

CHAPTER 21.01: General Provisions

21.01.010 Title and Effective Date

21.01.020 Authority

21.01.030 Purpose of this Title

Issue # 30.0: The Purpose of the C-ER Separate Chapter

Regulation Committee Recommendation:

- Write a statement of our purpose for having a separate C-ER Chapter 10.

Consortium Board Recommendation:

11/07/07:

- Write a statement of our purpose for having a separate C-ER Chapter 10.

Issue # 31.0: Protecting the Environment vs. Developers' Benefits

Comments and Discussion:

PA C01 Pg. 2

The purpose of Title 21 is stated:

"The purpose of this title to implement the comprehensive plan in a manner which protects the public health, safety, welfare, and economic vitality by..."

This language is not strong enough and would weaken the protection of residents' quality of life and protection of the environment in the long-term, and would increase the benefit of developers in the short-term. The Municipality's solid long-term economy would take care of itself if the Municipality would focus on creating a place where people want to come and stay.
(Chugiak 2006 1214 PHD C01)

PA C01 Pg. 2, G

Paragraph G states:

"Protecting the wide diversity of fish and wildlife habitats by minimizing the adverse impacts of land development on the natural environment."

The requirements for protecting the existing environment are overly burdensome and it is the infamous "Tree Clearing Ordinance" all over again. That ordinance was defeated for numerous very good reasons. This appears to be an effort to slide it in again, hoping no one will notice. Note the opening statement of this paragraph (*stated above*). Paragraph G does nothing to protect the public health, safety, and welfare. Recommend paragraph G be revised to read "Encouraging the protection of existing trees and vegetation..."

(Aksamit_Loken 2006 0316 D2)

Reminder that land law can only be made to protect the safety, health, and general welfare of its citizens.

(Wells 2007 0706 PA C01)

Regulation Committee Recommendation:

- Review this issue when discussing environmental protection and tree-clearing.
- Include C-ER ideals in Chapter 10 Purpose Statement.

Consortium Board Recommendation:

11/07/07:

- No action needed.

21.01.040 Applicability and Jurisdiction

21.01.050 Official Zoning Map

Issue # 32.0: Lots with Split-Zoning

Comments and Discussion:

PA C01 Pg. 4, C. 5 – Interpretation of District Boundaries (Lots)

Committee: I hope it is not a practice to put one lot in two zones.

Public: We would appreciate adding language saying that split zoning should be avoided if at all possible.

(Assembly 2006 0525 D2)

Regulation Committee Recommendation:

- Address split zoning in Chapter 5: Use Regulations (e.g. Nauman residential/horse carriage business property).

Consortium Board Recommendation:

11/07/07:

- Address split zoning in Chapter 5: Use Regulations.

21.01.060 Conflicting Provisions

Issue # 33.0: Relationship to Other Title 21 Provisions

Regulation Committee Recommendation:

- Add the following language to Chapter 10:
“To the extent any provision in this chapter conflicts with other provisions of title 21, the provisions of this chapter shall govern. If certain provisions overlap but are not in conflict, then the provisions of this chapter shall be considered to supplement title 21 requirements and are additional requirements.”

Consortium Board Recommendation:

11/07/07:

- Add the following language to Chapter 10:
“To the extent any provision in this chapter conflicts with other provisions of title 21, the provisions of this chapter shall govern. If certain provisions overlap but are not in conflict, then the provisions of this chapter shall be considered to supplement title 21 requirements and are additional requirements.”

Issue # 34.0: Conflicts with Existing Covenant Provisions

Comments and Discussion:

PA C01 Pg.5, C. Conflict with Private Agreements

I would like to suggest an additional sentence for 21.01.060 Conflicting Provisions as follows:

“If an interested person raises an objection to a proposed plat or rezoning based upon covenant rights, the platting authority may not take any action on the proposed plat or rezoning except to return the proposed plat or rezoning to the applicant with instructions that no action will be taken until the applicant has presented the platting or zoning authority with proof that the covenant objection has been conclusively negated by either a judicial ruling, in an action initiated by the applicant, or by a written agreement between the interested parties which negates the covenant objection.”

The current language stops short of making this important statement. This statement is needed in order to protect and enhance developed areas within the MOA. This additional language would apply only if there was a valid objection raised. The suggested additional language compliments the existing language.

(Arnesen 2006 1031 PHD C01)

Arnesen’s suggestion seems sound since there will be more and more homeowners associations formed for Planned Unit Developments (PUD’s), under Master Plans, as well as conservation subdivisions. Suggest legal advice be provided to us on this although I really would like to see this adopted in our area. There was an attempt to address this as Item 12 in the 12/13/06 PZC/Platting Board Issue/Response as follows...

(Wells 2007 0706 PA C01)

“12. Issue: 21.01.060C., Conflict with Private Agreements

Add to the end of the paragraph: “If an interested person raises an objection to a proposed plat or rezoning based upon covenant rights, the platting authority may not take any action on the proposed plat or rezoning except to return the proposed plat or rezoning to the applicant with instructions that no action will be taken until the applicant has presented the platting or zoning authority with proof that the covenant objection has been conclusively negated by either a judicial ruling, in an action initiated by the applicant, or by a written agreement between the interested parties which negates the covenant objection.” This statement is need to protect and enhance developed areas within the MOA, as evidenced by a recent court case ruling ordering the municipality to vacate a plat that ignored covenants prohibiting re-subdivision. The MOA should not approve a plat or rezoning where objections are raised due to covenant rights.

