To the Planning Commission,

I have struggled with chapters 4.15 & 4.16 in trying to make them more readable and easier to understand. It appears to me that Title 4 is concerned with "Real Property Acquisition, Management, and Disposal".

I think of leasing as a management function. The borough loses no property and gains no property. With a lease it still must manage the property through the lease contract. Therefore, it appears that leasing should be with management and not disposals. However, I feel that leasing borough real property is important enough to have its own chapter.

Exchanges are another animal. They will more than likely involve an "Acquisition" and a "Disposal". Therefore, I believe exchanges should have their own chapter. I believe the most important part of an exchange is the acquisition and not the disposal.

What I suggest is that chapter 4.15 be for disposals, chapter 4.16 be for leasing, and chapter 4.17 be for exchanges. These should be stand-alone chapters. I think it would help simplify what is needed to accomplish any one of these three actions. Also, I believe it would be easier to amend one of these three items in the future.

I tried my hand at creating these three chapters. I tried to remove all references to leasing and exchanges in chapter 4.15 and keep everything that applies to disposals. Anything that referred to leasing or exchanges I moved to chapters 4.16 & 4.17. I used cut and paste. I did as little editing as possible to keep the original language. I'm sure that there are many mistakes and more editing needed.

I would encourage the Planning Commission to use this or some other change to make these three items easier to read and understand.

Sid

Title 4
Revision Draft V. C
(Sid Michael's suggested changes)

REAL PROPERTY ACQUISITION, MANAGEMENT, AND DISPOSAL

Chapters:

4.01 General Provisions
4.05 Real Property Acquisition
4.10 Management of Borough Real Property
4.15 Disposal of Borough Real Property
4.16 Leasing of Borough Real Property
4.17 Exchange of Borough Real Property
4.20 Financial Provisions for Land Sales and Leases
4.25 Classification of Borough-Owned Lands

Chapter 4.15

DISPOSAL OF BOROUGH REAL PROPERTY

Sections:

4.15.005 Definitions.
4.15.010 General policy
4.15.020 Authority to dispose borough real property
4.15.030 Conformity with classification and borough-approved plans
4.15.040 Procedures for nominations, review and approvals
4.15.050 Appraisal and market value
4.15.060 Requirements for sale
4.15.070 Qualifications of bidders or applicants
4.15.080 Assembly ordinance authorizing sales
4.15.090 Terms for land disposals
4.15.100 Different methods of land disposal
4.15.110 Public outcry auction sale
4.15.120 Sealed bid public auction sale
4.15.130 Lottery sale
4.15.140 Over-the-counter sale
4.15.150 Direct sale
4.15.160 Negotiated sale
4.15.170 Land conveyance and future uses of conveyed lands
4.15.180 Conveyance for public purpose

4.15.005 Definitions

Define disposal & "sale"; real property & "land"?

4.15.010 General Policy

The borough shall provide for land disposal considering the following:

1. Goals presented in the borough comprehensive plan and section 4.01.010
2. The preponderance of public land and the limited supply of private land in the borough
3. Evidence of local demand and the capacity of the private real estate market to meet that demand
4. A priority on land for year round residential use and for beneficial industrial or commercial developments
5. The general intent to generate revenue to support borough services, by offering land at fair market value, except in the limited situations provided by DBC 4.15.040 (B).

4.15.020 Authority to dispose borough real property

A. The mayor or designee may dispose borough land where authorized by the assembly by ordinance.

B. Decisions on disposals of borough real property/land are subject to review by the planning commission before submission to the borough assembly. Planning commission review shall be limited to the properties' suitability for the intended purpose and consistency with surrounding land use(s), management plans and classification. The planning commission, by resolution, shall make a recommendation to the borough assembly regarding the proposed land disposal.

4.15.030 Conformity with classification and borough-approved plans

The borough may dispose municipal property when the affected land has been classified under the policies of this chapter, and the proposed action is consistent with that classification, as well as the borough comprehensive plan, and where applicable, an adopted management plan.

