# MUNICIPALITY OF ANCHORAGE MEMORANDUM

DATE:

August 12, 2013

TO:

Planning and Zoning Commission

THRU:

Jerry T. Weaver, Jr., Director

FROM:

Dave Whitfield, Senior Planner

SUBJECT:

Case 2013-087-Request for an 18-month time extension of a Master Site Plan approval (Case 2006-142) for a senior housing development in the PLI district approved by the Planning and Zoning Commission on October 22, 2007.

### Request:

The petitioner, Goldenview Development Company is requesting an 18-month time extension of a Site Plan approval (Case 2006-142) for a senior housing development in the PLI district approved by the Planning and Zoning Commission on October 22, 2007.

Planning and Zoning Commission Resolution 2007-076 Condition 1.f. states:

A building permit for Phase 1 must be obtained and construction begun within five years of the effective date of the final Planning and Zoning Commission resolution of approval approving the Master Site Plan, issued after the conclusion of any appeals. Building permits for each subsequent phase shall be issued no later than the dates set forth below. Each phase will be completed within two years from the date the building permit is issued. Permits for each subsequent phase are expected to be issued no later than the end date shown on the phase plan. If a building permit is not timely issued within these time periods, then the Master Site Plan approval shall be null and void for any uncompleted phases unless the Planning and Zoning Commission grants an extension for **good cause** shown following a public hearing. [emphasis added]

- 1) Phase 1. 2012
- 2) Phase 2. 2013
- 3) Phase 3. 2014
- 4) Phase 4. 2015
- 5) Phase 5. 2017
- 6) Phase 6. 2018
- 7) Phase 7. 2020
- 8) Phase 8. 2020
- 9) Phase 9. 2021
- 10) Phase 10. 2022

The petitioner's representative states the reason for this time extension request is due to the "worst economic collapse in the history of the United States." He further states: "The economic hardship has been devastating to the owners of this property. Hundreds of thousands of dollars have been spent and lost. With the economy beginning to turn around, this 18 month extension will help the owners maintain the value in the property they spent so much to create."

## Property and Case History:

09-01-92	AO 92-93	Ordinance added "housing for the elderly" to the PLI District. When AO-90-152(S) addressing hospitals, inebriate reception center, etc. passed the Assembly, it inadvertently deleted the land use entitled "homes for the aged", a permitted use in the PLI district. GAAB Ordinance No. 1-69, March 24, 1969 listed "homes for the aged" in the list of permitted uses in the PLI District (no definition).
06-05-00	Rezone Case 00-026	Request by The Alaska Mental Health Trust Land Office to rezone 117 acres from PLI to R-3 SL to develop residential cluster housing at 3 DUA, with public sewer and water, for NW4, NE4, S2, plus a portion of the E2, E2, NE4, NW4 of Section 10, T11N, R3W, S.M.,AK. (This includes the 104 +/- acreage of 2006-142 petition site.) Planning and Zoning Commission recommended APPROVAL to the Assembly to rezone the petition property from PLI to R-3 SL.
09-15-00	Protest	The Rabbit Creek Community Council submitted a letter to the Assembly protesting the rezoning of Case 2000-026 and requesting that PLI zoning be retained on this property. The Law Department determined that a valid protest petition was submitted. A valid protest requires a super majority of eight Assembly votes to pass.
10-26-00	Withdrawn from Assy Agenda	The Alaska Mental Health Trust Land Office, the petitioner in Case 2000-026, withdrew their rezone request in light of local opposition.
04-05-04	Case 2004-053	A request by John Berggren to rezone 120 acres from PLI to R-7 SL (includes the 104 +/- acres of Case 2006-142, plus a 15 +/- acres tract for a future school site). Planning Department <u>postponed</u> a public hearing indefinitely after determining additional technical information was required. Tax parcel 020-181-19.

04-05-04	Case 2004-078	A companion request to Case 2004-053 by John Berggren to remove 120 acres, T11N, R3W, Section 10, NW 4, NE4, S2, NE4, from the <i>Hillside Wastewater Management Plan</i> . Planning Department postponed a public hearing indefinitely after determining additional technical information was required. Tax parcel 020-181-19.
11-07-05	Rezone Case 2005-139	Petition by Forest Heights LLC to rezone 120 acres of an undeveloped, unsubdivided parcel from PLI to R-7 is denied by the Planning and Zoning Commission. (Resolution 2005-067)
01-24-06	Plat 2006-10	Final recordation of Legacy Pointe, Tracts A and B (S-11418)
06-20-06	Rezone Case 2005-139	The petitioner, Forest Heights, LLC, filed a timely petition to the Assembly to hold a public hearing to overturn the Planning and Zoning Commission's recommendation to deny the rezoning (Resolution 2005-067). Law Department determined that a valid protest petition was submitted. A valid protest requires a super majority of eight Assembly votes to

pass.

Assembly public hearing was closed 2-28-06; action was postponed from 2-28-06, 3-14-06, and 4-11-06. AO 2006-18, an ordinance approving rezoning of 120 acres from PLI to R-7 for NW4, NE4, S2, NE4 of Section 10, T11N, R3W, S.M., AK, died for lack of action pursuant to AMC 2.30.050 F: After public hearing on an ordinance has been completed, the vote on the ordinance may be continued no more than two times and for a total period of not more than four regularly scheduled meetings. If no vote on the ordinance occurs prior to the end of the four regularly scheduled meetings period, the ordinance shall be automatically defeated without a vote. The provisions of this subsection may be waived by a majority vote of the assembly taken prior to the expiration of the four regularly scheduled meetings period.

# **Brief Description of Site Plan Approval**

The request for site plan approval to allow a multi-family residential housing development for the elderly on 104 acres of land was approved by the Planning and Zoning Commission for five years on October 22, 2007 (Case 2006-142).

The final scope and scale of the project was reduced significantly from the initial submittal. Density was reduced from 6.75 dwelling units per acre to 3.8 dwelling units per acre. This was achieved by reducing the number of units by 43%; from 704 units to 400 units. In reducing the number of units, the number of buildings was also reduced from 13 to 10 with one floor being dropped from each building. This has the effect of lowering the building profiles to reduce visual impacts from the Seward Highway and nearby residential properties.

The site plan approval provides that 59 acres (56% of the property) be reserved as undisturbed open space. All open space will be preserved as natural open space and is not intended for future development. A significant amount of landscape buffer is being provided. A 100-foot wide buffer is provided along the north boundary and a 50-foot wide open space buffer is provided along the south boundary.

With this approval, the petitioner is also required to construct a residential collector street extended by each phase of development, ultimately connecting Golden View Drive to Potter Valley Road.

### Analysis:

The petitioner's representative states that economic hardship is the cause of this time extension request and the reason the property has not yet been developed under the current site plan approval. It is very difficult for staff to determine the validity of the petitioner's argument without supporting details and documentation, and as such, staff finds it more appropriate to analyze how this development conforms to the goals and policies of the Hillside District Plan (HDP) which was adopted by the Assembly after the site plan approval (April 13, 2010).

The purpose of the HDP is to establish sound public policy that reflects the vision of Hillside residents and landowner's, and the interests of the full community of Anchorage. The plan aims to maintain the rural character of the area, including preserving the natural vegetation and access to open space, particularly in the large portion of the district where housing densities are low.

• The <u>HDP Land Use Plan Map (2.1)</u> shows this parcel as being limited intensity with 0 to 1 dwelling units per acre (DUA). The *limited intensity residential* designation provides for large lot, single family residences in a rural environment, much of which is served by private wells and septic systems. The predominant land use within this designation consists of detached houses on lots one acre or larger in size.

This development does not appear to conform to the HDP Land Use Plan Map.

Legacy Pointe Case 2013-087 August 12, 2013 Page 5

The current site plan approval is for 3.8 DUA. However, this was reduced from 6.75 DUA in the original proposal and was achieved by reducing the total number of units by 34% to 400.

Limited intensity Residential 0-1 DUA- This type of development results from a combination of preferred lifestyles, a lack of public infrastructure, remoteness and environmental constraints.

The location criteria for this designation are as follows (HDP Page 2-17):

- -Areas with an established large-lot, rural development pattern;
- -Areas outside of the water/wastewater service boundaries,
- -Areas furthest from employment and services;
- -Areas constrained by limited road access; and
- -Areas where environmental constraints preclude more intense development.

This property does not conform to the density requirements of its residential designation; however, it does not appear to meet several of the criteria for this designation.

The property is within the water and wastewater boundary and will be developed with public water and sewer service. The area surrounding the parcel is developed with a mix of large and small lots. The area to the north is zoned R-6, suburban residential (large lot) district and the area to the south is zoned R-3 SL, multiple family residential district. The property is relatively close to the transportation networks in the area. Furthermore, with development under the approved site plan an additional road connection from Golden View Drive to Potter Valley Road will be created.

• <u>Policy 1-A</u> Direct growth to the lower hillside, in areas located closer to existing services and infrastructure; to a limited degree to reduce the amount of future development in the southeast hillside.

This development does not appear to conform to Policy 1-A of the HDP.

Development of the property under the current site plan approval would allow for growth in the mid-hillside area as opposed to the lower hillside where the growth would be closer to established services.

• <u>Goal 2</u> Guide the character of development of individual properties, homesites, and subdivisions to help maintain assets such as quiet, trees and other natural vegetation, natural drainage systems, wildlife habitat, good views, access to open space, access to clean water, and dark night skies.

This development appears to conform to Goal 2 of the HDP.

Under the current site plan approval, the structures are to be clustered in a manner that will provide open space between buildings and on the site. Fifty-nine of the 104

Legacy Pointe Case 2013-087 August 12, 2013 Page 6

acres will be reserved as open space. All of the open space will be preserved as natural open space and is not intended for any future development. Additionally, a 100-foot wide landscaping buffer is being provided along the north boundary and a 50-foot wide open space buffer is being provided along the south boundary.

• <u>Policy 2-C</u> Establish a new "Hillside Conservation Subdivision" ordinance allowing flexibility in subdivision layout to better protect environmental and neighborhood character.

This development appears to conform to the intent of Policy 2-C of the HDP.

Conservation subdivisions are intended to preserve natural features by allowing flexibility in lot sizes in response to the character of individual tracts of land. The approved site plan appears to preserve the natural features of this property.

A majority of the property is to be dedicated as open space with no plans for development in the future. There are significant landscape buffers along the periphery where the existing vegetation is being retained. All stream features are protected by easements with the site plan appearing to minimize the impacts on these features. While no "Hillside Conservation Subdivision" ordinance has yet been created or adopted, the approved site plan appears to meet the intent of a conservation subdivision.

• <u>Policy 9-A</u> Identify proposed future road connections to improve the system of primary and secondary roads within the Hillside District. Map 4.1 identifies these possible connections. One such roadway connects Golden View Drive with Potter Valley Road, providing an additional east/west connection and outlet from the Hillside.

This development appears to conform to Policy 9-A of the HDP.

Under the current site plan approval, the developer is responsible for the full development of the collector roadway between Golden View Drive and Potter Valley Road, including portions outside the project boundary, but is not responsible for any upgrades to Golden View Drive. During the Planning and Zoning Commission meeting, the Commission examined the Traffic Impact Analysis and closely questioned the Municipal Traffic Engineer. The Traffic Engineer found that with the reduction in projected units, the traffic impacts would be significantly reduced and concluded that the reduced density design will not have permanent negative impacts greater than that anticipated from permitted development.

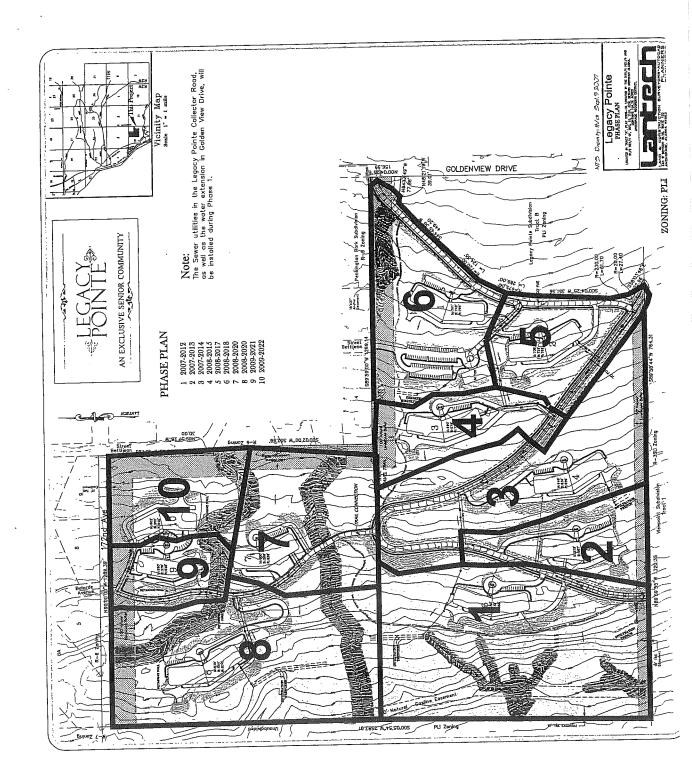
While the current site plan approval may not conform to the Land Use Plan Map for maximum density, it does appear to conform to other goals and policies outlined in the Hillside District Plan. This, coupled with the petitioner's argument of economic hardship, makes reasonable a one time 18-month time extension.

Legacy Pointe Case 2013-087 August 12, 2013 Page 7

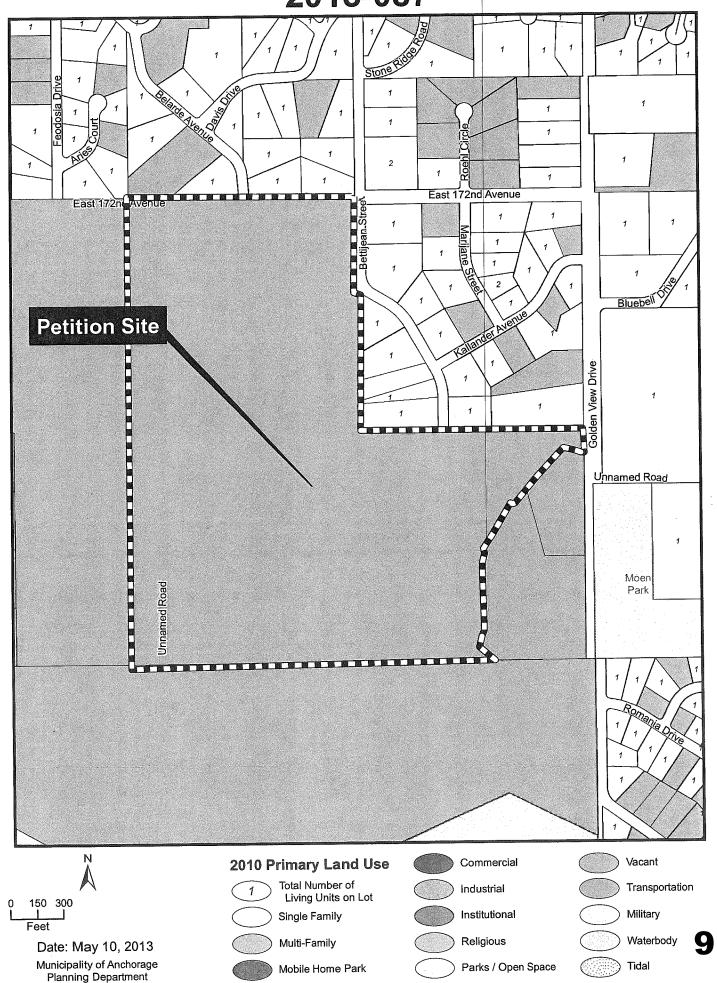
# **Department Recommendation:**

Approval of the request for an 18-month time extension of a Master Site Plan approval (Case 2006-142) to May 25, 2015 for a senior housing development in the PLI district approved by the Planning and Zoning Commission on October 22, 2007 subject to all conditions required by Resolution 2007-076 and amending the phasing plan to correspond with the following dates:

Phase 1. 2014 Phase 2. 2015 Phase 3. 2016 Phase 4. 2017 Phase 5. 2019 Phase 6. 2020 Phase 7. 2022 Phase 8. 2022 Phase 9. 2023 Phase 10. 2024

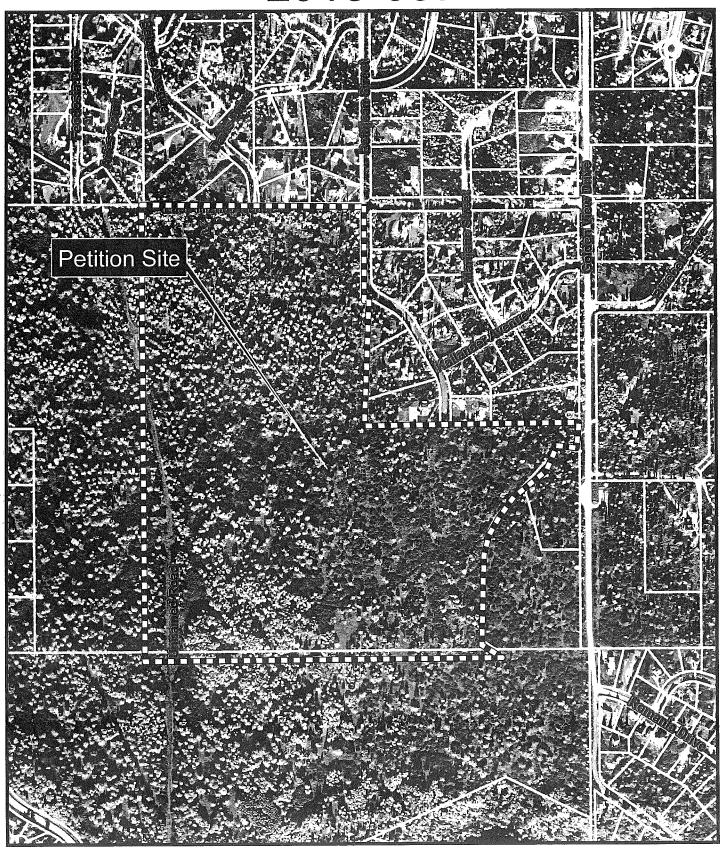


2013-087



# MAPS

# 2013-087



Municipality of Anchorage Planning Department Date: May 10, 2013

2013-087 Stone Rid 1 1 2 1 1 East 172nd Avenue East 172n 1 Bluebell **Petition Site** View Drive Unnamed Road Moen Unnamed Road Park Vacant 2010 Primary Land Use Commercial Total Number of Transportation Industrial Living Units on Lot 150 300 Institutional Military Single Family Feet Waterbody Religious Multi-Family Date: May 10, 2013 Municipality of Anchorage Planning Department Tidal Parks / Open Space Mobile Home Park

# APPLICATION



Land Surveying
Land Development Consultants
Subdivision Specialists
Construction Surveying

124 E 7th Avenue, Anchorage, Alaska 99501

www.S4AK.com

907-306-8104

Mr. David Whitfield Senior Planner MOA Planning Department 4700 Elmore Road Anchorage, Ak 99507

May 9, 2013

Dear Mr. Whitfield,

On behalf of the petitioner, Goldenview Development Co., the current owners of Tract A, Legacy Point Subdivision, I am requesting an eighteen month time extension for Planning & Zoning Resolution No 2007-076, AKA P & Z Case # 2006-142. It is my understanding that the approval expires on November 25, 2013, which is five years from the Board of Adjustments denial of the Appeal. I have enclosed a copy of the original Planning and Zoning Approval, and a copy of the Board of Adjustments decision.

Our proposed time extension would of course add eighteen months to all of the timelines within the conditions of approval.

In the General Conditions of Approval for the Site Plan, condition 1.f, last sentence, requires that a "good cause" be shown before granting an extension. The good cause in this request is for the following reason: The worst economic collapse in the history of the United States. The economic hardship has been devastating to the owners of this property. Hundreds of thousands of dollars have been spent and lost. With the economy beginning to turn around, this 18 month extension will help the owners mantain the value in the property they have spent so much to create. With the possibility of this project coming to fruition, we hope that you will grant this simple 18 month time extension.

Thank you,

Tom Dreyer, PLS

S4 Group

Petitioner's representative



Land Surveying Land Development Consultants Subdivision Specialists Construction Surveying

124 E 7th Avenue, Anchorage, Alaska 99501 www.S4AK.com

907-306-8104

Mr. David Whitfield Senior Planner MOA Planning Department 4700 Elmore Road Anchorage, Ak 99507

July 24, 2013

Attn: Mr. Whitfield

Re: Legacy Pointe Time Extension Additional Information

Dear Mr. Whitfield,

As previously stated, the condition we are complying with for this Time Extension request is General Condition 1.f of Planning & Zoning Resolution 2007-076, as approved on October 22, 2007, and as further approved by the Anchorage Board of Adjustment on November 25, 2008. The last sentence of this condition is; " If a building permit is not timely issued within these time periods, then the Master Site Plan approval shall be null and void for any uncompleted phases unless the **Planning and Zoning Commission grants an extension for good cause** shown following a public hearing."

The key phrase here is "for good cause."

# New Title 21 References to Site Plan Time Extension

It is of some value to note that in the new Title 21, that becomes by choice, effective on January 1, 2014, Time Extensions are specifically defined in new Title 21.03.180.E.2. The extensions are defined as follows:

### First Extension

Upon written application by the applicant at least thirty 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.,,,,,"

### 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 may grant additional extension without a public hearing**, each one not to exceed 12 months. ,,,,,"

In the new Title 21, the original approval is for 24 months, then after that, there is no limit on the amount of 12 month time extensions that can be granted without public hearings. The first time extension can be directed solely by the Planning Director, then subsequently after that, by a non-public hearing by the UDC. It is clear that the authors of the new Title 21, who spent over ten years working, reviewing, and refining the text, respected the original Site Plan approval

process. They give credence to the petitioners that may have spent years in the public planning process to obtain approval, and respected the fact the there is no glass ball for predicting the future, especially for new construction.

# Current Title 21 regulations concerning Master Site Plan Time Extensions

Let's now see how the current Title 21 regulates time extensions for Master Site Plan Time Extensions. There is none. The only regulation we are left with is the definition of "for good cause" in the existing Master Plan Approval. Usually, good cause is defined as development confinements due to the economic reality of the situation.

