

MINUTES

**PLANNING COMMISSION**  
CITY AND BOROUGH OF JUNEAU  
Maria Gladziszewski, Chair

REGULAR MEETING  
January 11, 2011

**I. CALLED TO ORDER**

Vice Chair Satre called the regular meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:00 p.m.

Swear in new PC member: Nathan Bishop

Chair Satre performed the swearing in ceremony for Mr. Bishop, and stated that the PC appreciates him volunteering for public service; Mr. Bishop thanked the PC.

Commissioners present: Nathan Bishop, Dan Miller, Marsha Bennett, Dennis Watson, Benjamin Haight, Frank Rue, Michael Satre

Commissioners absent: Nicole Grewe, Maria Gladziszewski

A quorum was present.

Staff present: Dale Pernula, CDD Director; Greg Chaney, Nicole Jones, Benjamin Lyman, CDD Planners

**II. APPROVAL OF MINUTES**

December 20, 2010 – Special Meeting  
December 28, 2010 – Regular Meeting

***MOTION:** by Mr. Miller, to approve the December 20, 2010 special PC minutes, as presented, and the December 28, 2010 regular PC minutes, with corrections.*

There being no objection, it was so ordered.

**III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None**

**IV. PLANNING COMMISSION LIAISON REPORT**

Mr. Doll stated that the Assembly approved the Mayor to provide direction relating to reopening the AJ Mine, noting that this has caused much public consternation. He explained that this project might be presented to the PC in the future. He said the direction by the Assembly for the Mayor is to appoint a committee consisting of 7 members to draft a report by May 1, 2011, regarding prospects of operating the AJ Mine, and he believes the committee appointments will take place over the next week or so. He said the AJ Mine is an asset of the CBJ, as it has

potential value, particularly with the steep rise in the price of gold. He said this was last considered over 20 years ago when the CBJ failed to obtain a tailings disposal Environmental Protection Agency (EPA) permit, so in the meantime technology could have been developed to make it possible to achieve an EPA permit now, which is what the committee review board would be charged with determining. He said it might in fact be that no technology is available towards this endeavor, although with the price of gold at what it is today it will potentially provide a margin for many new aspects that probably could not have been done 20 years ago. Chair Satre asked if the potential PC review would be in relation to using the CBJ Large Mine Ordinance permitting process, or just for an appointed committee to evaluate all aspects of potentially reopening the AJ Mine. Mr. Doll said the discussion by the Assembly specifically focused on attempting to overcome objections the EPA had 20 years ago regarding the CBJ permit. In addition, he said the subject of reviewing the CBJ Large Mine Ordinance was discussed amongst the priorities the Assembly has already set, although the objective of examining whether AJ Mine represents any kind of potential revenue source to the CBJ is the topic being focused on now.

V. **RECONSIDERATION OF THE FOLLOWING ITEMS** - None

VI. **CONSENT AGENDA** - None

VII. **CONSIDERATION OF ORDINANCES AND RESOLUTIONS** – [Moved to be heard following Other Business]

VIII. **UNFINISHED BUSINESS** - None

IX. **REGULAR AGENDA**

**CSP2010 0007**

A City Project for reconstruction of roadway, sidewalk embankments, and utilities on Dixon and Main Street, and reconstruction of the stairways on West Eighth Street.

Applicant: CBJ Engineering

Location: Main St.

Staff report

Ms. Jones said the project is to replace water, sewer, and storm drain utilities on Dixon and Main Street, including reconstructing sidewalks, curb and gutters, and roadways; plus the reconstruction of the West Eight Street stairways. She said this project contains over 1,400' of rights-of-way. The on-street parking would not change, whereby she showed photographs of the project area, noting that the east portion of the West Eighth stairways are in poor shape, especially on the west side of Dixon Street. There will be a method in which to access properties during the reconstruction phase, as the only access to some of adjacent properties is via these stairways.

She stated that both Main and Dixon Street are a priority on the Capital Improvement Program (CIP) list, which conforms to the 2008 Comprehensive Plan (Comp Plan) and the Area Wide Transportation Plan (AWTP).

