



Municipality of Anchorage

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Mayor Mark Begich

Planning Department

RECEIVED

May 24, 2004

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**ASSOCIATED GENERAL
CONTRACTORS**

Mr. J. A. Fergusson
Associated General Contractors of Alaska
8005 Schoon Street
Anchorage, AK 99518

RE: Module 1 Comments

Dear Mr. Fergusson:

Thank you for your continued interest and involvement in the Title 21 Rewrite project.

On January 6, 2004, several of my staff and I met with you and other representatives of the development community to discuss the project and, specifically, the Associated General Contractors' comments on Module 1. You specifically requested to know how the Department considered the AGC's comments. Attached are the original questions, followed by the Department's response. Please feel free to contact me if you wish to discuss these issues further.

In your letter you suggested that the tone of the proposed changes "verges on being anti-development." That is certainly not our intent, nor that of our consultants. One of the major objectives of these regulations is to facilitate development. We can all agree that it is in the community's best economic interest to create new development. There is a strong community desire to improve the standards of new development and to make development patterns more consistent with the goals and objectives of the Anchorage 2020 Comprehensive Plan.

We recognize that the rewrite process is taking longer than was originally anticipated. We appreciate and encourage your continued interest and involvement.

Sincerely,

Tom Nelson
Acting Director

Community, Security, Prosperity

Module 1

Responses to Comments from Associated General Contractors

- 1. Comment:** These are worthwhile concepts but how can they be measured and evaluated? How do we promote vitality? What do we mean by managing congestion? Do we protect the diversity of habitats to the exclusion of all else or is it balanced against other provisions? If so, how? Since many of these items are intangible do they belong in the code or should they be addressed somewhere else? Where in the code does it indicate the desire to aid or promote the reasonable and economical development of Anchorage? (Page 2, paragraph 21.01.030, items J, K, M, N, and O)

Response: The point of these concepts is to illustrate the purpose and intent of the title. They are not meant to be measured or evaluated, except in the very broadest sense. We “promote vitality” by encouraging lively and thriving businesses in our employment centers, town center and mixed-use districts. We “manage congestion” during the development review process through such methods as Traffic Impact Analyses. “Protecting the diversity of habitats” is just one concept among more than twenty others which must be considered together. We have asked the consultants to create an additional purpose statement that addresses your last question.

- 2. Comment:** If a violation under the original code is not a violation under the new code why should a civil penalty continue to be assessed? (Page 5, paragraph 21.01.060 A)

Response: Fines for the offense under the original code will not continue to accrue if the matter is no longer a violation under the new code. The land owner will still be responsible for paying the fines assessed under the original code while the original code was the law, because he or she was in violation of the law that was then in place.

- 3. Comment:** Why is this paragraph proposed? If it conforms to all requirements of the code it is obviously lawful. Is the intent of this section to grandfather in items that failed to obtain the necessary approvals so long as they are deemed to comply with the requirements of this title? (Page 6, paragraph 21.01.060 B)

Response: This paragraph clarifies the status of a use, structure, or lot in certain situations. An unlawful use, structure, or lot has no nonconforming or grandfather rights. This section allows the transition from unlawful to lawful if all the standards are met.

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- 4. Comment:** **Allowing only 12 months extension on preliminary approvals between the codes will be inadequate in many cases. A major commercial or governmental building cannot be designed and processed in the suggested time frame. Look at the time the rewrite of this section is taking. The time period needs to be expanded to perhaps a minimum of 36 months. (Page 6, paragraph 21.01.060 D2)**

Response: This paragraph provides that the original approval stands for whatever approval period was granted under the prior rules. In addition, the paragraph allows a further year beyond the original approval. A preliminary plat with an 18-month approval could have it extended to 30 months. The original approval period should be ample in the majority of cases; but, if not, a bonus of up to a year is available. It must be noted that a time extension is not guaranteed under the current rules.

- 5. Comment:** **The scope of this exercise should consider the effectiveness and need for existing Boards and Commissions. For example, many construction professionals believe that the Urban Design Commission serves no functional purpose. The rewrite of this title appears to be attempting to find some use of the commission, but in the end does little to indicate how the Commission meets a specific need and furthers the purpose of this title. If there are useful functions provided by this Commission, can those functions be absorbed within the scope of other Boards and Commissions? For example, paragraph 21.02.080.9 is just an example of a project that should best be assigned to functioning departments within the Municipality. This paragraph seems to imply that the professional staff managing the city cannot perform this function and that a Commission of volunteers will be better able to manage the task. If a problem exists with the professional managers within the Municipality, deal with it, don't try to skirt the issue with volunteers. (Page 5, paragraph 21.02.020 B)**

