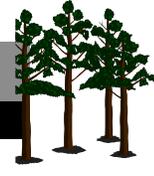


## Rabbit Creek Community Council

1057 West Fireweed Lane, Suite 100, Anchorage AK 99503



May 24, 2017

MOA Planning and Zoning Commissioners  
Francis McLaughlin, Senior Planner  
Hal Hart, Director of Planning  
Planning Department  
P.O. Box 196650  
Anchorage, AK 99519-6650

RE: Case 2017-0072, Lewis and Clark Subdivision request to rezone approximately 73 acres from R-8 (minimum lot size of 4 acres) to R-6 SL (minimum lot size of 1 acre) with special limitations

Dear Commissioners and Municipal planning staff:

At our Council's meeting on May 13, the general membership of Rabbit Creek Community Council (RCCC) voted unanimously to oppose the rezone of 80 acres in Lewis and Clark Subdivision, and to submit the following findings.

### **Importance of this case to our Community Council**

1. This case is a major test of the Hillside District Plan (HDP). This application attempts to override several policies of the HDP, as well as the clearly stated intent for low-density residential development of the southeast Hillside.
2. Denser development impacts our water supply. Our neighborhoods, located downslope from this subdivision, mostly rely on well water. Run-off patterns and leaching from 50-percent higher density would affect our groundwater. In addition, it is hard to ensure well water supply in an area with multiple interconnected aquifers.
3. Denser development impacts Rabbit Creek and Potter Marsh. Rabbit Creek Greenbelt and Potter Marsh would be negatively affected by the increased level of development proposed. Potter Marsh is within the Rabbit Creek Community Council Area. The proposed 50% increase in the number of houses would increase sewage effluent. In addition, the increase in impervious surface and removal of natural vegetation would cause faster, dirtier run-off into Rabbit Creek and less recharge and filtration of the ground water. Erosion and flooding would likely increase downstream.

### **Lack of need and justification for this rezoning**

1. There is no community need for this rezoning. The 2012 Housing Study found that there was "an oversupply of large lots zoned for single-family residential development." There is a need for small lot development served by public utilities and services, but not more R-6 lots at this time.

2. The implication of affordably-priced home lots is deceptive. The Application Narrative offers no evidence that the rezone would ensure reduced development costs. Possibly, the rezone would reduce the developer's costs: but this could result in increased profits and not reduced housing prices. The developer's statement that R-8 lots would not be "within reach financially of most home buyers" may or may not be true. However, there is no pledge that that R-6 lots would be priced within reach of most home buyers either.
3. The soils report shows marginal to impermeable soils, as further discussed below.
4. Drainage concerns. The calculations of future impervious surface are dubious. *We need a third party to use realistic figures for impervious surface both on this parcel and in the upstream drainage area that channels run-off across this parcel.*

**Compliance with Title 21 (AMC 211.03.160) rezoning requirements.**

1. 21.03.160E.1 – Does not comply because it does not "serve the best interests of the citizens of Anchorage" . Rezoning for increased lots is not needed given the current oversupply of large lots. This rezoning perpetuates an inefficient sprawl pattern with more vehicle travel, instead of the infill and centralized infrastructure investment called for in the Anchorage 2020 Comprehensive Plan (Comp Plan) and reiterated in HDP Policy 1-A.
2. 21.03.160E.2 – Does not comply. Does not conform to the zoning of the relevant map in the HDP. The applicant's lawyer states that Comp Plan Policy 5, compatible scale with adjacent uses, is met. However, R6 zoning borders less than 10 percent of this tract. R8 and R9 borders 90 percent of the lot, and much of it was zoned decades ago with substandard size lots for the zone. HDP kept the R8 zoning: the intent of the HDP's zoning is to promote 4-acre lots.
3. 21.03.160E.5 & 6 – Compliance is debatable. The increased density of houses, driveways and yards will create more rapid stormwater runoff and greater disturbance to natural recharge of wetlands and Rabbit Creek, as well as disturbance to wildlife, and vegetation.
4. RCCC has specific concerns about the soils and percolation test results.
  - a. Many of the percolation tests appear to have been done at very shallow depths, sometimes even 1 to 2 feet. Many of them were done in the 3 to 6 foot depth range. Septic systems are generally installed deeper than just a few feet beneath the surface, which means these results may not be helpful in determining actual septic system performance. Additionally, in some of the borings, the data shows that the soils become "denser" the further down you go, which would slow percolation. If that is the case, percolation tests should be done at depths of proposed septic installation.
  - b. Several of the percolation tests show either very slow percolation or no percolation at all. In some cases, these tests were performed a second time in the same location at much shallower depths with improved results. I am not familiar with the proposed "Advantix" type systems, but I do not expect septic systems would be installed at such shallow depths.