She said CBJ Engineering held a community meeting on December 16, 2010, and the Community Development Department (CDD) staff received three letters from citizens who

reside within the project area. The concerns were the need to expand the project, and there is a parcel that is land-locked that does not have storm drain access, and a retaining wall on private property that might not withstand the reconstruction efforts, so the landowner requests that the CBJ pay disposal costs if they are going to demolish it. She said in terms of expanding the scope of the project, particularly the bulwark, the citizen wants the retaining wall to be reconstructed, including installing wire mesh along the bottom portion of Dixon Street where rocks have tumbled onto the roadway. She explained that the response from CBJ Engineering is that the bulwark appears not to have any structural issues, and installing wire mesh would potentially make it unstable by having to remove vegetation to do so. She said the landowner is in current negotiations with CBJ Engineering regarding the potential disposal of the retaining wall. She said the request for CBJ to install underground storm drains during the reconstruction phase is because it was not done during the 7th Street reconstruction, so a property owner believes the storm drain should be extended to Main Street. She said the response from CBJ Engineering was that if proper easements could be obtained, they might consider installing a storm drain under Main Street.

She said staff recommends the PC authorize the replacement of water and sewer, and storm drain utilities on Dixon and Main Street, including reconstructing sidewalks, curb and gutters, and roadways; plus the reconstruction of the West 8<sup>th</sup> Street stairs.

Rorie Watt, CBJ Director of Engineering, stated that these two streets, staircases, and utilities are old, so they are proposing to renovate all the utilities and put new infrastructure back as it is. He explained that the rights-of-way are narrow, so there is not much room to do anything different. He offered to answer questions of the PC.

Mr. Rue asked Mr. Watt to explain how they intend to re-stabilize the rock wall near the roadway. Mr. Watt stated that if CBJ Engineering were to do so, they would mobilize laborers and equipment to drill into the rock in order to hang wire mesh, noting that he acknowledges that rocks have fallen from the retaining wall in the past, but he believes touching it would be worse than leaving it alone.

Mr. Bishop stated that there has been a separation issue between sanitary and the storm sewer system in this area, and he also asked if this is the last remaining sewer project in town and/or Douglas. Mr. Watt said it is certainly part of this project to separate sanitary from the storm sewer system. He noted that currently all the sewage flows through the Sewage Treatment Plant, which is problematic because it costs more money to convey and treat, but they are reaching the point where they have very few roads that have combined sanitary and sewer systems. He noted that there are probably a few small sections of town they still have to work on in terms of sewer systems.

Mr. Watson said staff mentioned an alternative access would be provided during reconstruction of the stairways, so he asked Mr. Watt what this will consist of. Mr. Watt said it will be challenging because certain people live directly off of the stairways who will have to be provided access, so they will try to leave an old staircase in place, either up or down, and establish some type of footpath while the new staircases are being built.

Mr. Haight asked if they intend to include handrails along the retaining walls, sidewalk, or fences in the project area. Mr. Watt said they intend to install handrails anywhere there is a drop off. Mr. Haight said the cross-section between 6<sup>th</sup> and 7<sup>th</sup> Street where the crown of the road slopes

from a near center position both ways allows for runoff on both sides of the roadway, but in the area between 5<sup>th</sup> and 6<sup>th</sup> Street it slopes to one side, so he asked what the strategy is regarding dealing with these issues. Mr. Watt said the roadway is steep between 6<sup>th</sup> and 7<sup>th</sup> Street, and they had a request to try to grade the road away from parking, which is a change from the original proposal. In the area between 5<sup>th</sup> and 6<sup>th</sup> Street, he said it is shown as being cross-sloped all the way across, but he is unsure if there has been discussion to date on this topic. Mr. Haight said parking is currently permitted along this section of the street. Mr. Watt agreed, noting that there are also driveways, although he does not recall any comments being provided regarding parking along this area.

Roman Motyka, 835 Dixon St., thanked CBJ Engineering for finally tackling Dixon Street, as it is way overdue. He said he attended the CBJ Engineering informal meeting held in December 2010, where someone mentioned that there was potential damage to a home and/or rock retaining wall during a previous construction phase by CBJ. He noted that he is not clear how property owners are compensated for damages by CBJ, so he would like this process put in writing. He said he has not yet been informed when reconstruction is going to take place, but this would be nice to know so the homeowners can institute proper remedies beforehand. He said he wonders why the utilities are unable to be installed underground.