# **Economic Reality**

The economic calamity of the last five years has had a substantial effect on the progress of the development of Legacy Pointe. The market for Senior Housing Condos collapsed after 2007, and is now just in the recovery stage. The timing for the construction of Legacy Pointe could very well be perfect at this time. As per State of Alaska data, the Anchorage number of new units built has increased from 72 for the first quarter of 2012, to 123 units for the first quarter of 2013. Statewide housing new building activity peaked at 4,664 units in 2004, plummeted to 2,205 units in 2008, and settled to 1,918 units in 2012. The statewide foreclosure rate has doubled between 2006 and 2010, the increase driven by a dramatic jump in Anchorage foreclosures, as per Alaska DOL statistics. (See enclosure.) The Anchorage condominium loan activity has substantially increased from a 2012 YTD of 150 to 213 units YTD 2013. This number includes sales of existing condos. (See attachment titled Condominium Loan Activity in Alaska. Ak DOL.)

There is no doubt in any sensible persons mind that the previous owners were caught in an economic disaster not of their making or choosing, as many of us in the building industry can attest to. It was the "perfect storm" of economic hard times for the new construction industry.

# Other Allowed Uses as per Title 21

Other allowed uses in the PLI zoning district are, among others; Educational institutions, cemeteries, monasteries, placer mining operations, churches, police and fire stations, golf courses, day care, 24 hour child care facilities, offices and centers for family self sufficiency services, etc. Our current Master Site Plan approval is for Housing for the Elderly, also a permitted use. A permitted use that will:

- 1) Respect our elders by providing quality housing in a quiet peaceful surrounding,
- 2) Respect the land through providing huge greenbelts throughout the project, and
- 3) Respect the neighbors by providing extra wide buffer landscaping around the perimeter.
- 4) Provide a much needed collector road ROW that will provide fire and police access for the safety of all of the neighbors and hillside residents south of Rabbit Creek Road.

### **Historical Protocol**

In all of my thirty years or so of dealing with land development approvals, all of our time extension requests have been approved. Petitioners put a lot of time and money and effort into obtaining these very public approvals, and their requests for time extensions are approved. In this particular case, years were spent, many, many public hearings were held, and in the end, the Planning & Zoning Commission approved the plan, and the Board of Appeals approved the plan.

The past, and current owner, Mr John Berggren, of The Goldenview Development Company, has recently taken back ownership of Legacy Pointe, Tract A. He is in differing stages of negotiations with very large organizations that are interested in developing the project. The approval of this time extension will help maintain the value of the property, and give some time for the future new owners to begin the construction process.

Granting this Time Extension, quite simply, is the proper thing to do. We ask you to please approve this request for the Legacy Pointe Master Plan Time Extension.

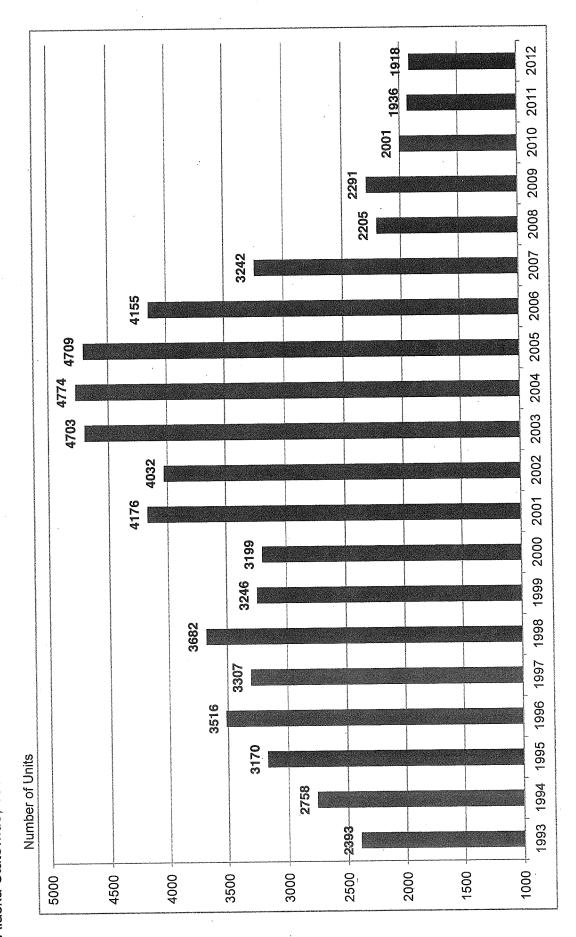
Thank you,

Tom Dreyer, PLS

S4 Group

Petitioner's representative

Alaska Statewide, 1993 to 2012 **Building Activity** 



Squrce: Alaska Dept of Labor & Workforce Development, Research and Analysis Section, New Housing Unit Survey

# Foreclosures in Alaska

# How the state compares to the nation



he housing bubble and subsequent foreclosure crisis in the United States continues to hamper regional housing markets and broad economic recovery, but Alaska was one of the healthiest states in terms of mortgage delinquencies throughout the national collapse, and the state's housing market remains relatively stable. Though Alaska's housing market has cooled since 2006, the state had the third-lowest delinquency rate in the U.S. in the rst quarter of 2012.

Alaska's economy was largely insulated from the problems that led to the national recession, keeping up a brisk clip through the rst half of the decade as residential construction boomed, particularly in the Matanuska-Susitna Borough. But Alaska's accelerated building pace didn't have the same speculative fervor as many regions in the Lower 48, and it didn't result in the same level of over-building.

The state's lending practices were also much

more conservative than the national average — a smaller percentage of mortgages in Alaska were subprime or adjustable rate, both indicators of increased default risk.

# The national buildup

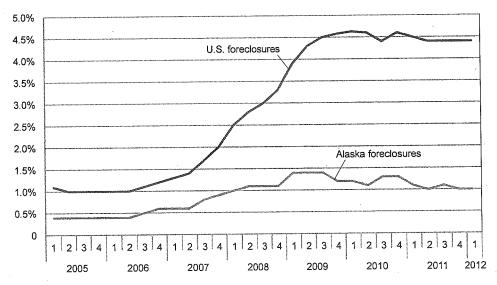
During the early 2000s, the housing bubble seemed like a path to prosperity for many Americans. After the dot-com bust in the late 1990s, housing seemed like a safer bet. Easy access to credit allowed subprime borrowers, perhaps with bad credit or without a veri able repayment mechanism, to nance the American dream of home ownership — even if that was a dream they couldn't afford.

Lenders bundled, subdivided, and resold those risky mortgages to mega-players in the international nance market as high-yield nancial instruments called mortgage-backed securities.

Existing homeowners watched their net wealth skyrocket as home prices appreciated at an unprecedented rate. Residential builders were selling homes before the land had even been cleared. Realtors were ipping houses and taking big cuts. It seemed like everyone was making money.

The booming housing market started to deteriorate when the inventory of new housing swamped demand. When overstretched borrowers began to default on their loans, the collapse began in earnest. Foreclosures surged and housing prices plummeted, all while global nancial institutions realized they'd been betting on bad hands. Many homeowners, even those who could make

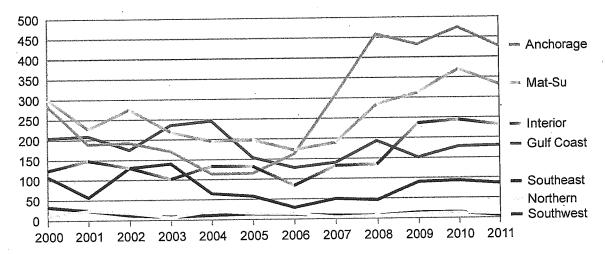
# U.S. vs. Alaska Foreclosure Rates 2005 to 2012



Source: Mortgage Bankers Association, National Delinquency Survey

# Anchorage Led the State in Foreclosures

Alaska regions, 2000 to 2011



Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

ern regions remained mostly stable between 2000 and 2011. (See Exhibit 4.)

The increase in Anchorage, and to some extent in Mat-Su and Fairbanks, was due to many of the same factors that caused the foreclosure spike in the rest of the country. Although subprime and adjustable rate mortgages weren't as prevalent in Alaska as they were in the rest of the U.S., they do exist in the state and have higher delinquency rates than conventional mortgages. A weak Alaska job market in 2009 didn't help matters.

Alaskans' appetite for buying homes diminished during the recession, which of cially ended in 2009, but had begun falling a few years earlier. After reaching a peak in 2006, total loan volume for single-family homes and condominiums dropped in 2007 and remained below that level through 2011. New housing construction fell during the same period.

# Swings in home value indexes

Alaska's home sales prices, when adjusted for ination, have fallen slightly statewide. According to the Federal Housing Finance Authority housing price index, Alaska's index value has been up and down since 2008. (See Exhibit 5.)

Alaska's index value has been relatively stable

compared to many other states, though. Nevada is an example of a state with an extreme swing between positive and negative home price changes. Nevada had a remarkable housing boom during the rst half of the decade, but houses were built faster than they could be sold — especially when credit tightened.

Nevada's price index, which hit its peak in 2004, was increasing faster than 30 percent per year. The growth slowed until 2006, when prices started to drop and Nevada's housing market went from bad to worse quickly. The free fall accelerated until late 2008, when prices were 32 percent below the previous year's levels. Nevada's home price index value has not increased over-the-year since 2006, although it's currently dropping at a slower rate.

The state of Washington's trajectory was less dramatic than Nevada's. For one, the FHFA home price index never climbed as quickly as it did for its southwest neighbor. Compared to Nevada, prices accelerated later and less dramatically. The highest year-over-year change in the index was in 2006, nearly two years after Nevada's peaked. Washington's prices started falling in 2008, which was more in line with the national average.

In contrast, North Dakota's housing market was barely touched by the crisis. The shale oil fracking boom was largely responsible for the state's growth throughout the national recession. North

# Condominium Loan Activity in Alaska Including AHFC



								Dr. 1		Total Tot	tal Market
	Chg	Number	Chg	Chg	Average						Value <sup>1</sup>
YTD	Prv YTD	of Loans	Prv Qtr	Prv Yr	Loan	Total Loans	Prv Yr				
213	53	213	-122	53	\$182,263	\$38,821,925	\$10,651,867	88.6	\$204,965	\$43,657,504	87.7
223		3		-4	107.867	323,602	-869,018	0.7	165,667	497,000	1,0
2	•	2				166,575	-325,566	0,4	93,450	186,900	0.4
1		1	-1			118.750	-127,430	0.3	125,000	125,000	0.3
25	•	25	4	_		3,912,118	3,164,044	8.9	190,016	4,750,400	9.5
23	1	1	1	1			57,000	0.1	60,000	60,000	0.1
	ņ	n	ñ	n		0	0	0.0	N/A	0	0.0
0	0	0	0	-		0	0	0.0	N/A	0	0.0
0	1	3	2	1		404 500	87.149	0.9	255,750	511,500	1.0
247		247	120	68				100.0	201,572	49,788,304	100.0
	213 3 2 1 25 1 0 0 2	YTD Prv YTD 213 53 3 -4 2 -2 1 -1 25 20 1 1 0 0 0 2 1	YTD         Prv YTD         of Loans           213         53         213           3         -4         3           2         -2         2           1         -1         1           25         20         25           1         1         1           0         0         0           0         0         0           2         1         2	YTD         Prv YTD         of Loans         Prv Qtr           213         53         213         -122           3         -4         3         -11           2         -2         2         -3           1         -1         1         -1           25         20         25         4           1         1         1         1           0         0         0         0           0         0         0         0           2         1         2         2	YTD         Prv YTD         of Loans         Prv Qtr         Prv YT           213         53         213         -122         53           3         -4         3         -11         -4           2         -2         2         -3         -2           1         -1         1         -1         -1           25         20         25         4         20           1         1         1         1         1           0         0         0         0         0           0         0         0         0         0           2         1         2         2         1	YTD         Prv YTD         of Loans         Prv Qtr         Prv Yr         Loan           213         53         213         -122         53         \$182,263           3         -4         3         -11         -4         107,867           2         -2         2         -3         -2         83,288           1         -1         1         -1         -1         118,750           25         20         25         4         20         156,485           1         1         1         1         57,000           0         0         0         0         N/A           0         0         0         0         N/A           2         1         2         2         1         202,250	YTD         Prv YTD         of Loans         Prv Qtr         Prv YT         Loan         Total Loans           213         53         213         -122         53         \$18,2263         \$38,821,925           3         -4         3         -11         -4         107,867         323,602           2         -2         2         -3         -2         83,288         166,575           1         -1         1         -1         -1         118,750         118,750           25         20         25         4         20         156,485         3,912,118           1         1         1         1         1         57,000         57,000           0         0         0         0         N/A         0           0	YTD         Prv YTD         of Loans         Prv Qtr         Prv Yr         Loan         Total Loans         Prv Yr           213         53         213         -122         53         \$18,22,63         \$38,821,925         \$10,651,867           3         -4         3         -11         -4         107,867         323,602         -869,018           2         -2         2         -3         -2         83,288         166,575         -325,556           1         -1         1         -1         -1         118,750         118,750         -127,430           25         20         25         4         20         156,485         3,912,118         3,164,044           1         1         1         1         1         57,000         57,000         57,000           0         0         0         0         N/A         0         0           0         0         0         0         N/A         0         0           0         0         0         N/A         0         0           0         0         0         N/A         0         0           0         0         0         N/A	YTD         Prv YTD         of Loans         Prv Qtr         Prv Yr         Loan         Total Loans         Prv Yr         Volume¹           213         53         213         -122         53         \$182,263         \$38,821,925         \$10,651,867         88.6           3         -4         33         -11         -4         107,867         323,602         -869,018         0.7           2         -2         2         -3         -2         83,288         166,575         -325,566         0.4           1         -1         1         -1         118,750         118,750         -127,430         0.3           25         20         25         4         20         156,485         3,912,118         3,164,044         8.9           1         1         1         1         57,000         57,000         57,000         0.1           0         0         0         0         N/A         0         0         0.0           0         0         0         0         N/A         0         0         0.0           0         0         0         0         N/A         0         0         0.0	YTD         Prv YTD         of Loans         Prv Qtr         Prv YT         Loan         Total Loans         Prv Yr         Volume <sup>1</sup> Sales Price           213         53         213         -122         53         \$182,263         \$38,821,925         \$10,518,667         88.6         \$204,965           3         -4         3         -11         -4         107,867         323,602         -869,018         0.7         165,667           2         -2         2         -3         -2         83,288         166,575         -325,566         0.4         93,450           1         -1         1         -1         -1         118,750         118,750         -127,430         0.3         125,000           25         20         25         4         20         156,485         3,912,118         3,164,044         8.9         190,016           1         1         1         1         57,000         57,000         57,000         0.1         60,000           0         0         0         0         N/A         0         0         0.0         N/A           0         0         0         0         0         0         0         <	Number     Number     Number     Number     Number     Number

# Single-Family Loan Activity in Alaska Including AHFC 1st Qtr 2013

1St Qtr 2013		Ch-	Normalina	Chg	Chg	Average		Chg.	% Loan	Average	Total To	al Market
Location	YTD	Chg Prv YTD	Number of Loans	Prv Otr	Prv Yr	Loan	Total Loans	Prv Yr	Volume <sup>1</sup>	Sales Price	Sales Volume	Value <sup>1</sup>
Anchorage	654	85	654	-328	85	\$298,980	\$195,533,232	\$36,640,467	55.6	\$331,989	\$217,120,899	55.5
Mat-Su	245	36	245	-144	36	230,984	56,591,136	10,882,707	16.1	254,284	62,299,466	15.9
Fairbanks	145	-12	145	-117	-12	213,260	30,922,764	-3,282,001	8.8	239,090	34,668,115	8.9
Kenai	120	8	120	-57	8	207.142	24,857,036	3,030,030	. 7.1	232,665	27,919,752	7.1
Juneau	68	28	68	-26	28	298,057	20,267,881	9,960,757	5.8	322,172	21,907,700	5.6
Ketchikan	11	-5	11	-8	-5	241,510	2,656,615	-965,850	0.8	263,000	2,893,000	0.7
Kodiak	20	10	20	-8	10	285,745	5,714,907	2,825,953	1.6	320,874	6,417,473	1.6
Bethei	4	· 1	4	-1	1	268,668	1,074,670	381,670	0.3	289,500	1,158,000	0.3
Rest of State	66	7	66	-36	7	217,695	14,367,849	2,253,454	4.1	252,522	16,666,483	4.3
Statewide Total	1,333	158	1,333	-725	158	264,056	351,986,090	61,727,186	100.0	293,362	391,050,888	100.0

# Multi-Family Loan Activity in Alaska Including AHFC 1st Qtr 2013

st Otr 2013						•			•
		Number		Chg	Average		Average		% Total Market
Location	# Units2	of Loans	YTD Pr	v YTD	Loan	Total Loans	Sales Price	Sales Volume	Value <sup>1</sup>
Anchorage	397	45	45	7	\$832,260	\$37,451,694	\$1,102,081	\$49,593,657	87.9
Mat-Su	28	7	7	0	315,736	2,210,149	420,313	2,942,192	5.2
Fairbanks	4	1	1	-1	250,381	250,381	255,000	255,000	0.5
Kenai	32	8	8	1	173,024	1,384,194	247,313	1,978,500	3,5
Juneau	8	2	2	1	410,615	821,229	482,000	964,000	1.7
Ketchikan	4	1	1	1	299,200	299,200	420,000	420,000	0.7
Kodiak	7	ñ	ō	-1	N/A	. 0	N/A	0	0.0
Bethel	0	0	0	0	N/A	0	N/A	0.	0.0
Rest of State	4	1	1	1	234,442	234,442	250,000	250,000	0.4
Statewide Total	477	65	65	9	656.174	42,651,289	867,744	56,403,349	100.0

Notes:

Based on the quarterly Survey of Lender's Activity, a survey of private and public mortgage lenders.

1. Total may not sum due to rounding.

2. Total in "etinits" column may not sum since some lenders do not report units by area.

Multi-family residences include buildings with more than three units.

Some of the increased lending activity in the 2nd quarter of 2012 may be attributed to the inclusion of a new lender to the survey sample.

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section.

# New Construction vs. Existing Housing Loan Activity in Alaska Including AHFC Single Family, and Condominium $\,$



1st Qtr 2013	New Sin	gle Family	Construct	ion					% Loan	Average	Total	% Total
		Chg	Number	Chg	Chg	Average	Total Loans	Chg Prv Yr	Volume	Sales Price		
Location	YTD	Prv YDT	of Loans	Prv Qtr	Prv Yr	Loan			47.1	433,124	23,388,704	45.0
Inchorage	54	13	54	-20	13	\$403,683	\$21,798,884	\$6,998,737				
			60	-44	-12	\$266,839	\$16,010,339	-\$1,111,028	34.6	295,228	17,713,660	
√at-Su	60	-12		-44	_		\$2,721,224	-\$1,825,834	5.9	332,833	3,994,000	7.7
airbanks	12	-6	12	-2	-6	\$226,769			9.1	323,453	5,175,247	10.0
	16	-11	16	2	-11	\$263,272	\$4,212,359	-\$967,296	9.1		3,1,5,1,	
enai	10			-	-4	N/A	\$D	-\$1,189,396	-	N/A	U	-
uneau	0	-4	U	-3			\$0	èn	_	N/A	0	-
etchikan	٥	. 0	0	-1	0	N/A				395,000		1.5
		2	2	0	2	\$340,506	\$581,012	\$681,012	1.5		7,50,000	2.0
Codiak	2	-			-1	N/A	\$0	-\$251,754	-	N/A	0	-
Bethel	0	-1	0	U	-1			\$50,183	1.9	234,363	937,450	1.8
Rest of State	4	0	4	-6	0	\$223,918	\$895,670					
Statewide Total	148	-19	148	-74	-19	\$312,970	\$46,319,488	\$2,384,624	100,0	351,345	51,999,001	100.0

1st Qtr 2013	Existing	Single Fa	mily Reside					Chq	% Loan	Average	Total	% Total
		Chg	Number		Chg	Average Loan	Total Loans	Prv Yr	Volume		Sales Volume	Market Value
ocation	YTD	Prv YDT	of Loans	Prv Qtr	Prv Yr			\$29,641,730	56,8	322,887	193,732,195	57.1
Anchorage	600	72	600	-308	72	\$289,557	\$173,734,348	\$11,993,734	13.3	241,004	44,585,806	13.2
Mat-Su	185	48	185	-100	48	\$219,356	\$40,580,797		9.2	230,632	30,674,115	9.0
Fairbanks	133	-6	133	-115	-6	\$212,042	\$28,201,540	-\$1,456,167		218,697	22,744,505	6.7
Kenai	104	19	104	-59	· 19	\$198,507	\$20,644,677	\$3,997,326	6.8		21,907,700	6.5
	68	32	68	-23	32	\$298,057	\$20,267,881	\$11,150,153	6.6	322,172		0.9
uneau	11	-5	11	-7	-5	\$241,510	\$2,656,615	-\$965,850	0.9	263,000	2,893,000	
Cetchikan	18	-5	18	-8	8	\$279,661	\$5,033,895	\$2,144,941	1.6	312,637	5,627,473	1.7
Codiak	10		10	-1	2	\$268,668	\$1,074,670	\$633,424	0.4	289,500		0.3
Bethel	4			-30	7	\$217,293	\$13,472,179	\$2,203,271	4.4	253,694		4.6
Rest of State Statewide Total	1,185	177	1.185	-651	177	\$257,946	\$305,666,602	\$59,342,562	100.0	286,120	339,051,827	100.0

1st Qtr 2013	New Cor	ndo Const						Chg	% Loan	Average	Total	% Total
		Chg	Number	Chg	Chg Prv Yr	Average Loan	Total Loans	Prv Yε	Volume		Sales Volume	Market Value
Location	YTD	Prv YDT		Prv Qtr	PIV II			\$844,199	94.8	272,487	6,267,194	95.0
Anchorage	23	2	23	-9	2	\$251,458	\$5,783,527					_
	0	٥	n	-2	0	N/A	\$0	\$0	-	N/A		
Mat-Su				_	0	N/A	\$0	\$0	-	N/A	U	-
Fairbanks	0	U	U				\$0	\$0	-	N/A	0	-
Kenai	0	0	0	0	U	N/A	7 -	\$0		N/A	, 0	-
Juneau	n	0	0	0	0	N/A	\$0	şυ	_		_	_
		ň	0	0	0	N/A	\$0	\$0	-	N/A	Ů.	
Ketchikan	U				-	N/A	\$0	\$0	-	N/A	0	-
Kodiak	0	0	U	U	0		\$0	, ÷n	-	N/A	0	-
Bethel	0	0	0	0	U	N/A		40	5.2	330,000	330,000	5.0
Rest of State	1	n	1	1	0	\$319,500	\$319,500	\$2,149				
			24	-10	2	\$254,293	\$6,103,027	\$846,348	100.0	274,883	6,597,194	100,0
Statewide Total	24		24	-10		400 1/22						

1st Qtr 2013	Existing	Condo Re	sidences						0/ 1-55	Average	Total	% Total
250 Q 51 20 20		Chg	Number	Chg	Chg	Average		Chg Prv Yr	% Loan Volume	Sales Price		
Location	YTD	Prv YDT	of Loans	Prv Qtr	Prv Yr	Loan	Total Loans			196,791	37,390,310	86.6
	190	51	190	-113	51	\$173,886	\$33,038,398	\$9,807,668	87.6			
Anchorage	190	31	130	-9	-4	\$107,867	\$323,602	-\$869,018	0.9	165,667	497,000	1.2
Mat-Su	3	-4	3				\$166,575	-\$325,566	0.4	93,450	186,900	0.4
Fairbanks	2	-2	2	-3	-2	\$83,288		-\$127,430	0.3	125,000	125,000	0.3
Kenai	1	-1	1	-1	-1	\$118,750	\$118,750			190,016	4,750,400	11.0
	25	20	25	4	20	\$156,485	\$3,912,118	\$3,164,044	10.4			0.1
Juneau	23	20		•	1	\$57,000	\$57,000	\$57,000	0.2	60,000	60,000	0.1
Ketchikan	1	1	1	- 1		N/A	\$0	\$0	-	N/A	0	-
Kodiak	٥	0	0	0	U		7.	én.		N/A	0	-
Bethel	0	0	0	0	0	N/A	\$0	φυ 		181,500	181,500	0.4
	- 1	1	1	1	1	\$85,000	\$85,000	\$85,000	0,2			
Rest of State	A		223	-120	66	\$169,065	\$37,701,443	\$11,791,698	100.0	193,682	43,191,110	100.0
Statewide Total	223	66	223	-120		4205,000	7-1.02/					

Notes:

Based on the quarterty Survey of Lender's Activity, a survey of private and public mortgage lenders.