4.15.040 Procedures for nominations, review and approvals

A. The borough mayor or designee, the assembly, the planning commission, or the public may nominate real property for sale as outlined below:

1. Land disposal nominations from the borough mayor or designee, planning commission, or assembly are incorporated into the annual work plan (see 4.10.020).

2. The public may recommend disposals to the borough mayor or designee for inclusion in the annual work plan. Nominations from the public shall be submitted to the mayor or designee in a standardized format established for that purpose.

3. The borough entities referenced above may also recommend disposals outside the timeframe of the annual work plan.

B. Once properties are nominated for disposal the process below shall be followed.

1. The mayor or designee prepares the information below for each specific recommended disposal:

- rationale, link to classification and management plan (where applicable)
- initial best interest finding
- intended form and terms of offering
- physical form of sale-e.g., intended use, general number and size of lots, access, design standards
- controls on post-disposal uses

2. Public notice is issued, as specified in DBC 01.05.090. A public meeting is held in a location proximate to the proposed action.

3. Planning staff presents a package to the planning commission for review, including a recommended action. The commission reviews these findings and takes public testimony as part of a regularly scheduled meeting. The planning commission presents a recommendation for consideration by the assembly.

4. The assembly, by ordinance, approves any specific disposal, providing sufficient direction to allow the mayor or designee to move forward with specific actions.

5. The mayor or designee carries out disposal process as authorized by the assembly; final terms and conveyance of agreements or contracts are governed by the remaining sections of this chapter.

4.15.050 Appraisal and market value

A. All lands shall be sold at fair market value as determined by appraisal, except as allowed by C below.

B. Parcels to be sold must have a current appraisal performed by an Alaska State certified, Alaska chapter, Member of the Appraisal Institute (MAI) appraiser.

C. The borough may provide for less than fair market land sales to established non-profit corporations and organizations when doing so would provide a public benefit and be in the best interest of the borough. The assembly may authorize the mayor or designee to sell land for less than fair market value if the ordinance authorizing the action contains:

- A finding that the sale for less than fair market value is in the best interests of the borough
- A statement of the facts on which the finding is based
- The period of time during which the offer may be accepted

4.15.060 Requirements for sale

Borough-owned real property (except natural resources) must be surveyed, platted and made to comply with other subdivision processes by the borough prior to sale. The cost to the borough of surveying, platting and complying with other subdivision processes shall be included in the sale price of the property. In the case of subdivisions, the costs may be prorated or shared equally among all the properties within the subdivision.

4.15.070 Qualifications of bidders or applicants

A. A bidder at auction or an applicant to otherwise purchase real property must be:

1. A legally competent person under the laws of the state of Alaska
2. At least 18 years old
3. A group, association, or corporation authorized to conduct business under the laws of Alaska
4. A person acting as agent for another person qualified under subsection (1) or (2) and has provided evidence of this status acceptable to the borough mayor or his designee, for example by filing with the borough a power of attorney or letter of authorization.

B. In addition to subsection (A) of this section, a person is not qualified if:

1. The person has failed to pay a deposit or payment, payable to the borough in relation to borough-owned real property in the previous five years
2. The person is currently in breach or default on any contract or lease for real property transactions in which the borough has an interest
3. The borough mayor or his designee has documented in writing that the person is unlikely to make payment or responsibly perform under the lease or other contract

4.15.080 Assembly ordinance authorizing sales

The assembly shall by ordinance fix the general terms of all sales of borough land. The ordinance shall contain:

1. The approximate date and the method or methods of the sale

2. The manner in which payment is to be made, the interest to be conveyed, the instrument of conveyance to be used, and any other terms the assembly deems necessary to provide the mayor or designee sufficient general direction to proceed with the sale or lease.

4.15.090 Terms for land disposals

A. The assembly may authorize payment to be made through either an upfront, full payment, or financed over time. The latter approach requires the following:

1. The down payment, payment schedule and rates of interest shall be set in the assembly ordinance.

2. For disposals, the period for total payment does not exceed 10 years, or 20 years if the land is sold for agricultural use.

3. For a sale of land with a value of more than $5,000, the prospective purchaser shall pay to the borough not less than 10 percent of the minimum appraised value at the time of sale or bid opening.