- c. The method used to complete the actual percolation tests isn't provided (that we found). Was the testing done using a standard method and following standard test procedures? Testing is also provided from two different companies. Was the same method used by both?
  - d. Several of the percolation tests were done in January of 2015 at fairly shallow depths. Were the soils frozen?
  - e. The drainage analysis includes a discussion of potential icing and states that icing is concern for this development as it is for developments across much of the hillside. The proposed mitigation for icing is to over-excavate in areas where shallow groundwater is encountered and line the excavation with rock. It is not clear how this would provide insulation of the shallow groundwater. Would other methods for dealing with icing be considered during design, such subdrains below the ditches? Would the proposed roadway design account for shallow groundwater as needed to ensure stability of the road? Icing can be of particular concern in areas of cut slopes. Both roadway design and surrounding cut embankments should account for potential icing.
  - f. The drainage analysis was completed assuming that any type of development (R6 or R8) would leave a substantial portion of the area as trees or dense vegetation. Is that a good assumption? Is there any way to ensure that homeowners wouldn't fully or mostly clear their lots?
  - g. The drainage analysis assumed Type B and C soils. Based on the provided soils data, would Type D soils be more appropriate in parts of the basin?
5. 600 percent increase in potential lot coverage. Increased lot coverage decreases percolation and filtration, and creates higher peak run-off. This increases the likelihood of erosion, flooding, sedimentation, and poor water quality entering Rabbit Creek and Potter Marsh, as well as the aquifer(s) that supplies neighborhoods downstream. The proposed R6 rezoning allows 30 percent coverage of each one-acre lot, or about 13,500 s.f. of structural footprint per acre. R8 lots allow 5 percent lot coverage on each 4-acre lot, which averages out to 2,250 s.f. of structural footprint per acre. That is a 600 percent increase in potential lot coverage.

In addition, the accessory hard surfaces for a single family home, such as lawns and parking, are likely to take up a larger percentage of a 1-acre lot than a 4-acre lot. The applicants' lawyers claim that the change from R8 to R6 zoning creates a minimal change in impervious area, from 3.3% to 6.1%, and peak run-off increase of about only 3 to 7%. The lawyers' letter based this on an assumption that 80 percent of the parcel will remain vegetated: this is unfounded and misleading.

The applicant's narrative on page 7 makes an unsupportable claim that "over 80 percent of the parcel {is} predicted to remain as heavily vegetated brush and trees." That claim can be fulfilled only through further Special Limitations, such as further reserve tracts, coupled with plat requirements to retain natural vegetation on those tracts as well as platted disturbance limits on individual lots. Otherwise, the Municipal Title 21 has NO REQUIREMENT to retain any vegetation on R-6 lots except along permanent streams.

- 6. 21.03.160.7. The proposed rezone does not comply. The rezone "extends or exacerbates a land use pattern that is inconsistent with the comprehensive plan." This

tract is surrounded on approximately 90 percent of its borders by R8 or R9. Some of that R-8 and R-9 was subdivided into half-acre lots decades before, prior to the 4-acre minimum lot requirement. These undersized lots have a well-documented history of drainage and septic issues. Downsizing of lots in the current R8 zone exacerbates this problem and sets a precedent contrary to the HDP: it could be used to justify downzoning of other tracts on the upper Hillside.

### **Non-Compliance with other Title 21 requirements and Comp Plan policies**

The plat lacks protection for one north-south drainage way across six lots. 21.08.030C requires protection of drainage ways.

