan and other municipal plans adopted by the assembly, conformity to the requirements of this title, and the effects of the proposal on the area surrounding the site. The following specific criteria shall be considered:

1. Whether the site will allow development that is compatible with current and projected land uses;

2. Whether the site is large enough to accommodate the proposed use and future additions or another planned public facility;

3. Whether adequate utility and transportation infrastructure is available to the site;

4. Whether the site is located near a transit route, if applicable;

5. Whether there are existing or planned walkways connecting the site to transit stops and surrounding residential areas, where applicable;

6. The environmental suitability of the site;

7. The financial feasibility of the site, including maintenance and operations; and

8. Major municipal, state, and federal administrative offices shall locate in the Central Business District. Satellite government offices and other civic functions are encouraged to locate in regional or town centers if practicable.

I. Appeal

Decisions on public facility site selections may be appealed to the assembly.

21.03.150 RECORD OF SURVEY MAPS

A. Purpose and Authorization

The purpose of this section is to provide for the approval of record of survey maps to be filed with the district recorder for the state. Record of survey maps shall be reviewed and approved in accordance with this section.

B. Use of Record of Survey Maps

1. A record of survey map is a map depicting the exterior boundaries of a legally created lot, parcel, or tract, and includes a correction to a record of survey map.

2. A record of survey map shall not be used to depict the boundaries of a lot, parcel, or tract, which lot, parcel, or tract was created or subdivided contrary to law. A record of survey map shall not subdivide property or recombine lots into acreage, and any record of survey map purporting to do so shall be null and void.

C. Application Submittal

Applications for approval of a record of survey map shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

D. Monuments

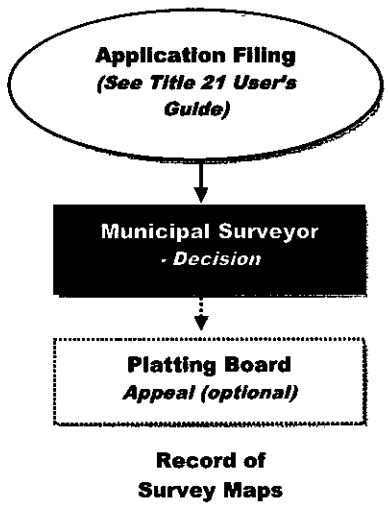
Monuments set for the survey shall conform to the standards of the department of project management and engineering.

E. Approval

A record of survey map is subject to approval by the municipal surveyor, who shall approve a record of survey map if it conforms to this section.

F. Appeals

All decisions of the municipal surveyor under this section shall be final unless appealed to the platting board within 15 days of the date of approval.



21.03.160 REZONINGS (ZONING MAP AMENDMENTS)

A. Purpose and Scope

The boundaries of any zone district in the municipality may be changed or the zone classification of any parcel of land may be changed pursuant to this section. This section states the procedures and approval criteria necessary to process an amendment to the official zoning map. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but to make adjustments to the official zoning map that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the municipality. Rezonings shall not be used as a way to legitimize nonconforming uses or structures, and should not be used when a conditional use, variance, or minor modification could be used to achieve the same result.

B. Minimum Area Requirements

A rezoning shall only be considered for properties totaling 1.75 acres (76,230 square feet) or more (excluding rights-of-way), except for:

1. A rezoning extending the boundaries of an existing zoning district; or

2. A rezoning initiated by the municipal administration to place municipally owned land in a PLI, PR, or DR zoning district.

3. A rezoning into the NC district.

C. When a Comprehensive Plan Map Amendment is Required

Zoning map amendments may also require an amendment to the comprehensive plan map. Determination of whether the comprehensive plan map must also be amended is based upon whether the proposed zoning map amendment is to a zone consistent with the comprehensive

plan map. If an amendment to the comprehensive plan map is required, the zoning map amendment can only be made if the amendment to the comprehensive plan map is approved first. Both amendments may be processed concurrently, as provided in subsection 21.03.070C.3.

D. General Procedure

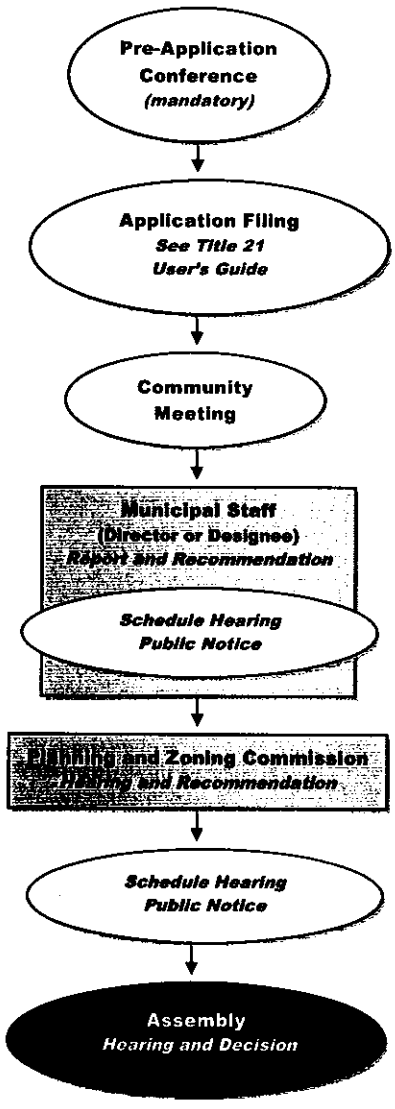
1. Initiation

a. A rezoning may be initiated by the assembly, the planning and zoning commission, or by the director of any municipal department.

b. In addition, any person may initiate a rezoning by submitting a petition favoring the rezoning signed by the owners of at least 51% of the area within the property to be rezoned. For the purposes of this subsection, an owner of property subject to the Horizontal Property Regimes Act (A.S. 34.07) owns a percentage of the appurtenant common areas equal to the percentage for that property stated in the recorded declaration committing the property to the Horizontal Property Regimes Act.

c. A rezoning application shall expire one year after submittal unless a public hearing on the application has been held by the assembly on or before that date; provided, however, that the director or designee may extend the application for six months if the reason for the delay was due to circumstances beyond the control of the applicant.

d. Rezonings shall precede corps of engineers wetland permit applications.



Rezonings (Map Amendments)

2. Pre-Application Conference

Before filing an application, a private-party applicant shall request a pre-application conference with the director, in accordance with subsection 21.03.020B.

3. Application Submittal

Applications for a rezoning shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department. Additional materials may be required for certain types of rezoning, such as rezoning with special limitations.

4. Community Meeting

A community meeting is required in accordance with subsection 21.03.020G.

5. Public Notice

Notice of all public hearings shall be provided in accordance with section 21.03.020H. In addition, the published and written (mailed) notice for the public

hearing before the assembly shall list the protest provisions set forth in subsection D.9. below.

6. **Departmental Review**
The department shall review each proposed rezoning in light of the approval criteria in subsection E. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

7. **Planning and Zoning Commission Action**

a. The planning and zoning commission shall hold a public hearing on the proposed rezoning and, at the close of the hearing, recommend approval, approval with special limitations or other modifications, or denial. The commission shall base its recommendation on the approval criteria in subsection E. below, and shall include written findings based on each of the approval criteria.

b. If the commission recommends approval or approval with special limitations or other modifications, within 60 days of the commission's written resolution, the director shall forward the recommendation to the assembly with an ordinance to amend the official zoning map in accordance with the recommendation.

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

8. **Assembly Action**
The assembly shall hold a public hearing on the proposed rezoning and shall, at the close of the hearing, taking into account the recommendations of the director, planning and zoning commission, and public input, and based upon the approval criteria of subsection E. below:

a. Approve the zoning map amendment as submitted;

b. Approve the zoning map amendment by ordinance with special limitations (see subsection G.) or other modifications at least as restrictive as those recommended by the planning and zoning commission;

c. Deny the amendment; or

d. Remand the proposed amendment to the planning and zoning commission or to a committee of the assembly for further consideration.

9. **Protests**

a. Any owner of property subject to a proposed rezoning may protest the rezoning by filing a written protest with the clerk pursuant to this subsection.

b. Any owner of property within 300 feet of the outer boundary of the land to which the amendment applies may protest the rezoning by filing a written protest with the clerk that is signed by the owners of at least one-third of the property, excluding rights-of-way, of:

i. The land to which the amendment applies; or

ii. The land within 300 feet of the outer boundary of the land to which the amendment applies;

excluding land owned by the municipality, except where the municipality joins in the protest.

c. To be valid, the protest shall state the factual and/or legal basis for the protest, contain a legal description of the property on behalf of which the protest is made, be signed by the owner of that property, and be received by the municipal clerk after notice of a public hearing before the assembly on a zoning map amendment and at least three business days before the time set for the assembly public hearing on the amendment.

d. Assembly approval of a rezoning subject to a valid protest under this subsection shall require an affirmative vote of eight assembly members.

10. 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 one year of the date of denial, unless denial is made without prejudice.

11. Form of Amending Ordinance
An ordinance amending the zoning map shall contain the following:

a. The names of the current and the requested zoning districts;

b. The legal description of the subject property;

c. Any special limitations being applied to the subject property; and

d. An effective clause.

E. Approval Criteria

The planning and zoning commission may recommend approval, and the assembly may approve a rezoning, if the rezoning meets all of the following criteria:

1. The rezoning promotes the public health, safety, and general welfare;

2. The rezoning complies with and conforms to the comprehensive plan and the purposes of this title;

3. The proposed rezoning conforms to the comprehensive plan map, as follows:

a. The rezoning shall be to a zone corresponding to the comprehensive plan map, including the zoning consistency table, except as provided in F. below.

b. When the comprehensive plan map designation has more than one corresponding zone, it shall be shown that the proposed zone is the most appropriate, taking into consideration the purposes of each zone and the zoning pattern of surrounding land.

4. The rezoning is consistent with the stated purpose of the proposed zoning district;

5. Facilities and services (including roads and transportation, water, gas, electricity, police and fire protection, and sewage and waste disposal, as applicable) are capable of supporting the uses allowed by the zone or will be capable by the time development is complete, while maintaining adequate levels of service to existing development;

6. The rezoning is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated;

7. The rezoning is not likely to result in significant adverse impacts upon other property in the vicinity of the subject tract;

8. The rezoning does not result in a split-zoned lot;

9. The applicant has demonstrated, to the satisfaction of the commission and the assembly, that the supply of land in the desired zoning district in the general area is insufficient or inadequate for the intended purpose, and that sufficient land of the existing zoning district remains in the area to meet the needs of the community; and

10. The proposed rezoning maintains and preserves the compatibility of surrounding zoning and development, and protects areas designated for specific uses on the zoning map from incompatible land uses or development intensities.

F. Flexibility of Interpretation

The comprehensive plan map and the approval criteria of subsection E. above may be interpreted with flexibility within the following parameters:

1. A proposed rezoning that is to a district that does not correspond to the comprehensive plan map may be considered if processed concurrently with a related amendment to the comprehensive plan map following the procedures of subsection 21.03.070, *Comprehensive Plan Amendments.*

2. Where the location of comprehensive plan map designation boundaries appear generalized or uncertain, proposed zoning amendments on or near the boundaries shall be treated as follows:

a. Areas clearly within a particular comprehensive plan map designation shall follow the standards of that designation.

b. The designation of areas at or near boundaries on the comprehensive plan map shall be interpreted in accordance with the goals, objectives, policies, and guidelines of the comprehensive plan, including locational criteria for designations on the comprehensive plan map.

3. Interpretation shall not be a basis for cumulative encroachment by incompatible land uses.

G. Rezonings with Special Limitations

Pursuant to this subsection, a rezoning may include special limitations that restrict some aspects of development, to a greater degree than otherwise provided for a zoning district applied by the rezoning.

1. Purposes

A rezoning may include special limitations for one or more of the following purposes:

a. To prohibit structures, or uses of land or structures, that would adversely affect the surrounding neighborhood or conflict with the comprehensive plan; or

b. To conform the zoning map amendment to the comprehensive plan, or to further the goals and policies of the comprehensive plan; or

c. To conform development under the zoning map amendment to existing patterns of development in the surrounding neighborhood; or

d. To mitigate the adverse effects of development under the zoning map amendment on the natural environment, the surrounding neighborhood, and on public facilities and services.

2. Types of Limitations

A special limitation shall do one or more of the following:

a. Limit residential density; or prohibit structures, or uses of land or structures, otherwise permitted in a zoning district;

b. Require compliance with design standards for structures and other site features;

c. Require compliance with a site plan approved under this title;

d. Require the construction and installation of improvements, including public improvements; or

e. Impose time limits for taking subsequent development actions.

3. Effect of Approval

a. A zoning district subject to special limitations shall be identified on the zoning map by the suffix "SL," and the number of the ordinance applying the special limitations shall be printed on the zoning map.

b. Where a special limitation in a zoning map amendment conflicts with any less restrictive provision of this title, the special limitation governs.

H. Rezonings to Create, Alter, or Eliminate Overlay Districts

1. Purpose and Applicability

The assembly may, through the rezoning process, establish overlay districts that supplement the requirements of the underlying base zoning districts, in order to address special land use needs, to meet an objective of the comprehensive plan or neighborhood plan, or other specific planning objective. A rezoning for an overlay district may be applied to the zoning map in order to:

a. Permit, require, prohibit, or restrict structures or the use of land or structures;

b. Alter the provisions of the use-specific requirements as applied to property within the overlay district;

c. Require new development or attributes of new development to conform to a specific architectural or design theme;

d. Require a design review approval process; and/or

e. Alter the development standards of the underlying district by decreasing or increasing the requirements with regard to building height, setbacks, lot area, lot width, lot coverage, and lot densities of the underlying district.

2. Minimum Area Requirements

No overlay district zoning map amendment shall be considered or approved that applies an overlay district to an area less than 1.75 acres, excluding rights-of-way, except for an amendment extending the boundaries of an existing overlay district.

3. General Procedure for Creating, Altering, or Eliminating Overlay Districts

Overlay districts shall be established, altered, or eliminated using the general rezoning procedure set forth in subsection D. above, *General Procedure*, except as modified by the following provisions:

a. ***Contents of Adopting Ordinance***

An ordinance amending the zoning map for an overlay district shall contain the following:

i. The name of the overlay district that the ordinance applies;

ii. The legal description of the land within the overlay district applied by the ordinance; and

iii. All standards of development to be governed by the overlay district.

b. ***Effect of Approval***

i. Where a specification in an overlay zoning map amendment conflicts with any provision of this title, the overlay zoning map amendment shall govern.

ii. An overlay district adopted in the same manner as the original ordinance remains effective until repealed or amended. The assembly may set a time for the overlay district to expire if it finds the planning objectives will be met or completed within a specific time period.

c. ***Map of Overlay Districts***

i. Each overlay district shall be annotated on the zoning map with a symbol unique to the overlay district and shall be identified on the zoning map by the suffix "OV" and the number of the ordinance applying the overlay district shall be printed on the zoning map within the boundaries of the overlay district.

ii. The department shall maintain, for inspection by the public, maps showing the location of the overlay districts and records of the assembly's purpose and intent in establishing each district.

4. Establishment or Modification of Airport Height Overlay Districts
In addition to the standard submittals required to initiate an overlay map amendment, establishment of an Airport Height Overlay District also shall require preparation of an airport height map as set forth in section 21.04.060C.

I. Rezoning to Planned Community Development District (PCD)

1. Purpose
The assembly may, through the rezoning process, adopt a regulatory zoning strategy that is customized for a specific property or group of properties. The zoning strategy may substitute, alter, or adopt the specific requirements of chapters 21.05, 21.06, and 21.07 (see subsection I.4. below) in order to meet the unique needs of the development. The assembly must find that the proposed strategy will result in development that is compatible with that which would occur with conventional application of the requirements of chapters 21.05, 21.06, and 21.07.

2. Procedure
Rezoning to PCD districts shall follow the general rezoning procedure set forth in section D. above, except as modified by this section.

3. Minimum Area Requirements
No PCD district zoning map amendment shall be considered or approved that is equal to an area of less than 30 acres. These limits exclude rights-of-way and do not apply to amendments that extend the boundaries of an existing PCD district.

4. In-Lieu Standards Allowed

a. The use of standards that are different from standards stated in title 21 is intended to allow a developer some flexibility and creativity in meeting the intents and purposes of the code.

b. In-lieu standards for the following sections may be proposed for the PCD district:

i. Chapter 21.05, *Use Regulations*;

ii. Chapter 21.06, *Dimensional Standards*;

iii. Subsection 21.07.020C., *Steep Slope Development*;

iv. Section 21.07.030, *Open Space*;

v. Section 21.07.060, *Transportation and Connectivity*;

vi. Section 21.07.080, *Landscaping, Screening, and Fencing*;

vii. Section 21.07.090, *Off-Street Parking and Loading*;

viii. Section 21.07.100, *Residential Design Standards*;

ix. Section 21.07.110, *Public/Institutional and Commercial Design Standards*;

x. Section 21.07.120, *Large Commercial Establishments*;

xi. Section 21.07.130, *Exterior Lighting*; and

xii. Subsection 21.08.050D., *Interior Streets.*

c. Along with the application and documentation information required in I.5. below, the applicant must also submit the following information with regard to any proposed in-lieu standards.

i. Clear specification of the proposed in-lieu standards, and the title 21 standards for which the proposed in-lieu standards are a substitute. Any title 21 standards that are not replaced with approved in-lieu standards shall apply in the PCD district.

ii. A statement of why compliance with title 21 standards would interfere with the goals, purposes, or functions of development in the proposed PCD district.

iii. A demonstration of how the proposed in-lieu standards would be at least as effective as the title 21 standards in fulfilling the intents and purposes of title 21, and furthering the goals and policies of the comprehensive plan, including any applicable neighborhood or district plans.

iv. A statement of the expected benefits of the proposed in-lieu standards.

d. The planning and zoning commission may recommend approval, and the assembly may approve a rezone to the PCD district with in-lieu standards if they find that the in-lieu standards will result in development that is compatible with the intents and purposes of title 21 and the goals and policies of the comprehensive plan, and do not compromise public health, safety, or welfare.

5. **Application and Documentation**
Applications for rezoning to a PCD district shall contain the information specified in the title 21 user's guide, and the following:

a. If proposing in-lieu standards for subsection 21.07.020C., *Steep Slope Development*, the information required in subsection 21.07.020C.;

b. Development Areas: a PCD district that proposes to segregate differing land uses and/or different project phases shall provide and maintain a map that clearly distinguishes the boundaries of each development area. The development areas shall be identified with an alpha, numeric, or alphanumeric coding system to allow for easy identification of each area. Different in-lieu standards may be proposed for each development area.

c. Table of allowed uses and use definitions:

i. The PCD district shall establish a table of allowed uses and a table of accessory uses. The table shall be formatted in the same manner as the tables depicted in chapter 21.05 listing the land use, and if development areas are proposed, noting each with its designated land uses. The table abbreviations set forth at 21.05.010A. shall be used.

ii. The land uses listed in the table of allowed uses or the table of accessory uses shall be defined in chapter 21.05, or the PCD district shall provide a use definition for those uses not listed in sections 21.05.020 through 21.05.080.

d. Dimensional standards and measurements:

i. The PCD district shall establish a table of dimensional standards. The table shall be formatted in the same manner as the tables depicted in chapter 21.06 listing the dimensional standards, and if development areas are proposed, noting each with its designated dimensional standards.

ii. Unless specifically provided otherwise (see subsection I.4. above), the measurements and exceptions section 21.06.030 shall apply.

6. Relationship to Other Requirements

When there is a conflict between the PCD district requirements and other requirements of this title, the PCD district requirements control. The specific requirements of this title apply unless the PCD district provides other requirements for the same specific topic.

7. Changes to an Approved PCD District

a. ***Approval by Assembly***

Approval of a zoning map amendment in accordance with section 21.03.160 is required for the following amendments to the PCD district:

i. Any increase in the total number of authorized dwelling units;

ii. Any decrease in the total open space acreage;

iii. Any increase in the total gross building area of commercial or industrial structures;

iv. Any addition or deletion of any permitted principal use, conditional use, or accessory use;

v. Any changes in the development standards;

vi. Any density transfer between development areas that will result in a 25% or greater cumulative increase or decrease in the number of dwelling units in any development area; or

vii. Any change in the acreage of a development area equal to or more than 25% of the total acreage of the development area.

b. ***Approval by the Planning and Zoning Commission***

Approval by the planning and zoning commission is required for the following amendments to the PCD district:

i. Any density transfer between development areas that will result in a cumulative increase or decrease of more than 10% but less than 25% in the number of dwelling units in any development area; or

ii. Any change in the acreage of a development area of more than 10% but less than 25% of the total acreage of the development area.

c. ***Approval by the Director***
Approval by the director is required for the following amendments to the PCD district:

i. Any density transfer between development areas that will result in a cumulative increase or decrease of 10% or less in the number of dwelling units in any development area; or

ii. Any change in the acreage of a development area of 10% or less of the total acreage of the development area.

21.03.170 SIGN PERMITS

A. Applicability

No person shall erect, locate, move, alter, or replace any sign or cause a sign to be located or maintained, unless all applicable provisions of this section and chapter 21.11, *Signs*, have been met.

B. Approval Requirements for Signs

Proposed signs shall be required to receive a permit from the building official as set forth in the table below.

TABLE 21.03-3: SIGN PERMIT REQUIREMENTS

	Permit required by Title 21	No permit required by Title 21; permit may be required by Title 23
Sign Plate		X
Permanent Building Sign	X	
Permanent Freestanding Sign	X	
Entrance/Exit		X
Instructional		X
Temporary – on a parcel		X
Temporary – for a business		X
Construction signs		X
Temporary for any Residential Unit		X

C. Application Submittal

An application for a sign permit shall be made to the building official on the form provided. When any person other than the owner of the property submits a sign application, the owner of the property or a designated agent for the owner shall also sign such application.

D. Review and Approval

Sign permit applications shall be reviewed and approved pursuant to the procedure outlined in 21.03.100C.2, *Approval Procedure (for Land Use Permits)*.

E. Appeals

1. Denial of a sign permit relating to title 21 compliance may be appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.

2. Denial of a sign permit relating to title 23 compliance may be appealed to the building board of examiners and appeals.

21.03.180 SITE PLAN REVIEW

A. Purpose

The purpose of the site plan review process is to ensure compliance with the development and design standards and provisions of this title, and to encourage quality development in the municipality reflective of the goals, policies, and objectives of the comprehensive plan. For land uses requiring a site plan review, such uses may be established in the municipality, and building or land use permits may be issued, only after a site plan showing the proposed development has been approved in accordance with the procedures and requirements of this title.

B. Administrative Site Plan Review

1. **Applicability**
Land uses requiring administrative site plan review are identified in section 21.05.010, *Tables of Allowed Uses*.

2. **Procedure**

a. ***Application Submittal***
Applications for an administrative site plan review shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

b. ***Departmental Review and Director's Action***
The department shall review each proposed administrative site plan application in light of the approval criteria of subsection E. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the director shall take final action on the site plan application and approve, approve with conditions, or deny the application. The department's review and the director's action, including referral to other agencies and bodies, shall be completed within 60 days of verification of a complete application.

c. ***Appeals***
Denial of an administrative site plan may be appealed to the urban design commission, in which case it shall be treated as a major site plan review application under subsection C. below.

C. Major Site Plan Review

1. **Applicability**
Land uses requiring major site plan review are identified in section 21.05.010, *Tables of Allowed Uses*.

2. **Procedure**

a. ***Pre-Application Conference***
Before filing an application, the applicant shall request a pre-application conference with the director, in accordance with subsection 21.03.020B.

b. ***Application Submittal***
Applications for a major site plan review shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

c. ***Community Meeting***
A community meeting is required in accordance with subsection 21.03.020G.

d. ***Public Notice***
Notice of all public hearings shall be provided in accordance with subsection 21.03.020H.

e. ***Departmental Review***
The department shall review each proposed major site plan application in light of the approval criteria of subsection E. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the urban design commission.

f. ***Urban Design Commission Action***
The urban design commission shall hold a public hearing on the proposed application and act to approve, approve with conditions, or deny the proposed major site plan, based on the approval criteria of subsection E. below.

g. ***Appeals***
Denial of a major site plan may be appealed to the board of adjustment in accordance with subsection 21.03.050A.

D. **Expiration**

1. **General**
A site plan approval shall automatically expire at the end of 24 months after the effective date unless a building or land use permit for at least one building in the development proposed in the site plan is approved and construction has begun (see the definition of "start of construction" in chapter 21.14). A change in ownership of the property does not affect this time frame.

2. **Extension**

a. ***First Extension***
Upon written application submitted by the applicant at least 30 days prior to the expiration of the permit period and upon a showing of good cause, the director may grant one extension not to exceed 12 months. The approval shall be deemed extended until the director has acted upon the request for extension. Failure to submit an application for an extension within the time limits established by this section shall render the site plan approval void.

b. ***Further Extensions***
Upon written application submitted at least 30 days prior to the expiration of the previous extensions and upon a showing of good cause, the urban design commission, without a public hearing, may grant additional extensions, each one

not to exceed 12 months. The approval shall be deemed extended until the commission has acted upon the request for extension.

E. Approval Criteria

An application for administrative or major site plan review shall be approved upon a finding that the site plan meets all of the following criteria:

1. The site plan is consistent with any previously approved subdivision plat, planned development master plan, or any other precedent plan or land use approval;

2. The site plan complies with all applicable development and design standards set forth in this title, including but not limited to the provisions in chapter 21.04, *Zoning Districts*, chapter 21.05, *Use Regulations*, chapter 21.06, *Dimensional Standards and Measurements*, and chapter 21.07, *Development and Design Standards*;

3. The site plan addresses any significant adverse impacts that can reasonably be anticipated to result from the use, by mitigating or offsetting those impacts to the maximum extent feasible; and

4. The development proposed in the site plan is consistent with the goals, objectives, and policies of the comprehensive plan.

F. Platting for Site Plans

1. If development under an approval under this section will create a subdivision or requires the vacation of a dedicated public area, the approval is not effective until a final plat for the subdivision or vacation is approved and recorded in accordance with this title. A preliminary plat required under this section is subject to approval as required by section 21.03.200, *Subdivisions*.

2. Unless the authority granting approval directs in the approval that it shall act as the platting authority, the director is the platting authority for subdivisions under this subsection.

G. Amendments to Approved Site Plans

1. **Original Procedure Applies for Most Amendments**
Amendment of a site plan shall follow the same process required for the original approval of a site plan, unless the amendment is determined to be a minor amendment as described in subsection G.2. below.

2. **Administrative Approval of Minor Amendments**
The director may approve administratively minor amendments to any approved site plan upon written application and documentation by the applicant, and upon the director's determination that the amendment is a minor amendment.

   a. ***Procedure***

      i. Upon receiving a written request from the applicant for a site plan amendment, the director shall determine if the proposed amendment will be processed as a minor amendment or major amendment. The applicant may appeal the director's decision, in writing to the zoning board of examiners and appeals within 10 days of the decision.

ii. Immediately following the director's determination that a proposed amendment is minor, the director shall:

(A) Issue a minor amendment affidavit, which shall be transmitted to the urban design commission for their information; and

(B) Attach a form stating the nature of the modification, date of approval, and bearing the signature of the director to the site plan mylar on file in the department.

iii. If the original approval had been recorded, the amended plan shall be recorded by the municipality at the applicant's expense.

b. ***Types of Minor Amendments***

The following are amendments which the director may reasonably determine to be "minor":

i. Insubstantial changes to the text to add clarity or correct conflicting provisions.

ii. Changes in street alignment if such changes further the intent of the plan and this code, and are acceptable to the municipal engineer.

iii. Changes in building envelope, setback, and similar provisions of 10% or less.

iv. Incidental changes in landscaping, sign placement, lighting fixtures, etc. to further the intent of the plan and this code.

21.03.190 STREET AND TRAIL REVIEW

A. Purpose

Streets are a significant investment in the municipality's infrastructure and establish long-term land use impacts on nearby properties and the community at large. Streets and trails are not only utilitarian, but also convey the image of the municipality to all users. These important parts of the municipality's fabric benefit by oversight and concurrence in the design decisions by citizen bodies that are represented by the planning and zoning commission and the urban design commission.

B. Planning and Zoning Commission Review and Recommendation

1. **Applicability**

The planning and zoning commission shall review new construction and reconstruction street and intersection projects involving streets of collector classification or greater in the *Official Streets and Highways Plan*, and public trail projects involving all trails that are over one-half mile in length and any portion of which utilizes publicly-owned land, easements, or right-of-way.

2. **Review**

a. The planning and zoning commission shall review the design-study report or equivalent document, for all applicable street and trail projects, and shall issue a recommendation to the appropriate agency. A public hearing is not required but may be held at the commission's discretion.

b. As applicable, the commission's review of the project shall include but not be limited to:

i. Compliance with the comprehensive plan and its elements;

ii. Compliance with this title;

iii. Long-term impact on existing and projected adjacent land uses;

iv. Preferred route selection;

v. Short-term and long-term impact of property acquisition for right-of-way; and

vi. Impacts on utilities including undergrounding of overhead utilities.

c. The commission may request that subsequent design documents be returned to the commission for review. Any such requested design documents shall be presented to the commission at the earliest opportunity that permits any additional commission recommendations to be implemented in design revisions.

C. Urban Design Commission Review and Action

1. Applicability

The urban design commission shall review and approve all landscaping and streetscape and pedestrian facilities for streets of collector classification or greater in the *Official Streets and Highways Plan*, and for trail projects involving all trails that are over one-half mile in length and any portion of which utilizes publicly-owned land, easements, or right-of-way.

2. Review and Action

a. The urban design commission shall approve, approve with conditions, or reject the landscaping, streetscape, and pedestrian design plans at a stage no greater than 65% designed, for all applicable street and trail projects. A public hearing is not required but may be held at the commission's discretion.

b. As applicable, the commission's action shall be based on, but is not limited to, the following considerations:

i. Compliance with this title;

ii. Context of the area and the long-term impact on existing and projected adjacent land uses;

iii. Initial cost of materials including installation;

iv. Long term costs associated with operation and maintenance;

v. Adherence to a design theme established through local area plans or prior public improvements;

vi. Effectiveness in meeting community design goals; and

vii. Accommodation of pedestrians.

c. The commission may request that subsequent design documents be returned to the commission for review. Any such requested design documents shall be presented to the commission at the earliest opportunity that permits any additional commission recommendations to be implemented in design revisions.

3. Appeal

Decisions may be appealed to the planning and zoning commission, which shall be required to hold a public hearing only if the urban design commission did not hold a public hearing.

21.03.200 SUBDIVISIONS

A. Purpose

The purpose of the subdivision review process is to ensure compliance with the subdivision standards and requirements set forth in chapter 21.08, *Subdivision Standards*, which are designed to ensure quality development in the municipality consistent with the comprehensive plan.

B. Applicability

1. General

The procedures of this section, and the standards and requirements set forth in chapter 21.08, *Subdivision Standards*, shall apply to all subdivisions or resubdivisions that result in the portioning, dividing, combining, or altering of any lot, parcel, or tract of land, including subdivisions or resubdivisions created by an exercise of the power of eminent domain by an agency of the state or municipality. All subdivisions applications shall be reviewed according to the process set forth in subsection C. below, unless they qualify for the abbreviated plat procedure.

2. Abbreviated Plat

Certain subdivisions may follow the streamlined procedure set forth in subsection D. below. Eligible preliminary plats are those plats where the applicant is not an agency of the municipal, state, or federal governments, and are:

a. A movement or elimination of lot lines that does not:

i. Result in an increase in the permitted density of residential units within the area being subdivided or resubdivided.

ii. Allow a change in the permitted use to which the lot or tract may be devoted under existing zoning.

iii. Deny adequate access to and from all lots or tracts created by the subdivision or those adjacent to it.

b. The subdivision of a single tract, parcel, or lot into no more than three tracts or eight lots, provided that the subdivision does not:

i. Allow a change in the permitted use to which the lot or tract may be devoted under existing zoning.

ii. Deny adequate access to and from all lots or tracts created by the subdivision or those adjacent to it.

iii. Divide a tract, parcel or lot:

(A) Created within the previous 48 months pursuant to the approval of a preliminary plat under this section;

(B) Contiguous to or having an owner either in an individual capacity or as an owner of a corporation, partnership, or other legal entity of a preliminary plat approved within the previous 48 months; or

(C) That is 10 acres or more in the R-6, R-7, R-8, R-9, and R-10 zoning districts or that is governed by AO 84-21 (G-5 areawide rezoning).

c. Vacations and relocations under section 21.03.230.C.1.

d. Subdivision of a cemetery into burial plots.

e. A plat required by section 21.03.080F. for approval of a conditional use, or section 21.03.180F. for approval of a site plan.

f. A plat depicting the creation of two attached single-family lots.

3. **Subdivision Approval is Prerequisite to Other Approvals**

a. No building permit, land use permit, certificate of zoning compliance, or certificate of occupancy may be issued for any building, structure, or improvement located within a subdivision, and no plat for a subdivision may be recorded with the state of Alaska, until all required dedications of land have been made, and all required improvements have been installed in accordance with the procedures and requirements of this section, or an approved subdivision agreement is in place pursuant to section 21.08.060, *Subdivision Agreements*.

b. The municipality shall not accept or maintain any street, and shall not extend or connect any street lighting, water service, or sanitary sewer service to any subdivision of land, until and unless a plat for the subdivision has been approved and recorded in accordance with the requirements set forth in this section.

4. **Restriction on Sale or Transfer of Subdivided Land Without Approved Plat**

Any person who transfers or sells any land located within the municipality by reference to a plat that has not been approved by the municipality and recorded by the state of Alaska shall be guilty of a violation of this title. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The municipality also may enjoin such transfer or sale by filing an action for an injunction.

5. **Existing Lots of Record**

No provision of chapter 21.08, *Subdivision Standards,* applies to any lot of record in a subdivision legally created and filed before the effective date of this title, unless the lot is further subdivided or resubdivided.

C. Review and Approval of Subdivision Plans

1. **Applicability**

This section shall apply to all subdivisions not meeting the eligibility criteria for the abbreviated plat procedure.

2. Pre-Application Conference

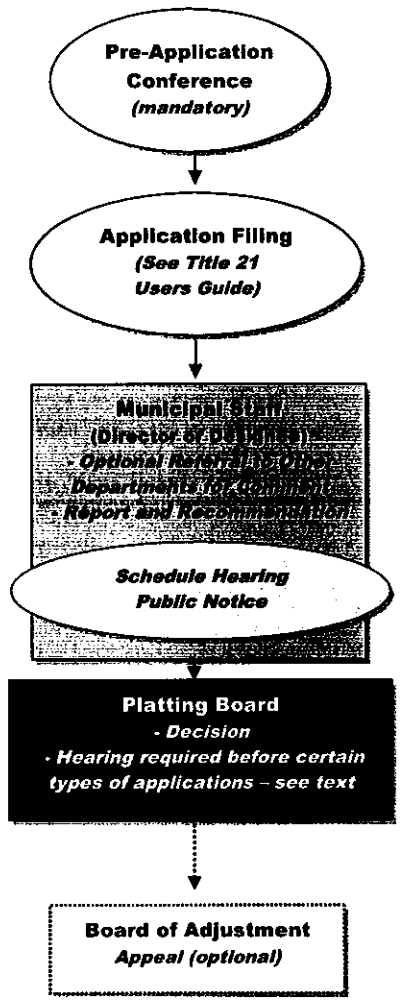
Before filing an application for a new subdivision or a modification of an already-approved subdivision, the applicant shall request a pre-application conference with the director, in accordance with subsection 21.03.020B.

3. Application Submittal

a. Unless waived by the director, a preliminary plat shall include all land under contiguous ownership, unless separate legal descriptions exist as a matter of record. If only a portion of the land is intended for immediate development, the remaining portion shall be given a tract number and shall be part of the preliminary and final plat. Requirements for surveying this remaining tract may be waived at the discretion of the municipal surveyor. By plat note, development shall not be allowed on the remaining tract until approved under this section.

b. Applications for a preliminary plat shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

c. For subdivision plats that have A or B wetlands, the applicant shall have initiated corps of engineers wetland permitting prior to submitting the preliminary plat.



Preliminary Plat

4. Community Meeting

A community meeting is required in accordance with subsection 21.03.020G.

5. Public Notice

Notice of all public hearings shall be provided in accordance with subsection 21.03.020H.

6. Departmental Review

The department shall review each proposed preliminary plat in light of the approval criteria of subsection C.9. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the platting board.

7. Action on Preliminary Plat

a. ***Platting Authority***

The platting board is the platting authority for preliminary plats, except as provided in subsection 21.03.080F. for conditional uses, and subsection 21.03.180F. for site plans.

b. ***Action by Platting Authority***

Subject to paragraph 7.c. below, the platting authority shall, based on the approval criteria of subsection C.9. below, take action on the preliminary plat

within 90 days after the submittal date, or shall return the plat to the applicant for modification or correction. The reasons for denial of a plat shall be stated in the records of the platting authority.

c. ***Referral to Other Agency***

If the platting authority finds that:

i. It cannot determine whether a preliminary plat conforms to the approval criteria of subsection C.9. below, because a specific controlling land use, public facility, or other public policy issue has not been resolved; and

ii. An official board, commission or legislative body of the municipality or another government has been identified as being responsible for resolving that issue;

then, upon a majority vote, the platting authority may refer the issue to the responsible official, board, commission, or legislative body and postpone action on the plat for a period not exceeding 90 days or to its next regular meeting after the responsible official, board, commission, or legislative body responds to the referral, whichever occurs first.

d. ***Public Hearing***

The platting authority shall hold a public hearing before action on the following types of subdivision applications:

i. Approval of a preliminary plat, except applications allowed to use the abbreviated plat procedure;

ii. Approval of a final plat that differs from the preliminary plat (see section 21.03.200C.8.b.);

iii. Modification or deletion of a condition of plat approval;

iv. Granting of a variance from the provisions of chapter 21.08, *Subdivision Standards*; and

v. Vacation of dedicated right-of-way; BLM and section line easements; or platted landscape, drainage, slope, or protective well radii easements.

e. ***Approval Period; Time Extensions***

i. Notwithstanding any subsequent change in the subdivision regulations, zoning regulations, and zoning districts, the approval of the preliminary plat shall be effective:

(A) For at least 24 months and up to 60 months from the date of approval, when it pertains to a development of no less than 10 acres and includes a phasing plan. The length of the approval period shall be based upon the platting board's evaluation of the size, complexity, and phasing elements of the development.

(B) For 24 months from the date of approval when it pertains to a development of less than 10 acres or does not include a phasing plan.

ii. The preliminary plat shall become null and void after the approval period unless an extension of time is granted by the platting authority. A request for a time extension must be made in writing by the subdivider. The extension request must be received by the director prior to the expiration of the preliminary plat to be eligible for consideration by the platting authority.

iii. Such a time extension shall be granted only if the authority finds that current conditions are substantially the same as those that existed when the preliminary plat was originally approved. The director shall conduct the reevaluation for every extension request that does not raise the total time of extension for a particular plat beyond 24 months and present his or her findings to the authority. Every extension request that raises the total time of extension for a particular plat beyond 24 months shall be evaluated in the same manner as an original plat application, including payment of the applicable fee.

iv. Only two time extensions may be approved for a preliminary plat approved by the platting authority. Approval of the second extension shall require a noticed public hearing.

v. Preliminary plats being finalized in portions or phases shall not be construed to automatically extend the original approval period. Such an extension may only be granted by the platting authority in accordance with the procedures set out in this subsection.

f. ***Appeals***
All decisions as to approval or denial of a preliminary plat by the platting authority shall be final unless appealed to the board of adjustment.

g. ***Resubmittal Following Denial***
No new application for the same or substantially the same preliminary plat shall be accepted by the platting authority within one year of denial of the original application. The waiting period required by this section may be waived in an individual case, based upon new evidence or changed circumstances, by the affirmative vote of a majority of the platting authority.

8. Final Plat

a. ***Procedure When Final Plat Corresponds to Preliminary Plat as Approved***

i. A hearing on the final plat shall not be required when such plat essentially conforms to the preliminary plat approved by the platting board. The final plat shall, in addition, meet all conditions imposed by the board in approving the preliminary plat.

ii. The final plat map shall constitute only that portion of the approved preliminary plat that is proposed to be recorded and developed at the time. If only a portion of the approved preliminary plat is proposed for final plat approval, such portions shall conform to all requirements of this section and chapter 21.08, *Subdivision Standards.*

iii. The following procedure shall be followed for the final plat:

(A) The final plat shall be submitted to the department for examination as to compliance with all terms of the preliminary

plat as approved by the platting authority. If all conditions have been met, a statement to that effect, appearing on the final plat, shall be signed by the platting authority. The final plat shall not be signed until the documents described in paragraph a.iv. and a.v. below have been received.

(B) Upon acceptance of the final plat, the department shall forward the final plat to the project management and engineering department for final checking and inspection before final approval is given. If requested, a subdivision survey shall be submitted to the project management and engineering department with a complete set of field and computation notes showing the original or reestablished corners of the plat and of lots within the plat. Traverse sheets and work sheets showing the closure within the allowable limits of error of the exterior boundaries of each irregular block and lot of the subdivision may also be required. Final approval by the project management and engineering department shall be indicated by a statement appearing on the plat.

iv. Final approval by the platting board shall be dependent upon receipt of the following material:

(A) A statement from the development services department stating that all conditions imposed by the department on the preliminary plat and approved by the platting board have been met. This approval by the development services department shall not affect any subsequent requirements relating to sewage disposal and water supply as they apply to any lots within the plat.

(B) A certificate from the tax collecting official or a note on the face of the plat stating that all municipal real property taxes levied against the property are paid in full, or, if approval is sought between January 1 and the tax due date, that there is on deposit with the chief fiscal officer an amount sufficient to pay estimated real property tax for the current year.

(C) A certificate to plat showing the legal and equitable owners, including mortgagees, contract purchasers and fee owners, of the land to be platted, plus all grants, reservations, covenants, deed restrictions, and easements of record which may condition the use of the property.

v. If the subdivision is to be served by a community water or sewer system, the development services department may require the subdivider to provide the following before the platting board finally approves the plat:

(A) Any approvals or certificates required by the state departments of environmental conservation and natural resources.

(B) An agreement under the standards and procedures set out in section 21.08.060, *Subdivision Agreements*, to ensure that the system installed will be compatible with existing public water and sewer systems.

(C) Approval of the plans, specifications, and installation and operating procedures for the system by the municipal water and wastewater utility pursuant to chapter 21.08, *Subdivision Standards,* and regulations promulgated thereunder.

vi. Final plats affecting land neither supplied, nor under subdivision agreement to be supplied, both with public water and public sewer, shall be submitted to the development services department for a determination that all lots and proposed water and wastewater facilities conform to AMC chapter 15.65 at the time of determination.

b. ***Procedure When Final Plat Differs from Preliminary Plat***
When the final plat differs from the preliminary plat, the plat shall be considered a new application for preliminary plat approval under this subsection C., except that all decisions as to approval or denial of this plat by the platting board as submitted under this section shall be final unless appealed to superior court.

c. ***Requirements for Final Plat***
The final plat shall be prepared to the technical specifications, and shall be accompanied by appropriate supporting materials, as specified in the title 21 user's guide.

d. ***Subdivision Agreements and Cost Estimates***
All final plats requiring public improvements, except those requiring monumentation only, shall be accompanied by a subdivision agreement between the subdivider and the municipality and an engineer's estimate of the cost of all required public improvements. Requirements for such an agreement are further described in section 21.08.060, *Subdivision Agreements*.

e. ***Notes, Restrictions, and Covenants***
The platting board may place such conditions upon granting of final plat approval as are necessary to preserve the public welfare in accordance with the subdivision regulations. (See section 21.03.020M.) When such a condition of approval entails a restriction upon the use of all or part of the property being subdivided, a note specifying such restrictions shall be placed on the face of the plat. Such note shall constitute a restrictive covenant in favor of the municipality and the public and shall run with the land, enforceable against all subsequent owners. Any such restrictive covenant may be enforced against the subdivider or any subsequent owner by the municipality or by any specifically affected member of the public.

9. **Approval Criteria**
The platting board may approve a preliminary or final plat only if it finds that the plat conforms to chapters 21.06, *Dimensional Standards and Measurements*, 21.07, *Development and Design Standards*, and 21.08, *Subdivision Standards*, and, to the maximum extent feasible:

a. Promotes the public health, safety, and welfare;

b. Mitigates the effects of incompatibilities between the land uses or residential densities in the subdivision and the land uses and residential densities in the surrounding neighborhood, including but not limited to visual, noise, traffic, and environmental effects;

c. Provides for the proper arrangement of streets in relation to existing or proposed streets;

d. Provides for adequate and convenient open space;

e. Provides for the efficient movement of vehicular and pedestrian traffic;

f. Ensures adequate and properly placed utilities;

g. Provides access for firefighting apparatus;

h. Provides opportunities for recreation, light, and air, and avoids congestion;

i. Facilitates the orderly and efficient layout and use of the land;

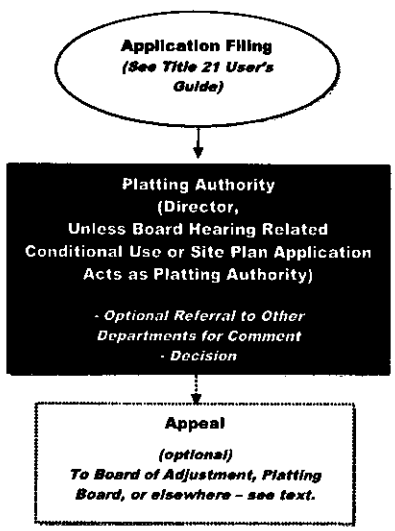
j. Does not create a split-zoned lot; and

k. Furthers the goals and policies of the comprehensive plan and conforms to the comprehensive plan in the manner required by section 21.01.080, *Comprehensive Plan.*

D. Abbreviated Plat Procedure

1. Authorization

Except for preliminary plats where the applicant is an agency of the municipal, state, or federal governments, the preliminary plats described in subsection B.2.b. above are subject to approval under the abbreviated procedure in this subsection instead of the procedure in subsection C. above. Preliminary plats described in B.2.b., where the applicant is an agency of the municipal, state, or federal governments, are subject to approval under the procedure in subsection C. above.



Abbreviated Plats

2. Application Submittal

Applications for abbreviated plats shall contain all of the submittal requirements that are listed in the title 21 user's guide. Applications shall be submitted to the director on a form provided by the department.

3. Public Notice

Before acting on an abbreviated plat application under this section, the director shall provide notice in accordance with section 21.03.020H.

4. Action on Plat

a. ***Platting Authority***

The director is the platting authority for abbreviated plats, except as provided in section 21.03.230 for vacation or relocation of certain dedicated public areas. The director may refer any application to the platting board that he or she deems may need further or more extensive analysis and public comment concerning access into adjacent property.

b. ***Review and Decision***
The platting authority shall review each proposed subdivision in light of the approval criteria of subsection C.9. above and shall consult other municipal offices or agencies as necessary. Based on the results of that review, the platting authority shall act to approve, approve with conditions, or deny the plat.

c. ***Variances***

i. When acting as the platting authority under this section, the director may not grant variances from the provisions of chapter 21.08, *Subdivision Standards*.

ii. When acting as the platting authority under section 21.03.080F., *Platting for Conditional Uses*, or 21.03.180F., *Platting for Site Plans*, the board or commission hearing an application for conditional use or site plan approval may grant variances from the provisions of chapter 21.08, *Subdivision Standards*, in accordance with section 21.03.240, *Variances*.

d. ***Duration of Preliminary Approval***
Abbreviated plat approval expires after 24 months; provided that the board hearing an application for conditional use or site plan approval may extend the expiration of abbreviated plat approval in conjunction with extending the time for implementing the conditional use or site plan.

e. ***Time Extensions***
The abbreviated plat shall become null and void after the preliminary approval period unless an extension of time is granted by the director. A request for a time extension must be made in writing by the subdivider. Such a time extension shall be granted only if the director finds that current conditions are substantially the same as those that existed when the preliminary plat was approved. Only one extension of no more than 24 months may be approved.

f. ***Appeals***
Decisions of the director under this section are final unless appealed within 15 days to the platting board, in which case the appeal shall be treated as an application for preliminary plat approval pursuant to subsection 21.03.200C.

g. ***Approval of Final Plat***
A final plat submitted pursuant to the approval of an abbreviated plat under this section is subject to approval in accordance with subsection C.8. above, provided that the municipal surveyor may waive a field survey for a final plat that merely eliminates interior lot lines.

E. Commercial Tract Plats

1. Applicability
A commercial tract may be created and divided into fragment lots in order to facilitate construction of commercial developments requiring multiple phases of construction. Designation of commercial tracts shall be allowed only in the B-3, RO, NMU, CMU, RMU, MT-1, MT-2, I-1, I-2, PCD, MC, and MI zoning districts.

2. Platting Authority
The urban design commission shall be the platting authority for a commercial tract whose site plan includes a large commercial establishment. The platting board shall be the platting authority for all other commercial tracts.

3. Review, Approval, and Modification of Commercial Tract Plats

a. *Application Submittal*

Applications for a commercial tract plat shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department. An application for approval of a commercial tract shall be signed by the owners of the property involved.

b. *Action by Platting Authority*

i. The platting authority shall act upon the application for approval of a commercial tract whose site plan includes a large commercial establishment as part of the major site plan review for the large commercial establishment under subsection 21.03.180C.

ii. Except as provided in E.3.b.i. above, the platting authority shall act upon the application for commercial tract approval following the review and approval procedures of a preliminary plat in accordance with subsection 21.03.200C.7.

c. *Recording of Site Plan*

Upon approval of a commercial tract under subsection E.3.b. above, the director shall, after notice to the petitioner, record the commercial tract site plan as approved, together with any declarations, covenants, and restrictions, with the district recorder's office.

d. *Conformance with Site Plan*

It shall be unlawful for any person to construct, erect, or maintain any structure, building, fence, or improvement, including landscaping, parking, and other facilities, on property designated as a commercial tract, unless such improvements are constructed or reconstructed in a manner consistent with the approved commercial tract site plan.

e. *Alteration of Boundaries*

The process for amending or altering the boundaries of an approved commercial tract shall be the same process as that of the original approval of the commercial tract plat.

f. *Amendment of Site Plan*

Any amendment or alteration of an approved commercial tract site plan shall be made only upon approval of the platting authority as provided in this section.

4. Division of Tract

The owner of a commercial tract may divide the tract into fragment lots provided that such division is consistent with the approved commercial tract site plan and recorded declarations, covenants, and restrictions applicable to the commercial tract. Any property description used to divide an area of the commercial tract into a fragment lot shall not be considered a lot or tract under the terms of this title or title 23, but shall be otherwise a lawful lot or tract. Any fragment lot created under this section shall contain the minimum area, width, and depth otherwise required for lots in the zoning district in which the fragment lot is located.

F. Right-of-Way Acquisition Plat

1. Generally

A plat for a subdivision created by a government agency's acquisition of a street or trail right-of-way is subject to approval under this section and is not subject to any other approval procedure for plats under this title.

2. Application Submittal

Applications for a right-of-way acquisition plat shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

3. Applicability of Requirements

a. A right-of-way acquisition plat is not subject to section 21.08.050, *Improvements*.

b. Survey requirements for a right-of-way acquisition plat shall be established by agreement between the municipal surveyor and the government agency applying for plat approval, or, if there is no such agreement, by the provisions of this title.

4. Action

a. ***Platting Authority***

The director shall act as the platting authority unless the government agency applying for plat approval requests a public hearing before the platting board.

b. ***Duration of Approval***

The preliminary approval of the right-of-way acquisition plat shall be for a period of 60 months; provided, however, that the director may grant an extension of time for filing the final plat upon a finding that it is in the public interest to do so.

c. ***Appeals***

All decisions of the director under this section shall be final unless appealed to the platting board within 15 days. An appeal under this subsection shall be treated as an application for preliminary plat approval pursuant to section 21.03.200C.

5. Requirements for Final Plat

Requirements for final right-of-way acquisition plats shall be established by agreement between the director and the government agency applying for plat approval, or, if there is no such agreement, by the provisions of this title.

G. Modification or Removal of Plat Notes

1. Purpose

This section sets forth a process by which the platting board may modify or remove plat notes from recorded plats.

2. Initiation

Applications for modifying or removing a plat note(s) may be initiated by the owner(s) of land encumbered by the plat note. If the applicable plat note encumbers more than one lot, the owners of all encumbered lots shall be a party to the application.

3. **Application**
Applications for modifying or removing a plat note(s) shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

4. **Public Notice**
Notice of all public hearings shall be provided in accordance with section 21.03.020H.

5. **Departmental Review**
The department shall review the proposed modification or removal of a plat note(s) in light of the approval criteria of subsection G.9. below and distribute to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the platting board.

6. **Action by the Platting Board**
The platting board shall hold a public hearing on the proposed application and act to approve, approve with alterations, or deny the proposed modification or removal of a plat note(s), based on the approval criteria of subsection G.9. below.

