CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

PLANNING COMMISSION
NOTICE OF RECOMMENDATION
Date: June 12, 2012
File No.: AME2012 0008

City and Borough of Juneau
City and Borough Assembly
155 South Seward Street
Juneau, AK 99801

Application For:	Planning Commission Recommendation to the City and Borough Assembly regarding an Ordinance Amending the Land Use Code Relating to Restrictions on Rezonings.
Legal Description:	Boroughwide
Parcel Code No.:	0
Hearing Date:	June 12, 2012

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated June 6, 2012, and recommended that the City and Borough Assembly adopt staff's recommendation for an amendment to CBJ 49.75.120 - *Restrictions on rezonings* as shown in the memorandum on page 6 of 6, not as shown in the draft ordinance attached to the memorandum. The recommended language of this text amendment is:

> **49.75.120 - Restrictions on rezonings.**
> Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezoning requests which are substantially the same as a rezoning request rejected within the previous 12 months shall not be considered. A rezoning shall ~~not allow uses which violate~~ *only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the intent of* the land use maps of the comprehensive plan.

Attachments: June 6, 2012 memorandum from Ben Lyman, Senior Planner, Community Development, to the CBJ Planning Commission regarding AME2012 0008

This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ §01.50.020 (b).

Project Planner: _____ _____

Ben Lyman, Senior Planner
Community Development Department

Michael Satre, Chair
Planning Commission

_____ 6/15/2012

Filed With City Clerk

Date

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this recommended text amendment. ADA regulations have access requirements above and beyond CBJ - adopted regulations. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

MEMORANDUM

CITY & BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

DATE: June 6, 2012

TO: Planning Commission

FROM: Ben Lyman, Senior Planner
Community Development Department

FILE NO.: AME2012 0008

PROPOSAL: An Ordinance Amending the Land Use Code Relating to Restrictions on Rezonings.

The City and Borough of Juneau Code states in CBJ 49.10.170(d) that the Commission shall make recommendations to the Assembly on all proposed amendments to this title, zonings and re-zonings, indicating compliance with the provisions of this title and the Comprehensive Plan.

BACKGROUND

The proposed ordinance would amend CBJ 49.75.120 to clarify that rezonings must be in substantial conformance with the land use maps of the Comprehensive Plan, but that rezonings need not exactly match the designations or the boundaries of the land use maps of the Comprehensive Plan.

This amendment was requested by the Planning Commission in the wake of AME2011 0002 and Ordinances 2011-18 and 2011-23, wherein a property was re-zoned and then subsequently un-re-zoned after a legal opinion that the re-zoning was illegal, as it violated the Comprehensive Plan land use maps. The Manager's Reports for each of the two ordinances is provided below for reference.

Ordinance 2011-18
August 8, 2011
Manager's Report:

> *The applicant has requested a zone change from D-10 to Light Commercial (LC).*
>
> *This site is located in Subarea 4 of the 2008 Comprehensive Plan (map G). The plan shows this lot as Medium Density Residential (MDR). Page 164 of the 2008 Comprehensive Plan describes MDR as follows:*

The LC district (49.25.230(a)), is intended to accommodate commercial development that is less intensive than that permitted in the General Commercial (GC) district. LC districts are primarily located adjacent to existing residential areas. Although many of the uses allowed in this district are also allowed in the GC, they are listed as Conditional Uses in this district and therefore require Planning Commission review to determine compatibility with surrounding land uses. A lower level of intensity of development is also achieved by stringent height and setback restrictions.

The CBJ Land Use Code (49.75.120) provides minimum restrictions for zone change requests. This proposal conforms to these restrictions as follows:

1. The request is for a site of 2.68 acres, which exceeds the minimum lot size of two acres for a single lot rezone request. A Light Commercial Zoning District is located directly across Mendenhall Loop Road.

2. No similar request has been made in the past year.

However, this request does not conform, in that the request is not consistent with the land use maps of the 2008 Comprehensive Plan.

The Planning Commission, at its April 26, 2011 meeting, recommended the Assembly deny rezoning the subject parcel from D-10 to LC. The Lands Committee, at its August 1, 2011 meeting recommended sending this ordinance to the full Assembly.

As this is a policy matter, I have no recommendation.

