

Analysis of Application 2009-063 Russian Jack Springs Park Golf Course

For the purposes of this testimony, the Planning Department hereinafter is referenced as PD, the Parks and Recreation Department as P&RD, the Municipality of Anchorage as MOA), Russian Jack Springs Park as RJSP, Master Plan as MP, the Northeast Community Council as NECC, the Parks and Recreation Commission as PRC, the Planning and Zoning Commission as PZC, the Urban Design Commission as UDC or simply as Commission, Anchorage Municipal Code as AMC, the site plan under current review in this matter as SP.

There are a number of jurisdictional issues (using jurisdictional in an informal sense) raised by the current application. One has to do with the new review process adopted under Title 21 (can the UDC consider a site plan not reviewed first by the PRC.). Another has to do with whether the Commission may consider the application absent the applicant's compliance with ordinances setting forth the minimal filing requirements.

As to filing requirements, which is perhaps the most mundane of the issues to be addressed, AO No. 2008-15(S-2) provides in pertinent part:

C[B]. *Required information.* The agency proposing a site selection or site plan shall submit to the applicable commission all information necessary to its review under this section. For a site selection, t[T]his information shall include, but need not be limited to, an evaluation of alternative sites, or an explanation why no alternative sites were considered.

However, the application does not include material evidencing review of the plan by the Parks and Recreation Commission. This is a very important point in that the Parks and Recreation Commission (PRC) DID NOT take any specific action on the plans proposed by the applying agency, but specifically requested that the applying agency prepare a plan.

The Municipal Parks and Recreation commission recommends the Municipal Parks and Recreation Department prepare design drawings to provide for the immediate safety and needs of the community to include safety upgrades to the sledding hill and provide an alternative safe snowboarding area.

AO No. 2008-15(S-2) also provides in pertinent part:

D[C]. *Review of park projects.* Prior to the urban design commission action on any public facility site plan review which includes municipal parks and recreation facilities and/or parkland, the parks and recreation commission (for projects in the Anchorage Bowl) or the Chugiak-Eagle River parks and recreation board of supervisors (for projects in Chugiak-Eagle River), shall review the site plan and make a recommendation to the urban design commission.

It would appear that the PRC directed the agency to prepare a site design for review by the PRC, but that the applying agency rejected the PRC's recommendation and came straight to this Commission with a site plan that has never been seen by the PRC. We will come back to this point below.

Nor does the application include a copy of the current MP for the site in question. As this Commission has been advised, there is no evidence that an alleged Amended 1979 RJSP MP has ever been seen. As will be noted below, the PZC file on the matter does not include this document, nor the most recent UDC site review. Alaska Public Records Act requests have not produced any MP, though the 1979 MP is in fact still available. While staff has been

requested to make such documents available to the UDC, it is unclear at present whether staff has provided the Commission with access to pertinent documents in the file. Most recently the MOA has produced minutes of the PRC meeting at which the MP was allegedly altered. What becomes immediately apparent from those minutes is that an amendment to of the MP was not even before the PRC. In other words, while the public has been consistently told that the RJSP MP was amended by the PRC in 1997, in fact that did not happen. The minutes don't even reflect a discussion of the RJSP MP, only a site plan to implement two soccer fields and provide for lighted trails (still not implemented). It would appear that the MP is still as adopted in 1979, which as noted before, still calls for the eventual removal of the golf course, as will be discussed in greater detail below.

In passing it should also be noted that neither of the Departments involved in this matter nor the UDC staff have published the documents submitted to the UDC which would necessitate travel to Elmore and Tudor or City Hall during working hours to simply be advised of the specifics of the site plan. Presentations by P&RD contractors are arguably misleading in that they fail to address the myriad points noted below, arguing only that the plans are inconsequential and required for safety purposes, though both those points are at best inaccurate. The UDC should require, especially in light of the overwhelming public concern over the misconduct of Parks and Rec and Planning with respect to planning, designing and development for RJSP (while this is covered in the PRC resolution, that mention is a far cry from the hours of testimony regarding the misconduct in planning of this project) that no site plan shall be considered until the MOA can manage to publish online all documents submitted with respect to the subject site plan so that all documents, including comments by the public, can be considered. The NECC has created a repository for these documents which is available to the Commissioners.