Beginning 2nd quarter 1999, an adjustment is made to reduce double counting of loans reported by both primary and secondary lenders.

Comparisons with earlier quarter will under- or over-state differences in activity.

Some of the increased lending activity in the 2nd quarter of 2012 may be attributed to the inclusion of a new lender to the survey sumple.

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section.



Refinance Loan Activity in Alaska Including AHFC Single Family, and Condominium

	מווע										Take W	- A-
		Cha	Number	Chg	Chg	Average			o .	Average	lotal	% lota
100	QT.	Prv VDT	of Loans	Prv Otr	Prv Yr	Loan	Total Loans	Prv Yr	Volume	/olume Sales Price	Sales Volume	Market Value
		50,	-	787	-102	\$252.740	\$371,274,729	-\$32,885,559	57.6	\$335,383	\$492,677,683	57.
nchorage		707-		101	1 4	100 073	205 587 307	-3.708.603	14.8	254,549	121,674,305	14.
/at-Su	4/8	97	4/0	1/-	9		120,120,120	105 874	ď	248 306	66.297.669	7.7
airbanks	267	?	267	99-	7-	195,414	26,121,036	10,001,2	1 6	00000	000 000 11	c
	203	-41	293	-20	-41	180,947	53,017,392	-10,103,397	8.7	562,829	7,,008,802	
	27.	<u> </u>	7	Ŧ		227,073	36.104.654	-4,408,315	5.6	337,916	53,728,604	9
Juneau .	CT	·	601	•		מכני טטני	2 C 0 0 2 E A E	-1 135 059	7.7	296,650	9,789,463	;
Cetchikan	33	'n	33	7-	,	677,607	0101000	000000000000000000000000000000000000000	;	10000	000 000 77	•
	44	-24	44	-23	-24	237,275	10,440,104	-5,372,359	1.6	330,247	14,530,882	•
	F \$	Ţ	: =	. 4	7	193,701	1,937,006	-177,763	0.3	258,000	2,580,000	0
setnel	10	1 .	2 2		- 6.	179 274	16.672.510	-6,762,033	2.6	257,527	23,949,975	2.
est of State	93	/7-	2000	77-	101-	226.304	644.059.899	-66,658,962	100.0	302,965	862,237,383	100.0

1et Otr 2012	Condominiums	ms										
		Cha	Number	Chg	Chg	Average		Loan Vol. Chg % Loan Average	% Loan	Average		
100	CF>		of Loans	Prv otr	Prv Yr	Loan	Total Loans	Prv Yr	Volume \$	ales Price	S S	market va
FOCALION		١.	05.0	45	~	¢166 027	\$39,680,572	\$15,425	91.7	\$200,541		8.06
Anchorage	4.39		2,1	7 1		008 271	869 493	-63.122	2.0	206.800	1,034,000	2.0
Mat-Su	5	0	n	-	<b>.</b>	CCO'C / T	1000	709 00		225 000	661 000	E
Fairbanke	m		m	-2	7	109,162	347,485	+60,00-	2	550,032	000/100	;
- Salingains		4	-	7-	ç	499.500	499,500	-562,972	1.2	295,000	295,000	1.1
Kenai	<b>⊣</b> (	? '	ı Ç	•		147 013	1.764,160	934,890	4.1	202,168	2,426,015	4.6
Juneau	77	D •	71	4 6	· <del>-</del>	108 250	108.250	108,250	0.3	147,000	147,000	0.3
Ketchikan '	-	ri (	<b>-</b> 1 0	> 0	4 6	100,200 M/M		0	0.0	N/A	0	0.0
Kodiak	0	0 0	0 0	0		N/A		0	0.0	N/A	0	0.0
Bethel	0 0		<b>.</b>	> +7	7	A/N	0	-105,989	0.0	N/A	0	0.0
Rest of State		-	2	09	,	165 707	43.249.460	295,788	100.0	202,269	52,792,295	100.0
Statewide Total	261	7	707	90-	7	100/100	201/21 =/21					

NOCES:
Bessed on the quarterly Survey of Lender's Activity, a survey of private and public mortgage lenders.
Bessed on the quarterly Survey of Lender's Activity, a survey of private and public mortgage lenders.

Refinance activity, was first collected in the 3rd quarter of 2005.

Some of the increased lending activity in the 2nd quarter of 2012 may be attributed to the inclusion of a new lender to the survey sample.

# FOREST HEIGHTS LLC SITE PLAN REVIEW: HOUSING FOR THE ELDERLY IN THE PLI DISTRICT (LEGACY POINTE), APPEAL NO. 2006-142

# APPEAL FROM THE PLANNING AND ZONING COMMISSION TO THE MUNICIPALITY OF ANCHORAGE BOARD OF ADJUSTMENT

# **DECISION AND FINDINGS**

WHEREAS, by Corrected Resolution No. 2007-076 dated February 4, 2008, the Anchorage Municipal Planning and Zoning Commission ("Commission") approved the Site Plan Review for Housing for the Elderly located at Legacy Pointe, Tract A, subject to detailed General Conditions; and

WHEREAS, the home and landowners organization, HALO, Inc. ("appellant") appealed the Commission's action to the Board of Adjustment, alleging error in the interpretation and application of law by allowing the private development of housing for the elderly in the Public Lands and Institution (PLI) land use district; and

WHEREAS, the Board of Adjustment deliberated over and decided the appeal at a meeting open to the public held on October 8, 2008;

NOW THEREFORE BE IT RESOLVED, that the Board of Adjustment adopts the following decision and findings:

# PLANNING AND ZONING COMMISSION ACTION ON APPEAL

- 1. After public hearings on August 20, 2007, October 15, 2007, October 22, 2007, and deliberation December 19, 2007, January 14, 2008, and February 4, 2008, appellant's site plan review was approved by the Planning & Zoning Commission, as reconfigured with lower density and profile, and subject to the terms of Corrected Resolution No. 2007-076 adopted February 4, 2008.
- 2. Notice of Appeal to the Board of Adjustment was filed on February 21, 2008.

# PRELIMINARY MATTERS

3. The Board of Adjustment decided to first address the 2-page Issue Response Memorandum for Chapter 21.04 of the Title 21 Rewrite, prepared by

Tom Nelson, Planning Director, dated December 1, 2007, and appended to appellant's brief.

<u>Issue No. 1</u>: Should the Board of Adjustment consider the memorandum identified at R. 2199–2200, which is not part of the record on appeal?

- 4. Under AMC 21.30.090, the Board of Adjustment hears this appeal solely on the basis of the record established before the Planning & Zoning Commission, the notice of appeal, the appellant's argument and the reply thereto. AMC 21.30.080.B prohibits the Board of Adjustment from taking additional evidence and AMC 21.30.040 specifically states that allegations of new evidence shall not be considered or decided by the Board of Adjustment.
- 5. By unanimous vote (3-0), the Board of Adjustment finds that the memorandum dated December 1, 2007 (R. 2199–2200) should be stricken from the record and not considered by the Board of Adjustment.

# MAIN ISSUES

- <u>Issue No. 2</u>: Did the Planning & Zoning Commission err as a matter of law in granting final site plan approval for the private development of multi-family housing, for use as private non-institutional housing for the elderly, in a Public Lands and Institutions (PLI) district?
- 6. This is a legal issue over which the Board of Adjustment will exercise its independent judgment.
- 7. General guidance is offered under AMC 21.05.050.C.5: The "public lands and institutions" classification is for "areas substantially developed for active public and institutional uses, and vacant areas designated for future public and institutional uses." Nothing in AMC 21.05.050.C.5 precludes private development.
- 8. Areas "substantially" developed for active public and institutional uses may also permit other uses without violating the general classification system.

- 9. There is no requirement in AMC 21.05.050.C.5 that all "institutional" uses be publicly owned or developed: Educational institutions are examples of "institutional uses" which can be public or private.
- 10. AMC 21.40.020.B, lists permitted principal uses in the PLI district, including the following which clearly may be private: placer mining operations; child care homes; ski towers.
- 11. The listing of permitted principal uses in AMC 21.40.020.B does not support a restrictive reading of AMC 21.05.050.C.5 as precluding private development.
- 12. AMC 21.40.020.B.15 lists "housing for the elderly", not "public housing for the elderly". If the Assembly had intended to preclude private development, the restriction to "public housing" would have been stated.
- 13. Private housing for the elderly is a permitted principle use in the PLI district.
- 14. "Housing for the elderly" is defined in AMC 21.35.020.B as "multiple-family housing especially designed for occupancy by persons 62 years of age and older and requires 30 percent of the units within the facility to be handicapped accessible with accommodation for wheelchairs".
- 15. Planning & Zoning Commission Resolution 2007-076, General Condition B.1.b. (R. 624), imposes a minimum threshold requirement of compliance with AMC 21.35.020.B.
- 16. By majority vote (2-1), the Board of Adjustment finds that the Planning & Zoning Commission did not err as a matter of law in granting final site plan approval for the private development of multi-family housing, for use as private non-institutional housing for the elderly, in a PLI Public Lands and Institutions (PLI) district.
- Issue No. 3: Did the Planning & Zoning Commission err as a matter of law in its determination of the proper application of AMC 21.40.020.N?

- 17. The Planning and Zoning Commission Finding of Fact No. 12 (R. 623) was: The Commission finds the proposal and site plan generally meets (sic) the applicable definitions, procedures, regulations and standards in accordance with AMC 21.35.020.B, 21.40.020, 21.15.015, 21.15.030, and 21.50.200.
- 18. This is a legal issue over which the Board of Adjustment will exercise its independent judgment.
- 19. The Board approaches this issue from the perspective of both the Board's finding that private housing for the elderly is a permitted principal use in the PLI district, and recent guidance offered to the Board by the Alaska Supreme Court in determining whether a provision in the Anchorage Municipal Code is directory or mandatory.
- 20. Under the 3-prong test enunciated by the Supreme Court in South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Board of Adjustment, 172 P.3d, 768, 772 (December 2007), the Board finds AMC 21.40.020.N to be directory and not mandatory.
- 21. The provisions of AMC 21.15.015 have no practical application to private development of housing for the elderly in the PLI district.
- 22. The site plan review for private development of housing for the elderly in the PLI district is appropriately accomplished under AMC 21.15.030 and 21.50.200.
- 23. By unanimous vote (3-0), the Board of Adjustment finds that the Planning & Zoning Commission did not err as a matter of law in determining the proper application of AMC 21.40.020.N.
- <u>Issue No. 4</u>: Is the evidence in the record sufficient to support the Planning & Zoning Commission's findings and conclusions regarding the impact of project density and the project's compatibility with surrounding land uses?
- 24. This issue presents a mixed question of law and fact. The Commission's methodology presents a legal issue relating to the interpretation

and construction of AMC 21.50.200, over which the Board may exercise its independent judgment.

- 25. Whether or not the site plan, with conditions, meets the standards of 21.50.200 is a factual issue. The Board will defer to the Planning and Zoning Commission on factual issues unless, upon two-thirds vote, the Board substitutes its independent judgment.
- 26. In the Planning & Zoning Commission review process, the project density was significantly reduced from what the developer had originally submitted, and density mitigation measures were incorporated as reflected in Planning & Zoning Commission Resolution 2007-076.
- 27. The Planning & Zoning Commission's review of project density and compatibility is reflected in Commission Findings of Fact Nos. 4, 5, and 10, as supplemented by General Condition No. 1.c.
- 28. Under AMC 21.50.200, the allowable (i.e. permitted) uses set out in the Code for the land use district, and not existing uses, must drive the impact and compatibility analysis. Existing uses cannot be the driver, and do not provide the legal standard for comparison, as illustrated by this example: In an undeveloped land use district that allows residential development, initial development would forever be defeated because the first development will always have a substantially greater impact on the items listed in AMC 21.50.200 than existing development, which in this example is not present.
- 29. The Anchorage Municipal Code does not set out a specific radius for use in determining compatibility with closely adjacent permitted uses. AMC 21.15.005.E.2 and 21.35.020.B are notice requirements and do not preclude going beyond 500 feet of the Legacy Pointe site to evaluate impact of the development on surrounding neighborhoods.
- 30. The 1-mile radius used by Planning Staff and relied on by the Planning & Zoning Commission is a reasonable area for comparison under AMC 21.50.200 and the Anchorage 2020 Comprehensive Plan.

- 31. There is substantial evidence in the record showing that the Planning & Zoning Commission took a thoughtful and reasonable approach in its evaluation of compatibility and impact under AMC 21.50.200.
- 32. The Board relies on Planning Staff's analysis (R. 1290–1293) that the density range of property to the south and northeast of the Legacy Pointe site is 3-6 DUA, and with development controls and mitigation, allowable densities could be increased up to 10 DUA through a clustered development plan.
- 33. In comparing what other potential density could be in adjacent parcels and on the Legacy Pointe site under review, with and without mitigation measures, the Planning & Zoning Commission struck a reasonable balance in reviewing the Legacy Pointe site plan for development in an area with an existing density below that allowed in the Code.
- 34. By majority vote (2-1), the Board of Adjustment finds the Planning & Zoning Commission's review and comparison of the allowable density in surrounding properties within a 1-mile radius, as reflected in Commission Findings of Fact Nos. 4, 5, and 10, supplemented by General Condition No. 1.c, is reasonable and proper under AMC 21.50.200 and the Anchorage 2020 Comprehensive Plan, and is supported by substantial evidence in the record.
- <u>Issue No. 5</u>: Did the Planning & Zoning Commission err by approving phased-in development of a collector street?
- 35. This issue presents a mixed question of law and fact. The issue whether the Design Criteria Manual bars the Commission from approving phased-in development of the collector street is a legal issue, over which the Board may exercise its independent judgment. The issue whether the Commission's findings and conditions of approval for the collector street are supported by substantial evidence in the record is a factual issue.
- 36. Commission Findings of Fact Nos. 2 and 7 and subsections h k of General Condition No. 4 address the phased-in development of a collector street.

- 37. There is flexibility in the Code, given the long term staged development of the housing units.
- 38. The record reflects recommendations of approval from both Donald C. Keefer, P.E., Municipal Project Management & Engineering Department, and Robert E. Kniefel, Municipal Traffic Engineer, and consideration of the July 2007 Traffic Impact Analysis (with revisions). Both Mr. Keefer and Mr. Kniefel were present and available for comment in the proceedings before the Planning and Zoning Commission.
- 39. There is no evidence in the record, and the Board finds nothing in the Code, to preclude the Municipal Engineer and the Municipal Traffic Engineer from approving phased-in development of the collector street, to be paved and opened to the public in segments over 10 years.
- 40. In approving phased-in development of the collector street, the Commission followed the recommended modifications and comments of Mr. Keefer and Mr. Kniefel.
- 41. By unanimous vote (3-0), the Board of Adjustment finds no legal bar to phased-in development of the collector street, and finds the Planning & Zoning Commission's findings and conditions addressing phased-in development to be supported in the record by substantial evidence.
- 42. The Board next addressed two additional legal arguments raised by appellant: Filing Fees and "Spot Zoning".
- 43. By footnote (R. 2194), appellant argues that the filing fee of \$960 is "unconstitutionally excessive". The jurisdiction of the Board of Adjustment to decide appeals under AMC 21.30.010 does not extend to constitutional challenges to the filing fee established by the Assembly.
- 44. The Board finds appellant's argument on "spot zoning" neither persuasive nor applicable to the facts in this appeal.

# **CONCLUSIONS**

1. This appeal was heard in accordance with AMC 21.30.090.

- 2. The meeting at which the Board of Adjustment decided this appeal was held in accordance with AMC 21.30.080.
- 3. The memorandum dated December 1, 2007 (R. 2199–2200), included as an attachment to appellant's briefing, is not accepted as part of the record on appeal and is therefore stricken.
- 4. The Board of Adjustment does not have jurisdiction to hear appellant's constitutional challenge to the filing fee established in the Code by the Assembly.
  - 5. The Planning & Zoning Commission did not engage in "spot zoning".
- 6. The Planning & Zoning Commission's findings of fact and approval of the site plan review for housing for the elderly, located at Legacy Pointe, Tract A, subject to the conditions set out Corrected Resolution No. 2007-076, as adopted by the Planning & Zoning Commission on February 4, 2008 (R.619 632), are affirmed.
- 7. This is a final decision of the Board of Adjustment with respect to all issues involved in this case. The parties have 30 days from the date of mailing or other distribution of this decision to file an appeal to the Superior Court.

Adopted this 25 day of November, 2008.

Kevin Waring, Chair On behalf of the

Board of Adjustment hearing

panel:

Kevin Waring, Chair

Michael J. Jensen, Member

Bernd C. Guetschow, Member

# REVIEWING AGENCY & PUBLIC COMMENTS



# MUNICIPALITY OF ANCHORAGE

# Traffic Division



### **MEMORANDUM**

RECEIVED

DATE:

June 7, 2013

JUN 0 7 2013

TO:

MUNICIPALITY OF ANCHORAGE Erika B. McConnell, Current Planning Section Supervisor NING DIVISION

Zoning and Platting Division

THRU:

Stephanie Mormilo, PE, Municipal Traffic Engineer

FROM:

Dwayne Ferguson, Acting Associate Traffic Engineer

**SUBJECT:** 

Traffic Division comments for the following Planning and Zoning

Commission Public hearing activity for Monday, July 8, 2013.

2013-84 Request for review of Design Study Report for public roadway.

Traffic Engineering has the following comments:

- a) Traffic conceptually supports the recommendations of the Design Study Report.
- b) Please ensure the design considers future queuing capacities for the Minnesota off ramps and provide adequate levels of service for future projected volumes.
- c) The proposed design should mitigate weaving maneuvers for both westbound and eastbound traffic on Raspberry to and from Northwood Drive.
- d) Raspberry is classified as a major arterial in the OSHP. It is not ideal to have intersection spacing less than ¼ mile on an arterial to prevent flow disruption, delays and queues. Placing two (2) signalized intersections in close proximity may cause demand starvation whenever portions of the green signal for the downstream intersection are unused due to delays or blockage from the upstream intersection.
- e) Consider providing dual right turn lanes on the Minnesota off ramp with an island and/or right turn yields with an island to provide better pedestrian safety if the pedestrian crossing to the trail will remain.
- f) Please show any proposed changes to pedestrian pathways and crossings.

2013-87

Request for time extension for a site plan review.

Traffic Engineering has no comment.



DATE:

13-087

TO:

# MUNICIPALITY OF ANCHORAGE

Development Services Division Right of Way Section

Phone: (907) 343-8240 Fax: (907) 343-8250



ZONING DIVISION

Planning Division, Current Planning Section

Jack L. Frost, Jr., Right of Way Supervisor THRU:

Lynn McGee, Senior Plan Reviewer FROM:

June 7, 2013

Comments on Planning and Zoning Commission case(s) for July 8, 2013. SUBJ:

Right of Way Section has reviewed the following case(s) due June 7, 2013.

West Dowling Road Phase 3, Minnesota Drive, and Raspberry Road Ramp, grids 13-084

2027 & 2028

(Design Study Report for a Public Road)

Right of Way Section has no comments at this time.

Review time 15 minutes.

Legacy Pointe, Tract A, grid 3437 (Time Extension for a Site Plan Review for a PLI Development)

Right of Way Section has no comments at this time.

Review time 15 minutes.