B. The sale of land with a value of $5,000 or less shall be paid at the time of the sale or bid opening by certified check or money order by the prospective purchaser.

C. Any bid deposits submitted that are not successful shall be returned to the unsuccessful bidder immediately following the sale or bid opening. Application fees to participate in a sale process shall not be refunded.

D. If the assembly requires a prospective buyer to pay the borough a down payment, bond or other deposit, and if the prospective buyer breaches a term of the sale, damages will be addressed. The borough shall retain as liquidated damages the prospective buyer's down payment, bond or other deposit.

E. The assembly may by ordinance impose additional limits on the number of parcels a person may buy at any sale.

4.15.100 Different methods of land disposal

The borough may dispose of borough land by any of the following methods:

1. Public outcry auction sale
2. Sealed bid public auction sale
3. Lottery sale
4. Over-the-counter sale
5. Direct sale
6. Soliciting proposals to purchase borough land
7. Negotiated sale

4.15.110 Public outcry auction sale

The assembly may by ordinance authorize the mayor or designee to sell borough land by public outcry auction. The mayor or designee shall sell the land to the highest bidder who performs all the terms of the sale. The mayor or designee will promulgate rules and regulations for conducting this type of auction sale. These rules must be approved by the assembly.

4.15.120 Sealed bid public auction sale

The assembly may by ordinance authorize the mayor or designee to sell borough land by sealed bid public auction. The mayor or designee shall sell the land to the highest bidder who performs all the terms of the sale. The mayor or designee will promulgate rules and

regulations for conducting this type of auction sale. These rules must be approved by the assembly.

4.15.130 Lottery sale

The assembly may by ordinance authorize the mayor or designee to sell borough land by the use of a lottery. A single individual, business, corporation or other eligible entity may purchase by lottery only one parcel of borough land every three years. In order to ensure the fair and equitable disposal of borough land to the public, the
Assembly may by ordinance impose additional limits on the number of parcels an eligible entity may buy from lottery sales. The mayor or designee may promulgate rules and regulations for conducting a lottery. These rules must be approved by the assembly.

4.15.140 Over-the-counter sale

A. The assembly may by ordinance authorize the mayor or designee to sell borough land by the use of over-the-counter sales if the land was offered for sale at an auction or lottery and the land did not sell at the auction or lottery. Land offered over the counter for sale may be purchased on a first-come, first-served basis at the borough office. The mayor or designee may promulgate rules and regulations for conducting an over-the-counter sale. These rules must be approved by the assembly.

B. The mayor or designee shall periodically review the terms of sale of all land offered for sale over the counter and shall:

1. Adjust rates on interest to reflect the prevailing market conditions, provided, the rate of interest shall be not more than six percentage points above the prevailing Federal Reserve discount rate to member banks.

2. Adjustments in the price of any lot offered in the over-the-counter sale shall be made by the assembly. Price adjustments may be made under the guidance of an independent fee appraiser.

C. Lots unsold at a sale may also be offered for sale at future land sales.

D. Defaulted parcels may be offered for resale over the counter and/or at future land sales.

4.15.150 Direct sale

The assembly may by ordinance authorize the mayor or designee to sell borough land directly to the landowner adjoining the borough land if:

1. The land has no legal or physical access and the cost of developing access would be greater than the resulting value of the parcel with access.

2. The cost of surveying, platting, or taking other action necessary to establish an acceptable legal description would exceed the value of the property.

3. The land is of such a size or shape as to be illegal or unfeasible to develop as an independent parcel under the applicable land use ordinance.

4. The land is found not suitable for development and is placed in permanent conservation status.

4.15.160 Negotiated sale

The assembly may by ordinance authorize the mayor or designee to sell borough land directly to an interested, eligible party under rare, specific circumstances:

1. Land will be sold at fair market value, and

2. The use of the proposed sale would lead to a specific use that provides a broad public benefit, beyond the specific benefits to the applicant, and the particular parcel provides an otherwise difficult to achieve option to provide this public benefit, or.