To return to the matter of "required information" with respect to filing, the ordinance may be subject some varying interpretation, but suggests that where there are siting issues as is the case here (the plan creates a new site for a new sledding hill) "an evaluation of alternative sites, or an explanation why no alternative sites were considered" must be included. The current SP fails to specifically address other, safer alternatives to allow for sledding or snowboarding at RJSP. It considers no alternative siting nor does it consider alternatives such as vegetative buffering as to any existing hill. Indeed, the SP fails to address whether or how sledding could be made safe at RJSP, simply presuming that changing the fall line on a hill, selected only because its selection will allow the plan to incorporate changes to the golf course, will render that or any hill safer. Moreover, the SP fails to consider the extensive literature produced with respect to risk management as to sledding venues, and ignores the recommendations of no less than three assembly persons submitted to the PRC that a complete risk analysis be completed before any development work is undertaken or contemplated. These are, of course, important considerations in as much as the SP provides for the creation of a much more dangerous venue that will be used for sledding.

Rendering the situation even more confusing are the statements by Jeff Dillon, Parks and Rec. Director, that use of the hill identified in the Master Plan as the skiing hill for sledding and controlled sports (e. g. skiing) is unacceptable, and if the skiing hill is now limited to sledding, Dillon's statements would suggest that the plan would preclude the use of the current ski hill by nordic and alpine skiers without any public notice or any community discussion thereof though the hill is currently used extensively by skiers and is identified as a ski hill in all master plans. The MP1979 specifically identifies the area now presented in the SP as a "sledding hill" as a ski hill, with a sledding hill identified where the SP proposes a "terrain park", while the map from the alleged amended master plan, MP1997 (pg 18 of PZC Case 2002-024) likewise makes it clear that there is a ski slope, with the prospect of a sledding hill to be developed elsewhere. The attempt, therefore, to convert the ski hill to a

sledding hill is inconsistent with the specific resource allocations stated in both the MP1979 and the MP1997.

As noted above, there are a number of questions as to the procedural aspect of the SP in that it clearly is not a review of any specific action taken by the PRC. Title 21 requires that the UDC review the recommendations of the PRC, but the current SP does not cite in any way shape or form the specifics of any recommendation by the PRC. This may be due to the fact that the PRC adopted a resolution which the applicant has not presented for UDC review. It would in fact appear to the public that the SP seeks to undermine the resolution adopted by the PRC by submitting for review by the UDC what is identified as a golf course site plan review (UDC staff will confirm that the title of the application was changed some time after the application was submitted to make it appear that this is not a golf course matter). In fact, the PRC recommended that the MOA develop plans that could provide for safe sledding and snowboarding areas, plans which would have to be presented to the PRC for approval prior to UDC review. However, as evidenced by the resolution of the PRC, such plans have yet to be presented to the PRC. Moreover, such plans would first have to identify an acceptable location for such usages that was consistent with the Park master plan (whichever document that might be, MP1979 or MP1997 if in fact lawfully adopted.)

It is at this point unclear whether any authority with the MOA is fully cognizant of the provisions of a current master plan for RJSP. While the MP1979 is still available and apparently is not disputed, the 1998 UDC case does not evidence that the UDC in any way reviewed any RJSP master plan, the 2002 Planning and Zoning Commission (PZC) case likewise does not indicate that the PZC reviewed any master plan and no current recent proceedings before the PRC indicate that the PRC reviewed any master plan. Further, while P&RD claim that the MP1979 has been amended P&RD has never produced for review or consideration any master plan for RJSP other than the MP1979 (as noted above, the minutes of the PRC indicate that the Master Plan was in fact NOT amended.) In fact, though PZC Resolution #2002-011 indicates that the alleged amended master plan is on file in the MOA Planning Department offices, Planning staff advised that the alleged amended plan was not on the premises. While an Alaska Public Records Act request for the 1997 PRC file and alleged amended master plan, just days before the UDC hearing on this matter the MOA is apparently unable to produce any Master Plan for RJSP other than that adopted in 1997, unable to produce the PRC file in the case, and unable to produce anything which indicates that the UDC or the PZC has ever actually seen the alleged amended Master Plan. Of course, we now understand why that is the case, in that there was never any amended master plan for the PZC, the UDC or anyone else to review.