Response: The one board/commission of which the need and effectiveness is in doubt is the Urban Design Commission (UDC). One high priority of the Anchorage 2020 – Anchorage Bowl Comprehensive Plan (Anchorage 2020) is to add new design standards and strengthen the existing ones in Title 21. Giving design review responsibilities to the Urban Design Commission evens the workload between the UDC and the Planning and Zoning Commission (PZC), clarifies the purpose of each board/commission, and directs issues to the board/commission most qualified to deal with them. The Municipality has limited funds to maintain a staff of architectural and site design professionals. The Urban Design Commission is proposed to play a vital role in reviewing the design of certain development projects and implementing the above-mentioned element of Anchorage 2020. We also note that we have recommended deleting 21.02.080.B.9.

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- 6. Comment:** **The recommended six-month period does not appreciate the work that must be done. Why give the design community impossible and impractical goals to meet? It just wastes money. As with paragraph 21.01.060.D.2, allowing 36 months would appear more appropriate.**
(Page 3, paragraph 21.03.020.7)

Response: This paragraph only requires the scheduling of an additional pre-application meeting if the project fails to be submitted for action. Based upon current experience, six months seems to be an adequate time period to complete an application after the initial pre-application meeting. Applications are usually submitted within days or weeks of pre-application meetings. Laws and development conditions could significantly change within a longer period.

- 7. Comment:** **The threshold criteria for Traffic Impact Assessments remains a critical issue and needs to be addressed by the advisory committee, not just the consultants and staff. (Page 4, section 21.03, footnote 3)**

Response: The Traffic Department plans to have a policy paper about TIAs and when they are required. The thresholds are anticipated to be based on industry standards.

- 8. Comment:** **Community meetings should be used judiciously to inform the public of important events impacting their local areas. But the rewrite of this title must recognize that public meetings delay the process and must allow for those delays in the time requirements for the various provisions. (Page 5, paragraph 21.03.020.7)**

Response: The provision for the community meeting should add no delay in the processing of an application as it occurs concurrently with the normal preparation and processing of an application. It is scheduled by the project proponent, may or may not use the local community council as the venue, and if not needed may be waived by the Director. It should be noted that failure to advise the local area of the project may result in project delays when the matter is before the decision-making body at the public hearing. The community meeting should provide the developer with advance knowledge of what neighborhood issues will be, and allows the developer to have a well-reasoned response for each at the public hearing.

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- 9. Comment:** A community meeting should not be the standard but rather the exception. The Director should require a community meeting when it is deemed necessary and critical to the public understanding of a complicated, controversial plan, otherwise it would not be required. (Page 5, paragraph 21.03.020.F.2)

Response: We believe it is better for the developer to prepare for a community meeting in the project schedule and subsequently have it waived, rather than to be told it must be inserted in the project schedule later.

- 10. Comment:** The possibility of involvement by multiple community councils needs to be addressed. This process should not be allowed to become a process of delaying projects. (Page 6, paragraph 21.03.020.F.5)

Response: We agree. The community meeting is specifically not required to be a community council meeting. Thus if more than one community council is impacted by the proposal, both can be invited to the same required community meeting.

- 11. Comment:** Any additional staff cost for attending community meetings should be borne by the MOA. After all, the purpose of the meetings is for community involvement. The developer is already paying the cost to have his staff attend and the process should not be viewed as an additional source of revenue to a department. The developer is currently assessed a fee to the Municipality for the development. If that fee is inadequate, the department needs to deal with the problem through appropriate channels, not seek an end-run around the fee structure. (Page 6, paragraph 21.03.020.F.7)

Response: This is a legitimate concern that will require further consideration. We believe that for many projects, staff's presence at the community meeting will be helpful in facilitating the review and approval process. The proposed language in F.7 suggests one way of recovering the cost, although factoring that cost into the overall fee structure is another alternative.

- 12. Comment:** When a developer submits a proposal to the Municipality they expect a decision. They have invested time and money into a project that they believe will fulfill the requirements of this title and they are following a process that will lead to construction and utilization. The MOA, whether through staff or a Board or Commission should not be given a "pocket veto" of a project by their failure to act and thereby failing to provide comments

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regarding the perceived shortcomings of the proposal. The development community cannot tolerate being in the position that the MOA can deny a permit simply by failing to act. (Page 12, section 21.03, footnote 17)

Response: We have asked the consultants to delete this section (Section L).

