



October 31, 2006

Erica McConnell  
Title 21 Re-Write Project  
Municipality of Anchorage  
632 West 6<sup>th</sup> Avenue,  
Anchorage, Alaska 99501

Re: Suggested changes to Title 21, Chapter One, September 2006  
Addition language to 21.01.060 CONFLICTING PROVISIONS

Dear Ms. McConnell:

I would like to suggest an additional sentence for the Title 21 Re-Write, Chapter One, 21.01.060 CONFLICTING PROVISIONS, Page Four, Line 41 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 draft 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 draft language, the first and second sentence (lines 35-38).

The need for new language is evidenced by a recent platting board Case No. S-10935-1,2,3,4 which ended up in the Superior Court as Case No. 3AN-04-05720 CI. The court ruled the MOA-approved plat invalid and vacated. Skyway Park Estates Subdivision has covenants prohibiting re-subdivision. The MOA ignored these covenants and approved a plat under objections from Skyway Park Estate Subdivision. Skyway Park Estate Subdivision Homeowners, Inc. took the case to court after exhausting all MOA administrative appeal procedures, a three year process. The court ruled against the MOA, vacated the plat, and ordered the MOA to officially vacate the plat.

*Skyway Park Estates Homeowners Association, Inc.*  
1800 Shore Drive, Anchorage, AK 99515  
Phone 344-7707 Fax 344-9540  
[jarnesen@gci.net](mailto:jarnesen@gci.net)

Erica McConnell  
October 31, 2006  
Page Two of Two

Homeowner Associations and individuals that attempt to protect their covenanted areas and rights should not have to take the MOA or developers to court to defend their covenant rights with their money. The MOA simply should not approve a plat or rezoning where objections are raised due to covenant rights, and instead return the application to the applicant with instructions to conclusively negate the covenants in a court of law, or reach an agreement with the interested person(s) or homeowners negating the covenant right and show proof of that negation before accepting or approving a plat or rezoning application. The burden of proof should be placed upon the applicant instead of homeowners defending protective covenants.

Please consider my suggestions. Thank you in advance.

Respectfully,

Jim Arnesen  
President

This document was created with Win2PDF available at <http://www.daneprairie.com>.  
The unregistered version of Win2PDF is for evaluation or non-commercial use only.