7. **Recordation**
Once approved by the platting board, a plat with modified or deleted plat notes shall be re-recorded in accordance with the procedures of the district recorder's office.

8. **Appeal**
Decisions on modifying or removing a plat note(s) may be appealed to the board of adjustment in accordance with subsection 21.03.050A.

9. **Approval Criteria**
Plat note modifications or deletions may be approved if the platting board finds that all of the following approval criteria have been met:

a. Conditions that required the plat note(s) on the original plat have changed and the need for the plat note has been negated;

b. Modification or removal of the plat note(s) will not have a negative impact on adjacent or nearby properties; and

c. Despite modification or removal of the plat note(s), the plat continues to meet the approval criteria of subsection 21.03.210C.9.

21.03.210 TITLE 21 – TEXT AMENDMENTS

A. Purpose and Scope

The assembly may amend the text of this title in accordance with the procedures set forth in this section. The purpose of text amendments is not to relieve particular hardships, nor to confer special privileges or rights on any person, but rather to make adjustments to text that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the municipality.

B. Procedure

1. Initiation

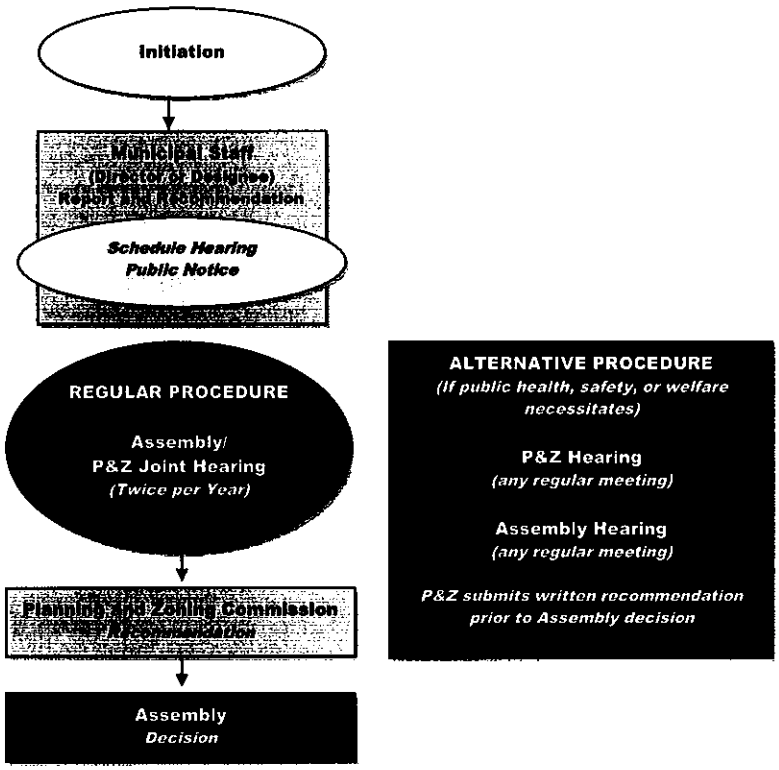
A petition for amendment to the text of this title may be initiated by any review or decision-making body.

2. Application Submittal

Petitions for text amendment shall be filed with the director in a form established in the title 21 user's guide.

3. Departmental Review

The department shall review each proposed text amendment in light of the approval criteria of subsection C. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission. A positive recommendation shall be accompanied by a draft ordinance reflecting the recommendation.



Amendments to Text of Title 21

4. Review by Other Boards or Commissions

a. Any text amendments proposed that amend the powers and duties of any board or commission shall be reviewed by that board or commission, which shall forward a recommendation to the assembly.

b. In addition, if any text amendments are proposed in chapter 21.08, *Subdivision Standards*, the platting board shall review such proposed amendments and forward a recommendation to the planning and zoning commission and the assembly.

5. Joint Public Hearing

a. Written and published notice of public hearings on text amendments shall be provided pursuant to the general notice provisions of section 21.03.020H.

b. Text amendments shall be considered two times per year at a joint public hearing of the planning and zoning commission and the assembly. However, where the assembly determines by a majority vote that the public health, safety, or welfare necessitates, text amendments may be considered at any regularly scheduled meeting of the assembly, provided that the assembly holds a public hearing on the proposed amendment and the planning and zoning commission holds a

public hearing and provides a written report and recommendation on the proposed amendment prior to the assembly's decision.

6. Planning and Zoning Commission Action

a. As soon as possible after the public hearing, but no later than 60 days, the planning and zoning commission shall make a recommendation to the assembly to approve or deny the text amendment based on the approval criteria of subsection C. below.

b. If the commission recommends approval of the amendment, the director shall submit the draft ordinance to the assembly.

c. If no recommendation is made within 60 days, then the planning and zoning commission may request an extension of time from the assembly. If no recommendation is made and no extension is granted, then the assembly may act on the proposed amendment without a recommendation from the planning and zoning commission.

7. Assembly Action

After reviewing the reports and recommendations of the director and the planning and zoning commission, the assembly shall vote to approve, approve with amendments, or deny the proposed amendment, based on the approval criteria of subsection C. below. The assembly also may refer the proposed amendment back to the planning and zoning commission or to a committee of the assembly for further consideration. Text amendments shall be approved in the form of ordinances.

C. Approval Criteria

Text amendments may be approved if the assembly finds that all of the following approval criteria have been met:

1. The proposed amendment will promote the public health, safety, and general welfare;

2. The proposed amendment is consistent with the comprehensive plan and the stated purposes of this title; and

3. The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions.

D. Successive Applications

Following denial of a text amendment request, no new application for the same or substantially the same amendment shall be accepted within one year of the date of denial. This provision may be waived in an individual case, for good cause shown, by the affirmative vote of two-thirds of the members of the assembly.

21.03.220 USE CLASSIFICATION REQUESTS

A. Purpose and Applicability

1. The use classifications set forth and defined in chapter 21.05, *Use Regulations*, describe one or more uses having similar characteristics, but do not list every use or activity that may fall within the classification. This section shall be used to determine all questions or disputes whether a specific use is deemed to be within a use classification permitted in a zoning district.

2. The provisions of this section shall not apply to permit any specific use that is expressly prohibited in a zoning district.

B. Procedures for Use Classification Request

The procedure for an application to determine a use classification shall be as follows:

1. **Application Submittal and Action**
An application for a use classification shall be submitted to the director on a form provided by the department. Within 30 days from the date a complete application is submitted, the director shall review the application according to the standards set forth in this section; consult with the municipal attorney and other staff, as necessary; and make a final determination as to whether the subject use shall be deemed to be within a use classification set forth in this title and whether such use shall be allowed in the applicable zoning district.

2. **Appeals**
Appeals from the director's determination on a use classification request shall be made to the zoning board of examiners and appeals, pursuant to section 21.03.050B.

3. **Form of Determination**
All final determinations by the director shall be provided to the applicant in writing and shall be filed in the official record of use classification determinations.

C. Standards for Review

In evaluating a use classification request, the director shall consider whether the proposed use has an impact that is similar in nature, function, and duration to the other uses allowed in a specific zoning district. The director shall give due consideration to the intent of this title concerning the district(s) involved, the character of the uses specifically identified, and the character of the use(s) in question. The director shall assess all relevant characteristics of the proposed use, including but not limited to the following:

1. The primary activity of the establishment and its relationship to existing use categories and use types. The primary activity may be the principal product or group of products produced or distributed, or services rendered. It may be the share of production costs, capital investment, revenue, shipments, or employment, if evaluating the relative significance of multiple activities;

2. The volume and type of sales (retail or wholesale) on the premises, and the size and type of items sold and nature of inventory on the premises;

3. Any processing done on the premises, including assembly, manufacturing, final production, warehousing, shipping, and distribution;

4. Any dangerous, hazardous, toxic, or explosive materials used in the processing on the premises;

5. The nature and location of storage and outdoor display of merchandise (enclosed, open, inside or outside the principal building); and predominant types of items stored (such as business vehicles, work-in-process, inventory and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders);

6. The type, size, height, and nature of buildings and structures;

7. The number and density of employees and customers per unit area of site in relation to business hours and employment shifts;

8. Transportation requirements, including the modal split for people and freight, by volume type and characteristic of traffic generation to and from the site, trip purposes, and whether trip purposes can be shared by other uses on the site;

9. Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses;

10. The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes;

11. Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water output, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities; and

12. The impact on adjacent properties created by the proposed use will not be greater than that of other uses in the zoning district.

D. Effects of Findings by the Director

1. Typical Uses: Amendment to this Title
If the director finds that the particular use or category of use(s) that was the subject of the use classification request is likely to be common or to recur frequently, or that omission from this title is likely to lead to public uncertainty and confusion, the director shall initiate an amendment to this title under section 21.03.210, *Title 21-Text Amendments*. The determination of the director shall be binding on all officers and departments of the municipality.

2. Atypical Uses: Determination Binding
If the director finds that the particular use or category of use(s) that was the subject of the use classification request is of an unusual or transitory nature, or is unlikely to recur frequently, the director may approve the use without initiating an amendment to this title. However, the director's determination shall thereafter be binding on all officers and departments of the municipality.

E. Official Record of Use Classification Determinations

An official record of use classification determinations and related zoning board actions shall be kept on file in the department and shall be available for public inspection in the department during normal business hours.

21.03.230 VACATION OF PUBLIC AND PRIVATE INTEREST IN LANDS

A. Authority

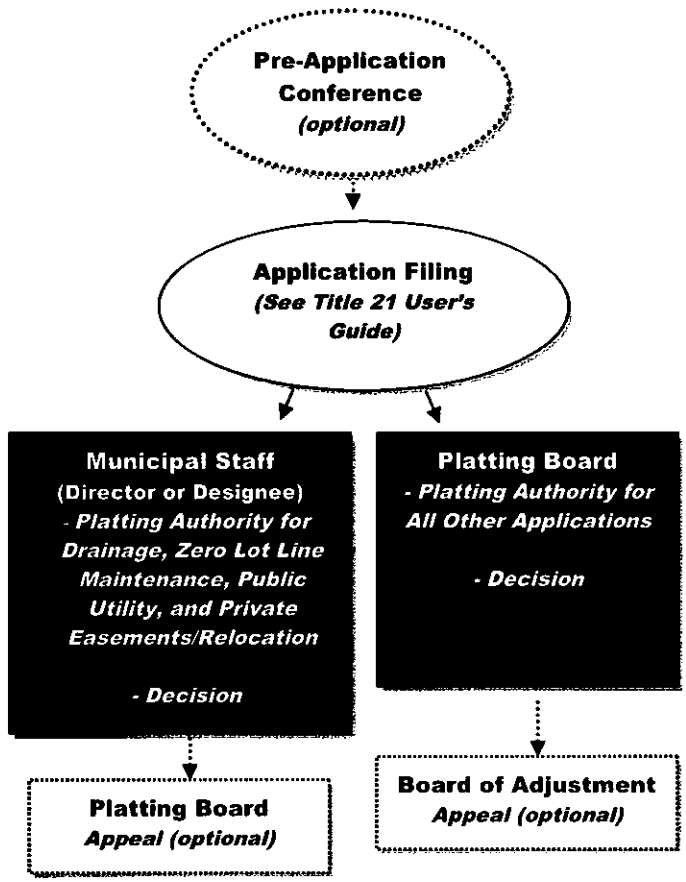
The platting authority shall consider the merits of each vacation request, and in all cases the platting authority shall deem the area being vacated to be of value to the municipality unless proven otherwise. The burden of proof shall lie entirely with the petitioner. The presumption contained herein does not apply to vacations of private easements where the beneficiaries have provided written concurrence.

B. Application Submittal

Applications for vacation requests shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

C. Decision-Making Responsibilities for Vacations

1. The director is the platting authority for applications to vacate the following platted interests:
   - a. Drainage easements granted under section 21.08.050M.
   - b. Zero lot line maintenance easements.
   - c. Public utility easements.
   - d. Private easements, but only upon the written concurrence of the beneficiaries.
   - e. Relocation of any of the above-described interests.
2. The platting board is the platting authority for all other applications to vacate a dedicated public area.



Vacation of Public and Private Interest in Lands

D. Action

The director or platting board shall take action on the vacation application within 60 days after the submittal date. The reasons for the approval of the vacation shall be stated upon the case record.

E. Approval Period

The approval of a vacation expires 24 months after the date of approval unless, before its approval expires, a conveyance of the vacated interest is approved in accordance with law and a final plat depicting the vacation is approved and filed in accordance with this title. A street right-of-way or easement whose vacation is finally approved under this section is a right-of-way or easement without substantial value to the municipality and is conveyed upon the filing of a final plat depicting the vacation.

F. Appeals

Appeals of the director's decision on a vacation under his or her jurisdiction shall be treated as an application for preliminary plat approval pursuant to section 21.03.200C. Appeals of the platting board's decision on a vacation under its jurisdiction shall be to the board of adjustment.

G. Title to Vacated Area

1. The title to the street or other public right-of-way vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that, if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square[1] is vacated, the title to it vests in the municipality.

2. If the municipality acquired the street or other public area vacated for legal consideration before the final act of vacation, the fair market value of the street or public area shall be deposited with the municipality. Title transferred under this subsection shall be warranted by the municipality in the same manner as it was received.

3. The provisions of paragraph G.1 of this section notwithstanding, the platting board may determine that all or a portion of the area vacated should be devoted to another public purpose and, if so, title to the area vacated and held for another public purpose does not vest as provided in paragraph G.1 but remains in the municipality.

21.03.240 VARIANCES

A. Purpose and Scope

The variance process is intended to provide limited relief from the requirements of this title in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the reasonable use of land in a manner otherwise allowed under this title. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this title may impose on property owners in general. Rather, it is intended to provide relief where the requirements of this title render the land difficult or impossible to use because of some unique physical attribute of the property itself. State and/or federal laws or requirements may not be varied by the municipality.

B. Decision-Making Bodies Authorized to Consider Variance Requests

1. The platting board shall be authorized to review and consider all requests for variances to standards of the following sections:

   a. Chapter 21.08, *Subdivision Standards*;

   b. Subsection 21.07.020C., *Steep Slope Development*; and

   c. Section 21.07.060, *Transportation, Connectivity, and Pedestrian Facilities*;

2. The planning and zoning commission shall be authorized to review and consider all requests for variances of standards of the following sections:

   a. Section 21.07.050, *Utility Distribution Facilities* ; and

b. Subsection 21.05.040K., *Telecommunication Facilities*.

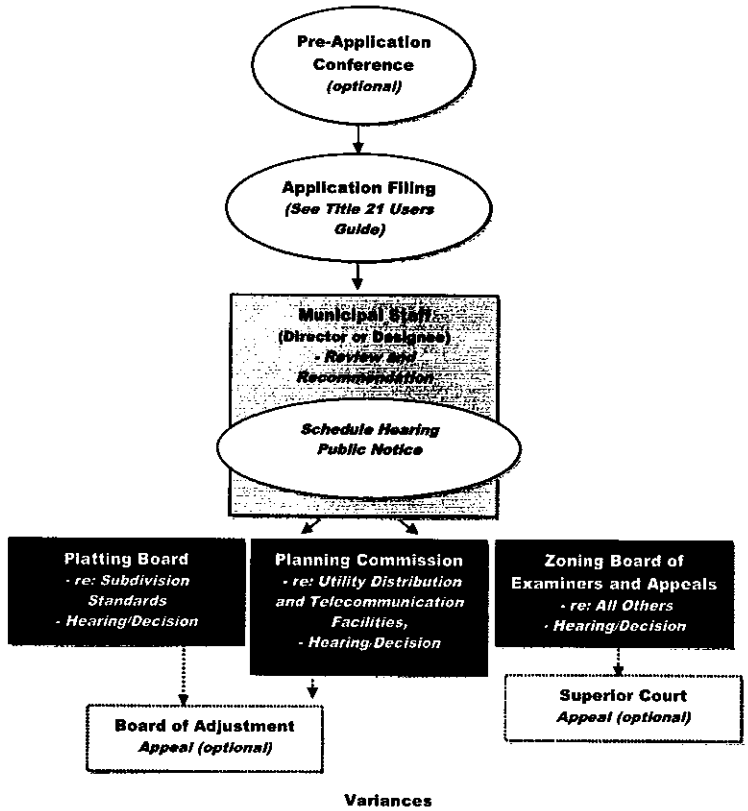
3. Requests for variances from the airport height zoning regulations set forth in section 21.04.060C. shall be referred to the Federal Aviation Administration.

4. The urban design commission shall be authorized to review and consider all requests for variances to standards of the following sections:

a. Chapter 21.11, *Signs*; and

b. Section 21.07.080, *Landscaping*.

5. The zoning board of examiners and appeals shall be authorized to review and consider variance requests from all other provisions of this title. The zoning board may only grant variances from dimensional standards. No variance may be granted from the definitions set forth in chapter 21.14.



Variances

C. Application Submittal

Applications for a variance shall contain the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

D. Public Notice

Notice of all public hearings shall be provided in accordance with section 21.03.020H.

E. Departmental Review

The department shall review each proposed variance in light of the approval criteria of subsection G. below and distribute to other reviewers as deemed necessary. Based on the results of those reviews, the department shall provide a report to the decision-making body.

F. Action by the Decision-Making Body

1. Once the application is complete, the director shall schedule the application for consideration at a public hearing, and shall transmit to the appropriate decision-making body all applications and other records pertaining to the variance prior to the hearing. Upon receiving the application materials from the director, the decision-making body shall hold a public hearing on the proposed variance.

2. In considering the application, the decision-making body shall review the application materials, the approval criteria of subsection G., and all testimony and evidence received at the public hearing.

3. After conducting the public hearing, the decision-making body may: deny the application; conduct an additional public hearing on the application; or grant the minimum required variance. Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the applicable criteria set forth in subsection G., stating the reasons for such findings. A concurring vote of a majority of the fully constituted membership of the entity, minus those excused by conflicts of interest, shall be required to grant a variance.

4. Under no circumstances shall the decision-making body grant a variance to allow a use not permitted in the zoning district containing the property for which the variance is sought.

5. Under no circumstances shall the decision-making body grant a variance from any written conditions attached by another decision-making body to the approval of a conditional use permit, subdivision plat, or site plan.

G. Approval Criteria

The application must state with particularity the relief sought and must specify the facts or circumstances that are alleged to show that the application substantially meets the following standards:

1. **Variances from this Title Other than the Subdivision Regulations or Airport Height Zoning Regulations**
   - **a.** There exist exceptional or extraordinary physical circumstances of the subject property including, but not limited to, streams, wetlands, or slope, and those circumstances are not applicable to other land in the same zoning district;
   - **b.** Because of these physical circumstances, the strict application of the code creates an exceptional or undue hardship upon the property owner, and strict interpretation of the provisions of the zoning ordinance deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance;
   - **c.** The hardship is not self-imposed, special conditions and circumstances do not result from the actions of the applicant, and such conditions and circumstances do not merely constitute inconvenience;
   - **d.** The variance, if granted, has no adverse affect on the use of adjacent or nearby property;
   - **e.** The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and granting the variance does not permit a use not otherwise permitted in the district in which the property lies;
   - **f.** The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality; and
   - **g.** The variance granted is the minimum variance that will make possible a reasonable use of the land.

2. Variances from Subdivision Regulations

a. There are special circumstances or conditions affecting the property such that the strict application of the provisions of the subdivision regulations would clearly be impractical, unreasonable, or undesirable to the general public;

b. The granting of the specific variance will not be detrimental to the public welfare or injurious to other property in the area in which such property is situated;

c. Such variance will not have the effect of nullifying the intent and purpose of the subdivision regulations or the comprehensive plan of the municipality; and

d. Undue hardship would result from strict compliance with specific provisions or requirements of the subdivision regulations. The applicant may supplement the form with supporting documents.

3. Variances from Airport Height Zoning Regulations

The Federal Aviation Administration shall complete an airspace determination that concludes that the proposed variance would not create a hazard.

H. Lapse of Approval

Any variance granted shall become null and void if:

1. The variance is not exercised within one year of the date it is granted, or

2. Any building, structure, or characteristic of use permitted by variance is moved or altered so as to enlarge the variance or discontinue it.

I. Appeals

1. An appeal from a decision of the platting board or the urban design commission shall be brought to the board of adjustment in accordance with sections 21.03.050A.

2. An appeal from a decision of the planning and zoning commission or the zoning board of examiners and appeals shall be brought in accordance with section 21.03.050C.

J. Administrative Variances from Occupancy Limits For Assisted Living Facilities

1. Intent

The intent of this section is to provide a procedure to allow persons with disabilities and assisted living providers to request reasonable accommodation from the department when access to decent safe, accessible and affordable housing with assisted living would not be available absent a reasonable accommodation. This administrative variance procedure is available to address application for minor variance in dimensional and setback requirements to accommodate special needs of persons with disabilities and to address application for variance in occupancy limits of no more than three persons.

2. Application

Application for minor variance in dimensional and setback requirements to accommodate special needs of persons with disabilities and application for variance in occupancy limits of no more than three persons shall be made to the director on a form provided by the department, shall be executed by or on behalf of the person with disabilities seeking the reasonable accommodation, or the owner of the real property, or the lessee with proof of

the owner's consent, and shall be complete in all respects prior to review under this section.

3. Public Notice Of Application For Variance In Occupancy Limits
Notice shall be provided in accordance with section 21.03.020H.

4. Time for approval
The department shall make a determination on an application within 60 days of submittal. Notification of approval or denial shall be posted electronically on the department's municipal web site and furnished in writing to the applicant by mail or delivered by electronic means.

5. Standards.
In deciding to approve or deny an application, the department shall review the application and written comments addressing factors relevant to the request for reasonable accommodation, including but not limited to, the extent to which the application demonstrates the following, as related to the particular request of the applicant:

a. For administrative variance applications to increase occupancy limits in R-1, R-1A, R-2A and R-2D districts, the extent to which the accommodation and the assisted living provider seek to protect and preserve the primarily residential character of the district. Factors may include traffic patterns, on-street parking patterns, the control exercised by the assisted living provider to mitigate environmental disturbance associated with ingress and egress of facility staff workers at shift change, and any other measures taken by the assisted living provider to ensure the commercial aspects of the facility do not detract from its residential purpose and the primarily residential character of the district. An example of a commercial aspect is if residential trash containers were standard in the neighborhood and the assisted living provider used one or more dumpsters due to volume. An example of a mitigation measure for this aspect the assisted living provider might take is to screen the dumpster.

b. For administrative variance applications to increase occupancy limits, economic hardship on the intended occupants if the variance is denied. Cost and availability of other housing alternatives may be addressed in preparation and review of the application.

c. Whether the requested accommodation and the assisted living provider are implementing accident prevention and safety measures specific to the needs of the residents, including but not limited to safety measures in state law and regulation, and in municipal fire code adopted under title 23.

d. Whether the accommodation requested is advancing housing opportunities for disabled individuals in a residential community without jeopardizing residential aspects of the neighborhood with commercial aspects of operation.

e. For administrative variance applications to increase occupancy limits, whether the proposed size of the facility is necessary for the facility's financial viability.

f. External characteristics and impacts of the proposed facility, including without limitation appearance, projected contribution to traffic volumes and on-street parking within the neighborhood, available street lighting and sidewalks.

g. Quantifiable risks to the health, safety, and quality of life of area residents and users.

h. Administrative and economic burden on the municipality, in either approval or denial of the variance.

i. Other factors deemed relevant to the applicant or the department in review of the application.

6. Conditions
In approving a variance, the department may impose reasonable conditions designed to address the standards in subsection J.5. or mitigate impacts created by the variance.

7. Appeal
All decisions of the department under this section shall be final unless an appeal is filed in a timely manner. Appeals of the decision to approve or deny a variance under this section shall be to the zoning board of examiners and appeals, pursuant to the provisions of subsection 21.03.050B., except an appeal may be brought by any person with standing to request reasonable accommodation under the Fair Housing Act, 42 U.S.C. § 3604(f).

21.03.250 VERIFICATION OF NONCONFORMING STATUS

A. Process

Owners of lots, uses, or structures that may not conform to the requirements of this title may request a verification of nonconforming status by filing an application with the director in accordance with this section. Owners of signs that do not conform to the requirements of this title shall comply with section 21.12.070, *Nonconforming Signs*.

1. The application shall be accompanied by documentation that establishes the approximate date that the lot, use, or structure was established; proof that the lot, use, or structure was lawfully established at the time it became nonconforming; and proof that the use has not been discontinued or abandoned, except as provided in subsection B. below. The director shall require additional information if deemed necessary to permit an accurate determination.

2. Such verifications shall run with the land, and their status shall not be affected by changes of tenancy, ownership, or management.

3. A verification of nonconforming status shall not be required for continued daily operation or maintenance of a nonconforming lot, use, or structure.

B. Exceptions

Notwithstanding subsection A. above:

1. Where the contention for nonconforming use is raised in a court in any action brought to enforce this title before an application for determination has been filed under this section, this section shall not be applicable and the court shall have jurisdiction to determine the issue.

2. Nothing in this section shall be construed to deprive the director the right to make a decision regarding a claimed nonconforming use or status as incident to a valid pending application for a land use permit.

C. Appeals

Denial of the director's decision on nonconforming status may be appealed to the zoning board of examiners and appeals pursuant to subsection 21.03.050B.

[1] PRD#2 NOTE: This provision is in state law. There is no definition of "public square" in state law.

Attachment 2

MUNICIPALITY OF ANCHORAGE

PLANNING AND ZONING COMMISSION RESOLUTION NO. 2008-034

A RESOLUTION RECOMMENDING ADOPTION OF TITLE 21 CHAPTER 3, REVIEW AND APPROVAL PROCEDURES.

(Case 2007-153)

WHEREAS, Anchorage Municipal Code Title 21 is being rewritten to implement recently adopted plans and policies, encourage more innovative development, infill, and redevelopment; to restructure and reformat the code for better usability; and to allow for more consistent interpretation and application; and

WHEREAS, Chapter 21.03 will not become effective until the remaining chapters of the Title 21 rewrite are passed; and

WHEREAS, adoption of the code in sections will be more manageable for the public and the decision-makers; and

WHEREAS, advertised public informational meetings were held on October 17 and 24, 2007; and

WHEREAS, the Planning and Zoning Commission held public hearings on November 5, 7, and 8, 2007; and

WHEREAS, Planning Department staff proposed a number of amendments responding to issues raised by the public and by Commission members; and

WHEREAS, the Commission deliberated on the issues of Chapter 21.03 at their meetings of March 17 and April 14, 2008.

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

A. The Commission makes the following findings of fact:

1. Adoption of the revised Title 21 will help implement the vision of Anchorage's comprehensive plans.

2. Chapter 21.03, *Review and Approval Procedures*, describes the various application, review, and approval processes for entitlements and other procedures of the Planning Department.

3. The amendments proposed by the Commission result in a more useful and clearer code with more efficient procedures.

4. Planning Department staff thoroughly researched the issues of the chapter, the Commission had a full and free discussion of the issues, and resolution was reached either through consensus or through action.

B. The Commission recommends that Chapter 21.03 be adopted with the amendments shown in Attachment A.

PASSED AND APPROVED by the Anchorage Planning and Zoning Commission this 14th day of April 2008.

Tom Nelson
Secretary

Toni M. Jones
Chair

Attachment A: Planning and Zoning Commission Recommended Amendments to Chapter 21.03

(2007-153)

Attachment A
to Planning and Zoning Commission Resolution No. 2008-034
Recommended Amendments for Chapter 21.03

1. Page 6, Section 21.03.020B.2.b., lines 2-4

   "Pre-application conferences are not required for the first change[S] to already-approved conditional use approvals [PERMITS], major site plans, and subdivision plans if the following conditions are met. Subsequent changes to these approvals require a pre-application conference.[:]"

2. Page 8, Section 21.03.020D.3., line 3

   "Fees are not subject to waivers [AND ARE NON-REFUNDABLE]."

3. Page 9, Section 21.03.020G.2.b., lines 23-24

   "The waiver shall be justified in writing, provided along with the verification of application completeness, and shall be included as part of the case record."

4. Page 10, Section 21.03.020G.6., lines 9-10

   "The applicant shall prepare a written summary of the community meeting(s), which shall be submitted to the director and the affected community council(s) no later than seven days after the date of the meeting."

5. Page 11, Table 21.03-1: Summary of Notice Requirements

   Add a row for "Master Plan, Area", Section "21.09.030E.", with check marks in all three columns.

   Add a row for "Master Plan, Development", Section "21.09.030F.", with check marks in all three columns.

   Add a new column titled "Community Council Notice." Add check marks to the following rows: "Alcohol—Special Land Use Permit", "Appeals to ZBEA", "Comprehensive Plan Amendments, Substantive", "Conditional Uses", "Master Plan, Area", "Master Plan, Development", "Master Plan, Institutional", "Neighborhood or District Plans", "Public Facility Site Selection (except schools)", "Rezonings (Zoning Map Amendments)", "Site Plan Review, Major", "Street and Trail Review", "Subdivisions (with existing physical access)", "Subdivisions (without existing physical access)", "Abbreviated Plats", "Modification or Removal of Plat Notes", "Title 21, Text Amendments", "Vacation of Public and Private Interest in Land", and "Variances".

6. Page 12, Section 21.03.020H.3.c., lines 11-36

Change section 3.c., *Community Councils*, into section H.6. Amend lines 11-14 to read, "Any officially recognized community council whose boundary includes any part of the subject property, and any additional such council whose boundary lies within 1,000 feet of any part of the subject property shall receive written (mailed) notice in accordance with H.3. above."

Amend lines 35-36 to read, "All community councils shall receive notice of substantive amendments to the comprehensive plan, neighborhood or district plans, street and trail review, and amendments to the text of title 21."

7. Page 14, Section 21.03.020L., line 14

"The applicant may request a postponement of his or her case for any other reason, which he or she shall state to the commission."

8. Page 16, Section 21.03.040A.2., lines 3-6

"Notwithstanding A.1. above, catering and special event permits issued by the state Alcoholic Beverage Control Board [, AND HELD NO MORE THAN 12 TIMES IN A CALENDAR YEAR AT THE SAME PHYSICAL LOCATION] are exempt from these approval requirements, but shall meet AMC title 10 requirements and the following:

a. When multiple permits are issued for the same location, the permits shall be for discreet events, and shall not be used to avoid the special land use permit process; and

b. The catering and special event permit shall be reviewed by the chief of police in order to address any recurring problems at the site that have involved the police."

9. Page 17, Section 21.03.040C.7., line 36

Add a new section b. as follows, and make the existing b. into c.: "The use holding the permit has been discontinued, vacant, or inactive for a continuous period of at least one year; or"

10. Pages 18-19, Section 21.03.050A.3.a., lines 26-37 and 1-2

"3. Notification of Decision and Appeal Filing

a. When the appellant is not the applicant, the director shall notify the applicant of the appeal.

b. Persons who wish to be notified of a decision by a land use board or commission and of any appeal filed on that decision, shall submit a form provided by the department to the director at any time before the end of the appeal period. The director shall cause the signed resolution or summary of action to be mailed to such persons on the date of service, and also notification of any appeals filed on that decision.

4. Appellees Before Board

   a. An appellee brief may be filed as provided in [SECTION] subsection A.8[7]. by:

      i. The party in whose favor the lower administrative body's decision was rendered.

      ii. Any municipal agency.

      iii. Any party of interest for the application, as defined in chapter 21.14.

   b. Persons who wish to become an appellee shall file a notice of intent to file a brief with the municipal clerk's office on a form prescribed by the municipal clerk, within 10 days after the end of the appeal period. The municipal clerk shall notify such persons of the date the record is available and of the date the appellant's brief is filed.

   [APPELLEES WHO WISH TO BE NOTIFIED BY THE MUNICIPAL CLERK'S OFFICE OF THE DATE THE RECORD IS AVAILABLE AND OF THE DATE THE APPELLANT'S BRIEF IS FILED MUST FILE A NOTICE OF INTENT TO FILE A BRIEF WITH THE MUNICIPAL CLERK'S OFFICE ON A FORM PRESCRIBED BY THE MUNICIPAL CLERK WITHIN 20 DAYS AFTER THE DECISION OF THE LOWER ADMINISTRATIVE BODY FROM WHICH THE APPEAL IS TAKEN. AN APPLICANT FOR A SITE PLAN, CONDITIONAL USE, OR SUBDIVISION, WHO IS NOT THE APPELLANT, MUST FILE A NOTICE OF INTENT TO FILE A BRIEF WITH THE MUNICIPAL CLERK'S OFFICE WITHIN SEVEN DAYS OF RECEIPT OF THE APPELLANT'S NOTICE OF APPEAL TO BECOME AN APPELLEE.]"

(Renumber remaining sections in 21.03.050A.)

11. Page 19, Section 21.03.050A.4.a., lines 4-8

"An appeal to the board of adjustment must be perfected by a party of interest for the application no later than 20 days from the date of service of the decision being appealed [THE WRITTEN FINDINGS OF FACT AND DECISION OF THE ADMINISTRATIVE BODY FROM WHICH THE APPEAL IS TAKEN IS APPROVED, ON THE RECORD, AND BECOMES A FINAL APPEALABLE DECISION, IS MAILED OR OTHERWISE DISTRIBUTED OR DELIVERED TO THE APPLICANT]."

12. Page 19, Section 21.03.050A.5., lines 23-26

"Allegations of new evidence or changed circumstances shall be raised by written motion for rehearing, filed with the municipal clerk no later than 20 days after the date of service of the decision of the lower administrative body['S INITIAL DECISION BECOMES FINAL]."

13. Page 19, Section 21.03.050A.5.a.i., lines 27-29

"The municipal clerk shall automatically reject any motion filed more than 20 days after the date of service of the decision of the lower administrative body['S INITIAL DECISION BECOMES FINAL], without hearing or reconsideration by the lower administrative body."

14. Page 21, Section 21.03.050A.7.c., lines 3-4

"The appellant's reply brief is due no later than 15 [10] days after the date the clerk's office sends notice, by certified mail, [SERVICE OF NOTICE] that the appellee briefs have been filed."

15. Page 21, Section 21.03.050A.10.c., lines 39-40

"The board of adjustment shall [, UNLESS IT SUBSTITUTES ITS INDEPENDENT JUDGMENT PURSUANT TO SUBSECTION D. BELOW,] defer to the judgment of..."

16. Page 22, Section 21.03.050A.10.d., lines 3-9

"[NOTWITHSTANDING THE PROVISIONS OF SUBSECTION 10.C. ABOVE, THE BOARD OF ADJUSTMENT MAY, BY AN AFFIRMATIVE VOTE OF TWO-THIRDS OF THE FULLY CONSTITUTED BOARD, SUBSTITUTE ITS INDEPENDENT JUDGMENT FOR THAT OF THE LOWER ADMINISTRATIVE BODY ON ANY DISPUTED ISSUES OR FINDINGS OF FACT. SUCH JUDGMENT MUST BE SUPPORTED ON THE RECORD BY SUBSTANTIAL EVIDENCE. FOR THE PURPOSE OF THIS SUBSECTION, THE FULLY CONSTITUTED BOARD OF ADJUSTMENT SHALL NOT INCLUDE THOSE MEMBERS WHO DO NOT PARTICIPATE IN THE APPEAL.]"

17. Page 22, Section 21.03.050A.12.a., lines 40-42

"If the board of adjustment remands a case to the lower administrative body, the board [A DECISION REMANDING A CASE] shall describe any issue upon which further evidence shall [SHOULD] be taken, and shall set forth any further directions the board deems appropriate for the guidance of the lower administrative body."

18. Page 23, Section 21.03.050B.1.e., line 25

"Denial of a minor modification under section 21.03.120 when the director is the decision-making body."

19. Page 24, Section 21.03.050B.3.a., lines 7-9

"An appeal of an administrative decision to the zoning board of examiners and appeals, as set out in subsection B.1. above, must be filed no later than 20 days after the date of service [WRITTEN NOTIFICATION] of the decision."

20. Page 27, Section 21.03.070C.2., lines 43-45

"The planning and zoning commission may submit a recommendation for approval, and the assembly may approve an amendment [ONLY] if, in the judgment of the commission or assembly, the amendment meets the following approval criteria:"

21. Page 30, Section 21.03.080C., lines 28-30

"The planning and zoning commission may approve a conditional use approval [PERMIT] application [ONLY UPON FINDING THAT] if, in the judgment of the commission, all of the following criteria have been met:"

22. Pages 30 and 31, Section 21.03.080C., lines 40 and 7-8

Replace C.4. and C.7. with, "The site size, dimensions, shape, location, and topography are adequate for the needs of the proposed use and any mitigation needed to address potential impacts."

Renumber remaining criteria.

23. Page 31, Section 21.03.080E., after line 35

"3. The platting authority under this subsection may require that any street right-of-way, walkway, utility easement, or other public area designated under the final approval be dedicated to the public."

24. Page 31, Section 21.03.080F.

Delete all references in section F. to the R-4A district.

25. Page 32, Section 21.03.080F.1.e., lines 11-12

"Maintaining population densities and lot coverage that are consistent with available public services, the character of the surrounding neighborhood, and the comprehensive plan."

26. Page 32, Section 21.03.080F.2.a., lines 22-24

"...If any portion of a proposed PUD is located within the R-1, R-1A, R-2A, R-2D, R-5, or [R-6,] R-7[, R-8, OR R-9] zoning districts, the minimum site area shall be 5.0 acres. If any portion of a proposed PUD is located within the R-6, R-8, or R-9 zoning districts, the minimum site area shall be 10 acres."

27. Page 32, Section 21.03.080F.2.b., lines 26-30

"A minimum of 30% of the site shall be reserved as [USABLE] open space which shall meet the following standards:

i. At least one-half of such [USABLE] open space shall be contiguous;

ii. In class A districts, n[N]o portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.iv. and b.v. below;

iii. In class B districts, no portion of the required open space shall be less than half of the minimum lot size of the underlying district in area, or less than 100 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.iv. and b.v. below;"

Renumber remaining sections.

28. Page 33, Section 21.03.080F.2.c., lines 1-11

"...combined within a single structure, nonresidential uses shall be separated from dwelling units by L3[4] buffer [SCREENING] landscaping.

...

iii. Level 4[3] screening [BUFFER] landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district...

iv. Common open space with L4 screening landscaping shall be provided along any lot line abutting a residential neighborhood where any adjoining lot is greater than 150% of the average lot size along that lot line of the PUD."

Renumber remaining sections.

29. Page 34, Section 21.03.080F.3.b., lines 3-4

"The applicant may propose any residential use, and in class A zoning districts, may propose any commercial use that is allowed in the R-4 district in table 21.05-1."

30. Page 37, Section 21.03.100B.1.g., line 3

"Clearing more than one [TWO] contiguous acre[S]."

31. Page 37, Section 21.03.100C.2.d., lines 22-29

"A land use permit shall become null and void unless the work approved by the permit is commenced (see "start of construction" in chapter 21.14) within 12 months after the date of issuance. [NO WORK SHALL BE CONSIDERED TO HAVE COMMENCED FOR THE PURPOSES OF THIS PARAGRAPH UNTIL AN INSPECTION HAS BEEN MADE AND RECORDED.] If after start of construction [COMMENCEMENT] the work is discontinued for a period of 12 months, the permit therefore shall immediately expire. No work

authorized by any permit that has expired shall thereafter be performed until a permit has been reinstated, or until a new permit has been secured."

32. Page 41, Section 21.03.100E.8., lines 2-9

"The amount of the fee in lieu shall be the full cost [LESSER OF 75% OF THE COST] of the improvements as estimated by an engineer registered as a professional engineer in Alaska [OR AS PROVIDED IN A FEE SCHEDULE ADOPTED BY REGULATION BY THE MUNICIPAL ENGINEER, WHICH FEE SCHEDULE MAY BE ADJUSTED BY REGULATION ANNUALLY TO ACCOUNT FOR INCREASES IN CONSTRUCTION COSTS IN THE ANCHORAGE AREA]. In the event the applicant or successor in interest later elects or is required to install improvements for which the fee was paid, the fee shall be refunded (without interest), so long as the claim for refund is filed within two years from the date of initial payment."

33. Page 41, Section 21.03.110A.5., lines 37-38

"Consider [PROTECT THE INTEGRITY OF ADJACENT NEIGHBORHOODS BY ADDRESSING] the impacts of institutional development on adjacent neighborhoods [AREAS]."

34. Page 42, Section 21.03.110B., lines 1-2

"...develop large, complex sites with multiple buildings and uses following a contextually aesthetic [UNIFORM AND COHESIVE] design theme."

35. Page 43, Section 21.03.110C.2.d.xi., line 15

"Commercial spaces, not including concessionaire space that is intended to serve the institutional community [AND/OR USES OVER 1,000 SQUARE FEET]."

36. Page 43, Section 21.03.110C.2.f., lines 29-35

"The institutional master plan shall include the elements listed below. These elements may set different standards than those found in title 21. [CHAPTER 21.05, *USE REGULATIONS*; CHAPTER 21.06, *DIMENSIONAL STANDARDS AND MEASUREMENTS*; AND CHAPTER 21.07, *DEVELOPMENT AND DESIGN STANDARDS*.] The plan shall list the specific sections of title 21 for which different standards are to be established by the master plan, and provide rationale for any different standards proposed. Where different standards are approved in the institutional master plan, those standards shall be applied instead of the corresponding standards in title 21."

37. Page 44, Section 21.03.110C.2.f.v.(D)., line 25

Add as new (D) "Historic structures;" and re-letter remaining items.

38. Page 44, Section 21.03.110C.2.g., lines 37-39

"This information shall include, at a minimum, the general location and approximate scale of anticipated development that may occur within a 20 year period."

39. Page 45, Section 21.03.110D., after line 44

Add new section D.9.:

"9. Approval of Final Institutional Master Plan

a. The approval of an institutional master plan expires 12 months after the date of approval by the assembly unless, before the approval expires, the applicant files the final institutional master plan, including any modifications or conditions required by the assembly, with the director.

b. The director shall certify the final institutional master plan within 60 days of filing by the applicant, or if the plan is not in compliance with the assembly's approval, the director shall issue a detailed list of reasons and recommended amendments to the final institutional master plan to achieve compliance.

c. Until the approval of an institutional master plan by the assembly and the filing by the applicant of a final institutional master plan accepting the modifications or conditions required by the assembly, the affected institution shall continue to be governed solely by the provisions of title 21 other than this chapter."

40. Page 46, Section 21.03.110E., lines 2-4

"An institutional master plan may be approved if the assembly finds that it is consistent with the comprehensive plan[, COMPATIBLE WITH ANY ADOPTED NEIGHBORHOOD PLANS FOR ADJACENT AREAS,] and will achieve the following:"

41. Page 47, Section 21.03.120A., lines 27-28

"...the planning and zoning commission, [THE PLATTING BOARD,] or the urban design commission."

42. Page 47, Section 21.03.120B.1., lines 34-35

"...the planning and zoning commission, [THE PLATTING BOARD, AND] or the urban design commission may approve..."

43. Page 47, Section 21.03.120B.1.b., line 42

"...21.07.020B.;"

44. Page 48, Section 21.03.120B.1.c., lines 1-2

"[SUBDIVISION STANDARDS SET FORTH IN CHAPTER 21.08, *SUBDIVISION STANDARDS*, EXCEPT FOR THE IMPROVEMENT STANDARDS IN SUBSECTION 21.08.050;]

Re-letter remaining sections.

45. Page 48, Section 21.03.120C.1.b., lines 21-22

"In no instance may an applicant use the minor modification process to obtain approval for adjustments to more than three standards applicable to the same development."

46. Page 48, Section 21.03.120C.3., lines 26-30

"3. Minor Modifications Approved by Assembly, Planning and Zoning Commission, [PLATTING BOARD] or Urban Design Commission

The assembly, planning and zoning commission, [PLATTING BOARD,] or urban design commission may approve a minor modification allowed under this section at any time before taking action on a development application."

47. Page 48, Section 21.03.120C.5., lines 36-37

"Denial of a minor modification [APPLICATION] may be appealed to the same body as an appeal of the underlying approval process. For instance, denial of a minor modification in a conditional use application may be appealed to the board of adjustment, as the board of adjustment hears appeals of conditional use approvals [ZONING BOARD OF EXAMINERS AND APPEALS IN ACCORDANCE WITH SUBSECTION 21.03.050B]. Denial of a minor modification associated with a permitted use may be appealed to the zoning board of examiners and appeals."

48. Page 49, Section 21.03.130A.1., lines 23-25

"The goal of a neighborhood or district plan is to protect and promote positive elements of neighborhood or district character and identity, while promoting [PROMOTE] the orderly growth, improvement, and future development of the neighborhood, community, or municipality."

49. Page 49, Section 21.03.120A.2.a., after line 35, add to 2.a.

"Plans sponsored by the municipality, including the mayor, the assembly, the planning and zoning commission, and various departments, are not subject to this section, but rather shall follow the process of section 21.03.070C., *Comprehensive Plan Amendments, Substantive.*"

50. Page 50, Section 21.03.130C.1., lines 38-40

"Within 45 [90] days of the submittal of a plan, the department shall review the plan and determine whether the plan meets the standards for form, content, and for consistency with sound planning, as set forth in subsection D. below."

51. Page 51, Section 21.03.130C.1.b., lines 1-7

"If the department determines the plan does not meet the threshold standards of subsection D., the staff shall provide written notification to the sponsor of all deficiences with respect to form, content, process, and any changes, additions, or deletions which, in the opinion of staff, may correct such deficiencies. [THE SPONSOR MAY INDICATE ITS WILLINGESS TO MAKE SUCH CHANGES, ADDITIONS, OR DELETIONS. ONLY IN SUCH EVEN MAY THE SPONSOR BE PERMITTED TO CONTINUE WITH THE PLAN.]"

52. Page 53, Section 21.03.130E.1., lines 3-6

"When, pursuant to subsection C. above, a plan is ready for public review, the department shall, within 21 [30] days of its determination, provide copies of the plan simultaneously to all municipal and state agencies with jurisdiction over elements of the plan, and to all community councils."

53. Page 53, Section 21.03.130F.1., lines 25-26

"[AT THE CONCLUSION OF THE 120 DAY REVIEW PERIOD, T]The commission shall schedule a public hearing within 60 days following the final day of the public review period."

54. Page 54, Section 21.03.140B.1., lines 31-34

"Unless exempted by subsection B.3[2]. below, the planning and zoning commission shall review and decide the selection of sites for any of the following facilities that are to be owned[, OR LEASED] by a government agency not exempt by law from municipal land use regulation, and shall review and approve the RFP (or similar guidelines) for any of the following facilities that are to be leased by a government agency not exempt by law from municipal land use regulation:""

55. Page 54, Section 21.03.140B.1.a., lines 35-37

"Any newly constructed building or buildings and any existing building acquired by purchase or lease, in which government operations or activities occupy more than a total of 75,000 [100,000] square feet of gross floor area [ON THE SITE];"

56. Page 55, Section 21.03.140B.1., line 3

"c. Fire stations;"

Re-letter remaining subsections.

57. Page 55, Section 21.03.140B.1., after line 5

Add a new "e. A facility that, in the judgment of the director, warrants a public process for site selection due to the potential for significant impacts on surrounding properties."

58. Page 55, Section 21.03.140B.2., line 6

"2. Notwithstanding B.3. below, the planning and zoning commission shall review and make recommendations, and the assembly shall decide the selection of a site for a school facility."

Renumber existing B.2. to become B.3.

59. Page 55, Section 21.03.140B.2.b., lines 14-15

"[THE SELECTION OF SITES FOR PUBLIC SCHOOLS, WHICH SHALL INSTEAD BE UNDERTAKEN PURSUANT TO AMC CHAPTER 25.25.]"

Renumber remaining subsections..

60. Page 55, Section 21.03.140F., lines 29-32

"1. The department shall review each proposed site selection application in light of the approval criteria set forth in subsection I.[H.] below, and distribute the application to other reviewers as deemed necessary.

2. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

3. For school site selections, the department shall also provide the report to the Anchorage school board for its review and recommendation."

61. Page 56, Section 21.03.140G., lines 2-4

"1. The commission shall hold a public hearing on any site selection that is subject to review under this section.

2. For school site selections, the school board and the commission may meet in a joint public hearing; however, the school board and the commission shall separately consider and make recommendations to the assembly. Both recommendations shall then be forwarded as a package to the assembly for approval.

3. For all other site selections, [AT THE CLOSE OF THE HEARING,] the commission shall decide on the proposed site based on the approval criteria of subsection I.[H.] below."

62. Page 56, Section 21.03.140, line 5

"H. **Assembly Action**

For school site selections, upon receipt of the recommendations from the commission and the Anchorage school board, the assembly shall hold a public hearing and take one of the following actions:

1. Approve a specific recommended site;

2. Reject some or all recommended sites; or

3. Remand the evaluated and recommended sites to the commission and the school board for further investigation, review, and evaluation."

Re-letter current "H. Approval Criteria" to "I. Approval Criteria"

63. Page 56, Section 21.03.140, lines 23-24

"J. Request for Assembly Hearing [APPEAL]

1. The planning and zoning commission decision is final unless, within 20 days of the date of service, any party of interest requests an assembly hearing in a letter sent to the director.

2. The assembly may hold a public hearing on the case at their discretion."

[DECISIONS ON PUBLIC FACILITY SITE SELECTIONS MAY BE APPEALED TO THE ASSEMBLY.]

64. Page 57, Section 21.03.160A., lines 18-21

"This section states the procedures and approval criteria necessary to process an amendment to the official zoning map. Zoning is not effective if it is too easily or frequently changed. Zoning is intended to provide a degree of certainty that is important for long-term investment and neighborhood cohesion and stability. The purpose of rezoning is not to relieve particular hardships..."

65. Page 59, Section 21.03.160D.7.a., lines 9-13

"The planning and zoning commission shall hold a public hearing on the proposed rezoning, and, at the close of the hearing, taking into account the recommendations of the department and public input, and based upon the approval criteria of subsection E. below, shall recommend approval, approval with special limitation or other modifications, or denial. The commission shall [BASE ITS RECOMMENDATION ON THE APPROVAL CRITERIA IN SUBSECTION E. BELOW, AND SHALL] include written findings based on each of the approval criteria."

66. Page 60, Section 21.03.160D.10., lines 15-17

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

67. Pages 60-61, Section 21.03.160E., lines 27-36 and 1-18

"1. The rezoning shall be in the best interest of the citizens of Anchorage and shall promote[S] the public health, safety, and general welfare;

...

4. The rezoning is consistent with the stated purpose of the proposed zoning district and the applicable portions of the comprehensive plan;

...

6. The rezoning will [IS] not [LIKELY TO] result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts shall [WILL] be substantially mitigated;

7. The proposed rezoning shall [IS] not [LIKELY TO] result in significant adverse impacts upon adjacent land uses, or such impacts shall be mitigated through stipulations [OTHER PROPERTY IN THE VICINITY OF THE SUBJECT TRACT];

8. [THE REZONING DOES NOT RESULT IN A SPLIT-ZONED LOT;

9.] The applicant [HAS] demonstrates[D,] to the satisfaction of the planning commission and the assembly[,] that the supply of land in the desired zoning district [IN THE GENERAL AREA] is insufficient or inadequate for the stated [INTENDED] purpose[,] and, if approved, would not substantially reduce the amount of land available within the general area for future community needs; [THAT SUFFICIENT LAND OF THE EXISTING ZONING DISTRICT REMAINS IN THE AREA TO MEET THE NEEDS OF THE COMMUNITY; AND]

9. The rezone does not initiate, continue, or exacerbate a pattern that is inconsistent with the comprehensive plan;

10. The proposed rezoning is compatible with and does not detract from existing or planned land uses, and where specific areas are designated on the zoning or comprehensive plan maps, that these areas are adequately protected; and [MAINTAINS AND PRESERVES THE COMPATIBILITY OF SURROUNDING ZONING AND DEVELOPMENT, AND PROTECTS AREAS DESIGNATED FOR SPECIFIC USES ON THE ZONING MAP FROM INCOMPATIBLE LAND USES OR DEVELOPMENT INTENSITIES.]

11. The rezoning does not result in a split-zoned lot."

68. Page 61, Section 21.03.160F., lines 20-21

"The comprehensive plan map and the approval criteria of subsection E. above may be interpreted with flexibility within the following requirements [PARAMETERS]:"

69. Page 64, Section 21.03.160I.1., lines 11-13

"The zoning strategy may substitute, alter, or adopt the specific requirements of chapters 21.05, 21.06, and 21.07 (see subsection I.4. below) in order to allow the development to achieve the goals of the comprehensive plan and title 21 in a unique way [MEET THE UNIQUE NEEDS OF THE DEVELOPMENT]."

70. Page 69, Section 21.03.180C.2.f., lines 20-22

"The urban design commission shall hold a public hearing on the proposed application and, taking into account the recommendations of the department and public input, shall act to approve, approve with conditions, or deny the proposed major site plan, based on the approval criteria of subsection E. below."

71. Page 72, Section 21.03.190B.2.b., lines 5-6

"iii. Long- and short-term impacts on existing and projected [ADJACENT] land uses and planned transportation systems;

iv. Impacts on the surrounding transportation system including the induced need for off-site upgrades and connections;"

Renumber remaining subsections.