There are additional concerns regarding the current site plan, including but not limited to the matter of stream buffers and other ecological concerns. The Park ecosystem is in equilibrium at this time and no development should be undertaken until there is an impact study completed to determine how much will this development will disturb the existing ecosystem, a position arguably adopted by the PRC in suggesting that a Natural Resource Management Plan be adopted. It makes absolutely no sense to develop first and adopt a resource management plan after unless it is in fact your intent to implement development inconsistent with appropriate resource management. An example of such a concern is that the PRC Resolution recommends a 300 foot buffer "between" greens and streams. However the SP appears to indicate a 50 foot buffer. In order to protect the existing watershed and give effect to the clear language of the documents adopted to protect the Park's natural resources, a buffer no less than 600 feet, extending 300 feet from the mean high high watermark of all water bodies (whether alleged to be moving or otherwise) should be established and maintained.

The applying agency asks that approval be provided before there are any specifics as to

clearing and the SP fails to provide any details or specifications regarding consultation with an urban arborist regarding clearing and replanting. Based upon conduct that the public has seen in the past, it is critical that before any final review by the UDC of this site plan, the urban arborist, community members, and the MOA or its agents for planning and development must tag trees slated for removal and a substantial fine must be established to address "accidental" clearing or destruction of trees that are not tagged and the site plan must include reforestation provisions with respect to clearing, including unauthorized clearing through mis-, mal, or nonfeasance. This was clearly what the public understood the PRC to suggest in requiring a natural resources management plan and site plans before any further development be undertaken

Another concern regarding the current plan is that it apparently ignores the recommendations laid out at length before the UDC and PZC in the past. Nowhere is there a consideration of the Master Plan and public priorities list identified in past years. The extensive documentation presented in the past to the UDC and PZC are not even referenced, in no small part because the agency's position is that this is essentially a trivial matter. The hours of testimony offered by the community regarding the arguably disastrous planning in this matter argue to the contrary.

Speaking of public participation, the Anchorage Municipal Code provides in pertinent part (code is excerpted at the end of this testimony):

In the event of a written communication from a community council requesting information, recommending municipal action or modification of municipal law or policy, or acting upon a municipal proposal submitted pursuant to subsection A of this section, the appropriate municipal officials shall issue an informative response within a reasonable time. If the municipal officials cannot comply with the request or do not agree with the position taken by a community council, the reasons therefor shall be stated.

Neither the PD nor the P&RD have responded directly to any comments submitted by the NECC with respect to RJSP.

Even the most liberal reading of PZC Case 2002-024 indicates that a) the NECC was specifically and unlawfully excluded from review of the submission to the PZC b) the only evidence of any amendment to the RJSP MP1979 is a Map appearing at pages 13 and 18 suggesting that it reflects changes made pursuant to PRC Case 97-50 (purporting to be an amended Master Plan, MP1997), and c) there is no case file indicating that the NECC ever received notice of the proceedings in PRC #97-50. However, there is no indication that the PZC ever reviewed or approved PRC Case 97-50 as far as an approval of an amended master plan and the file documents indicated that the PRZ approved only a site plan. The record reflects that current UDC staff was the senior planner in that case, responsible for failing to provide AMC mandated notice to the NECC and that the current contractor was a PZC Commissioner. In sum, it would appear that the community council representing the most population in our community has repeatedly been unlawfully excluded from this process, most importantly from the alleged adoption by the PZC of the amended master plan.

This is an important point because a review of the PZC case file makes it clear that the Master Plan approval was simply a side note to adoption of building plans, the PZC resolution was pro forma and the minutes reflect approval on a consent agenda with no discussion. The MP1979 called for the golf course to be removed. There is considerable interest in the community, which has yet to be fully explored, in reconfirming the removal of traditional golf (club and ball) from the Park as an activity inconsistent with other park

usages (as compared with disc golf, for example) and the needs and requirements of the public and in as much as reconsideration of the Master Plan has been identified as appropriate by the PRC it would be most appropriate to delay any actual construction in the Park until such consideration has been completed. This is all the more important because it is arguably unclear as to whether the master plan was lawfully amended and if so, what the results of such amendment actually were. The 1979 and 1997 Master Plans for RJSP need to be compared to evaluate what was taken out, added or changed, whether any changes were substitutions, additions or clarifications, and the degree to which any such attempts were lawful and actually resulted in a changed master plan. As the NECC was, as noted above, specifically excluded from review of the alleged amended master plan in 2002, at a minimum the record should reflect that the current master plan is MP1979.