# MUNICIPALITY OF ANCHORAGE

Community Development Department **Development Services Division** 



Private Development Section

Mayor Dan Sullivan

JUN 0 7 2013

### **MEMORANDUM**

MUNICIPALITY OF ANCHORAGE ZONING DIVISION

# Comments to Planning and Zoning Commission Applications/Petitions

DATE:

June 7, 2013

TO:

Erika McConnell, Current Planning Section Supervisor

FROM:

Matthew Hendrick, Plan Review Engineer

**SUBJECT:** Comments for Planning and Zoning Commission

Public Hearing date: July 08, 2013

Case 2013-087 – Time extension for a site plan review.

# **Department Recommendations:**

The Private Development Section has no objection to approval.



# Municipality of Anchorage Development Services Department Building Safety Division

## **MEMORANDUM**



DATE:

June 6, 2013

JUN 0 6 2013

TO:

Erika McConnell, Manager, Current Planning Section

MUNICIPALITY OF ANCHORAGE ZONING DIVISION

FROM:

Deb Wockenfuss, Civil Engineer, On-Site Water and Wastewater Program

**SUBJECT:** 

Comments on Cases due June 7, 2013

The On-Site Water & Wastewater Program has reviewed the following cases and has these comments:

2013-087

Time extension for a site plan review

No objection

2013-096

Request for registration of a Non-Conforming Lot of Record

The well and septic systems are undocumented and not approved. Existing onsite systems that do not have approved paperwork on file with the On-site Water and Wastewater Program are required to be documented and approved. If required by code, repairs or upgrades shall be completed.

# MUNICIPALITY OF ANCHORAGE PUBLIC WORKS DEPARTMENT

4700 Elmore Road Anchorage AK 99507

# **Project Review Form**

Projec	Project Name:	Legacy P	Legacy Point / Rabbit Creek		Project No:	2013-087
Projec	Project Status:	☐ Design Study	n Study   35%   65%	☐ 95% ☐ Other	Time extension	
Name/	Title: Sand	Jy Hansen, F	Name/Title: Sandy Hansen, Planning Tech / Randy Bergt, Project Engineer	Project Engineer		
Organi	zation / De	epartment: F	Organization / Department: Public Transportation / People Mover	Mover		
Phone	Number:	Phone Number: 343-8213 or 343-8285	.343-8285	Date: June 3, 2013		
	Page/ Sheet No.	Reviewer	Comment		Response	9S
(-			NO Comment			
2)					-	
3)			Thank you for the opportunity to review.	y to review.		
(4						
5)						
(9						A. Munimum
(						agency of the same
(8	and the second s			- Control of the Cont		N O
6						
10)						013
17						D
-						100

12)

7

3

15)



#### Kimmel, Corliss A.

From:

Bunnell Kristine

Sent:

Friday, May 31, 2013 12:22 PM

To:

Kimmel, Corliss A.

Subject:

Case #2013-087

Extension should be granted due to changes in Title 21 that could affect this project.

Thank you, Kristine

Kristine Bunnell Senior Planner | Project Manager Municipality of Anchorage Long Range Planning Section bunnellkr@muni.org 907.343.7993



#### **Municipality of Anchorage**

### Public Works Department Project Management & Engineering Division



#### **MEMORANDUM**

RECEIVED

MAY 3 1 2013

MUNICIPALITY OF ANCHORAGE ZONING DIVISION

DATE:

May 31, 2013

TO:

Erika McConnell

FROM:

Steven Ellis

SUBJECT:

P&Z Comments from Watershed Management Services

Watershed Management Services (WMS) has the following comments for the July 8, 2013, Planning and Zoning Commission Meeting.

2013-087, Time extension for site plan review; WMS has no comment.



## Department of Transportation and Public Facilities

CENTRAL REGION Planning

4111 Aviation Avenue Anchorage, Alaska 99502 Main: 907.269.0520 Fax: 907.269.0521

RECEIVED

MAY 2 3 2013

COMMUNITY DEVELOPMENT DEPT

May 21, 2013

Erika McConnell, Planning Section Manager MOA, Community Development Department Planning Division P.O. Box 196650 Anchorage, Alaska 99519-6650

RE: MOA Zoning Review

Dear Ms. McConnell:

The Alaska Department of Transportation and Public Facilities, ADOT&PF, Central Region Planning office reviewed the following submitted site plan review and we have no comment.

2013-087; Time extension for site plan review 104.76

Sincerely,

Bart Rudolph

Transportation Planner

AJ/er

#### Municipality Of Anchorage **ANCHORAGE WATER & WASTEWATER UTILITY**

RECEIVED

MAY 2 3 2013

MUNICIPALITY OF ANCHORAGE ZONING DIVISION

#### MEMORANDUM

DATE:

May 23, 2013

TO:

Erika McConnell, Supervisor, Planning Section, Planning Division

FROM:

Shawn Odell, Engineering Tech III, AWWU

SUBJECT: Zoning Case Comments

Planning & Zoning Commission Hearing July 8, 2013

Agency Comments due June 7, 2013

AWWU has reviewed the materials and has the following comments.

#### WEST DOWLING ROAD PHASE III, Design Study Report for a public 13-084 road MOA/ADOT Project #55148, Grid SW2127, 2128, 2027, 2028

- 1. AWWU water and sanitary sewer mains are located within Raspberry Road.
- 2. AWWU requests that locates be performed prior to any construction so that clearances may be maintained.
- 3. AWWU has no objection to this design plan review.
- 4. AWWU requests that the AWWU Planning Department be involved in the upcoming design review and any construction that pertain to this project.
- 5. This project ties into the 2012 AWWU Water Master Plan project for Anchorage Loop Water Transmission Main Phase VIII Upgrades.

13-087

LEGACY POINT TRACT A (Site Plan Review-Elderly housing), Time extension for a site plan review, Grid SW3437

- 1. AWWU review comments still apply 2006-142.
- 2. AWWU has no objection to this time extension.

If you have any questions pertinent to public water and sanitary sewer, you may call me planning section at 564-2739, at 564-2713 or the AWWU shawn.odell@awwu.biz

## ing and Platting Cases On-line

#### View Case Comments

Submit a Comment

\*\* These comments were submitted by citizens and are part of the public record for the cases \*\*

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: 2013-087

View Comments

#### 2. View Comments:

Case Num: 2013-087

Time extension for a site plan review

Location: Request for an 18 month Time Extension of a Site Plan Review (PZC Case 2006-142) for a Senior Housing Development in the PLI (public lands and institutions) district. Legacy Pointe, Tract A. Generally located west of Golden View Drive and south of East 172nd Avenue. \*POSTPONED FROM 7/1/13 AND 7/8/13\*

Details | Staff Report | submit a comment

#### **Public Comments**

#### 7/29/13

Rachel Irons

17053 Aries Court

Anchorage AK 99516

There is no reason to develop this area of of land, especially into condos for senior housing. This area of land is far away from every type of amenity needed by a senior community. The roads are treacherous in the winter, its far away from downtown and its on a hill which would make it difficult to walk around. This development is an poorly conceived idea to cut corners in the zoning and platting process and has no reason to be approved.



# Rabbit Creek Community Council PO Box 112354, Anchorage, AK 99511-2354



RECEIVED

July 14, 2013

Dave Whitfield, Senior Planner Community Development Department Planning Division, Current Planning Section Municipality of Anchorage

JUL 1 S 2013

MUNICIPALITY OF ANCHORAGE ZONING DIVISION

RE: PZC #2013-087, Request for an 18 month Time Extension of a Site Plan Review (PZC Case 2006-142)

At the Rabbit Creek Community Council's (RCCC) June meeting, the membership voted unanimously to oppose the request for an 18 month time extension of the site plan review (PZC Case #2013-087). Reasons for the RCCC vote are outlined below.

I. Petitioner did not show "good cause" Condition B.1.f of the Planning and Zoning Commission Resolution 2007-076 requires the petitioner show "good cause" when requesting a time extension. It is the burden of the petitioner to show such "good cause". If the petitioner cannot show "good cause" the time extension should not be granted.

The one and only cause the petitioner listed in the request was "The worst economic collapse in the history of the United States."

The RCCC refutes this cited cause for the following reasons:

- The Anchorage real estate market did not suffer the significant downturn experienced by the rest of the United States. This fact is borne out in several sources:
  - According to State of Alaska Dept of Labor economist Caroline Schultz: "The average sales price
    of homes rose about 2 percent annually in Anchorage and 1 percent statewide from 2007 to
    2010, right through the recession" (see attached article titled "Alaska housing prices buck
    national trend downward").
  - O Data from the Multiple Listing Service (MLS) shows no significant decrease in the average sales price of single family homes in Anchorage (see attached graph).
  - According to the Alaska Department of Labor and Workforce Development, Research and Analysis Section, there was no significant drop in the average sales price of single-family homes statewide (see attached graph)
- The petitioner did not own Legacy Pointe during the years of the national recession.

If the petitioner finds other reasons for "good cause", then the RCCC and the public should be granted the opportunity to review and comment on any additional information provided by the petitioner beyond what was included in the original application.

II. Time limits are placed on site plans for good reason Site plan approvals have time limits because land use plans and infrastructure evolve as the city grows. Time extensions should be based on the developer's proof that the unbuilt project will be in full compliance with current land use plans, codes, and site conditions infrastructure.

In the case of Legacy Pointe, the project should not be extended because no progress has been made and it is out of compliance with the Hillside District Plan and Title 21 in regards to density, wetlands/drainage, public utilities and roads.

Timelines also ensure that the most current data in used in planning. Since the original approval, the engineering firm CRW has done drainage studies in the area. Drainage is a huge problem in the area of Legacy Pointe and granting a time extension and ignoring the new data would be irresponsible.

Thank you for the opportunity to comment.

If you have any questions please contact us at RabbitCreekCC@gmail.com.

Sincerely,

Pat Hansen

Pat Husen

Vice Chair Rabbit Creek Community Council

cc (via email): Rabbit Creek Community Council Board

#### Alaska housing prices buck national trend downward

By ROSEMARY SHINOHARA rshinohara@adn.com

A national news headline this week said, "Home prices sink to new lows." Prices in a dozen big metro markets have fallen to their lowest levels since the housing market first crashed in late 2006.

In Alaska, we still don't care how they do it Outside. Alaska's home-sales prices continue to maintain their values more than in much of the rest of country, according to state economists and local real estate experts.

The average sales price of homes rose about 2 percent annually in Anchorage and 1 percent statewide from 2007 to 2010, right through the recession, says state housing economist Caroline Schultz.

That compares to a 9 percent annual rise in Anchorage and 8 percent statewide from 2000 to 2006.

A temporary federal tax credit for home buyers pushed average prices up last year, the experts say.

But apart from that, Anchorage prices have been steady.

Meantime, from February to March, prices fell in 18 of 20 cities nationwide in the Standard & Poor's/Case-Shiller index, The Associated Press reported. Prices dropped 3.7 percent in Minneapolis, 2.4 percent in Chicago, and 2 percent in Detroit. They rose .1 percent in Seattle and 1.1 percent in Washington, D.C.

Anchorage has the highest single family home prices of areas surveyed in Alaska, according to a report in the May issue of the Alaska Department of Labor publication, "Alaska Economic Trends."

The average Anchorage sales price rose from \$318,000 in 2009 to \$328,000 in 2010, with the tax credit, the Labor Department report says.

This year so far, the average for an Anchorage house has dropped back down to around the levels of '07, '08, '09, with an Anchorage average sales price of \$316,000, said Niel Thomas of Coldwell Banker Fortune real estate.

"We didn't have the hyper inflation, and we didn't have the big drop," said Thomas. "Housing values are basically flat, nothing like what is going on in the Lower 48."

It almost feels like the situation Outside is a drag on the market here, he said.

Connie Yoshimura, residential land developer and associate broker with Prudential Real Estate, agrees we're better off. "Historically, we're still so much ahead of many, many markets," she said.

Some types of houses are more marketable in Anchorage than others, Thomas and Yoshimura say.

Housing costs, including rents, are the biggest factor in the cost of living, says the May state Labor Department report. The average consumer spends the largest share of her money on a place to live.

With a slow rise in the real estate market, overall inflation in Anchorage last year was only 1.8 percent, even while gasoline costs soared by 18.2 percent and medical costs went up 5.7 percent.

Though housing prices have gone up, buying a house is still more affordable than it has been in years past because interest rates — the cost of borrowing — are low, said Schultz, with the state Labor Department in Juneau. Last year the average mortgage interest rate was 5 percent.

To compare, in 2006, the average interest rate was about 6.5 percent, she said.

The Labor Department matches up interest rates, and average housing prices and average wages in each city and figures out how many wage earners it takes to buy a house.

The cheapest alternative: It takes 1.11 people who commute to work in Anchorage to buy an average Mat-Su house, which at \$240,000, is about \$88,000 less expensive than an Anchorage house.

But there are downsides.

"I don't know how people feel about that with the price of gas," said Yoshimura. "And if you put a price on your time."

It takes 1.44 Anchorage workers to buy an Anchorage house; or 1.47 Valley workers to buy a Mat-Su house.

"Mat-Su is interesting because housing costs are low, but average incomes are also low," said Schultz.

Average earnings are higher in Anchorage, she said.

One thing the economists can't measure is the quality of average houses sold in Anchorage, the Valley, or elsewhere.

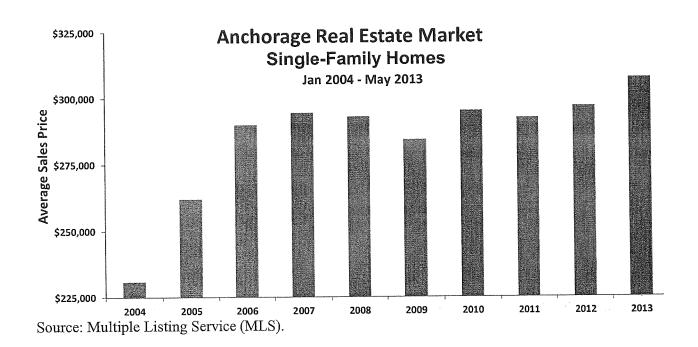
But quality and age of the houses do matter in sale prices, said Yoshimura.

"The real issue is that we have a very old and aging housing stock," she said. Older houses need roof repairs, furnace repairs, new appliances, she said.

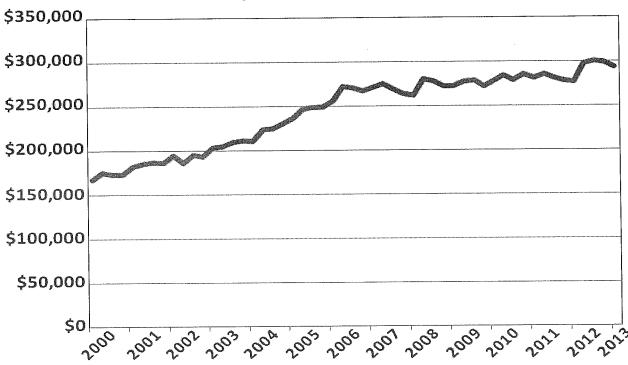
Newer houses are more energy efficient. Kitchens are bigger these days. Granite countertops and hardwood floors are in demand.

So a person trying to sell to a new house in the under-\$400,000 range will likely get a higher price and sell more quickly than someone with an older home in the same price range, said Yoshimura.

Read more here: http://www.adn.com/2011/06/02/1896549/bucking-the-trend.html#storylink=cpy



#### Average Sales Price of a Single-Family Home Statewide Average, 1st Quarter 2000 - 1st Quarter 2013



Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

#### Whitfield, David R.

From:

Dianne Holmes [dianneholmes@alaska.net]

Sent:

Monday, June 24, 2013 9:40 PM

To:

Whitfield, David R.; McConnell, Erika B.

Subject:

Case 2013-087 Legacy Pte time extension--comments

One reason for placing time limits on site plans is because the comprehensive plan components and codes change--and it is expected that development will fulfill the new requirements if the site plan isn't completed in the allotted time. Therefore, the request for a time extension on the Legacy Pointe site plan should not be given a time extension for that reason and for the following reasons:

- 1. The 'good cause' given as a requirement to extend, does not apply. The owner has not suffered economic hardship because he only recently got the property back, after the prior owner defaulted. The national economic down-turn did not affect Alaska to the same degree as the Lower 48.
- 2. This high density senior housing site plan was given a time limit, like other site plans, because a plan allowed for one period may not fit in a future time period when codes and requirements are amended. But the senior housing project will not be built as it was an ill-conceived project. A rezone will be needed for any future, reasonable project. Therefore this site plan is essentially void.
- 3. The Hillside District Plan (HDP) has been adopted since the site plan was approved and the HDP does not allow high density in this area. Neither does the area have public utilities and the HDP does not allow the extension of public utilities because the area is slated for low density with on-site utilities.
- 4. The HDP requires several "Special Transportation Study Areas" before roads can be constructed; Legacy Pointe is included as one of these special study areas and in it are the Old Seward and New Seward Hwy intersections. The current site plan was not developed with a special transportation study. It cannot be used as a guide for the Legacy road system for the above reason as well as #5, #6 & #7 below.
- 5. The Long Range Transportation Study (now called the TIP), requires a collector road through Legacy Pointe (as does the HDP). The current site plan did not design for a collector road, rather it is a subdivision road whose purpose does not expedite traffic. Although some of Legacy Pointe is steep, it is not so steep that a better collector can't be designed. The Legacy road must be redesigned to reflect the requirement for a collector to serve SE Anchorage.
- 6. A developer will not build a collector road. Funds for a collector outside of the Anchorage road service area will come from the Alaska Legislature. The Legislature will not, and should not, fund a subdivision road because it would be illegal to fund something for a specific developer. The site plan--with its current road system--cannot be used to obtain Legislative funds. The road must be redesigned to reflect a true collector before such funds are sought.
- 7. The HDP calls for the Legacy Pointe collector (see HDP road map) in part due to wild fire danger and the need to move traffic off the hillside during natural disasters. Currently Rabbit Cr Road is the closest major road to move traffic and it is not even sufficient to handle traffic today nor especially in an emergency—that is why the Legacy collector was put into the LRPT/TIP. It is vital that a road needs to be designed to expedite traffic. The Legacy road was not designed for that purpose, but it needs to be. Even given the terrain, the road could be better designed for its purpose, with subdivision roads feeding into it.
- 8. The HDP's goals and policies are specific to SE Anchorage and provide new requirements for Hillside development that do not fit the outdated Legacy site plan. Title 21 does not override the HDP's goals/policies.

The Legacy Pointe site plan should not be granted a time extension unless the owner or

future owner is willing to comply with the new requirements of the HDP including a better collector road design.

It is rather disingenuous that the extension should be requested because the planned development for a high density senior housing on PLI will not occur; this is common knowledge. A rezone will be sought for a lower density development that fits with the HDP. Therefore the site plan is of no use to this owner or a future one.

2

The public's interest should come first in this case--compliance with the HDP and especially a road design that grants a measure of safety both for general movement of traffic and for natural disasters.

#### Whitfield, David R.

From:

Nancy Pease [nancypease2@gmail.com] Sunday, June 23, 2013 10:25 PM

Sent:

To:

Whitfield, David R.

Subject:

legacy pointe time extension

RCCC unanimously opposed the time extension. I thought we had until June 28 to submit comments, but I will try to get them revised and submitted by Monday evening. Hello, David,

Sent from my iPad

# Zoning and Platting Cases On-line

#### View Case Comments

Submit a Comment

\*\* These comments were submitted by citizens and are part of the public record for the cases \*\*

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: 2013-087 -

View Comments

#### 2. View Comments:

Case Num: 2013-087

Time extension for a site plan review

Location: Request for an 18 month Time Extension of a Site Plan Review (PZC Case 2006-142) for a Senior Housing Development in the PLI (public lands and institutions) district. Legacy Pointe, Tract A. Generally located west of Golden View Drive and south of East 172nd Avenue.

Details | Staff Report | submit a comment

#### **Public Comments**

#### 6/23/13

Cristy Willer

17330 Bettijean St.

Anchorage AK 99516

I received a notice in the mail last week informing me that there will be a public hearing on July 8, 2013, on "Legacy Pointe," the project that I remember as intending create a huge "senior housing development" in the middle of our rural, hilly, out-of-the-way neighborhood. I have serious questions about how and why this is being brought up again at this time. The notice says "case information may be viewed" by following the directions to the appropriate link in the muni.org website, but in fact there does not seem to be any information at all on the site about this. There is nothing explaining what, if anything, is happening with this proposed project, why a time extension is being requested and what that means for those of us who would be significantly impacted by this project. We have heard virtually nothing about "Legacy Pointe" for almost six years, and had begun to assume that the neighborhood had been spared even though our concerns were overridden when this came up in the first place. Now, all of a sudden, we get a notice saying that "the only public hearing" on this issue before the Commission has been scheduled, with no explanation of what is behind this, or what it means, and for a time that appears designed to minimize community input. It is well known that our community council meets once a month, on the second Thursdays. The notice of this public hearing was sent out right after the last community meeting, announcing a hearing that is to take place before the next community council meeting. Not only was this scheduled with no opportunity for the community to discuss the issue at a council meeting, but it was also scheduled to give little opportunity for community council input even if the council were able to find a way to discuss this on such short notice--the time between the receipt of the public notices and the date by which comments from

the community council are required for packet inclusion is roughly one week. I would like to comment on whatever is going on, and I know a number of the other affected neighbors would, too. We can't really do this, however, without knowing what is happening. Where does the project stand? What, if anything, has been happening regarding this project since 2007? (Searching the P&Z Case 2006-142 referenced in the public notice sent this week brings up nothing at all.) Why is this extension being requested? What would it mean if it is, or isn't, allowed? We would like meaningful notice, and a meaningful amount of time to respond after we have been told what is at stake (including time to discuss this at our community council meeting). Thank you for your consideration, Cristy Allyn Willer 17330 Bettijean St. cristy.willer@gmail.com

Zoning & Platting Cases On-line website

#### Kimmel, Corliss A.

From:

Whitfield, David R.

Sent:

Tuesday, June 25, 2013 9:31 AM

To:

Kimmel, Corliss A.

Subject:

FW: Case 2013-087 Legacy Pte time extension--comments

Dave Whitfield Senior Planner/Platting Officer Community Development Department Municipality of Anchorage (907) 343-8329 ph (907) 249-7919 fx whitfielddr@muni.org

----Original Message----

From: Dianne Holmes [mailto:dianneholmes@alaska.net]

Sent: Monday, June 24, 2013 9:40 PM

To: Whitfield, David R.; McConnell, Erika B.