Ordinance 2011-23
September 19, 2011
Manager's Report:

This ordinance would repeal Ordinance 2011-18, rezoning certain property on Atlin Drive. The City Attorney has determined that Ordinance 2011-18 violates a provision of the Land Use Code, CBJ 49.75.120, Restrictions on Rezonings, and recommends that the ordinance be repealed. The third sentence in CBJ 49.75.120 provides: "A rezoning shall not allow uses which violate the land use maps of the Comprehensive Plan." This is a narrow restriction; it only relates to uses – developments that are allowed in zoning districts – and it is based only on the Comprehensive Plan maps (the language of the Comprehensive Plan is much more likely to be ambiguous). Accordingly, under this code section, to the extent that uses are designated by the maps, that designation restricts rezonings. The Community Development Department has made clear that the Comprehensive Plan maps would, in fact, limit the uses in this case; and, accordingly, the City Attorney recommends against rezoning to a Light Commercial zoning designation, as it would violate CBJ 49.75.120.

I recommend this ordinance be adopted.

During their Regular Meeting of May 22, 2012, Planning Commissioners discussed rezonings and the Comprehensive Plan land use maps. The DRAFT minutes of that discussion are reproduced below:

- Mr. Miller described a rezone case several months ago reviewed by the PC that staff recommended against because the maps in the Comp Plan signified other zoning than what was being requested. Therefore, even though surrounding parcels to the subject lot were zoned D-18, the maps in the Comp did not agree with the requested rezone in that particular case. At that time, he commented that when the PC updated the 2008 Comp Plan they were presented with a flurry of papers, so they did not review specifics zoning aspects of individual properties. Instead, they viewed those maps of the Comp Plan in a broader sense, and yet those maps have been taken as being absolute when the PC reviews actual cases, and if it states that a request is not in compliance with the Comp Plan, they cannot approve it. He stated that if that is the case, the PC has to conduct a closer review of the maps of the Comp Plan, or make it so the maps are not so absolute. He asked in which chapter of the Comp Plan might they review this aspect.
- Mr. Chaney said this is not found in the Comp Plan; rather it is in Title 49, specifically §49.70.120 Restrictions on Rezonings. He cited a portion, which states, "49.75.120 - Restrictions on Rezonings - A rezoning shall not allow uses which violate the land use maps of the comprehensive plan." He explained that this portion of code would have to be revised if the PC wishes to do so.
- Mr. Miller said if the PC does not do so, they are going to have to scrutinize the maps in the Comp Plan more closely, which in reality would probably be more than they possibly could do. If those maps in the Comp Plan are not absolute, Title 49 needs to be fixed because the Comp Plan is meant to be a guiding document.
- Chair Satre said these comments should be forwarded to members of the Assembly.
- Mr. Lyman said this was primarily discussed when he provided an update to an increase in residential density and height limits for Light Commercial (LC), General Commercial (GC) and Mixed-Use 2 (MU2) land use designated zones. During those previous PC discussions they attempted to understand how much more of a stringent reading of that section of Title 49 was than what they expected or experienced in the past. In doing so, they tried to eliminate confusion, i.e., where they have a GC land use category in the Comp Plan and a GC zoning district in the Land Use Plan, which created a lot of confusion. Therefore, they reviewed changing the land use designation names, so it would now be Commercial zones in the Comp Plan if it is adopted, which makes it easier to see that Waterfront Commercial (WC), GC and LC are all acceptable. Another possibility was rather than listing many different zoning districts that would be appropriate in a Comp Plan designation, perhaps they should instead review expanding the section of Title 49 to ensure that they do not have to have that strict of an interpretation. He cited page 1 of the Chapter 1: Introduction and Background of the Comp Plan, specifically the portion that states, "This is not to say that the Plan will be infallible or that it is cast in concrete," which staff has routinely reviewed. Historically, staff and the PC have reviewed many zone change requests that were across Comp Plan land use designation boundaries because they were consistent with the neighborhood.

During his tenure with the CDD, and some of the Commissioners might recall, along Old Dairy Road where now Budget Car Rental, Arctic Carpet, Four Seasons Glass, Rayco Sales, and the new hotel are now, which was previously designated as Industrial in the Comp Plan that was rezoned from Commercial to Industrial in the late 1980s. This made all the Commercial properties in that location nonconforming that could not be improved because they could not be expanded, and no one wanted to invest in them. However, many years later they found that this area was not being put to its highest and best use with potentially heavy industrial uses adjacent to the highway and along Old Dairy Road. The interpretation provided by staff, the decision by the PC and the Assembly was that it was not inconsistent with the Comp Plan to pull the Commercial zoning from Fred Meyer across the highway and south of the Nugget Mall area to create a Commercial frontage in this location, but under the other interpretation they could not do so. Therefore, staff intends to represent the PC with the chapter on land use and its maps so the PC has not yet finished their review, which he is continuing to work on.