72. Page 85, Section 21.03.210B.2., lines 6-9

"Petitions for text amendment shall be filed with the director in ordinance form or in a form established in the title 21 user's guide."

73. Page 85, Section 21.03.210B.5.b., lines 42-43

"Starting on [two years after the effective date], t[T]ext amendments shall be considered no more than two times per year, at a joint public hearing of the planning and zoning commission and the assembly."

74. Page 88, Section 21.03.230A., lines 36-38

"The platting authority shall consider the merits of each vacation request, and in all cases the platting authority shall deem the area being vacated to be of current and/or future value to the municipality unless proven otherwise."

75. Page 92, Section 21.03.240G.1., lines 23-36

"b. Because of these physical circumstances, the strict application of the code creates an exceptional or undue hardship upon the property owner, and would [STRICT INTERPRETATION OF THE PROVISIONS OF THE ZONING ORDINANCE] deprive the

applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance.

...

d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code [HAS NO ADVERSE AFFECT ON THE USE OF ADJACENT OR NEARBY PROPERTY];

e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and [GRANTING THE VARIANCE] does not permit a use not otherwise permitted in the district in which the property lies;"

Technical Edits

1. Conditional Uses
   Throughout the chapter, change all "conditional use permit" to "conditional use approval."

2. Page 9, Section 21.03.020G.2.a.,
   Add "Institutional Master Plan" to those types of applications that require a community meeting.

3. Pages 7 and 9, Section 21.03.020G.,
   As community meetings are required to happen before applications are submitted, this section should come before the "Authority to File Applications" section. Move "Community Meetings" to be section C. and re-letter the remaining sections.

4. Page 15, Section 21.03.040,
   Amend to reflect recently passed ordinance.

5. Page 31, Section 21.03.080, line 40
   Change "that" to "than."

6. Page 32, Section 21.03.080F.2.b.iv., line 35
   Change "deckes" to "decks."

7. Page 34, Section 21.03.080F.3.b., line 6
   Change "even" to "event."

8. Page 47, Section 21.03.120B.1., line 34
   Change "and the urban design commission" to "or the urban design commission."

9. Page 55, Section 21.03.140B.1.b., line 2
   Change the cross reference from "21.03.200" to "21.03.190."

10. Page 55, Section 21.03.140B.2.d., line 18
Amend to read, "Any facility site selection for [UNDER] which over..." for readability.

11. Page 57, Section 21.03.160B.3., line 34
Change "NC" to "B-1A."

12. Page 59, Section 21.03.160D.8., line 26
Change "director" to "department."

13. Page 84, Section 21.03.200G.9.c., line 30
Amend the cross reference from "21.03.210C.9." to "21.03.200C.9."

14. Page 90, Section 21.03.240B.1., line 33
Change "platting board" to "platting authority."

Municipality of Anchorage

MEMORANDUM

DATE: March 17, 2008

TO: Planning and Zoning Commissioners

FROM: TN Tom Nelson, Director, Planning Department

SUBJECT: Case No. 2007-153; Issue Response for **Chapter 21.03** of Title 21 Rewrite

1. **Issue:** 21.03.020B.2.a., *Required for New Applications*
Add:

vii. Projects where the property contains slopes steeper than 30 percent.

viii. Projects located within Seismic-Induced Hazard Zones 4 and/or 5.

Commentary - It would be prudent that projects on any property with slopes steeper than 30 percent have a pre-application conference (e.g. with Development Services/Building Safety) to review the requirements in Chapter 7 as they pertain to development and Title 23. In addition, it would be prudent that developers planning and/or applying for a permit/authorization under Title 21 (i.e. before the Title 23 permits) have a pre-application conference (e.g. with Development Services/Building Safety) when the project is located with the high seismic hazard zones.

Staff Response: Title 21 controls the pre-application conference with Planning Department staff, not with Building Safety/Development Services staff. Subdivision applications, including those on steep slopes, are already required to have a pre-application conference. On-lot development on slopes of 30-50 percent require an administrative site plan review. All administrative site plan reviews must be treated consistently, and they don't have required pre-application conferences. An applicant may always request a pre-application conference regardless if one is not required.

Staff Recommendation: No changes recommended.

2. **Issue:** 21.03.020B.2.b., *Exception for Some Changes to Already-Approved Applications*
Exempting development for pre-application conferences for increases less than 25% of the approved sq footage or number of units is not an appropriate measure by which to save time for staff and the public. The public is not served well by such exemptions because there is no limit on the number of times this exemption can occur and the original size of the developments is not factored into the exemption. 25% increases for large developments can result in impacts not envisioned in the original CUs, or site plans. If this exemption is kept,

reduce the 25% limit to 10% and factor in size of the developments as part of the condition for exemption. Also limit the number of times this exemption can occur.

Staff Response: This section does not waive oversight of changes to an already approved application—it only waives the required pre-application conference. The amendment to the already approved application will still go through the process outlined in the relevant section, and the applicant can still request a pre-application if he or she desires one. Staff agrees that only one such change to an already approved conditional use, major site plan, or subdivision should be allowed to waive a pre-application conference.

Staff Recommendation: Page 6, lines 2-4, amend to read "Pre-application conferences are not required for the first change[S] to already-approved conditional use approvals [PERMITS], major site plans, and subdivision plans if the following conditions are met. Subsequent changes to these approvals requires a pre-application conference.[:]"

3. **Issue:** 21.03.020D., *Application Contents, Submittal Schedule, and Fees*
Can the Municipality reject an application if a developer has outstanding fees/fines (no matter which department)?

Staff Response: This issue was raised during the review and deliberations on chapter 8, to determine whether the municipality could refuse to enter into a subdivision agreement with a subdivider who had defaulted on a previous subdivision, or had outstanding fees/fines. It was decided that this was too heavy of a hammer, considering that a developer could be contesting the fees or fines. This provision would also cause a logistical burden on municipal staff, as fines are usually assessed through the Development Services Department or the Project Management and Engineering Department, but applications are submitted to the Planning Department. To add to the tracking burden it is the common practice of developers to create different "shell" companies for each development project, which would prevent the municipality from tying a new development proposal to a previous project with outstanding fees/fines.

Staff Recommendation: No changes recommended.

4. **Issue:** 21.03.020D.3., *Processing Fees*
Currently fees are partially refundable—why change to nonrefundable?

Staff Response: Staff does not object to removing the "non-refundable" language.

Staff Recommendation: Page 8, line 3, amend to read, "Fees are not subject to waivers [AND ARE NON-REFUNDABLE]."

5. **Issue:** 21.03.020G., *Community Meetings*
ANC understands the sentiment behind some of the new pre-application review and community meeting procedures contained in proposed Chapter 3. However, ANC is concerned about their relevance for most state and private tenant projects on the Airport, and

about the potentially significant delay and cost that they may add for relatively little real public benefit. Tremendous growth and development at the ANC have made it a significant contributor to the local economy. ANC would like to avoid any unnecessary procedures that may stall development, potentially sending investment elsewhere.

Staff Response: Community meetings are required for rezones, subdivisions, conditional uses, major site plan reviews, and public facility site selections. The Anchorage International Airport is unlikely to initiate a rezone on their property, particularly after the Airport District is implemented. The AIA does not subdivide their property through a municipal process. Thus the types of applications that require community meetings and may affect the airport are conditional uses, major site plan reviews, and public facility site selections.

Staff disagrees that a community meeting will create a "significant delay and cost." The meeting is required to be held before the application is submitted to the department, so it won't hold up actual processing of the application. The costs are limited to the fulfillment of the notice requirements and potentially renting a meeting space.

One of the rights guaranteed in the municipal charter's bill of rights is "The right to a locally directed, ongoing planning process that is based upon the community's goals, objectives and policies for the future." Informing and involving the public in major projects is important.

Staff Recommendation: No changes recommended.

6. **Issue:** 21.03.020G., *Community Meetings*
This should be required to be the community council meeting if such meeting is available.

Staff Response: Staff does not support requiring the community meeting to be a community council meeting. Not all councils meet regularly, most development projects are not council-wide issues, community councils are included as reviewing agencies during approval process, and the developer is free to use the community council as the community meeting venue if he/she desires.

The statement "if such meeting is available" leaves too much room for interpretation and arguments (disagreements over whether a council meeting is available). However, staff does not object to encouraging the use of the community council meeting for the community meeting, but as a voluntary provision, it would be more appropriate to state in the user's guide.

Staff Recommendation: No changes recommended.

7. **Issue:** 21.03.020G.2.a., *Types of Applications*
Community meetings should be required for all site plans, not just major ones. Minor site plans, such as churches, can have huge impact to neighborhoods due to their size and traffic, etc depending upon the adjacent zoning and infrastructure.

Staff Response: One of the major purposes of the code rewrite is to find the appropriate balance for what type/intensity of project should go through a public review process, and what

should have an administrative review. Currently, there are few design standards in the code and many projects go through a public review, which is unpredictable both for the developer and for the public. With more design standards to address concerns that are commonly raised with new development, there is more predictability of the outcome of the development, alleviating the need for public review. To address this commenter's concern, the issue should not be whether or not to add a community meeting to an administrative site plan review, but rather are the standards appropriate for those uses that require an administrative review, and/or are the uses that require an administrative review the appropriate ones.

Staff has received many comments about large nonresidential development (such as churches) in residential districts, and is working on standards to address this type of situation. Staff does not agree that adding a community meeting to an administrative approval process is the best solution to the problem.

Staff Recommendation: No changes recommended in this section.

8. **Issue:** 21.03.020G.2.b., *Waiver*
Waiving a community meeting should not remove other notification requirements. Public involvement should be encouraged for all development and waivers should not be granted lightly.

Staff Response: Waiving a community meeting does not remove any notification requirements. Whether or not a community meeting is required or not required or waived, the notice requirements of section 21.03.020H. still apply.

Staff Recommendation: No changes recommended.

9. **Issue:** 21.03.020G.2.b., *Waiver*
The community should be included when deciding whether to grant a waiver. It should not just be up to the director to grant waivers because only the neighbors have the detailed knowledge to determine whether a development will have significant impacts. Taking the public out of this decision is a backwards step for community involvement.

Staff Response: Any Planning director will have experience judging the impacts of proposed development. The waiver can only be granted if the director judges that a project will not have significant impacts on five different areas, which is a pretty high bar. In reality, waivers are likely to be rare.

Additionally, the logistics of involving "the community" in whether or not to grant a waiver are difficult. Who would get to speak for "the community"? Would it be some sort of vote taken? Considering the historic response rate the department gets to mailed notices (usually very small), it doesn't seem likely than any response would actually be representative of "the community."

Staff Recommendation: No changes recommended.

10. **Issue:** 21.03.020G.2.b., *Waiver*
The director should have to justify the waiver of a community meeting.

Can the community challenge the waiver?

Staff Response: Staff agrees that a waiver should be justified.

There is no provision for the community to challenge the waiver, but as all of the types of applications have public hearings before a board or commission, community members will be able to register their objections before the decision-making body.

Staff Recommendation: Page 9, line 23, amend to read, "The waiver shall be justified in writing, provided along with..."

11. **Issue:** 21.03.020G.4., *Notice of Community Meeting*
Add in the requirement to notify effected community councils.

Staff Response: The applicant must provide written (mailed) notice of a community meeting in accordance with the written (mailed) notice requirements of section H. In section H.3. that describes written notice, H.3.c. requires notice to the affected community council(s).

Staff Recommendation: No changes recommended.

12. **Issue:** 21.03.020G.5.b., *Attendance at Community Meeting*
This section does not state that regularly scheduled community council meetings should be the preference for conducting the required community meetings. Council meetings would be easier for the applicant to use and would likely allow for greater public input than holding a separate meeting. Add: "Where a regularly scheduled Community Council meeting meets the timing and location requirements, that is the preferred venue for the community meeting."

Add in that it is preferable to have community meetings as part of the local community council(s) meetings. Use the regularly scheduled council meeting format for community meetings to get the most public input with the least inconvenience to the public.

Insert a new lead sentence under 5 b: Community meetings shall be part of the local Community Council meetings unless the Community Council schedule has lapses over 60 days or cannot reasonably provide the length of presentation time that the developer needs.

Reason: the incorporation of the developer's meeting into the community council format serves as an important convenience to the affected community, increases publicity, increases likelihood of attendance by knowledgeable members of the community, and puts the project in perspective with other community issues. Also helps to strengthen the Council system.

Staff Response: See Issue #6.

Staff Recommendation: See Issue #6.

13. **Issue:** 21.03.020G.6., *Summary of Community Meeting*
Include the requirement for the applicant to send a meeting summary to the affected community council(s) to aid them in their response to the meeting and their case comments, in general. This would allow boards & commissions to independently assess applicants' statements regarding the public response to information they presented at the required meetings. Sometimes there is disagreement as to the public's opinion.

These requirements do not include the need to have the community council review the meeting summary for accuracy. Normally these community meetings will be held in conjunction with council meetings and the council should have a copy of the summary to review and comment on. Developers' representatives have misrepresented the public's views on various developments or parts thereof at P/Z meetings after the hearings have been closed. Questioning by the Commissioners does not allow the public to rebut what the developers say during their deliberations; therefore at least the community meeting summary should be reviewed by the councils for their views on neighborhood concerns.

Staff Response: Meeting summaries are required to be included in the case packet, which is available to the public approximately a week before the public hearing. Staff notes that a week ahead of time is not a large amount of time. The department will be working on their system of posting case information on the website—in the future it may be possible to post the meeting summary soon after it is received by the department.

Staff Recommendation: No changes recommended.

14. **Issue:** 21.03.020H., *Notice*
MOA public notices are notoriously poor in supplying needed information and the signs are way too small. All the information on the signs should be readable 10 ft away. Suggest a minimum sign size of 18 x32." Even though hearings may not be held on short plats, some site plans, master planning and development master planning cases, etc., the public should be notified with public notices of some sort such as 'Public Input Requested" because these types of cases can impact neighborhoods and not everyone reads the newspaper notices.

Staff Response: The dimensional details of notice signs should not be in the code. They should be included in the user's guide, so that needed adjustments can be made administratively, rather than by ordinance.

See also Issue #16.

Staff Recommendation: No changes recommended.

15. **Issue:** 21.03.020H., *Notice*
Notice to community councils is required when written (mailed) notice is required, but the councils should be notified even when written notice isn't required. For example, councils should receive notice of substantive comp plan amendments, and T21 text amendments.

Should email notice be codified?

Staff Response: Staff agrees that community councils should be notified for Substantive Comprehensive Plan Amendments, Neighborhood or District Plans, and Text Amendments to Title 21, at the least. In current practice, this is done. The department is considering the most appropriate way to codify this practice.

Also, all three types of notice should be given for Area Master Plans and Development Master Plans (from chapter 21.09).

Staff Recommendation: Page 11, Table 21.03-1: Summary of Notice Requirements, add a row for Master Plan, Area, Section 21.09.030E., check marks in all three columns, and a row for Master Plan, Development, Section 21.09.030F., check marks in all three columns.

16. **Issue:** 21.03.020H.1., *Content of Notices*
Public notices should provide information about the public hearing—whether it is a rezone, etc. The current notices do not give adequate data. Why is the requirement for posting of notice not required for Site Plan Review, Administrative, Abbreviated Plats, Area Master Planning, and Development Master Planning? Even an abbreviated plat can have a major impact to the area if it contains a design for significant road connections or neglects to include key pedestrian/trail connections.

Staff Response: There is no way to provide the relevant information on a posted notice to people driving by in their car, which is the most common way the signs are viewed. The signs are not intended to be a distraction to drivers. The distinctive blue sign is an indication that something is proposed to happen on the property. There is a phone number listed on the sign for more information, and for those who can't get that number (if they are driving by), they can call the Planning Department.

There is a premise that this code, the current code, and most codes in most communities starts with: that there is a spectrum of development projects with the "low" end being projects that need no specialized or public review, and the "high" end being projects that need a full blown government and public review to determine even whether or not they should happen. At the "low" end would be a single-family home on a lot zoned for such uses. At the "high" end would be something with amazing community impacts, like an airport. Nobody would disagree with those developments at the far ends of the spectrum. It is the middle of the spectrum where opinions vary on what sort of review should be required. The department has proposed four different levels of review. Two require only staff review with no public input, and two require public hearings. Staff considers the range of review processes to be adequate and appropriate.

Staff Recommendation: No changes recommended.

17. **Issue:** 21.03.020H.5., *Posted Notice*
Add a provision about "indelible ink"? or about legibility?

Staff Response: The writing on the signs is done with permanent marker. It is possible/likely that the illegible signs are old signs left up from hearings long past. The

rewrite has a new requirement to remove signs within 30 days of the close of the applicable public hearing.

Staff Recommendation: No changes recommended.

18. **Issue:** 21.03.020I., *Departmental Report*
Councils need the Departmental Reports as far in advance as possible in order to prepare their response for the hearing. Change "approximately" to "minimum of" one week before the hearing.

Staff Response: Planning department staff members do their best to finalize the departmental report in a timely manner, but there are many factors that can prevent a report being finished a week before the hearing.

Staff Recommendation: No changes recommended.

19. **Issue:** 21.03.020L., *Postponements*
The proposed section appears to codify what was an informal practice of some of the bodies. The proposed section is different than the current rule of procedure of three of the bodies. See AMCR 21.10.305, 21.11.305, and 21.12.350. The new section creates in the applicant a right of postponement if too few members are present (21.03.020L.1.) and a discretionary right for other reasons (21.03.020L.2.). No right of postponement is afforded to other persons interested in the matter.

I have personally observed the informal current practice of granting postponements to applicants manipulated by the applicant to frustrate opposition presentations by neighborhood groups and others.

There is no reason to presume that a requested entitlement is in the public interest. It is therefore irrational to grant rights to the applicant for the entitlement which are not afforded to those opposing it. Further, allowing the applicant to control the timing of the public hearing on it gives the proponent greater influence over the substantive outcome by inconveniencing and wearing down the opposition. To expect the public to follow an application through long agendas of multiple meetings is unreasonable.

Under the United States and Alaska Constitutions, all persons are entitled to fair and just treatment in legislative investigations, equal opportunity to be heard, and access to public forums without regard to their views. Proposed AMC 21.03.020L. appears to violate these provisions by favoring the applicant with opportunities for postponement that are not available to others.

Given the informal practice of the present bodies, I support addressing this issue in the ordinance and not leaving the matter to rules of procedure. One possible solution is to minimize the need for postponements by making the affirmative vote of a quorum present at the meeting sufficient for approval. This is the common practice of many organizations. At a minimum the postponement at the request of the applicant for this reason should be limited to one time only.

Staff Response: The section states the processes by which an applicant may request a postponement of his or her case. A member of the public may request a postponement as part of their public testimony. In both cases, the board or commission may decide to grant, or not grant, a postponement request.

While staff notes it is possible that applicants have used postponements to frustrate their opposition, they have no ability to take away the opposition's right to be heard. They can change the date of the hearing, but they can't take away their access to the public forum.

That said, staff has tightened the rules. The informal practice has been to allow the applicant to postpone whenever the board or commission did not have every member present. The new rules give a "free" postponement only if there is only a quorum present. Otherwise, the applicant may request postponement, and the board/commission may grant it, but the applicant must pay a fee.

Staff does not support making an affirmative vote of a quorum to be sufficient for approval. For a nine member body, a quorum is five persons, and that would allow potentially major decisions to be made by three people. Given all the perspectives and specialties that are attempted to be represented on each board or commission, it would not be right to have decisions made by one third of the body.

Staff Recommendation: No changes recommended.

20. **Issue:** 21.03.020L., *Postponements*
Why should the applicant pay for a second or third postponement if there is a short board, which is out of the control of the applicant? Should the fee be waived the first three times (instead of just the first time)? Who pays for re-noticing?

Staff Response: The fact that board decisions don't have to be unanimous is an indication that the potential for absences is built into the system. The staff and the board members have prepared for the case and interested members of the public have shown up. The board, by law, is capable of deciding on the case. When postponements occur, the public is inconvenienced, and the workload of the board piles up in other meetings. The quorum requirements (usually five of nine) are the standard and the applicant should expect to work within the standard.

The municipality pays for re-noticing.

Staff Recommendation: No changes recommended.

21. **Issue:** 21.03.020N., *Decision*
Include the pertinent language of Title 4 here so the public does not have to go elsewhere for the information. It is an unnecessary added burden to have to do so. Many other sections have similar, limited, wording that refers the reader elsewhere. Please revise all.

Staff Response: When code language is repeated in different locations, the potential for error is greater that the code may be revised in one place but not in the other place(s). This leads to

inconsistencies and confusion. Referencing code provisions in other areas of Title 21 or in other municipal titles is customary and efficient. All 31 titles of municipal code are available online (through municode.com), at the library, and in various municipal offices, including at the Planning Department.

Staff Recommendation: No changes recommended.

22. **Issue:** 21.03.020N., *Decision*
There is no text for this section and it is referred to Title 4. Need to know how this important matter is being dealt with.

Staff Response: The same staff working on the T21 rewrite is working on the T4 amendments. Basically, those elements that were in this section in previous drafts are being moved to Title 4. When it is ready, the ordinance will be available for public review and comment.

Staff Recommendation: No changes recommended.

23. **Issue:** 21.03.040A.2., *Applicability*
12 time limit consistently violated—remove limit on number of permits and add language about not circumventing the special permit process through catering/special event permits; and add review by Police Chief

Staff Response: Staff notes that facilities such as the Anchorage Senior Center, the Selkregg Chalet at Russian Jack, the Bayshore Clubhouse, or the Kincaid Park Chalet would consistently violate this section as they are often rented out more than 12 times in a year for special events that include alcohol. These situations are not a problem and should not be violations. Staff proposes some language to directly address the real problem, which is establishments using subsequent special event licenses to avoid getting a permanent license.

Staff Recommendation: Page 16, lines 3-6, amend to read, "Notwithstanding A.1. above, catering and special event permits issued by the state Alcoholic Beverage Control Board [, AND HELD NO MORE THAN 12 TIMES IN A CALENDAR YEAR AT THE SAME PHYSICAL LOCATION] are exempt from these approval requirements, but shall meet AMC title 10 requirements and the following:

a. When multiple permits are issued for the same location, the permits shall be for discreet events, and shall not be used to avoid the special land use permit process; and

b. The catering and special event permit shall be reviewed by the chief of police in order to address any recurring problems at the site that have involved the police."

24. **Issue:** 21.03.040C.7., *Expiration*
Add a new section c. about abandonment for one year.

Staff Response: Staff agrees that adding a section on abandonment of the permit would be a positive change.

Staff Recommendation: Page 17, line 36, amend to add a new section b. as follows, and make the existing b. into c.: "The use holding the permit has been discontinued, vacant, or inactive for a continuous period of at least one year; or"

25. **Issue:** 21.03.050A.4., *Perfection of Appeal; Notice of Appeal; Appeal Fee*
This proposal continues existing practice of requiring a notice of appeal to be filed with the municipal clerk within 20 days of the final decision. This is a reasonable requirement and time period. However, present regulations of the PZC require in addition that a request for written findings together with a notice of intent to file an appeal be filed with the "secretary of the commission" (defined to be the director of planning). This notice must be filed within 7 days of the oral findings at the commission hearing. This requirement is a trap for the unwary and probably unlawful as it contradicts present AMC 21.30.030. It is an unlawful attempt by the lower body to state the terms by which an appeal may be taken from its decision. The apparent purpose of the regulation is to avoid staff time developing detailed written findings in cases in which there is no controversy. If this is deemed significant, then proposed section 21.03.050A.4. should be revised. (suggested language included in comment but not added here)

Staff Response: Staff has revised the appeal process in the rewrite to remove the 7 day "intent to appeal" requirement.

Staff Recommendation: No changes recommended.

26. **Issue:** 21.03.050A.4.b., *Perfection of Appeal; Notice of Appeal; Appeal Fee*
Contents of Notice of Appeal: Presently, the form of the notice of appeal requires a "written statement of the cause and reason for granting the appeal." This requirement serves no purpose as the real substance of the appeal and the framing of issues is accomplished by the briefing. All that is necessary in the notice of appeal is a specification of the case in which the appeal is taken.

Staff Response: Including this information is important so that the clerk can judge whether the issues are allegations of new evidence or changed circumstances, which don't go to the board of adjustment.

Staff Recommendation: No changes recommended.

27. **Issue:** 21.03.050A.6.-9., *Appeal Record, Written Arguments, Appeal Packet; Notice of Hearing, Conduct of Hearing*
Subsections 6, 7, 8, and 9 are procedural matters and should be left to the discretion of the Board and addressed by regulations of the Board. Many of these requirements date from the time when the Assembly was the Board of Adjustment and reflect the needs and time

pressures of the Assembly. In particular, the Board or the Municipal Clerk should have discretion to grant extensions of time (for matters other than the notice of appeal) under standards to be developed by them. Such extensions can avoid serious hardships which ordinance mandated timelines can cause. As an advocate, I do welcome the proposed change to allow oral argument before the Board.

Staff Response: Staff is reviewing these issues with the Law Department.

Staff Recommendation: HOLD

28. **Issue:** 21.03.050A.7.c., *Reply Brief*
Waiting for the appellant to pick up the appellee's brief from the clerk's office can extend the process for a long time. Instead of having it picked up, it should be mailed.

Staff Response: Staff has no objection to this change. Staff proposes changing the time limit from 10 days to 15 days to allow for a mailing period.

Staff Recommendation: Page 21, lines 3-4, amend to read, "The appellant's reply brief is due no later than 15 [10] days after the date the clerk's office sends notice, by certified mail, [SERVICE OF NOTICE] that the appellee briefs have been filed."

29. **Issue:** 21.03.050A.9.a., *Conduct of Hearing*
Presently, the Board is required to deliberate in a public meeting. The proposed rewrite would continue this requirement. I believe this requirement also dates from the days when the Assembly was the Board of Adjustment. It was a sensible requirement for a potentially politically motivated Assembly to conduct its deliberations in public. But it makes little sense for a separately constituted board to do so. In my limited observation, it results in an overly formal process that slows down what is the critical task, the preparation of the written decision. It is the written decision which will be the focus of any remand or judicial review proceedings. Most appellate courts deliberate in private following oral argument. I think this is an appropriate model for the Board.

Staff Response: Staff is reviewing these issues with the Law Department.

Staff Recommendation: HOLD

30. **Issue:** 21.03.050A.10.d., *Scope of Review*
This section follows present AMC 21.30.090D. in allowing the Board to substitute its judgment on questions of fact. I believe this provision was added by AO 88-29 at the urging of then Assemblyman John Wood. The reason advanced, as I recall, was that the Municipal Assembly, as an elected body, was a broader or perhaps better representative of the public and should, in narrow circumstances, be allowed to overrule lower bodies on factual issues. The procedural limitation was the requirement of a super majority of two-thirds of the members. This was a significant limitation since it required 8 of 11 members of the assembly to allow substitution. Neither the original reason for the provision nor its procedural limitation makes

any sense for the separately constituted board. The Board, being a much smaller body than the bodies whose decisions it reviews, is not likely to be more representative or more in tune with community values than the lower bodies. And with only three members constituting the board, the super majority of two-thirds is the same as a simple majority, two members. Thus, the provision becomes simply an opportunity for a "second bite of the apple" with no gain in the perceived or real accuracy and fairness of the outcome.

Staff Response: Staff agrees with the comment.

Staff Recommendation: Page 21, lines 39-40, amend to read, "The board of adjustment shall [, UNLESS IT SUBSTITUTES ITS INDEPENDENT JUDGMENT PURSUANT TO SUBSECTION D. BELOW,] defer to the judgment of..."

Page 22, lines 3-9, delete section 10.d.

31. **Issue:** 21.03.050A.12.a., *Remand*
This section follows current code in stating how remand is to be directed to the lower body. Although I don't necessarily disagree with the existing and proposed language, I don't think the PZC and the Board of Adjustment read it the same way. First, the Board has a stated preference for remanding matters and leaving to the discretion of the Commission as to whether further hearings are appropriate. The Commission, on the other hand, appears to have a policy of not conducting a new hearing unless specifically directed to do so by the Board. The existing and proposed language seems to favor the Commission's view but perhaps further clarification is warranted.

Second, the commission generally does not reopen the entire matter on remand, but only addresses specific issues on which its decision has been reversed. This would seem to make remand little more than a scrivener's exercise and simply delays the final decision. Again, I am uncertain how to address this difference in proposed code language but believe it should be prior to adoption of this section. It is critical that what should be accomplished on remand is clear particularly given the delay which it introduces to the process and to obtaining judicial review of the final municipal action.

Staff Response: Staff has proposed clarifying language below.

Staff Recommendation: Page 22, lines 40-42, amend to read, "<u>If the board of adjustment remands a case to the lower administrative body, the board</u> [A DECISION REMANDING A CASE] shall describe any issue upon which further evidence <u>shall</u> [SHOULD] be taken, and shall set forth any further directions the board deems appropriate for the guidance of the lower administrative body."

32. **Issue:** 21.03.050B.3.a., *Time Limit for Filing; Notice of Appeal; Appeal Fee*
What is "written notification"?

Staff Response: There has been confusion in the past over the point that the appeal period begins. Through the Title 21 rewrite and proposed amendments to Title 4, staff is attempting to clarify this issue. The intent is that the appeal period starts on the "date of service," which

is the date that the planning department mails the signed resolution or summary of action to the applicant. Several amendments are proposed below to clarify this, and "date of service" will be defined in chapter 14.

In addition to these changes, staff is proposing additional changes to clarify who gets notified of an appeal and how to become an apellee.

Staff Recommendation:

- Page 18-19, lines 26-37 and 1-2, amend to read:

"3. Notification of Decision and Appeal Filing

a. When the appellant is not the applicant, the director shall notify the applicant of the appeal.

b. Persons who wish to be notified of a decision by a land use board or commission and of any appeal filed on that decision, shall submit a form provided by the department to the director at any time before the end of the appeal period. The director shall cause the signed resolution or summary of action to be mailed to such persons on the date of service, and also notification of any appeals filed on that decision.

4. Appellees Before Board

a. An appellee brief may be filed as provided in [SECTION] subsection A.8[7]. by:

i. The party in whose favor the lower administrative body's decision was rendered.

ii. Any municipal agency.

iii. Any party of interest for the application, as defined in chapter 21.14.

b. Persons who wish to become an appellee shall file a notice of intent to file a brief with the municipal clerk's office on a form prescribed by the municipal clerk, within 10 days after the end of the appeal period. The municipal clerk shall notify such persons of the date the record is available and of the date the appellant's brief is filed.

[APPELLEES WHO WISH TO BE NOTIFIED BY THE MUNICIPAL CLERK'S OFFICE OF THE DATE THE RECORD IS AVAILABLE AND OF THE DATE THE APPELLANT'S BRIEF IS FILED MUST FILE A NOTICE OF INTENT TO FILE A BRIEF WITH THE MUNICIPAL CLERK'S OFFICE ON A FORM PRESCRIBED BY THE MUNICIPAL CLERK WITHIN 20 DAYS AFTER THE DECISION OF THE LOWER ADMINISTRATIVE BODY FROM WHICH THE APPEAL IS TAKEN. AN APPLICANT FOR A SITE PLAN, CONDITIONAL USE, OR SUBDIVISION, WHO IS NOT THE APPELLANT, MUST FILE A NOTICE OF INTENT TO FILE A BRIEF WITH THE MUNICIPAL CLERK'S OFFICE WITHIN SEVEN DAYS OF RECEIPT OF THE APPELLANT'S NOTICE OF APPEAL TO BECOME AN APPELLEE.]"

(Renumber remaining sections in 21.03.050A.)

- Page 19, lines 4-8, amend to read, "An appeal to the board of adjustment must be perfected by a party of interest for the application no later than 20 days from the date of service of the decision being appealed [DATE THE WRITTEN FINDINGS OF FACT AND DECISION OF THE ADMINISTRATIVE BODY FROM WHICH THE APPEAL IS TAKEN IS APPROVED, ON THE RECORD, AND BECOMES A FINAL APPEALABLE DECISION, IS MAILED OR OTHERWISE DISTRIBUTED OR DELIVERED TO THE APPLICANT]."
- Page 19, lines 25-26, amend to read, "...no later than 20 days after the date of service of the decision of the lower administrative body['S INITIAL DECISION BECOMES FINAL]."
- Page 19, lines 27-29, amend to read, "...any motion filed more than 20 days after the date of service of the decision of the lower administrative body['S INITIAL DECISION BECOMES FINAL], without hearing or reconsideration by the lower administrative body."
- Page 24, lines 8-9, amend to read, "...must be filed no later than 20 days after the date of service [WRITTEN NOTIFICATION] of the decision."
- Define "appeal period" in chapter 21.14. as 20 days after the date of service.

33. **Issue:** 21.03.060B., *Applicability*
This needs clarification. What if the CO is granted for something that is not allowed in the district but may have been granted or is getting a CU? Does this open the door for others to become legal with uses that normally would not be allowed?

Staff Response: A certificate of zoning compliance (known as a certificate of occupancy inside the building safety service area) will not be granted for a use that is not allowed in the zoning district, or for a use that does not have the appropriate approvals. In fact, a land use permit (known as a building permit inside the building safety service area) can not be lawfully issued for a use that is not allowed in the zoning district or that does not have the appropriate approvals. This certificate does not and cannot legalize a use that is otherwise illegal. Any permits issued in error will be subsequently revoked.

Staff Recommendation: No changes recommended.

34. **Issue:** 21.03.060D., *Standards*
Revise to state that in some situations (large lot single family?), an as-built is sufficient and an inspection is not needed.

Staff Response: An on-site inspection to verify that the development meets the zoning code prevents future problems. Without such an inspection, many times a code violation is only discovered when the owner is in the process of selling a home, and then they must scramble to

correct the violation or apply for a variance. Special limitations on zoning districts and other special situations make a zoning inspection necessary in most cases.

Staff Recommendation: No changes recommended.

35. **Issue:** 21.03.070C.2., *Approval Criteria*
These criteria are very loose and allow amendments for nearly any circumstance that an administration may want. Item iii is particularly generic and could override years of public input with little requirement for solid justification. Strengthen this whole section and in particular, strengthen or remove 21.03.070C.2.a.iii.

Staff Response: Staff also heard comments that these criteria are too tight and will lead to frivolous lawsuits.

The current code has no criteria for amending the comprehensive plan or adopting a new element of the plan. The various elements of the comprehensive plan cover a wide range of topics and thus the approval criteria must be broad enough to apply to all the topics and plan elements. The purpose of the approval criteria is to provide a rational basis for making a decision. In the end however, the plans are approved by the Assembly, and the code cannot limit the Assembly's legislative powers and authority.

Staff Recommendation: No changes recommended.

36. **Issue:** 21.03.070C.2., *Approval Criteria*
There is a concern that having approval criteria for comp plan amendments will open the door to frivolous lawsuits. Section should be deleted or language should be relaxed about "only if the amendment meets the following approval criteria"—delete "only" or add something like "in the opinion of the Assembly."

Staff Response: As noted in Issue #35, the purpose of the approval criteria is to provide a rational basis for making a decision. Some amendments are proposed to clarify that the decision-making body is exercising its judgment.

Staff Recommendation: Page 27, line 44, amend to read, "...the assembly may approve an amendment [ONLY] if, in the judgment [OPINION] of the commission or assembly, the amendment meets the following..."

37. **Issue:** 21.03.070C.2., *Approval Criteria*
Add language at the end of this subsection: "The proposed amendment shall be accompanied by an analysis of the impacts of the amendment on these measures of public welfare and on the overall goals of the Comp Plan."

Staff Response: The staff analysis (departmental report) will address how the amendment meets (or doesn't meet) the approval criteria.

Staff Recommendation: No changes recommended.

38. **Issue:** 21.03.070C.2.c., *Approval Criteria*
This section can be interpreted many ways and is very loose. One could easily say (without the requirement to supply scientific proof) that public health would be improved by putting sewers over all of the MOA without the requirement to prove anything. Revise this section to ensure any statement is supported by science, or delete this item.

Staff Response: This critierion requires that the proposed amendment be examined from different perspectives, and that it is evaluated as enhancing or furthering the public good standard.

Staff Recommendation: No changes recommended.

39. **Issue:** 21.03.080C.2, *Approval Criteria*
Request that the word "substantially" be inserted to read: "the following criteria have been substantially met:" Conditional uses are unique applications of judgment for the benefit of the community. The Planning and Zoning Commission deserves as much latitude as possible to render as fair a decision as possible.

Staff Response: The consistent application of these criteria will ensure fair decisions. Applying only some criteria in each situation, or only partially meeting different criteria will lead to unequal decisions.

Staff Recommendation: Page 30, lines 29-30, amend to read, "...conditional use <u>approval</u> [PERMIT] application [ONLY UPON FINDING THAT] <u>if, in the judgment of the commission,</u> all of the following criteria have been met:"

40. **Issue:** 21.03.080C.4., *Approval Criteria*
Since this section deals with dimensional qualities suggest that it be combined with C7.

Staff Response: Staff does not object to combining these two criteria.

Staff Recommendation: Pages 30 and 31, combine C.4. and C.7. to read, "The site size, dimensions, shape, location, and topography are adequate for the needs of the proposed use and any mitigation needed to address potential impacts." and renumber remaining criteria.

41. **Issue:** 21.03.080C.9., *Approval Criteria*
Same request as C.4, that requirements 9 and 10 be combined, since these both speak to infrastructure.

Staff Response: One of the changes between Public Review Draft #2 and the Public Hearing Draft was to pull the issue of transportation out of #10 and more fully address it in a separate criterion, because transportation and traffic are often some of the biggest issues to arise in a conditional use application. Staff supports keeping #9 and #10 separate.

Staff Recommendation: No changes recommended.

42. **Issue:** 21.03.080C.10., *Approval Criteria*
The condition that the CU must be located with respect to existing or planned water . . . wastewater (facilities) does not allow for those sections of town that have and will continue to have on-site utilities. This appears to have been written for urban areas although a septic tank and leach field and well could meet these requirements. Clarify and revise. The requirement for "storm water disposal." might serve rural areas better if worded something like "storm and groundwater control." Revise.

Also, the MOA Charter allows for areas to be outside of service areas until voted in. This section appears to neglect the Charter on this point.

Staff Response: The phrases "water supply" and "wastewater disposal" do not indicate public services. Water can be supplied by public water lines from a municipal utility, or it can be supplied by an on-site well. Wastewater can be disposed of through a sewer system, or through an on-site septic system. The terms do not imply off-site service. Thus, if the proposed use is outside of the water/wastewater utility service area, it would plan to provide onsite water and wastewater disposal, and that would meet this criterion with respect to those issues.

Staff Recommendation: No changes recommended.

43. **Issue:** 21.03.080C.10., *Approval Criteria*
Re-include the requirement for the CU to be located with respect to transportation facilities. CU's may have large impacts to the transportation system of the area and if the necessary facilities are not there, nor are being planned for in a reasonable time, the CU could have a negative effect on the community. Transportation needs are in the same category as other facilities like utilities, fire and safety. Transportation is a subcomponent of the 2020 Plan and should not be stricken from CU criteria for approval.

Staff Response: "Transportation facilities" were deleted from C.10. because transportation issues were addressed in a new criterion: C.9.

Staff Recommendation: No changes recommended.

44. **Issue:** 21.03.080E.3., *Platting for Conditional Uses*
Why has condition '3' for a CU been removed—public dedication of street ROW, etc? Wouldn't it serve the public better in the long run and reduce problems if streets were dedicated.

Staff Response: Staff does not object to returning the language.

Staff Recommendation: Page 31, after line 35, add a new E.3. to read, "The platting authority under this subsection may require that any street right-of-way, walkway, utility easement, or other public area designated under the final approval be dedicated to the public."

45. **Issue:** 21.03.080F., *Conditional Use for a Residential Planned Unit Development*
This section does not protect the goal of neighborhood character as stated many times in the comp plan. Nor does it adhere to the goal of growing out from core centers in an efficient manner. In particular is the justification for allowing more density than would normally be allowed. This could create impacts on infrastructure that might not be upgraded accordingly or might not be possible to upgrade due to other circumstances (including transit and ER services). Another condition giving consideration for mixing of densities and housing types within a neighborhood is a mistaken interpretation of the comp plan. While the comp plan calls for a variety of housing types, it never states this should occur within neighborhoods. To do so would not protect existing neighborhood character. People buy into neighborhoods with the expectation they will retain certain qualities. This section would especially effect areas designated to remain lower density. Revise to state CUs for PUD are not meant to apply to lower density areas of single family neighborhoods with limited or no public utilities and poor infrastructure. Even with the minimum 5 acre requirement for PUDs in R-6 to R-9 districts, the main point of protection of neighborhoods would not be met, nor solve the problems of lack of supporting infrastructure.

The options in this section deviate significantly from the intent of the comp plan and allows the PZC to determine density. It must be changed to reverse that drift. This section would vastly change the character of an area without consideration for the zoning that people originally bought into. Table 21.03-2 allows for doubling the density of R6 and R7 while other options allow for greater height. Most egregious is section 3.c which allows the applicant an open ended invitation to propose changes to lot size, coverage and setbacks as well as 3.b. which allows any commercial use that is allowed in R-4 districts. Title 21 should support the neighborhood protection goals of the comp plan and designated zoning. This section allows developers to override zoning regulations and the comp plan. It does not follow the intent of Title 21 whose purpose is to implement the comp plan—rather these sections reverse that purpose. Eliminate these loopholes that do not comply with the comp plan's intent and goals/policies.

There is no discussion about the impacts to adjacent infrastructure nor mechanisms to pay for improvements—if such improvements were even possible. Some areas of town are too challenged with steep, wet slopes to even consider upgrading. The location of these zones often include viewshed locations, which must be protected according to other 2020 policies. This section needs to be revised for R6-9 districts in SE Anchorage so that neighborhood character is not compromised.

Staff Response: The Planned Unit Development option has existed in current code for at least 30 years. The purpose of the residential PUD is to allow the developer some creative flexibility, give him or her the ability to build a mix of housing types and uses if desired, consolidate open space, and have a public process through which the planned development is determined. One of the approval criteria, in addition to the regular conditional use approval criteria, is that the PUD shall maintain population densities and lot coverage that are consistent with available public services and the comprehensive plan. (Page 32, lines 11-12) Many PUDs were approved and built in the 1970s, and they continue to be attractive and popular places to live today. The use of the PUD method has declined since then with the popularity of the site condo, which does not require a public process or approval by the

Planning and Zoning Commission. The upfront provision of the full design, along with the public process and the Commission oversight combines to create an opportunity for attractive and well-thought-out residential developments through this process.

The Planning Department does not interpret comprehensive plan policy #16 as calling for a variety of lot sizes and housing types in every neighborhood.

Staff Recommendation: No changes recommended.

46. **Issue:** 21.03.080F.1.a., *Intent and Approval*
Suggest deleting this requirement as 'b' through 'e' say pretty much the same thing. Also the words creative and imaginative are too subjective to enforce.

Staff Response: Staff disagrees that the issues of open space, recreation areas, and natural features are covered in 'b' through 'e'. The Planning and Zoning Commission will use these existing criteria to approve or not approve an application, but the criteria will also assist a developer to understand what is expected of a PUD, and to give him or her a sense of what he or she should be emphasizing to the Commission.

Staff Recommendation: No changes recommended.

47. **Issue:** 21.03.080F.1.e. + 2.a + 2.b + 2.c.iii, *Intent and Approval and Minimum Standards*
This section appears to give some protection for density and lot coverage but it also is in conflict with other allowances for CUs for PUDs including Table 21.03.-2 that allows density increases exceeding the growth goals of the comp plan. Add " . . . consistent with the underlying zoning district, ..." See comment on F.3 below.

Under Open Space, specify if this is public or private open space. In R-6 to R-9 it should be public open space to create connections that people are asking for.

Under buffering, why is there a lower level of screening (L3) required for a boundary that might be non-residential? It should provide the maximum level of screening.

Staff Response: One of the purposes of this development option is to offer the developer the incentive of greater density in order to get more open space and other site amenities. Thus, densities greater than the underlying zoning district may be approved through the conditional use process.

The open space required in the PUD section is private open space, but that does not preclude the designation of a public trail easement through the open space in order to create trail connections.

As for the landscaping, staff carried forward the requirements of the current code, but agrees that the levels should be switched, as proposed below.

Staff Recommendation: Page 33, lines 1-6, amend to read,

"...combined within a single structure, nonresidential uses shall be separated from dwelling units by L3[4] buffer [SCREENING] landscaping.

...

iii. Level 4[3] screening [BUFFER] landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district..."

48. **Issue:** 21.03.080F.2.a., *Minimum Site Area*
Increase minimum for large lot districts to 7 or 10 acres.

Staff Response:

Staff Recommendation: Page 32, lines 22-24, amend to read, "...If any portion of a proposed PUD is located within the R-1, R-1A, R-2A, R-2D, R-5, or [R-6,] R-7[, R-8, OR R-9] zoning districts, the minimum site area shall be 5.0 acres. If any portion of a proposed PUD is located within the R-6, R-8, or R-9 zoning districts, the minimum site area shall be 10 acres."

49. **Issue:** 21.03.080F.2.b., *Open Space*
What is "usable open space"? Do ii. and iii. conflict?

Staff Response: "Usable" open space is a term carried forward from current code in error. See Issue #50 which addresses the conflict between b.ii. and b.iii.

Staff Recommendation: Page 32, line 26, amend to read, "...shall be reserved as [USABLE] open space which..."

Line 28, amend to read, "At least one-half of such [USABLE] open space shall be contiguous;"

50. **Issue:** 21.03.080F.2.b.ii., *Open Space*
Change minimum size of any fragment of the open space in both the A and B districts: " 2,000 square feet or 50 percent of the minimum lot size of the district, which ever is greater, and no less than 30 feet in its smallest dimension in the A (urban) district; and 10,000 square feet or 50 percent of the minimum lot size of the district, whichever is greater; and no less than 100 feet in its smallest dimension in the B (rural) district ." Add intent language for the open space if necessary.

The issue of very small and thus low-value fragments of open space also arose in Chapter 8 under Conservation Subdivision Standards. The provision of a 2,000 foot open space is insignificant in a zone of R6, R7 or larger lots. Such a small parcel will not be noticeable, or will have only modest visual impact similar to landscaping rather than the larger benefits that open space is associated with such as viewshed, solar access, privacy, wildlife habitat, recreation.

Staff Response: As similar proposals were adopted as part of the conservation subdivision regulations in chapter 8, staff does not object to differing standards for large lot districts for PUDs.

Staff Recommendation: Page 32, lines 29-30, amend to read, "ii. In class A districts, n[N]o portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.iv. and b.v. below;

iii. In class B districts, no portion of the required open space shall be less than half of the minimum lot size of the underlying district in area, or less than 100 feet in its smallest dimension, except for individual yard, balconies, or decks pursuant to b.iv. and b.v. below;"

Renumber remaining sections.

51. **Issue:** 21.03.080F.3.a., *Density*
The R-4 density allowed through a PUD is too high.

Staff Response: Current density in the R-4 is basically unlimited, as there is no height limit. The proposed code places a 45 foot height limit in the R-4, which could be raised to 55 feet through the PUD process. In 30 years, no one has attempted such density as allowed in the PUD process in the R-4, and the new height restriction makes that density unlikely to be achieved. Staff will revisit this issue and propose a lower maximum density.

Staff Recommendation: HOLD

52. **Issue:** 21.03.100, *Land Use Permits*
Separate Land Use Permits and Building Permits into two sections.

Staff Response: There is no advantage to separating land use permits and building permits into two sections, because for zoning purposes, they are the same. The zoning regulations apply throughout the municipality, regardless of the Building Safety Service Area.

Staff Recommendation: No changes recommended.

53. **Issue:** 21.03.100B.1. d. + e., *In the Municipality*
A lot of re-contouring can be done with 50 cubic yds. On sloped parcels this can result in significant changes to drainage. Reduce this requirement to something less, like 20-30 cu yds or figure out a way to ensure that no fill or excavation is done on sloped areas or those that may have drainage challenges. Many people landscape with up to 50 cu yds and this should not impede them from doing so IF re-contouring and drainage issues are not involved.

The city is increasingly built-up; and lots and setbacks have been reduced in this code revision; and therefore, the short-term impacts from excavation and hauling as well as long-term changes to terrain on views, privacy, slope stability, etc. affect adjoining properties more than in previous years.

Staff Response: Regardless of the threshold for a permit for filling or excavating, property owners must still comply with the drainage regulations and may not cause adverse impacts on surrounding properties. The increase in amount of fill allowed before a permit is required is

to be consistent and in sync with the building code. The department considers these thresholds to be the appropriate level of oversight.

Staff Recommendation: No changes recommended.

54. **Issue:** 21.03.100B.1.a., *In the Municipality*
Replace 120 square feet with 200 square feet or up to 10 percent of the existing square footage, which ever is less. If there is no structural concern that kicks in at 120 sf, why regulate the smallest structural additions that do not change the scale of the original structure? 200 feet seems like roughly the size of a single bedroom and bathroom on a residence. If the concern is that an accredited plumber or electrician be involved on any plumbing or wiring, shouldn't those requirements be specified, rather than use project square footage to trigger a permit?

Staff Response: The 120 square foot threshold for a structure is a requirement of the building code.

Staff Recommendation: No changes recommended.

55. **Issue:** 21.03.100B.1.g., *In the Municipality*
The EPA standard has been reduced from two acres to one. Change this to reflect consistency. Ensure that there is a way to check for potential drainage problems before permitting ground disturbance because in SE Anchorage ground water issues are poorly understood and drainage issues are huge.

Staff Response: The EPA requirement has changed and this threshold should be reduced to comply with the EPA requirement.

Staff Recommendation: Page 37, line 3, amend to read, "Clearing more than <u>one</u> [TWO] contiguous acre[S]."

56. **Issue:** 21.03.100B.1.g., *In the Municipality*
There should also be a mechanism to ensure that no springs or high ground water will be encountered during clearing to avoid situations encountered on Goldenview Dr across from the middle school. Even with a land permit, which the contractor did not have, it may not have been apparent that there was a huge drainage problem waiting to happen. If the area to be cleared is within known drainage problem areas such as on slopes or suspected to be, further limitations or study should be required before granting a permit. How can it be assured that the permitting office and employees check for potential problems before issuing permits? They never physically go to the area, or ask neighbors or the local council.

Staff Response: There is a provision in the drainage section of chapter 7 to stop site work immediately upon encountering underground or unexpected groundwater. Municipal wetland maps are checked during application review (wetland maps were updated a few years ago).

There is also a new policy in place in the permitting process requiring municipal verification of all streams before a plat application can be submitted.

Staff Recommendation: No changes recommended.

57. **Issue:** 21.03.100C.2.d., *Approval Procedure*
"No work shall be considered to have commenced for the purposes of this paragraph until an inspection has been made and recorded." How will this be enforced outside the BSSA? What is the departmental expectation about an inspection?

Staff Response: Staff proposes the following amendment to make this paragraph more clear. The phrase "start of construction" is defined in chapter 14.

Staff Recommendation: Page 37, lines 22-29, amend to read, "A land use permit shall become null and void unless the work approved by the permit is commenced (see "start of construction" in chapter 21.14) within 12 months after the date of issuance. [NO WORK SHALL BE CONSIDERED TO HAVE COMMENCED FOR THE PURPOSES OF THIS PARAGRAPH UNTIL AN INSPECTION HAS BEEN MADE AND RECORDED.] If after start of construction [COMMENCEMENT] the work is discontinued for a period of 12 months, the permit therefore shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a permit has been reinstated, or until a new permit has been secured."

58. **Issue:** 21.03.100E.1. through 9., *Improvements Associated with Land Use Permits*
This section was "updated" in 2003. Since that time it has evolved into a takings clause which the Municipality has been using to force public projects on to private development. Individual building permits have been held up for months to force property owners to commit to installing stormdrains, road improvements or signing away their rights to vote their conscience on future public works development. There are proposed changes before the Anchorage Assembly in AO 2007-25(S), the AHBA request that those changes be reflected here.

Staff Response: If the Assembly passes AO 2007-25(S), then staff will reflect those changes in the rewrite. Since AO 2007-25(S), was postponed indefinitely on 1-8-08 further Assembly action is unlikely.

Staff Recommendation: No changes recommended.

59. **Issue:** 21.03.100E.3., *Standards for Requiring Dedications and Improvements*
Cost is not the only consideration for deciding the need for an improvement. There are long-term impacts that should be factored in, such as down stream drainage impacts, future trail connectivity, trail head parking area, etc. It is not clear why a required public land use easement would be removed when calculating density or lot coverage.

Do not neglect impacts to easements/ROW; do not simply base the reason for requiring the improvement (or not) based on a reasonable cost, because some improvements become cost effective when the long term affects are considered—such as drainage impacts, long term vision for trail connectivity, or requiring setting aside a neighborhood trail head parking area which in the long term would help reduce congestion on the roads.

Staff Response: The intent of this section is to require site condo projects to be consistent with and developed to the same standards as conventional subdivisions. The drainage requirements of Title 21 apply to these types of developments.