Subject: Case 2013-087 Legacy Pte time extension--comments

One reason for placing time limits on site plans is because the comprehensive plan components and codes change--and it is expected that development will fulfill the new requirements if the site plan isn't completed in the allotted time. Therefore, the request for a time extension on the Legacy Pointe site plan should not be given a time extension for that reason and for the following reasons:

- 1. The 'good cause' given as a requirement to extend, does not apply. The owner has not suffered economic hardship because he only recently got the property back, after the prior owner defaulted. The national economic down-turn did not affect Alaska to the same degree as the Lower 48.
- 2. This high density senior housing site plan was given a time limit, like other site plans, because a plan allowed for one period may not fit in a future time period when codes and requirements are amended. But the senior housing project will not be built as it was an ill-conceived project. A rezone will be needed for any future, reasonable project. Therefore this site plan is essentially void.
- 3. The Hillside District Plan (HDP) has been adopted since the site plan was approved and the HDP does not allow high density in this area. Neither does the area have public utilities and the HDP does not allow the extension of public utilities because the area is slated for low density with on-site utilities.
- 4. The HDP requires several "Special Transportation Study Areas" before roads can be constructed; Legacy Pointe is included as one of these special study areas and in it are the Old Seward and New Seward Hwy intersections. The current site plan was not developed with a special transportation study. It cannot be used as a guide for the Legacy road system for the above reason as well as #5, #6 & #7 below.
- 5. The Long Range Transportation Study (now called the TIP), requires a collector road through Legacy Pointe (as does the HDP). The current site plan did not design for a collector road, rather it is a subdivision road whose purpose does not expedite traffic. Although some of Legacy Pointe is steep, it is not so steep that a better collector can't be designed. The Legacy road must be redesigned to reflect the requirement for a collector to serve SE Anchorage.
- 6. A developer will not build a collector road. Funds for a collector outside of the Anchorage road service area will come from the Alaska Legislature. The Legislature will not, and should not, fund a subdivision road because it would be illegal to fund something for a specific developer. The site plan-with its current road system-cannot be used to obtain Legislative funds. The road must be redesigned to reflect a true collector before

such funds are sought.

- 7. The HDP calls for the Legacy Pointe collector (see HDP road map) in part due to wild fire danger and the need to move traffic off the hillside during natural disasters. Currently Rabbit Cr Road is the closest major road to move traffic and it is not even sufficient to handle traffic today nor especially in an emergency—that is why the Legacy collector was put into the LRPT/TIP. It is vital that a road needs to be designed to expedite traffic. The Legacy road was not designed for that purpose, but it needs to be. Even given the terrain, the road could be better designed for its purpose, with subdivision roads feeding into it.
- 8. The HDP's goals and policies are specific to SE Anchorage and provide new requirements for Hillside development that do not fit the outdated Legacy site plan. Title 21 does not override the HDP's goals/policies.

The Legacy Pointe site plan should not be granted a time extension unless the owner or future owner is willing to comply with the new requirements of the HDP including a better collector road design.

It is rather disingenuous that the extension should be requested because the planned development for a high density senior housing on PLI will not occur; this is common knowledge. A rezone will be sought for a lower density development that fits with the HDP. Therefore the site plan is of no use to this owner or a future one.

The public's interest should come first in this case--compliance with the HDP and especially a road design that grants a measure of safety both for general movement of traffic and for natural disasters.

# POSTING AFFIDAVIT



Case Number:
I, Crais Bennett, hereby certify that I have posted a Notice of Public Hearing as prescribed by Anchorage Municipal Code 21.15.005 on the property that I have petitioned for $time \ E_x tention$ . The notice was posted on $\frac{7-8-2013}{2013}$ which is at least 21 days prior to the public hearing on this petition. I
acknowledge this Notice(s) must be posted in plain sight and displayed until all public hearings have been completed.
Affirmed and signed this 8 day of July, 2013.
Signature
Tract or Lot Legacy Pointe  Block Subdivision

# PROPERTY AND ARELATED HISTORY

#### MUNICIPALITY OF ANCHORAGE PLANNING DEPARTMENT Memorandum

DATE:

October 15, 2007

CASE NO .:

2006-142

APPLICANT:

Forest Heights LLC

**PETITIONERS** 

Lantech, Inc.

REPRESENTATIVE:

Tony Hoffman

REQUEST:

Site Plan Review for Housing for the Elderly in accordance with AMC 21.40.020 N and AMC

21.15.015

LOCATION:

Legacy Pointe Subdivision, Tract A; generally

located between the Seward Highway and Goldenview Drive, and between East 172nd

Avenue and Potter Valley Road.

SITE ADDRESS:

Goldenview Drive

COMMUNITY COUNCIL:

Rabbit Creek

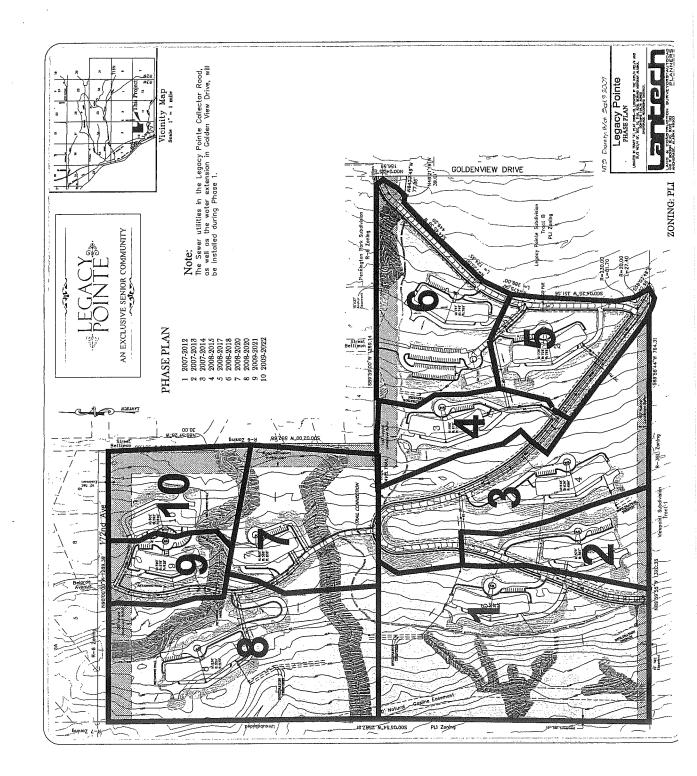
TAX NUMBER:

020-181-61

#### Background:

The staff report for the August 20, 2007 public hearing was not able to be made available until August 16, 2007. After having reviewed the Department recommendations, the petitioner met with Planning Department staff on August 17th to discuss the conditions of approval of the final report. They decided at that time to revise their proposal from 704 to 432 dwelling units and dropped the number of buildings from 13 to 8 (54 units each building). The petitioner presented this new proposal to the Commission at the August 20, 2007 public hearing.

The public hearing was opened on August 20, and the Department gave its presentation based on the September 18, 2006 application submittal for 702 units. The Commission asked the petitioner to present their revisions and changes to the development. The developer summarized that they would not develop the north one-third of the property (buildings 9 through 13) thereby



creating a site plan that would match the staff recommendations on density. The remaining eight buildings, with 54 units per building with four floors over the basement parking, would have resulted in 432 units, or a density of 4.15 DUA. This approach presented a much more compressed area of development, with several of the buildings intruding into setback areas.

The Commission discussed whether the public hearing should continue since the original proposal had changed from what the public understood the development to be. The Chair ruled that if the matter were postponed, the hearing would start over because the petitioner would not be presenting the same thing. The public hearing was postponed to October 15, 2007.

**Public Notice**: Ninety-six (96) public hearing notices were mailed September 21, 2007. The Rabbit Creek Community Council provided draft minutes of its September 13, 2007 meeting, in which a motion to forward the prior RCCC comments unchanged (July 26, 2007) was unanimously approved. Twelve letters and or emails were received in opposition. One public hearing notice was return as not deliverable.

#### **Revised Proposal:**

Since the August 20 hearing, the petitioner has worked further with the Department in order to refine their proposal and to work with concerns presented. The table below compares the main differences between proposal submitted to the Commission prior to the August 20<sup>th</sup> public hearing, and the final October 15 2007 changes to the proposal and site plan:

Item	August 20, 2007 Plans	October 15, 2007 Plans
Number of Units	704	400
Number of	54	40
Units/Building		
Density	6.75	3.8
Number of Residential	13	10
Buildings		
Building Height	55 feet	39 feet
Number of Floors	5 including parking level	4 including parking level
Open Space,	54 acres (52%)	59 acres (56%)
Undisturbed Natural		
Buffers	Northerly Boundary:	Northerly Boundary:
	100 feet	100 feet
	Southerly Boundary:	Southerly Boundary: 50
	none	feet
Phases 1 thru 6	Beginning at higher	Beginning at lower

Item	August 20, 2007 Plans	October 15, 2007 Plans
	elevation (east) from	elevation at the west,
	Goldenview, moving to	moving to higher
	lower elevation to west	elevation to east
		(Goldenview)
Access from Goldenview	Phase 1	Phase 6
Emergency Access	Bettijean and Belarde	Bettijean
(fire gate)		
Full Secondary Access	None	Belarde
	Construct from	Construct from Potter
Collector Road	Construct from	
	Goldenview to Potter	Valley Road to
	Valley Road	Goldenview

#### Discussion:

The following is a discussion of these modified elements. It discusses the changes from the original plan reviewed by the Department to that to be presented by the petitioner for the October hearing, and not the revisions presented by the petitioner on August 20, as further refinements of plans have occurred since that time.

#### Height and Density:

The total number of units is reduced by 304 units, or 43%. This is achieved by dropping three buildings, dropping one floor per building (3 floors above the basement parking), and having 40 units per building. This also reduced the amount of required parking per building and reduces the amount of residential guest surface parking. Dropping one floor of each building will reduce building heights. This has the effect of lowering the building profiles to reduce the visual impact from the Seward Highway and nearby residential properties. This change reflects conformity with the height recommendations from the original Department recommendation to mitigate area visual impacts.

The petitioner has also changed the building locations from that presented at the public hearing to a less dense cluster of structures. The Department agrees that spreading the buildings around the site is a better design and allows more open space between the buildings and contributes to a more open design, rather than the original clustering site design. The open space shown on the plans will be preserved as natural open space and is not intended for any future development.

• Traffic Impact Analysis Updated 10-1-07:

The updated TIA considered the reduced building unit counts and the new phasing program with full build out estimated by 2022. With the reduction in projected units to 400, the traffic impacts are significantly reduced. Traffic Engineering concludes the reduced density design will not have permanent negative impacts greater than that anticipated from permitted development. For purposes of the site plan review analysis, permitted development was assumed to be detached single-family development an average density of 2 DUA by which to measure the impacts of the proposed development.

Traffic Engineering's revised comments also considered the four alternate main alignments connecting Potter Valley Road with Goldenview Drive. Additional connections were also considered but based upon environmental considerations, permitting and wetlands issues, were not carried forward. The developer has selected Option #2 that connects Goldenview Drive to Potter Valley Road near the bridge crossing as having the least impact to the environment of all the options considered while maintaining safe road grades and curves. This alignment is generally acceptable to the Municipality. The developer needs to provide written concurrence from the owner of Tract 1, Viewpoint Subdivision, agreeing in principal with the collector road alignment through the Tract 1 property (condition of approval D.11)

#### Collector Road:

Plat 2006-10 recorded 1/24/06 has a note stating "no fill, excavation and/or clearing permits shall be issued on Tract "A" until future road alignments have been granted preliminary approval by the platting authority. Minimum clearing required for onsite soils investigation is permitted provided that all disturbed areas are stabilized as soon as possible upon completion of investigation." At the time the plat was reviewed it was not known that the new owners intended to develop under AMCR 21.90. There is no further platting activity required. The Platting Officer has determined that, should the Commission approve the road alignments as shown on the site plan, the Department would consider that the Commission acted as the platting authority, and the plat note would be satisfied (condition of approval A.9). All easements will be recorded by document with the State Recorder's Office (condition of approval D.5).

PM&E requires a performance guarantee for the completion of the collector street to final street standards prior to any construction of any phase. See condition of approval D. 10. Construction of the collector

road must begin at Potter Valley Road with Phase 1 and will be allowed to be extended in phases for each and all phases 1 through 6 to Goldenview Drive (condition of approval D. 7.a) Urban subdivision agreements are required for each phase (condition of approval D.7.b) and for construction of the interior streets (D.7.c and d).

#### Drainage:

The proposed drainage plan appears acceptable to PM&E. Final drainage easements and improvements, creek protection setbacks and wetland setbacks will be resolved with Planning and PM&E (condition of approval D.3). A final site grading and drainage plan and an erosion and sediment control plan must be included with the fill and grad permit application (condition of approval D.5).

#### • Trails:

The Trails Coordinator has identified minor modifications to the trail. Condition of approval D.6 calls for resolution of the connections with the Traffic Department.

#### • Buffering and Landscaping:

100-foot natural landscape buffers are located along the north boundary of the site where it borders two existing residential subdivisions. The buffers are undisturbed except for any necessary access road, sidewalks, driveways, fire lands and a corner of Building 10. This 100 foot buffer is in addition to the 10 foot utility easement and the 50 foot dedicated right-of-way for  $172^{\rm nd}$  Avenue. The new site plan includes a 50 foot wide open space buffer along the south boundary, except for required access road, trials and/or sidewalks. Buffer landscaping will augment the buffer easements. See conditions of approval C.1 through 3.

#### Conclusion:

The August 20, 2007 planning staff analysis found the most fundamental problems with this project were the density or total projected 702 units, building seizes and traffic impacts. The October 15, 2007, site plan and proposal reflects a different building layout and overall density that is more consistent with the department's analysis and original conditions of approval, specifically the competing goals of open space, building height and density. Based on the reduced number of total units, 400, Traffic Engineering has determined the reduced density design will not have permanent negative impacts greater than that anticipated from permitted development. The

October 15<sup>th</sup> proposed changes do not materially change the original analysis but instead works strongly towards meeting the Department's findings and conclusions of changes necessary to mitigate neighborhood impact. This memorandum incorporates the August 20, 2007 planning staff analysis by reference.

#### Recommendation

Staff recommends approval of the site plan, subject to the following conditions. These conditions modify the project in order to meet the general standards for site plan approval.

#### A. GENERAL CONDITIONS:

- 1. A Notice of Zoning Action shall be filed with the State of Alaska District Recorder's Office. Proof of such shall be submitted to the Planning Department.
- This site plan approval is for Housing for the Elderly, a permitted use in the PLI District. Ownership and/or occupancy are age restricted: a minimum of one owner per unit shall be 62 years of age or older or as otherwise provided by Title 21 code definition, and no one under the age of 19 years is permitted permanent occupancy. The sale or subleasing of these units shall be consistent with these age restrictions.
- 3. Maximum residential density shall not exceed 3.84 dwelling units per acre, or a total number not to exceed 400 units.
- 4. No commercial uses or activities, except those that are ancillary to the club house functions and that are intended to serve residents and guests. Home occupations are not allowed in the PLI District.
- 5. Development will be in accordance with AMCR 21.90, multiple dwelling unit residential development on a single lot or tract. Development will be done in the ten (10) phases commencing at the southwest corner of the parcel.
- 6. A building permit for Phase 1 must be obtained and construction begun within five years of the effective date of the final Planning and Zoning Commission resolution of approval approving the Master Site Plan, issued after the conclusion of any appeals. Building permits for each subsequent phase shall be issued no later than the dates set forth below. Each phase will be completed within two years from the date the building permit is issued.

Permits for each subsequent phase are expected to be issued no later than the end date shown on the phase plan. If a building permit is not timely issued with these time periods then the Mater Site Plan approval shall be null and void for any uncompleted phases unless the Planning and Zoning Commission grants an extension for good cause shown following a public hearing.

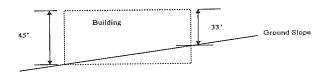
- a. Phase 1. 2012
- b. Phase 2. 2013
- c. Phase 3. 2014
- d. Phase 4. 2015
- e. Phase 5. 2017
- f. Phase 6. 2018
- g. Phase 7. 2020
- h. Phase 8. 2020
- i. Phase 9. 2021
- j. Phase 10. 2022
- 7. Submit a revised final master site plan, incorporating the conditions herein to the Planning Department before issuance of any construction permits. Provide a site plan note indicating all areas of open space, the total amount (acres) of open space provided, and that open space will be maintained as undisturbed natural vegetation, except for supplemental landscaping.
- 8. All construction and improvements related to this approval shall be substantially in compliance with the review application, narrative, and the following studies and site plan drawings, except as modified by the conditions of approval:
  - a. June 2007 Traffic Impact Analysis (including all revisions) as approved by the Municipality of Anchorage.
  - b. Wetland Delineation Report for Forest Heights Tracts A and B, dated October 4, 2005, prepared by CH2MHill.
  - c. Wetland Delineation Report, Legacy Pointe, dated August 28, 2006, prepared by Shaw Alaska, Inc.
  - d. Phase 1 Environmental Site Assessment, Tracts A and B, Forest Heights Subdivision, dated October 2005, prepared by Shannon & Wilson, Inc.
  - e. Drainage Impact Analysis Report, Legacy Pointe Subdivision Site Development, dated April 12, 2007, and September 9, 2007 Analysis Letter re: recent infrastructure layout modification, prepared by Terrasat, Inc.

- f. Subsurface Soils Study Septic System Feasibility Study, Forest Heights Subdivision, dated March 19, 2004, prepared by Anderson Engineering.
- g. Master Site Plan dated September 9, 2007 prepared by Lantech.
- h. Landscape Plan pages 1 and 2, dated October 10, 2007, prepared by Lantech
- i. Elevation and Building Floor Plans for Building A and B, submitted September 10, 2007, prepared by Chris Cole Architect.
- j. Phasing Plan dated September 9, 2007.
- k. Proposed Offsite Road Connection drawing, dated September 9, 2007.
- 1. Building Height Profiles, dated October 1, 2007.
- m. Site Disturbance Plan, dated October 3, 2007.
- 9. The Commission is the platting authority for the purposes of reviewing the site road alignments per Plat 2006-10, plat note number 2, and the approval of this site plan, as amended by the conditions of approval herein, sets the required road alignments. All public improvements required per this entitlement shall be those of AMC 21.85.020 A, per the designation authority requirement of AMC 21.85.020E.
- 10. Resolve with the Planning Department the method by which areas delineated as open space from areas that may be disturbed during construction will be protected. Construction fencing shall be required to be installed prior to site preparation clearing and construction to protect existing vegetation. Pre and post construction inspections by Land Use Enforcement are required.

#### B. BUILDING DESIGN:

- 1. The following building height standards shall apply to all buildings:
  - a. Maximum building height: As shown on the final building height cross sections, building height shall be measured from the basement floor ground elevation to the building roof elevation and shall not exceed 45 feet; from the first floor

b. elevation above the basement to the top of the roof shall not exceed 33 feet. See diagram below.



- c. Roof Form. Final building dimensions shall not exceed those noted on the final approved site plan. Building massing shall provide visual relief using modulated roof forms such as a terracing parapet, multiple peaks, jogged ridge lines and dormers.
- d. Height Exceptions. Height exceptions for building appurtenances shall be as provided in Anchorage Municipal Code section 21.45.050 B, subject to the following:
  - 1) Appurtenances that exceed the building height limit shall be demonstrated to the satisfaction of the Planning Director as being necessary or directly related to the functioning and use of the building;
  - 2) Appurtenances shall not exceed the building height limit by more than 16 feet, except that open railings and skylights may exceed the height limit by up to four feet;
  - 3) Appurtenances shall cumulatively cover no more than 15% of the roof area of the building;
  - Appurtenances shall not be constructed for the purpose of providing additional floor area, usable space, or storage room for the building, except that a storage room of 60 square feet or less, combined with a stairwell tower or elevator housing, and directly related to a rooftop use (such as tool storage for a rooftop garden), is allowed.
- 2. All building windows shall be non-reflective glazing.
- 3. Each building is required to have sprinkler systems.

4. Exterior lighting for the development shall meet IESNA standards and avoid excessive glare, brightness and avoid off site light trespass. The applicant shall submit a site lighting plan and resolve with the Planning Department exterior lighting specifications with the submittal of the final master site plan. The submittal shall address parking lot lighting, building-mounted lighting, parking structure lighting, pedestrian lighting and other site exterior lighting. It shall provide the location of exterior lighting by type, a luminaire schedule, mounting height of all luminaires, photometric data and calculations for foot-candles and uniformity ratios.

#### C. LANDSCAPING:

- 1. Landscaping on the site shall include the following:
  - a. Install buffer landscaping along the west side of the interior collector street between Tract A and Tract B with Phase 5 or full build out of the collector road, whichever occurs first.
  - b. The 100 foot natural open space buffer on the northerly boundary bordering the two residential subdivisions shall be left undisturbed (except for any necessary access road, sidewalks, driveways, and fire lanes into the site, and a corner of Building 10, as shown on the master site plan associated with Building 9 and 10), and placed exclusive of any utility easements, and supplemented with buffer landscape plantings as needed.
  - c. An undisturbed (except for any necessary access road, trail, and sidewalk from off-site into the site) natural open space buffer shall be established along the southerly boundary of the site at least 50 feet wide, and placed exclusive of utility easements, supplemented with buffer landscaping as needed.
- 2. With the initiation of each new phase of development, an individual building site grading and drainage plan, to include a restoration and landscape plan, shall be submitted and approved by relevant sections of PM&E and Planning addressing:
  - a. The location and disturbance limits for all utilities associated with the new development, including shallow utilities and

service connections of main lines.