Staff Response: From the municipal law department: This refers to an appeal from a platting board decision that was litigated in Superior Court Case No. 3AN-04-05720 Civil.

This appeal raised the issue whether a private covenant allegedly limiting an owner’s right to subdivide property precluded the platting board from approving a plat to subdivide the same property. The case also presented substantial evidence suggesting that the covenant may have been legally defective and unenforceable. Unfortunately, the appellants in Case No. 3AN-04-05720 voluntarily dismissed their case without ever determining whether the covenant was enforceable. The platting board did not ignore the subdivision residents’ covenant claims, but instead took a neutral position, advising the parties to adjudicate their claims in court.

The platting board generally declines to enforce covenants because it is an administrative agency, and it lacks the practical means to adjudicate covenant disputes. To resolve such disputes, the platting board would have to investigate the facts surrounding the enactment of the covenant; research the chain of title of the property; and analyze issues of property law, evidence rules, and the Statute of Frauds, among other things. The platting board is not equipped for such an undertaking. These issues are best resolved in a court. The platting board’s decision to approve or reject a plat application does not impair the parties’ rights to enforce a covenant in a court action.

This position has generally been adopted by other jurisdictions as well. The rule in American property law is that zoning regulations and restrictive covenants are two concurrent but separate systems of law. A zoning ordinance constitutes the public regulation of land use through the exercise of the government's police power. By contrast, a covenant is a strictly private right, created by agreement, and enforceable only by those who are party to the covenant. Enforcement of private restrictions via a zoning authority would constitute an impermissible delegation of the police power to private entities. Accordingly, restrictive provisions in a private covenant are not within the purview of a platting board action.

Staff Recommendation: No action needed.

Platting Board Recommendation: Not applicable.

Planning and Zoning Commission Recommendation: Concurs with staff recommendation.”
(PZC 2006 1213 Issue-Response PHD)

Regulation Committee Recommendation:

- Address issue in Chapter 03: Review and Approval Procedures with another look back at 21.01.060.C. Conflict with Private Agreements.

Consortium Board Recommendation:

11/07/07:

- Add the following language to Chapter 10:
“If an interested person raises an objection to a proposed plat or rezoning based upon covenant rights, the platting authority may not take any action on the proposed plat or rezoning except to return the proposed plat or rezoning to the applicant with instructions that no action will be taken until the applicant has presented the platting or zoning authority with proof that the covenant objection has been conclusively negated by either a judicial ruling, in an action initiated by the applicant, or by a written agreement between the interested parties which negates the covenant objection.”

21.01.070 Severability

21.01.080 Comprehensive Plan

21.01.090 Transitional Provisions

Issue # 35.0: Impact of New Nonconformities from the Title 21 Rewrite

Comments and Discussion:

PA C01 Pg. 8, C: Uses, Structures, and Lots Rendered Nonconforming

Clarify if grandfathering will be allowed and in what cases. If grandfathering will be allowed for lots, structures, and uses that become nonconforming as the result of implementing these new Title 21 regulations, then the term nonconforming should not be used to describe such lots, structures, and uses. The term nonconforming has negative connotations which might cause problems for the property owner when the property is sold in the future and could lower the sales price.

Many landowners might become owners of nonconforming lots, structures, and uses as a consequence of implementing these new Title 21 regulations. Landowners of such nonconformities should not have to file paperwork and pay fees to legalize their individual situations. Instead, the Municipality should have the responsibility to file applications and seek verification of nonconforming status, at no cost to these landowners.

Clarify if the Municipality would pay the difference in property value to the property owner should the property owner's property be rezoned to a less valuable zoning designation.
(Chugiak 2006 1214 PHD C01)

Regulation Committee Recommendation:

- Address this issue in Chapter 12: Nonconformities.

Consortium Board Recommendation:

11/07/07:

- Address this issue in Chapter 12: Nonconformities.

Issue # 36.0: Investment-Backed Expectations

Comments and Discussion:

PA C01 Pg. 9, E. Investment-Backed Expectations

This section has not yet been written (RESERVED). Revisit this section and open it up for review and comment prior to final approval of the entire Title 21 Rewrite.
(Birchwood 2006 1113 PHD C01)

There was an attempt to address this as Item 19 in the 12/13/06 PZC/Platting Board Issue/Response as follows...
(Wells 2007 0706 PA C01)

"19. Issue: 21.01.090E., Investment-Backed Expectations

What is the purpose of this section and why is it labeled RESERVED? Revisit this and open for review and comment prior to final approval of the entire title 21 rewrite.

Staff Response: Chapter 21.01 proposes transitional provisions for those projects where an application has been submitted before the new code is adopted. However, there will be situations where significant time and money has been invested in a future project but the project is not at a point where an application is ready to be filed. The code should take into account those situations. The questions that need to be answered are "How much money?" and "How much time?" have been invested to give a developer rights under the previous regulations. The department needs more time to create a proposal for this section, but all proposed language will have ample time for public review and comment.

Staff Recommendation: No action needed.

Platting Board Recommendation: Not applicable.

Planning and Zoning Commission Recommendation: Concurs with staff recommendation"
(PZC 2006 1213 Issue-Response PHD)

Regulation Committee Recommendation:

- Revisit this section when it becomes available from MOA Planning.

Consortium Board Recommendation:

11/07/07:

- Revisit this section when it becomes available from MOA Planning.

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