B Street is a long sloping cul-de-sac that should have a pedestrian connection to Canyon Road, which leads to municipal parkland and Chugach State Park. This complies with Comp Plan Policy 55 and HDP Policy 10-A explanation, "There are local trails that may be needed within or between adjoining neighborhoods: these are not shown on the trails map. Such trails, which serve a more localized function than either regional or district trails, may be identified at the time of development."

The applicants' lawyers erroneously cite Policy 14, conservation of residential lands for housing. Policy 14 does not apply to this rezone. Policy 14 discourages reducing the residential densities identified in the Neighborhood or District Plan, but does not promote densities greater than the zoning of the District Plan. The lawyers' statement that "...properties must be developed at what they can reasonably and responsibly be constructed[sic]" is only lobbyists' word-craft, not Comp Plan policy.

### **Non-Compliance with Hillside District Plan (HDP)**

1. Policy 1-A. The proposed rezone does not comply with Policy 1-A of the HDP, which calls for "a greater proportion of future Hillside growth to occur in the lower Hillside, in areas located closer to existing services and infrastructure" to reduce driving and improve the efficiency of public services.. This policy further states that "land use patterns on the Hillside are largely established. While the area will continue to grow, *dramatic changes from these patterns are neither desirable nor practical*". The proposed rezoning of this large tract, to enable at least 50 percent more lots under R-6SL than under R-8, sets the wrong precedent for other large undeveloped tracts in the upper Hillside.
2. Policy 1-B is misinterpreted by the applicant's narrative on page 4. Policy 1-B states "This plan maintains existing residential land use designations and zoning in the southeast Hillside." The applicant's narrative on page 4 extrapolates this to "not limit zoning changes", but Policy 1-B text says to *maintain* existing zoning. The lawyer's letter contradicts itself by arguing that the whole text of the HDP must be considered (we agree), and then trying to focus just on Policy 1-B without the supporting text (we disagree—the Policy 1-B text must not be disregarded, and it says to "maintain existing residential land use designations and zoning in the southeast Hillside").
3. Policy 1-C. The proposed rezone does not comply with Policy 1-C of the HDP, which clearly commits to the zoning shown on Map 1.2. Policy 1-C states, "Maintain the same land use designations and zoning in this area as were established prior to the beginning of this plan."

4. Policy 1-B of the HDP cannot be used to override Policy 1-C. Policy 1-B states, “Maintain policies for the amount of development as allowed under current land use designations.” Land use designations are more general than zoning and do not override zoning: zoning is the label that determines maximum density. The HDP text further explains that only 1,700 acres of the 6,000 private vacant acres in the Southeast Hillside are physically suitable for development. The text supports less-dense development on the Southeast Hillside because of environmental constraints.
5. Land Use Map 2.1 defers to the HDP Zoning Map. The applicant’s narrative (page 3) claims that the rezone conforms with the density levels shown on the HDP Land Use Plan Map 2.1, but this is a distraction because Map 2.1 is an overview map that defers to the zoning map. Map 2.1 is accompanied by disclaimers that it does NOT depict density at the site level.
  - a. The HDP Land Use Plan Map 2.1 is defined explicitly on page 2-15 as not a zoning map (emphasis added).
  - b. HDP page 2-16: “The measure of housing units per gross acre [on the LUPM] is not intended to be applied directly as the measure of how many housing units may be allowed on each lot or development site. The Title 21 Land Use Regulations and Official Zoning Map will determine how many housing units may be allowed on each lot or development site. (emphasis added).
6. The draft 2040 Land Use Planning Map (LUPM) does not override the existing zoning. The LUPM has not been adopted. Furthermore, in its draft form, the 2040 LUPM defers to the Hillside District Plan through map notes. The precise zoning for the Hillside is not depicted on the LUPM because of the scale of the map.
7. The conservation subdivision model in the HDP allows a density increase of 5 to 20 percent, not 50 percent (Policy 14-L, pages 6-35 & 36). Regarding flexibility for increasing the number of lots, the Hillside Development Plan offers the developer the option of slightly-increased density of 5 to 20 percent more lots, and lower development costs through clustering, via the Hillside Conservation Subdivision (Policy 14-L). These bonuses are awarded if the developer commits to specific high-value conservation features that protect natural hydrology beyond the normal standards of Title 21, and provide high public value. This applicant has not chosen to use that approach.