As public land use easements are not available for development, they are not counted for the purposes of calculating density—this actually keeps the density lower than if those non-developable lands were included in the calculations.

Staff Recommendation: No changes recommended.

60. **Issue:** 21.03.100E.3., *Standards for Requiring Dedications and Improvements*
Add a section requiring future developers to reimburse a developer who must oversize to accommodate future growth.

Staff Response: Staff is still researching workable language on this issue.

Staff Recommendation: HOLD

61. **Issue:** 21.03.100E.3.a., *Standards for Requiring Dedications and Improvements*
This section ties the dedication or improvement to the anticipated impact on public facilities and adjacent areas from the structure that is the subject of the permit. What if the structure is very small and doesn't have a direct impact but impedes an intended dedication or improvement: e.g. a house or stable in an intended easement or in a future ROW expansion area that has been identified but not funded?

Staff Response: The section does not apply to a single dwelling unit on a single lot. If an easement exists, development will be restricted in that easement. If an easement does not exist, the municipal manager can choose to require the dedication of the easement but may choose not require construction of the public amenity. This section provides the flexibility for the municipal engineer to respond to a variety of types and intensities of development.

Staff Recommendation: No changes recommended.

62. **Issue:** 21.03.100E.3.a.iii., *Standards for Requiring Dedications and Improvements*
This section currently calls for a financial impact statement but is unclear. What is meant by financial impacts of "continuity of improvements"? The financial impacts may be difficult to assess in some of the listed categories, such as pedestrian safety and access; so the impact analysis should be cover financial costs for all the listed topics, as well as , any additional time and convenience impacts, health, and aesthetic impacts that are not easily measured by monetary costs.

Staff Response: Staff is working with the Project Management and Engineering Department to address this comment.

Staff Recommendation: HOLD

63. **Issue:** 21.03.100E.6., *Oversizing*
There is no funding source to reimburse applicants outside of ARDSA

Staff Response: Outside ARDSA the developer will not be reimbursed and must factor in the cost of oversizing in his/her development expenses.

Staff Recommendation: No changes recommended.

64. **Issue:** 21.03.100E.7., *Fee in Lieu*
Should this really be an option? Why would they only pay 75% of the costs (per section 8)?

Staff Response: Staff is working with the Project Management and Engineering Department to address this comment.

Staff Recommendation: HOLD

65. **Issue: 21.03.110, *Master Planning, Institutional***
Based on comments and meetings with UAA, staff recommends the amendments below.

Staff Response: See recommendations.

Staff Recommendation:

- Page 41, lines 37-38, amend to read, "Consider [PROTECT THE INTEGRITY OF ADJACENT NEIGHBORHOODS BY ADDRESSING] the impacts of institutional development on adjacent neighborhoods [AREAS]."
- Page 42, lines 1-2, amend to read, "...following a contextually aesthetic [UNIFORM AND COHESIVE] design theme."
- Page 43, line 15, amend to read, "Commercial spaces, not including concessionaire space that is intended to serve the institutional community [AND/OR USES OVER 1,000 SQUARE FEET]."
- Page 43, lines 28-35, amend to read, "The institutional master plan shall include the elements listed below. These elements may set different standards than those found in title 21. [CHAPTER 21.05, *USE REGULATIONS*; CHAPTER 21.06, *DIMENSIONAL STANDARDS AND MEASUREMENTS*; AND CHAPTER 21.07, *DEVELOPMENT AND DESIGN STANDARDS.*] The plan shall list the specific sections of title 21 for which different standards are to be established by the master plan, and provide rationale for any different standards proposed. Where different standards are approved in the institutional master plan, those standards shall be applied instead of the corresponding standards in title 21."

- Page 44, line 38, amend to read, "...general location and approximate scale of anticipated development..."
- Page 45, after line 44, add new section D.9. to read, "9. Approval of Final Institutional Master Plan

  a. The approval of an institutional master plan expires 12 months after the date of approval by the assembly unless, before the approval expires, the applicant files the final institutional master plan, including any modifications or conditions required by the assembly, with the director.

  b. The director shall certify the final institutional master plan within 60 days of filing by the applicant, or if the plan is not in compliance with the assembly's approval, the director shall issue a detailed list of reasons and recommended amendments to the final institutional master plan to achieve compliance.

  c. Until the approval of an institutional master plan by the assembly and the filing by the applicant of a final institutional master plan accepting the modifications or conditions required by the assembly, the affected institution shall continue to be governed solely by the provisions of title 21 other than this chapter."

66. **Issue:** 21.03.110A .4., *Purpose*
Change to "Protect the natural environment." If you only protect sensitive portions of the environment, this is a judgment call that isn't defendable.

Staff Response: The intent of the language is not about how the institution develops its facilities, but rather is for institutions to identify those areas of their property that will be set aside as natural areas, such as water bodies, wetlands, and steep slopes, which are the most sensitive natural areas.

Staff Recommendation: No changes recommended.

67. **Issue:** 21.03.110A., *Purpose*
Add "airports, railroads, and municipal lands" to the "such as" list in line 20.

Staff Response: As this is a voluntary process, the list gives some examples of those institutions that might benefit from developing an Institutional Master Plan. The municipality could create such a master plan for some of its lands. The airport has its own master planning process tied into FAA regulations, and the railroad has chosen to create a PC district to direct development in their depot/headquarters area. These institutions may choose to develop an Institutional Master Plan in the future, but seeing as they've chosen other planning routes, it seems unnecessary to add them to the list of examples.

Staff Recommendation: No changes recommended.

68. **Issue:** 21.03.110C.2.f.v., *Site and Building Design Standards*
Why has the requirement to consider adverse design impacts to historic structures been removed? In section E add wording to #5 "...historic structures, surrounding neighborhood character..."

Staff Response: Staff does not object to including "historic structures" in the list of site design issues to be addressed.

Staff Recommendation: Page 44, line 25, add as new (D) "Historic structures;" and re-letter remaining items.

69. **Issue:** 21.03.110E., *Approval Criteria*
Add to the approval criteria list of plans "and district plans." Consistency with the comp plan and its sub plans is important. Criteria #1 seems to say it supersedes the comp and sub plans. If so, change this to reflect that the comp plan is the defining document

Staff Response: As the comprehensive plan includes all adopted neigbhorhood or district plans, specifically calling out "neighborhood or district plans" is unnecessary and redundant.

Staff Recommendation: Page 46, lines 2-4, amend to read, "...consistent with the comprehensive plan[, COMPATIBLE WITH ANY ADOPTED NEIGHBORHOOD PLANS FOR ADJACENT AREAS,] and will achieve the following:"

70. **Issue:** 21.03.110F., *Compliance with Institutional Master Plan*
Clarify this section because it appears to avoid the public process. Neither is it clear if add-on projects can avoid public process. It may be appropriate to add sanctions if a key part of the project is not completed. i.e. if affordable housing is part of the plan, but never built.

We have seen this used on the current convention center construction and more than once other projects have been 'added' to the exempt list by loophole phrases in the contract, even though they haven't even been exempt by Assembly action. This has resulted in overriding other master plans without a process. Public process should never be compromised.

Staff Response: The intent of this process is that if, through a public process, a master plan is approved that places a certain use at a certain location, then when the time comes to construct that use, it isn't necessary for it to go through another approval process. The public process has been satisfied and the second approval process is redundant. This is the benefit that entices an institution to go through a master planning process.

Staff Recommendation: No changes recommended.

71. **Issue:** 21.03.120B.1., *Minor Modifications to General Development and Zoning District Standards*
It is unclear what is meant that minor modifications may be approved up to 5% of the general development and zoning standards. What constitutes 5%--costs of the development? If 5% is determined by costs, then large projects could be granted modifications that amount to

significant changes. If 5% refers to distances, then for small setbacks, 5% could end up being significant. Explain the 5% rule and examine for significant changes that may slip through this crack.

Staff Response: The text states that the modification may be up to 5% of certain standards—there is no mention of costs. There are situations when strict adherence to a numerical standard may cause a problem, while a minor deviation could solve the problem, and applying for a variance would be unnecessary cost and time. The minor modification process allows the director or other decision-making body to administratively approve small changes to certain standards, if the approval criteria are met. This process slightly expands the current "administrative variance" procedure, and is intended to bring a bit of flexibility to the design standards.

Staff Recommendation: No changes recommended.

72. **Issue:** 21.03.120B.1., *Minor Modifications to General Development and Zoning District Standards*
Does this section limit a board or commission from making a deviation from a standard that is larger than 5%? How does this affect the Platting Board's application of chapter 21.08? Is it appropriate to have a numerical limit? Or just leave it to the discretion of the decision-maker?

Staff Response: The Platting Board has the authority to modify standards through chapter 8 and should not be included in this section. For the other commissions, this section is the only section that gives them any authority to relax standards, and they are limited to 5% of the standards listed. The only other way to relax a standard is through the variance process.

It is important to have a numerical limit in order to provide predictability to the applicant and the public, and to maintain relatively equal treatment of projects.

Staff Recommendation: Page 47, lines 27-28, amend to read, "...the planning and zoning commission, [THE PLATTING BOARD,] or the urban design commission."

Page 47, lines 34-35, amend to read, "...the planning and zoning commission, [THE PLATTING BOARD, AND] <u>or</u> the urban design commission may approve..."

Page 48, lines 1-2, delete B.1.c. and re-letter remaining sections.

Page 48, lines 26-29, delete "Platting Board" twice.

73. **Issue:** 21.03.120B.1.b., *Minor Modifications to General Development and Zoning District Standards*
Why are natural resource standards not allowed to be modified by this process?

Staff Response: Scientific research shows that stream setbacks twice as wide as those proposed in the Title 21 rewrite are necessary to protect water quality and the health of the stream. There is no reason to reduce these setbacks any further.

It should be clarified that the natural resource protection standards being referenced are the setback standards of 21.07.020B., and do not include the steep slope standards of 21.07.020C., to which the minor modification section is applicable.

Staff Recommendation: Page 47, line 42, amend to read, "...21.07.020B.;"

74. **Issue:** 21.03.120C.1.a., *Limitation on Minor Modifications*
Why is an applicant limited to requesting the application of this procedure only once during the review process? Why not limit it to once on the same issue?

Staff Response: Every time the applicant submits new or changed information, the review process, which consists of distributing the application to different agencies for their comments, takes longer and is more complicated. If changes to the application are continually being submitted (or requested), the staff member who is in charge of the case is unable to finish the review and write the case. Yet many applicants get very angry when the department delays a hearing on their case because there hasn't been enough time to review new information. This provision is important for information management for the planners and those in other departments who review applications. Also community councils and interested neighbors need stability in the application in order for them to provide relevant comments or testimony.

A clarifying amendment is proposed.

Staff Recommendation: Page 48, lines 21-22, amend to read, "In no instance may an applicant use the minor modification process to obtain approval for adjustments to more than three standards applicable to the same development."

75. **Issue:** 21.03.120C.5., *Appeals*
Who hears the appeal should be based on who is the decision-making body. Can there be appeals from an assembly decision?

Staff Response: The appeal body for the minor modification should be the same as the appeal body for the type of approval process of the development in question.

Staff Recommendation: Page 48, lines 36-37, amend to read, "Denial of a minor modification [APPLICATION] may be appealed to the same body as an appeal of the underlying approval process. For instance, denial of a minor modification in a conditional use application may be appealed to the board of adjustment, as the board of adjustment hears appeals of conditional use approvals [ZONING BOARD OF EXAMINERS AND APPEALS IN ACCORDANCE WITH SUBSECTION 21.03.050B]. Denial of a minor modification associated with a permitted use may be appealed to the zoning board of examiners and appeals."

Page 23, line 25, amend to read, "Denial of a minor modification under section 21.03.120 when the director is the decision-making body."

76. **Issue:** 21.03.130, *Neighborhood or District Plans*
Add a new section for an Appeal Process. Failure to have an appeal process is inequitable, because private projects which may cost less in time, money and public involvement than these neighborhood plans are allowed an appeal process. These projects may be citizen-led with no financial write-off if they founder; and citizen organizations should have procedures equal to business investors.

Staff Response: As with any comprehensive plan decision made by the Assembly, the avenue of appeal is to Superior Court.

Staff Recommendation: No changes recommended.

77. **Issue:** 21.03.130A.1., *Purpose*
It is good that the purpose statement lists that these plans shall be guided by elements of the comp plan. However, add under "The goal of a . . . . district plan . . ." that the comp plan also is to protect neighborhood character and identity. This is a critical component of the comp plan and the focus of neighborhood (sub)plans.

Staff Response: Staff does not object to the proposed language.

Staff Recommendation: Page 49, lines 23-25, amend to read, "The goal of a neighborhood or district plan is to protect and promote positive elements of neighborhood or district character and identity, while promoting [PROMOTE] the orderly growth, improvement, and future development of the neighborhood, community, or municipality."

78. **Issue:** 21.03.130A.2.a., *Authority*
The inclusion of the planning department and other government entities in this section implies that plans developed by the planning department shall follow this process. However, the adoption of new plans is also covered under substantive amendments to the comprehensive plan.

Staff Response: It is unclear whether planning department plans, such as the Hillside District Plan or the Midtown District Plan, are required to follow the steps required in this section (which is current code). One of the missions and functions of the planning department is to develop plans for the municipality, and the professional department staff determine the timeline and schedule for each planning project on a case by case basis. This ordinance was intended to provide policy and issue guidance and a process framework for community groups that wished to develop a plan for their neighborhood or district. Thus the intent was not to place parameters on municipal planning projects, but rather provide structure and direction to community groups. Staff proposes an amendment to clarify this.

Staff Recommendation: Page 49, after line 35, add to 2.a., "Plans sponsored by the municipality, including the mayor, the assembly, the planning and zoning commission, and various departments, are not subject to this section, but rather shall follow the process of section 21.03.070C., *Comprehensive Plan Amendments, Substantive.*"

79. **Issue:** 21.03.130A.3., *Policy Guidance*
What is the point of allowing neighborhood plans to be developed if the Assembly/MOA entity can override potentially important features of an on-going plan by voting on a competing plan or action. There should be consideration for the group involved and the process; there should be coordination between same if some action may impact the not-yet-completed plan.

Staff Response: It seems the commenter is misinterpreting the section. There is nothing in the section about "competing plans." This section states that the plan serves as the policy to guide actions by municipal agencies. However, other plans may be created for the same area that address different subjects.

Staff Recommendation: No changes recommended.

80. **Issue:** 21.03.130C.1. , *Department Review and Determination*
A 90 day review is far longer than that permitted for some major developments. The whole Neighborhood Plan process could take well over a year if the maximum time for each step was taken. Reduce the overall time period for approval of neighborhood plans because this section is out of line for approval with other time frames in Title 21.

The limitation placed in 'b' for permission to proceed, only with departmental approval, is discriminatory in that many questionable projects that come before Planning are offered advice, but are not told they cannot proceed. Reword the section to allow an entity/group to proceed with their plans upon being given guidance and advice.

Staff Response: A development on private property and a neighborhood or district plan are very different things. A development proposal requesting an entitlement (such as a conditional use) must meet the submittal requirements of Title 21, but if it does, the department does not have the authority to reject it out of hand. The department can note problem issues where the development is deficient or doesn't meet the code requirements, and the department can recommend against granting the entitlement, but the decision-making body has the final say.

A neighborhood or district plan will become an adopted element of the comprehensive plan, and as such, will set the policy for whole areas encompassing many different properties. The Assembly, the Planning Commission, and the municipality are granted planning powers through the charter and from the state, as a unified municipality. Thus the municipality can set standards for planning. The checks and balances in the Neighborhood and District Plan section exist to ensure that plans contain a certain minimum amount of information and are a certain level of quality, and also to prevent a minority element of the community from imposing their will upon the larger neighborhood/district: thus the length of time for the whole process, and the planning department oversight.

However, staff has reviewed the timeline for a neighborhood or district plan and recommends the changes suggested below.

Staff Recommendation:

- Page 50, line 38, amend to read, "Within <u>45</u> [90] days of the submittal of a plan..."

- Page 53, line 4, amend to read, "...within 21 [30] days of its determination..."

- Page 53, line 25, amend to read, "[AT THE CONCLUSION OF THE 120 DAY REVIEW PERIOD, T]The commission shall schedule..."

81. **Issue:** 21.03.130C.1.b., *Department Review and Determination*
The requirement that "content" conform to department critique at this early stage seems vague and could result in foreclosure of new ideas, not just the intended conformity to an outline or format.

Replace the word content with scope or completeness of content

Delete the sentence "Only in such an event may the sponsor be permitted to continue with the plan." That deletion enables the sponsor to move forward with benefit of advice even if sponsor's approach may be a degree or two off-target. Staff doesn't kill a bad development application, just try to reshape it; and the same policy should apply here.

Add language similar to 21.03.020 B 5 Informal Review at pre-application stage: the review comments of the department are not binding upon the applicant or the municipality but are intended to serve as a guide to the sponsor in developing the neighborhood or district plan and to advise the sponsor in advance of the formal review of any issues which will be presented to the decision-making bodies.

Staff Response: As stated above in Issue #80, the standards for form and content in this section are proposed to ensure that plans created by community groups contain a certain minimum amount of information and are a certain level of quality. However staff does not object to deleting the suggested sentence. With or without this statement, staff will not be able to process a plan that does not meet the standards of the code.

Staff Recommendation: Page 51, lines 4-5, amend to read, "...may correct such deficiencies. [THE SPONSOR MAY INDICATE ITS WILLINGESS TO MAKE SUCH CHANGES, ADDITIONS, OR DELETIONS. ONLY IN SUCH EVEN MAY THE SPONSOR BE PERMITTED TO CONTINUE WITH THE PLAN.]"

82. **Issue:** 21.03.130C.2., *Coordination of Plan Review*
If neighborhood or district plans can be placed on hold while other planning efforts are taking place—which could result in significant impacts to a neighborhood in the meantime—then define what an "appropriate timetable is" and place a maximum delay of not more than one year. Holding back a neighborhood plan for a building season or two could amount to penalizing a neighborhood plan and negate its very purpose. If 'coordination' of planning efforts is necessary, then it makes more sense to allow the neighborhood plans to be developed concurrently.

Why should MOA planning efforts be allowed to place a neighborhood plan on hold because in the end the neighborhood plan will supercede all but the comp plan; therefore its long term goals should not be overridden during its planning process by other actions that may negatively impact it.

Staff Response: It is reasonable for a legislative body to delay action on a proposal when a related proposal is being developed and may be up for consideration in the near future. This is particularly true in the planning arena, as it is the venue for coordinating strategies for the future. The municipality is aware of practical considerations of various planning efforts and the fact that some efforts can extend beyond one year.

Staff Recommendation: No changes recommended.

83. **Issue:** 21.03.130D.1.b., *Form and Content*
This is an important point to keep—that neighborhood plans shall enhance or implement . . . the comp plan. Such statements should be included throughout Title 21 more often to highlight this fact.

Staff Response: Almost every approval criteria for every process includes a requirement to "conform to the comprehensive plan."

Staff Recommendation: No changes recommended.

84. **Issue:** 21.03.130D.2., *Sound Planning Policy*
In this section, maybe in 2.d., require neighborhood plans to be in accordance or compatible with district plans.

Staff Response: Not all neighborhood plans will be in an area where a district plan has been adopted. If there is an adopted district plan, it will be an element of the comprehensive plan, and the neighborhood plan will need to be consistent with it, so the proposed addition is unnecessary.

Staff Recommendation: No changes recommended.

85. **Issue:** 21.03.130E.2.a., *Public, Agency, and Community Council Review*
120 days to review a neighborhood plan is excessive and stalls the process so that people lose interest and continuity. Councils are rarely given 45 days to review projects, and while neighborhood plans should have a greater impact than anything else, 120 days is a long time and could easily be reduced to 90 days. That time frame would even accommodate councils who do not meet in the summer. Reduce this time frame for review.

Staff Response: A neighborhood or district plan will become an adopted element of the comprehensive plan, and as such, will set the policy for whole areas encompassing many different properties. It is important that agencies and the public have sufficient time to carefully review the proposed plan. See Issue #80 for proposed amendments to shorten the plan approval process.

Staff Recommendation: No changes recommended.

86. **Issue:** 21.03.130E.3., *Department Review*
Neighborhood and District Plans are to implement the comprehensive plan as stated in this section; they supercede Title 21 code, so it is 1) inaccurate to include the statement that the dept will review the plan for consistency with other adopted plans, and 2) it is inappropriate to include the last statement that indicates the department can essentially neglect the decisions of a neighborhood plan because these plans are meant to supercede all but the comp plan. Revise this section to reflect that neighborhood plans supercede all others except the comp plan.

Staff Response: Neighborhood/District Plans do not supersede Title 21 nor other higher level plans such as the Wetland Plans or the Offical Streets and Highways Plan. These plans are elements of the comprehensive plan, and Title 21 is one of the implementation tools of the comprehensive plan. Some plans may have implementation strategies that call for amending Title 21 (for instance suggesting the creation of an overlay district), but a separate process to amend Title 21 would then need to happen.

As a proposed element of the comprehensive plan, any neighborhood/district plan proposal must be consistent with already-adopted goals and policies.

Staff Recommendation: No changes recommended.

87. **Issue:** 21.03.130E.3., *Department Review*
How will the department incorporate the public comments if they are reviewing the document at the same time the public is.

Staff Response: The department will be able to review public comments and coordinate recommended amendments during the public notice period before the planning and zoning commission hearing.

Staff Recommendation: No changes recommended.

88. **Issue:** 21.03.130F.3., *Planning and Zoning Commission Action*
The comp plan is the only plan that supercedes a neighborhood plan, therefore P/Z should not review a neighborhood plan in light of other adopted plans, but rather the reverse should hold.

Staff Response: A neighborhood/district plan is one of many elements of the comprehensive plan (see chapter 1 of the Title 21 rewrite or section 21.05 of the current code). Plans under consideration for adoption need to be consistent with plans that are already adopted and effective municipal policy.

Staff Recommendation: No changes recommended.

89. **Issue:** 21.03.130G., *Assembly Adoption*
This section should include the requirement that the Assembly adhere to the same requirements as P/Z in section F and that is to include a statement of findings in their action.

Staff Response: Traditionally various Assemblymembers speak on the record giving reasons for their actions, but findings are not required for a legislative action (as opposed to a regulatory action).

Staff Recommendation: No changes recommended.

90. Issue: 21.03.140, *Public Facility Site Selection*
Amend to reflect recent ordinance (2007-124 S) about school site selection.

Staff Response: See below.

Staff Recommendation:

- Page 54, line 31, amend to read, "Unless exempted by subsection B.3[2]. below,..."

- Page 55, line 6, add new section B.2.: "Notwithstanding B.3. below, the planning and zoning commission shall review and make recommendations, and the assembly shall decide the selection of a site for a school facility."

- Page 55, line 6, renumber existing B.2. to become B.3.

- Page 55, lines 14-15, delete subsection 2.b. (new 3.b.) and renumber remaining.

- Page 55, lines 29-32, amend to read, "1. The department shall review each proposed site selection application in light of the approval criteria set forth in subsection I.[H.] below, and distribute the application to other reviewers as deemed necessary.

2. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.

3. For school site selections, the department shall also provide the report to the Anchorage school board for its review and recommendation."

- Page 56, lines 2-4, amend to read, "1. The commission shall hold a public hearing on any site selection that is subject to review under this section.

2. For school site selections, the school board and the commission may meet in a joint public hearing; however, the school board and the commission shall separately consider and make recommendations to the assembly. Both recommendations shall then be forwarded as a package to the assembly for approval.

3. For all other site selections, [AT THE CLOSE OF THE HEARING,] the commission shall decide on the proposed site based on the approval criteria of subsection H. below."

- Page 56, add new section H., "Assembly Action," to read, "For school site selections, upon receipt of the recommendations from the commission and the Anchorage school board, the assembly shall hold a public hearing and take one of the following actions:

1. Approve a specific recommended site;

2. Reject some or all recommended sites; or

3. Remand the evaluated and recommended sites to the commission and the school board for further investigation, review, and evaluation."

Page 56, renumber current "H. Approval Criteria" to "I. Approval Criteria," and amend "I. Appeal" as proposed in Issue #98.

91. **Issue:** 21.03.140B.1., *Applicability*
Add a new criteria to 21.03.140 B 1:

Any facility that seeks an exception to the intent of the 2020 Comp Plan or the Downtown Plan to concentrate government services in the Downtown.

Staff Response: In Issue #92, staff proposes lowering the threshold for public facility site selection from 100,000 square feet to 75,000 square feet. The intent is to capture major government facilities, and locating them downtown (when appropriate) is one of the approval criteria. Some government services are not appropriate downtown or should be spread throughout the municipality (e.g., parks, fire stations).

Staff Recommendation: Page 55, line 3, add "Fire stations;" to become B.1.c. and re-letter remaining subsections.

92. **Issue:** 21.03.140B.1.a., *Applicability*
Make a distinction between new construction and leasing of existing space.

Revise to include P&Z approval when there would be high impacts, rather than base P&Z role only on square footage.

...a total of 100,000 square feet, or 20,000 square feet if the site or use involve high traffic impacts or volumes. The P&Z commission has a important role in implementing the overall land use and infrastructure patterns.

Is 100,000 sf too big (too high of a threshold)? The words "on the site" make it unclear whether multiple stories of a building would count toward the total square footage.

Staff Response: At issue is the location of the public facility, whether it is a situation of new construction or of leased space, so the ownership and/or current existence of the building is immaterial. The site selection process is intended for the siting of major public facilities, no matter what type of building they occupy.

The current threshold of 4,000 square feet is far too low, but perhaps a jump to 100,000 is too high. The intent is to capture those government facilities that are large enough to be a major draw to the public or create a major impact on the surroundings. Staff proposes lowering the threshold to 75,000 square feet.

Staff agrees that the words "on the site" create confusion. See proposed amendment below.

Staff Recommendation: Page 54, lines 35-37, amend to read, "Any newly constructed building or buildings and any existing building acquired by purchase or lease, in which government operations or activities occupy more than a total of 75,000 [100,000] square feet of gross floor area [ON THE SITE];"

93. **Issue:** 21.03.140B.1.b., *Applicability*
Change from 20 to 5 acres. Same reasons as above.

Staff Response: Staff disagrees that this reduction is appropriate.

Staff Recommendation: No changes recommended.

94. **Issue:** 21.03.140B.2.b. , *Applicability*
Does AMC 25.25 allow P&Z timely review and recommendation, at the site search and alternatives stage, on school site selections? If not, then delete item 2b so that P&Z has an analysis role on school site selection. Schools have a major impact on surrounding land uses and infrastructure, and they are intended (under our adopted Parks Plan) to serve an increasing role as community centers and recreation sites for the public. Analysis of these elements should not be delegated solely to the School Board because their interest is skewed toward specific goals and constraints of the Anchorage School District.

Staff Response: Actually, the Assembly recently passed an ordinance repealing the school site selection process in Title 25 and adding schools to the public facility site selection process, so this section will be revised to reflect that. See Issue #90.

Staff Recommendation: See Issue #90.

95. **Issue:** 21.03.140H. and 21.03.160E., *Approval Criteria (for Public Facility Site Selection and Rezonings)*
Please be aware that complaints regarding noise may be filed if development or rezoning is not compatible with both current and projected land uses and current and projected surrounding land uses.

Staff Response: So noted.

Staff Recommendation: No changes recommended.

96. **Issue:** 21.03.140H.8., *Approval Criteria*
Since 9/11 this requirement may not be a wise one to congregate all government offices downtown. This also adds to traffic problems and too often the requirement to add adequate transportation infrastructure--mainly transit, is not adhered to.

Staff Response: The events of 9/11 have added the issue of security to the many issues that planners and government officials must deal with. The goal of a downtown that is a regional center for commerce, services, finance, arts and culture, government offices, and residential development (Anchorage 2020 policy #18) remains a valid and worthy goal.

Downtown is the area of town with the most convenient access to transit—another reason it remains a logical choice for government offices.

Staff Recommendation: No changes recommended.

97. **Issue:** 21.03.140I., *Appeal*
Clarify why the Assembly can hear an appeal of the selection of a public facility site when they do not hear other land use issues. There should be consistency.

Staff Response: Public facility site selection involves allocation of fiscal resources, which is the purview of the Assembly, so it was logical that the Assembly hear appeals on this issue. However, staff is proposing a change in Issue #98.

Staff Recommendation: See Issue #98.

98. **Issue:** 21.03.140I., *Appeal*
If an "appeal" is to the Assembly, they must abide by ex parte contact rules, which are inappropriate. Call it something else—maybe model it on the rezoning protest section.

Staff Response: Staff has proposed language to create a method to object and call for an Assembly hearing rather than an appeal provision.

Staff Recommendation: Page 56, lines 23-24, amend to read, "J. Request for Assembly Hearing [APPEAL]

1. The planning and zoning commission decision is final unless, within 20 days of the date of service, any party of interest requests an assembly hearing in a letter sent to the director.

2. The assembly may hold a public hearing on the case at their discretion."

99. **Issue:** 21.03.160, *Rezonings*
The point of the latest comprehensive plan and its sub plans is, in part, to reduce time and cost for rezones. These proposed changes appear to make the process easier which defeats the intent to provide a stable development environment where the regulations can be relied upon for consistency and for protection of neighborhood character. How did Clarion advise dealing with rezones, CUs, etc? Their recommendations on these sections should be reviewed and considered.

Staff Response: Staff is unsure why the commenter believes the proposed process is "easier" than the current process. The process is actually the same. The approval criteria have been revised, with the criteria of the proposed code adding more specificity. Clarion proposed some changes to the approval criteria, a number of which have been carried through to the public hearing draft.

Staff Recommendation: No changes recommended.

100. **Issue:** 21.03.160D.10., *Waiting Period for Reconsideration*
Waiting period for reconsideration should be 2 years, not 1 year. Denials are rarely granted by P&Z, and usually induce a major effort by staff and the affected public. Chances of subsequent approval may wrongly be affected by staff and public burnout. The actual reasons for subsequent approval should be change in market or surrounding conditions, which are not

likely to change significantly in 1 year. Two years strikes a fair balance between public interest and private interest.

Staff Response: The rewrite already extends the waiting period. In the current code, the PZC may not hear the case for one year, but the application may be submitted and processed before a full year has passed since the denial. The rewrite states that an application may not be submitted until a year has passed. As the routine processing if the application will take several months, the likely waiting period will be closer to 18 months.

Staff Recommendation: No changes recommended.

101. **Issue:** 21.03.160D.7. & 8., *Planning and Zoning commission Action and Assembly Action*
Provide consistency between P/Z and Assembly requirements to base a decision on public input. The Assembly instructions includes this point, the P/Z does not. Always stress the value of public input.

Staff Response: Staff has no objection to making the language consistent.

Staff Recommendation: Page 59, lines 10-13, amend to read, "...at the close of the hearing, taking into account the recommendations of the department and public input, and based upon the approval criteria of subsection E. below, shall recommend approval, approval with special limitation or other modifications, or denial. The commission shall [BASE ITS RECOMMENDATION ON THE APPROVAL CRITERIA IN SUBSECTION E. BELOW, AND SHALL] include written findings based on each of the approval criteria."

102. **Issue:** 21.03.160E., *Approval Criteria*
This section has been greatly weakened in the direction of easier re-zoning. Add this intent language: Zoning is not effective if it is too- easily or frequently changed: zoning is intended to provide a degree of certainty that is important for long-term investment and neighborhood cohesion and stability. Case-by-case rezoning is allowed if it can address a demonstrated change in supply and demand for a land use without changing the intended pattern of densities, land uses, infrastructure and neighborhood character established in adopted plans, or without causing significant impacts. (There is a similar level of explanation of intent for Conditional Uses.)

Staff should highlight for the public and P&Z key elements from existing code on rezoning (21.020.060) that are eliminated in this proposed revision. Staff is also requested to comment objectively on the ease of rezoning in Anchorage compared to other cities.

Staff Response: The procedure for rezoning remains essentially the same between the current code and the rewrite. In the rewrite, the applicant is required to have a pre-application conference with staff, and to hold a community meeting. These are not required in current code.

In current code, there are five "standards for approval." In the rewrite, there are ten approval criteria. The ten criteria cover the issues addressed in the current code's five criteria.

Staff does not support adding the proposed language, because a zoning change, by its very nature, will change the density and land uses allowed in the subject area.

Since the rezoning process is essentially the same as current, staff did not dedicate any resources to compare the ease of rezoning in various cities.

Staff Recommendation: No changes recommended.

103. Issue: 21.03.160E., *Approval Criteria*
Restore the language form existing code "may be approved only in the best interest of the public" Amend the proposed sentence to read "The rezoning may be approved only in the best interest of the public, including the public health, safety, and general welfare." It is too vague to have the existing standard of "promote the public health, safety and general welfare," because any applicant can demonstrate some narrow benefits to some sector of the public.

One re-zone often encourages and sets precedent for another; and the potential domino-effect of transition of the neighborhood must be in the public interest and meet the Comp Plan intent for the area and the use. The approval process is currently weak in cumulative impacts: first-to-apply projects are found to have below-threshold impacts and last-to-apply projects bear disproportionate burdens for infrastructure retro-fitting and environmental mitigation.

This section does not uphold the intent of the comp plan to reduce rezones and maintain consistency for developers and neighborhoods. One rezone can set the stage for subsequent rezones thus producing cumulative impacts that are not addressed here or elsewhere in code. Revise the whole section to tighten up instances where rezones may be allowed.

Staff Response: Staff does not object to adding the suggested language.

Staff Recommendation: Page 60, line 27, amend to read, "The rezoning shall be in the best interest of the public and shall promote[S] the public health, safety, and general welfare."

104. Issue: 21.03.160E.9., *Approval Criteria*
Restore the existing wording of 21.20.120 that requires the applicant to demonstrate an insufficient supply of available land in that zoning category relative to the demand for that type of zoning.

Reason: re-zoning should meet a public interest not just an individual applicant's interest in a certain type of development. The current wording looks only at supply, not whether there is a supply/demand imbalance. We've had conceptual projects presented to support a re-zone, with no evidence of demand: and once the rezoning is obtained, these projects evanesce.

Staff Response: Item 9 requires the applicant to demonstrate the need for the rezoning. If there is insufficient supply of land in the desired zoning district, then there is a need for more land to be zoned for that district.

Staff Recommendation: No changes recommended.

105. Issue: 21.03.160F., *Flexibility of Interpretation*
This section is very loose and essentially allows rezones and comp plan amendments with little regard for the intent of the overall comp plan, even though item 3 tries to say there shall not be cumulative encroachment. The reality of using the comp plan map for determination of when a rezone is near a boundary that allows the proposed designation is faulty, because the plan map is not of sufficient detail to allow those determinations. For example, when the comp plan land use policy map (p. 50) was developed in 1999, the Urban/Rural Boundary design was changed many times in an effort to keep agencies/commissions from using it as a determining factor for where public services should be placed. Even with the disclaimer in the legend that said the boundary could only be determined through the Hillside District Plan process, boards/commissions/Assembly still used that gross line on the map to rationalize their decisions. Allowing flexible interpretation via the plan map, which is of insufficient scale for the job, is tantamount to placing no limits on rezoning. This section must be severely tightened up or removed.

Staff Response: "Comprehensive Plan Map" in the Title 21 Rewrite refers to the land use plan map of the Comprehensive Plan. This definition of "Comprehensive Plan Map" is available in public hearing draft Title 21, Chapter 14. The purpose of a land use plan map is to designate the future location and density for land use and development. In most communities the land use plan map serves as a geographic policy basis for zoning. For most of the Anchorage Bowl, the draft Anchorage Bowl Land Use Plan Map will (after further public review and adoption) provide this geographic guide for land use decisions, including zoning amendments. It is designed to provide more specific policy geographic guidance throughout the Bowl than does the "land use policy map" that the commentator refers to above.

Certain areas of town that are in a Neighborhood or District Plan, such as Downtown, Fairview, Midtown and Hillside, will have an area-specific land use plan map that provides even more customized guidance for growth in its area. Once a Neighborhood or District Plan is adopted as an element of the Comprehensive Plan, its land use plan map becomes the "Comprehensive Plan Map" for its area. For example, the Hillside District Plan's land use plan map will be the "Comprehensive Plan Map" for Hillside.

Therefore, most proposed rezonings will be clearly within a one or another of the color-shaded land use classifications on the land use plan map for the area. The "Comprehensive Plan Map" will be geographically explicit enough, and subsection 21.03.160F.2.a (lines 29-30 on page 61) will apply in most rezone cases.

However, land use plan maps in the Municipality are not as geographically explicit as a zoning map. Zoning boundaries are specific to the property line level. Land use plan maps traditionally serve as more generalized policy guidance, and often do not reach the specificity of individual property lines. It follows that there can be parcel-specific rezoning proposals on or near the boundaries of two land use plan map classifications, where it is uncertain which classification the proposed rezoning falls in. It is important that the Title 21 Rewrite provides the procedure and criteria for addressing these situations. Subsection 21.03.160F.2.b (page

61, lines 31-34) ensures that, where the land use plan map boundaries are unclear, the rezoning decision must take into account the policies and intent of the Comprehensive Plan.

Staff Recommendation: No changes recommended.

106. **Issue:** 21.03.160H.3.b.ii., *Effect of Approval*
Clarify that a time limit for an overlay will not expire when the overlay has been created as part of a neighborhood/district plan. Only if the neighborhood/district plan is re-written can an overlay be changed. The Assembly should not be given license to undo something that is a product of a neighborhood's creation.

Staff Response: The overlay district will only be given a time limit if the Assembly finds that the objectives will be met within a certain period of time. For instance, if an overlay district is put in place to require some sort of amortization over five years, then in five years the issue would be corrected and the overlay would no longer be necessary.

Staff Recommendation: No changes recommended.

107. **Issue:** 21.03.160I., *Rezoning to Planned Community Development District (PCD)*
A Planned Community Development (PCD) is difficult to understand especially when the In-Lieu standards allowed have a long list that refers the reader to other sections and chapters. Complete language or other guides are needed here. In general, this section appears to grant higher densities than would be allowed even though the comp plan and available infrastructure may not support it. It also appears to allow PCDs to be exempt from some Title 21 regulations. In 21.03.160I.1 change "in order to meet the unique needs of the development," to "to allow the development to achieve comprehensive plan goals in a unique way."

Staff Response: Were the code to duplicate the language of the referenced sections in section I.4.b., all of chapters 5 and 6 and most of chapter 7 would be repeated, and the whole code would be much longer. Also, when code language is repeated in different locations, the potential for error is greater that the code may be revised in one place but not in the other place(s). This leads to inconsistencies and confusion. Cross references are necessary to link various sections of code together.

The rezoning approval criteria apply to a rezone to a PCD district, and those criteria discuss infrastructure requirements.

Staff does not object to a change similar to that proposed in the last sentence.

Staff Recommendation: Page 64, line 13, amend to read, "...in order to <u>allow the development to achieve the goals of the comprehensive plan and title 21 in a unique way</u> [MEET THE UNIQUE NEEDS OF THE DEVELOPMENT]."

108. **Issue:** 21.03.160I., *Rezoning to Planned Community Development District (PCD)*
This section is far to complex to understand without a comparison chart and without detailing the points listed in the proposed section such as .160.4.I.4.b. In general PUDs appear to be a huge loophole for rezoning in areas that would not normally be allowed to have higher densities due to lack of infrastructure and in areas with limits on density determined in the comp plan. The proposed language would allow PUD requirements to supercede those of Title 21 (03.160.I.6). This could result in conflicts with the intent of the comp plan and thus result—over time—shifting the goals and policies of the comp plan away from the protection of neighborhoods and their desire to maintain their character. See comments above under 21.03.080.F. Revise this section so that the comp plan goals and policies always supercede a PUD rezoning or CU.

Staff Response: Complying with and conforming to the comprehensive plan and the purposes of this title is one of the approval criteria for rezones, which a rezone to a PCD would have to meet. If an area lacks the infrastructure to support the development proposal, then the proposal would be rejected. Nothing in the PCD district negates the Title 15 requirements for 40,000 square feet per unit for on-site wastewater disposal.

Staff Recommendation: No changes recommended.

109. **Issue:** 21.03.160I.3., *Minimum Area Requirements*
Where did the 30 acre threshold come from? Is this the correct threshold?

Staff Response: The current code threshold is 40 acres. The development community requested a lower threshold. Staff does not recommend reducing the threshold to less than 30 acres, as this will lead to too many problems of application. The development area needs to be substantial to warrant a separate and distinct zoning scheme.

Staff Recommendation: No changes recommended.

110. **Issue:** 21.03.180, *Site Plan Review*
Clarify if installation of new, or upgrades to synthetic of existing, athletic fields at costs greater than $1 million require Administrative Site Plan Review or Major Site Plan Review?

Staff Response: It would depend on where the fields are located. If they are part of a school site and are approved as part of the major site plan review for a school, then they would need no further review. If a school site plan was approved without fields, and later on the School District plans to add fields, that would require an amendment to an approved site plan. Most amendments go through the original approval process—for a school that would be a major site plan review.

Staff Recommendation: No changes recommended.

111. **Issue:** 21.03.180, *Site Plan Review*
Can all site condos go through a site plan review? Can the municipality required homeowner's associations with sufficient dues to maintain infrastructure, so the municipality doesn't have to step in later to pay to fix inadequate infrastructure?

Staff Response: The difficulty with requiring all site condos to go through a site plan review is how to define a "site condo." As a use type, they fall under "dwelling, multifamily," because there are multiple dwelling units on one lot. As a building type, they can be single-family, two-family, or more, but how many units need to be in each building before the project is considered to be multiple multifamily buildings on a lot, like the Alpine Apartments? The concept of multiple units in multiple buildings on a lot, or of multiple single-family homes on one lot is not a bad concept—it has been executed poorly in many places in Anchorage. Thus staff considers the appropriate response to be to apply design standards, rather than to create a relatively arbitrary cut-off between a "site condo" and a multifamily condo or apartment development.

Staff is working with the Law Department to answer the second question.

Staff Recommendation: HOLD

112. **Issue:** 21.03.180C.2.f., *Urban Design Commission Action*
Include the requirement that decisions shall be based on public input (and other criteria) in order to be consistent with similar statement in other sections.

Staff Response: No objection.

Staff Recommendation: Page 69, lines 20-21, amend to read, "The urban design commission shall hold a public hearing on the proposed application and, <u>taking into account the recommendations of the department and public input, shall</u> act to approve, approve with conditions…"

113. **Issue:** 21.03.180D.1., *General*
Is the 24 month expiration of approval consistent with other procedures?

Staff Response: A conditional use permit expires if the use is abandoned for 12 months. A land use permit expires after 12 months if no work has commenced in that time period. "Long" plats are valid from between 24 and 60 months, as set by the platting board. Abbreviated plat approvals expire after 24 months. Vacation approvals expire after 24 months. A variance becomes null and void if it is not exercised within 12 months of being granted.

The approval period varies with the type of application and development.

Staff Recommendation: No changes recommended.

114. Issue: 21.03.180E., *Approval Criteria*
This proposed revision is a MAJOR change from existing code. The staff should clearly publicize the change in scope for all site plan reviews, and make a case to the public and the Commission as to how this does or does not serve the public interest. Please print the previous language of 21.50.200 along with the new for ease of contrast. Unless I've overlooked some section, it appears to me that the revised version has totally dropped the current standards for general site plan review (21.50.200), which require the proposed site plan "not to have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development" (e.g. circulation and safety; the demand for public services; environmental pollution; maintenance of compatible land use patterns).

The staff should also prepare a chart to compare new standards for specific high-profile types of site plans. Otherwise, how can the public, during this review, understand if the numerous approval criteria for site plans for specific uses, such as churches, drive in banks, etc. where retained in the new draft since the Design and Development Standards are no longer organized by particular uses.

The current proposed Approval Criteria are vague to the point of laissez faire?

There is no clear standard in the language proposed in E4: mitigate or offset those impacts to the maximum extent feasible. Mitigate or offset to the maximum extent feasible is FAR, FAR WEAKER than the current intent to AVOID SIGNIFICANT PERMANENT NEGATIVE IMPACTS greater than that from permitted development. Mitigate or offset actions as "feasible" takes the developer's willingness as the guiding force and could result in token actions. This DOES NOT APPEAR TO SUPPORT THE PUBLIC INTEREST OR TO REQUIRE COMPLIANCE WITH COMP PLAN PRINCIPALS such as overall land use patterns and compatibility policies.

Requested revisions:

Reinstate the language of current 21.50.200 requiring the proposed site plan "not to have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development" with a specific listing of impacts to avoid.

Include language that the site plan review shall include conditions to apportion the public costs from offsite public infrastructure and services induced by the site plan

Clarify how the word "reasonably" would be defined. Past instances, instances from other jurisdictions, and technical information and professional opinion should be considered evidence of reasonably anticipated impacts.

Staff Response: The biggest changes regarding site plan review between the current code and the rewrite are that site plan reviews are now clearly divided between "administrative" (director makes decision without public hearing) and "major" (public hearing before the urban design commission) and the process is clearly placed in the hierarchy of review procedures between "by-right" or "permitted" uses, meaning no planning department review is necessary, and conditional uses, where the appropriateness of the use at its proposed location is determined by the planning commission. Site plan reviews, either administrative or major, are applied when the use type is appropriate for the zoning district, but a more thorough review of the site design is important for code compliance.

The use tables in chapter 5 are quite clear as to which uses require site plan reviews. In fact, the current code is not nearly as clear about when a site plan review is required. In order to determine the standards for those uses, a person would look to see if there are any use-specific standards listed under the use in chapter 5, and any district-specific standards listed under the applicable district in chapter 4. Then a person would apply the appropriate design and development standards from chapter 7. If, through the site plan review process, the decision-making body concludes that compliance with the applicable standards of title 21 do not mitigate or offset adverse impacts of the use, then the decision-making body may impose additional conditions on the use to address those impacts. The decision-making body will use its judgment to determine what is reasonable and feasible.

The standard in current code requiring that a proposed site plan not "have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development" is a circular standard. For example, apply this standard to a church in the R-6 district (which requires an administrative site plan review): a church is a permitted development in that district, so the church can't have permanent negative impacts greater than those from churches. The result is a non-standard. Staff does not recommend retaining this confusing standard.

Staff Recommendation: No changes recommended.

115. 21.03.190B.1., *Applicability*

If a trail is part of a subdivision (platting) action, does it need to go through this review? In general, the applicability of this section is confusing. "Reconstruction" needs to be defined. The applicability of streets and that of trails should be separated into two different sentences.

Staff Response: Staff is working with the Project Management and Engineering Department to clarify the applicability of this section.

Staff Recommendation: HOLD

116. **Issue:** 21.03.190B.2.b., *Review*
Add Trails Plan, Bike Plan, and Pedestrian Plan as review documents. It isn't enough to say "equivalent document" when outlining street and trail project reviews.

Staff Response: The "equivalent document" phrase is in section 2.a. where the commission is directed to review the applicant's submittal. The submittal for a street project usually comes in the form of a Design Study Report, but not always. Thus, the direction is for the commission to review the Design Study Report (the application) or whatever equivalent document is submitted if it isn't a Design Study Report. In section 2.b., the direction to review the project for compliance with the comprehensive plan and its elements covers the Trails Plan, Bike Plan, and Pedestrian Plan, as they are all elements of the comprehensive plan.

Staff Recommendation: No changes recommended.

117. **Issue:** 21.03.190C.2.a. & b., *Review and Action*
Public hearings should be required, not optional, given how difficult it is to get non-motorized facilities included in projects.

Staff Response: The commissions should have the discretion to hold or not hold a public hearing, because some projects are so minor as to not warrant a hearing.

Staff Recommendation: No changes recommended.

118. **Issue:** 21.03.200C.8.a.v.(B). & (C)., *Procedure When Final Plat Corresponds to Preliminary Plat as Approved*
A subdivision that is not served by public utilities would not have a system that would be compatible with public systems. What is the point of this requirement? The only reason to have AWWU involved in approving any plans would be if the area is in AWWU's certificated area and only if there are public utilities. Change to: Allow AWWU involvement in its certificated area, only."

There are other departments within the MOA that review non-public utilities, so why make another costly layer of oversight? Revise to eliminate unnecessary involvement by MOA for subdivisions with non-public utilities.

Staff Response: This subsection 8.a.v. (carried forward from current code) applies to subdivisions with community water and/or sewer systems. Thus the individual buildings in the subdivision will connect, through an underground pipe system, to the community well or community sewer system. This statement says that the Development Services Department MAY require that the underground pipe system be compatible with the public system and constructed to their specifications. This has the potential to save money, time, and headaches in the future if the subdivision ever decides or needs to hook up to the public system. In actuality, community systems are rarely used.

Staff Recommendation: No changes recommended.

119. **Issue:** 21.03.210B.2., *Application Submittal*
The Assembly does not submit a form when they propose an amendment to Title 21. They write an ordinance and send it to the Clerk. Change this to reflect how the process works.

Staff Response: Staff is proposing an amendment to address this issue.

Staff Recommendation: Page 85, lines 6-9, amend to read, "Petitions for text amendment shall be filed with the director <u>in ordinance form or</u> in a form established in the title 21 user's guide."

120. **Issue:** 21.03.210B.5.b. & C., *Joint Public Hearing and Approval Criteria*
Developers and residents need consistency, so requiring Title 21 amendments two times a year may not be necessary. Change 'shall' to "may occur no more than twice a year." It is a good idea to require the joint hearing for a number of reasons, the most important being that

only seriously flawed sections might be offered for amendments rather than for specious reasons.

The Approval Criteria contain generic wording (promote public health, safety and general welfare) that can be used to justify anything that an Assembly or Administration wishes to change—repeatedly. Given the proposed text, it could be used to eliminate all on-site utilities in the name of health, without consideration that public sewers dump untreated sewage into Cook Inlet. This language must be strengthened to avoid changes that may be made for political reasons and without scientific basis.

(Another view) Limiting amending Title 21 to twice a year is a bad idea.

Staff Response: The intent was not to require text amendments twice a year—staff proposes a clarifying amendment.

Limiting amendments to two times per year will provide stability and predicatibilty to the public, the development community, and to municipal staff. From a standpoint of information administration, it is very difficult to know the current code today, as paper versions are only printed once a year, and the on-line version is updated every few months. As of 2/21/08, the on-line version includes all ordinances passed up to June 30, 2007. If amendments to the code are passed monthly, it is very difficult to know what the rules are. There is an exception for matters of health and safety. And staff proposes an amendment to exempt the first two years after the rewrite becomes effective, as there will likely be "fix-up" amendments needed.

The approval criteria provide guidance to the Commission and the Assembly, but the code cannot constrain the legislative powers and authority of the Assembly.

Staff Recommendation: Page 85, line 42, amend to read, "Starting on [two years after the effective date], text amendments shall be considered no more than two times per year..."

121. Issue: 21.03.210D., *Successive Applications*
Waiting a year to re-introduce a failed amendment may be problematic. What if the make-up of the Assembly changes in that time?

Staff Response: There is an outlet provided—if 2/3 of the Assembly agree to take up the amendment again, than the Assembly can consider it again in less than a year.

Staff Recommendation: No changes recommended.

122. Issue: 21.03.230, *Vacation Of Public and Private Interest In Lands*
It is unclear what criteria will be used in determining the vacation request. Currently it is required that the petitioner answer four questions relating to the need for the vacation. I do not see those criteria listed. It occurs all too often that vacations are granted without regard to potential future use for pedestrian or trail access—even if the area does not abut other ROW or easements. It is too difficult to buy back public easements once they are vacated. Insert strong criteria for granting of vacations and comment that these should be granted infrequently.

Insert language that the standard for evaluating the value of public interest in land should be the public interest for future generations. Insert language that . that segments of easements where public access is beneficial, although currently discontinuous, have public value and shall be retained. Insert language to the effect that: easements with difficult physical conditions shall not be assumed to have zero public value because future techniques may overcome the current development limitations of these easements.

Staff Response: Current code section 21.15.130 *Approval of Vacations*, consists of essentially the same language as the proposed code. Staff is not aware of the "four questions" referenced in the comment, although there is municipal policy on vacations, which will be carried forward in the user's guide. The only significant change from current code is the approval period, which is increased from 18 months in the current code, to 24 months in the proposed code. There is no set number of criteria in the current code. The petitioner must prove to the platting authority that the area to be vacated has no value to the municipality. Staff does not object to clarifying that the platting authority must consider both current and future value.

Staff Recommendation: Page 88, line 37, amend to read, "...platting authority shall deem the area being vacated to be of current and/or future value to the municipality..."

123. Issue: 21.03.240, *Variances*
Clarify the changes that this section is proposing. It is not clear what is being offered. Will variances be easier to get? What are the criteria the decision-making bodies will use to grant variances? These should be listed. In the past, a variance(?) was specifically disallowed for a self-imposed condition. That point should be included here. Revise.

Staff Response: The Assembly recently passed an ordinance that changed the approval criteria for variances. This language mostly reflects those changes—a few additional amendments (shown below) are needed.

Criterion 1.c. states that a self-imposed hardship is not a valid reason.

The process for obtaining a variance is essentially the same.