- b. All limits of clearing, fill stabilization measures, and disturbed area restoration plans.
- c. Site restoration is required for all areas between the edges of clearing and permanent structures, finished lawns and edge of pavement, in the same growing season as each development phase is completed, and any required landscaping installed no later than the next season for planting landscaping.
- d. The final landscape plan will provide landscaping to soften the effect of the building mass.
- 3. A final landscape plan shall be submitted to the Planning Department to address supplemental plantings as needed in the north and south natural open space buffers that meet the intent of buffer landscaping AMC 21.45.125.C.2. Supplemental landscaping in the north 100 foot natural open space buffer shall be completed with the completion of Phase 9. Supplemental landscaping in the south 50 foot natural open space buffer shall be completed with the completion of Phase 1.
- 4. Construction fencing shall be required to be installed prior to site preparation clearing and construction to protect existing vegetation in designated undisturbed areas. Pre and post construction inspections by Land Use Enforcement are required.

#### D. ROADS AND DRAINAGE:

- 1. Provisions for storm drainage with Legacy Pointe Subdivision, Tract A shall comply with requirement under Anchorage Municipal Code 21.45,230 and 21.85.140.
- 2. Resolve drainage easements and drainage improvements, creek protection setbacks, and wetland setbacks with Planning, PM&E Private Development and Watershed Management.
- 3. Resolve with PM&E and Development Services Building Safety the need for footing drains and stub-outs to structures. A fill and grade permit from Building Safety must be obtained prior to the commencement of grading and/or excavation of on site material or the import of fill material in excess of fifty cubic yards. A site

grading and drainage plan, and an erosion and sediment control plan, must be included with fill and grade permit application. The plan must detail all measures to be implemented on site to prevent the transport of sediment beyond property boundaries or into existing development setbacks and/or stream maintenance and protection setbacks both during and after construction.

- 4. All easements to be dedicated by document and recorded with the State Recorder's Office prior to the initiation of each development phase. Graphics depicting the written legal description of the respective dedication shall be recorded with each easement. Roadway and drainage easements required by the approved master plan shall be dedicated and recorded prior to entering into a subdivision agreement for Phase 1.
- 5. Resolve with the Traffic Department and Trail Coordinator the trail connections to the realigned "Moen Trail" and connections from the building sidewalks to the trail and sidewalk along the road. The developer shall dedicate a 20 foot wide trail easement for the realigned "Moen Trail".
- 6. The Collector Street shall be completed according to the standards of this resolution prior to issuance of any permits for Phase 6.
- 7. For each phase, or election to combine phases, the developer shall enter into urban subdivision agreements with PM&E for required improvements as follows:
  - Collector Street: for each and all of phases 1 thru 6, a a. residential urban collector street, extended by phase, ultimately connecting Goldenview Drive to Potter Valley Road (the "Z" roadway alignment illustrated on the Legacy Point Master Site Plan dated September 9, 2007) shall be to the following standard: 32' roadway section from back-of-curb to back-of-curb, 28' AC pavement, Type 1 curb and gutter on both sides, detached AC pavement sidewalk 5 feet in width, ADA ramps in PCC sidewalk sections, storm drain piping and drainage facility installations, street lighting, guardrails, traffic control devices, signage, utilities, landscaping, and USPS mail service provisions. Temporary turnarounds for emergency vehicles to be resolved with PM&E, Traffic Engineering, and the Fire Department on a phase by phase basis. Collector Street to be completed and accepted for maintenance and operation by PM&E and Maintenance and

Operations prior to Phase 6 structure receiving conditional certificate of occupancy.

- b. Collector Street: Included with Phase 1, a 26-foot-wide road gravel roadway, inclusive of 2-foot shoulders on both sides from the east end of Phase 1 improvements (a above) to Goldenview Drive, with traffic control to include but not limited to temporary access gates at both ends of the gravel roadway length, signage, storm drain piping and drainage facility installations, and utilities. Maintenance, snow removal, and access restrictions (gate access) for gravel roadway improvements shall be the responsibility of the Homeowner's Association or the developer to be identified in the covenants, conditions and restrictions to be recorded with the first phase.
- c. For phases 5 and 6, a residential urban interior street, connecting the above collector street to BettiJean Street: Standards to be in accordance with AMCR 21.90, 30 feet in width from back-of-curb to back-of-curb, Type 1 curb on both sides, AC pavement, with attached PCC sidewalk 5 feet in width, retaining walls, ADA ramps, storm drain piping and drainage facility installations, street lighting, traffic control devices, guardrails, signage, utilities, landscaping, optional fire gate on the north property line, and USPS mail service provisions. Street to be completed and pass a final inspection by PM&E prior to Phase 5 structure(s) receiving conditional certificate of occupancy. (Private Street in a private use easement).
- d. For each and all of phases 7 thru 10, a residential urban interior, extended by phase, ultimately connecting the above collector street to Belarde Avenue: Standards to be in accordance with AMCR 21.90, 30 feet in width from back-of-curb to back-of-curb, Type 1 curb on both sides, AC pavement, with attached PCC sidewalk 5 feet in width, retaining walls (as applicable), ADA ramps, storm drain piping and drainage facility installations, street lighting, traffic control devices, guardrails, signage, utilities, landscaping, and USPS mail service provisions. Temporary turnarounds for emergency vehicles to be resolved with PM&E, Traffic Engineering, and the Fire Department on a phase by phase basis. Street to be completed and accepted for maintenance and operation by PM&E and Maintenance

and Operations prior to Phase 9 structure receiving conditional certificate of occupancy.

- 8. A Storm Water Pollution Prevention Plan is required for each phase.
- 9. Since the developer is responsible for the full development of the collector street including portions outside of the project, he will not be responsible for any upgrades to Goldenview Drive or Potter Valley Road.
- 10. Prior to any construction for any phase the developer shall provide a performance guarantee for completion of the collector street to final street standards by one of the methods authorized under AMC 21.08.060 Subdivision Agreements.
- 11. Provide written concurrence from the owner of Tract1, Viewpoint Subdivision, agreeing in principal with the collector road alignment through the Tract 1 property.
- 12. Tract A, Legacy Pointe Subdivision shall petition to annex into the Anchorage Roads and Drainage Service Area prior to construction of any building units. If annexed, the Developer shall agree with annexation.
- 13. Wetlands Permit from Corps of Engineering is required prior to issuance of any permits for work or construction within any wetland delineated area. The individual building site grading and drainage plan shall reflect the COE permit conditions such as protective setbacks from streams and wetlands. Snow storage is not permitted in the wetland retention areas.

Reviewed by:

Tom Nelson Director Prepared by:

Mary Autor Senior Planner

#### MUNICIPALITY OF ANCHORAGE PLANNING AND ZONING COMMISSION CORRECTED RESOLUTION NO. 2007-076

A RESOLUTION GRANTING FINAL APPROVAL OF A SITE PLAN REVIEW FOR HOUSING FOR THE ELDERLY IN THE PLI DISTRICT IN ACCORDANCE WITH AMC 21.40.020.N AND 21.15.015, LOCATED IN TRACT A, LEGACY POINTE SUBDIVISION; GENERALLY LOCATED BETWEEN THE SEWARD HIGHWAY AND GOLDENVIEW DRIVE, AND BETWEEN EAST 172ND AVENUE AND POTTER VALLEY ROAD.

(Case 2006-142; Tax ID. No. 020-181-61)

WHEREAS, an application has been received from Forest Heights LLC, requesting final site plan approval to develop housing for the elderly, located in Tract A, Legacy Pointe Subdivision, zoned PLI District, consisting of 104.8 acres; generally located between the Seward Highway and Goldenview Drive, and between East 172nd Avenue and Potter Valley Road;

WHEREAS, notices were published, posted and mailed and public hearings were held on August 20th, October 15th, and October 22, 2007;

WHEREAS, "housing for the elderly" is a permitted use in the PLI District per AMC 21.40.020.B.15. Under the terms of AMC 21.40.020.N, the procedures stated in AMC 21.15.015 shall be followed for all permitted uses in the PLI District regardless of their nature. The approval procedure is set forth in section 21.15.030 and provides that the property owner's submittal must comply with the applicable standards of chapter 21.50. The applicable standards that apply are found in section 21.50.200, General Standards for Site Plan Approval. "Housing for the elderly" is defined in AMC 21.35.020B;

WHEREAS, the Municipal Attorney has determined that PLI zoned land may be owned and developed by private parties. Therefore, a project to provide "housing for the elderly" in the PLI District may be constructed by a private owner. There are no specific criteria in Title 21 beyond meeting the terms of the definition and the applicable Title 21 regulations;

WHEREAS, PLI District regulations and the Comprehensive Plan Land Use Map designation do not provide a residential density range for this property. In its analysis, the Planning Department established a base assumption to use as a review standard, that being a residential detached single family use and two (2) dwelling units per acre, to evaluate the impacts from this residential development compared to impacts anticipated from permitted development of the surrounding area;

WHEREAS, Title 21 does not have a codified definition for the terms "maintenance" and "compatible" as referenced in the general standards AMC 21.50.200.B.4. The Planning Department relied upon definitions found to be most relevant to this standard from the April 2004 edition of <u>A Planners Dictionary</u>, by the American Planning Association, to bring clarity for the terms "maintain" and "compatibility"; and

Planning and Zoning Commission Resolution 2007-076 Page 2

WHEREAS, this project will be developed in accordance with AMCR 21.90 Multiple Dwelling Unit Residential Development on a Single Lot or Tract.

NOW, THEREFORE BE IT RESOLVED, by the Municipal Planning and Zoning Commission that:

- A. The Commission makes the following findings of fact:
  - The petitioner proposes to develop a multi-family residential housing for 1. the elderly project on the subject 104 acres of land. The final scope and scale of the development project was significantly reduced from the initial submittal due to the considerable issues identified through the review process. Density was reduced from 6.75 DUA to 3.8 DUA. This was achieved by reducing the total number of units by 304 units, or 43 percent, from 704 units to 400 units; dropping three buildings from 13 to 10; dropping one floor per building from five to four; reducing the number of units per building from 54 to 40. Height was reduced. By changing the roof line from a gable roof to a flat roof and by dropping one floor of each building reduced the average building height from 55 feet to 39 feet. This has the effect of lowering the building profiles to reduce visual impact from the Seward Highway and nearby residential properties. Open space was increased. Placement of the buildings on the site was changed to a less dense cluster of structures, allowing a better design and more open space between the buildings. This contributes to a more open design rather than the original clustering site design. The open space increased from 54 acres or 52% of the land to 59 acres or 56% of the land. The site plan shows that, except for construction envelopes around roads and buildings, the open space will remain undisturbed. All of the open space will be preserved as natural open space and is not intended for any future development. Buffering and Landscaping was increased. Additional buffer landscaping was added along the north 100 foot natural landscape buffer, and a new 50 foot wide open space buffer was added along the south boundary.
  - 2. The Commission examined the Traffic Impact Analysis Updated October 1, 2007, and closely questioned the Traffic Engineer, Robert Kniefel, concerning his traffic assumptions, existing conditions at the intersection of Goldenview Drive and Rabbit Creek Road, and projected levels of traffic to new development on this intersection and Goldenview Drive, related issues of the surrounding road network, and his conclusions and findings. With the reduction in projected units, he found that traffic impacts are significantly reduced, and concluded that the reduced density design will not have permanent negative impacts greater than that anticipated from permitted development. Other issues were explored, such as the alignment and timing of the construction of the neighborhood collector road connecting Potter Valley Road with Goldenview Drive; the environmental considerations; whether an adequate public review process on the collector road had been

conducted; future road upgrades of the surrounding road network; funding sources; ARDSA and LRSA boundaries and responsibilities and the extent to which this developer has the responsibility to contribute to off site impacts; timing and phasing of the road construction; emergency fire access and connectivity between this project and Belarde and Bettijean Roads; the Moen and Feodosia Trails alignment; connectivity, phasing, and construction. Based upon information from the Traffic Engineer, it was found that the developer is responsible for the full development of the collector street between Goldenview Drive and Potter Valley Road, including portions outside of the project, but is not responsible for any upgrades to Goldenview Drive. It was also found that the collector road will be built initially as a gravel road and closed at the Goldenview Intersection; it will be paved and opened to the public in segments over ten years. Construction will begin at Potter Valley Road and continuing northward through Tract 1, Viewpoint Subdivision and continuing from the southwest corner of Legacy Pointe to Goldenview Drive, to correspond with the phasing of development. Goldenview Drive would not occur until Phase 6 is completed, estimated to be 2018. Thus, until Phase 6 is completed traffic from Legacy Pointe would be prevented from using Goldenview Drive and traffic from surrounding areas would not have access to the collector road from Goldenview Drive. Legacy Pointe traffic would be forced to move in a southward direction away from the surrounding neighborhoods adjacent to Goldenview Drive.

- Hydrology, drainage and environmental considerations were examined 3. pertaining to the impacts upon the surrounding area, the petition site and Potter Marsh. The Municipal Private Development Manager, Don Keefer, with PM&E discussed technical aspects and the adequacy of the petitioner's various submitted reports and studies concerning the drainage impact analysis report, subsurface soils study, septic system feasibility study, wetland delineation report, phase 1 environmental site assessment, and wetlands delineation. Municipal Watershed Management has plotted approximate alignments of streams, ground and 50 foot stream buffers, and water discharge zones. Based on this information, the Commission found that appropriate conditions of approval exist with which the issues of hydrology can be dealt with. In addition, it was indicated that the site plan has been redesigned to avoid locating buildings in streams, wetlands, and drainages, and the number of roads and/or driveways crossing streams or wetlands has been minimized. The petitioner is required to obtain the applicable wetlands permit, as needed, through the Corps of Engineers.
- 4. The Commission's authority is specific to a site plan review of this project against the standards in 21.50.200. The Commission did not determine that they had authority other than that provided by this section of statute. They debated what a reasonable standard of review under a site plan authority would be and determined the focus of the review should

be on ensuring that the proposed project would not create a greater negative impact than that produced by closely adjacent permitted uses. They also agreed with the Planning Department's reasoning that the review standard is that of a residential use with a dwelling unit density of 2 DUA, given the variety of land uses that adjoin this project, is an appropriate and reasonable standard. Comparable development does not necessarily mean single-family homes. The use of clustering was found to be an appropriate design technique since this approach can be used to protect sensitive environmental features and provide greater amounts of open space than may occur under standard single-family residential subdivision design.

- 5. The Commission reviewed the proposal within the context of its authority and from two general perspectives. The dominant viewpoint is whether this project would have deleterious impacts to adjacent land use, and the other is a comparison between the project and permitted residential density. The proposed development has over 50% of open space remaining in natural vegetation or reseeded. The cluster design is an effective use of space that avoids sensitive areas and conserves the natural features as open space. This is an effective use of the land in this area. If this design should be compared to R-7 development, the development would blanket the entire area. This type of residential use is not as desirable or effective as this cluster design and would severely impact the existing drainages and wetlands.
- 6. Housing for the elderly is a permitted use in the PLI according to an opinion of the Municipal Attorney, and the titling of the PLI District as "Public" did not imply that the proposed use was prohibited in this District. The general definition of public and institutional was made specific by the definition of housing for the elderly. This proposal meets the elements of that definition. Staff information indicated that private uses of land are allowed in the PLI District and that this proposed use was consistent with the allowed uses in this district.
- One of the principal issues was the collector street and whether or not it would adequately carry the traffic. The Commission concluded that it meets urban standards, it is a standard design type, it will be connected to Potter Valley Road before development occurs, and the project and road will be extended upslope and to the east. This creates traffic patterns that come through the development to Potter Valley Road. The access to Goldenview Drive will not be immediate, but will occur in the far future. Potter Valley Road is a collector on the OS&HP and should have sufficient capacity to accommodate the proposed development. In terms of the amount of traffic produced, the TIA showed that the revised design would generate fewer trips than typical R-9 development.
- 8. A plat note on Plat 2006-10 anticipated future subdivision of the land and road alignment of the collector road would require review approval

by the platting authority. The Municipal Platting Officer has determined that no further platting activity is required because the new owners, Forrest Heights LLC, intend to develop this project in accordance with AMCR 21.90 (Multiple Dwelling Unit Residential Development on a Single Lot or Tract). The Commission agreed with the Planning Department's position that with the approval of the site plan, the Planning and Zoning Commission would act as the Platting Authority and approve the road alignment shown on the site plan, thus satisfying the plat note. All public use easements will be recorded by document with the State District Recorder's Office.

- 9. The Commission finds that public facilities, water, storm drainage, and sewer are either available, or will be extended as required according to the phasing schedule. In terms of environmental impacts, there will be storm drains, filtration systems, and the type of land use will ensure minimal pollution. The Commission finds that the provision of these services should ensure adequate environmental protection and that the provision of these services should not result in greater impacts to the environment than that caused by typical hillside residential development. This type of development should not generate a need for additional schools.
- 10. In terms of compatibility with surrounding land uses, the Commission finds the original higher density proposal was inappropriate. The developer revised the density downward and reduced the height and number of building so the appearance from Potter Valley Road and the Seward Highway should be minimal. The developer also provided considerable buffer space between current residential uses and the proposed project. Because of the location of the proposed uses, they should not be visible from current residential uses and there should be little adverse impact to the surrounding residential areas as a result of these design and siting changes.
- 11. The Commission finds that the neighborhoods to the north object to having road connectivity from this project to Bettijean Road, which connects to 172nd Avenue and Virgo, and believe there should be only emergency fire access between the proposed and existing development. Roads with 15% to 20% grades, such as Virgo and 172nd Avenue, would not be built to a standard to carry traffic from the Hillside.
- 12. The Commission finds the proposal and site plan generally meets the applicable definitions, procedures, regulations and standards in accordance with AMC 21.35.020.B, 21.40.020, 21.15.015, 21.15.030, and 21.50.200.
- 13. The developer has agreed to the conditions of approval and amendments.

- 14. The Commission voted seven (7) in favor, one (1) opposed to approve the site plan as amended.
- B. The Commission approves the Site Plan Review for Housing for the Elderly in accordance with AMC 21.40.020.N and AMC 21.15.015, located at Legacy Pointe, Tract A, subject to the following conditions:

#### 1. GENERAL CONDITIONS:

- a. A Notice of Zoning Action shall be filed with the State of Alaska District Recorder's Office. Proof of such shall be submitted to the Planning Department.
- b. This site plan approval is for Housing for the Elderly, a permitted use in the PLI District. Occupancy is age restricted: a minimum of one occupant per unit shall be 62 years of age or older or as otherwise provided by Title 21 code definition and the federal Fair Housing law, whichever is more restrictive, and no one under the age of 19 years is permitted permanent occupancy. The sale or subleasing of these units shall be consistent with these age restrictions.
- c. Maximum residential density shall not exceed 3.84 dwelling units per acre, or a total number not to exceed 400 units.
- d. No commercial uses or activities, except those that are ancillary to the club house functions and that are intended to serve residents and guests. Home occupations are not allowed in the PLI District.
- e. Development will be in accordance with AMCR 21.90, multiple dwelling unit residential development on a single lot or tract. Development will be done in the ten (10) phases commencing at the southwest corner of the parcel.
- f. A building permit for Phase 1 must be obtained and construction begun within five years of the effective date of the final Planning and Zoning Commission resolution of approval approving the Master Site Plan, issued after the conclusion of any appeals. Building permits for each subsequent phase shall be issued no later than the dates set forth below. Each phase will be completed within two years from the date the building permit is issued. Permits for each subsequent phase are expected to be issued no later than the end date shown on the phase plan. If a building permit is not timely issued within these time periods, then the Mater Site Plan approval shall be null and void for any uncompleted phases unless the Planning and Zoning Commission grants an extension for good cause shown following a public hearing.

- 1) Phase 1, 2012
- 2) Phase 2, 2013
- 3) Phase 3. 2014
- 4) Phase 4. 2015
- 5) Phase 5. 2017
- 6) Phase 6. 2018
- 7) Phase 7. 2020
- 8) Phase 8. 2020
- 9) Phase 9. 2021
- 10) Phase 10. 2022
- g. Submit a revised final master site plan, incorporating the conditions herein to the Planning Department before issuance of any construction permits. Provide a site plan note indicating all areas of open space, the total amount (acres) of open space provided, and that open space will be maintained as undisturbed natural vegetation, except for supplemental landscaping.
- h. All construction and improvements related to this approval shall be substantially in compliance with the review application, narrative, and the following studies and site plan drawings, except as modified by the conditions of approval:
  - 1) June 2007 Traffic Impact Analysis (including all revisions) as approved by the Municipality of Anchorage.
  - Wetland Delineation Report for Forest Heights Tracts A and B, dated October 4, 2005, prepared by CH2MHill.
  - Wetland Delineation Report, Legacy Pointe, dated August 28, 2006, prepared by Shaw Alaska, Inc.
  - 4) Phase 1 Environmental Site Assessment, Tracts A and B, Forest Heights Subdivision, dated October 2005, prepared by Shannon & Wilson, Inc.
  - 5) Drainage Impact Analysis Report, Legacy Pointe Subdivision Site Development, dated April 12, 2007, and September 9, 2007 Analysis Letter re: recent infrastructure layout modification, prepared by Terrasat, Inc.
  - 6) Subsurface Soils Study-Septic System Feasibility Study, Forest Heights Subdivision, dated March 19, 2004, prepared by Anderson Engineering.
  - 7) Master Site Plan dated September 9, 2007 prepared by
  - 8) Landscape Plan pages 1 and 2, dated October 10, 2007, prepared by Lantech.
  - 9) Elevation and Building Floor Plans for Building A and B, submitted September 10, 2007, prepared by Chris Cole Architect.

10) Phasing Plan dated September 9, 2007.

11) Proposed Offsite Road Connection drawing, dated September 9, 2007.

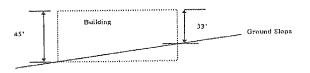
12) Building Height Profiles, dated October 1, 2007.

13) Site Disturbance Plan, dated October 3, 2007.

- i. The Commission is the platting authority for the purposes of reviewing the site road alignments per Plat 2006-10, plat note number 2, and the approval of this site plan, as amended by the conditions of approval herein, sets the required road alignments. All public improvements required per this entitlement shall be those of AMC 21.85.020.A, per the designation authority requirement of AMC 21.85.020.E.
- j. Resolve with the Planning Department the method by which areas delineated as open space from areas that may be disturbed during construction will be protected. Construction fencing shall be required to be installed prior to site preparation clearing and construction to protect existing vegetation. Pre and post construction inspections by Land Use Enforcement are required.