**Other erroneous information presented as need and justification for the rezone**

1. Development costs should not be a determining factor. The applicant’s letter states on page 1 that the rezone will allow them to subdivide “with reduced development costs”. Reduced development costs are not demonstrated anywhere in the application: and it is not a criterion for allowing zoning map amendments per AMC 21.03.160.

Rezoning is not intended to serve individual financial interests: in fact, small lot rezoning for individual benefit is considered “spot zoning” and is illegal.

The applicant has already benefited from a windfall allowed by the change in definition of R-8 (minimum lot size of 4 acres instead of 5 acres) in the recent the revision of Title 21, gaining 4 additional lots on the 80 acres compared to the earlier Title 21.

2. The Lawyers' letter offers many distractions. We address the most egregious.
  - a. Lawyers' item #4: Legal Standard. "The authority tasked with reviewing a proposed land action must consider whether the proposed action is in accordance with the applicable Comprehensive Plan.
  - b. The 2020 Comprehensive Plan specifically (page 3) "outlines general patterns of development". The emphasis is on infill and re-development in the central parts of the bowl, and lower density on the perimeter. Specific goals include improving efficiency of service delivery and reducing vehicle dependency and total vehicle miles. This rezone does not comply.
  - c. The Hillside District Plan, in its totality, emphasizes lower densities on the upper Hillside and holds to the existing zoning except for conservation subdivisions that meet specific design standards of conservation. This proposed development does not.
  - d. Lawyers' item #5: "A rezone to R6SL more fully furthers the goals and policies of the HDP than R-8 development." The opposite is true.
    - o Rezoning to 50 percent higher density on the Upper Hillside creates a damaging precedent to maintaining the hillside's existing low-density rural residential character.
    - o The existing higher densities to the west are non-conforming, grandfathered densities, and drainage and water and septic issues have been problematic.
    - o Delineating the wetlands into a tract can be accomplished within R8 zoning as easily as within R6.
    - o The cumulative and long-term effects on well-water capacity have not been modeled.
    - o The test holes are mostly shallow: in fact, the "improved" test results compared to earlier hydrology tests may be attributed to shallower test holes.
    - o There is no well-water protection program: the potential 600-fold increase in impervious surface and the increase from 20 to 30 potential homes increases stress on the well water resources..
    - o There is nothing innovative about this development. Claims such as "reducing the need for pedestrian activity along DeArmoun" and "increasing green space and trails within the development itself" are false. There are no protections for vegetation, and no trails shown on the preliminary plats.
3. Feasibility of development is not the only determinant of density. R-8 zoning was applied to areas with "natural conditions are such that higher development density would be infeasible". However, there are other factors cited in the HDP for avoiding dramatic changes in the density pattern, represented by the 50 percent leap in density proposed

in this rezone. As cited in Policy 1-A, these include efficient transportation patterns and efficient provision of public services. In addition, the Comp 2020 Plan emphasizes infill and redevelopment.

### **Conditions for any rezone or plat approval**

1. Depict a pedestrian path and commit to construction of this path along Upper DeArmour Road and Canyon Road, per the HDP Trails Map (Map 4.1). This is currently lacking.
2. Require additional protection of existing contours and natural vegetation retention to maintain natural rates of recharge and runoff.

### **Conclusion**

This proposed rezone would override several policies of the HDP, as well as the clearly stated intent for low-density residential development of the southeast Hillside.

The resulting pattern of denser sprawl in sensitive environmental conditions would create lasting physical impacts to downstream watersheds and neighborhoods. In addition, the scale and intensity of the proposed rezone-- approximately 50 percent housing density above current zoning, and an allowable increase of up to 600 percent greater lot coverage--sets a dangerous precedent for overriding the Hillside District Plan.

Between the intense opposition of our council area and the directly affected residents as well as the clear lack of conformity with municipal code, planning documents, and area plans, as we have demonstrated, it is clear that this rezone should not be approved.

Sincerely,

*Adam S. Lees*

Adam S. Lees, Chair