Staff Recommendation: Page 92, lines 24-25, amend to read, "...upon the property owner, and would [STRICT INTERPRETATION OF THE PROVISIONS OF THE ZONING ORDINANCE] deprive the applicant..."

Lines 31-32, amend to read, "The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code [HAS NO ADVERSE AFFECT ON THE USE OF ADJACENT OR NEARBY PROPERTY];"

Lines 34-35, amend to read, "...and [GRANTING THE VARIANCE] does not permit a use not otherwise permitted..."

124. **Issue:** 21.03.240, *Variances*
ANC has previously indicated the critical importance of allocating to the ANC the authority to grant variances from Title 21 standards on the ANC. Because variances are typically sought in the context of other reviews, it will be necessary to consider carefully the variance procedure under proposed 21.03.240, and to find ways to allow for ANC's review and decision on variances in conjunction with municipal approval procedures.

Staff Response: The Municipality will not delegate its planning and zoning powers to other entities.

Staff Recommendation: No changes recommended.

125. **Issue:** 21.03.240J.5.c., *Standards*
Requires all accommodations for assisted living to meet the requirements of AMC title 23. Title 23 is not enforced in the Land Use areas. State statute is mandatory; however, local amendments under Title 23 are not. Reference should be made here concerning Land Use areas.

Staff Response: These regulations on adult care, carried forward from current code, were passed in 2006. It is department policy not to make changes to recently adopted ordinances, as the department has made its recommendation to the Assembly, and the Assembly has considered the matter and decided their course of action.

Staff Recommendation: No changes recommended.

Technical Edits

1. **Issue:** Conditional Uses
Throughout the chapter, change all "conditional use permit" to "conditional use approval."

2. **Issue:** 21.03.020G.2.a., *Types of Applications*
Page 9, Add "Institutional Master Plan" to those types of applications that require a community meeting.

3. **Issue:** 21.03.020G., *Community Meetings*
Pages 7 and 9, As community meetings are required to happen before applications are submitted, this section should come before the "Authority to File Applications" section. Move "Community Meetings" to be section C. and re-letter the remaining sections.

4. **Issue:** 21.03.040, *Alcohol—Special Land Use Permit*
Page 15, Amend to reflect recently passed ordinance.

5. **Issue:** 21.03.080, *Conditional Uses*
Page 31, line 40, change "that" to "than."

6. **Issue:** 21.03.080F.2.b.iv., *Open Space*
Page 32, line 35, change "deckes" to "decks."

7. **Issue:** 21.03.080F.3.b., *Uses*
Page 34, line 6 , change "even" to "event."

8. **Issue:** 21.03.120B.1., *Minor Modifications to General Development and Zoning District Standards*
Page 47, line 34, change "and the urban design commission" to "or the urban design commission."

9. **Issue:** 21.03.140B.1.b., *Applicability*
Page 55, line 2, amend the cross reference from "21.03.200" to "21.03.190."

10. **Issue:** 21.03.140B.2.d., *Applicability*
Page 55, line 18, amend to read, "Any facility site selection <u>for</u> [UNDER] which over..." for readability.

11. **Issue:** 21.03.160B.3., *Minimum Area Requirements*
Page 57, line 34, change "NC" to "B-1A."

12. **Issue:** 21.03.160D.8., *Assembly Action*
Page 59, line 26, change "director" to "department."

13. **Issue:** 21.03.200G.9.c., Approval Criteria
Page 84, line 30, amend the cross reference from "21.03.210C.9." to "21.03.200C.9."

14. **Issue:** 21.03.240B.1., Decision-Making Bodies Authorized to Consider Variance Requests
Page 90, line 33, change "platting board" to "platting authority."

Municipality of Anchorage

MEMORANDUM

DATE: April 7, 2008

TO: Planning and Zoning Commissioners

FROM: Tom Nelson, Planning Department Director

SUBJECT: Case #2007-153; Issue Response for **Chapter 21.03** of Title 21 Rewrite – HOLD Issues

The Commission requested staff to develop recommendations on the following 17 issues and bring them back to the Commission at their April 7 meeting. The blue text is new language to respond to the issue or propose new amendments.

15. **Issue:** 21.03.020H., *Notice*
Notice to community councils is required when written (mailed) notice is required, but the councils should be notified even when written notice isn't required. For example, councils should receive notice of substantive comp plan amendments, and T21 text amendments.

Should email notice be codified?

Staff Response: Staff agrees that community councils should be notified for Substantive Comprehensive Plan Amendments, Neighborhood or District Plans, and Text Amendments to Title 21, at the least. In current practice, this is done. See below for recommended amendments. ~~The department is considering the most appropriate way to codify this practice.~~

Also, all three types of notice should be given for Area Master Plans and Development Master Plans (from chapter 21.09).

Staff Recommendation: Page 11, Table 21.03-1: Summary of Notice Requirements, add a row for Master Plan, Area, Section 21.09.030E., check marks in all three columns, and a row for Master Plan, Development, Section 21.09.030F., check marks in all three columns.

Page 11, Table 21.03-1: Add a new column titled "Community Council Notice." Put check marks in all the boxes where "Written (Mailed)" notice is checked in the public hearing draft and in the amendment above, and add checks in the following rows: Comprehensive Plan Amendments, Substantive; Neighborhood or District Plans; Street and Trail Review; Abbreviated Plats; Title 21, Text Amendments.

Page 12, lines 11-36, make this section about community council notice into a new H.6. Amend lines 11-14 to read, "Any officially recognized community council whose boundary includes any part of the subject property, and any additional such council whose boundary lies within 1,000 feet of any part of the subject property shall receive written (mailed) notice in accordance with H.3. above."

Amend lines 35-36 as follows: "All community councils shall receive notice of substantive amendments to the comprehensive plan, neighborhood or district plans, street and trail review, and amendments to the text of title 21."

27. **Issue:** 21.03.050A.6.-9., *Appeal Record, Written Arguments, Appeal Packet; Notice of Hearing, Conduct of Hearing*
Subsections 6, 7, 8, and 9 are procedural matters and should be left to the discretion of the Board and addressed by regulations of the Board. Many of these requirements date from the time when the Assembly was the Board of Adjustment and reflect the needs and time pressures of the Assembly. In particular, the Board or the Municipal Clerk should have discretion to grant extensions of time (for matters other than the notice of appeal) under standards to be developed by them. Such extensions can avoid serious hardships which ordinance mandated timelines can cause. As an advocate, I do welcome the proposed change to allow oral argument before the Board.

Staff Response: ~~Staff is reviewing these issues with the Law Department.~~ The Law Department recommends retaining these procedures in code, as it is a benefit to everyone to know the rules of the procedure.

Staff Recommendation: ~~HOLD~~ No changes recommended.

29. **Issue:** 21.03.050A.9.a., *Conduct of Hearing*
Presently, the Board is required to deliberate in a public meeting. The proposed rewrite would continue this requirement. I believe this requirement also dates from the days when the Assembly was the Board of Adjustment. It was a sensible requirement for a potentially politically motivated Assembly to conduct its deliberations in public. But it makes little sense for a separately constituted board to do so. In my limited observation, it results in an overly formal process that slows down what is the critical task, the preparation of the written decision. It is the written decision which will be the focus of any remand or judicial review proceedings. Most appellate courts deliberate in private following oral argument. I think this is an appropriate model for the Board.

Staff Response: ~~Staff is reviewing these issues with the Law Department.~~ The Law Department strongly recommends that the Board of Adjustment continue to deliberate in a public meeting. The Board is not an appellate court, and if they deliberated in private, there is a risk of more challenges to their rulings due to not knowing the basis of their decision.

Staff Recommendation: ~~HOLD~~ No changes recommended.

45. **Issue:** 21.03.080F., *Conditional Use for a Residential Planned Unit Development*
This section does not protect the goal of neighborhood character as stated many times in the comp plan. Nor does it adhere to the goal of growing out from core centers in an efficient manner. In particular is the justification for allowing more density than would normally be allowed. This could create impacts on infrastructure that might not be upgraded accordingly

or might not be possible to upgrade due to other circumstances (including transit and ER services). Another condition giving consideration for mixing of densities and housing types within a neighborhood is a mistaken interpretation of the comp plan. While the comp plan calls for a variety of housing types, it never states this should occur within neighborhoods. To do so would not protect existing neighborhood character. People buy into neighborhoods with the expectation they will retain certain qualities. This section would especially effect areas designated to remain lower density. Revise to state CUs for PUD are not meant to apply to lower density areas of single family neighborhoods with limited or no public utilities and poor infrastructure. Even with the minimum 5 acre requirement for PUDs in R-6 to R-9 districts, the main point of protection of neighborhoods would not be met, nor solve the problems of lack of supporting infrastructure.

The options in this section deviate significantly from the intent of the comp plan and allows the PZC to determine density. It must be changed to reverse that drift. This section would vastly change the character of an area without consideration for the zoning that people originally bought into. Table 21.03-2 allows for doubling the density of R6 and R7 while other options allow for greater height. Most egregious is section 3.c which allows the applicant an open ended invitation to propose changes to lot size, coverage and setbacks as well as 3.b. which allows any commercial use that is allowed in R-4 districts. Title 21 should support the neighborhood protection goals of the comp plan and designated zoning. This section allows developers to override zoning regulations and the comp plan. It does not follow the intent of Title 21 whose purpose is to implement the comp plan—rather these sections reverse that purpose. Eliminate these loopholes that do not comply with the comp plan's intent and goals/policies.

There is no discussion about the impacts to adjacent infrastructure nor mechanisms to pay for improvements—if such improvements were even possible. Some areas of town are too challenged with steep, wet slopes to even consider upgrading. The location of these zones often include viewshed locations, which must be protected according to other 2020 policies. This section needs to be revised for R6-9 districts in SE Anchorage so that neighborhood character is not compromised.

Staff Response: The Planned Unit Development option has existed in current code for at least 30 years. The purpose of the residential PUD is to allow the developer some creative flexibility, give him or her the ability to build a mix of housing types and uses if desired, consolidate open space, and have a public process through which the planned development is determined. One of the approval criteria, in addition to the regular conditional use approval criteria, is that the PUD shall maintain population densities and lot coverage that are consistent with available public services and the comprehensive plan. (Page 32, lines 11-12) Many PUDs were approved and built in the 1970s, and they continue to be attractive and popular places to live today. The use of the PUD method has declined since then with the popularity of the site condo, which does not require a public process or approval by the Planning and Zoning Commission. The upfront provision of the full design, along with the public process and the Commission oversight combines to create an opportunity for attractive and well-thought-out residential developments through this process.

The Planning Department does not interpret comprehensive plan policy #16 as calling for a variety of lot sizes and housing types in every neighborhood.

Staff proposes to address the concerns about commercial development on the Hillside in areas not identified for such development in an adopted plan by limiting commercial development in PUDs to the smaller lot districts.

Staff Recommendation: ~~No changes recommended.~~ Page 34, lines 3-4, amend to read, "The applicant may propose any residential use, and in class A zoning districts, may propose any commercial use that is allowed in the R-4 district in table 21.05-1."

47. **Issue:** 21.03.080F.1.e. + 2.a + 2.b + 2.c.iii, *Intent and Approval and Minimum Standards*
This section appears to give some protection for density and lot coverage but it also is in conflict with other allowances for CUs for PUDs including Table 21.03.-2 that allows density increases exceeding the growth goals of the comp plan. Add " . . . consistent with the underlying zoning district, ..." See comment on F.3 below.

Under Open Space, specify if this is public or private open space. In R-6 to R-9 it should be public open space to create connections that people are asking for.

Under buffering, why is there a lower level of screening (L3) required for a boundary that might be non-residential? It should provide the maximum level of screening.

Staff Response: One of the purposes of this development option is to offer the developer the incentive of greater density in order to get more open space and other site amenities. Thus, densities greater than the underlying zoning district may be approved through the conditional use process.

The open space required in the PUD section is private open space, but that does not preclude the designation of a public trail easement through the open space in order to create trail connections.

As for the landscaping, staff carried forward the requirements of the current code, but agrees that the levels should be switched, as proposed below.

Staff Recommendation: Page 33, lines 1-6, amend to read,

"...combined within a single structure, nonresidential uses shall be separated from dwelling units by L3[4] buffer [SCREENING] landscaping.

...

iii. Level 4[3] screening [BUFFER] landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district..."

Commissioner Pease desired to propose an amendment to this section.

48. **Issue:** 21.03.080F.2.a., *Minimum Site Area*
Increase minimum for large lot districts to 7 or 10 acres.

Staff Response: The increased site area for a PUD in the large lot residential districts was requested by the Assembly Title 21 Committee.

Staff Recommendation: Page 32, lines 22-24, amend to read, "…If any portion of a proposed PUD is located within the R-1, R-1A, R-2A, R-2D, R-5, or [R-6,] R-7[, R-8, OR R-9] zoning districts, the minimum site area shall be 5.0 acres. If any portion of a proposed PUD is located within the R-6, R-8, or R-9 zoning districts, the minimum site area shall be 10 acres."

Commissioner Phelps requested this issue be held until it could be addressed in the Hillside District Plan process.

51. **Issue:** 21.03.080F.3.a., *Density*
The R-4 density allowed through a PUD is too high.

Staff Response: Current density in the R-4 is theoretically ~~basically~~ unlimited, as there is no height limit. The proposed code places a 45 foot height limit in the R-4, which could be raised to 55 feet through the PUD process. In 30 years, no one has attempted such density as allowed in the PUD process in the R-4~~, and the new height restriction makes that density unlikely to be achieved. Staff will revisit this issue and propose a lower maximum density~~. However, the R-4, using the bonuses available in the proposed code, would probably max out at a density of around 100 dwelling units per acre, depending on the size of the units. Thus a small bonus for developing through the PUD process seems appropriate. The density in the R-4A could likely be higher; staff recommends removing the R-4A from the PUD section, as it is unlikely to be used in an R-4A area.

Staff Recommendation: ~~HOLD~~ Starting on page 32, remove all references to the R-4A from the "Conditional Use for a Residential Planned Unit Development" section.

60. **Issue:** 21.03.100E.3., *Standards for Requiring Dedications and Improvements*
Add a section requiring future developers to reimburse a developer who must oversize to accommodate future growth.

Staff Response: ~~Staff is still researching workable language on this issue.~~ In their water and wastewater tariffs, AWWU has provisions for reimbursement to developers from other properties that benefit from the development. Below is the language from the AWWU water tariff (underlining is my emphasis):

"14.1. Water Main Extension Agreements

A. General
An owner of a parcel not served by public water facilities, and which is not included in a water improvement district, may obtain service by constructing a water main extension at the owner's expense and contributing the main to the Utility. The water main shall be constructed in accordance with the terms of a water main extension agreement administered by the utility. Should the water main extension serve properties other than the property owner, construction of the water main shall not commence until (i) the Municipality, after public hearing, has approved the proposed agreement, or (ii) the property owner waives all

reimbursement from other properties for constructing the water main extension [AS 42.05.385(a) through (e)] and (AMC 19.90.010.B).

E. Reimbursement of Assessments
A property owner who constructs a water main extension under this rule shall be reimbursed by the Utility for any assessments the Utility collects from the other property who benefited by the construction of the water main extension. Reimbursement shall be due thirty days after the Utility collects a reimbursable assessment.

F. Conditions of Reimbursement of Assessments
A property owner who constructs a water main extension under this rule may be reimbursed for the cost of that construction as provided in Rule 14.1.E. The cost of the construction is reimbursed only if a certified cost statement and a record drawing for the construction is (i) acceptable to the Utility, (ii) conforms to the Standard Construction Specifications, (iii) and the form for reimbursement is submitted to AWU within one-hundred-eighty days of the date the property owner is notified in writing by the Utility that the water main passed a final inspection. No reimbursement shall be due with respect to any parcel whose date of connection to the water main occurs more than three years after the date of acceptance of the water main and was constructed under a water main extension agreement where reimbursement was not waived under Rule 14.1.A."

AWWU indicates that the reimbursement option is rarely if ever chosen. Staff is wary of including a similar provision in Title 21 due to the legal complexities of the issue.

Staff Recommendation: ~~HOLD~~ No changes recommended.

62. **Issue:** 21.03.100E.3.a.iii., *Standards for Requiring Dedications and Improvements*
This section currently calls for a financial impact statement but is unclear. What is meant by financial impacts of "continuity of improvements"? The financial impacts may be difficult to assess in some of the listed categories, such as pedestrian safety and access; so the impact analysis should be cover financial costs for all the listed topics, as well as , any additional time and convenience impacts, health, and aesthetic impacts that are not easily measured by monetary costs.

Staff Response: ~~Staff is working with the Project Management and Engineering Department to address this comment.~~ PM&E Response (Don Keefer): The whole section reads as follows: "An estimate of the financial costs of impacts on public facilities and adjacent areas without the required improvements, including without limitation, continuity of improvements, maintenance costs of public facilities, parking, drainage, noise and dust control, pedestrian and vehicle safety and access, and emergency vehicle access and response time."

One would think that wherever and whenever possible, orderly extension of infrastructure would accompany fringe, or even infill, development. If a property is developing where there is a reasonable expectation that infrastructure would extend beyond, adjacent and/or through the development, placement of the infrastructure should occur as part of the development.

Where it is allowed not to, there are likely impacts that can generally be reduced to costs, such as

- "What would it cost the developer to complete the improvements?"
- "If not the development, then who provides for the orderly expansion?"
- "If not at the developer's costs, then at whose costs?"

Impacts can be monetary and the cost of the improvement estimated accordingly. However, I'd agree that some impacts may be less tangible in dollar value, but an associated cost (multipliers) can be suggested and factored in. We've been taught to think of time as money.....more time required due to greater distance and higher congestion.....what's it costing in time and material. All the suggested items need to be considered, but consideration should not be limited to just these suggested items....the "without limitation" provision.

Staff Recommendation: ~~HOLD~~ No changes recommended.

64. **Issue:** 21.03.100E.7., *Fee in Lieu*
Should this really be an option? Why would they only pay 75% of the costs (per section 8)?

Staff Response: ~~Staff is working with the Project Management and Engineering Department to address this comment.~~ PM&E Response (Don Keefer): In my endeavors to find the answer to this question, I kind of ran into dead ends. From my own perspective I could support and explain the 75% from the following:

- A minimum 75% may be justified from a development requirement to build the adjacent infrastructure only to half-street standards as permitted by AMC. Half-street standards is not literally building half the roadway and associated improvements. Building to half-street standards would still require adequate roadway for two travel lanes, hence the greater than 50%, but less than 100%.
- To a much lesser degree, the minimum 75% payment in lieu set aside for the given infrastructure improvements would provide for some hedge against inflation, depending on how soon the funding was actually used for the infrastructure improvements.
- And there's the perception of fairness.....the idea that one side of the road should not have to pay for both sides of the infrastructure in its final and finished form. If there's two sides (to the street), it makes sense the two sides should share the cost burden. Completing a project in segments, especially where there may be overlap, adds cost.

I believe 75% was an agreed-to figure by a past task force/work committee developing the code, but documentation as to how it was derived is either lacking or lost.

Staff Recommendation: ~~HOLD~~ No changes recommended.

92. **Issue:** 21.03.140B.1.a., *Applicability*
Make a distinction between new construction and leasing of existing space.

Revise to include P&Z approval when there would be high impacts, rather than base P&Z role only on square footage.

...a total of 100,000 square feet, or 20,000 square feet if the site or use involve high traffic impacts or volumes. The P&Z commission has a important role in implementing the overall land use and infrastructure patterns.

Is 100,000 sf too big (too high of a threshold)? The words "on the site" make it unclear whether multiple stories of a building would count toward the total square footage.

Staff Response: At issue is the location of the public facility, whether it is a situation of new construction or of leased space~~, so the ownership and/or current existence of the building is immaterial~~. In order to provide more flexibility for lease situations, staff proposes that the PZC approve the RFP for a lease, so that the commission can approve the criteria by which a new space will be chosen, rather than approving the site that has already been chosen through an RFP process.

The site selection process is intended for the siting of major public facilities, no matter what type of building they occupy. The current threshold of 4,000 square feet is far too low, but perhaps a jump to 100,000 is too high. The intent is to capture those government facilities that are large enough to be a major draw to the public or create a major impact on the surroundings. Staff proposes lowering the threshold to 75,000 square feet. In order to address the concerns of the commenter, staff proposes adding a discretionary ability for the director to require a site selection process for facilities that may be smaller in size than the threshold, but still have other major impacts.

Staff agrees that the words "on the site" create confusion. See proposed amendment below.

Staff Recommendation: Page 54, lines 31-34, amend to read, "Unless exempted by subsection B.2. below, the planning and zoning commission shall review and decide the selection of sites for any of the following facilities that are to be owned[, OR LEASED] by a government agency not exempt by law from municipal land use regulation, and shall review and approve the RFP (or similar guidelines) for any of the following facilities that are to be leased by a government agency not exempt by law from municipal land use regulation:"

Page 54, lines 35-37, amend to read, "Any newly constructed building or buildings and any existing building acquired by purchase or lease, in which government operations or activities occupy more than a total of 75,000 [100,000] square feet of gross floor area [ON THE SITE];"

Page 55, after line 5, add a new "e. A facility that, in the judgment of the director, warrants a public process for site selection due to the potential for significant impacts on surrounding properties."

102. Issue: 21.03.160E., *Approval Criteria*
This section has been greatly weakened in the direction of easier re-zoning. Add this intent language: Zoning is not effective if it is too- easily or frequently changed: zoning is intended to provide a degree of certainty that is important for long-term investment and neighborhood cohesion and stability. Case-by-case rezoning is allowed if it can address a demonstrated

change in supply and demand for a land use without changing the intended pattern of densities, land uses, infrastructure and neighborhood character established in adopted plans, or without causing significant impacts. (There is a similar level of explanation of intent for Conditional Uses.)

Staff should highlight for the public and P&Z key elements from existing code on rezoning (21.020.060) that are eliminated in this proposed revision. Staff is also requested to comment objectively on the ease of rezoning in Anchorage compared to other cities.

Staff Response: The procedure for rezoning remains essentially the same between the current code and the rewrite. In the rewrite, the applicant is required to have a pre-application conference with staff, and to hold a community meeting. These are not required in current code.

In current code, there are five "standards for approval." In the rewrite, there are ten approval criteria. The ten criteria cover the issues addressed in the current code's five criteria.

Staff does not object to adding more purpose statement language to express some of the points of the commentor, but does not support adding the proposed language that starts with "case-by-case…", because a zoning change, by its very nature, will change the density and land uses allowed in the subject area.

Since the rezoning process is essentially the same as current, staff did not dedicate any resources to compare the ease of rezoning in various cities.

Staff Recommendation: ~~No changes recommended.~~ Page 57, lines 18-21, amend to read, "This section states the procedures and approval criteria necessary to process an amendment to the official zoning map. Zoning is not effective if it is too easily or frequently changed. Zoning is intended to provide a degree of certainty that is important for long-term investment and neighborhood cohesion and stability. The purpose of rezoning is not to relieve particular hardships…"

103. Issue: 21.03.160E., *Approval Criteria*
Restore the language form existing code "may be approved only in the best interest of the public" Amend the proposed sentence to read "The rezoning may be approved only in the best interest of the public, including the public health, safety, and general welfare." It is too vague to have the existing standard of "promote the public health, safety and general welfare," because any applicant can demonstrate some narrow benefits to some sector of the public.

One re-zone often encourages and sets precedent for another; and the potential domino-effect of transition of the neighborhood must be in the public interest and meet the Comp Plan intent for the area and the use. The approval process is currently weak in cumulative impacts: first-to-apply projects are found to have below-threshold impacts and last-to-apply projects bear disproportionate burdens for infrastructure retro-fitting and environmental mitigation.

This section does not uphold the intent of the comp plan to reduce rezones and maintain consistency for developers and neighborhoods. One rezone can set the stage for subsequent

rezones thus producing cumulative impacts that are not addressed here or elsewhere in code. Revise the whole section to tighten up instances where rezones may be allowed.

Staff Response: Staff does not object to adding the suggested language.

Staff Recommendation: Page 60, line 27, amend to read, "The rezoning shall be in the best interest of the citizens of Anchorage ~~public~~ and shall promote[S] the public health, safety, and general welfare."

Page 61, line 11, create a new #8 to read, "The rezone does not continue or exacerbate a pattern that is inconsistent with the comprehensive plan;"

Commissioner Phelps desired to propose an amendment to this section.

111. Issue: 21.03.180, *Site Plan Review*
Can all site condos go through a site plan review? Can the municipality require homeowner's associations with sufficient dues to maintain infrastructure, so the municipality doesn't have to step in later to pay to fix inadequate infrastructure?

Staff Response: The difficulty with requiring all site condos to go through a site plan review is how to define a "site condo." As a use type, they fall under "dwelling, multifamily," because there are multiple dwelling units on one lot. As a building type, they can be single-family, two-family, or more, but how many units need to be in each building before the project is considered to be multiple multifamily buildings on a lot, like the Alpine Apartments? The concept of multiple units in multiple buildings on a lot, or of multiple single-family homes on one lot is not a bad concept—it has been executed poorly in many places in Anchorage. Thus staff considers the appropriate response to be to apply design standards, rather than to create a relatively arbitrary cut-off between a "site condo" and a multifamily condo or apartment development.

~~Staff is working with the Law Department to answer the second question.~~ The Law Department advises that the municipality is not and should not become involved in or become party to private agreements and covenants on land.

Staff Recommendation: ~~HOLD~~ No changes recommended.

114. Issue: 21.03.180E., *Approval Criteria*
This proposed revision is a MAJOR change from existing code. The staff should clearly publicize the change in scope for all site plan reviews, and make a case to the public and the Commission as to how this does or does not serve the public interest. Please print the previous language of 21.50.200 along with the new for ease of contrast. Unless I've overlooked some section, it appears to me that the revised version has totally dropped the current standards for general site plan review (21.50.200), which require the proposed site plan "not to have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development" (e.g. circulation and safety; the demand for public services; environmental pollution; maintenance of compatible land use patterns).

The staff should also prepare a chart to compare new standards for specific high-profile types of site plans. Otherwise, how can the public, during this review, understand if the numerous approval criteria for site plans for specific uses, such as churches, drive in banks, etc. where retained in the new draft since the Design and Development Standards are no longer organized by particular uses.

The current proposed Approval Criteria are vague to the point of laissez faire?

There is no clear standard in the language proposed in E4: mitigate or offset those impacts to the maximum extent feasible. Mitigate or offset to the maximum extent feasible is FAR, FAR WEAKER than the current intent to AVOID SIGNIFICANT PERMANENT NEGATIVE IMPACTS greater than that from permitted development. Mitigate or offset actions as "feasible" takes the developer's willingness as the guiding force and could result in token actions. This DOES NOT APPEAR TO SUPPORT THE PUBLIC INTEREST OR TO REQUIRE COMPLIANCE WITH COMP PLAN PRINCIPALS such as overall land use patterns and compatibility policies.

Requested revisions:

Reinstate the language of current 21.50.200 requiring the proposed site plan "not to have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development" with a specific listing of impacts to avoid.

Include language that the site plan review shall include conditions to apportion the public costs from offsite public infrastructure and services induced by the site plan

Clarify how the word "reasonably" would be defined. Past instances, instances from other jurisdictions, and technical information and professional opinion should be considered evidence of reasonably anticipated impacts.

Staff Response: The biggest changes regarding site plan review between the current code and the rewrite are that site plan reviews are now clearly divided between "administrative" (director makes decision without public hearing) and "major" (public hearing before the urban design commission) and the process is clearly placed in the hierarchy of review procedures between "by-right" or "permitted" uses, meaning no planning department review is necessary, and conditional uses, where the appropriateness of the use at its proposed location is determined by the planning commission. Site plan reviews, either administrative or major, are applied when the use type is appropriate for the zoning district, but a more thorough review of the site design is important for code compliance.

The use tables in chapter 5 are quite clear as to which uses require site plan reviews. In fact, the current code is not nearly as clear about when a site plan review is required. In order to determine the standards for those uses, a person would look to see if there are any use-specific standards listed under the use in chapter 5, and any district-specific standards listed under the applicable district in chapter 4. Then a person would apply the appropriate design and development standards from chapter 7. If, through the site plan review process, the decision-making body concludes that compliance with the applicable standards of title 21 do not mitigate or offset adverse impacts of the use, then the decision-making body may impose additional conditions on the use to address those impacts. The decision-making body will use its judgment to determine what is reasonable and feasible.

The standard in current code requiring that a proposed site plan not "have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development" is a circular standard. For example, apply this standard to a church in the R-6 district (which requires an administrative site plan review): a church is a permitted development in that district, so the church can't have permanent negative impacts greater than those from churches. The result is a non-standard. Staff does not recommend retaining this confusing standard.

Staff Recommendation: No changes recommended.

Commissioner Pease desired to propose an amendment to this section.

115. 21.03.190B.1., *Applicability*

If a trail is part of a subdivision (platting) action, does it need to go through this review? In general, the applicability of this section is confusing. "Reconstruction" needs to be defined. The applicability of streets and that of trails should be separated into two different sentences.

Staff Response: Staff is still working with the Project Management and Engineering Department to clarify the applicability of this section.

Staff Recommendation: HOLD

123. **Issue:** 21.03.240, *Variances*
Clarify the changes that this section is proposing. It is not clear what is being offered. Will variances be easier to get? What are the criteria the decision-making bodies will use to grant variances? These should be listed. In the past, a variance(?) was specifically disallowed for a self-imposed condition. That point should be included here. Revise.

Staff Response: The Assembly recently passed an ordinance that changed the approval criteria for variances. This language mostly reflects those changes—a few additional amendments (shown below) are needed.

To clarify, the public hearing draft did not reflect all the changes passed by the Assembly. The amendments below bring the section in line with the Assembly changes. The previous standards were so strict that by the letter of the law almost all variances had to be denied. The new language changed the standards from strict application of the wording to "being substantially met" and provide more flexibility.

Criterion 1.c. states that a self-imposed hardship is not a valid reason.

The process for obtaining a variance is essentially the same.

Staff Recommendation: Page 92, lines 23-27 ~~24-25~~, amend to read, "~~...~~Because of these physical circumstances, the strict application of the code creates an exceptional or undue hardship upon the property owner, and would [STRICT INTERPRETATION OF THE PROVISIONS OF THE ZONING ORDINANCE] deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance. ~~...~~"

Lines 31-32, amend to read, "The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code [HAS NO ADVERSE AFFECT ON THE USE OF ADJACENT OR NEARBY PROPERTY];"

Lines 34-35, amend to read, "...and [GRANTING THE VARIANCE] does not permit a use not otherwise permitted..."

Attachment 5

PLANNING AND ZONING COMMISSION MEETING
Assembly Chambers
Z.J. Loussac Library
3600 Denali Street
Anchorage, Alaska

MINUTES OF
November 5, 2007
6:30 PM

Prior to the meeting a worksession was held on Title 21 Rewrite Chapters 3, 7 and 14. Staff members present included Cathy Hammond, Erika McConnell, Tom Davis, Dave Tremont, and Al Barrett.

A. ROLL CALL

Present	Toni Jones, Chair
	Jim Palmer
	Art Isham, Vice Chair
	Andrew Josephson
	Nancy Pease
	Thomas Vincent Wang
Excused	Bruce Phelps
	Lamar Cotten
	Jim Fredrick
Staff	Jerry Weaver
	Cathy Hammond
	Erika McConnell
	Tom Davis
	Al Barrett
	Dave Tremont

B. MINUTES

COMMISSIONER ISHAM moved for approval of the minutes of October 1, 2007. COMMISSIONER PEASE seconded.

COMMISSIONER PEASE corrected statements on page 9 and 10 of the minutes to clarify her statement regarding property values, her statement regarding recreational uses, and Commissioner Josephson's statement regarding commercial enterprises in the R-6 zoning district.

CHAIR JONES remarked, in particular with regard to transportation infrastructure, that there is a specific scheme for planning for the transportation network, which is coordinated between the State and the MOA; there are plans that set out priorities and project ranking. It is very important to follow that as best possible and develop projects consistent with those planning documents and try to discourage projects disappearing.

COMMISSIONER JOSEPHSON asked how Staff will take into account the language of the motion and what Commissioner Wang has said in the Commission's resolution. CHAIR JONES stated that these items would be reflected in findings. COMMISSIONER PEASE remarked that she does not have a level of expertise to make recommendations on projects such as the transit fleet. Hopefully the public that is directly affected in the areas she mentioned will address their concerns. CHAIR JONES remarked that there are policies encouraging infill because it is less expensive to build contiguous to existing infrastructure.

COMMISSIONER WANG noted that the planning documents and the budget should be reconciled to the extent possible. The Commission can identify transit, parks, and remote infrastructure as particular points that merit further review.

AYE: Josephson, Jones, Isham, Palmer, Pease, Wang
NAY: None

PASSED

COMMISSIONER PALMER asked whether the process could be different when the budget is next reviewed, as he felt at a disadvantage in terms of the depth of his understanding. COMMISSIONER PEASE hoped that the Administration could show how they worked forward from planning documents and how the budget addresses those documents. COMMISSIONER JOSEPHSON suggested a review perhaps with a plan citation in a separate column.

G. PUBLIC HEARINGS

1. **2007-153** Municipality of Anchorage, Planning Department. Review and Recommendation of the Title 21 Rewrite: Chapter 21.03, *Review and Approval Procedures*; Chapter 21.07, *Development and Design Standards*; and Chapter 21.14, *Rules of Construction and*

Definitions.

Staff member CATHY HAMMOND, Planning Supervisor in the Physical Planning Division, introduced Erika McConnell, Tom Davis and Dave Tremont. ERIKA McCONNELL stated these are the final three chapters of the Title 21 Rewrite to come before the Commission. Chapter 3 contains the Review and Approval Procedures, which are the processes by which applications come to the Planning Department and then to the various decision-making bodies; Chapter 7 is the Development and Design Standards that apply generally to development within the MOA, including topics such as natural resource protection, parking requirements and standards, landscaping requirements and standards, lighting, drainage, and building design standards; Chapter 14 is Rules of Construction and Definitions and contains general definitions of terms used within Title 21.

CHAIR JONES explained that those who testify this evening would not be permitted to testify at the hearing on November 7 or November 8. Both of those hearings will be held at Wilda Marston Theatre beginning at 6:30 p.m.

The public hearing was opened and continued.

COMMISSIONER PEASE referenced comments submitted by Ted Stevens Anchorage International Airport (TSAIA) lain on the table this evening. Page 30 of the packet (page 2 of 5 of the letter) states, "ANC operates what is believed to be one of the largest seaplane bases in the world, to which few of Title 21's standards for water body protection can properly apply." Page 31 states "The ANC has its own Airport Drainage Plan. ANC environmental engineering staff successfully work with other state and federal agencies on issues of drainage, water treatment and erosion control." Over the weekend a Compass piece in the Anchorage Daily News talked about a highly toxic de-icing agent that goes into Lake Hood and the TSAIA will probably divert it into Cook Inlet. She asked whether Title 21 affects TSAIA with regard to water body protection and drainage. MS. McCONNELL indicated she would research this matter with other agencies and offer a response at a later time.

COMMISSIONER PALMER noted that one of the comments from Ronald Baird talked about procedures. He assumed these would be addressed in the Issue-Response, but asked for a quick overview on the two letters Mr. Baird authored. MS. McCONNELL responded that the MOA agrees with many of Mr. Baird's comments in his October 24, 2007 letter. These comments will be discussed with the Legal Department. COMMISSIONER PALMER noted

that comments by Field Tech, representing the Anchorage Homebuilders Association, talk about the land use regulations being tested as to financial burden. He what is the status of the Commission being briefed on the financial implications of the Title 21 Rewrite. MS. HAMMOND replied that the economic impact analysis is being prepared by a consultant out of St. Louis. The report is delayed, however the consultant is preparing the final draft based on the public hearing draft of the code that is out for review. The final draft of the consultant's report is expected by the end of the month. The Commission will be provided with the final report following review by the Department.

COMMISSIONER JOSEPHSON asked what is point being made by the author of the TSAIA letter in discussion of Lake Hood and Lake Spenard and that few of the Title 21 standards could properly apply. MS. McCONNELL responded that the comments from the TSAIA have consistently advanced the Airport's and the State's opinion that they have jurisdiction over their property and the MOA does not. COMMISSIONER JOSEPHSON felt it would be helpful for the city attorney to provide a memorandum that gets to the issue of jurisdiction within the context of the Alaska Railroad Corporation, the TSAIA, or Chugach State Park.

COMMISSIONER JOSEPHSON moved that the city attorney provide a memorandum that gets to the issue of jurisdiction within the context of the Alaska Railroad Corporation, the TSAIA, or Chugach State Park. COMMISSIONER PEASE seconded.

COMMISSIONER ISHAM asked that the memorandum include citations of case law.

COMMISSIONER WANG wanted to know to what extent the MOA purports to regulate the TSAIA and to what extent in the Rewrite is the MOA purporting to regulate more or less.

COMMISSIONER PALMER asked that the question of what the MOA purports to regulate with regard to the TSAIA and what the Title 21 Rewrite proposes would also be helpful information. MS. McCONNELL suggested that the Staff provide a memorandum that attempts to answer some of these questions.

AYE: Josephson, Jones, Isham, Palmer, Pease, Wang
NAY: None

PASSED

COMMISSIONER PEASE noted in the comments from the Northeast Community Council (NECC) received this evening asks for a comparison of Title 21 changes. They state they are not ready to make recommendations on Chapters 3, 7 and 14 and ask for some workshops on key topics so they understand the code well enough before testifying. She wondered whether there is minimal participation because people do not understand the changes and because they know there will be some additional assistance in understanding it. She asked whether the Commission might want to have another hearing that would benefit from that further community information. MS. HAMMOND was not certain that the document the Department will prepare would help the public more than has the information, workshops, meetings, hearings, and conversations provided over the last five years. The public participation process has been underway for five years. There is also much information on the website. The code can be a very difficult document to review. It is not meant to be read cover-to-cover. The analogy has been used over and over in public presentations that the code is like the car manual in the glove compartment in that it is not used until needed. A summary document will be prepared and Staff hopes it helps facilitate review of the current code for those just now reviewing it. Staff is hopes the summary document will help direct individuals to areas they may want to review. There have been open invitations to attend community council meetings over the past five years, there have been newspaper and magazine articles, the Director has been on radio talk shows, there have been public meetings, including town hall meetings with the Mayor attending. The Department has also hired someone in the past to assist with outreach. With regard to people coming forward at this point in the process saying they do not know about this project or that it is too difficult to read volumes of code drafts, she encouraged people to take responsibility and participate in a process from the beginning, not ask that the public process be stopped because they have not been involved before now.

COMMISSIONER ISHAM concurred with Ms. Hammond that this Rewrite has been underway for five years and at this point it is not appropriate to say people have not had an opportunity to participate.

COMMISSIONER JOSEPHSON also agreed with Ms. Hammond. He read Assemblymember Tesche's column in the newspaper, which was quite controversial, and while he is a great admirer of his, he did not agree with

the comment that this has been a backroom situation; he has seen a huge public process. He shared the public's fear because the code is enormous. COMMISSIONER WANG noted that bits and pieces of the code affect certain constituencies and he expected and hoped that they have made their voices heard through the process. He did not think there was a lack of opportunities to participate; rather the nature of the material is dense and focused.

COMMISSIONER PALMER stated that sitting on the Chamber of Commerce in Chugiak-Eagle River he became aware of this code Rewrite four years ago and there were numerous presentations to the Chamber and Council by various Staff members. In his experience of public outreach, the Staff has gone beyond what he would have expected.

CHAIR JONES stated that, in her involvement going back to 1998 when work began on *Anchorage 2020* and with the Title 21 process since inception, there has been an ongoing process and many opportunities for people to be involved in a variety of community meetings and forums. She stated that if people chose to be involved, they were afforded that opportunity. She was not convinced that the process should stop or slow at this point. She welcomed another analytical document and felt it could be of value when the matter goes before the Assembly. This body makes recommendations to the Assembly, which ultimately takes action. She hoped the Commission would have that document as a reference tool before it takes action. She felt there had been sufficient opportunity for people to be involved.

CHAIR JONES informed those in attendance that comments and recommendations are welcome and would be received through close of business on November 13, 2007.

COMMISSIONER JOSEPHSON noted that in his experience the Assembly's timetable has lagged what it expected.

COMMISSIONER PEASE felt Staff has been extremely diligent and responsive to community requests for information. She explained she was simply expressing the concern that there have been a limited number of people testifying on the Rewrite at previous hearings. She thought there are concerns with drainage, landscaping, and neighborhood protection because those issues arise in public testimony. Perhaps those remarks will come forward at the Assembly.

BRIAN VANDERWOOD with Solid Waste Services stated that Title 21 Chapter 7 section 080 (AMC 21.07.080) speaks to screening of dumpsters, which is aesthetically a very good idea and he agreed with Staff that the

appearance of dumpsters is a major concern. However, from a service standpoint there are many pitfalls that will be of concern to the service companies for years to come. There are some concerns within the industry in Anchorage with regard to safety, access, rate structures, and the increased cost of performing services as a result of some of the obstacles set forth in this document. He agreed that there is need for improvement in the way containers appear in the community, but he was not sure how to balance the two. He thought it would be some time until this issue is resolved.

CHAIR JONES asked what Mr. Vanderwood would recommend. MR. VANDERWOOD felt a recommendation would take time. He stated it was only within the last 12 to 14 months that he became aware that the code would affect how the industry does business. He has been involved in the process to address aesthetic concerns and serviceability. He noted that Staff has been very open to ideas and concepts.

COMMISSIONER ISHAM noted that there is a short time frame to develop a recommendation prior to Assembly action. MR. VANDERWOOD stated he has been working to address the various concerns that arise from the constraints this document places on enclosures. COMMISSIONER ISHAM asked if there are objections to the requirement for screening. MR. VANDERWOOD replied that the issues of concern are the location of dumpsters and accessibility, as well as gates that are required in some instances.

COMMISSIONER PALMER noted that Mr. Vanderwood's five-page comments do offer suggested changes and improvements. He noted that the Commission will receive an Issue-Response document that addresses these remarks.

MR. VANDERWOOD remarked that the process has been open and Staff has been very responsive; he concurred with the Commission's remarks that the process has been open to the public.

CHAIR JONES stated she works between 3rd Avenue and 5th Avenue where there are many dumpsters in an alley with no screening. She was not sure they could be effectively screened. She asked if those would have to go away as a result of the code as proposed. MR. VANDERWOOD believed the title allows dumpsters in the alley without screening so long as it does not abut residentially zoned property or are viewable from a public street. CHAIR JONES stated they are all viewable from a public street.

GLENN CLARY, co-chair of the Northeast Community Council (NECC) Subcommittee on the Title 21 Rewrite, stated he would speak this evening as an individual; the Subcommittee will present on Thursday evening. He understood that this has been a long process. He has been involved from the beginning and Staff has been very responsive, but that does not mean the Council understands or agrees with the direction that Staff is taking. Part of the concern of the community in continuing with this at the current pace is, in particular, that Chapter 7 is large. It appears that the Council's comments are either not being heard or the Staff does not want to incorporate them into the Rewrite changes. He referenced the site plan review section at 21.03.180 and stated that in his opinion the entire Rewrite eliminates churches from being built in smaller communities where they should service people. There were formerly church site plan design minimums in Title 21 and those minimums are not in the Rewrite. There are other issues, including 21.07.110 Public Institutions and Commercial Design Standards, which speak to rooftop mechanical units having a 4-foot wall built completely around them. The code does not address access or how the unit works if it fills with snow. The purpose of the parapet wall is to have sight obstruction. There are locations where rooftop units are visible regardless of enclosures and other situations where they would never be visible.

COMMISSIONER JOSEPHSON asked for Staff response to the removal of the church subsection from the code and the other issue brought forward by Mr. Clary. MS. McCONNELL stated that in the current code churches are required to undergo a site plan review. The design standards in the title have been carried forward. Some of the issues of concern are in Chapter 5 and those will be addressed in that Issue-Response. In terms of screening mechanical equipment, situations where topography gives visual access to roofs is relatively uncommon. The construction industry indicates it is common practice to disguise rooftop mechanical equipment through the use of parapet walls. These are not meant to create a small enclosure around the equipment that would prevent maintenance or trap snow. MR. CLARY stated that is not how he would interpret the code language. In the existing code churches are permitted use in residential zones and in the Rewrite churches are not a permitted use. His concern is particularly with regard to small churches.

The hearing was continued to November 7, 2007 in the Wilda Marston Theatre at 6:30 p.m.

Attachment 6

PLANNING AND ZONING COMMISSION MEETING
Wilda Marston Theater
Z.J. Loussac Library
3600 Denali Street
Anchorage, Alaska

MINUTES OF
November 7, 2007
6:30 PM

A. ROLL CALL

Present	Toni Jones, Chair
	Jim Fredrick
	Jim Palmer
	Art Isham, Vice Chair
	Nancy Pease
	Andrew Josephson*
Excused	Bruce Phelps
	Lamar Cotten
	Thomas Vincent Wang
Staff	Cathy Hammond
	Dave Tremont
	Tom Davis

*Arrived at 6:32 p.m.

B. MINUTES

C. SPECIAL ORDER OF BUSINESS

1. Disclosures

VICE CHAIR ISHAM requested that members make disclosures regarding items on this evening's agenda.

CHAIR JONES disclosed that she received an email from the Anchorage Citizens Coalition about community meetings that are occurring. She also had a voicemail message expressing some concern with the timing of these meetings; this is consistent with the comments Commissioner Pease made on November 5, 2007. She attempted to return the phone call, but did not receive a call back.

COMMISSIONER JOSEPHSON arrived at this point in the meeting.

D. CONSENT AGENDA

E. UNFINISHED BUSINESS AND ACTIONS ON PUBLIC HEARINGS

1. **2007-153** Municipality of Anchorage, Planning Department. Review and Recommendation of the Title 21 Rewrite: Chapter 21.03, *Review and Approval Procedures*; Chapter 21.07, *Development and Design Standards*; and Chapter 21.14, *Rules of Construction and Definitions*.

CHAIR JONES noted that those who testified on November 5, 2007 would be unable to testify again. She indicated that another hearing would be held November 8, 2007 in the Wilda Marston Theater. Written comments can be submitted until close of business on November 13, 2007.

Staff members were introduced.

The public hearing was re-opened.

KIM WETZEL stated her written comments have been distributed to the Commission. She reiterated a comment made by Dianne Holmes, a member and board member of the Anchorage Citizens Coalition, regarding an email expressing concern with the ability of the community to comment to the Commission and the Assembly on these chapters. At the start of the fall when the review of these chapters began there was not adequate summary information and comparative information that would help citizens provide comment. She stated it feels like she needs a masters in planning in order to look at the code. She did not think this should be the case in order for someone to make a comment about design that would help their lives or help them get to work or have adequate lighting or green space. Citizens began to go to community councils to see if they had committees examining Title 21; some did, but many did not. In the fall, this inquiry was made again and several councils stated they did not have adequate summary information. She noted that the North Star Community Council does not meet in the summer, and in October at her Council meeting she displayed some proposed changes in zoning using a map. At that time there was discussion of another use for B-3, which is plentiful in her Council area, which was perhaps prisons. Her Council has to wait for one month before making a resolution as a statement to the Commission or Assembly. As a result, she could not speak

for her Council. She asked, as an individual and a member of the Council, to slow the process and produce good summary information.

COMMISSIONER PEASE noted that Ms. Wetzel's point #2 suggests requirements for recycling collection and storage in addition to traditional trash collection. She asked if there are other cities doing this already that could be examined. MS. WETZEL replied that she lived in Boston for a number of years and worked in the public works department. That city council had passed an ordinance requiring recycling in multi-family developments. Retrofitting was required to locate recycling receptacles. That city has a mandatory curbside recycling program. A town hall meeting was held in Anchorage last evening and the consultant the city hired to develop a package of options for recycling in Anchorage presented. The tendency is toward mandatory recycling. The best way to have a mandatory recycling program is to plan for it. Anchorage is so young that it can plan for dumpster space. It is difficult to have recycling facilities at multi-family developments, but it is very viable for commercial space.

COMMISSIONER PEASE noted that Ms. Wetzel's point #6 supports parking reduction requirements. She asked if this is a reduction in the minimum parking requirement. MS. WETZEL stated that the code revision she reviewed was reducing the maximum, which she favors.

COMMISSIONER ISHAM asked if Ms. Wetzel was involved in the versions of Title 21 that were done last year and the year before. MS. WETZEL replied that she has been involved for 2.5 years; she was working on the first set of chapters last year. COMMISSIONER ISHAM asked if her Council submitted comments on the previous versions. MS. WETZEL stated she recently purchased her first house and this is her first Council.

DAN BOLLES stated he submitted written comments, which are contained in the Commission's packets. His primary concern is that comments have been solicited from the public without the economic impact statement being available. Requiring the public to come to a public hearing is premature without this. He was aware staff was diligently working on the economic impact statement and there have been delays, but he felt there should be the ability to review the code with that document in order to comment to the Commission. He indicated he consults to the Anchorage Homebuilders Association and written comments have been submitted from that organization.

COMMISSIONER ISHAM asked when the economic impact statement would be available. MS. HAMMOND responded that she sent another email today

and she is awaiting a response from the consultant. A draft should be available to the public by the end of the month. It will be released to the public when it is finalized. There will be a public meeting on that document with boards and commissions that will be open to the public. COMMISSIONER ISHAM asked if that would be a public hearing. MS. HAMMOND replied that it would be provided as supplemental information on the potential impacts of the code to property values. CHAIR JONES noted that it appears the document will be available to the public before the hearings at the Assembly. MS. HAMMOND hoped it would be available prior to the Commission taking action. CHAIR JONES noted the Commission does not expect to take action until January 2008. MR. BOLLES noted that Thursday is the final day of public testimony before the Commission. COMMISSIONER ISHAM believed the biggest impact would result from Chapter 7. COMMISSIONER JOSEPHSON presumed there would be testimony allowed on the economic impact statement once it is released. CHAIR JONES stated that the Commission could discuss that possibility.

COMMISSIONER PEASE asked if Mr. Bolles's comments are on the pages titled "Field Tech Zoning Stormwater Assessment Inspection." MR. BOLLES indicated this is correct. This was for the Anchorage Homebuilders Association. COMMISSIONER PEASE noted that page 17 of these comments state "the use of the term 'high quality' is problematic. The overall impression of high quality is top of the line and costly construction. Taxpayers want good quality for their money more than expensive and showy displays." She asked what is Mr. Bolles's suggested language. MR. BOLLES suggested deleting "high-" and leave "quality construction."

T.J. SHEFFIELD, member of the Board of Directors of the Anchorage Amateur Radio Club, commented on the definitions in Chapter 14 dealing with "amateur radio." He thanked the Commission for making a distinction between amateur radio service and other telecommunications services. Amateur radio has a long history of public service and technical innovation and he appreciated the distinction in the definitions that recognizes a federally licensed individual in the amateur radio service. He stated that the Club is interested in preserving the language in 21.45.263.1.a and b, as that language is reflected in the draft copy of Chapter 5. He invited the Commission to the Club's annual winter communications training exercise at Kincaid Park on November 17-18; this is a nationwide exercise, including Canada, testing emergency communications capabilities.

AINSLIE PHILLIPS stated she has been a realtor in Anchorage for over 30 years and ahs worked with many developers and builders. She also worked on the site planning and the site condo ordinance and she is an eastside

activist who has dealt with Target, Wal-Mart, the Town Center, and other agonizing projects. Her primary concern with Chapters 5, 3, and 7 is that the language is not specific enough. The intent is there, but she has witnessed developers arguing that the code does not say something specific, so they can do it. The intent of the Rewrite was to make it easier for the public to understand what they need to do and what are the requirements, and easier for the people having to deal with them. The lack of specificity can be problematic. There are words in the Rewrite that were of concern when the condo ordinance was written, such as "contiguous" and "shall" as opposed to "must be" and how those can be manipulated to meet a specific interest that goes against the intent. She had concern with the Design Innovation Criteria Table, substituting credits for various things. She felt this was very ambiguous and feared it could be manipulated beyond the intent unless it is better defined with clear, concise language. She noted that she has submitted written material, but it is with Erika McConnell of staff. She stated that some of the design measurements for garage doors bother her. She remarked on the number of garages she has had to measures to see if her clients' cars would fit in the garage or in the driveway. During the site condo ordinance, she measured trucks, fire engines, and the streets to see the widths. She felt this chapter negates that ordinance. She feared that the lack of specificity in the language would make the work of the Commission more difficult. She would like the language to be very simple and easy to understand. The reduction of parking space in affordable housing could open the city to a huge reverse discrimination lawsuit. She has had a prominent designer/builder tell her, "Those people can't afford cars so they don't need as many parking spaces." She stated she sells many places to people who live with their sisters, brothers, and grandparents and they have as many as six cars. She stated that she spent 2.5 hours last night discussing only Chapter 7. She stated she would go through and flesh out the questions and resubmit them. She stated that Anchorage is out of land and design has to change. Much acreage in residential land has been lost in the last three years, yet *Anchorage 2020* says residential should not be lost. She thought the process needs to be slowed to be sure that language is clear. She believed from reviewing the table done on what was changed versus what exists in terms of zoning that there would be an enormous impact on the cases coming before the Commission because people do not understand. She felt because of the situation in Anchorage now, there must be examination of effects one mile around a proposal and the language in these chapters doesf not target that.