Robert "Buck" Lindekugel, 839 Dixon St., said he lives above Dixon Street near the project area. He attended the CBJ Engineering informal meeting in December 2010, and spoke about the rock wall near his property that borders Dixon Street, which was run into by a driver of a vehicle two winters ago and he and the adjacent residents do not have the capacity to fix it. He said the CBJ constructed the retaining wall several years ago, so the residents are assuming that repairing the wall should be included in this reconstruction to make it functional again. He explained that he has not yet had a chance to discuss this with Mr. Watt, although since heavy equipment would already be in the area, he thought that the retaining wall might be fixed during reconstruction too.

Mr. Watt said CBJ Engineering will contract out the reconstruction work, and require the contractor to carry insurance, so in the event of potential damage to a property it is likely that their insurance would apply. However, it might be that the retaining wall will cannot be feasibly fixed, and if it fell down then CBJ Engineering would have to fix it, but such a determination is difficult to make without knowing first hand what the actual circumstances are. He said the general promise CBJ Engineering makes is that they will leave it in as good a condition as it is now when they leave, so the responsibility of events going wrong would be between the contractor and CBJ Engineering.

Regarding installing utilities underground, he explained that as a general rule, CBJ Engineering only has done so in the downtown central business district. He noted that this is required of all new subdivisions, which is why many areas outside of downtown have underground utilities. He said CBJ Engineering has found that it is far too costly to place utilities underground in residential areas of downtown because there is no room for such infrastructure in the rights-of-way in these neighborhoods. He said this entails installing large transformers, junction boxes, switchgears, etc., which are nearly impossible in 30' and 40' right-of-ways. He said another issue is that many homes located on either side of the downtown roadways have aerial utilities, which would include undergrounding the utilities back to the residences, so there would be electrical code issues to tie into entrance panels that might be quite costly for homeowners, etc., so the hurdles are really too high to underground the utilities in terms of this project.

In terms of the retaining wall, he said it sounds like it requires maintenance, and since the wall is adjacent to this project then CBJ Engineering will take a look at it to see what can be done.

He stated that in regards to the timeframe of the project, CBJ Engineering will soon go out to bid, noting that they plan on phasing the project. The first phase will be the reconstruction on Dixon Street, with the next phase consisting of the two blocks on Main Street after the legislative session.

Mr. Rue asked Mr. Watt to address the concern he hears that the CBJ does not require of itself as it does of others, which some private developers feel is unfair. He said the CBJ does not do projects certain ways because doing so would be too costly, but the CBJ requires the private sector do so. Therefore, he asked why this particular project would be more costly for the CBJ, versus a private developer with regard to installing utilities. He noted that he realizes Mr. Watt already stated that it would be expensive for individual homeowners to retrofit their residences, and there would be large transformers in substandard rights-of-way, which would also be expensive to install. Mr. Watt said the difference is that the CBJ is rebuilding roads and the utilities along them, and a private developer generally falls under the Subdivision Code, which states that they have to place utilities underground, so these are different circumstances. He said often new subdivisions provide a blank slate, so the private developer is able to install underground utilities because they have control of the land and rights-of-way, so doing so is feasible. However, in this particular case, it would be a financial burden on taxpayers, including homeowners.

Mr. Watson confirmed that a contact person would be available for residents to call in the event of any on-site incidents. Mr. Watt said the contractor will assign a superintendent to oversee the project who will appoint a contact person, including hiring a private consultant to perform construction management to coordinate with the neighbors any questions and concerns they have, including CBJ Engineering staff as well.

Public testimony was closed.

Commission discussion - None

Staff recommendation: that the PC recommend authorization of the Dixon and Main Street reconstruction, as well as the reconstruction of West 8<sup>th</sup> Street.

Commission action

***MOTION:*** by Mr. Rue, that the PC adopts the Director's analysis and findings and grants the requested City Project for reconstruction of the roadway, sidewalk embankments, and utilities on Dixon and Main Street, and reconstruction of stairways on West 8<sup>th</sup> Street per a City Project, CSP2010 0007.