#### 2. BUILDING DESIGN:

- a. The following building height standards shall apply to all buildings:
  - 1) Maximum Building Height. As shown on the final building height cross sections, building height shall be measured from the basement floor ground elevation to the building roof elevation and shall not exceed 45 feet; from the first floor elevation above the basement to the top of the roof shall not exceed 33 feet. See diagram below.



2) Roof Form. Final building dimensions shall not exceed those noted on the final approved site plan. Building massing shall provide visual relief using modulated roof forms such as a terracing parapet, multiple peaks, jogged ridge lines and dormers.

- 3) Height Exceptions. Height exceptions for building appurtenances shall be as provided in AMC section 21.45.050.B, subject to the following:
  - (a) Appurtenances that exceed the building height limit shall be demonstrated to the satisfaction of the Planning Director as being necessary or directly related to the functioning and use of the building;
  - (b) Appurtenances shall not exceed the building height limit by more than 10 feet, except that open railings and skylights may exceed the height limit by up to four feet;
  - (c) Appurtenances shall cumulatively cover no more than 15% of the roof area of the building;
  - (d) Appurtenances shall not be constructed for the purpose of providing additional floor area, usable space, or storage room for the building, except that a storage room of 60 square feet or less, combined with a stairwell tower or elevator housing, and directly related to a rooftop use (such as tool storage for a rooftop garden), is allowed.
- b. All building windows shall be non-reflective glazing.
- c. Each building is required to have sprinkler systems.
- d. Exterior lighting for the development shall meet IESNA standards and avoid excessive glare, brightness and avoid off site light trespass. The applicant shall submit a site lighting plan and resolve with the Planning Department exterior lighting specifications with the submittal of the final master site plan. The submittal shall address parking lot lighting, building-mounted lighting, parking structure lighting, pedestrian lighting and other site exterior lighting. It shall provide the location of exterior lighting by type, a luminaire schedule, mounting height of all luminaires, photometric data and calculations for foot-candles and uniformity ratios.

#### LANDSCAPING:

- a. Landscaping on the site shall include the following:
  - Install buffer landscaping along the west side of the interior collector street between Tract A and Tract B with Phase 5 or full build out of the collector road, whichever occurs first.

- 2) The 100 foot natural open space buffer on the northerly boundary bordering the two residential subdivisions shall be left undisturbed (except for any necessary access road, sidewalks, driveways, and fire lanes into the site, and a corner of Building 10, as shown on the master site plan associated with Building 9 and 10), and placed exclusive of any utility easements, and supplemented with buffer landscape plantings as needed, creating an all-season visual screen from the property line.
- 3) An undisturbed (except for any necessary access road, trail, and sidewalk from off-site into the site) natural open space buffer shall be established along the southerly boundary of the site at least 50 feet wide, and placed exclusive of utility easements, supplemented with buffer landscaping as needed.
- b. With the initiation of each new phase of development, an individual building site grading and drainage plan, to include a restoration and landscape plan, shall be submitted and approved by relevant sections of PM&E and Planning addressing:
  - 1) The location and disturbance limits for all utilities associated with the new development, including shallow utilities and service connections of main lines.
  - 2) All limits of clearing, fill stabilization measures, and disturbed area restoration plans.
  - 3) Site restoration is required for all areas between the edges of clearing and permanent structures, finished lawns and edge of pavement, in the same growing season as each development phase is completed, and any required landscaping installed no later than the next season for planting landscaping.
  - 4) The final landscape plan will provide landscaping to soften the effect of the building mass.
- c. A final landscape plan shall be submitted to the Planning Department to address supplemental plantings as needed in the north and south natural open space buffers that meet the intent of buffer landscaping AMC 21.45.125.C.2. Supplemental landscaping in the north 100 foot natural open space buffer shall be completed with the completion of Phase 9. Supplemental landscaping in the south 50 foot natural open space buffer shall be completed with the completion of Phase 1.

d. Construction fencing shall be required to be installed prior to site preparation clearing and construction to protect existing vegetation in designated undisturbed areas. Pre and post construction inspections by Land Use Enforcement are required.

#### ROADS AND DRAINAGE:

- a. Provisions for storm drainage with Legacy Pointe Subdivision, Tract A shall comply with requirement under Anchorage Municipal Code 21.45.230 and 21.85.140.
- b. Resolve drainage easements and drainage improvements, creek protection setbacks, and wetland setbacks with Planning, PM&E Private Development and Watershed Management. At the completion of the drainage impact analysis, the municipal departments will report back to the Planning and Zoning Commission the results of that analysis specifically dealing with the issues of impact to Potter Marsh wetlands from the site, and other concerns in terms of water quality and water quantity.
- c. Resolve with PM&E and Development Services Building Safety the need for footing drains and stub-outs to structures. A fill and grade permit from Building Safety must be obtained prior to the commencement of grading and/or excavation of on site material or the import of fill material in excess of fifty cubic yards. A site grading and drainage plan, and an erosion and sediment control plan, must be included with fill and grade permit application. The plan must detail all measures to be implemented on site to prevent the transport of sediment beyond property boundaries or into existing development setbacks and/or stream maintenance and protection setbacks both during and after construction.
- d. All easements to be dedicated by document and recorded with the State Recorder's Office prior to the initiation of each development phase. Graphics depicting the written legal description of the respective dedication shall be recorded with each easement. Roadway and drainage easements required by the approved master plan shall be dedicated and recorded prior to entering into a subdivision agreement for Phase 1.
- e. Resolve with the Traffic Department and Trail Coordinator the trail connections to the realigned "Moen Trail" to the Feodosia Trail and connections from the building sidewalks to the trail and sidewalk along the road. The developer shall dedicate a 20 foot wide trail easement for the realigned "Moen Trail" and shall construct a trail to the standards of the Municipality.

#### f. Trails:

- 1) The Moen Trail will be constructed in its entirety as part of Phase One to a 10 foot wide gravel trail except in those areas where it overlaps the trail alongside the roadway. In those areas it will be a 10 foot wide paved trail.
- 2) The trail along one side of the collector street will be an 8 foot wide paved trail setback 5 foot from the back of curb to support snow plowing. Where it overlaps the Moen Trail, it will be a 10 foot wide paved section. The developer will determine the adequacy of the PUE width at 70 feet to accommodate the required improvements and can increase the PUE width if needed. With the trail along the collector street at 8 feet width, there is no need for a bike lane in the street.
- 3) There is no need for a connection from the Moen Trail to the Feodosia Trail in Legacy Pointe, however, the site plan will include a 20 foot trail easement for the Feodosia Trail.
- g. The Collector Street shall be completed according to the standards of this resolution prior to issuance of any permits for Phase 6.
- h. For each phase, or election to combine phases, the developer shall enter into urban subdivision agreements with PM&E for required improvements as follows:
  - 1) Collector Street: for each and all of phases 1 thru 6, a residential urban collector street, extended by phase, ultimately connecting Goldenview Drive to Potter Valley Road (the "Z" roadway alignment illustrated on the Legacy Point Master Site Plan dated September 9, 2007) shall be to the following standard: 32 foot roadway section from backof-curb to back-of-curb, 28 foot AC pavement, Type 1 curb and gutter on both sides, detached AC pavement sidewalk 5 feet in width, ADA ramps in PCC sidewalk sections, storm drain piping and drainage facility installations, street lighting, guardrails, traffic control devices, signage, utilities, landscaping, and USPS mail service provisions. Temporary turnarounds for emergency vehicles to be resolved with PM&E, Traffic Engineering, and the Fire Department on a phase by phase basis. Collector Street to be completed and accepted for maintenance and operation by PM&E and Maintenance and Operations prior to Phase 6 structure receiving conditional certificate of occupancy.

Planning and Zoning Commission Resolution 2007-076 Page 13

- 2) Collector Street: Included with Phase 1, a 26-foot-wide road gravel roadway, inclusive of 2-foot shoulders on both sides from the east end of Phase 1 improvements (a above) to Goldenview Drive, with traffic control to include but not limited to temporary access gates at both ends of the gravel roadway length, signage, storm drain piping and drainage facility installations, and utilities. Maintenance, snow removal, and access restrictions (gate access) for gravel roadway improvements shall be the responsibility of the Homeowner's Association or the developer to be identified in the covenants, conditions and restrictions to be recorded with the first phase.
- 3) For phases 5 and 6, a residential urban interior street, connecting the above collector street, to Bettijean Street, with an emergency access fire gate at the Bettijean Street connection: Standards to be in accordance with AMCR 21.90, 30 feet in width from back-of-curb to back-of-curb, Type 1 curb on both sides, AC pavement, with attached PCC sidewalk 5 feet in width, retaining walls, ADA ramps, storm drain piping and drainage facility installations, street lighting, traffic control devices, guardrails, signage, utilities, landscaping, fire gate access on the north property line, and USPS mail service provisions. Street to be completed and pass a final inspection by PM&E prior to Phase 5 structure(s) receiving conditional certificate of occupancy. (Private Street in a private use easement).
- For each and all of phases 7 thru 10, a residential urban 4) interior, extended by phase, ultimately connecting the above collector street to Belarde Avenue, with an emergency access fire gate at the Belarde Avenue connection: Standards to be in accordance with AMCR 21.90, 30 feet in width from back-of-curb to back-of-curb, Type 1 curb on both sides, AC pavement, with attached PCC sidewalk 5 feet in width, retaining walls (as applicable), ADA ramps, storm drain piping and drainage facility installations, street lighting, traffic control devices, guardrails, signage, utilities, landscaping, fire gate access on the north property line, and USPS mail service provisions. Temporary turnarounds for emergency vehicles to be resolved with PM&E, Traffic Engineering, and the Fire Department on a phase by phase Street to be completed and accepted for maintenance and operation by PM&E and Maintenance and Operations prior to Phase 9 structure receiving conditional certificate of occupancy.

- i. A Storm Water Pollution Prevention Plan is required for each phase.
- j. Since the developer is responsible for the full development of the collector street including portions outside of the project, he will not be responsible for any upgrades to Goldenview Drive or Potter Valley Road.
- Prior to any construction for any phase, the developer shall k. provide a performance guarantee for completion of the collector street to final street standards by one of the methods authorized under AMC 21.08.060 Subdivision Agreements.
- 1. Provide written concurrence from the owner of Tract1, Viewpoint Subdivision, agreeing in principal with the collector road alignment through the Tract 1 property.
- Tract A, Legacy Pointe Subdivision shall petition to annex into the m. Anchorage Roads and Drainage Service Area prior to construction of any building units. If annexed, the Developer shall agree with annexation.
- Wetlands Permit from Corps of Engineering is required prior to 11. issuance of any permits for work or construction within any wetland delineated area. The individual building site grading and drainage plan shall reflect the COE permit conditions such as protective setbacks from streams and wetlands. Snow storage is not permitted in the wetland retention areas.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission this 22nd day of October, 2007.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this day of February 2008. This written decision/resolution of the Planning and Zoning Commission is final and any party may appeal it within twenty (20) days to the Board of Adjustment pursuant to Anchorage Municipal Code 21.30.030

Tom Nelse

Secretary

(Case 2006-142; Tax ID. No. 020-181-61)

# FOREST HEIGHTS.LLC SITE PLAN REVIEW: HOUSING FOR THE ELDERLY IN THE PLI DISTRICT (LEGACY POINTE), APPEAL NO. 2006-142

## APPEAL PROM THE PLANNING AND ZONING COMMISSION TO THE MUNICIPALITY OF ANCHORAGE BOARD OF ADJUSTMENT

#### **DECISION AND FINDINGS**

WHEREAS, by Corrected Resolution No. 2007-076 dated February 4, 2008, the Anchorage Municipal Planning and Zoning Commission ("Commission") approved the Site Plan Review for Housing for the Elderly located at Legacy Pointe, Tract A, subject to detailed General Conditions; and

WHEREAS, the home and landowners organization, HALO, Inc. ("appellant") appealed the Commission's action to the Board of Adjustment, alleging error in the interpretation and application of law by allowing the private development of housing for the elderly in the Public Lands and Institution (PLI) land use district; and

WHEREAS, the Board of Adjustment deliberated over and decided the appeal at a meeting open to the public held on October 8, 2008;

NOW THEREFORE BE IT RESOLVED, that the Board of Adjustment adopts the following decision and findings:

#### PLANNING AND ZONING COMMISSION ACTION ON APPEAL

- 1. After public hearings on August 20, 2007, October 15, 2007, October 22, 2007, and deliberation December 19, 2007, January 14, 2008, and February 4, 2008, appellant's site plan review was approved by the Planning & Zoning Commission, as reconfigured with lower density and profile, and subject to the terms of Corrected Resolution No. 2007-076 adopted February 4, 2008.
- 2. Notice of Appeal to the Board of Adjustment was filed on February 21, 2008.

#### PRELIMINARY MATTERS

3. The Board of Adjustment decided to first address the 2-page Issue Response Memorandum for Chapter 21.04 of the Title 21 Rewrite, prepared by

Tom Nelson, Planning Director, dated December 1, 2007, and appended to appellant's brief.

Issue No. 1: Should the Board of Adjustment consider the memorandum identified at R. 2199–2200, which is not part of the record on appeal?

- 4. Under AMC 21.30.090, the Board of Adjustment hears this appeal solely on the basis of the record established before the Planning & Zoning Commission, the notice of appeal, the appellant's argument and the reply thereto. AMC 21.30.080.B prohibits the Board of Adjustment from taking additional evidence and AMC 21.30.040 specifically states that allegations of new evidence shall not be considered or decided by the Board of Adjustment.
- 5. By unanimous vote (3-0), the Board of Adjustment finds that the memorandum dated December 1, 2007 (R. 2199–2200) should be stricken from the record and not considered by the Board of Adjustment.

#### MAIN ISSUES

- Issue No. 2: Did the Planning & Zoning Commission err as a matter of law in granting final site plan approval for the private development of multi-family housing, for use as private non-institutional housing for the elderly, in a Public Lands and Institutions (PLI) district?
- 6. This is a legal issue over which the Board of Adjustment will exercise its independent judgment.
- 7. General guidance is offered under AMC 21.05.050.C.5: The "public lands and institutions" classification is for "areas substantially developed for active public and institutional uses, and vacant areas designated for future public and institutional uses." Nothing in AMC 21.05.050.C.5 precludes private development.
- 8. Areas "substantially" developed for active public and institutional uses may also permit other uses without violating the general classification system.

- 9. There is no requirement in AMC 21.05.050.C.5 that all "institutional" uses be publicly owned or developed: Educational institutions are examples of "institutional uses" which can be public or private.
- 10. AMC 21.40.020.B, lists permitted principal uses in the PLI district, including the following which clearly may be private: placer mining operations; child care homes; ski towers.
- 11. The listing of permitted principal uses in AMC 21.40.020.8 does not support a restrictive reading of AMC 21.05.050.C.5 as precluding private development.
- 12. AMC 21.40.020.B.15 lists "housing for the elderly", not "public housing for the elderly". If the Assembly had intended to preclude private development, the restriction to "public housing" would have been stated.
- 13. Private housing for the elderly is a permitted principle use in the PLI district.
- 14. "Housing for the elderly" is defined in AMC 21.35.020.B;as "multiple-family housing especially designed for occupancy by persons 62 years of age and older and requires 30 percent of the units within the facility to be handicapped accessible with accommodation for wheelchairs".
- 15. Planning & Zoning Commission Resolution 2007-076, General Condition B.1.b. (R. 624), imposes a minimum threshold requirement of compliance with AMC 21.35.020.B.
- 16. By majority vote (2-1), the Board of Adjustment finds that the Planning & Zoning Commission did not err as a matter of law in granting final site plan approval for the private development of multi-family housing, for use as private non-institutional housing for the elderly, in a PLI Public Lands and Institutions (PLI) district.
- Issue No. 3: Did the Planning & Zoning Commission err as a matter of law in its determination of the proper application of AMC 21.40.020.N?

- 17. The Planning and Zoning Commission Finding of Fact No. 12 (R. 623) was: The Commission finds the proposal and site plan generally meets (sic) the applicable definitions, procedures, regulations and standards in accordance with AMC 21.35.020.B, 21.40.020, 21.15.015, 21.15.030, and 21.50.200.
- 18. This is a legal issue over which the Board of Adjustment will exercise its independent judgment.
- 19. The Board approaches this issue from the perspective of both the Board's finding that private housing for the elderly is a permitted principal use in the PL! district, and recent guidance offered to the Board by the Alaska Supreme Court in determining whether a provision in the Anchorage Municipal Code is directory or mandatory.
- 20. Under the 3-prong test enunciated by the Supreme Court in South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Board of Adjustment, 172 P.3d, 768, 772 (December 2007), the Board finds AMC 21.40.020,N to be directory and not mandatory.
- 21. The provisions of AMC 21.15.015 have no practical application to private development of housing for the elderly in the PLI district.
- 22. The site plan review for private development of housing for the elderly in the PLI district is appropriately accomplished under AMC 21.15.030 and 21.50.200.
- 23. By unanimous vote (3-0), the Board of Adjustment finds that the Planning & Zoning Commission did not err as a matter of law in determining the proper application of AMC 21.40.020.N.
- <u>issue No. 4</u>: Is the evidence in the record sufficient to support the Planning & Zoning Commission's findings and conclusions regarding the impact of project density and the project's compatibility with surrounding land uses?
- 24. This issue presents a mixed question of law and fact. The Commission's methodology presents a legal issue relating to the interpretation

and construction of AMC 21.50.200, over which the Board may exercise its independent judgment.

- 25. Whether or not the site plan, with conditions, meets the standards of 21.50.200 is a factual issue. The Board will defer to the Planning and Zoning Commission on factual issues unless, upon two-thirds vote, the Board substitutes its independent judgment.
- 26. In the Planning & Zoning Commission review process, the project density was significantly reduced from what the developer had originally submitted, and density mitigation measures were incorporated as reflected in Planning & Zoning Commission Resolution 2007-076.
- 27. The Planning & Zoning Commission's review of project density and compatibility is reflected in Commission Findings of Fact. Nos. 4, 5, and 10, as supplemented by General Condition No. 1.c.
- 28. Under AMC 21.50.200, the allowable (i.e. permitted) uses set out in the Code for the land use district, and not existing uses, must drive the impact and compatibility analysis. Existing uses cannot be the driver, and do not provide the legal standard for comparison, as illustrated by this example: In an undeveloped land use district that allows residential development, initial development would forever be defeated because the first development will always have a substantially greater impact on the items listed in AMC 21.50.200 than existing development, which in this example is not present.
- 29. The Anchorage Municipal Code does not set out a specific radius for use in determining compatibility with closely adjacent permitted uses. AMC 21.15.005.E.2 and 21.35.020.B are notice requirements and do not preclude going beyond 500 feet of the Legacy Pointe site to evaluate impact of the development on surrounding neighborhoods.
- 30. The 1-mile radius used by Planning Staff and relied on by the Planning & Zoning Commission is a reasonable area for comparison under AMC 21.50.200 and the Anchorage 2020 Comprehensive Plan.

- 31. There is substantial evidence in the record showing that the Planning & Zoning Commission took a thoughtful and reasonable approach in its evaluation of compatibility and impact under AMC 21.50.200.
- 32. The Board relies on Planning Staff's analysis (R. 1290–1293) that the density range of property to the south and northeast of the Legacy Pointe site is 3-6 DUA, and with development controls and mitigation, allowable densities could be increased up to 10 DUA through a clustered development plan.
- 33. In comparing what other potential density could be in adjacent parcels and on the Legacy Pointe site under review, with and without mitigation measures, the Planning & Zoning Commission struck a reasonable balance in reviewing the Legacy Pointe site plan for development in an area with an existing density below that allowed in the Code.
- 34. By majority vote (2-1), the Board of Adjustment finds the Planning & Zoning Commission's review and comparison of the allowable density in surrounding properties within a 1-mile radius, as reflected in Commission Findings of Fact. Nos. 4, 5, and 10, supplemented by General Condition No. 1.c, is reasonable and proper under AMC 21.50.200 and the Anchorage 2020 Comprehensive Plan, and is supported by substantial evidence in the record.
- <u>Issue No. 5</u>: Did the Planning & Zoning Commission err by approving phased-in development of a collector street?
- 35. This issue presents a mixed question of law and fact. The issue whether the Design Criteria Manual bars the Commission from approving phased-in development of the collector street is a legal issue, over which the Board may exercise its independent judgment. The Issue whether the Commission's findings and conditions of approval for the collector street are supported by substantial evidence in the record is a factual issue.
- 38. Commission Findings of Fact Nos. 2 and 7 and subsections h k of General Condition No. 4 address the phased-in development of a collector street.

- 37. There is flexibility in the Code, given the long term staged development of the housing units.
- 38. The record reflects recommendations of approval from both Donald C. Keefer, P.E., Municipal Project Management & Engineering Department, and Robert E. Kniefel, Municipal Traffic Engineer, and consideration of the July 2007 Traffic Impact Analysis (with revisions). Both Mr. Keefer and Mr. Kniefel were present and available for comment in the proceedings before the Planning and Zoning Commission.
- 39. There is no evidence in the record, and the Board finds nothing in the Code, to preclude the Municipal Engineer and the Municipal Traffic Engineer from approving phased-in development of the collector street, to be paved and opened to the public in segments over 10 years.
- 40. In approving phased-in development of the collector street, the Commission followed the recommended modifications and comments of Mr. Keefer and Mr. Kniefel.
- 41. By unanimous vote (3-0), the Board of Adjustment finds no legal bar to phased-in development of the collector street, and finds the Planning & Zoning Commission's findings and conditions addressing phased-in development to be supported in the record by substantial evidence.
- 42. The Board next addressed two additional legal arguments raised by appellant: Filing Fees and "Spot Zoning".
- 43. By footnote (R. 2194), appellant argues that the filing fee of \$960 is "unconstitutionally excessive". The jurisdiction of the Board of Adjustment to decide appeals under AMC 21.30.010 does not extend to constitutional challenges to the filing fee established by the Assembly.
- 44. The Board finds appellant's argument on "spot zoning" neither persuasive nor applicable to the facts in this appeal.