3. The sale meets the broad goals for land disposal specified in this Title and the specific terms of the proposed sale do not fit well into the other methods outlined in this chapter, e.g., forms of non-traditional payments.

4.15.170 Land conveyance and future uses of conveyed lands

A. After the buyer has paid to the borough the payments required by ordinance, the mayor or designee shall execute the instrument of conveyance authorized by ordinance that transfers the land or the interest in land to the buyer.

B. An instrument conveying land may contain controls on future land uses, for example deed restrictions, that set specific, borough-enforceable rules approved by the assembly that:

1. Define allowed and prohibited use
2. Prohibit subdivision and/or set maximum residential densities
3. Establish dimensional requirements, such as building setbacks or maximum building heights
4. Establish other use controls necessary to comply with the goals for the disposal established in the management plan or other adopted borough land use policy

Note to reviewers: the borough may wish to establish a standard package of development guidelines, in several categories, e.g. low density residential; higher density residential, commercial/industrial. This would allow for consistency in post-sale land use standards throughout the borough.

4.15.180. Conveyance for public purpose

The transfer of borough land or resources may be made to a state or federal agency, or municipality within the borough, for public purposes if:

A. Approved by the borough assembly; and

B. The borough mayor or his designee ensures, by regulation, deed restriction, covenant, or otherwise, that transfers of land under this section serve a public purpose and are in the public interest; and

C. The borough retains a reversionary interest if the land is not used for the public purpose that was approved by the borough assembly on each conveyance or other land use authorization made under this section.

Chapter 4.16

LEASING OF BOROUGH REAL PROPERTY

Sections:

4.16.005 Definitions
4.16.010 General policies
4.16.020 Authority to lease borough real property
4.16.030 Conformity with classification and borough-approved plans
4.16.040 Procedures for nominations, review and approvals
4.16.050 Appraisal and market value
4.16.060 Requirements for lease
4.16.070 Qualifications of applicants
4.16.080 Assembly ordinance authorizing leases
4.16.090 Different methods for offering land for lease, and types of leases
4.16.100 Processing fee
4.16.110 Qualifications of applicants
4.16.120 Plan of operations
4.16.130 Competitive bids
4.16.140 Term of lease
4.16.150 Current appraisal
4.16.160 Right of renewal
4.16.170 Lease rate
4.16.180 Land survey
4.16.190 Attachment of special conditions
4.16.200 Termination of lease
4.16.210 Easements on leased land

4.16.005 Definitions

A. Agriculture - means the tilling of the soil, the raising of crops, dairying, or animal husbandry.

B. Grazing – means the use of land for the sustenance and growth of domestic livestock, for example, horses or cattle; primarily relying on native vegetation.

Note to reviewers – the borough may want to develop policies on marijuana cultivation, manufacturing, sales and testing, as these activities may be proposed on borough-owned lands. Preparing such a code is outside the scope of this current project, but for reference, two definitions, from the Anchorage draft code, are shown below.

C. Marijuana Cultivation Facility - A facility that cultivates and harvests marijuana for transfer or sale to a marijuana manufacturing facility, a marijuana testing facility, or a marijuana retail sales establishment.

D. Marijuana Manufacturing Facility - A facility that receives harvested marijuana from a cultivation facility and extracts, processes, and/or manufactures marijuana products for

transfer or sale to another marijuana manufacturing facility, a marijuana testing facility, or a marijuana retail sales establishment.

4.16.010 General Policies

The borough shall provide for land leases considering the following:

1. Goals presented in the borough comprehensive plan and section 4.01.010
2. The preponderance of public land and the limited supply of private land in the borough
3. Evidence of local demand and the capacity of the private real estate market to meet that demand
4. A priority on land for year round residential use and for beneficial industrial or commercial developments
5. The general intent to generate revenue to support borough services, by offering land at fair market value, except in the limited situations provided by 4.16.050 (C).