The apparent current effort of Planning and Parks and Rec to present items piece-meal to the UDC appears to be intended to avoid consideration of overall Park development specifically to undermine and avoid the recommendations of the PRC, which themselves were flawed as not flowing from the Master Plan, and as such should be rejected until a site plan that addresses the entire Park has been completed and submitted, especially in as much as the current site plan arguably runs counter to the mandates of the Master plan and the previous site review before the UDC. The public continues to be very concerned about overall planning for the Park, including but not limited to concerns that PD and P&RD have ignored the priorities set for Park development especially as to lighting and development of trails (and the planned additional tunnel), the configuration and development of a Pitch and Putt area, the need for and siting of an additional playground, the future of the area hosting the greenhouses, etc.

The SP appears to be driven not by the requirements of the RJSP Master Plan (MP1979) for the Park but through a response to the interests of private parties, namely First Tee, as made very clear in the language of the SP itself. The SP is simply a drastically scaled down version of the plans proposed by First Tee, which appear to ignore MP1979. The UDC, in light of the extensive public testimony before the PRC and the illustration by such testimony of the fact that the current site plan has never proceeded from a consideration of the Master Plan and the needs and requirements of the public, should reject the site plan as being inherently flawed as a result of the process employed. Moreover, in light of the prior conduct of the MOA agencies the UDC should require that PD and P&RD obtain the signatures of impacted community council Presidents on all design plans so as to ensure that in fact all planning docs have been presented to the community councils, including all details of all development contemplated within this site review as well as all resulting therefrom.

Title 21 as amended appears to indicate that the UDC must reject the current application for a number of reason including but not limited to the applicant agency's failure to comply with the requirements of said Title in bypassing site plan review by the PRC, not including documents that may impact consideration of the site plan, arguably misrepresenting the constraints of the adopted Master Plan for the site, etc.

Even should the UDC determine that it intends to consider the application despite the foregoing, the UDC should require, prior to consideration of a site plan: a) a complete review of the Park Master Plan to determine to what extent, if any, the current hill has ever been identified as a sledding hill or as appropriate for sledding usage, and to the extent that it was not specifically so designated or such usage was identified as a potential future use, amendment of the Master Plan to include such usage before any site plan approval, b) a complete risk management study by an independent source of plans to address sledding "safety", c) alternative siting options for a sledding hill as there has been no such consideration despite public comment on the matter, d) questions of whether a safe

sledding hill can be provided at the current locus without effective staff observation and management and whether P&R has the resources to accomplish same, e) whether the creation of a snow boarding venue will in fact result in the creation of an even more dangerous hill for sledders, f) development by Planning and P&R of an option to deploy 4 foot high vegetative buffers to address sledding safety and require that Planning and P&R submit designs to that effect to community councils for review.

Additionally, the UDC should reject further consideration of any site plans in RJSP until a natural resource management plan has been adopted with respect to RJSP, a resolution of the questions of the content of the RJSP Master Plan and the impact thereon if any of the actions of the PRC in 1997 and the UDC and PZC thereafter especially in light of the failure to provide notice of such matters to the NECC, and specifics regarding compliance of the site plan with PRC recommendations, now in question, are resolved.

Lastly, the UDC, having recognized the community concern over this matter, should not proceed to consider any application until the MOA can publish all pertinent materials for consideration by the public on its web site.

AMC provisions regarding community councils

2.40.050 Functions.

Community councils shall have the following advisory functions:

A. In regard to the Anchorage comprehensive plan:

1. Evaluate compliance with the plan, alerting municipal officials to, or proposing appropriate action regarding any inconsistencies with the plan; and
2. Conduct a continuing review and study of the plan to determine its workability in each district and to advise municipal officials of, or propose any appropriate action regarding proposed modifications or additions to the plan.

B. Assume leadership and propose action in regard to enforcement of existing laws or ordinances, pursuit of rights under existing laws or ordinances, desired or opposed changes in or additions to laws or ordinances, or any matter of policy regulation.

C. Respond to local government proposals submitted to community councils pursuant to [Section 2.40.060](#).

D. Work with local government and other governmental entities, as well as with persons and groups outside the government, to accomplish district goals, including goals which may have an areawide impact.