#### **CONCLUSIONS**

1. This appeal was heard in accordance with AMC 21.30.090.

- 2. The meeting at which the Board of Adjustment decided this appeal was held in accordance with AMC 21,30,080.
- 3. The memorandum dated December 1, 2007 (R. 2199–2200), included as an attachment to appellant's briefing, is not accepted as part of the record on appeal and is therefore stricken.
- 4. The Board of Adjustment does not have jurisdiction to hear appellant's constitutional challenge to the filing fee established in the Code by the Assembly.
  - The Planning & Zoning Commission did not engage in "spot zoning".
- 6. The Planning & Zoning Commission's findings of fact and approval of the site plan review for housing for the elderly, located at Legacy Pointe, Tract A, subject to the conditions set out Corrected Resolution No. 2007-076, as adopted by the Planning & Zoning Commission on February 4, 2008 (R.619 632), are affirmed.
- 7. This is a final decision of the Board of Adjustment with respect to all issues involved in this case. The parties have 30 days from the date of mailing or other distribution of this decision to file an appeal to the Superior Court.

Adopted this 25 day of November, 2008.

Kevin Waring, Chair On behalf of the

Board of Adjustment hearing panel:

Kevin Waring, Chair Michael J. Jensen, Member

Bernd C. Guetschow, Member

#### APPEAL PROCEDURES

Pursuant to AMC 21.30.095 and 21.30.100, a final decision affirming or reversing the decision of the lower administrative body in whole or in part shall finally dispose of the matter on appeal. A remand to a lower administrative body is not a final decision from which an appeal may be taken. Any party aggrieved by a final decision may file a complaint in the superior court in accordance with Alaska Rules of Appellate Procedure Rule 601 and 602 within 30 days from the date the decision appealed from is mailed or otherwise distributed to the appellant.

#### **RECONSIDERATION**

Pursuant AMC 21.30.170C, a party may ask the board to reconsider a decision by filing a petition for reconsideration within 15 days after delivery or mailing of the decision. A denial of a petition for reconsideration by the board of adjustment is the final decision for purposes of appeal to the superior court. Where the board of adjustment grants a petition for reconsideration, the board of adjustment's decision on reconsideration is the final decision for purposes of appeal to the superior court.

#### **CERTIFICATION**

I hereby certify that the foregoing is a full, and correct copy of the Supplementary Decision on Appeal in the matter of <u>Appeal 2006-142</u>; dated and filed in the office of the Anchorage Municipal Clerk in Anchorage, Alaska, this <u>4th</u> day of <u>December. 2008.</u>

inda L. Heim

Deputy Municipal Clerk

H

2012-006068-0

Recording Dist: 301 - Anchorage 2/6/2012 11:20 AM Pages: 1 of 14



TRUSTEE'S DEED

FTAA

F 33224

WHEREAS on August 1, 2005, Forest Heights LLC, as trustor, executed that certain Deed of Trust to Alyeska Title Guaranty Agency, as trustee, for the benefit of Goldenview Development Company, an Alaska partnership, as beneficiary, pertaining to real property now described as:

Tract A, Legacy Pointe Subdivision, according to the official plat thereof, Plat Number 2006-10 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska

and other property which has been released from the Deed of Trust, which Deed of Trust was recorded on August 2, 2005 at recording number 2005-053635-0 of the records of the Anchorage Recording District, State of Alaska, and

WHEREAS the trustor failed to perform duties in accordance with the Deed of Trust and the obligations secured thereby, and

WHEREAS on October 31, 2011, a Notice of Default and Election to Sell was recorded under recording number 2011-053005-0 in the records of the Anchorage Recording District, State of Alaska wherein the said trustee notified the trustor of the default in the performance of the terms and provisions of the Deed of Trust and the obligations secured thereby; and

WHEREAS accurate copies of said Notice of Default were on November 4, 2011 mailed, by certified mail, to the persons listed and at the addresses shown following their names in the Affidavit of Mailing attached hereto as Exhibit A which were the last known addresses of the persons and representatives, and

WHEREAS a full, true and correct copy of said Notice of Default was on November 7, 2011 posted at on the property as set forth in the Return of Service attached hereto as Exhibit B, and

WHEREAS copies of a notice of sale were on December 5, 2011 posted within five miles of the place of sale at the places as set forth in the Affidavit of Posting attached hereto as Exhibit C; and

TRUSTEE'S DEED PAGE 1 OF 3

WHEREAS a Notice of Sale of the property described in said Deed of Trust was duly published as required by publishing the same in the Alaska Journal of Commerce, a newspaper of general circulation published nearest to the place of sale as set forth in the Affidavit of Publication attached hereto as Exhibit D-1, once each week on December 4, 11, 18, and 25, 2011, and

WHEREAS a Notice of Sale was published on the Internet Website beginning at least 45 days before the date of sale as described in the Affidavit of Internet Publication attached hereto as Exhibit D-2, and

WHEREAS on February 2, 2012, the property described in the Deed of Trust was sold to Goldenview Development Company for the sum of \$5,506,702.07 which was the highest bid for the property and which was setoff against all sums due said person under the deed of trust as set forth in the Affidavit of Sale attached hereto as Exhibit E,

NOW THEREFORE, Fidelity Title Agency of Alaska, whose address is 3150 C Street, Suite 220, Anchorage, Alaska 99503, hereby conveys to Goldenview Development Company, an Alaska partnership, whose address is 16420 St. James Circle, Anchorage, Alaska 99516, the real property described as:

Tract A, Legacy Pointe Subdivision, according to the official plat thereof, Plat Number 2006-10 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska

without warranty.

Fidelity Title Agency of Alaska

Name: Leslie Plikat

Title: Clasent

Date: 2-6-12

111

2 of 14 2012-006068-0

The foregoing instrument was acknowledge	d before me	this 6	day of
Jessian, 2012, by Loslie, Plike	<u>t</u>	, of Fideli	ity Title
Agency of Alaska, on behalf of the corporation.			
$\mathcal{C}_{\lambda}$	te R	1	

Motary Public In And For Alaska My Commission Expires: 5 29 12

After recording, return to:

Office of Ronald L. Baird P.O. Box 1120700 Anchorage, Alaska 99511-2070



TRUSTEE'S DEED PAGE 3 OF 3



## EXHIBIT A AFFIDAVIT OF MAILING

STATE OF ALASKA	•	)
	) ss.	
THIRD JUDICIAL DISTRICT	)	

Nancy Schock, being first duly sworn, upon oath, deposes and states:

- 1. I am a legal assistant in the law office of Ronald L. Baird, 1000 E. O'Malley Road, Suite 202, Anchorage, Alaska, attorney for the beneficiary, and I am competent in all respects to make this affidavit.
- 2. On November 4th, 2011, I caused to be mailed by certified U.S. Mail, postage prepaid, a copy of the recorded Notice of Default and Election to Sell (a copy of which is attached hereto as Exhibit 1) concerning the following described real property:

Tract A, Legacy Pointe Subdivision, according to the official plat thereof, Plat Number 2006-10 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska.

to the last known address or addresses of the following parties who have or may claim an interest subsequent to that of the beneficiary in the real property which is the subject of this matter:

Forest Heights, LLC 4730 Business Park Blvd, #H14 Anchorage, AK 99503

Aaron F. Scott 8324 E. 130<sup>th</sup> Avenue Anchorage, AK 99516

Aaron F. Scott 3000 A Street, Suite 420 Anchorage, AK 99503

Tabitha R. Scott 8324 E. 130<sup>th</sup> Avenue Anchorage, AK 99516 Tabitha R. Scott 3000 A Street, Suite 420 Anchorage, AK 99503

Forest Heights, LLC c/o Hartig, Rhodes, Hoge & Lekisch 717 K Street Anchorage, AK 99501

Paul M. Palmer 10505 Maintree Dr Anchorage, AK 99507

TRUSTEE'S DEED, EXHIBIT A - AFFIDAVIT OF MAILING PAGE I OF 3



Paul M. Palmer 16420 St. James Pl Anchorage, AK 99516

. `A-

First National Bank Alaska 8725 Old Seward Highway Anchorage, AK 99515

First National Bank Alaska P.O. Box 200588 Anchorage, AK 99520

Thomas E. Alexander 3801 Centerpoint Drive #200 Anchorage, AK 99503

Sharon K. Elliott P.O. Box 240285 Anchorage, AK 99524

Sharon K. Elliott P.O. Box 39088 Minneapolis, MN 55439

Thomas E. Alexander 13741 Arne Erickson Pl Anchorage, AK 99515

Thomas E. Alexander 3000 A Street, Suite 420 Anchorage, AK 99503

Sharon K. Elliott 5942 Meadow St. #302 Anchorage, AK 99507

Sharon K. Elliott 3000 A Street, Suite 420 Anchorage, AK 99503 Municipality of Anchorage Attn: R. Ward P.O. Box 196650 Anchorage, AK 99519-6650

Lantech, Inc. 440 W. Benson Blvd., Suite 200 Anchorage, AK 99524

Troy Jarvis P.O. Box 240285 Anchorage, AK 99524

Aaron F. Scott 7901 Honeysuckle Drive Anchorage, AK 99502

Aaron F. Scott 9612 Newhaven Loop Anchorage, AK 99507

Tabitha Renee Scott 7901 Honeysuckle Drive Anchorage, AK 99502

Tabitha Renee Scott 9612 Newhaven Loop Anchorage, AK 99507

Sharon K. Elliott 615 E. 82nd Avenue, Suite 301 Anchorage, AK 99518

Troy Jarvis 360 E. Jackson Street Medford, OR 97501

Troy Jarvis 5400 Woodshire Circle Anchorage, AK 99516

TRUSTEE'S DEED, EXHIBIT A - AFFIDAVIT OF MAILING PAGE 2 OF 3



Palmer M. Palmer C/O Greg Oczkus Law Office 430 W. 7th Avenue, Suite 202 Anchorage, AK 99501 Forest Heights, LLC P.O. Box 240285 Anchorage, AK 99524-0285

Nancy Schock

Date: 11/7

Subscribed and sworn to or affirmed before me at Anchorage, Alaska on the 1th day of 100, 2011.

Notary Public in and for Alaska
My Commission Expires: 8/26/12

TARY OF STREET



#### 2011-053005-0

Recording Dist: 301 - Anchorage 10/31/2011 11:03 AM Pages: 1 of 2



NOTICE OF DEFAULT AND ELECTION TO SELL

F 33224

Fidelity Title Agency of Alaska, an Alaska corporation authorized to do business in the State of Alaska, hereby gives notice that:

- 1. It is the trustee under a deed of trust in which Forest Heights LLC was trustor and Goldenview Development Company was beneficiary.
- 2. The deed of trust was dated August 1, 2005, and was recorded on August 2, 2005, at recording number 2005-053635-0 of the records of the Anchorage Recording District, State of Alaska.
  - 3. The deed of trust pertains to real property described as:

Tract A, Legacy Pointe Subdivision, according to the official plat thereof, Plat Number 2006-10 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska

and located at the southwest corner of the intersection of Bettijean Street and E. 172nd Avenue, Anchorage, Alaska.

- 4. A breach of the obligation for which the deed of trust is security has occurred.
- 5. The nature of the breach is that the trustor has failed to make payment in accordance with the obligation for which the deed of trust was given as security and has failed to pay property taxes due the Municipality of Anchorage for the 2009, 2010, 2011 tax years.
- 6. There is currently owed to the beneficiary the principal sum of \$4,606,854.77 together with interest at the rate of 7.0% from October 1, 2008 plus attorney's fees and costs of the foreclosure sale.
- 7. Fidelity Title Agency of Alaska, as trustee, has elected to sell the property to satisfy the obligation.

Exhibit / Page / of 2

NOTICE OF DEFAULT AND ELECTION-TO SELL PAGE 1 OF 2



8. The sale shall be held on the <u>And</u> day of <u>horizon</u>, 2012 at 10:00 a.m. at the front door of the Nesbitt Courthouse located at 825 W. 4th Avenue, Anchorage, Alaska.

Fidelity Title Agency of Alaska

Name: Leslie Plikat
Title: Qaent
Date: 10.31.11

The foregoing instrument was acknowledged before me this <u>31</u> day of <u>October</u>, 2011, by <u>Leslie Mikot</u>, <u>October</u> of Fidelity Title Agency of Alaska, an Alaska corporation, on behalf of the corporation.



Notary Public In And For Alaska My Commission Expires: 5/29/12

This notice is given in an attempt to collect a debt and any information obtained will be used for that purpose. If you do not within 30 days after receipt of this notice dispute the validity of the debt, or any portion thereof, the debt will be assumed to be valid. If you notify the Office of Ronald L. Baird, Attorney at Law, P.O. Box 100440, Anchorage, Alaska 99510-0440 in writing within the thirty-day period that the debt or any portion thereof is disputed, verification of the debt will be obtained and mailed to you. If you request within the thirty-day period, the name and address of the original creditor, if different from the current creditor, will be provided to you.

After recording, return to:

Office of Ronald L. Baird P.O. Box 100440 Anchorage, Alaska 99510-0440

Exhibit 1
Page V of V

NOTICE OF DEFAULT AND ELECTION TO SELL PAGE 2 OF 2





#### **RETURN OF SERVICE**

Beneficiary,		
vs. FOREST HEIGHTS, LLC Trustor.	)	
I solemnly swear or affirm that on 11/7/2011, at 10:15 AM, I served	the following documents:	
NOTICE OF DEFAULT AND ELECTION TO SELL		
upon the therein named OCCUPANTS at SOUTHWEST CORNER BETTIJEAN STREET AND EAST 172ND AVENUE, ANCHORACOTTECT copy to a tree on the premises.		
1. TREE IN THE SOUTHWEST CORNER OF 172ND AVENUE A	AND BETTIJEAN STREET	
2. 500 FEET SOUTH OF 172ND AVENUE, ANCHORAGE, ALAS	SKA	
THE PROPERTY IS DESCRIBED AS TRACT A, LEGACY POIN THE OFFICIAL PLAT THEREOF, PLAT NUMBER 2006-10 OF TO RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, SATTE	THE RECORDS OF THE AN	
	DOUGLAS CALLISON	***************************************
	Civilian Process Server	
SUBSCRIBED AND SWORN to or affirmed before me this Novem	WM C	1
Client: BAIRD, RONALD L., The Law Office of	Notary Public in and for the My Commission 5/2	State of Alaska 23/2013
Client Contact: RONALD L. BAIRD	•	
File Number:	Service Fee (tree 1):	\$40.00 \$25.00
Nowth Country Process Is 10149 0	Service Fee (tree 2):	*
North Country Process, Inc.	Mileage Fee:	\$20.00
P.O. Box 101126		
Anchorage, Alaska 99510		
Office: (907) 274-2023		
Fax Line: (907) 274-2823	TOTAL:	\$85.00
NCPI@alaska.net Page of	. Return 107125	
		-

FIDELITY TITLE AGENCY OF ALASKA

#### **RETURN OF SERVICE**

NCPI@alaska.net	Return No.: 107738		
Fax Line: (907) 274-2823	TOTAL:	\$70.00	
P.O. Box 101126 Anchorage, Alaska 99510 Office: (907) 274-2023 Fax Line: (907) 274-2823			
File Number:	Service Fee:	\$70.00	
Client Contact:	My Commission Exp	ires: 5/20/2013	
Client: BAIRD, RONALD L., The Law Office of	Notary Public in and	for the State of Alaska	
SUBSCRIBED AND SWORN to or affirmed before me this Decem	nber 06, 2011 in Anchor	rage, Alaska.	
	Civilian Process Serv	ver	
	DOUGLAS CALLIS	ON	
THE PROPERTY IS DESCRIBED AS TRACT A, LEGACY POIN OFFICIAL PLAT THEREOF, PLAT NUMBER 2006-10 OF THE I RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE	RECORDS OF THE AT		
Superior Court, 825 W. Fourth Avenue, Anchorage, Alaska, and Municipal Clerk's Office, Hill Building, Anchorage, Alaska.			
at the following public locations:  U.S. Post Office, Third Avenue and C Street, Anchorage, Alaska,			
NOTICE OF SALE			
I solemnly swear or affirm that on 12/5/2011, I served the following	g documents:		
Trustor.			
vs. FOREST HEIGHTS, LLC			
Beneficiary,			
FIDELITY TITLE AGENCY OF ALASKA			

10 of 14 2012-006068-0 **105** 

## Journal of Commerce

Baird Law Offices
Notice of Sale and Default
FILE NO:

Ad#: 10157612

Forest Heights Ad#10157612

#### AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA, STATE OF ALASKA, THIRD DISTRICT BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Lara Bickford WHO, BEING FIRST DULY SWORN, ACCORDING TO THE LAW, SAYS THAT SHE IS THE Business Manager OF THE ALASKA JOURNAL OF COMMERCE PUBLISHED AT 301 ARTIC SLOPE AVENUE, SUITE 350, IN SAID THIRD DISTRICT AND STATE OF ALASKA AND THAT ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WHICH WAS PUBLISHED IN SAID PUBLICATION

#### 12/04/2011 4th DAY OF DECEMBER 2011

AND THERE AFTER FOR 4 CONSECUTIVE WEEK(S) AND THE LAST PUBLICATION APPEARING ON 12/25/2011 25th DAY OF DECEMBER 2011

Lara Bickford

Business Manager

SUBSCRIBED AND SWORN BEFORE ME

THIS 27th DAY OF December 2011

NOTARY PUBLIC STATE OF ALASKA
MY COMMISSION ENTIRES OF ALASKA
MY COMMISSION ENTIRES OF ALASKA
MY COMMISSION ENTIRES OF ALASKA
MY Commission Expires June 14, 2012

ATTACH PROOF OF PUBLICATION HERE

#### NOTICE OF SALE

Trustee, Fidelity Title Agency of Alaska, will sell real property described as Tract A, Legacy Pointe Subdivision, according to the official plat thereof, Plat Number 2006-10 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska whose street address is the southwest corner of the intersection of Bettijean Street and E. 172nd Avenue, Anchorage, Alaska, for cash to the highest bidder at the front door of the Nesbitt Courthouse, 825 W. 4th Avenue, Anchorage, Alaska on February 2, 2012 at 10:00 a.m., with other sales that may be conducted. The proceeds of the sale shall be applied to sums due pursuant to the Deed of Trust naming Forest Heights LLC, trustor, and recorded on August 2, 2005 at recording number 2005-053635-0 of the records of the Anchorage Recording District, State of Alaska. The sum of \$4,606,854,77 is due plus interest, advances and costs. Fidelity Title Agency of Alaska, Trustee By:/s/Leslie Plikat, Agent

Pub: 12/4, 11, 18.8 25, 2011.

Ad#10157612

Exhibit D - 2 Page / of 7

### ommerce

#### AFFIDAVIT OF INTERNET PUBLICATION

- I, Lara Bickford, am first duly sworn, state that I am the Business Manager of Alaska Journal of Commerce, that I am authorized to make this affidavit on its behalf, and that:
  - 1. Alaska Journal of Commerce operates; www.alaskajournal.com an Internet web site that is: (A) available to any person; (B) is completely free to the public for viewing and does not require a subscription; (C) has been in continuous operation for more than one year; (D) has a viewer ship of at least 5,000 different visitors each month as verified by an independent audit; and (E) maintains an office in the State of Alaska the staff of which includes a senior management person. The address of the web site is http://www.alaskajournal.com/.
- 2. The notice of foreclosure sale shown below was first published on the Internet web site described above on 12/04/2011 which date was at least 45 days before the foreclosure sale date stated in the notice and remained continuously on the web site through at least 12/31/2011.

10157615

Subscribed and sworn to before me this 3rd day of January, 2012.

**NOTARY PUBLIC** RFLINDA CUMMINGS STATE OF ALASKA

Notary public for Alaska

My Commission Expires June 14, 2012 My commission expires: June 14, 2012

**Baird Law Offices** Customer No. 15109361 Web/Forest-Heights/10157615

2012-006068-0

# Exhibit D - $\mathcal{L}$ Page $\underline{\mathcal{L}}$ of $\underline{\mathcal{V}}$ NOTICE OF SALE

Trustee, Fidelity Title Agency of Alaska, will sell real property described as Tract A, Legacy Pointe Subdivision, according to the official plat thereof, Plat Number 2006-10 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska whose street address is the the southwest corner of the intersection of Bettijean Street and E. 172nd Avenue, Anchorage, Alaska, for cash to the highest bidder at the front door of the Nesbitt Courthouse, 825 W. 4th Avenue, Anchorage, Alaska on 2012 at 10:00 a.m., with other sales that may be conducted. The proceeds of the sale shall be applied to sums due pursuant to the Deed of Trust naming Forest Heights LLC, trustor, and recorded on August 2, 2005 at recording number 2005-053635-0 of the records of the Anchorage Recording District, State of Alaska. The sum of \$4,606,854.77 is due plus interest, advances and costs.

Fidelity Title Agency of Alaska, Trustee

Name: Leslie Plikat

Title: Comb

13 of 14 2012-006068-0

#### EXHIBIT E AFFIDAVIT OF SALE

STATE OF ALASKA	)
THIRD JUDICIAL DISTRICT	)

Suzan R. Calhoun, being first duly sworn, upon oath, deposes and states:

- 1. I am employed by Fidelity Title Agency and I am competent in all respects to make this affidavit.
- 2. On February 2, 2012 at 10:00 a.m., I personally appeared at the Nesbett Courthouse located at 825 W. 4th Avenue, Anchorage, Alaska and conducted an auction sale of the following described real property:

Tract A, Legacy Pointe Subdivision, according to the official plat thereof, Plat Number 2006-10 of the records of the Anchorage Recording District, Third Judicial District, State of Alaska

3. The highest bid at said sale was made in the amount of \$5,506,702.07 on behalf of Goldenview Development Company, holder of the beneficial interest under the deed of trust pursuant to which the sale was being conducted, to be setoff against all sums due the bidder under said deed of trust.

Susan R Calhoun

Susan R. Calhoun

Date: 2/2/2012

Subscribed and sworn to or affirmed before me at Anchorage, Alaska on the  $2 \times 6$  day of February, 2012.

OFFICIAL SEAL
Les lie Plikat
Notary Public-State of Alaska
My Comm. Expires 11/28/2013

Notary Public in and for Alaska
My Commission Expires: 11-28-13

14 of 14 2012-006068-0