4.16.020 Authority to lease borough real property

A. The mayor or designee may lease borough land where authorized by the assembly by ordinance.

B. Decisions on leases of borough real property are subject to review by the planning commission before submission to the borough assembly. Planning commission review shall be limited to the properties' suitability for the intended purpose and consistency with surrounding land use(s), management plans and classification. The planning commission, by resolution, shall make a recommendation to the borough assembly regarding the proposed lease.

4.16.030 Conformity with classification and borough-approved plans

The borough may lease municipal property when the affected land has been classified under the policies of this title, and the proposed action is consistent with that classification, as well as the borough comprehensive plan, and where applicable, an adopted management plan.

4.16.040 Procedures for nominations, review and approvals

A. The borough mayor or designee, the assembly, the planning commission, or the public may nominate real property for lease as outlined below:

@ 1. Nominations of real property for lease from the borough mayor or designee, the assembly or the planning commission are incorporated into the annual work plan (see 4.10.020).

2. The public may recommend real property for lease to the borough mayor or designee for inclusion in the annual work plan. Nominations from the public shall be submitted to the mayor or designee in a standardized format established for that purpose.

3. The borough entities referenced above may also recommend leases outside the timeframe of the annual work plan.

B. Once properties are nominated for lease the process below shall be followed.

1. The mayor or designee prepares the information below for each specific recommended lease action:

– rationale, link to classification and management plan (where applicable)
– initial best interest finding
– intended form and terms of offering

– physical form of lease – e.g., intended use, general number and size of lots, access, design standards

– objectives for operations plan

2. Public notice is issued, as specified in DBC 01.05.090. A public meeting is held in a location proximate to the proposed action.

3. Planning staff presents a package to the planning commission for review, including a recommended action. The commission reviews these findings and takes public testimony as part of a regularly scheduled meeting. The planning commission presents a recommendation for consideration by the assembly.

4. The assembly, by ordinance, approves any specific lease or providing sufficient direction to allow the mayor or designee to move forward with specific actions.

5. The mayor or designee carries out lease process as authorized by the assembly; final terms and conveyance of agreements or contracts are governed by the remaining sections of this chapter.

4.16.050 Appraisal and market value

A. All lands shall be leased at fair market rental value as determined by appraisal, except as allowed by C below.

B. Parcels to be leased must have a current appraisal performed by an Alaska State certified, Alaska chapter, Member of the Appraisal Institute (MAI) appraiser.

C. The borough may provide for less than fair market rental value in two circumstances:

1. to established non-profit corporations and organizations when doing so would provide a public benefit and be in the best interest of the borough. The assembly may authorize the mayor or designee to lease land for less than fair market value if the ordinance authorizing the action contains:

– A finding that the lease for less than fair market rental value is in the best interests of the borough;

– A statement of the facts on which the finding is based

– The period of time during which the offer may be accepted.

2. The borough may lease borough land at less than fair market Rental value where, pursuant to the lease operating plan, a commercial or industrial facility or use will be established or maintained on the leased land, but only if the assembly first finds:

– That without the rent reduction, development of the use or facility will not be financially feasible, and will not be located or maintained within the borough;

– The operation of the facility within the borough will confer a net economic benefit to the borough or to the citizens of the borough.

– The below market lease rate shall not extend for more than10 years. A lease entered into pursuant to this subsection may be renewed only for a fair market rental value.

– A lease providing for below a fair market value shall provide for an immediate rent adjustment to fair market value if the specified use or facility is not established within a time specified in the lease and if the specified use or facility is not continuously maintained except for such periods as are set forth in the lease.

4.16.060 Requirements for lease

Borough real property (except natural resources) must be surveyed, platted and made to comply with other subdivision processes by the borough prior to lease. The cost to the borough of

surveying, platting and complying with other subdivision processes shall be included in the rental price of the property. In the case of subdivisions, the costs may be prorated or shared equally among all the properties within the subdivision.

4.16.070 Qualifications of applicants

A. An applicant to lease borough real property must be:

1. A legally competent person under the laws of the state of Alaska;

2. At least 18 years old

3. A group, association, or corporation authorized to conduct business under the laws of Alaska; or

4. a person acting as agent for another person qualified under subsection (1)or (2) and has provided evidence of this status acceptable to the borough mayor or his designee, for example by filing with the borough a power of attorney or letter of authorization.