(GAAB 5.75.040)

2.40.060 Municipal responsibilities to community councils.

A. *Submission of proposals for review by community council.* Except where action must be taken on an emergency basis, the mayor shall be responsible for giving to community councils an opportunity to participate in the formulation of, and to review and comment upon, all land use, social and economic proposals which in the opinion of the mayor, the assembly, or the agency head involved, will have a significant impact on all or a substantial portion of district residents, provided that such procedures do not delay or preempt existing procedures with regard to the processing and hearing of applications for rezoning, special exceptions, variances and building permits. Such opportunity for participation shall be afforded community councils in the initial stages of planning as well as in subsequent stages of proposal development. Where municipal ordinance or resolution requires the giving of mailed notice to adjacent or nearby residents or property owners with respect to a proposed rezoning or land use change, the planning department shall send a copy of the same notice to the chairman of any community council whose boundaries contain land described in Tables 1 and 2 of this subsection, or to such other officer designated by the council for receiving such notice.

Table 2.40.060A.-1: Community Council Notice Requirements For Land Use Changes
Proposed on Public Lands and Facilities

TABLE INSET:

Land Use Proposals on Public Lands and Facilities (proposals for which 21.15.005A. requires notice)	Minimum Notice Radius
<p>A1. Regional (Areawide) Public Lands and Facilities. The following regional (areawide) public facilities are geographically expansive, adjoin multiple council districts, and impact a wide area:</p> <ol style="list-style-type: none"> 1. Merrill Field Airport; 2. Ted Stevens Anchorage International Airport; 3. Far North/Bicentennial Park, with BLM and Tudor Road public facilities; 4. Chugach State Park; and, 5. Anchorage Coastal Wildlife Refuge. 	<p>Community councils that have boundaries within 1,000 feet of the subject public land or facility shall receive notice which includes the proposal application. Community councils more than 1,000 feet from the subject public land or facility shall receive notice. Such community councils may request the proposal application.</p>
<p>A2. The following kinds of public lands and facilities are geographically within a council district and have regional (areawide) impacts:</p> <ol style="list-style-type: none"> 1. Public airports and airstrips; 2. Regional and Urban parks as designated in the Parks, Greenbelts and Recreational Facilities Plan; 3. Public schools and universities with areawide attendance. 	
<p>B. Other Municipal and State Lands and Facilities.</p>	<p>The Planning Department shall provide notice to community councils within 1,000 feet of the subject public lands or facility.</p>
<p>C. Branch Municipal Facilities that Serve Specific Delineated Areas. These are branch municipal facilities that serve an established delineated sub-area of the Municipality. Examples:</p> <ul style="list-style-type: none"> • Public Schools; school attendance areas • Fire Stations; emergency response areas 	<p>The Planning Department shall provide notice to community councils within 1,000 feet of the subject facility, AND to community councils within the facility's delineated district of service.</p>

Table 2.40.060A.-2: Community Council Notice Requirements for Land Use Proposals on
Private Property

TABLE INSET:

Land Use Proposal on Private Property	Minimum Notice Radius
<p>A. Zoning map amendments, conditional uses, public hearing site plan reviews, subdivisions cases that require public</p>	<p>The planning department shall notify community councils within 1,000 feet of the subject site.</p>

hearings, and other land use and development proposals that require notification and a public hearing.	
B. Variances, non-public hearing platting cases, easement vacations, or non-public hearing site plan reviews.	The planning department shall notify community councils within 1,000 feet of the subject site if notice is required by 21,15.005.
C. Land use proposals that are potentially major projects or controversial uses, and it is the opinion of the planning department director that community councils beyond the minimum notification distance are likely to be impacted.	The planning director shall notify community councils beyond the minimum notification distance regarding proposals which, in the opinion of the director, are likely to have a significant impact on residents of community councils beyond the minimum notice distance.

B. *Response to community councils.* In the event of a written communication from a community council requesting information, recommending municipal action or modification of municipal law or policy, or acting upon a municipal proposal submitted pursuant to subsection A of this section, the appropriate municipal officials shall issue an informative response within a reasonable time. If the municipal officials cannot comply with the request or do not agree with the position taken by a community council, the reasons therefor shall be stated.

(GAAB 5.75.050; AO No. 2003-75, § 3, 7-22-03)