

MEMORANDUM

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

DATE: April 11, 2014
TO: Planning Commission
FROM: Travis Goddard, Planning Manager
Community Development Department
*Cheryl Mobley
for Travis Goddard*
FILE NO.: AME2014 0005

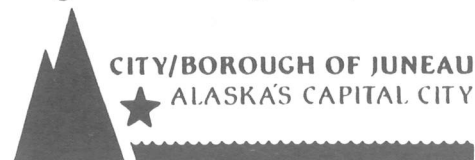
PROPOSAL: Proposed amendment to Title 49 Section 49.75.130 amending the Land Use Code related to rezoning approval.

At the February 28, 2012 Planning Commission meeting, the Commission recommended approval of an ordinance amending Title 49 Section 49.75.130 to the Assembly. The purpose of the text amendment was to clarify rezoning procedures when the Planning Commission denies a rezone request. Title 49 has been clear that when the Planning Commission approves a rezoning the action is a recommendation to the Assembly. However, Title 49 was silent on whether a denial was a recommendation or a final decision. Ordinance 2012-11 established that a denial of a rezone request by the Planning Commission was a final decision. The decision can be appealed to the Assembly.

Based on the recommendation of the CBJ Law Department, the proposed Ordinance would make a Planning Commission denial of a rezone request a recommendation to the Assembly. The purpose of Ordinance 2014-14 is to remedy two issues related to the amendment of CBJ 49.75.130 (rezoning procedure.) First, Ordinance 2012-11 created an inconsistency in the code by providing for the Planning Commission's decision to deny a rezone to be a "final agency decision on the matter."

Second, CBJ 49.75.130 improperly suggests that rezoning decisions are quasi-judicial, and thus appealable, rather than legislative acts. While rezoning decisions are subject to direct judicial review and can be invalidated when they are the result of prejudice, arbitrary decision-making, improper motive, or when they violate due process, they are not subject to direct appeal. ("[T]he decision of a legislative body is subject to review by appeal only where the decision is a quasi-judicial one." *Cabana v. Kenai Peninsula Borough*, 21 P.3d 833, 836 (Alaska 2001). *See also*: "As a general rule, an applicant whose rezoning petition is denied cannot seek a direct review of that denial..." 3 Rathkopf's The Law of Zoning and Planning § 40:4 (4th ed.)).

The Planning Commission is not authorized to make the final legislative decision on rezoning requests under the current code. The Planning Commission's role with respect to rezoning is to "make recommendations to the assembly on all proposed . . . zonings and rezonings..." (CBJ



49.10.170(d)). In order to correct this inconsistency, either: (1) the Planning Commission's authority would need to be expanded to allow for it to be the legislative, and final, decision-maker on rezoning requests; or (2) 49.75.130 needs to be amended to return the legislative authority to decide all rezoning requests to the Assembly, which is consistent with past practice. (CBJ 49.75.130 suggests that the legislative authority on rezoning requests is split between the Assembly and Planning Commission. It provides that the authority to make the legislative decision on approvals is held by the Assembly, but on denials, suggests that authority rests with the Planning Commission.)

Finally, even if CBJ 49.10.170(d) were amended to give the Planning Commission the legislative-decision-making authority on rezoning requests (denials and approvals), CBJ 49.75.130 would need to be amended to eliminate the reference to appealing denials to the Assembly. As stated above, small scale rezoning decisions are legislative acts, not quasi-judicial, and are not subject to appeal under CBJ 01.50. (*Cabana v. Kenai Peninsula Borough*, 21 P.3d 833, 836 (Alaska 2001)).

RECOMMENDATION

Based on the above analysis, it is recommended that the Planning Commission forward to the Assembly a recommendation to approve the proposed Ordinance.

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received:
Project Name (City Staff to Assign Name)		

INFORMATION

Project Description: <u>Text amendment for C49.75.130 (Rezoning Procedures)</u>		
PROPERTY LOCATION		
Street Address: <u>Borough Wide</u>	City/Zip	
Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot)		
Assessor's Parcel Number(s)		
LANDOWNER/LESSEE		
Property Owner's Name: <u>Borough Wide</u>	Contact Person:	Work Phone:
Mailing Address	Home Phone:	Fax Number:
E-mail Address	Other Contact Phone Number(s):	

PROJECT / APPLICANT

LANDOWNER/LESSEE CONSENT ***Required for Planning Permits, not needed on Building/Engineering Permits***		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:		
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.		
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.		
X	 Landowner/Lessee Signature	Date
X	 Landowner/Lessee Signature	Date
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.		
APPLICANT If the same as OWNER, write "SAME" and sign and date at X below		
Applicant's Name: <u>Travis Goddard</u>	Contact Person: <u>Same</u>	Work Phone: <u>907-586-0756</u>
Mailing Address	Home Phone:	Fax Number:
E-mail Address: <u>travis.goddard@ci.juneau.ak.us</u>	Other Contact Phone Number(s):	
X	 Applicant's Signature	<u>4/4/14</u> Date of Application

-----OFFICE USE ONLY BELOW THIS LINE-----

STAFF APPROVALS

☐	Permit Type	Major	Date Received	Application Number(s)
	Building/Grading Permit			
	City/State Project Review and City Land Action			
	Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
	Mining Case (Small, Large, Rural, Extraction, Exploration)			
	Sign Approval (If more than one, fill in all applicable permit #'s)			
	Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
	Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
	Variance Case (De Minimis and all other Variance case types)			
	Wetlands Permits			
	Zone Change Application			
	Other (Describe): <u>TEXT Amendment</u>		<u>4/7/14</u>	<u>AME 14-0005</u>
***Public Notice Sign Form filled out and in the file.				
Comments:				Permit Intake Initials

Presented by: The Manager
Introduced:
Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2014-14

An Ordinance Amending the Land Use Code Relating to Rezoning Procedures

NOW, THEREFORE, 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 of Juneau Municipal Code.

Section 2. Amendment to Section. CBJ 49.75.130 Procedure is amended to read:

49.75.130 Procedure.

A rezoning shall follow the procedure for a major development permit except for the following:

- (1) ~~The commission decision for approval shall make a recommendation to the assembly to approve or deny a rezoning request shall constitute only a recommendation to the assembly.~~
- (2) As soon as possible after the commission's recommendation, the assembly shall provide public notice and hold a public hearing on the proposed rezoning. After public hearing, the assembly may adopt the commission's recommendation as

1
2 submitted or with amendments, or reject the recommendation. A rezoning shall be
3 adopted by ordinance, and any conditions thereon shall be contained in the
4 ordinance. Upon adoption of any such ordinance, the director shall cause the official
5 zoning map to be changed in accordance therewith.

- 6
7 (3) The commission decision for denial shall constitute a final agency decision on the
8 matter which will not be presented to the Assembly unless it is appealed to the
9 Assembly in accordance with CBJ 49.20.120. All rezoning shall be adopted by
10 ordinance, and any conditions thereon shall be contained in the ordinance. Upon
11 adoption of any such ordinance, the director shall cause the official zoning map to
12 be amended in accordance with the adopted ordinance.

13
14 **Section 3. Effective Date.** This ordinance shall be effective 30 days after its
15 adoption.

16 Adopted this _____ day of _____, 2014.

17
18
19 _____
Merrill Sanford, Mayor

20 Attest:

21
22 _____
Laurie J. Sica, Municipal Clerk