B. In addition to subsection (A) of this section, a person is not qualified if:

1. The person has failed to pay a deposit or payment, payable to the borough in relation to borough real property in the previous five years; or

2. The person is currently in breach or default on any contract or lease for real property transactions in which the borough has an interest; or

3. The borough mayor or his designee has documented in writing that the person is unlikely to make payment or responsibly perform under the lease or other contract.

4.16.080 Assembly ordinance authorizing leases

The assembly shall by ordinance fix the general terms of all leases of borough land. The ordinance shall contain:

1. The approximate date and the method or methods of the lease

2. The manner in which payment is to be made, the instrument of conveyance to be used, and any other terms the assembly deems necessary to provide the mayor or designee sufficient general direction to proceed with the lease.

4.16.090 Different methods for offering land for lease, and types of leases

A. Land can be leased in response to a borough solicitation for public interest, as initiated through the annual work plan process, or in response to a request for a lease from an individual, business or organization.

B. Where lands are suitable, and public interest exists, the borough assembly may authorize by ordinance the leasing of land for grazing or agriculture uses. The fair market value of leases shall be set to reflect the value of the land when limited to these specific purposes, that is, generally lower than if the land was available for commercial, industrial or residential use.

4.16.100 Processing fee

Applicants wishing to lease borough property must complete an application and submit a nonrefundable processing fee, as specified in the borough's fee schedule.

4.16.110 Qualifications of applicants

@ A. Requires complying with same standards presented in 4.15.070

B. Under certain circumstances, the borough may require a sole proprietor, partnership, corporation or other entity to provide a credit application. All financial information supplied to the Denali Borough will be stamped Confidential and will not be released for public scrutiny under applicable Public Records statutes.

4.16.120 Plan of operations

A. The lease applicant shall submit to the borough for review and approval a plan of operations as specified below. The lessee's plan of operations as must be consistent with the broad goals of this title, the land's classification, any adopted borough plans, and provisions of borough code.

B. The plan of operations shall include, at a minimum:

1. Detailed description of the intended use of the land
2. Desired lease length
3. Timetable for development
4. Planned structures and fuel storage facilities accompanied by a scale drawing
5. Estimated value of the improvements
6. Delineated access, water, and power sources
7. Intended solid waste and wastewater disposal methods,
8. If a non-exclusive lease, identify location points of passage for the general public
9. Detailed description of how improvements will be removed at the end of the lease.

C. Once approved the lessee must comply with all terms of the operations plan. Proposed modifications to the plan require submittal and approval of a request for plan amendment. Minor changes in the operations plan can be approved by the mayor or designee. Minor changes are defined as those that do not notably change the nature of the use, the footprint of any improvements, or the impact on surrounding uses. If changes are made without approval of the mayor or designee, the mayor or designee may require the changes to be reversed at the lessee's expense.

4.16.130 Competitive bids

The borough may provide for competitive bidding to lease borough land that is classified and intended for commercial or industrial use. The competitive bidding shall be conducted in accordance with requirements established by the Assembly.

4.16.140 Term of lease

The term of the lease shall be based on the nature of the improvements to be made by the lessee and shall generally be long enough to allow for amortization of improvements made by the lessee.

1. Leases shall have a maximum term of 35 years with a one-time option for renewal.
2. A lease for a term in excess of 10 years shall be recorded at the state recorder's office.
3. Lessee will provide 90 days' notice of a request to renew a lease.

4.16.150 Current appraisal

Parcels to be leased must have a current appraisal performed by an Alaska State certified, Alaska chapter, Member of the Appraisal Institute (MAI) appraiser.

4.16.160 Right of renewal

A lease may grant the lessee a right of renewal upon the expiration of the initial term; provided, that the renewal, or any extension of the lease, shall be treated as a new lease and shall be subject to all provisions of this code then in effect, and that the lessee has complied with the approved operations plan.