COMMISSIONER PEASE asked if Ms. Phillips or her group would submit detailed comments to follow up on her points. MS. PHILLIPS replied in the affirmative and indicated she would send the previous comments forward as well. COMMISSIONER PEASE asked for an example on how the Design

Innovation Criteria Table could be used to manipulate or skirt the intent. MS. PHILLIPS stated that above the table is a statement that substitutions can be made if the intent of the criteria is met by something else. She could see this being manipulated and result in something undesirable. She felt the language was not clear enough. COMMISSIONER PEASE asked for clarification of Ms. Phillips's comment about looking at a radius around a project. MS. PHILLIPS felt that there must be examination of not only large developments, but also how anything will affect the overall area. If there is a proposal to create housing in an area, there should be a question whether the streets can sustain the traffic it will generate. There should be examination of the impact on schools. The code does not address that; it did when the process began with Clarion. She noted that the impacts from infill in Muldoon are noticeable today.

COMMISSIONER JOSEPHSON asked for clarification of Ms. Phillips's comment about loss of housing. MS. PHILLIPS explained her comment is on the loss of residentially zoned land, such as what occurred with the Wal-Mart rezone in East Anchorage. There will be redevelopment in Anchorage because of the lack of available vacant land and using only balconies as open green space is not acceptable as it does not allow for enjoyment of Alaska, an area to sit in the sun, somewhere to let a dog out, etc. At the same time as the amount of available land has reduced, the density has increased. COMMISSIONER JOSEPHSON noted that some people would say that is a more sophisticated type of housing. Part of the downtown master plan is to build more condo complexes and allow for a more minimalist lifestyle. MS. PHILLIPS did not oppose this, but there are areas in the code that could result in loss of green space. There is a provision for off-site parking 600 feet from a building. Things like that do not make sense. Japan is going from 40 story high-rises to 64 story high-rises, but they have kept the amenities of walkability and practical open green space. If there are wind tunnels because of the number of tall buildings, she questioned what is gained.

COMMISSIONER PEASE stated she has not asked Staff how they derived common open space requirements in Chapter 7, but if Ms. Phillips has specific numbers in mind, particularly if they are based on professional experience or other cities, that feedback would be helpful.

VANESSA SALINAS, Muldoon resident, stated she has lived in this area for six years. She is a grant writer and when she writes a grant she has to be very specific. In looking at Chapter 7, there is verbiage that does not make sense to her, including how "contiguous" would be defined and what is meant by the use of "shall". She cited page 108 of Chapter 7, line 37, addressing rooftop mechanical equipment and that it must be covered and become an

integral part of the building's architectural design. There is another area with discussion of covering things, but the type of material used to cover them is not identified. She felt someone should clean up the language in the Rewrite to make it more consistent and firm.

COMMISSIONER PEASE felt "shall" is the same as "must". CHAIR JONES stated that "shall" is mandatory, not discretionary. TOM DAVIS stated there is a subsection in Chapter 14, "interpretation of terms," which provides the meaning of "shall"; it is mandatory.

DIANNE HOLMES stated she would be supplying the Commission with hard copies of her testimony. She stated a 50-foot setback on each side of a stream corridor is the absolute minimum; at 25 feet Anchorage would be far below the "real world." She stated there are inconsistencies regarding setbacks for wetlands and water bodies, which she has outlined. There also seems to be inconsistencies because Chapter 7 allows activities or structures in the outer 15 feet of the setback, such as sheds and play equipment. This works against the reason for having a 50-foot setback. She hoped the Commission would support the slope standards in the Rewrite. She stated that in many places in Anchorage what constitutes good drainage is still not established. She supported all of the sections on slope development. She also supported the language regarding natural drainage patterns. The section on development on slopes greater than 30% does not contain language that there will be instances where the permitted zoning or density simply cannot be obtained. There is no guarantee that what is permitted under the zoning can be done. She asked that Little Survival Creek be included under wildlife conflict prevention areas because it does supply 60% of the water in the south end of the marsh and it is a wildlife corridor. Traffic impact mitigation should include two more categories: no build and low-density mitigation. There are some areas of town where usual mitigation techniques will not work. She asked that the Commission be aware the one-sided walkway option is a loophole that should be tightened. She asked if it is necessary to have seating or low walls or steps every 50 feet on a primary walkway. She asked why these standards are required; they should be an option. She asked that there be more flexibility in the section on courtyards. She did not think there should be a requirement or direct sunlight in plazas on Equinox of four hours or more, direct or reflected, because what might be built is adjacent cannot be known, and it would discourage building one. She doubted the Ruth Moulton plaza in Town Square meets this standard. She stated that the section on landscaping is perhaps the most important to make Anchorage a livable city. She asked that it not be diluted. She reminded the Commission that there were good landscaping standards in the self-storage ordinance until they were reduced through political maneuvering. She noted that spruce is the

only evergreen that provides the density and visual impact desired and it should be emphasized and perhaps garner extra points. She provided pictures with evergreens and noted that pines are not sufficient. MS. HOLMES asked that the Commission reconsider the requirement that all landscape plans must be done by licensed landscape architects or professionals; with good guidelines, non-professionals might be able to do these plans. She suggested leaving a safe place to walk up to the building. She asked to retain the requirement for steel construction fences when vegetation is being saved; Goldenview Middle School is an example why this is advisable.

COMMISSIONER PEASE asked if the recommendations on spruce reflect any landscape professional's advice or have some professionals contributed to that statement. MS. HOLMES replied that this is her own observation that if density and visual impacts are desired, spruce should be used. She noted she has also made recommendations on tables where there are inconsistencies on landscape awards. She noted that spruce grow well in Anchorage, they are native, and they are inexpensive.

COMMISSIONER PEASE asked if Ms. Holmes was nominating Little Survival Creek to be included in the stream setback part of the code or the wildlife protection corridor part of the code. MS. HOLMES replied that it is missing from the latter, but it should be included under the setback requirement, as would all streams and drainages.

COMMISSIONER PEASE noted regarding the section on wildlife conflict prevention that it seems Potter Creek is a major drainage too and would be appropriately added. MR. DAVIS indicated that Staff would investigate this.

EVAN ROWLAND, a homebuilder, indicated a statement has been made that there are 2.6 children per households. Anchorage has 77,000 households and 50,000 children in school. That is equal to about .6 children per household; although there are some children aged 1 through 5 that are not in school, this is a more realistic figure. His primary concern was to save the townhome. The point is being reached where apartments and condos will be built. Those are the least desirable housing. He saw major things that would make the townhome unaffordable and would result in construction of large apartment buildings. The major issue is the price of land. The thing that might result in townhomes not being developed is the requirement for sidewalks on both sides of every road. He stated he builds small projects and there is basically one home in the middle and homes are on both sides. He thought using the land with 5-foot sidewalks on both sides is not as desirable as including that land in the back yards. He stated he lived in Southport with a full-sized road

with full-sized yards and big, long driveways and children play in the street. He suggested that the sidewalk requirement be associated only with large projects. He was also concerned with the requirement that open space have a minim 15-foot dimension. The Homebuilders have suggested that be only for common space. Sometimes the back yard may be 14 feet or 12 feet. Sometimes one part of the yard is 10 feet while another part is 20 feet. If this requirement was instituted along with the sidewalks on both sides of the road, it might not work.

COMMISSIONER ISHAM asked how Mr. Rowland defines a townhome. MR. ROWLAND replied that he is referring to townhome style where units are not above each other; normally there is a garage where each unit is above and behind that. COMMISSIONER ISHAM confirmed that these are multiple homes with common walls. He asked if Mr. Rowland was suggesting no sidewalks in these developments or one side of the street only. MR. ROWLAND suggested that there be no sidewalks for up to 18 units, one side for 18-36 units, and both sides for over 36 units.

CHAIR JONES asked what Mr. Rowland suggested for a project that would be built out in phases but each phase has no more than 18 units. MR. ROWLAND suggested that perhaps the first phase not have the requirement and the others have the requirement.

GIL BURNHAM, landowner on the Hillside, stated this process has been dragging on for some time. He asked for clarification of the process. He was aware that a committee has been working on Title 21, has generated recommendations, those recommendations have gone to the Commission and been released to the public, and now the public can comment. CHAIR JONES indicated this is correct. She noted the public has an opportunity to comment on several occasions. The Commission's role is to hold public hearings and advise the Assembly. The Assembly has the legislative power to enact the changes to Title 21. The Commission has no authority to enact these changes. The Commission receives written and verbal testimony and then typically asks Staff to prepare an Issue-Response. She anticipated that a recommendation to the Assembly would be generated in several weeks. Following that, the Assembly will conduct hearings at which time all citizens of Anchorage can testify. MR. BURNHAM asked how many more hearings would be held before the Commission. CHAIR JONES replied that the hearing would be concluded tomorrow on these chapters. At a future time, there will be a chapter with changes applicable to Eagle River. The sign ordinance was also handled separately. She encouraged members of the public to contact Staff at any time with questions and to receive information. She noted that the Commission has not yet concluded its action on the last

group of chapters it reviewed. MR. BURNHAM asked when the Assembly hearings would begin. CHAIR JONES suggested that he contact his Assembly representative to explain the process.

COMMISSIONER ISHAM noted that the Commission often incorporates many of the suggestions made by the public. CHAIR JONES indicated that additional testimony could be provided at the November 8 hearing or in writing by end of business on November 13.

COMMISSIONER JOSEPHSON asked whether Staff had a reaction to Ms. Phillips's testimony that in the earlier Clarion draft there were details that are now not included and the language has lost specificity. MS. HAMMOND believed the version Clarion last worked with the Municipality has changed so significantly that she was not sure it was relevant at this point to go back to what they had drafted at that time. MR. DAVIS stated the version has changed significantly since Clarion last provided content. The more recent drafts reflect site testing. Substantial changes were made to the design standards to be sure it is as clear and specific as can be done. He indicated he would review the written comments from Ms. Phillips; it will be helpful for Staff to respond to specific comments.

COMMISSIONER ISHAM moved to continue the public hearing to November 8, 2007. COMMISSIONER JOSEPHSON seconded.

AYE: Josephson, Jones, Isham, Fredrick, Palmer, Pease
NAY: None

PASSED

F. REGULAR AGENDA – None

G. PUBLIC HEARINGS – None

I. REPORTS – None

J. COMMISSIONER COMMENTS – None

K. ADJOURNMENT

The meeting was adjourned at 7:30 p.m.

Attachment 7

PLANNING AND ZONING COMMISSION MEETING
Wilda Marston Theater
Z.J. Loussac Library
3600 Denali Street
Anchorage, Alaska

MINUTES OF
November 8, 2007
6:30 PM

A. ROLL CALL

Present	Toni Jones, Chair
	Jim Fredrick
	Jim Palmer
	Art Isham, Vice Chair
	Thomas Vincent Wang
	Andrew Josephson**
	Nancy Pease*
Excused	Bruce Phelps
	Lamar Cotten
Staff	Tom Nelson
	Erika McConnell
	Dave Tremont

* Arrived at 6:33 p.m.
** Arrived at 6:35 p.m. and departed at 6:55 p.m.

B. MINUTES

C. SPECIAL ORDER OF BUSINESS

1. Disclosures

VICE CHAIR ISHAM requested that members make disclosures regarding items on this evening's agenda. There were none.

D. CONSENT AGENDA

E. UNFINISHED BUSINESS AND ACTIONS ON PUBLIC HEARINGS

1. **2007-153** Municipality of Anchorage, Planning Department. Review and Recommendation of

the Title 21 Rewrite: Chapter 21.03, *Review and Approval Procedures*; Chapter 21.07, *Development and Design Standards*; and Chapter 21.14, *Rules of Construction and Definitions.*

CHAIR JONES noted that those who testified on November 5, 2007 or November 7, 2007 would be unable to testify again. Written comments can be submitted until close of business on November 13, 2007.

The public hearing was re-opened.

VIVIAN MENDENHALL, 24-year Anchorage resident, stated she has a Ph.D. and 30 years experience in wildlife management. Her comments reflect experience of other biologists, including the Alaska Department of Fish and Game. She was grateful for the chance to testify. She stated biologists do not expect preservation of all natural habitat in town, but personally she would rather see more habitat preserved than Title 21 proposes because parks do not protect everything needed for some species. She stated the wildlife conflict section is not adequate. Anchorage 2020 said Anchorage should conserve wildlife and habitat, so this section was included in Chapter 7 on Wildlife Habitat Protection. However, in all of the revised drafts it has been shortened to Wildlife Conflict Prevention. She was told the reason for this change is that Anchorage has several large parks that provide habitat for wildlife. This is true for many species, but Title 21 attempts to recognize conflicts between people and wildlife. The current conflict prevention section is reasonably well written for bears; it is based on a 2004 report by the Anchorage Bear Committee with detailed information from ADF&G. All of the buffers to protect bear habitat were reduced from what ADF&G recommended. The section almost completely neglects moose. The section does not address the main areas moose need for resting and traveling. Moose can be every bit as dangerous as bears; moose have killed two people in urban Anchorage in the past 20 years whereas bears have killed no one. The strategy in the conflict prevention areas is to encourage wildlife to stick to natural habitat rather than wandering through neighborhoods. If the natural areas are removed as development occurs, it is a fallacy that animals will just fade away from town. They will still live in the mountains nearby and in the parks in town and they will keep moving through the town. They will begin to encounter garbage cans, gardens, schools, kids and other problems. She attended the Assembly committee meetings in May 2006 on Title 21 and she spoke with several of the Planning Staff. She was invited to submit a revised section on wildlife conflict prevention; however, none of it was included in the September draft. She urged the Commission to modify Title 21 in accord with

the revision she brought this evening, which addresses moose problems specifically. She realized the ordinance must be written clearly and be enforceable and she has done that to the best of her ability.

COMMISSIONER FREDRICK believed Dr. Mendenhall's comments focus primarily on section 3, "shelter areas for moose," which appear to him to be different than what bears might require. MS. MENDENHALL stated she also added habitat that was not mentioned, such as including an entire stream corridor. She stated that as moose move through neighborhoods and can find somewhere to hide, they can stay there for a while. Then when they walk through a neighborhood they are not as likely to be aggravated by children or eat gardens. COMMISSIONER FREDRICK asked if the other stream areas were added to particularly address moose. DR. MENDENHALL replied in the affirmative.

COMMISSIONER PEASE stated she has seen no detail about what a habitat corridor, presumably for purposes of travel, should entail. She asked if there is a definition that would lend specificity. DR. MENDENHALL referred this question to the moose biologist at ADF&G, but stated the general intent is to provide a wide enough area of natural habitat that includes a stream or something else that attracts animals so they feel safe traveling in that corridor; it should connect at both ends to destinations. For example, corridors should be provided between Chugach State Park and the Anchorage Coastal Wildlife Refuge. ADF&G has good data on where moose and bear travel. She noted that the recommended 600-foot buffer for bears has been reduced. COMMISSIONER PEASE understood that a corridor should have cover for travel and food attractions. DR. MENDENHALL replied that cover for travel is essential and food is advised if the animals want to use it for food. The essential requirement is that if it is shelter or corridor, it should be big enough.

COMMISSIONER ISHAM asked if Dr. Mendenhall submitted her rewrite in the same format previously. DR. MENDENHALL replied that she submitted essentially the same thing to the Assembly Committee in May 2006. COMMISSIONER ISHAM asked to whom the document was submitted. DR. MENDENHALL replied that she submitted to the Assembly Committee at their request. She condensed it for this evening.

COMMISSIONER ISHAM asked if Staff had seen this document before. MR. NELSON replied that this information is new to Staff, but Staff will respond.

COMMISSIONER PALMER asked if wildlife corridors for both bear and moose have been identified between Chugach State Park and the Anchorage

Coastal Wildlife Refuge. DR. MENDENHALL replied that they have been identified in general. COMMISSIONER PALMER asked if the Department has a map of the corridors. MR. NELSON stated they are identified. DR. MENDENHALL stated the maps reflect bear corridors, but for moose there is not a digitized map of the same sort. When she was responsible for collecting wildlife information, it was her experience that verbal information from experts is an important way to gather current and complete data. COMMISSIONER PALMER understood that migration patterns for bear are well known, but for moose are not as well known and is more scattered. DR. MENDENHALL stated it has not been included in a computer file to generate a map.

COMMISSIONER WANG noted that the document seem to be divided into mandatory standards and voluntary guidelines. He asked if there could be an incentive to give people a reason to comply with voluntary guidelines. MR. NELSON explained that guidelines were suggested because as projects come forward, through site plan review for example, there may be the ability to try to affect the development. These guidelines could be utilized through that process. It is also there to encourage more public education and awareness of the measures that can be taken to avoid human/animal conflicts. DR. MENDENHALL agreed that this is the point of this section.

CHAIR JONES stated she lives in an area frequented by moose and they are not choosy about where they stop to sleep. She did not think she was on a route, and she sees moose downtown. DR. MENDENHALL asked where Chair Jones lives. CHAIR JONES indicated she lives on a creek, but she sees moose in many areas. DR. MENDENHALL stated that Rick Sinnott with ADF&G explained that if there is a conflict it is more likely that animals will retreat into natural habitat, if it exists. If there is nowhere to retreat, there may be conflicts.

T. J. SHEFFIELD spoke as an individual, noting that he testified on November 7 on behalf of the Anchorage Amateur Radio Club. Title 14, Definitions, he thanked the Commission for defining amateur radio support structure as different than a commercial structure. He acknowledged that the definition recognizes the amateur radio service as federally licensed. He encouraged the Commission to recognize the language at 21.45.263.1.a and b and that language is contained in the proposed draft of Chapter 5. That language also acknowledges that the amateur radio service as federally licensed. He introduced into the public record Public Law 103-408, a joint resolution of the 103rd Congress to recognize the achievements of radio amateurs and to establish support for such amateurs a national policy. In the findings, Congress declares that radio amateurs are commended for their

contributions and the Federal Communications Commission is encouraged to continue and enhance the development of the amateur radio service as a public benefit, and that reasonable accommodation should be made for the effective operation of amateur radio from residences, private vehicles, and public areas and that regulation at all levels of government shall facilitate and encourage amateur radio operation as a public benefit. He then introduced into the record a Federal Communications Commission Memorandum Opinion and Order, PRB-1, which is a federal preemption of sate and local regulations pertaining to amateur radio facilities. The Federal Communications Commission recognizes that local ordinances might be in conflict with their goals for the amateur service. Supporting comments are from the Department of Defense, American Red Cross, and various cities and counties. Opposing comments are also included. There is also a discussion with respect to preemption and constitutional issues. Section 24, the FCC states that nonetheless, there is a strong federal interest in promoting amateur communications. Section 24 finishes by saying, "State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted." Finally, in Section 26, the FCC says, "We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time consuming and expensive litigation in this area." He thanked the Commission for their support.

DAVE D'AMATO, owner of 26 acres in Bear Valley and a house on five acres, wanted to speak to science, money, and usability. He stated the stream setbacks proposed in this document and previous documents are 50 feet. This is in conflict with some of the research from Anchorage's stream biologist, Scott Wheaton, who suggested that the majority of the very small streams have a setback of 25 feet. He stated he would make available Mr. Wheaton's stream setback analysis, should the Commission desire. In that document he says that the largest greenbelt, Rabbit Creek, should have 50-foot setbacks, but that contemporary geomorphology, the study of these streams and their impacts, indicates that the smaller streams should have setbacks of 25 feet. He urged the Commission to join the people who embraced Copernicus, Galileo, Newton, Darwin and Hubble; embrace the science. On one of his properties the stream runs 1,300 feet, another runs 1,000 feet, and a third runs 700 feet. With setbacks, two acres disappear because a political compromise was reached rather than following sound science. He asked Staff yesterday whether or not there had been research on the economic impacts of these regulations on private landowners who may have vacant land they want to subdivide. Staff told him last night and Erika McConnell told him

this evening that the economic study that was done did not cover that at all. There is no estimate of how much these requirements will cost individuals when they create a subdivision from a vacant piece of land. He questioned why a study is not being done and why regulations are being adopted when there is no idea if the cost will be $10 per acre or $10,000 per acre. He viewed this as nothing more than a property tax being passed on without any consideration of economic impacts. He stated that many people in his neighborhood homesteaded and wanted to pass their land on to future generations. Costs should be known before regulations are adopted. He stated with respect to usability that he many people are frustrated with what the title means and how it is applied. A young man sitting next to him last evening suggested creating something like a Chilton's manual, which he felt was brilliant. Before the Title is adopted, he would appreciate it being made user-friendly like Chilton's auto manuals, explaining what must be done when someone is developing a subdivision or doing residential building, for example.

COMMISSIONER ISHAM understood Mr. D'Amato's primary concerns relate to stream setbacks. MR. D'AMATO stated that his concerns are stream setbacks and economic impact. COMMISSIONER ISHAM asked if his remark regarding economic impact relates to stream setbacks or is general. MR. D'AMATO stated he was referring to economic impact in general and noted that if stream setbacks are compulsory, the developable area on a property can be significantly reduced; this is both a stream setback and an economic issue. His primary concern is that sound science is followed and that there is equity and fairness. He stated his R-10 home borders an enormous R-6 development where everyone has 25-foot setbacks. He has 100-foot setbacks. Although he has been living in his home for 10 years, he was told recently that he needed a variance because his home is 97 feet from the stream. Plans seem to be tending toward equity by requiring 50 feet across the board, but equity should not be trumped by science. COMMISSIONER ISHAM asked what size of stream should be the threshold for a 25-foot versus 50-foot setback requirement. MR. D'AMATO stated that Scott Wheaton, who is respected and knowledgeable, suggested 25 feet for small streams. He noted that the MOA occasionally does stream classification analysis and this could rest in their hands. COMMISSIONER ISHAM stated that an economic impact analysis is in progress. MR. D'AMATO indicted that Staff has told him that economic impact analysis does not consider residential construction. He felt it was madness to consider adopting regulations when the cost impacts are not known. If there was an emergency, he could understand quickly adopting regulations, but that is not the case.

In response to a question from Mr. D'Amato, MS. McCONNELL stated the economic impact analysis is focused on commercial, industrial, and multi-family development. It does not address large lot residential subdivisions.

COMMISSIONER PALMER asked that Mr. D'Amato list his other concerns. MR. D'AMATO indicated he would submit those in writing; they primarily were an appeal to equity. If standards are different in one area than another, if they cannot be equitable, he wanted them to be explicable. He stated he would read the entire document and write his comments.

CHAIR JONES indicated that the deadline for written comments is close of business on November 13, 2007.

CHUCK LEKITES, landowner in Bear Valley, supported the remarks of Scott Wheaton who wants to introduce a new category into watershed management, which is ephemeral streams. Anything with the word "stream" attached to it currently requires a 100-foot setback. An ephemeral stream is just a small channel that runs temporarily with snowmelt and rainfall. He has a small trickle on his property that runs when the snow melts. Scott Wheaton told him that a 100-foot setback would be required under the current code, which eliminated a lot. He hoped that science would prevail.

COMMISSIONER FREDRICK wished to ensure that Mr. Lekites was aware that ephemeral streams are addressed in the current draft. MR. LEKITES was aware of this and supported it.

JOHN WEDDLETON, representing the Anchorage Citizens Coalition, stated the Coalition will submit detailed comments by November 13. He stated that in this first draft Chapter 7 is much clearer than it was previously. Looking broadly at the trend in open space, the *Anchorage 2020 Comprehensive Plan* says that people want the city to respect its northern environment, protect wildlife, and provide lots of open space for families and children. *Anchorage 2020* says, "new development shall be accompanied by public or private open space, parks, or other public recreational facility." In the earlier modules of the Rewrite, it stated, "the standards are enacted to ensure adequate and convenient open spaces." In the 2006 draft, that changed to "the standards are enacted to provide consideration of open space needs." In the 2004 modules, Clarion proposed 10 acres of open space for every 1000 residents, which they indicated was fairly typical across the country. The 2005 draft spoke about private open space and that has been changed to number of square feet per unit. Roughly there are 2.5 people per house, which comes to about 7 acres for 1000 people. Out of that 7 acres, half of the open space could be used for snow storage and the rest would be yard. At that point, private

open space was also vague. In the 2006 draft, the standard of 800 square feet per housing unit dropped to 600 square feet per housing unit. In the 2007 draft, the zones with the most required open space is 400 square feet per housing unit and the zones with the lowest required open space is 100 square feet. Half of that could be indoors, which could be an entry door in a multi-family building. This trend is also seen with regard to wildlife and other major issues that are dealt with in the *Comprehensive Plan.* He did not see a public outcry to reduce open space. He had a broad concern that Title 21 is drifting away from the goals of the *Comprehensive Plan.*

COMMISSIONER PEASE asked for Staff's response to the fairly dramatic reduction in open space requirements. MR. NELSON replied that many of these changes have to do with further research, particularly comparisons with other cities. The requirement for 100 square feet per unit is in highly urbanized, mixed use districts where more development is desired in geographic areas. He stated Staff would further review the statistics and offer a response to this issue. Staff admits that open space has been and continues to be a major issue for the public. He anticipated discussions on this topic would continue throughout the process.

COMMISSIONER ISHAM asked if the decrease in open space requirement is in the same context each time. MR. WEDDLETON replied that the initial map in the modules was 10 acres per 1000 people and the description in the draft became number of square feet per housing unit. It began as public open space, then was private open space, and there is private common open space. In general, the trend is for less outdoor park-like or playground-like space. Up to half of the outdoor open space can be used for snow storage. COMMISSIONER ISHAM stated that having been on the Commission when Anchorage 2020 was adopted, he wondered whether conflicts had been built in because it says the community must be more compact, yet there is a desire for open space. MR. WEDDLETON stated the general trend is to build up and not out. Particularly in denser areas, a bigger playground is needed.

COMMISSIONER PEASE believed Mr. Weddleton thought there is a 100 square foot open space minimum per dwelling unit in the R-4A, but it says at least half the open space shall be shared in common among the units, so that would mean 50 square feet would be the effective minimum. It could be less than 50 square feet per unit in the R-4. MR. NELSON explained that the requirement is that at least half of the required open space is in common to the area, not only for the use of an individual unit. This provision will provide more latitude in how open space is provided for various types of housing. Earlier there was consideration of both public open space as well as private open space. There will continue to be discussion of whether or not a public

open space requirement should be in the code. The scale of residential development in Anchorage is much lower than is typically found in other U.S. cities. In the Lower 48 where there are developments with hundreds of units, having a public open space requirement can make a difference. Dealing with smaller developers with a smaller number of units, getting practical usable public open space is more problematic. This is not to say it could not happen in the future, but it is necessary to provide a clear legal nexus where that open space is provided relative to who is having to provide it. In Anchorage, most would likely be required as a fee in lieu rather than an actual requirement for open space. Staff felt there may be more appropriate means to provide for public open space than to require it in Title 21. There has been a reduction in private open space, primarily based on research on other cities and with an eye toward other objectives in *Anchorage 2020*, particularly in the high density and mixed-use districts. It is not so much the volume of open space as it is the quality and location of the open space.

COMMISSIONER PEASE asked where this open space requirement would be discussed in the subdivision standards and encoded. MR. NELSON replied that this has been a significant public issue and he anticipated it would be a highly discussed item through the Assembly's deliberations. It is contained in Chapter 7. COMMISSIONER PEASE asked if the fact there was no category to stimulate discussion does not mean the option is closed. MR. NELSON stated that the Department has proposed not including the public open space requirement at this time primarily because of the characteristics, level, and type of development. He anticipated that, as people wish to see this included, there would be dialogue. COMMISSIONER PEASE asked if the indoor private open space option is a typical translation of open space. She noted that there is no discussion of who would have access to the open space. This is in AMC 21.07.030.C.4. MR. NELSON replied that this is typical in highly urbanized areas. This could be in the form of a rooftop garden or a completely indoor recreation area or an indoor plaza.

CHERYL RICHARDSON, long-time resident of downtown, stated she has followed transportation and land use issues for many years. She thought that as Anchorage matures it is possible to have large amounts of open space, as exist near her home on 13th Avenue. She stated this is attractive to tourists and residents alike. She noted that New York, Washington DC, Vancouver have open space available for people in the urban core. She is not seeing that happen in the Downtown Plan. The Assembly is pulling back on the goals in that plan. She is also seeing it pulled back in *Anchorage 2020.* She remarked that public opens space is gone in Title 21. There is private open space and that has eroded, but public open space is gone. That leaves the option of park bonds to provide for public open space, which does not have a good history.

She questioned who is making the decisions about how Title 21 implements *Anchorage 2020* and are those decision points public so the public can comment. Without a public process that clearly articulates what Anchorage 2020 says, what is being done today, where things are done right and where there are compromises. Staff is doing their best to reach a compromise, but right now it is very difficult to find the changes. There should be more transparency so that the public knows what are the changes from *Anchorage 2020* to what is in Title 21. She stated she was uncertain how well *Anchorage 2020* is being followed. She stated that the last time the public and Assembly has been able to relate the *Anchorage 2020* goals to Title 21 and it was in 2004 during a presentation by Clarion. There was real access to the process when Clarion was involved. There was a diagnosis of the code, an annotated bibliography and then they started producing code. They provided for public open space and now it is gone. She stated the Commission is the defenders of Anchorage 2020. She recalled meeting after meeting during the development of Anchorage 2020. Many interests were involved in that process, but that is not happening in Title 21. She feared there would be a backlash when people find out what changes are being made to their personal property, their neighborhood, and their city if they are not quickly and broadly informed. She noted that people typically engage Title 21 during remodeling and she thought people would do that after Title 21 is changed and they will not know there was a change. She urged the Commission as the defenders of Title 21, of *Anchorage 2020*, and of the public process to work with the Administration and be sure this is an open process. She stated there is no information and no illustrations provided to her as a citizen, yet she was supposed to testify this evening.

COMMISSIONER PEASE asked if there is any plan to hold Title 21 to the policies of *Anchorage 2020* and particularly those that people have said are not being carried forward in the Rewrite. MR. NELSON stated the Department would issue an informational summary of Title 21 highlighting what each chapter does. He stated it would not be possible to identify all of the changes between the current and the new code. He noted that the bulk of the changes focus on the multi-family and commercial districts. The Department will also summarize how the new code is addressing the *Anchorage 2020* policies, particularly where *Anchorage 2020* identified Title 21 as a means of implementing specific policy. There are approximately 100 policies in *Anchorage 2020* and many are meant to be implemented through means other than Title 21.

COMMISSIONER ISHAM referred to Ms. Richardson's testimony regarding the loss of a requirement for public open space in Title 21 and urged that Anchorage have parks. He asked if that is a fair analysis. MR. NELSON

responded that Staff is also concerned that there are certain areas of town that lack sufficient park and recreational resources. There is more than one way to achieve them. Anchorage 2020 called for establishing park dedication requirements in new development. That was considered in earlier drafts of Title 21. A concern was expressed regarding the ability to meaningfully obtain usable parkland or open space through that process or require a fee in lieu of land as part of that requirement. Because of the scale and size of most developments, it was expected to be difficult to get usable open space through that process. It might be that this provision can best be used in the Chugiak-Eagle River area where there is an owner of a large parcel. There have been discussions within Staff for and against having public open space. At this point the Department is recommending not pursuing that provision. He stated the Staff would provide a more thorough written reply in the Issue-Response Summary.

The public hearing was closed.

COMMISSIONER WANG asked if the summary would compare the current code to draft one to what is now before the Commission. He was unclear whether in the changes now before the Commission are a net plus in terms of changes from the current code. MR. NELSON replied that the summary is meant to provide information to the public. It will compare the current draft with the existing code, not with previous drafts.

COMMISSIONER FREDRICK asked if there would be public hearing opportunity on the economic impact study that has not yet been presented and whether it is complete in its analysis of all of the possible economic impacts. He hoped there would be opportunity for public comment in a hearing format. He suggested that a hearing be held 30 days after the economic impact analysis is available to the public. COMMISSIONER PEASE agreed with Commissioner Fredrick, but thought it might skew the discussion if the subsequent hearing is limited only to that topic, if it is in fact targeting business, industrial and multi-family housing. She did not feel it was a balanced addition to this discussion if the Commission is not also hearing from the community on the condensed version of development design standards and issues such as whether there are strategies to implement key policies of *Anchorage 2020* or other plans.

CHAIR JONES requested a motion in order to continue discussion.

COMMISSIONER FREDRICK moved that the Commission provide a public hearing opportunity on the economic impact analysis to be set a minimum of

30 days after the analysis is available for public review. COMMISSIONER ISHAM seconded.

COMMISSIONER PEASE felt that limiting the discussion to impacts to commercial, industrial, and multi-family development would not be balanced. She asked why the public would not also be permitted to speak to the summary of changes in the chapters before the Commission and how well the Title 21 do or do not enact *Anchorage 2020* and any other adopted plans.

COMMISSIONER ISHAM noted that the economic impact analysis does not address single-family development, so there would only be anecdotal information.

MR. NELSON clarified that the EIA is focusing on multi-family, commercial and industrial issues. This is being done because of limited time and resources to review all issues and most changes are in the more intense use districts. This is why the focus has been on the multi-family and commercial.

COMMISSIONER WANG thought that even if the Commission takes testimony on the EIA, it is not precluded from considering the offsetting benefits achieved by whatever zoning change or regulation is being implemented. He understood Commissioner Pease's concern, but he did not think the Commission's consideration is restricted to public comments that there is impact and changes must be made. The Commission must consider whether there are offsetting benefits that make the impacts worthwhile. He hoped that would be addressed in the analysis itself.

COMMISSIONER PEASE explained she did not want to preclude testimony regarding the fact there is no requirement in Title 21 for public open space, yet it is a goal of *Anchorage 2020* because it does not have to do with economic impact analysis. There would be more information to help people better understand Title 21, so she questioned why the Commission would not want the benefit of their enlightened response. CHAIR JONES noted that the summary would include all of the chapters that have been considered to date and the Commission would not re-open what it has already acted upon. MR. NELSON stated the summary would help the public understand what each chapter deals with and what significant changes might be in those chapters. The focus would be on the chapters that have the most interest, primarily Chapter 7. In addition, by summarizing each chapter, the public would be helped to understand how Title 21 is organized and how chapters may interrelate. There was discussion of focusing only on the last chapters, but there was recognition that a summary of all chapters would provide a better perspective. COMMISSIONER FREDRICK believed this analysis would aid

the public in addressing the chapters that have yet to come before the Assembly. He believed it is useful that the analysis applies to all of the chapters. MR. NELSON stated the purpose of the summary is to aid the public in understanding how Title 21 addresses a range of issues, and how it responds to policies in *Anchorage 2020* and other plans. He stated there has been extensive public outreach to date. He noted that Clarion has done this work in large and small communities across the country and they say it is difficult to get public interest in code because of the complexity. They found a higher level of interest in Anchorage than in most communities and Anchorage is addressing a broader range of issues than many other communities. There has been an effort by Staff to keep the public informed through newspaper articles, magazine articles, and a standing offer to speak to any community council at any time. The Department has met with a variety of organizations. The Mayor and he met with the editorial boards of the Anchorage Daily News and the Voice of the Times and they provided editorials. The Mayor has sponsored a series of public informational meetings. There is a question whether or not putting out the summary that Staff is preparing will have a big impact. He agreed that it is beneficial to summarize the major changes to Title 21 and to address how Title 21 is addressing the policies of *Anchorage 2020.* CHAIR JONES asked when the summary would be completed. MR. NELSON estimated it would be done in December.

COMMISSIONER PALMER felt the public outreach has been exemplary. He stated the Commission has not yet seen the EIA, but it has seen various versions of Title 21. While he sympathized that it would be good to continually hear the public's comments, he was persuaded that since the EIA has not been before the Commission, the hearing should be restricted to that topic.

COMMISSIONER ISHAM noted that the Commission must take action on the chapters before it in the next three to four weeks. MR. NELSON stated that the Issue-Response would likely be provided in January for Chapters 3, 7 and 14. COMMISSIONER ISHAM noted that it is then possible for the Commission to make changes to the three chapters before it, following the EIA and the summary.

COMMISSIONER PEASE stated that she would like to know not only does this revision do a better job than the current code, but also does this revision do what it is supposed to do as presented in the adopted plans that collectively have hundreds or thousands of public comment and years of debate. She felt she would be much better prepared to understand this with a summary from Staff and also whether the public agrees with that

assessment. She suggested a friendly amendment that the additional hearing consider comments on the Staff analysis of compliance or implementation effectiveness of these revisions with regard to the adopted plans. COMMISSIONER ISHAM seconded. He stated his concern is what would be the process if there were something not quite right with something that has been approved and sent to the Assembly. COMMISSIONER PEASE asked why the Commission could not find that it had new information that bears on its previous decision and ask the Assembly to take it into consideration.

COMMISSIONER WANG stated the Commission will receive a summary report covering all of the chapters, yet there are only three chapters before it. He did not want to give the impression that there is a new hearing on things already decided. He questioned how complete that testimony would be. The question is what is advertised, and that would be the opportunity for additional public comment on the chapters upon which the Commission has not decided.

CHAIR JONES supported the amendment because if there is "a mess" but the Commission does not know there is "a mess" this is a good way to flush it out. She stated regarding the chapters that have been sent to the Assembly, that the Commission would not undo its previous action. The Commission can send information to the Assembly and people can testify before the Assembly themselves, but the Commission only has before it the items upon which it has not taken action. She saw no harm in getting additional information, but the primary purpose of the hearing would be for the public to testify on the EIA because it is a new document.

COMMISSIONER PEASE restated her amendment that the additional hearing consider comments on the Staff analysis of how Title 21 revisions implement adopted plans. She also felt it was appropriate to consider testimony on the additional analysis on Title 21.

NR. NELSON stated that Staff is preparing a document explaining where Title 21 is implementing *Anchorage 2020* and the other comprehensive plans. This is not intended to be a comprehensive evaluation. COMMISSIONER PEASE understood this and that the Commission would not recommend revisions to chapters of the code it has already taken action on, but there may be a "sense of the body" if there is new information.

COMMISSIONER WANG asked if the original motion is to take testimony on the EIA or to take additional testimony on Chapters 3, 7 and 14. CHAIR JONES replied that it is a motion to take testimony on the analysis. The amendment is to allow comment on the summary as well. COMMISSIONER

WANG proposed an amendment to the amendment to provide for taking additional testimony on Chapters 3, 7, and 14 in light of the economic impact analysis. COMMISSIONER ISHAM seconded.

COMMISSIONER FREDRICK asked what is the motivation for proposing this amendment. COMMISSIONER WANG explained that the Commission is not deciding on the EIA, it is deciding on Chapters 3, 7 and 14.

Amendment to the Amendment
AYE: Josephson, Jones, Isham, Fredrick, Palmer, Pease, Wang
NAY: None

PASSED

Amendment
AYE: Josephson, Jones, Isham, Fredrick, Palmer, Pease, Wang
NAY: None

PASSED

Main Motion
AYE: Josephson, Jones, Isham, Fredrick, Palmer, Pease, Wang
NAY: None

PASSED

MR. NELSON understood this motion was on the process, not necessarily requiring a resolution. CHAIR JONES understood that every action by the Commission require a resolution. MR. NELSON thought this was a direction to Staff on process. CHAIR JONES deferred to Mr. Nelson.

F. REGULAR AGENDA – None

G. PUBLIC HEARINGS – None

I. REPORTS – None

J. COMMISSIONER COMMENTS – None

K. ADJOURNMENT

The meeting was adjourned at 7:45 p.m.

PLANNING AND ZONING COMMISSION MEETING
Assembly Chambers
Z.J. Loussac Library
3600 Denali Street
Anchorage, Alaska

MINUTES OF
March 17, 2008
6:30 PM

A. ROLL CALL

Present	Toni Jones, Chair
	Nancy Pease
	Thomas Vincent Wang
	Bruce Phelps
	Jim Palmer
Excused	Jim Fredrick
	Art Isham, Vice Chair
	Lamar Cotten
	Andrew Josephson
Staff	Tom Nelson
	Erika McConnell

B. MINUTES – None

C. SPECIAL ORDER OF BUSINESS

1. Disclosures

COMMISSIONER PEASE requested that members make disclosures regarding items on this evening's agenda.

COMMISSIONER PHELPS noted that he works for the State DNR and one portion of the title deals with the Airport, which is State-owned. CHAIR JONES directed Commissioner Phelps to participate.

D. CONSENT AGENDA – None

E. UNFINISHED BUSINESS AND ACTIONS ON PUBLIC HEARINGS

1. **2007-153** Municipality of Anchorage, Planning Department. Title 21 Rewrite, Chapters 3, 7 and 14; Action on Chapter 3.

Planning Director TOM NELSON stated the Department's recommendations are contained within the Issue-Response Summary

COMMISSIONER PALMER moved to convene a Committee of the Whole. COMMISSIONER WANG seconded.

AYE: Jones, Palmer, Pease, Wang, Phelps
NAY: None

PASSED

COMMISSIONER PHELPS cited Issue 48, which recommends amending 21.03.080F.2.a, *Minimum Site Area* to add: If any portion of a proposed PUD is located within the R-6, R-8, or R-9 zoning districts, the minimum site area shall be 10 acres. He asked why the minimum would be 10 acres rather than allowing a variance from that acreage threshold depending on whether the property is R-6 or R-9. MS. McCONNELL stated there was comment from the Assembly committee that they felt the minimum site area for a PUD in these zoning districts should be 10 acres. She agreed that particularly the difference between R-8 and R-6 is great, but the general concern was that doing a PUD does allow the density to be increased and a larger site area should be required. MR. NELSON stated there has been further discussion in the course of developing the *Hillside District Plan*. This came up under the context of the possibility of consolidating smaller lots into a larger land area in order to create a reasonable design for a PUD with higher density. The concern was that a larger area is needed to provide flexibility in order to get better design. The discussion was that, for large lot districts, the appropriate acreage would be 7 to 10 acres. COMMISSIONERR PHELPS asked if there have been many PUDs in the rural districts and, if so, what have been the sizes. MR. NELSON could not recall many PUDs in large lot rural areas; however, discussions are beginning of renewed interest in PUDs. The density in R-6 is 1.8 DUA for a PUD. COMMISSIONER PHELPS felt this was not a significant issue, but was concerned with arbitrarily choosing a site size. He preferred to defer action on this recommendation until the *Hillside District Plan* provides guidance.

COMMISSIONER PHELPS cited Issue 103, which recommends amending 21.03.160E, *Approval Criteria* to amend the proposed sentence to read, "The rezoning may be approved only in the best interest of the public, including

the public health, safety, and general welfare." He asked whether "public" refers to the community of Anchorage, and is "public health, safety and general welfare" and "best interest of the public." MS. McCONNELL replied that the "public" is the community of Anchorage. She did not see a difference between "public health, safety and general welfare" any different than the "best interest of the public." Staff was simply attempting to respond to comments. COMMISSIONER PHELPS felt it should be clarified that "public" refers to the community of Anchorage. CHAIR JONES noted that the jurisdiction of the Commission is municipal only. MS. McCONNELL suggested changing "public" to "citizens of Anchorage" or "community of Anchorage." ***There was no objection to this suggestion.***

CHAIR JONES asked that Issue 48, which Commissioner Phelps discussed earlier, be resolved. COMMISSIONER PHELPS explained he prefers to wait until the *Hillside District Plan* is adopted, as is being done with the other items that are recommended as "hold". MR. NELSON found this acceptable. MS. McCONNELL explained for Issues 62 and 64, which are "hold" items, she had been awaiting information from PM&E and she received that information today. CHAIR JONES asked if Commissioner Phelps wished to hold Issue 48 until the *Hillside District Plan* is finalized. COMMISSIONER PHELPS indicated he would like to see this issue resolved when other items come back before the Commission, not knowing what length of time would be involved in the finalization of the Hillside *District Plan.*

COMMISSIONER PHELPS stated regarding Issue 123 dealing with 21.03.240, *Variances* that the wording "strict interpretation of the provisions of the zoning ordinance" has had specific meaning and changing the language to "would deprive the applicant" would have a very different meaning. MR. NELSON stated that the six variance standards that have been in place for many years have been very strict and not meeting one of the standards resulted in denial of a variance request. Staff reviewed the requirements in other communities and the revised seven standards are in line with what other communities are using. He could not speak specifically to the language of concern to Commissioner Phelps. There was agreement through discussion between Commissioner Phelps and Mr. Nelson to consult with other zoning and platting staff to respond to this issue. ***This item was put on hold.***

COMMISSIONER PALMER noted that Issues 27 and 29 are both recommended for "hold" and asked what would be the process to deal with those issues that are being held. MS. McCONNELL stated that in the past the Commission has passed forward a chapter that has included some "hold" issues and trusted the Assembly to deal with them. There is also the option to answer the Commission's questions on the items that do not have a "hold"

recommendation and, whenever the case is back before the Commission, those issues on "hold" can be discussed. MR. NELSON noted that the Commission's April 7 meeting agenda includes the Economic Impact Analysis for Title 21 and this matter could be brought back at that time. COMMISSIONER PALMER stated he was comfortable moving forward this evening with questioning and then bringing the matter back on April 7. COMMISSIONER PHELPS preferred to take action on everything except the items on "hold" this evening and bring back only those items for action on April 7.

COMMISSIONER PEASE asked with respect to Issue 4 to amend 21.03.040, *Alcohol—Special Land Use Permit*, if fees are to be refundable, is there a non-burdensome process for considering refunds. MS. McCONNELL stated that, in the event an application is not complete, an applicant can either submit the elements that were missing or the fee can be refunded. An applicant could also withdraw an application and request a refund, but there would have to be some accounting for the work Staff had done to that point and other costs that were incurred. MR. NELSON stated that currently fees can be refunded, but it is rare. Once an application is received, processing begins and expenses are incurred. Typically a fee is refunded if an error is clearly made by the Municipality. COMMISSIONER PEASE understood that Staff is satisfied to deal with this issue on a case-by-case basis.

COMMISSIONER PEASE cited Issue 16 regarding 21.03.020H.1, *Content of Notices*, and asked why there is no requirement for posting for a site plan review, given that those can be substantial. MS. McCONNELL explained there are both an administrative site plan review and a major site plan review; the latter requires a public hearing before the Urban Design Commission. The code is structured to require major site plan reviews for uses that are major in nature and that logically require public review. An administrative site plan review is for uses that are by-right in the zoning district and not major enough to warrant a public hearing. COMMISSIONER PEASE understood that major site plan reviews would be posted. MS. McCONNELL indicated this is correct.

COMMISSIONER PEASE asked for confirmation that the commenter's remark is correct in Issue 45 regarding 21.03.080F, *Conditional Use for a Residential Planned Unit Development* that "Most egregious is section 3.c which allows the applicant an open ended invitation to propose changes to lot size, coverage and setbacks as well as 3.b. which allows any commercial use that is allowed in R-4 districts." MS. McCONNELL indicated this is correct. COMMISSIONER PEASE was not comfortable with a commercial use in the R-4, noting that an office use has a type of traffic use that is different than

residential. COMMISSIONER PHELPS concurred with Commissioner Pease. He agreed that only residential uses should be allowed in residential zones and PUDs should not be used as a device for allowing other uses. MR. NELSON explained that only the uses allowed in the R-4 would be permitted in the R-4. The current code allows limited commercial that is small scale. He stated that the current ordinance allows uses limited to residential and accessory uses, convenience establishments, and personal or professional services. A residential PUD does not allow the storage or use of mobile homes or Quonset huts. Any non-residential use must be specifically authorized as to its exact location, type and size. The total floor area of the non-residential uses cannot exceed 10% of the total internal floor area of the PUD. He could not recall this PUD ordinance being used in the last 25-30 years, but the code does allow it.

COMMISSIONER PEASE asked what would be allowed in the R-4 under the new 21.05-1 table. MS. McCONNELL stated the uses are club, lodge and meeting hall, fitness and recreational sports center, restaurant, convenience store, grocery or food store, parking lot, camper park, extended stay lodgings, hostel, and hotel/motel. COMMISSIONER PEASE asked, if a neighborhood or district plan had residential areas separated from commercial but a landowner wished to develop a PUD, would this not be a way for that landowner to start a new commercial center where the neighborhood or district plan did not approve it. MR. NELSON stated that the uses and their scale would be neighborhood serving. CHAIR JONES noted that most PUDs follow the plans that are adopted for the particular area in which they are situated. COMMISSIONER PEASE agreed that this could be the case, but in the situation of Legacy Pointe, for instance, there was a club oriented for users, but it was large. She was concerned with the breadth of possibilities under the proposed ordinance. She remained concern that a PUD could be a means to add commercial in a residential area, regardless of what a neighborhood or district plan has recommended. MR. NELSON stated a PUD is not automatic; this Commission reviews and approves those requests. The intent is to allow for a reasonable, small-scale use.

COMMISSIONER PHELPS suggested that Staff come back with a recommendation how to resolve this issue. He understood Commissioner Pease was asking that this language not be an avenue for a developer to change the code. He suggested that there be further intent language to ensure that the commercial use provision is not abused. CHAIR JONES stated she could see where it would be very beneficial to have a certain scale of commercial use in an R-4 district. Currently there are very few neighborhoods where people can walk to the store; instead people have to drive to the store. She felt it was appropriate to have grocery stores and

neighborhood services in an area of high density residential. COMMISSIONER PEASE stated that the proposed language does not assure neighborhood-oriented uses. She suggested perhaps putting an upper limit on the square footage of the commercial area and, secondly, ensure that it is neighborhood oriented.

There was agreement to place Issue 45 on hold.

COMMISSIONER PEASE noted that in Issue 92 dealing with 21.03.140B.1.a, *Applicability* Staff reduced the amount of square footage that requires a site plan review by a small amount. She asked for comment on the square footage threshold. She agreed with the idea to trigger Commission review if there is high volume traffic impacts or volumes. MR. NELSON stated there has been discussion about the threshold figure. There has been discussion to clarify between new construction and occupying existing space. It is problematic for governmental agencies to undergo a site selection process in order to lease existing space. A large figure is used because it is clear the use is major and would have traffic impacts. The threshold for new construction can be lower. He suggested this item also be placed on hold. COMMISSIONER PEASE stated she was considering a threshold of 40,000 SF. She felt there might be benefit in determining whether the use involves high traffic impacts or volumes, rather than setting a square footage threshold. CHAIR JONES stated there is industrial land near her home with warehouses that have associated service vehicles and a great deal of traffic. Different types of uses generate different levels of traffic. COMMISSIONER PHELPS suggested there also be a clarification that oftentimes an acquisition involves structures in which a governmental agency is already occupant and a site plan may not be desirable if there is no change.

There was agreement to place Issue 92 on hold.

COMMISSIONER PEASE noted that in Issue 81 regarding 21.03.130C.1.b, *Department Review and Determination*, the commenter seemed to be saying that the Commission or Assembly should be the judge of content and Staff would judge the completeness of the application. MS. McCONNELL stated that deficiencies with respect to content relates to provision of all required elements and if the information within elements is adequate to allow accurate judgment. COMMISSIONER PEASE suggested the language, "scope or completeness of content." MS. McCONNELL felt that the language "deficiencies with regard to content" has the same meaning. MR. NELSON stated the intent is not to pass judgment on what is said in an application, but to ensure that before a lengthy review occurs, the items on a checklist are submitted. That is referred to as "content".

There were no objections to Issue 81.

COMMISSIONER PEASE cited on page 54 of the chapter and asked what is the appeal process for a neighborhood or district plan. MS. McCONNELL stated this is answered in Issue 76 that, as with any comprehensive plan decision made by the Assembly, the avenue of appeal is to Superior Court. CHAIR JONES believed this is an administrative process that is an operation of law. COMMISSIONER WANG agreed that this is a generally applicable piece of administrative law that is automatic. COMMISSIONER PEASE asked if Issue 76 makes a correct critique that it is costly to appeal to Superior Court versus an appeal to the Zoning Board. CHAIR JONES explained the only place an appeal can be made from the Assembly's action is to Superior Court. COMMISSIONER PHELPS stated the code gives due deference in areas of expertise.

COMMISSIONER PEASE asked whether Issue 7 dealing with 21.03.020G.2.a, *Types of Applications* and suggesting that community meetings should be required for all site plans, not just major ones, should be held. The commenter says, "Minor site plans, such as churches, can have huge impact to neighborhoods due to their size and traffic." Since there is Staff work being done on Chapters 5 and 6 regarding criteria for large development, she felt perhaps this should be on hold. Depending on the size of the project and the site plan review, some site plans may merit public hearing. MS. McCONNELL anticipated that any proposed changes would come in Chapter 5 and Chapter 7. The type of review applied would be listed in Chapter 5 and the standards would be in Chapter 7; there would not be changes in Chapter 3. COMMISSIONER PEASE asked if it is the case that the public review process issue would be dealt with in other chapters. MS. McCONNELL replied in the affirmative.