13. Comment: Why is the requirement that rezones shall precede Corps permit applications needed? See also 21.03.060.C.2.c. (Page 20, paragraph 21.03.050.A)

Response: The Corps will not issue a permit on speculation. They need to know the proposed use of the site.

14. Comment: The requirement that “all improvements have been installed” prior to issuing a building permit or certificate of occupancy is needlessly onerous and needs to be reviewed. It ignores the unique construction constraints of Alaska and assumes that all improvements are equally critical. The builder should be allowed to post a bond or have other options to address this requirement. This paragraph is also in conflict with 21.03.110.E.4. (Page 25, paragraph 21.03.060.2.a)

Response: We agree. We have requested that the consultants adjust this to say that the improvements must either be installed, or a subdivision agreement be in place.

15. Comment: The requirement for a 60-day review period for a “Final Plat” is too long. Fourteen days should be adequate for a Final Plat review. After all it has already been reviewed once. (Page 32, paragraph 21.03.060.C.4.b)

Response: This requirement is for when a Final Plat differs from a Preliminary Plat, and when the difference is substantial, the review may take as much time as a new review.

16. Comment: Delete the word “maximum”. If the word maximum remains in the paragraph it creates an impossible level of attainment, particularly since “to the extent practicable” is a flexible standard. (Page 39, paragraph 21.03.070.E.5; see also page 42, paragraph 21.03.080.E.4.)

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Response: As a conditional use is, by definition, a “discretionary approval process for uses with unique or widely varying operating characteristics or unusual site development features”, it is reasonable to require that “significant adverse impacts” be mitigated to the “maximum extent” feasible. In these situations, it is the government’s responsibility to protect the general public from adverse impacts resulting from an approved project.

17. Comment: The Municipality of Anchorage currently requires landscaping on Anchorage School District (ASD) projects that cost between .5% and 2% of the project cost. Unfortunately the ASD does not have the money to maintain the landscaping once it has been installed and the contractor warranty period ends. This is an example of a serious disconnect between the requirements of this title and the reality of the real world of public finance. The burden of this disconnect is borne entirely by the public through their repayment of the bonds issued for the construction of the schools and must be considered in this revision. Under the current title and this proposed rewrite, the taxpayers are forced to incur a cost related to code compliance that has no long-term benefit since the landscaping is not maintained after the warranty period. The taxpayers deserve better from their public officials. (Page 42, section 21.03.090)

Response: We agree that maintenance of ASD landscaping has been an issue that needs addressing. However, we cannot expect private projects to meet standards that public projects are unwilling to meet. We acknowledge the problem identified in this question, but believe that it should be resolved through other means, rather than simply not requiring landscaping amenities at schools.

18. Comment: Delete this paragraph. If and when the 1% for Art is revised it will create a conflict within the document. What would be the interpretation if the 1% for Art were revised to require 2%? The requirement to comply with “All” MOA requirements already exists. (Page 46, paragraph 21.03.090.C.5.b.v)

Response: While it is true that the requirement to comply with “All” MOA requirements does exist, it does no harm to remind applicants of this requirement by including it in this section. If the program changes, we will revise this section.

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19. Comment: Six months is an inadequate time period between the issuances of a permit and starting work. A permit issued late in the summer may not allow the developer sufficient time to go finalize bid documents, allow contractors to develop bids, bid, negotiate the final contract, and allow the contractor to mobilize and undertake the work. Twelve months is a more realistic period. (Page 50, paragraph 21.03.110.C.2.d)

Response: We agree and have requested the consultants to increase the time period to 12 months.

20. Comment: This does not correctly describe the process now in use. Currently the contractor calls for a “Zoning Inspection” and they issue an inspection report that indicates approval for CO. (Page 55 paragraph 21.03.120.C.2)

Response: We are proposing a change to the process now in use.

21. Comment: Add new paragraph “e” indicating the parking is open to the minor modifications interpretation. (Page 62, paragraph 21.03.190.B.1)

Response: As the parking requirements will be in Chapter 21.07, they will be open to the minor modifications process per subsection c.

22. Comment: Why is building height listed here? It should be open to the minor modifications listing. (Page 62, paragraph 21.03.190.B.2)

Response: This is a good point; we will reconsider the issue.

23. Comment: Delete the words “or by implication”. This code must be clear and concise. The developers have right to depend on the written word not try to guess some other potential intent of the writer. (Page 66, paragraph 21.03.200.F.4)

Response: It is neither possible nor practical to list all the potential uses allowed or prohibited in the various zoning districts. For uses that are not specifically listed, there will always be a judgment made as to whether or not that use would be allowed in a district. The person making that judgment must consider all statements and implications in the code.