4.16.170 Lease Rate

A. The annual lease rate for a lease shall be established as the fair market value at the time the lease contract is approved, as determined by a qualified appraiser (see .14.080) unless otherwise authorized by ordinance.

A-1. The borough may lease (but not sell) borough land at less than fair market value where, pursuant to the lease operating plan, a commercial or industrial facility or use will be established or maintained on the leased land, but only if the assembly first finds:

– That without the rent reduction development of the use or facility will not be financially feasible, and will be located or maintained within the borough

– The operation of the facility within the borough will confer a net economic benefit to the borough or to the citizens of the borough.

– The below market lease rate shall not extend for up to more than10years. A lease entered into pursuant to this subsection may be renewed only for a fair market rental value.

– A lease providing for below a fair market value shall provide for an immediate rent adjustment to fair market value if the specified use or facility is not established within a time specified in the lease and if the specified use or facility is not continuously maintained except for such periods as are set forth in the lease.

B. Every five years the borough will review leases and adjustments will be determined by adding the increase or decrease rate of the consumer price index (CPI) based on the annual month of March adjustment for the Anchorage metropolitan area market. The amount of the adjustment will be conveyed to the lessee by the lessor by June 1st of each year and the adjusted payment will start beginning with the following July lease payment.

C. The appraised value or the adjusted value shall not include any improvements the lessee has made. Cost for the appraisal will be the responsibility of the proposed lessee at the lessee's own expense. Some or all of the appraisal costs may be considered as a part of the lease payments?

4.16.180 Land survey

The mayor or designee may require, for noncompetitively bid lands, a proposed lessee to cause the borough land to be surveyed at the proposed lessee's own expense.

4.16.190 Attachment of special conditions

The assembly or the mayor or designee may attach special conditions to a lease in order to reduce risk to the borough, mitigate public concerns, or other purposes.

4.16.200 Termination of lease

When the lease terminates, the lessee shall remove all improvements made pursuant to the plan of operations except those improvements that the lease specifies shall become the property of the borough, and the lessee shall restore the land to reasonably the same condition it was in at the time the lease was executed or, if stipulated, to the condition specified in the lease agreement. Improvements that are not removed by the lessee at the expiration of the lease shall become the property of the borough. If improvement is unwanted property of the borough it may remove it at the lessee's expense.

4.16.210 Easements on leased land

Every lease of municipal land shall provide that the municipality retains the right to designate or grant rights-of-way or utility easements across the leased premises without compensation; provided, that the lessee shall be compensated for the taking or destruction of any improvements and provided further, that the lessee at his option may request to terminate the lease and/or a rental adjustment to reflect any reduction in value of the leased premises.

Chapter 4.17

EXCHANGE OF BOROUGH REAL PROPERTY

Sections:

4.17.005 Definitions.
4.17.010 General policy
4.17.020 Authority to exchange borough real property
4.17.030 Conformity with classification and borough-approved plans
4.17.040 Procedures for nominations, review and approvals
4.17.050 Appraisal and market value
4.17.060 Requirements for exchanges
4.17.070 Qualifications of applicants, bidders, proposers
4.17.080 Assembly ordinance authorizing exchanges

Note: Sections 4.15.005-080 of this chapter apply to disposals, leases and exchanges. Remaining sections of this chapter address disposal of borough land (4.15.090-1.70) and in section 4.15.170 addresses land exchanges. The following chapter – 4.16. – references the procedures in 4.15, and adds policies specific to leasing.

4.17.050 Definitions

Define disposal & "sale"; real property & "land"?

4.17.010 General Policy

The borough shall provide for land exchanges considering the following:

1. Goals presented in the borough comprehensive plan and section 4.01.010
2. The preponderance of public land and the limited supply of private land in the borough
3. Evidence of local demand and the capacity of the private real estate market to meet that demand
4. A priority on land for year round residential use and for beneficial industrial or commercial developments
5. The general intent to generate revenue to support borough services, by offering land at fair market value, except in the limited situations provided by DBC 4.05.020 (H) and 4.15.040 (B).