COMMISSIONER PEASE wondered regarding Issue 12 dealing with 21.03.020G.5.b, *Attendance at Community Meeting*, whether the suggested sentence, "Where a regularly scheduled Community Council meeting meets the timing and location requirements, that is the preferred venue for the community meeting," should be added. COMMISSIONER PHELPS stated that in his work there would not be concurrence with this because, in many situations, the Community Council would not be the appropriate forum for a public meeting. He was uncertain whether the Community Council would be the preferred venue for all land use issues. MS. McCONNELL understood that one of the purposes of a Community Council is to provide a forum for community input into projects. Staff did not object to the language, but felt the more appropriate place for it is in the user's guide.

COMMISSIONER PALMER stated that, in his experience, Community Councils are normally run by a certain group of individuals and to put public review in that forum may diminish the importance of a particular issue. He also feared that some Community Councils would use that forum for their own purposes rather than simply to gain public input on an item. COMMISSIONER PEASE envisioned the meeting as a presentation with questions, which applicants often do in any case at public meetings. COMMISSIONER PALMER noted that there is no prohibition to using the Community Council. MS. McCONNELL confirmed this is the case and stated that Staff understands the preferred forum will, in many cases, be the Community Council. MR. NELSON stated that it is difficult to suggest things in the code, which is mostly prescriptive; therefore, placing this in the user's guide is more appropriate. COMMISSIONER PHELPS felt that it is important to allow flexibility for how community meetings can be held and he agreed with placing this in the user's manual, rather than in the code.

CHAIR JONES had concern that the community have an opportunity for involvement through community meetings and, in order for that to occur, the community needs to know where the meeting will occur, when, and it should be convenient. In many neighborhoods Community Council meetings happen with regularity. Her primary concern was that the public gets notice of community meetings. COMMISSIONER PEASE stated she was not clear who receives the user's guide. The Community Councils know about the code and, if the preference to meet with them is stated therein, they will likely feel comfortable asking petitioners to come to them. Community Councils also feel comfortable in their own meeting space. This language is advisory, but there is other advisory language in the code such as "to the extent practicable" or "feasible".

COMMISSIONER WANG stated that adding the language with the term "preferred" has no more strength than a Staff member suggesting it. Without knowing it is enforceable, he would prefer that it not be in the code. CHAIR JONES concurred with this sentiment.

No change was made to Issue 12.

COMMISSIONER PEASE noted that in Issue 13 regarding 21.03.020G.6, *Summary of Community Meeting* the commenter wanted the Community Council to receive a copy of the meeting summary, which she felt was important. She supported the change to require that the summary is sent to the Community Council at the same time it is sent to Staff. There is some mistrust of what is said at public meetings and this summary allows a recap

of what is said at the community meeting. She noted that in the situation of Legacy Pointe, after the public hearing, the Commission was attempting to find out how involved the community was in the development of the collector road and the petitioner indicated there were meetings, but the public did not necessarily agree and there was no opportunity for the public to speak. MS. McCONNELL noted that the community meeting discussed in this section would happen before an application is filed, not after a public hearing is closed. She had no objection to adding to page 10 that the meeting summary would be supplied to the Planning Director and the Community Council. She noted that the summary must address a prescribed list of items, including date and location of the meeting, content, the substance of the concerns, issues and problems, how the applicant has addressed or intends to address concerns, issues and problems, and concerns, issues and problems that the applicant is unwilling or unable to address and why. The benefit of sending the summary to the Community Council at the same time as the Director is that the Council would receive it earlier than when it appears in the packet.

No objection to the additional language proposed.

COMMISSIONER PEASE noted that Issue 15 regarding 21.03.020H, *Notice* proposed that mailed notice could be provided to affected Community Councils for comprehensive plan amendments (substantive), neighborhood and district plans, street and trail review, and Title 21 text amendments. MS. McCONNELL suggested that this item be placed on "hold" while the Department completes its consideration of this issue.

There was agreement to place Issue 15 on hold.

COMMISSIONER PEASE noted regarding Issue 18 respecting 21.03.020L, *Postponements* that she felt there were instances in which the affected public or the applicant have not seen the Department's comments until the Friday before a Monday hearing or, in some cases, the day of the hearing. There are often Department comments that neither the public nor applicant have been had sufficient time to review in order to respond and that greatly change the discussion. She felt that having something in code to ensure that information is available earlier is preferable. MR. NELSON did not disagree with Commissioner Pease's observations, noting that it is a challenge to get the Staff packet out. The language indicates it is the Department's intent to get the packet out one week before a hearing. There are internal challenges in terms of other departments' recommendations being received in time to meet that deadline. The Department is going through an internal review process to improve the application preparation process.

CHAIR JONES recalled that, at a point in the past, the Commission did receive packets one week in advance. She suggested perhaps pushing the cut-off date back one week in order to get the packets out one week prior to the hearing. COMMISSIONER PALMER understood that some of the other departments in the Municipality do not have these cases as their highest priority, so missing a deadline would have no consequences. MR. NELSON explained that most departments are able to submit comments timely; there are sometimes issues that make comments late. Sometimes departments face personnel issues that make prompt response difficult. There is typically a 45-day period of time from the cut-off date to the time a case gets to the Commission, which is an accelerated process compared to many cities of this size. Problems can arise during review and the developer might want to submit a revised plan in response. The Department is recommending making pre-application meetings mandatory so that issues are resolved prior to formal application being made. CHAIR JONES felt that applications should not be accepted if it does not include all necessary elements.

COMMISSIONER PHELPS stated the problems being discussed are structural and are associated with human nature, which is difficult to control. He opposed setting a minimum of one week prior to a meeting for the Commission to receive a packet because if that is included in the code and there is not notice to the Community Council one week prior to the hearing, it is procedural error and the matter could be taken to court on that basis. He felt that the intent to get it to the CC approximately one week prior to the hearing is reasonable. COMMISSIONER PEASE stated she has heard from both the public and applicants that they had seen a packet on the Friday before the hearing and that is not fair. She did not want to create a burden or a litigious situation, but she did not want to waste resources and have a poor public process. MR. NELSON stated the Department does not support codifying a time limit for getting packets to the public, but the Department has begun an internal process to improve procedures and process packets so that they are finalized timely. COMMISSIONER PHELPS suggested that the Commission agree with the Staff's recommendation on this issue. He believed that this issue must be reviewed more holistically and noted that the Commission has been willing to take things given to it on the evening of the hearing. He suggested that perhaps the Commission could change its rules of procedure.

COMMISSIONER PALMER asked that the Department report to the Commission when its internal review is completed.

COMMISSIONER PEASE cited Issue 19 regarding 21.03.020L, *Postponements*, and asked if it would be possible to add a provision that the

attending public could speak to the issue of postponement, particularly with regard to the date to which a matter is postponed. MS. McCONNELL stated that when an applicant requests a postponement, the Commission can deny that request. She also thought the Commission could invite the comments of the public on a request to postpone. COMMISSIONER PEASE stated she was proposing to add to 21.03.020L.1 "the attending public may speak to the postponement and rescheduling." MR. NELSON stated that, in his experience with the Assembly, if the matter has been advertised and there are members of the public in attendance, the hearing is opened in order to take testimony. He stated the decision whether or not to postpone is made by the decision-making body.

COMMISSIONER PHELPS thought this section dealt with a short board. MR. NELSON stated that there are two situations, one being a short board and the other being the ability for the applicant to ask for a postponement for any reason. COMMISSIONER PHELPS suggested adding language that the reason for postponement be presented to the board or commission. COMMISSIONER PEASE felt this would be added as 21.03.020L.2. Her suggestion would apply to both L.1 and L.2. She was suggesting that there be an opportunity for the public to speak to a postponement. COMMISSIONER PHELPS stated that in the situation of a short board, it is not fair to the applicant to have to move forward with only five members to vote. COMMISSIONER PEASE agreed; she stated she would like to think that it would be a formality to ask the other primary participants about the postponement.

COMMISSIONER PALMER understood that a public hearing could be held even when there is a short board and the deliberations and decision-making could be postponed. CHAIR JONES stated this is correct, but the public would be cautioned that they could not testify twice. COMMISSIONER WANG felt it is evident to the Commission when the public does not want a postponement. The proposed language concerned him with respect to control of the meeting. The questioned whether the proposed language would allow all those in attendance an opportunity to speak to the Commission regarding a postponement. CHAIR JONES felt the Chair could ask for a showing of hands. The Commission would have ultimate responsibility to pick a date to which the matter is postponed, as it would be unlikely that a selected date would work for everyone. COMMISSIONER PEASE suggested there could be a statement that the matter could be postponed to a certain date and an inquiry whether the applicant and public agree or object. She suggested the language state, "The decision making body may ask members of the public to speak to the postponement and rescheduling." MS. McCONNELL did not

disagree with the concept, but noted that the decision-making bodies already have this discretion.

COMMISSIONER PEASE stated regarding Issue 36 21.03.070C.2, *Approval Criteria*, that there were comments both that the proposed language makes it too difficult to make comprehensive plan amendments and that it makes it too easy to make comprehensive plan amendments. She suggested adding language "to require a substantiated written finding." The Staff agreed to add the line "if in the judgment of the commission or assembly," which she understood was intended to avoid frivolous appeals. MR. NELSON noted that these changes came from this comment and also from discussions with the Assembly committee. He stated that the word "only" is not necessary and is suggested for deletion. COMMISSIONER PEASE asked if Staff would agree to including reference to written documentation of the judgment. COMMISSIONER PALMER did not believe the Assembly produced written findings. MR. NELSON stated they are not as consistent as the Commission in stating their findings. On issues where there is concern they will often state findings on the record. He anticipated that on a comprehensive plan amendment there would be a record because specific criteria are established for the amendment.

COMMISSIONER PEASE stated her intent was to add language that the decision-making body would show through a written finding that the following amendment meets the required criteria. MR. NELSON stated there could be stated findings, albeit not written findings. CHAIR JONES suggested using the term "findings of fact" which could be either written or on the record.

COMMISSIONER PHELPS believed that the legislative body does not need to make findings. COMMISSIONER WANG felt it would be unusual to have a requirement for written findings in a legislative context. COMMISSIONER PEASE explained her intent was to give more solidity to comprehensive plan amendments. COMMISSIONER PALMER believed that any change to the comprehensive plan would come through the Commission, which would make findings of fact before sending it to the Assembly. His experience with national, state, and local decision-making bodies is that there are times there are no findings for a decision and times when there are substantial findings. CHAIR JONES noted that the Commission could address procedural protocol in its rules of procedure.

COMMISSIONER PEASE noted that in Issue 47 regarding 21.03.080F.1.e. + 2.a + 2.b + 2.c.iii, *Intent and Approval and Minimum Standards* the Staff recommendation is for changing buffering for non-residential uses from L4 to

L3. She asked whether this would be covered in Chapters 5 and 7, large development standards. MS. McCONNELL stated this issue deals with PUDs. The comment mentioned that there is a lower level of screening required for a boundary that could be between a residential area and a non-residential area outside the PUD and a higher level of screening between residential and non-residential uses within the boundaries of the PUD. It made more sense to have a wider buffer of 30 feet between the PUD and whatever is next to it and have the narrow buffer of 15 feet within the PUD.

COMMISSIONER PEASE noted the commenter asked whether the open space created in the PUD is public or private, noting that density bears upon the surrounding neighborhood and public open space compensates the surrounding neighborhood. MR. NELSON stated that many of the residential PUDs that have been developed have interior open space. The interior open space has an overall benefit because it benefits the surrounding neighborhood as well. There is not public open space in the code at this time. Even if there were ultimately a provision for public open space, the Department would not recommend requiring it as part of the PUD. The design of the PUD is intended to provide open space for the benefit of the residents living in the PUD. COMMISSIONER PEASE did not understand why the surrounding public would support a PUD if it were not receiving a benefit such as access to open space. MR. NELSON stated that the importance of the open space could be protection of a wetland or other physical feature. CHAIR JONES stated that she lives near a PUD and, while the neighborhood does not have access to their private open space, it is perceived by the neighborhood as a benefit.

COMMISSIONER PEASE asked if standards were approved in Chapter 8 for visual access to open space in subdivisions so that open space has broader benefit. MR. NELSON recalled discussion with the Assembly in this regard. COMMISSIONER PEASE stated that a PUD could enjoy higher density and uses that could not be developed under the existing zoning and the people around it may have no benefit while experiencing greater impacts on infrastructure. She asked if this item could perhaps be held if there is an opportunity for a trade-off for the density created by a PUD. MR. NELSON stated that when PUDs were done in the past trade-offs were identified; a developer must convince the Commission that there are sufficient trade-offs for the density they request. CHAIR JONES noted that most of the PUDs and the open space in them is private land. Liability issues arise when access by the general public is allowed. For this reason PUDs are often sequestered. A PUD would not be permitted unless the Commission approves it.

There was agreement to place Issue 47 on hold.

COMMISSIONER PEASE noted that in Issue 100 regarding 21.03.160D.10, *Waiting Period for Reconsideration* the commenter suggests a two-year wait for reconsideration and Staff says that in effect the wait would be 18 months. She was more comfortable with a waiting period of 18 months or two years because one year places too much of a burden on Staff and the public. MR. NELSON stated the time period within which a new application can be filed is nine months and that was changed to one year. MS. McCONNELL explained the code currently says the board cannot hear it for one year, but the application can be submitted in nine months. The change is that the application cannot be submitted for one year. COMMISSIONER PEASE felt that 18 months or two years to see the same project would be fairer. COMMISSIONER PALMER asked how many times a matter has been reconsidered by the Commission. MR. NELSON replied that it is rare. COMMISSIONER PALMER asked if two years would not be a burden. MR. NELSON responded that resubmission of a similar plan is rare. He explained that the point of the language is to put a stop to a continual submission. CHAIR JONES agreed with the suggestion for a two-year waiting period.

COMMISSIONER WANG stated that if this has not been a recurring problem, perhaps an incremental approach is warranted, so a change to one year would seem appropriate. He felt that, once an application fails, it seems a developer would look to make a significant change. He did not strongly oppose a waiting period of two years.

COMMISSIONER PHELPS felt that whether the waiting period is one-year or two-years is unimportant, given that so few have occurred or are likely to occur. He stated that if the requirement is that development proposals will not be accepted unless they are substantively changed, he did not see the need to change from a one-year waiting period, but he did not have a strong objection to a two-year waiting period.

There was agreement to a two-year waiting period for the Planning and Zoning Commission to reconsider a case.

COMMISSIONER PEASE cited Issue 102 respecting 21.03.160E, *Approval Criteria* and explained that she had asked that somewhere in the title the Commission consider not taking a rezoning lightly. She had asked whether other cities rezone with more conservatism than Anchorage. There have been preambles and explanation of intent under conditional use stating that they have to meet strict criteria and she wanted to encourage the inclusion of the following preamble to the approval criteria for rezoning in 21.03.160E: "Zoning is not effective if it is too- easily or frequently changed: zoning is

intended to provide a degree of certainty that is important for long-term investment and neighborhood cohesion and stability." COMMISSIONER PHELPS asked that action not be taken so that he can consult the proposed code in order to understand the action. MS. McCONNELL provided Commissioner Phelps with a copy of the draft code. MR. NELSON suggested reviewing page 57 dealing with rezonings and map amendments, which contains some of the language Commission Pease suggested. COMMISSIONER PALMER felt that Commissioner Pease's language should be in the Purpose and Scope section on that page.

COMMISSIONER PHELPS asked that Staff bring back suggested language before action is taken.

There was agreement to place Issue 102 on hold.

COMMISSIONER PEASE noted that one change in the approval criteria in this draft from previous code is stated in Issue 103 dealing with 21.03.160E, *Approval Criteria.* That change is a mention of the cumulative effect of similar rezoning and development. She noted that near the Library there was a plan for mixed residential and commercial uses and, project-by-project, the zoning and character of the area was changed to commercial with no residential. She wanted to re-insert the concept of considering the cumulative impact of a rezoning. She suggested adding after criteria of approval 7, "The cumulative effect of similar rezoning and development is not likely or is not likely to result in negative impacts identified in 5, 6, and 7 above."

COMMISSIONER PHELPS questioned how to deal with cumulative impacts with a singular rezone. COMMISSIONER PEASE suggested that consideration be given to whether a rezoning is unique in the area and similar rezoning would not be likely or perhaps the proposal requires freeway level road service and the area is all hardscape. MR. NELSON stated that for 30 years there has been a policy to not encourage strip commercial zoning, but it happened one lot at a time because the cumulative impacts were not examined. He felt the idea of looking at cumulative impacts of similar rezoning is what did not happen when rezonings occurred along arterials resulting in strip commercial. He felt that looking at cumulative impacts might be a desirable criterion. COMMISSIONER PHELPS was not averse to looking at cumulative impacts, but he had concern with a criterion that evaluates whether a proposed rezoning continues or exacerbates land use patterns that are not considered to be effective, efficient, or consistent with the comprehensive plan. He understood why it is desirable to evaluate whether a rezone contributes to a pattern that is not prescribed in the comprehensive plan and would contribute to inefficiency. COMMISSIONER

PEASE suggested that Staff develop language related to creating to a pattern that is not consistent with the comprehensive plan.

COMMISSIONER WANG did not want to put the Commission in a position of speculating about future development as opposed to looking at what has happened. He wished to avoid a situation where a petitioner proposes a rezoning and the Commission looks at the request in terms of what might occur if, for example, ten neighboring properties make the same request.

COMMISSIONER PALMER concurred with Commissioner Phelps, noting that he has concern with how the term "cumulative impact" might be used. COMMISSIONER PHELPS stated that the argument made by applicants is often that someone else was given a particular rezoning so, on the basis of fairness, it should be given to them. This has been an effective argument. The crafting of language has to do with issue of fairness versus land use policy.

There was agreement to place Issue 103 on hold.

COMMISSIONER PHELPS asked to hold the rezoning approval criteria in 21.03.140H in order to provide some wording to Staff. MR. NELSON noted that these are the approval criteria for public facility site plans. COMMISSIONER PHELPS clarified that he intended to reference the approval criteria for rezonings at 21.03.160H.

MS. McCONNELL suggested that his be dealt with as part of Issue 103.

There was agreement to place Issue 103 on hold.

COMMISSIONER PEASE stated she had not had sufficient time to review the site plan review criteria in 21.30.180 and asked if action on that could also be delayed. MS. McCONNELL stated this would be dealt with in Issue 114.

There was agreement to place Issue 114 on hold.

COMMISSIONER PALMER moved to adjourn the Committee of the Whole. COMMISSIONER WANG seconded.

AYE: Jones, Palmer, Pease, Wang, Phelps
NAY: None

PASSED

COMMISSIONER PEASE moved to adopt Chapter 21.03 as revised by Staff, including the revisions in the Issue-Response Summary dated March 17, 2008 with the actions of the Committee of the Whole, including items on hold for future action. COMMISSIONER WANG seconded.

COMMISSIONER PEASE stated Chapter 21.03 is a very important part of Title 21. The Commission is dependent on having clear processes, standards of approval, and schedules. This Title 21 Rewrite has made some good steps toward clarity and improved process.

COMMISSIONER PHELPS stated this is an important part of the code that deals with procedure and process. The proposed changes to this chapter are incremental improvements over what has existed. He noted that a comprehensive review of the title that provides an opportunity to make substantive change is unusual. One of the topics this evening was getting information compiled and available to the public in an expeditious fashion. He preferred that Staff be directed to deal with that issue and return to the Commission with recommendations.

COMMISSIONER WANG stated he has struggled with the issue of the timing of the packet receipt vis-à-vis late comments and late changes. He realized that having packets out early might preclude an opportunity to resolve issues before a hearing.

CHAIR JONES thanked members of the Commission for attending this meeting and participating in this action.

AYE: Jones, Palmer, Pease, Wang, Phelps
NAY: None

PASSED

F. REGULAR AGENDA – None

G. PUBLIC HEARINGS – None

I. REPORTS

1. Chair

CHAIR JONES announced that a joint meeting with other bodies on the Title 21 Economic Impact Analysis is scheduled for March 19, 2008.

J. APPEARANCE REQUESTS – None

L. COMMISSIONER COMMENTS – None

M. ADJOURNMENT

The meeting was adjourned at 9:08 p.m.

Attachment 9

PLANNING AND ZONING COMMISSION MEETING
Assembly Chambers
Z.J. Loussac Library
3600 Denali Street
Anchorage, Alaska

MINUTES OF
April 14, 2008
6:30 PM

A. ROLL CALL

Present
Toni Jones, Chair
Andrew Josephson
Nancy Pease
Thomas Vincent Wang*
Bruce Phelps
Jim Fredrick
Jim Palmer
Art Isham, Vice Chair

*Arrived at 6:35 p.m.

Staff
Tom Nelson
Mary Autor
Erika McConnell
Sharon Ferguson

B. MINUTES

C. SPECIAL ORDER OF BUSINESS

1. Disclosures

VICE CHAIR ISHAM requested that members make disclosures regarding items on this evening's agenda. There were none.

D. CONSENT AGENDA

1. **Resolutions for Approval:** 2007-004 (case 2007-007), 2008-017 (case 2008-027), 2008-020 (case 2007-049), 2008-025 (case 2008-041), 2008-028 (case 2008-050)

3. **Site/Landscape Plan Approval**

CHAIR JONES noted that, if the Clerk's Office is notified of new information and an appeal is in progress, it is customary that the case is remanded.

AYE: Josephson, Jones, Pease, Wang, Phelps, Palmer, Fredrick, Isham
NAY: None

PASSED

E. UNFINISHED BUSINESS AND ACTIONS ON PUBLIC HEARINGS

1. **2007-153** Planning Department Municipality of Anchorage. Title 21 Rewrite, Chapters 3, 7 and 14. Action on Chapter 21.03, Review and Approval Procedures.

CHAIR JONES asked how many members were able to participate in this matter this evening. COMMISSIONERS PHELPS, FREDRICK, JOSEPHSON had not listened to the tapes of the prior hearing.

COMMISSIONER JOSEPHSON moved to hear 2008-054 now.
COMMISSIONER ISHAM seconded.

AYE: Josephson, Jones, Pease, Wang, Phelps, Palmer, Fredrick, Isham
NAY: None

PASSED

F. REGULAR AGENDA – None

G. PUBLIC HEARINGS

1. **2008-054** Ersin Aygun. A public hearing site plan review as required by A.O. 2005-161 for the south 43,439 square foot portion of Boettcher Subdivision, Tract 1A (per plat 2007-68), generally located south of Spenard Road and west of where W. 43rd Court and W. 44th Court dead ends.

Staff member MARY AUTOR explained this site plan review is required by AO 2005-161 applying to the south portion of Tract 2. This is a split lot zoning; the northern portion is zoned B-3. A site plan and

landscaping plan for the entire site were reviewed, but the requirement for a site plan applies only to the B-3SL portion. There were four special limitations on the site: (1) a landscape plan shall be submitted for review and approval by the Planning Department; (2) any further redevelopment shall be subject to a Public Hearing Site Plan Review which shall comply with the *Spenard Commercial District Development Strategy Plan*; (3) temporary buildings are prohibited; and (4) landscaping and buffering improvement must be concluded by January 1, 2008. Prior to B-3 SL zoning becoming effective, Tracts 1 and 2 Boettcher Subdivision shall be replatted into a single lot. The petitioner began to comply with the requirements of the ordinance and the B-3SL became effective with recordation of the plat. Site preparation work began, including chain link fencing installation, water and sewer line installation, curbing and paving the parking lot. A stop work order (SWO) was issued in September 2007 for outdoor storage of junk and trash and for removal of trees located within the Spenard Road right-of-way. The petitioner provided the concept landscaping plan provided with the rezoning, which was informational only. The Planning Department approved that plan October 9, 2007. This satisfied special limitations (1) and (4). Code Enforcement and Planning met with Code Abatement, which had issued a SWO. The petitioner had ordered and received nursery stock that would satisfy the landscaping requirement. The Department had no objection to Code Abatement issuing a stipulated agreement that would allow planting of the nursery stock in September 2007, thereby avoid the loss of that investment, with the understanding that the site plan review was still required and that the petitioner proceeded at his own risk. The SWO remains in effect until proper permits are acquired. There was an open Code Enforcement complaint involving trash, dead or dying trees, and tree removal in the right-of-way. A site visit in early March revealed that a number of vehicles were also on the site. The vehicles were removed as of March 24. An Administrative Hearing Officer hearing on the complaint was scheduled for April 24; she was unaware of the status of that hearing.

The purpose of this review is to evaluate the portion of the split zoned property involving the parking lot and landscaping. The petitioner has submitted a building application for a car rental office with a garage and an internal car wash. The building will be two stories and will combine sales with a drive-through. The building faces Spenard Road with covered entries on the south and west sides of the property. Vehicles will enter from the south, go through the car wash, exit to the north, and travel to the main entrance at the west side of the lot. The

landscape plan is changed from the conceptual plan submitted in 2007. The concept landscape plan showed parking along the west side of the lot and a double row of parking down the middle of the lot with a 14-foot wide planting bed between those rows. That original plan provided 108 parking spaces. The newly submitted plan differs in terms of the lot layout insofar as there are now four rows of parking, one on the east lot line, one on the west lot line, and a double row in the center. The interior parking lot landscaping requirement is met and exceeded by 6%. The petitioner was directed to meet with the Spenard Community Council and did so on March 5, 2008. The Department finds that the site plan meets the standards and the special limitations. Supplemental information was received, including a letter from the Spenard Community Council outlining concerns, to which Lounsbury & Associates, the petitioner's representative, has provided a response.

COMMISSIONER PEASE noted that on page 5 there is a dashed line across this property that appears to be an extension of 44th Avenue, but there is no platted right-of-way. MS. AUTOR explained that the dashed line represents a 10-foot buffer easement that was on the original plat and was required because the zoning was B-3 adjacent to R-3. Now that the property is commercial adjacent to commercial, that buffer would not be applied. COMMISSIONER PEASE noted that the area she was referring to is a 30-foot T&E easement.

COMMISSIONER PALMER asked for discussion of the comment by the Spenard Community Council that the property has not been posted and the posting was not done in a timely manner, to which Lounsbury replies that it was done timely. MS. AUTOR indicated that the Staff report pages 82 through 84 are photographs of the posting.

The public hearing was opened.

JIM SAWHILL, representing the petitioner, explained that this property was rezoned in 2005 with a special limitation to install buffer landscaping around the perimeter. That landscaping plan was approved in 2007 and landscaping was installed in late 2007; the landscaping was inspected and approved. The proposal is for a rental car agency with a building at the front of the lot in the area that is not subject to site plan review. This petitioner has been issued a stop work order, an order to replace trees and to remove cars. Friction has developed between the petitioner and some of the neighbors. This approval will move the petitioner toward compliance. MR. SAWHILL stated there were no objections to the Staff conditions as written.

RON EAGLEY, owner of Gwennies, stated he attended the community council meeting in March and the shaded out area on the plans was not there. The plan shows a .5% grade on the entire lot and does not show the driveway, the 3-foot retaining wall, or access from the rear. There is a problem with drainage from this property, which runs down the driveway, in front of Gwennies. He has been tolerating this property for three years and has seen no improvement on it. There is dirt and mud on the sidewalk in front of the property. He believed the retaining wall 2.5 feet with 18-inch shrub on top of it is unsafe as it creates visual blockage. The property would be used for a car rental agency and he feared that people would be pulling out onto a sidewalk that is used by children. He noted that two children were hit in the last year because of shrubbery on Forest Drive and that shrubbery was cut down. He feared this petitioner was creating a similar situation on this property. He stated that the Spenard Community Council and the road redevelopment committee agreed to the intrusion of commercial onto one residential lot in order to bring properties down or up to the level of Spenard Road. He questioned why this property was being built up when other properties were brought to the level of Spenard Road. He was concerned that, if this site plan is approved, the cars that have been parked on the property for the last three years would be returned there. He requested a special limitation that nothing occurs on the property until the driveway is paved, there is curb and gutter, and snow and water is handled.

COMMISSIONER ISHAM asked if Mr. Eagley is opposed to this site plan or does he want special limitations. MR. EAGLEY asked for controls on the development of this site so that there is better access from the sidewalk to the property and on the driveway. There are no pedestrian safety or amenities associated with this property. He wished to see the property brought to the level of Spenard Road. He reiterated that the rezoning of residential lots was done in exchange for the properties being brought to the same level as Spenard Road. He also wished to see the drainage addressed so it does not affect other businesses or Spenard Road.

COMMISSIONER PEASE asked what conditions should be met before vehicles are stored on the petition lot. MR. EAGLEY asked that the property be paved, curbs and gutters installed properly, and storm water directed to the drainage on the property. He feared that water from the car wash would travel down the driveway to Spenard Road. COMMISSIONER PEASE asked if regrading the property was to have been part of a rezone. MR. EAGLEY stated this was not part of the rezone, but when he rebuilt his lounge he assumed the property would have to be brought down to the level of Spenard

Road. To date, the subject property has not been brought down to the level of Spenard Road.

JIM BOWERS stated he is secretary of the Spenard Community Council, but was speaking as an individual. He questioned information in the packet that the Commission supported the rezoning. He stated he attended the hearing on that rezone and he understood the Assembly overruled the Commission's decision. He sought to confirm the statement on page 10 that the parking lot was curbed and paved. He recalled curbs, but not paving. He did recall dirt running from the property onto the sidewalk because of drainage. He stated that a stop work order was issued and then the developer bought landscaping and was allowed to plant it last September. There is concern that these are small trees in comparison to those that were removed during site development. The community would like a guarantee that the petitioner assumes all risk.

COMMISSIONER JOSEPHSON asked whether or not the site is paved. MR. BOWERS suggested that this question be put to Mr. Sawhill. He was aware that mud has drained from the site.

COMMISSIONER PEASE asked for comment regarding the Community Council's insistence that a 6-foot wood fence is provided rather than a chain link fence. She asked if this standard has been adhered to by other business development adjoining residential. MR. BOWER believed there is wood fence; Lounsbury is arguing that chain link is adequate as residences have that type of fencing. He felt that businesses should be held to the same standard as their neighbors. COMMISSIONER PEASE asked if there have been wooden fences in areas where commercial abuts residential. MR. BOWERS indicated he could not respond, as he was unsure.

COMMISSIONER JOSEPHSON noted there is some reference to the Spenard Community Council not being privy to the most recent landscaping plan. He asked if there is a timing problem and the Community Council was not privy to something that might appease its members. MR. BOWERS indicated he did not attend that March 5 meeting. He stated that Lounsbury's responses to the Community Council's concerns were seen for the first time this evening. COMMISSIONER JOSEPHSON asked whether the Community Council has changed its position from the March 24 letter. MR. BOWERS stated there was discussion that a letter had been written and members were encouraged to attend this hearing.

In rebuttal, MR. SAWHILL distributed color photographs of the site. He used page 005 of the packet to indicate that storm drainage has been planned. The

site plan shows that the storm drain was stubbed into the property last fall. The storm drain will be extended to the shop and to the west. This is part of the grading and drainage plans submitted to the Building Department. The site is not paved; it has gravel in place. There is a condition of approval requiring construction of sidewalk facilities connecting to Spenard Road. The retaining wall on the site is very short; there will be a 4% to 5% grade down to Spenard Road and the primary grade across the site is .5%. The site will be graded to smooth the grade. The current landscaping will be re-inspected with the completion of the building. If any has died, it will be replaced. The landscaping must be maintained for one year after the Certificate of Occupancy is issued. The photographs show the residential properties surrounding this area and the wood fences that exist on some. On the eastern boundary, both Lot 9 and Lot 6 have wood fences. On the western boundary, Lot 12A has a chain link fence. Lot 10A and Lot 9 both have wood fences. He stated that the petitioner is willing to discuss installation of a wood fence on this property. There is no wood fence on the property to the south, but there is a letter of support for the site plan from that property owner.

COMMISSIONER ISHAM asked what type of fencing is on Lot 8. MR. SAWHILL did not believe there is a fence on that property, which he believed is commercial. COMMISSIONER ISHAM asked if there is a fence where West 43rd Court dead-ends. MR. SAWHILL replied that there is a wood fence across the right-of-way. COMMISSIONER ISHAM asked what type of fencing exists on Lot 5B. MR. SAWHILL replied that there is a block wall that lot, which is developed with Gwennie's; there is no fence. COMMISSIONER ISHAM asked what type of fence exists on Lot 12A. MR. SAWHILL replied that there is no fence.

COMMISSIONER PEASE asked if there is correspondence or information regarding resolution of the drainage issue. MR. SAWHILL replied that a grading and drainage plan has been submitted to the Building Department. Page 005 of the packet is the site plan, which shows the proposed storm drain. He indicated the location of the storm drain on that drawing. COMMISSIONER PEASE asked if the run off from the car wash will go into the storm drain and is there treatment before that. MR. SAWHILL stated there would be a cut-off drain at the exit from the car wash that will be connected to the sanitary sewer; water will go through an oil and grease separator before that.

COMMISSIONER JOSEPHSON believed he had read a concern regarding the need for parking spaces on the north side of the lot for visitors to the business. MR. SAWHILL explained there is parking to meet the requirements for the office building and there is parking for car storage.

COMMISSIONER JOSEPHSON noted that item 2 on page 27 of the packet indicates that the landscape plan is different than the one that had been submitted on October 9, 2007 and Code Enforcement prefers the former. MR. SAWHILL explained that the interior landscaping is no longer provided, but the perimeter landscaping remains. COMMISSIONER JOSEPHSON asked why this change was made. MR. SAWHILL explained that the building was made larger and there were efficiencies in laying out the lot. COMMISSIONER JOSEPHSON recalled that the owner had stored RVs on the site and asked if that would be part of the rental business. MR. SAWHILL was uncertain, but thought perhaps there would be RV rentals.

COMMISSIONER PALMER noted there was discussion about other businesses along Spenard Road bringing their lots to the grade of Spenard Road. MR. SAWHILL believed that the lot matched the grade of the lot that existed prior to this development. There will be a 5% driveway into the site; the maximum grade allowed by code is 10%. He stated he does not consider this site high. He did not believe there would be sight distance issues. COMMISSIONER PALMER asked that Mr. Sawhill address the safety concern for vehicles leaving the site. MR. SAWHILL did not believe there would be a safety issue; there are clear vision triangle requirements at driveways and those will be met. COMMISSIONER PALMER had concern with the previous problems with this development. He asked how the Commission could assume the development will proceed properly, if this approval is granted. MR. SAWHILL stated that Code Enforcement issued a $4,500 fine and he believed the petitioner would comply with all requirements. There are building inspections and agreements to complete landscaping. The community is watching this developer, as is Zoning Enforcement.

The public hearing was closed.

COMMISSIONER PEASE asked why there is no mention in the packet of the drainage issues discussed by the public. MS. AUTOR stated a number of meetings were held over the two years since the Assembly approved the zoning that addressed all of the topics mentioned in testimony. In recent meetings attended by PM&E and Traffic Engineering the topics of the driveway and drainage were discussed. They were confident that these issues would be resolved through building permit review and the construction plans for storm drainage and other technical reviews.

COMMISSIONER PALMER asked if the petitioner is not able to proceed until the stipulations of the site plan review are met. MS. AUTOR responded that the special limitation regarding redevelopment applies only to the

southern portion of the property under discussion this evening. The B-3 zoned portion of the property can sustain a by right use. She believed there had been some confusion regarding to what portion of the property the special limitations apply. She understood that the petitioner believed he could proceed with certain by-right uses on the B-3 property. A wood fence had been recommended when this was first reviewed by Staff, but that requirement was removed. COMMISSIONER PALMER asked for comment on the assertion that other property owners had to bring their properties to the same level as Spenard Road. MS. AUTOR indicated she could not respond on a case-by-case basis as those things allowed by right proceeded by right. It was only during the rezoning to deepen the lots along Spenard Road that requirements were added through site plan review. The topography along the road is not the same as it was when the road was originally built.

MS. AUTOR suggested amending condition 3.c to add "entrance" at the end of the first sentence. MR. SAWHILL had no objection.

COMMISSIONER PEASE asked that the petitioner respond to a proposal that vehicles not be brought back onto the lot until the drainage, paving, and storm sewer issues are addressed. MR. SAWHILL had no objection.

COMMISSIONER ISHAM asked if the only portion of the property before the Commission is that which does not abut Spenard Road. MS. AUTOR said the Commission could also address the driveway access. COMMISSIONER ISHAM noted that condition 3.c to address the driveway to the building entrance might not be appropriate as that portion of the property is not part of the petition site. CHAIR JONES noted that the petitioner did not object to addressing this property through a revised condition.

COMMISSIONER JOSEPHSON asked if the driveway is within the Commission's purview. MS. AUTOR replied in the affirmative.

COMMISSIONER PEASE noted that there are several provisions related to the site plan that are not within the boundaries of the petition site, however, the petitioner has not objected to those provisions.

COMMISSIONER PHELPS stated that issues off-site could be dealt with if there is a logical connection with the approval action.

COMMISSIONER PEASE moved for approval subject to Staff conditions 1 through 10, amending condition 3.c to add "entrance" at the end if the first sentence, amending condition 10 to correct "site" to "sight" and inserting "for both non-motorized and vehicle traffic along Spenard Road and the sidewalk"

before "in relation...", adding "and landscaping" after "retaining wall" and adding "and Non-Motorized Transportation Coordinator" at the end of the last sentence, and adding a new condition 11 "No vehicles may be stored on the lot until the Municipality has approved the drainage plan, and grading, paving with curb and gutters, and storm sewer have been installed to correct problems with storm water runoff." COMMISSIONER PALMER seconded.

COMMISSIONER PEASE stated she did not feel the need to strictly adhere to the Spenard Commercial District Development site plan guidelines for the wood fence because the petitioner showed photographs showing there are wood fences abutting this property on most sides. With regard to the driveway and road intersection, members of the community raised legitimate questions about safety and the safety of the driveway needs to be verified. There was testimony that there have been fairly substantial drainage problems across the adjoining property and possibly into Fish Creek and those should be corrected before business resumes on that property.

COMMISSIONER PALMER suggested adding to condition 12, "However if the current wood fences are removed or destroyed, additional chain link fences with wood slats will be installed by the petitioner." *This was accepted as a friendly amendment.*

COMMISSIONER JOSEPHSON remarked on the explanation by the petitioner's representative on treatment of water from the car wash. He wanted to add a condition to that effect. MS. AUTOR believed that is part of the application currently in review for the building and storm drainage. COMMISSIONER JOSEPHSON asked if this requirement should be added to this approval, regardless of that fact, unless there is a law that requires it. MR. SAWHILL explained that this is a requirement of mechanical code. A permit to build the car wash cannot be secured without this being done.

AYE: Josephson, Jones, Pease, Wang, Phelps, Palmer, Fredrick, Isham
NAY: None

PASSED

2.	**2008-033**	Target Corporation. A request to rezone approximately 35.88 acres from I-2 (Heavy Industrial) to B-3 (General Business). T12N R3W Section 18, the NE 1/4 of the SW 1/4, Parcel 12, S.M., AK. Located at 10300 King Street.

POSTPONED INDEFINITELY

3. 2007-093 State of Alaska Department of Transportation. A conditional Use for a natural resource extraction in the PLI zoning district. Northwest Quarter of Section 25, T15N R2W, S.M., AK excluding lots 69, 70, and 71. Located along the Alaska Railroad Right of Way, south of Beach Lake Park.

POSTPONED INDEFINITELY

CHAIR JONES noted that Mr. Cotten has resigned effective today.

E. UNFINISHED BUSINESS AND ACTIONS ON PUBLIC HEARINGS

1. 2007-153 Planning Department Municipality of Anchorage. Title 21 Rewrite, Chapters 3, 7 and 14. Action on Chapter 21.03, Review and Approval Procedures.

CHAIR JONES asked how many members were able to participate in this matter this evening. COMMISSIONERS FREDRICK and JOSEPHSON had not listened to the tapes of the prior hearing and could not participate; they were excused from the remainder of the meeting.

COMMISSIONER PEASE moved to convene a Committee of the Whole. COMMISSIONER ISHAM seconded.

AYE: Jones, Pease, Wang, Phelps, Palmer, Isham
NAY: None

PASSED

COMMISSIONER PEASE asked to discuss Issues 45, 47, 64, 114, and 115.

COMMISSIONER PHELPS asked to discuss Issue 103.

Issue 45
COMMISSIONER PEASE proposed changing page 32, section F.1.e to insert "the character of the surrounding neighborhood." ***There was no objection to this change.***

COMMISSIONER PEASE stated regarding section F.2.b, she had concerns with the amount of open space in PUDs and larger residential zones. Section 2.b.ii gives minimal dimensions for open space. In order to have meaningful open space in a small lot district, a small area of open space can be noticeable. In a larger lot district, those small fragments are not as meaningful. She proposed changing Section F.2.b.ii to add in the B residential district "No portion of the required common open space shall be less than one half the area of the lot size of the underlying zoning district." MS. McCONNELL stated that in Issue 50 of the initial Issue-Response this amendment was proposed and the Commission adopted it. That amendment stated: "in Class B districts, no portion of the required opens space shall be less than half of the minimum lot size of the underlying district in the area or less than 100 feet in its smallest dimension, except for individual yard balconies or decks, pursuant to D.4 and D.5 below."

COMMISSIONER PEASE indicated that she had attempted to determine what does the community get in terms of open space in large lot districts. If 50% of the required open space can be put into yards, there would be generous yards and not much common space. Using a 5-acre lot size, she calculated that .75-acre open space is required, with the other .75 acres in yards. She proposed that there be a lower amount of open space in individual yards in the B districts. She noted that in a 5-acre plot, each of ten homes could have a 4,000 square foot yard. MS. McCONNELL explained that Class A districts are small lot districts and Class B are large lot districts. COMMISSIONER PEASE suggested that, in the Class B districts, the amount of open space in private yards be between 12% and 25%. MS. McCONNELL noted that there is an amendment to change the 5-acre minimum to 10 acres in the Class B districts. COMMISSIONER PEASE felt her reasoning would still follow because neighbors have bought in those areas in order to have open space.

COMMISSIONER WANG asked what would be the impact on neighbors by providing open space in a private yard versus other open space. COMMISSIONER PEASE noted that a private yard can be fenced and solar access could be blocked. There would also be no continuity with what might be done in the private yard. CHAIR JONES noted that many people who move into a PUD are looking for privacy. COMMISSIONER PEASE responded that a PUD allows a greater density, which affects owners outside

of the PUD who bought into these zoning districts because of the privacy afforded by them.

TOM NELSON stated that if a PUD is to emulate the character of the surrounding area, the large lot zones have large yard areas and reducing the open space that can be put into yards in a PUD makes it move away from the character of the large lot district. COMMISSIONER PEASE noted that a PUD allows higher density. Many large lot owners do not fence their half-acre lot entirely. MR. NELSON noted that there is nothing indicating that yards would be fenced in a PUD. CHAIR JONES noted that in combination with the last amendment to F.1.e to add "consistent with the character of the neighborhood," allowing for flexibility with regard to the yard is advisable. MR. NELSON stated the guideline of 12% to 50% provides that flexibility.

COMMISSIONER PEASE reiterated her concern that in a 5-acre PUD where 30% open space is required, 75,000 SF of open space would be required and, if half of that is yards, there would be less than .5 acre in common open space. COMMISSIONER ISHAM felt that the design of the PUD would be market driven. COMMISSIONER PEASE noted that for the existing residents, there is not an offset of the doubling of density that is permitted in the PUD.

COMMISSIONER PHELPS asked if the change proposed by Ms. Pease would change what has existed in code for 25 years. MS. McCONNELL noted that this is code. She indicated that very few, if any PUDs have been developed in the large lot districts.

COMMISSIONER PEASE asked if the maximum densities proposed for PUDs are as exist in current code. MS. McCONNELL replied that in the R-6 the 1.8 DUA density is increased to 2 DUA, in the R-8 density is increased from 4 DUA to 5 DUA, and in the R-9 density is increased from .9 DUA to 1 DUA. MR. NELSON noted that in the current code half the abutting right-of-way can be counted and in the proposed code it is only within the lot lines, so the actual result is similar.

COMMISSIONER PEASE referred to F.2.iii, Design, which talks about buffer landscaping along each boundary of the PUD adjacent to a non-residential district. She did not see landscaping required next to adjoining residential districts. MS. McCONNELL replied that this is the case. COMMISSIONER PEASE proposed adding to F.2.c "Level 4 buffer landscaping shall be provided on the perimeter of a PUD where it abuts residential densities with a difference of 1.5 times the underlying zoning district." MS. McCONNELL read the language from the conservation subdivision: "Common open space with level 4 screening landscaping shall be

provided along any lot line abutting a residential neighborhood where any adjoining lot is greater than 150% of the average lot size along that lot line of the conservation subdivision." COMMISSIONER PEASE indicated this is the language she would suggest. MR. NELSON suggested inserting the same language as in Chapter 8. ***There was no objection to this change.***

COMMISSIONER PEASE proposed that F.2.c be amended with regard to the B districts to provide for a limitation on the amount of impervious surface on a lot, including parking, because those districts often use on-site water and sewer. She asked if Staff had determined percentages of impervious surface with regard to large development. COMMISSIONER PHELPS asked if this is similar in concept to something within the conservation subdivision. COMMISSIONER PEASE did not believe the conservation subdivision had relation to the impervious surface. A conservation subdivision does not allow a greater number of houses than can be achieved by the underlying zoning; whereas, PUDs allow twice the density of the underlying zoning district. COMMISSIONER PHELPS felt that the issue of the amount of impervious surfaces in PUDs would be addressed on a case-by-case basis. COMMISSIONER PEASE indicated she was suggesting setting a maximum of impervious surface. She had concern with this issue in areas where groundwater recharge and surface runoff is occurring. MS. McCONNELL asked if the concern is that units within the PUD will be on on-site systems or is the concern with the surrounding neighborhood. COMMISSIONER PEASE had concern with the surrounding areas that are relying on groundwater recharge and natural runoff. She proposed that for a PUD in the B districts, no more than 40% of the development may be covered by impervious surface, including parking. COMMISSIONER PALMER asked what is the basis of the 40% figure. COMMISSIONER PEASE replied that she did not base this figure on any research. She asked Staff to investigate what might be appropriate coverage.

COMMISSIONER PHELPS thought this was a good concept, but one that would be applicable to other districts as well. He preferred to institute such a requirement after analysis of whether or not this would be an appropriate requirement in other rural districts. COMMISSIONER PEASE asked Staff to investigate possible limits on impervious surface in any PUD. MR. NELSON stated that this issue is being addressed in the *Hillside District Plan.* Revisions to the Design Criteria Manual are being considered to require that drainage remain on-site. COMMISSIONER PHELPS agreed that this issue should be subject to a more holistic review. COMMISSIONER PEASE asked how this issue would be addressed in other areas of town. COMMISSIONER PHELPS presumed that a code change would come before the Commission. CHAIR JONES noted that most of the areas most affected are in

Chugiak/Eagle River and the Hillside. COMMISSIONER PALMER agreed with the concern, but was hesitant to take action without substantiation of a percentage to use. COMMISSIONER PEASE asked that this issue be addressed in the *Hillside District Plan* and later for other areas of town.

Issue 47
COMMISSIONER PEASE indicated this was already discussed in relation to screening.

Issue 48
COMMISSIONER PHELPS noted that this issue indicates that he had asked to hold this item until it could be addressed in the *Hillside District Plan* process. He asked if that is practical, given that the *Plan* may take months or a year to develop. MS. McCONNELL stated that the minutes, in fact, state that he asked that Staff not wait for the *Hillside District Plan*. That plan is recommending a 10-acre minimum for a PUD in these zoning districts because of the frequency of 2.5 and 5-acre BLM parcels. COMMISSIONER PHELPS asked, if there is a recommendation for a 12.5-acre minimum, would that be brought forward as a code amendment. MS. McCONNELL explained that if Title 21 is adopted prior to the *Hillside District Plan* and the *Plan* makes recommendations to change, those would be implemented through ordinance changes, as necessary.

Issue 64
COMMISSIONER PEASE explained that if a developer chooses to do fee in lieu, the fee amount is set as the less of 75% of the cost of improvements or from a fee schedule. She asked why a fee of 100% of the improvements would not be paid so that, if the improvement is needed in the future, the cost is covered entirely by the developer. MR. NELSON stated that Mr. Keefer with PM&E is relying on the most common formula, which is for road improvements. If the road is peripheral, the developer does a half street improvement; the most common practice is to require 75% of the improvement. COMMISSIONER PEASE asked why PM&E would not ask for 100% of the cost of the half street. MR. NELSON explained that the rationale is that the first developer should not have to bear the entire burden when an adjoining landowner would also benefit. He understood why a developer should be required to pay 100% of the requirement. The rationale is that a half street improvement is 75% of the cost of the entire street. The language should be to pay 100% in lieu of whatever is expected. COMMISSIONER ISHAM suggested using the term "full cost."

COMMISSIONER PEASE agreed with use of the term "full cost" of what the developer would be required to build. COMMISSIONER PHELPS asked if

the fee schedule could be used in the alternative. He feared that a fee schedule could be developed that is less than 100% of the full cost.

COMMISSIONER ISHAM assumed that at times developers are required to build only half a street. MS. McCONNELL noted there are only two conditions under which a developer is permitted to pay a fee in lieu of improvement.

There was no objection to changing the fee in lieu from 75% to full cost and removing the fee schedule option.

Issue 103
COMMISSIONER PHELPS explained he had concern with the wording of the approval standards for rezonings. He suggested changing approval criteria 4, 6, 7, 9 and 10, and reorder 8 to make it the final criteria. He suggested adding to criterion 4: "...and the applicable portions of the Comprehensive Plan." ***There was no objection to this change.***

He suggested rewording criterion 6 to change "is not likely" to "will not" and in the second sentence delete "will" and insert "shall". ***There was no objection to this change.***

He suggested rewording criterion 7 to read: "The proposed rezoning shall not result in significant adverse impacts (noise, illumination, vibration, and the like) upon adjacent land uses, or such impacts shall be mitigated through stipulations." ***There was no objection to this change.***

He suggested that criterion 8 read: "The applicant demonstrates to the satisfaction of the Planning Commission and Assembly that the supply of land in the desired zoning district is insufficient or inadequate for the stated purpose and, if approved, would not substantially reduce the amount of land available within the general area for future community needs." ***There was no objection to this change.***

COMMISSIONER PEASE stated that the previous discussion of Issue 103 was regarding the cumulative effect of one rezoning leading to similar rezones and the creation of a different pattern as a result of multiple rezones. The Staff suggested the following language to remedy this situation: "The rezone does not continue or exacerbate a pattern that is inconsistent with the Comprehensive Plan." She wanted to insert "or initiate" after "exacerbate" in order to not allow the pattern to begin. This echoes the previous language that the cumulative effect of the rezoning is not likely to result in a negative impact.

COMMISSIONER WANG noted that section 2 says: "The rezoning complies with and conforms to the Comprehensive Plan and the purposes of this title." He felt the language proposed by Ms. Pease was duplicative of section 2. CHAIR JONES felt the language proposed by Ms. Pease expresses intent. COMMISSIONER PHELPS felt the language proposed by Ms. Pease addresses the concerns that have arisen in years past to not exacerbate an existing problem or initiate a new problem. CHAIR JONES agreed that there is no policy and the impacts of cumulative effects have been seen. ***There was no objection to this change.***

COMMISSIONER PHELPS suggested changing criterion 10 to state: "The proposed rezoning is compatible with and does not detract from existing or planned land uses, and where specific areas are designated on the zoning or comprehensive plan maps, that these areas are adequately protected." ***There was no objection to this change.***

COMMISSIONER WANG felt the revision to criterion 7 might result in less protection because it lists specific items and the term "and the like" is not descriptive. He wondered whether there should be a longer laundry list, as exists for conditional uses. COMMISSIONER PHELPS explained his intent was to identify the types of things to be considered. COMMISSIONER WANG agreed with the intent, but had concern that if there is a list, it is confined to those items listed. He preferred either a laundry list or the language "adverse impacts." COMMISSIONER PHELPS stated he would give this greater consideration. COMMISSIONER ISHAM asked whether Staff had such a list. MS. McCONNELL replied in the negative. COMMISSIONER PHELPS agreed to removing the items listed parenthetically from item 7. ***There was no objection to this change.***

COMMISSIONER PHELPS suggested changing section F to state "within the following considerations" rather than "within the following parameters." COMMISSIONER WANG felt that the word "consideration" was suggestive where "parameters" is more prescriptive. He suggested "requirements." ***There was no objection to this change.***

Issue 114

COMMISSIONER PEASE proposed an amendment to provide protection by inserting a new criterion E.4: "In residential districts the site plan shall demonstrate that the proposed use will not have a permanent negative impact on those items listed below substantially greater than that from permitted residential development." Those items are circulation and safety, demand for public services, noise, air and water quality, and maintenance of

compatible land use patterns. She explained that in residential districts presumably the new large developments, such as schools or other institutional uses, will be covered under large development criteria, but for medium sized and smaller, the residential character of the neighborhood still needs safeguards.