- Mr. Miller said he was absent from the last Wetland Review Board meeting, although staff delivered the packet where an applicant requested a zone change. That subject property is located across from Fred Meyer, but the staff report stated that doing so is not allowed per the Comp Plan because the property is designated as different zoning than what was being requested in the rezone, and therefore it appears as though the Comp Plan is still being interpreted that this is not allowed.
- Chair Satre said it is, but they do not want to get into the details of that application. He said Title 49 has to be revised because the Commissioners would never be able to review the Comp Plan maps in enough detail to ensure that they could take into account every potential rezone consideration. They need to look at the Comp Plan maps in sufficient detail for potential conflicts in terms of boundaries within zoning districts. They have to find a way to frame the changes the PC wants to make to Title 49, but he wants this done with minimal analysis for the PC to review at a public hearing, and then move it onto the Assembly.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

Discussion

The purpose of this Ordinance is to improve the ability of staff, the Planning Commission, and the Assembly to consider the intent of the Comprehensive Plan land use maps in rezoning requests without requiring strict application of those maps to the zoning map set. The Comprehensive Plan states (Page 1): "This is not to say that the Plan will be infallible or that it is cast in concrete". Staff has interpreted this to mean that land use designation boundaries shown on the Comprehensive Plan land use maps are general in their boundaries, and that zoning district boundaries will differ from Comprehensive Plan land use map boundaries as needed to accommodate existing development and to recognize the intricate pattern of development that is generally expected on the ground, and that cannot be described exactly on maps intended to be as general as those of the Comprehensive Plan land use maps.

Findings

The proposed Ordinance would improve the ability of staff, the Planning Commission, and the Assembly to make recommendations or decisions on rezoning requests on a case-by-case basis, considering the existing development patterns of the neighborhood and streets as well as the land use maps of the Comprehensive Plan.

COMPLIANCE WITH CBJ LAND USE CODE

Title 49 Contents

The following sections of Title 49 have been examined to determine whether or not the proposed ordinance is in compliance with the Code:

49.05.100 Purpose and Intent

The several purposes of this title are:

(1) To achieve the goals and objectives, and implement the policies, of the Juneau comprehensive plan, and coastal management program;

(2) To ensure that future growth and development in the City and Borough is in accord with the values of its residents;

(3) To identify and secure, for present and future residents, the beneficial impacts of growth while minimizing the negative impacts;

(4) To ensure that future growth is of the appropriate type, design and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;

(5) To provide adequate open space for light and air; and

(6) To recognize the economic value of land and encourage its proper and beneficial use.

49.05.200 Comprehensive Plan

...

(c) No rights created. The goals and policies set forth in the comprehensive plan are aspirational in nature, and are not intended to commit the City and Borough to a particular action, schedule, or methodology. Neither the comprehensive plan nor the technical appendix adopted under this section nor the amendment of either creates any right in any person to a zone change nor to any permit or other authority to make a particular use of land; neither do they constitute a regulation of land nor a reservation or dedication of privately owned land for public purpose.

The proposed ordinance is in compliance with the Purpose and Intent of the Land Use Code, and is particularly relevant to the statement at CBJ 49.05.200(c) that "The goals and policies set forth in the comprehensive plan are aspirational in nature, and are not intended to commit the City and Borough to a particular action" such as a rezoning.

The proposed ordinance requires that the Planning Commission make a finding of substantial conformance prior to recommending approval of any zone change; the ordinance places no such restriction on Assembly actions on rezone requests. In the event that the Planning Commission and/or Assembly desire to hold the Assembly to the same standard, staff offers the following alternate language (in bold):

> **49.75.120 - Restrictions on rezonings.**
> Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezoning requests which are substantially the same as a rezoning request rejected within the previous 12 months shall not be considered. A rezoning shall ***only be approved*** *upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the intent of* the land use maps of the comprehensive plan.

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the Assembly adopt the Draft Ordinance amending CBJ 49.75.120, with or without modification by the Planning Commission.

Presented by: The Manager
Introduced:
Drafted by: J.W. Hartle

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2012-Rezoning Restrictions

An Ordinance Amending the Land Use Code Relating Restrictions on Rezonings.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough Code.

Section 2. Amendment of Section. CBJ 49.75.120 - Restrictions on rezonings, is amended to read:

...

49.75.120 - Restrictions on rezonings.

Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezoning requests which are substantially the same as a rezoning request rejected within the previous 12 months shall not be considered. A rezoning shall ~~not allow uses which violate~~ *only be recommended for approval by the Planning Commission upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the intent of* the land use maps of the comprehensive plan.

...

Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this day of 2012.

_____
Bruce Botelho, Mayor

Attest:

_____
Laurie J. Sica, Clerk