4.17.020 Authority to exchange borough real property

A. The mayor or designee may exchange borough land where authorized by the assembly by ordinance.

B. Decisions on exchanges of borough real property/land are subject to review by the planning commission before submission to the borough assembly. Planning commission review shall be limited to the properties' suitability for the intended purpose and consistency with surrounding land use(s), management plans and classification. The planning commission, by resolution, shall make a recommendation to the borough assembly regarding the proposed land exchange.

4.17.030 Conformity with classification and borough-approved plans

The borough may exchange municipal property when the affected land has been classified under the policies of this chapter, and the proposed action is consistent with that classification, as well as the borough comprehensive plan, and where applicable, an adopted management plan.

4.17.040 Procedures for nominations, review and approvals

A. The borough mayor or designee, the assembly, the planning commission, or the public may nominate real property for exchange, as outlined below:

1. Land exchange nominations from the borough mayor or designee, planning commission, or assembly are incorporated into the annual work plan (see 4.10.020).

2. The public may recommend exchanges to the borough mayor or designee for inclusion in the annual work plan. Nominations from the public shall be submitted to the mayor or designee in a standardized format established for that purpose.

3. The borough entities referenced above may also recommend exchanges outside the timeframe of the annual work plan.

B. Once properties are nominated for exchange, the process below shall be followed.

1. The mayor or designee prepares the information below for each specific recommended exchange:

- rationale, link to classification and management plan (where applicable)
- initial best interest finding
- intended form and terms of exchange
- physical form of exchange – e.g., intended use, general number and size of lots, access, design standards
- controls on post exchange uses

2. Public notice is issued, as specified in DBC 01.05.090. A public meeting is held in a location proximate to the proposed action.

3. Planning staff presents a package to the planning commission for review, including a recommended action. The commission reviews these findings and takes public testimony as part of a regularly scheduled meeting. The planning commission presents a recommendation for consideration by the assembly.

4. The assembly, by ordinance, approves any specific exchange, providing sufficient direction to allow the mayor or designee to move forward with specific actions.

5. The mayor or designee carries out exchange process as authorized by the assembly; final terms and conveyance of agreements or contracts are governed by the remaining sections of this chapter.

4.17.050 Appraisal and market value

A. All lands shall be exchanged at fair market value as determined by appraisal, except as allowed by C below.

B. Parcels to be exchanged must have a current appraisal performed by an Alaska State certified, Alaska chapter, Member of the Appraisal Institute (MAI) appraiser.

C. The borough may provide for less than fair market exchange to established non-profit corporations and organizations when doing so would provide a public benefit and be in the best interest of the borough. The assembly may authorize the mayor or designee to

exchange land for less than fair market value if the ordinance authorizing the action contains:

- A finding that the exchange for less than fair market value is in the best interests of the borough;
- A statement of the facts on which the finding is based
- The period of time during which the offer may be accepted.

4.17.060 Requirements for exchange

Borough real property (except natural resources) must be surveyed, platted and made to comply with other subdivision processes by the borough prior to exchange.

4.17.070 Qualifications of exchange applicants

A. An applicant to exchange must be:

1. A legally competent person under the laws of the state of Alaska;
2. At least 18 years old
3. A group, association, or corporation authorized to conduct business under the laws of Alaska; or
4. a person acting as agent for another person qualified under subsection (1) or (2) and has provided evidence of this status acceptable to the borough mayor or his designee, for example by filing with the borough a power of attorney or letter of authorization.

B. In addition to subsection (A) of this section, a person is not qualified if:

1. The person has failed to pay a deposit or payment, payable to the borough in relation to borough real property in the previous five years; or
2. The person is currently in breach or default on any contract or lease for real property transactions in which the borough has an interest; or
3. The borough mayor or his designee has documented in writing that the person is unlikely to make payment or responsibly perform under the exchange agreement.

4.17.080 Assembly ordinance authorizing exchanges

The assembly shall by ordinance fix the general terms of all exchanges of borough land. The ordinance shall contain:

1. the approximate date and the method or methods of the exchange
2. the instrument of conveyance to be used, and any other terms the assembly deems necessary to provide the mayor or designee sufficient general direction to proceed with the exchange.