COMMISSIONER WANG asked for Staff to comment on this suggestion. MR. NELSON agreed that this language has produced some problems, particularly for schools and churches in large lot residential districts. It is difficult for an institutional use to comply, for instance, with traffic generated from a single-family home. An issue has arisen in rural residential districts whether or not there should be dual standards for large projects versus those that are smaller in scale. The Department is apprehensive about using the standard Ms. Pease proposes. COMMISSIONER PEASE remarked that in the past the Commission has seen the impacts measured on a weekly basis rather than a daily basis. Another possible approach is to refine the language in E.3 to delete "to the maximum extent feasible" and insert "to a level approaching the impacts from permitted residential development." She felt that interpretation of the term "feasible" could be argued. COMMISSIONER PHELPS suggested adding the language, "or such impacts shall be mitigated through stipulations." COMMISSIONER PEASE explained she was attempting to get some measurable degree of mitigation and that language does not accomplish that. COMMISSIONER PHELPS suggested simply deleting "to the maximum extent feasible." COMMISSIONER PEASE felt this was even weaker because there is no standard with regard to the level of mitigation.

COMMISSIONER PALMER favored leaving the language as it is proposed. COMMISSIONER WANG concurred as he felt that this is a meaningful standard for review. He stated that "feasible" is a term with which he is familiar in a legal context. COMMISSIONER PHELPS stated that there is definition of this term in statutes.

COMMISSIONER PEASE added to approval criteria: "The site plan approval shall include a determination of public cost from induced off-site improvement to public infrastructure and shall apportion an equitable share of these costs to the proposed development." COMMISSIONER PHELPS felt this was a major policy shift and one should be considered in terms of applicability to other areas, if it were to be applied. COMMISSIONER PEASE stated she raised this point here because she has seen it raised sporadically with site plan reviews.

Issue 115
COMMISSIONER PEASE suggested adding two criteria on page 72 under Street and Trail Review: 1) identify "short and long term impacts on transportation infrastructure and traffic patterns"; and 2) identify impacts "on surrounding transportation system including the induced need for off-site upgrades and connections." COMMISSIONER PHELPS suggested, rather than adding the first additional criterion suggested by Ms. Pease, amending 3 to state, "short and long term impacts on existing and projected land uses and planned transportation systems." ***There was no objection to this change.***

COMMISSIONER PEASE departed the meeting at 9:37 p.m.

COMMISSIONER ISHAM suggested using the wording "including but not limited to" in the list of impacts.

COMMISSIONER ISHAM moved to adjourn a Committee of the Whole. COMMISSIONER PALMER seconded.

AYE: Jones, Wang, Phelps, Palmer, Isham
NAY: None

PASSED

COMMISSIONER ISHAM moved for approval of Chapter 21.03, accepting all amendments approved by the Commission in discussions as a Committee of the Whole in all meetings on this subject. COMMISSIONER WANG seconded.

COMMISSIONER ISHAM felt Staff had researched all issues thoroughly, the Commission had participated in discussion fully and freely, and consensus had been reached on many items, while other issues have been resolved by action.

CHAIR JONES observed that this group of Commissioners has worked well together to reach consensus on the various issues in this chapter.

AYE: Jones, Wang, Phelps, Palmer, Isham
NAY: None

PASSED

I. REPORTS

2. Secretary

MR. NELSON asked if a Director's meeting could be held this Thursday. CHAIR JONES stated she might be unable to attend. MR. NELSON explained that the subject is a briefing on the status of the *Hillside District Plan.*

J. APPEARANCE REQUESTS – None

L. COMMISSIONER COMMENTS – None

M. ADJOURNMENT

The meeting was adjourned at 9:45 p.m.

Attachment 10

Agency and Public Comments Received

Title 21 Rewrite, Chapter 21.03

OFFICE OF
RONALD L. BAIRD
ATTORNEY AT LAW

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WEBSITE: www.rlbaird.com

October 24, 2007
By Delivery

Physical Planning Division
Planning Department
4700 Bragaw Street
Anchorage, Alaska

Subject: Title 21 Rewrite
Chapter 3 – Review and Approval Procedures
Board of Adjustment

To Whom It May Concern:

I write to comment on the provisions of proposed Chapter 3 of the Title 21 Rewrite which relate to the Board of Adjustment. The views expressed are my own and are not made on behalf of any client.

My professional experience with the Board of Adjustment extends back to approximately 1997 when I was retained by the Municipal Attorney's Office to assist the Municipal Assembly, then sitting as the Board of Adjustment, as legal counsel in the first of four separate appeals over several years. I have also participated as an advocate in two appeals before the Board after it was constituted as three individuals distinct from the assembly.

I support constituting the Board from individuals separate from the Assembly. However, when the current code was amended to create the separate board, some provisions were left unchanged which were really tailored to the process before the Assembly, not a separate board. The result under the existing code is that the Board has too little discretion in some areas and too much in others. The current draft of the proposed rewrite of Chapter 3 does not correct this problem. The balance of this letter addresses how to make those corrections and others which will improve the process before the Board.

1. Perfecting the Appeal. Proposed AMC 21.03.050(A)(4) continues existing practice of requiring a notice of appeal to be filed with the municipal clerk within 20 days of the final decision. This is a reasonable requirement and time period. However, present regulations of the Planning and Zoning Commission

(Reg. 21.10.304(B) require in addition that a request for written findings together with a notice of intent to file an appeal be filed with the "secretary of the commission" (defined to be the director of planning). This notice must be filed within 7 days of the oral findings at the commission hearing. This requirement is a trap for the unwary and probably unlawful as it contradicts present AMC 21.30.030. It is an unlawful attempt by the lower body to state the terms by which an appeal may be taken from its decision. The apparent purpose of the regulation is to avoid staff time developing detailed written findings in cases in which there is no controversy. If this is deemed significant, then Proposed AMC 21.03.050(A)(4) should be revised to provide the following sequence:

a. Oral decision at conclusion of public hearing. Oral announcement at hearing that persons other than the applicant can request notice.

b. Written notice to applicant and requesting parties that oral decision will become final unless notice of appeal is filed with the clerk within 20 days.

c. Notice of Appeal filed with Municipal Clerk. No other notice required to perfect appeal.

d. Copy of filed notice of appeal forwarded by the municipal clerk to designated representative of lower body with request for written findings and conclusions and preparation of the record.

e. Briefing schedule established when written findings and conclusions and lower body record are filed.

2. Contents of Notice of Appeal. Presently, the form of the notice of appeal requires a "written statement of the cause and reason for granting the appeal." This requirement serves no purpose as the real substance of the appeal and the framing of issues is accomplished by the briefing. All that is necessary in the notice of appeal is a specification of the case in which the appeal is taken.

3. Procedure before the Board. Subsections 6, 7, 8 and 9 are procedural matters and should be left to the discretion of the Board and addressed by regulations of the Board. Many of these requirements date from the time when the Assembly was the Board of Adjustment and reflect the needs and time pressures of the Assembly. In particular, the Board or the Municipal Clerk should have discretion to grant extensions of time (for matters other than the notice of appeal) under standards to be developed by them. Such extensions can avoid

serious hardships which ordinance mandated timelines can cause. As an advocate, I do welcome the proposed change to allow oral argument before the Board.

4. Deliberation and Written Decision. Presently, the Board is required to deliberate in a public meeting. Proposed AMC 21.03.050(A)(9)(a) would continue this requirement. I believe this requirement also dates from the days when the Assembly was the Board of Adjustment. It was a sensible requirement for a potentially politically motivated Assembly to conduct its deliberations in public. But it makes little sense for a separately constituted board to do so. In my limited observation, it results in an overly formal process that slows down what is the critical task, the preparation of the written decision. It is the written decision which will be the focus of any remand or judicial review proceedings. Most appellate courts deliberate in private following oral argument. I think this is an appropriate model for the Board.

5. Substitution of Judgment on Issues of Fact. Proposed AMC 21.03.050(A)(10)(d) follows present AMC 21.30.090(D) in allowing the Board to substitute its judgment on questions of fact. I believe this provision was added by AO 88-29 at the urging of then Assemblyman, John Wood. The reason advanced, as I recall, was that the Municipal Assembly, as an elected body, was a broader or perhaps better representative of the public and should, in narrow circumstances, be allowed to overrule lower bodies on factual issues. The procedural limitation was the requirement of a super majority of two-thirds of the members. This was a significant limitation since it required 8 of 11 members of the assembly to allow substitution.

Neither the original reason for the provision nor its procedural limitation makes any sense for the separately constituted board. The Board, being a much smaller body than the bodies whose decisions it reviews, is not likely to be more representative or more in tune with community values than the lower bodies. And with only three members constituting the board, the super majority of two-thirds is the same as a simple majority, two members. Thus, the provision becomes simply an opportunity for a "second bite of the apple" with no gain in the perceived or real accuracy and fairness of the outcome.

6. Remand. Proposed AMC 21.03.050(A)(12)(a) follows present AMC 21.30.100(A) in stating how remand is to be directed to the lower body. Although I don't necessarily disagree with the existing and proposed language, I don't think the Planning and Zoning Commission and the Board of Adjustment read it the same way. First, the Board has a stated preference for remanding matters and

leaving to the discretion of the Commission as to whether further hearings are appropriate. The Commission, on the other hand, appears to have a policy of not conducting a new hearing unless specifically directed to do so by the Board. The existing and proposed language seems to favor the Commission's view but perhaps further clarification is warranted. Second, the Commission generally does not reopen the entire matter on remand, but only addresses specific issues on which its decision has been reversed. This would seem to make remand little more than a scrivener's exercise and simply delays the final decision. Again, I am uncertain how to address this difference in proposed code language but believe it should be prior to adoption of this section. It is critical that what should be accomplished on remand is clear particularly given the delay which it introduces to the process and to obtaining judicial review of the final municipal action.

I am copying this letter to Linda Heim, Deputy Municipal Clerk, who typically handles Board of Adjustment matters, and through her to existing Board members, so that you might hopefully have the benefit of their comments on these matters. I would welcome the opportunity to address these issues in any appropriate forum.

Sincerely,

Ronald L. Baird

cc: Linda L. Heim, Deputy Municipal Clerk
Members of the Board of Adjustment c/o the Municipal Clerk

RLB:rlb - Office070925 Ltr re Chap 3

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October 25, 2007
By Delivery

Physical Planning Division
Planning Department
4700 Bragaw Street
Anchorage, Alaska

Subject: Title 21 Rewrite
Chapter 3 – Review and Approval Procedures
Common Procedures - Postponements

To Whom It May Concern:

I write to comment on the provisions of proposed Chapter 3 of the Title 21 Rewrite which relate to postponements, specifically, Proposed AMC 21.03.020(L). The views expressed are my own and are not made on behalf of any client.

The proposed section appears to codify what was an informal practice of some of the bodies. The proposed section is different than the current rule of procedure of three of the bodies. See, Anchorage Municipal Reg. 21.10.305, 21.11.305, and 21.12.350. The new section creates in the applicant a right of postponement if too few members are present, Proposed AMC 21.03.020(L)(1), and a discretionary right for other reasons, Proposed AMC 21.03.020(L)(2). No right of postponement is afforded to other persons interested in the matter.

I have personally observed the informal current practice of granting postponements to applicants manipulated by the applicant to frustrate opposition presentations by neighborhood groups and others.

There is no reason to presume that a requested entitlement is in the public interest. It is therefore irrational to grant rights to the applicant for the entitlement which are not afforded to those opposing it. Further, allowing the applicant to control the timing of the public hearing on it gives the proponent greater influence over the substantive outcome by inconveniencing and wearing down the opposition. To expect the public to follow an application through long agendas of multiple meetings is unreasonable.

Under the United States and Alaska Constitutions, all persons are entitled to fair and just treatment in legislative investigations,[1] equal opportunity[2] to be heard, and access to public forums without regard to their views.[3] Proposed AMC 21.03.020(L) appears to violate these provisions by favoring the applicant with opportunities for postponement that are not available to others.

Given the informal practice of the present bodies, I support addressing this issue in the ordinance and not leaving the matter to rules of procedure. One possible solution is to minimize the need for postponements by making the affirmative vote of a quorum present at a meeting sufficient for approval. This is the common practice of many organizations. At a minimum the postponement at the request of the applicant for this reason should be limited to one time only.

Sincerely,

Ronald L. Baird

RLB:rlb Office070925 Ltr re Chap 3 Postponements

[1] Ak. Const., Art. I, Sec. 7.
[2] Ak. Const., Art. I, Sec.1.
[3] *Alaska Gay Coalition v. Sullivan*, 578 P.2d 951, 955 (Alaska 1978).

RECEIVED
OCT 2 9 2007
Municipality of Anchorage
Zoning Division

NECC

Northeast Community Council Resolution 2

TO: Planning & Zoning Commission
MOA Planning Department (fax: 343-7927)
Anchorage Assembly Members
Mayor Mark Begich

FROM: Peggy Robinson, President North East Community Council
333-1831 or 632-6436

SUBJECT: Delay of Action on Title 21 Amendments

DATE: October 18, 2007

The Northeast Community Council has had an active Title 21 Committee since last year, and they have been meeting, discussing, and making recommendations to the NECC membership on chapters or individual items as they have come up for review by the Planning and Zoning Commission. However, we have found the task to become increasingly more difficult as the changes become more numerous and require more information for us to make informed recommendations.

At our meeting on October 18, the committee was not ready to make recommendations on Chapters 3, 7, and 14, but P&Z is scheduled to hold their Public Hearings on these chapters the first week in November. Although there were two public workshops scheduled on these chapters, they were both on Wednesday nights, which eliminates some people from attending either of them. We'd recommend in the future that multiple public hearings be held on different nights.

After discussion, the NECC approved the following resolution on a vote of 13 for, 0 opposed, and 4 abstaining:

"Whereas, the adopted Anchorage 2020 Comprehensive Plan calls for

- Timely, meaningful public participation in government decisions,
- Northern design standards for an attractive, affordable, winter city,
- Generous open space and wildlife protection,
- Neighborhood improvements that ensure good communities for families,
- Pedestrian safety, convenient transit service, and a balanced transportation system,

Whereas, Title 21, the land use code, is a key implementation tool of Anchorage 2020,

Whereas, many neighborhoods and individuals do not understand how proposed land use changes will affect their properties, their neighborhoods or the city,

Now, therefore, let it be resolved, the Northeast Community Council asks the Anchorage Assembly to delay further action on Title 21 amendments until:

- Municipal planning staff creates a list of key changes that warrant public debate, to include but not limited to a side by side comparison of the changes between current code and the proposed changes to Title 21, and showing side by side comparisons of how those changes reflect the goals, intent, purpose, and original policies of the Anchorage 2020 Comprehensive Plan
- The community is offered individual workshops on key topics such as
    - Neighborhood protection and improvements,
    - Northern design standards including solar access,
    - Open space set asides in subdivisions,
    - Wildlife habitat protection,
    - Clean air and water, and
- Community councils agree that they understand the code well enough to comment on proposed changes.

We ask that you consider our motion as you make decisions in the best interests of the NECC and the community of Anchorage as a whole. Please contact me if you have any questions.

Sincerely,

Peggy Robinson

Field Tech
Zoning – Stormwater
Assessment and Inspection
PO Box 220042, Anchorage, AK 99522
907-952-0244

October 30, 2007

Throughout these past three years, of public participation, the Anchorage Home builders Association has endeavored to take an open and unbiased view of the proposed changes to the Municipal Land Use Regulations. In our review of chapters 3, 7 and 14, of Title 21, we have brought forth a number of changes and compromises. It is our belief that the character and natural setting we enjoy here in Anchorage are important these; however, must benefit the community and those who make it what it is. As slated the initial costs of the proposed code changes, along with related maintenance charges in the coming years, may in fact be more than individuals and the community as a whole can reasonably bear.

The Anchorage 2020 plan, as any good planning policy, requires that changes to the Land Use Regulations be tested as to financial burden, as well as relevance and effectiveness. The Municipal Planning Department indeed sought bids and executed a contract for an economic impact analysis. As of this date no one in the private sector has seen this document nor received a report as to its findings.

As we enter in to the final phase of public input on Title 21 we find that we have no common reference from which to compare the proposed changes in the code and their relevant costs. No business, wishing to succeed, proceeds without an economic plan. Not bank issues a loan without assets in place to secure the loan. The citizens of Anchorage are being asked to pass on to themselves and their children regulations without even a vague notion as to their effectiveness or their financial burden.

The comments and suggestions offered below are given in hopes that the Municipality will set aright some of the overreaching changes proposed in these new chapters.

Chapter 21.03

AMC 21.03.080C, request that the word "substantially" be inserted to read: "the following criteria have been substantially met:". Conditional uses are unique applications of judgment for the benefit of the community. The Planning and Zoning Commission deserves as much latitude as possible to render as fair a decision as possible.

AMC 21.03.080C.4 since this section deals with dimensional qualities suggest that it be combined with C7.

AMC 21.03.080C.9 same request as C.4, that requirements 9 and 10 be combined, since these both speak to infrastructure.

AMC 21.03.080F.1.a suggest deleting this requirement as 'b' through 'e' say pretty much the same thing. Also the words creative and imaginative are too subjective to enforce.

AMC 21.03.100.E.1 through 3.9 this section was "updated" in 2003. Since that time it has evolved into a takings clause which the Municipality has been using to force public projects on to private development. Individual building permits have been held up for months to force property owners to commit to installing stormdrains, road improvements or signing away their rights to vote their conscience on future public works development. There are proposed changes before the Anchorage Assembly in AO 2007-25(S), the AHBA request that those changes be reflected here.

AMC 21.03.240J.5.c requires all accommodations for assisted living to meet the requirements of AMC title 23. Title 23 is not enforced in the Land Use areas. State statute is mandatory; however, local amendments under Title 23 are not. Reference should be made here concerning Land Use areas.

Chapter 21.07

AMC 21.07.010D Alternative equivalent compliance should be extended to AMC 21.07.020C Steep Slope Development. An owner should not be required to obtain a variance to exceed the cut and fill, or retaining walls given steep terrain on a given lot, if a licensed civil engineer has provided suitable plans to ensure safe development of the property. This should be left to the engineer's discretion subject to approval of the Municipal Engineer.

AMC 21.07.020C.3.h.iii question the value of covering piers and pilings since ground movement due to frost will potentially destroy most encasement materials. Likewise any wooden structure would be subject to rot over time. Painting the pilings would seem a better way to mitigate visual impact.

AMC 21.07.020C.4.e.i through iii since21.07.020.C.2 applies to any lot with 40,000 square feet and an average slope of 20% (30% in C.4) or greater. The cost of a geotechnical report, as outlined in this section, is cost prohibitive for single family development and small subdivisions. Request that staff substantiate the insistence of such a rigorous list when the scientists and engineers hired by the owner must be licensed through the state.

AMC 21.07.020C.4.g.iii on slope affected properties of one acre and larger does it really matter that the houses blend in with the terrain? Are we so tied up with a homogenous society that we cannot express individuality? If a developer had approved plans for varying house styles and colors, who in five years is going to enforce them? These are just more rules to chase down and try to enforce. Request that items 'iii and iv' be deleted.

AMC 21.07.030B Applicability: insert "required private open space may be either private or common".

AMC 21.07.030C.1.a AHBA requests changing 10% to 25%, a one foot rise in ten feet is hardly a slope to be concerned over for open space. Also, to allow drainage easements, not having ditches or streams, to count for open space.

AMC 21.07.030C.2 request a change to yard width to "no less than 10 feet". Change balcony to "no less than 5 feet", due to structural requirements under the building code.

AMC 21.07.040A.1 does the inclusion of the word 'and' here by codify the Design Criteria Manual? If it does then we need to have it as part of this process.

AMC 21.07.040A.1.d please define "arctic climate function".

AMC 21.07.040B please clarify why nonconforming rights do not apply if the drainage is functioning and not presenting a danger to public safety or welfare.

AMC 21.07.040D.2 this section now includes drainage on all development in the municipality, including single family additions.

AMC 21.07.040G.2.d question what is so magical about 72 hours. Many yards become flooded during breakup and retain water until the ground thaws in a few weeks. Are our yards now hazardous sites by law? The Anchorage area has large areas of peat deposits which retain vast quantities of runoff. These same areas have become and are quickly becoming subdivisions, are these areas now undevelopable since they are to be classified as hazardous sites? Also, recommend addressing construction sites as temporary ponds may be permissible for on-site retention of run-off and final grading has not been accomplished.

MUNICIPALITY OF ANCHORAGE

Department of Health and Human Services

Date: 11/1/07

To: Tom Nelson, Planning Director

From: Diane Ingle, Director of Health and Human Services for Diane Ingle

Subject: Department of Health and Human Services review and comment on Planning and Zoning Commission Case 2007 – 153, Title 21 Rewrite Chapters 3, 7, and 14

General Comments:

The following comments are in response to the request to review and comment on the pending versions of Title 21 Chapters 3, 7 and 14. The comments were solicited from relevant divisions and programs within the Department of Health and Human Services. Under each chapter we have divided the comments by subject matter and identified the source of the comments to facilitate more effective follow-up should the need arise. We appreciate the opportunity to comment on this large undertaking.

Chapter 21.03: Review and Approval Procedures

Noise Comments:

Please be aware that complaints regarding noise may be filed if development or rezoning not compatible with both current and projected land uses and current and projected surrounding land uses. 21.03.140, 160 Approval Criteria (Environmental Services Division, Food Safety and Sanitation)

Chapter 21.07: Development and Design Standards

Pedestrian Access Comments:

A key factor in maintaining a physically active lifestyle is access to area parks and community space which includes sidewalks and green spaces. Several segments of the Public Review document address pedestrian mobility. The Division supports the inclusion of continuous pedestrian access for single- and two-family development. In addition we applaud the inclusion of flexible standards for required pedestrian- and bicycle-friendly amenities that improve access while enhancing the community. 21.07.060 D (Health Planning and Preparedness Division, Public Health Education)

It is important to provide a safe mode of travel for pedestrians as they travel in the urban areas of the Municipality. The Division supports the improvement requirements of class A zoning districts and collector streets that include street lighting and sidewalks on all

streets regardless of the number of trips. 21.07.060 E (Health Planning and Preparedness Division, Public Health Education)

Noise Comments:

The Division recommends that noise impact on surrounding areas be considered with the traffic impact analysis and the traffic mitigation measures. 21.07.060 (Environmental Services Division, Food Safety and Sanitation)

Please be aware that while location and placement will determine whether noise impacts the surrounding areas, physical barriers/buffers may also be necessary. Landscaping and screening often do little to mitigate noise. 21.07.070 (Environmental Services Division, Food Safety and Sanitation)

Chapter 21:14: Rules of Construction and Definitions

No comment.

Ted Stevens
Anchorage
International Airport

P.O. Box 196960
Anchorage, Alaska 99519-6960

November 1, 2007

Re: Comments on proposed Title 21,
Chapters 3, 7, & 14

Ms. Erika McConnell
Municipality of Anchorage
Physical Planning Division
P.O. Box 196650
Anchorage, AK 99519-6650

RECEIVED
NOV 02 2007
PLANNING DEPARTMENT

Dear Ms. McConnell:

The Ted Stevens Anchorage International Airport (ANC) appreciates the opportunity to review and comment to the Planning and Zoning Commission (Commission) on the Municipality of Anchorage's (MOA) proposed Title 21, Chapters 3, 7, & 14.

The MOA has traditionally not exercised full Title 21 jurisdiction over ANC. ANC's history of exercising primary land use regulatory jurisdiction over ANC is consistent with its long-standing view that Title 21 does not apply on ANC. This view is largely based on the statutory allocation of zoning authority at state airports to the Department of Transportation and Public Facilities (DOT&PF). ANC's exercise of authority has been highly successful, allowing ANC to develop into the tremendous economic engine it is today with a relatively low level of controversy for a world-class airport.

In discussions with MOA Planning staff during the Title 21 re-write process, MOA planners have been reluctant to acknowledge complete jurisdiction to ANC, but have also appeared to understand there are substantial reasons for distinguishing ANC's situation from that of a typical landowner within the MOA. Unlike a typical landowner, ANC is a governmental agency with land regulatory authority, which has expertise and experience in managing an extensive public airport complex in a single location under its sole ownership. Within that complex, ANC and MOA share the provision of public services; however, the most significant services from a Title 21 perspective, roads and drainage, are primarily ANC's responsibility.

The following outlines some reasons Title 21 should be under ANC's broad primary jurisdiction to carry out the regulatory functions under Title 21:

- ANC comprises some 4,600 acres under single ownership by the State of Alaska.
- ANC is composed of many individually platted parcels, which are, in turn, overlain with the ANC's Airport Information Maps (AIMS) describing ANC's lot and block plan of lease lot configuration, which are the real operational "lots" for purposes of land-use regulation. Traditional platting and subdivision concepts do not apply.

- ANC has long experience exercising exclusive jurisdiction over lease lot configuration and uses within its boundaries under Title 2 of the Alaska Statute.
- Aside from certain impacts, such as noise, inherent in the core aviation uses that must be protected under any regulatory scheme, use and development impacts within ANC's boundaries are substantially limited to impacts on adjacent or nearby lease lot tenants, issues that ANC can, and has for many years, effectively managed outside of Title 21.
- ANC is largely on the outer edge of the MOA, partially bordering Cook Inlet. ANC manages its own internal drainage system and is responsible, as a government agency, to do so.
- ANC is responsible for right-of-way, design, construction and maintenance of its own street network.
- ANC has substantial obligations to operate in accordance with requirements imposed by the federal government under FAA Grant Assurances, which include the generation of sufficient revenue to remain financially self-sustaining to the extent feasible.
- ANC has substantial obligations under 49 CFR Part 139 to regulate and maintain compliance with standards regarding structure and vegetative heights, clear areas, bird and wildlife attractants, lighting, snow and ice clearing, and a myriad of other issues.
- ANC is subject to a considerable array of other state and federal requirements and procedures that specifically govern or touch on land use and development. Requirements and procedures range from some with extensive public participation provisions, such as Master Planning, adoption of regulations under Title 17 of the Alaska Administrative Code, and public notices of leases and lease modification, to an Airport Security Plan that affects land use and development of some portions of the airport, but is forbidden from public disclosure by federal law.
- A large portion of ANC is fenced-off as a restricted access area, subject to the stringent security rules noted above.
- ANC operates what is believed to be one of the largest seaplane bases in the world, to which few of Title 21's standards for water body protection can properly apply.
- ANC maintains its own Airport Safety department, including both sworn police officers and fully trained fire fighters, and coordinates extensively with municipal police and fire under mutual aid arrangements.

For the reasons stated above, and more that become apparent as individual Title 21 standards are applied to the ANC, we strongly believe that only ANC can effectively and efficiently exercise regulatory authority within its boundaries. The terms of the Airport Development (AD) zoning district proposed by the MOA under 21.04.050A, reflects only a partial recognition of that reality. We note that the AD language that remains pending before the Commission does not include changes ANC previously recommended in our letter to the MOA dated September 28, 2007. MOA Planning staff had previously informed us that they had not had time to consider the appropriateness of our recommendations. We now understand that MOA staff may disagree with our requested changes. We continue to believe our recommendations to be sound policy and in the

public's best interest. We strongly urge the Commission to review our AD district changes carefully and to adopt them.

The following highlight some of the reasons ANC needs to retain variance authority relating to the chapters under review:

- ANC has unique and critical aircraft control tower line of sight and navigational control aid issues affecting standards and decisions regarding landscaping, tree/vegetation, elevation of property and structures.
- ANC has very limited land for the primary purpose of development for airfield-dependent uses, many requiring relatively level ground conditions for aircraft, aircraft maintenance equipment, and tug movement. Remaining developable land often requires raising or lowering natural grades to accommodate unique operating requirements of an airport.
- ANC has unique height, visibility, safety, and snow storage standards and requirements associated with a well developed airport impacting decisions for setbacks, easements, landscaping, fencing, drainage, parking and lighting.
- ANC has critical issues associated with the attraction of wildlife presenting aircraft safety issues impacting decision associated with landscaping and tree/vegetation requirements.
- The ANC has a well established and successful relationship with the COE, ADEC, and EPA, working through wetland and natural resource protection issues while accommodating the unique needs of ANC.
- The ANC has its own Airport Drainage Plan. ANC environmental and engineering staff successfully work with other state and federal Agencies on issues of drainage, water treatment and erosion control.

We have found it very difficult to evaluate the chapters now presented for public hearing without knowing whether or how they are proposed to apply under the AD district. This difficulty has increased as we have re-read the proposed AD language in light of Chapters 3, 7 and 14. We are left unsure what some of the MOA's proposed AD language is trying to say. It is unclear what portions, if any, of Title 21 are proposed to apply within the ANC's secure area, and what portions are proposed to apply to the rest of the ANC. During our review of the chapters currently before the Commission, it has become apparent that even though the standards may make sense in most situations, ***strict*** application of many standards would be impractical and unnecessary on ANC.

ANC appreciates the enormous effort of MOA staff to develop enlightened standards and the associated permit application and review processes. However, we strongly request the Commission to make amendments to accord ANC, a fellow government agency responsible to act in the public interest, complete variance authority to make appropriate determinations as to relief from strict application of Title 21 standards on the Airport.

ANC has not completed a detailed section-by-section review of Chapters 3, 7 and 14. Without a clear understanding of what the MOA may seek to apply to the Airport, it is difficult to know the impact of specific provision or the value of a more detailed review at this stage. For the present we add just a few general observations.

- ANC understands the sentiment behind some of the new pre-application review and community meeting procedures contained in proposed Chapter 3. However, ANC is concerned about their relevance for most state and private tenant projects on the Airport, and about the potentially significant delay and cost that they may add for relatively little real public benefit. Tremendous growth and development at the ANC have made it a significant contributor to the local economy. ANC would like to avoid any unnecessary procedures that may stall development, potentially sending investment elsewhere.

- Chapter 3 also includes proposed conditional use permitting standards and procedures. The AD district as proposed by the MOA provides that for all uses on land identified in the Airport's master plan as not necessary for aviation dependent or related use, proposed development shall be subject to a MOA conditional use permitting process. This requirement does not seem reasonable. Non-aviation uses are less likely to have off-airport impacts than aviation uses. Non-aviation land use applications on ANC are required to be processed through ANC's independent governmental decision-making process which includes public notice and comment. It is not clear what substantial benefit the significant burden of an additional and separate MOA conditional use procedure is expected to produce.

- ANC has previously indicated the critical importance of allocating to ANC the authority to grant variances from Title 21 standards on the ANC. Because variances are typically sought in the context of other reviews, it will be necessary to consider carefully the variance procedure under proposed 21.03.240, and to find ways to allow for ANC's review and decision on variances in conjunction with municipal approval procedures.

- In the purposes of Chapter 7, although ANC understands the emphasis on "quality of life" issues, it is also important to consider economic concerns that make quality of life possible. ANC recommends that the purposes of the chapter be expanded to include such issues as the following:

    1. To establish a reasonable balance between public aesthetic interests and land-owner preferences and financial considerations.
    2. To promote and protect sustainable economic development, ensuring that existing and new commercial, transportation and industrial investment is not burdened by standards not justified by substantial public concern or that require compliance efforts that are more costly than are reasonably justified by any resulting public benefit.
    3. To preserve and protect the economic viability of permissible land uses.

- Another provision of concern in Chapter 7 is 21.07.020. ANC does not believe that a public or private developer should always be required to spend the funds necessary to obtain a required federal permit before determining whether municipal permission would be granted. That is why "preliminary" approvals are appropriate. Issues completely unrelated to the wetland issues may pose a municipal issue, and until it is known whether those can be satisfied, it would be imprudent for a public or private developer to seek a federal permit. The federal

permit may be withheld anyway pending receipt of MOA approval. In addition, simultaneous permitting processes are necessary to limit the cost of, and time required for, public and private development permitting. Preliminary and contingent approvals should be allowed conditioned upon receipt of all necessary federal approvals and permits.

- With respect to Chapter 14, ANC will comment here regarding just a couple of definitions. The definition of "lot," does not apply well at the ANC, at least not if a "plat of record" is interpreted as limited to a plat recorded in the district recorder's office, as is a "Lot of Record." The lease lot plats maintained in ANC's Airport Information Maps (AIMS) are also public records and have been considered adequately "of record" for purposes of municipal taxation and millions of dollars of investment, yet they are not "lots" as proposed to be defined in Title 21.

- The term "Approach, Transitional, Horizontal, and Conical" should be revised to read "Approach, Departure, Transitional, Horizontal, and Conical," because the FAR surfaces at issue also relate to aircraft departure clearance. The definition of the term should also be expanded to add, at the end of the definition, "and as set forth in FAA Advisory Circular 150/5300-13".

Again, we appreciate the opportunity to comment. If you have any questions or need additional information, please feel free to give me a call at (907) 266-2544 or send me an e-mail. Many thanks.

Sincerely,

Jack Jones
Planning Manager

CC:

John Johansen, Director of Planning/Environmental/Engineering

From: Mark Romick [mailto:mromick@ahfc.state.ak.us]
Sent: Friday, November 02, 2007 3:28 PM
To: O'Neill, Corrine L.
Subject: RE: Title 21 Rewrite

Thanks for the opportunity to comment. Here's a couple of thoughts:

The definition for affordable housing is broader than the LIHTC, but wouldn't preclude it from qualifying. The lifetime commitment might scare off most everybody but the usual suspects. Is there a minimum number of units you have to designate to get the incentives, or is it all or nothing? Since most of the state or federal programs don't require that long a commitment, you may not get much interest if its the whole project versus a few units.

I didn't see a reference to a specific gross income calculation method? Would that show up in the program rules?

We did away with our separate definition of senior housing, and adopted the federal definition. We let the sponsor decide which sub-definition they want to choose. We just require them to declare which definition they are using. That way, our funds can be used in combination with other federal programs that have a statutorily mandated definition and we are no longer interpreting federal law.

I'm not sure that the definition for senior housing as written, is consistent with the Fair Housing Act. The statute says "intended for and solely occupied by persons 62 years of age or older." If you want to say at least one member has to be a senior I think you have to use the 55 years or older definition under the statute. That, however could also let someone make 20% of the units not "senior" housing. Have they run this definition by an attorney familiar with Fair Housing law or the FHEO office in Seattle?

Under 13., I think the first sentence should read "Affordable housing developments, which have units that are....." as it sounds like the parking spaces are designated to a unit and a 40% reduction would be a development benefit. The same comment would apply to the second sentence also.

in 13 b., what does tenure mean? Would it be easier to say the same quality and amenities as the other units in the development? That way it would include both the exterior and the interior features.

Just out of curiosity, would a 40% reduction in parking spaces allow an owner to have less than one space per unit?

let me know if you have any questions, I also forwarded your e-mail to other folks at AHFC.

Mark

From: O'Neill, Corrine L. [mailto:ONeillCL@ci.anchorage.ak.us]
Sent: Thursday, November 01, 2007 11:17 AM
To: Mark Romick
Subject: Title 21 Rewrite

Hi Mark,

How is it going? Tyler and I have been working with the Planning Department on some affordable housing incentives in the Title 21 Rewrite. Currently, there are some parking reductions in the Rewrite for Senior Housing and Affordable Housing. There are also some density bonuses for affordable housing, but it is unclear how they will work in reality. I was wondering, if you would be willing to look at the

Affordable Housing definition and see if it conflicts in anyway with the LIHTC program. In regards, to the Senior Housing definition does it conflict in any way with the State definition? There is no definition of Supportive Housing in the Code and I am working on it. If you or the Planning Department have any comments, I will happy to take them to the Planning Department who will introduce them to the Planning and Zoning Commission.

Housing, Affordable
Housing renting for a monthly rent of not more than 30% of the total monthly household income of low income households or housing that may be purchased with monthly payments including: principal, interest, taxes, insurance, homeowners association fees, and assessments that do not add up to more than 30% of the total monthly household income of low income households. Low income households are defined to be a household earning less than 80% of the median annual income for the Anchorage metropolitan statistical area (MSA), adjusted for household size, as determined by the United States Department of Housing and Urban Development. A deed restriction ensures the preservation of the affordable housing unit as an obligation that runs with the land and is binding on subsequent owners for the lifetime of the unit or building.

Housing, Senior
Housing designed for, and occupied by at least one person 62 years of age or older per dwelling unit, and which has significant facilities and services specifically designed to meet the physical or social needs of older persons as described in §100.306, "Significant Facilities and Services Specifically Designed for Older Persons," 24 C.F.R. part 100 (Department of Housing and Urban Development – Housing for Older Persons) or any amendments thereto.

13. Affordable Housing
Affordable housing units that are deed-restricted for extremely low income households having an income at the time of initial occupancy of 30% or less of median family income are eligible for a reduction of up to 40% of the minimum number of required parking spaces. Affordable housing units for low income households having an income at the time of initial occupancy of 60% or less of median family income are eligible for a reduction of up to 20% of the minimum number of required parking spaces. The affordable housing units shall be consistent with the following standards:
a. The affordable housing units shall be intermingled with all other dwelling units in the development;
b. The type of tenure and ownership of the affordable housing units shall be the same as that of the rest of the housing units in the development; and
c. The exterior appearance of the affordable housing units shall be indistinguishable from the other units in the development.

14. Senior Housing and/or Supportive Housing
Senior housing units or supportive housing units are eligible for a reduction of up to 40% of the minimum number of required parking spaces. The agreement to provide a dwelling as a senior and/or supportive housing unit is an obligation that runs with the land and is binding on subsequent

Thanks for you help!
Corrine O'Neill, Associate Planner
Department of Neighborhoods
Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519-6650
Tel: 907-343-4182
Fax: 907-343-6831

From: O'Neill, Corrine L.
Sent: Monday, November 05, 2007 9:39 AM
To: Davis, Tom G.
Cc: Robinson, Tyler P.
Subject: Senior Housing Definition

Hi Tom,

I used to work for AHFC and have had some experience with the Senior Housing definition under State Law. I also emailed Mark Romick who was instrumental in getting the State definition for Senior Housing revised this year. The State Senior Housing definition used to be inconsistent with the Federal Definition, as a result the State had to get several fair housing legal rulings on affordable Senior Housing complexes.

This spring they changed the State definition to match the Federal definition. You have to be really careful with the wording on Senior Housing or the City can have a problem with Fair Housing Law. Mark Romick suggested that you run the definition by the HUD's Fair Housing Office in Seattle. If you need a contact there, please let me know because the Department of Neighborhoods works with HUD on Fair Housing issues on a regular basis. I am going to forward you the new State definition of Senior Housing and Mark's comments. You may also want to run the definition by Barbara Jones in the Equal Opportunity Office and get a legal opinion on the definition.

I was also wondering if Assisted Living Facilities would fit under the Senior Housing Definition for a parking reduction? Today Assisted Living Facilities often include regular Senior Housing as well, so that people can move through a continuum of care as they age but live in the same environment. A good example would be Knik Manor in Wasilla, a new senior housing complex that has 12 assisted living and 129 independent living units in one Senior Campus. Thanks for your consideration of these issues.

Corrine O'Neill, Associate Planner
Department of Neighborhoods
Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519-6650
Tel: 907-343-4182
Fax: 907-343-6831

The new AHFC Senior definition:

FEDERAL DEFINITION OF "HOUSING FOR OLDER PERSONS" Under Sec. 807. [42 U.S.C. 3607] Implemented at 24 CFR 100.300-308

(b)(2) As used in this section "housing for older persons" means housing:

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by persons 55 years of age or older, and—

(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—

(I) provide for verification by reliable surveys and affidavits; and

(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2)(B) or (C): **Provided,** that new occupants of such housing meet the age requirements of sections (2)(B) or (C); or

(B) unoccupied units: **Provided**, that such units are reserved for occupancy by persons who meet the age requirements of subsections (2)(B) or (C).

(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that--

(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

From: Balivet_Rob [mailto:Balivet_Rob@asdk12.org]
Sent: Friday, November 09, 2007 9:10 AM
To: Hammond, Cathy A.
Subject: TITLE 21 - CHAPTERS 3, 7, 14

Cathy,
I am attaching ASD's draft review remarks for chapters 3, 7 and 14 – they are "draft" because I am waiting for their review and review of Title 21 from other ASD staff by Monday. The schedule shows P&Z public hearings November 5, 7 and 8. What is the 'drop-dead' date to get our final remarks in to you? Thanks.

Rob Balivet, AIA
Design Manager
ASD Facilities Dept.
(907) 348-5245
fax: (907) 348-5256

Anchorage School District
REVIEW OF TITLE 21 - PUBLIC HEARING EDITION - ASD REVIEW (11/8/07 DRAFT)

Chapter	Subject	Comment	Recommended action	Resolved?	
				Y=yes; N=no; N/A=not applicable (dropped)	
ITEMS FROM DRAFTS #1, 2 and 3					
21.03.020 Table 21-03-1, page 41	Summary of Notice Requirements	This requires schools to have notices mailed for their Major Site Plan Review by the Director, including to "such additional persons or geographic areas as the Director may designate". Assuming this would include schools' attendance areas, it appears to be an excessive and expensive requirement, considering quantities of attendance areas' households. For example, Dimond High School's attendance area might include 12,300 households (1,900 students); one of its feeder, Mears Middle School's area, 12,300 households (1,100 students); and one of its feeder, Sand Lake Elementary School's area, 2,125 households (625 students). Except for new schools, each has its own communications system with parents and students. Moreover, projects are presented to Community Councils and PTSA's in each area. At each school with a capital project, a Building Design Committee is formed. This is intended to include members of the community, parents, staff, and students. The historical practice has been to both post and publish school capital projects. This should be adequate.	Delete "Mailed" notice requirement for PLI.	Y	"Mailed" in parentheses after "written". Mailings are by Munnicipality.
21.03.020	Common Procedures for Applications	The overall schedule, considering all the procedures, seems to be quite lengthy. Anchorage School District projects are frequently under tight schedules. We are seeing 90 days from P&Z application to approval under current procedures. This does not include further time required for Assembly approval. Footnote #2 on page 2 says, "However, staff resources in Anchorage may not be sufficient to fully implement the text as written." The procedures are only as good as the capabilities of the staff to support them. Recognizing that operating budgets are frequent targets of cost-cutting, the process should be streamlined to fit a conservative model of staffing, not *vice versa*.	Reduce schedule of paperwork process and maximize staff's efficiency by simplifying system while maintaining quality.	Y	21.03.020.K addresses concurrent processing and reflects willingness to accommodate schedules within staff resources
21.03.020 B 5 e	Traffic Impact Assessments (sic)	Traffic Impact Analyses for school projects often rely on seasonal conditions for accurate data and may not coincide with the application procedures' schedule..	Reflect timeliness of TIA's for school projects in any process schedule.	Y	Include in User's Guide
21.03.020 E	Time limit on application completeness decision.	Because of Anchorage's short building season, any delay (especially due to understaffing) can negatively impact project delivery. Just as applicant's are given time limit's, so should the reviewers be given similar time limits.	Retain, or shorten, the 15-day limit.	Y	15 days retained
21.03.020 F.3.a & 4	Community meetings	The proposed minimums, totaling 35 days, are too restrictive and add to the already lengthy process. Community councils have their own calendaring requirements, which may vary between councils and from any time frame in Title 21.	Delete 3.a's reference to a minimum prior to first public hearing and reflect 4's time limit as a function of community council calendaring requirements.	Y	Appears to be 21 days
21.03.020 L	Effect of Inaction on Applications	By defaulting to a denial, if a review or decision-making fails to take action, this provisions places an onerous burden on the applicant under circumstances which could be caused by the review staff or decision-making body. Such delays are commonly caused by lack of staffing and lack of quorums.	Include a provision that excepts denial when delay is caused by circumstances beyond applicant's control..	Y	Provision deleted.
21.03.090.C.5.b	Site Plan and Landscaping	School projects have been increasingly held to higher and undefined landscaping standards than other public projects. Standards need to be clearly defined and agreed to. Fiscal responsibility should be a top priority. Both initial and maintenance costs should be considered. Outcome related to aesthetics and functionality. Make consistent with storm water permits.	Standards should not rely on ambiguous performance criteria. Refine the criteria to be quantifiable and qualitative, paying special attention to fiscal responsibility.	Y	Deleted from here. Footnote 56 refers to 21.07 such that public and private are held to same landscaping requirements.
21.03.110.B (formerly 21.03.240.C)	Institutional Master Plan Review	Would this be applicable to the Anchorage School District where it collocates a number of support facilities on one parcel (such as Facilities, Maintenance & Student Nutrition at Labar? Would it also be applicable to leased premises used for administrative and curriculum support offices?	Clarify.	Y	Labar Street complex is less than 25 acres
21.03.130.B	Sign Permit Requirements	Anchorage School District frequently installs, removes or alters site signs for traffic or security. Do each of these require a permit under the "Permanent Freestanding Sign" or no permit under "Instructional"?	Clarify.	Y	These fall under instructional signs

Chapter	Subject	Comment	Recommended action	Resolved?	
				Y=yes; N=no; N/A=not applicable (dropped)	
21.03.140.B.2.b (formerly 21.03.090.B.2.b)	Public Facility Site Selection.	AO No. 2007-124 (S) with amendments supersedes this.	Revise to reflect new ordinance.	N	
21.03.170.A & 21.11.060.B.3	Nonconforming signs	Verify that this means the Polaris K-12 Marquee school sign would need to be removed by October 1, 2006.	Verify.	Y	Sign has been removed.
21.03.180.c.1 (formerly 21.030.080.C.1.a)	Major Site Plan Review	Clarify if installation of new, or upgrades to synthetic of existing, athletic fields at costs greater than $1 milion require Administrative Site Plan Review or Major Site Plan Review?	Clarify.	N	
21.07.020.C.3.g	Ground cover and revegetation	Shouldn't this be covered by the SWPPP (Soil Water Pollution Prevention Plan) required by the Design Criteria Manual?	Clarify if redundant.		
21.07.020.D.3.a	Wildlife movement inhibited by fences	Many of our schools are separated from adjacent neighbors by fences. Before a forested school site is developed, wildlife habituate the site. Sometimes, as in the case of Service, Bartlett, and Chugiak high schools, we are able to avoid fencing the perimeter and allow wildlife movement. However, more commonly, the neighborhood requests fenced separation. Initially, the new South Anchorage High School was designed with the intent of allowing free large wildlife movement through the site. Fearing students would trespass on their properties, the neighborhood demanded a fence on three sides through a Special Limitation attached to rezoning, even on the Leyden Road (north) side.	Retain fence-free wildlife movement provision as a goal, but do not make mandatory. Recognize mitigating solution to extenuating circumstances may over-rule implementation of this goal.	Y	Rewritten: "Fences are discouraged"
21.07.020.G.2.a&b [New reference: 21.07.080.F.7]	Tree Retention Applicability	The general tenure of this provision appears to be directed to residential and commercial uses. Anchorage School District sites, because they are funded by taxpayer-approved funds, do not have the luxury of purchasing excess tree retention areas. The site sizes are chosen to meet the Educational Specifications for elementary, middle, and high schools. These address educational program requirements. Private educational facilities are less governed by such comprehensive educational specifications. (See comments regarding Section 4. "Minimum Retention Areas" below.)	Include public education sites in the list of exceptions.	Y	Applicability changed to residential only by 21.07.080.F.7.a
21.07.020.G.3 [New reference: 21.07.080.F.7]	Relationship to Landscaping & Screening	This clause says the tree retention "shall generally be in addition to the requirements in Section 21.07.080." Section 2.a. "General Requirement", p.17, lines 15-16 implies the landscaping shown on the plan can be combined with, or be in lieu of, tree retention.	Clarify.	Y	Applicability changed to residential only by 21.07.080.F.7.a
21.07.020.G.4, TABLE 21.07-1 "MINIMUM REQUIRED TREE RETENTION" [New reference: 21.07.080.F.7]	Minimum Retention Areas	In general, as noted above, the educational specifications dictate the program activities that will occur on a school site. Most of these are universal requirements and dictate maximum use of the site to fit the minimum acreage. For "traditional suburban schools", the Council of Educational Facilities Planners International (CEFPI) recommends the following minimums plus one additional acre for every 100 pupils: Elementary - minimum 10 acres (ASD 550 pupils = 15+ acres); Middle - minimum 20 acres (ASD 1,058 pupils = 30+ acres); High - minimum 30 acres (ASD for low 1,600 pupils = 46 acres; for high 2,000 pupils = 50 acres). Other factors to be considered for tree retention on educational PLI sites are: 1) existing tree canopies may offer less than full coverage of undisturbed natural vegetation due to a number of factors, including species (scrawny black, or swamp, spruce), wind blow-downs, and disease (spruce bark beetle); 2) site grading required to locate large flat play fields and building facilities on sloped or variable topography may require disturbing much of the *in situ*	Include Anchorage School District sites in exceptions as noted above.	Y	Table deleted. Applicability changed to residential only by 21.07.080.F.7.a
21.07.020.G.6.b	Early Tree Removal Prohibited	What happens if the Municipality/School District wish to purchase and develop for educational facility usage a site that is restricted by this three year restriction? It could delay construction on a new school based on this technicality.	Consider exempting public entities.	Y	Deleted.
21.07.060.E.6.b (formerly 21.07.060.C.3)	Snow removal and storage	Snow removal and on-site storage has a big impact on the abilities of both students to walk safely to school and School District buses to navigate through subdivisions. This paragraph addresses snow and ice removal. Snow storage issue is the more critical issue - especially in residential subdivisions.	Add requirement for a snow storage and removal plan in residential subdivisions.	Y	Covered by new 21.07.090.H.11.a.i

COMMENTS TO TITLE 21 REWRITE; CHAPTERS 3, 7 AND 14

R.L. Scher, Member, Geotechnical Advisory Commission
13 November 2007

21.03 REVIEW AND APPROVAL PROCEDURES

Commentary - It would be prudent that projects on any property with slopes steeper than 30 percent have a pre-application conference (e.g. with Development Services/Building Safety) to review the requirements in Chapter 7 as they pertain to development and Title 23. In addition, it would be prudent that developers planning and/or applying for a permit/authorization under Title 21 (i.e. before the Title 23 permits) have a pre-application conference (e.g. with Development Services/Building Safety) when the project is located with the high seismic hazard zones.

21.03.020.B.a.

Add:

vii. Projects where the property contains slopes steeper than 30 percent.

viii. Projects located within Seismic-Induced Hazard Zones 4 and/or 5.

21.07 DEVELOPMENT AND DESIGN STANDARDS

Commentary - It seems the items pertaining to steep slopes, grading, and retaining walls may conflict with, or at least could be construed to replace the requirements for engineering and design addressed in Title 23. However, rather that try to rewrite those items, maybe adding the following sentence would suffice.

21.07.020.C.3 and 21.07.020.C.4

Add, after the first sentence:

These standards do not supersede or otherwise set precedence over the requirements for site grading, retaining walls, drainage, slope stability, and/or other improvements defined under Title 23.

21.14 RULES OF CONSTRUCTION AND DEFINITIONS

Commentary - The "provisionally adopted" Chapter 21.08 (Subdivision Standards), and the above proposed changes include reference to seismic-induced ground failure zones, which are not, but should be defined in Title 21.

MUNICIPALITY OF ANCHORAGE

PARKS & RECREATION DEPARTMENT

MEMORANDUM

DATE: November 13, 2007

TO: Physical Planning Division

FROM: Park Planning

SUBJECT: Title 21 Rewrite, Chs. 3, 7, & 14; P&Z Case No. 2007-153

The Parks and Recreation Department notes that The *Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan* (the *Park Plan*) references use of regulations and incentives through Title 21 to encourage private-public collaboration for acquisition, development, and maintenance of recreational spaces including parks, sports fields, public indoor and outdoor recreation facilities, natural resource areas, and trails. (pp. 41, 45, 55, 59, 61, 71, 100)

The Parks and Recreation Department recommends consideration be given to distinguishing applicability of certain standards and procedures relative to various park categories, for example Neighborhood Use areas compared to Community Use areas, or dedicated compared to non-dedicated (designated) park lands.

The Parks and Recreation Department believes that the proposed off-street parking space requirement for playfields may exceed that needed in most cases.

Title21Rewrite 3714 P&Z2007-153.doc

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Questions? If you have questions regarding a case, please contact Zoning at **907-343-7943** or Platting & Variances at **907-343-7942.**

1. Select a Case: 2007-153 View Comments

2. View Comments:

Case Num: 2007-153
An ordinance amending Title 21 for Title 21 rewrite

Site Address: N/A
Location: For adoption, Title 21 Rewrite, Chapter 21.03, Review and Approval Procedures; Chapter 21.07, Development and Design Standards; and Chapter 21.14, Rules of Construction and Definitions.

Details | Staff Report | submit a comment

Public Comments

3/14/08
Susanne Comellas
After very briefly reading staff responses I discovered an error that is pretty significant. I can hope there are no others. pages 46-47, #114, Issue 21.03.180E, Aproval Criteria Paragraph 2, line 3, the code should read, "permitted RESIDENTIAL development..". Staff has created a non-standard and defended their arguement by leaving the word "residential" out, not an accurate accounting of current code. The language now serves to protect RESIDENTIAL neighborhoods from institutional development(churches) that engage in activities which are much more commercial and revenue producing than that of worship. It also helps limit disruption to a peaceful neighborhood by giving residents a standard which they can require any institution to abide.

Zoning & Platting Cases On-line website