There being no objection it was so ordered and CSP2010 0007 was approved, as presented.

Chair Satre adjourned the PC, and convened as the Board of Adjustment.

## **X. BOARD OF ADJUSTMENT**

### **VAR2010 0039**

A Variance Request to reduce a side yard setback from 10' to 5' for the construction of a deck.

Applicant: Van Rueben Willis

Location: 2375 Jordan Ave.

Staff report

Ms. Jones stated that this variance is to construct a deck within the side yard setback so that they may build a larger deck, which would reduce the setback from 10' to 5' to allow for a 10' x 24' deck [the staff report inadvertently states 20', not 24' as it should be]. She said the 10-unit boat condominiums were approved through an Allowable Use Permit (AUP), USE2010 0014, at a June 8, 2010 PC meeting (attachment A), with 4 conditions requiring plantings, a parking plan, lot consolidation, and a 20' vegetative buffer. Lots 4 and 5 of the Valley Professional Center abut an established D-5 single-family residential neighborhood. She stated that neighbors along the western property line previously stated that they have concerns regarding the impact of the complex; they signed a petition requesting that an 8' fence and motion lights be installed along the western property line on the north end of the building (attachment B), although neither of these requests are conditions of this AUP. She explained that the plat notes were established to decrease the impacts this Light Commercial (LC) use would have on the adjacent residential neighborhood (attachment C), which requires a 20' vegetative buffer along the western property line, and that the building was to be situated to minimize impacts by being a buffer from its parking lots and lights. She said the complex is in the final stage of construction, with most of the outdoor construction complete, although work still has to be completed before the Certificate of Occupancy (CO) is issued.

She said the original building plans show one exit door from the second story of the subject unit 10, with an 8' x 5' deck off of the second story, including stairs to the ground. She said staff conducted a site visit on December 29, 2010, and found that modifications were made to the structure because two doors exit from the second story (attachment D).

She said unit 10 is 15' from the property line with a 10' side yard setback, so a deck extending 5' from the side of the building is permitted outright. The opposite end of the complex has unit 1 with a deck that extends 12', but unit 10 is further from the side yard setback, noting that 8 of the condominiums between the two end units all have mezzanines, although the end units do not.

She said an adjacent neighbor of unit 10 provided a letter of support, and she received one telephone call from another neighbor who had a question, including three e-mails in opposition to the project. She said the concerns were mainly regarding the buffer that was required, which would not adequately buffer a larger deck off of unit 10, so the proposal would impact privacy, and increase noise and light.

She said staff found no unique physical features on the subject parcel, as it provided ample room for building space when the AUP was originally presented, although building a larger deck off of unit 10 would impact neighboring properties in the D-5 zoning district.

She said staff recommends denial of the variance. She explained that the current owner of the complex provided information stating that they would install a lattice barrier to block the view and noise, but it is proposed to be constructed at the bottom of the larger deck. Therefore, if the Board of Adjustment approves this variance, staff suggests that the lattice barrier be installed to the roofline of unit 10 to provide a greater barrier of noise and light impacts.

Mr. Watson asked staff what the size of the deck is at the opposite end of the complex off of unit 1. Ms. Jones said that deck is 17' x 24'.

Ms. Bennett said she is concerned with the parity of other condominium owners in terms of this variance request. Ms. Jones explained that the two end units of the complex meet the setback standards, so these were permitted to have larger decks; plus neither of these units have a mezzanine as the other 8 units in between do.

Public testimony

Van Reuben Willis, 2912 Jackson Rd., stated that as a current homeowner he is acutely aware of the concerns, as he has experienced them as well so he appreciates and respect them. He explained that his purpose is to have the highest and best use of unit 10 by having a deck large enough to barbeque and enjoy visiting with people on nice days. He does not intend to be intrusive or obnoxious as a neighbor, and instead, he would be reasonable. He said the windows of unit 10 with/without a deck currently provides the ability to view adjacent D-5 properties to a minor degree from the second floor, which is true of all the condominium units. He said he is willing to install a taller lattice barrier as suggested by staff if this variance is approved, although if he was an adjacent property owner in the D-5 neighborhood he would think that it would be more of an eyesore than his proposed larger deck. He explained that the adjoining property is currently vacant, which is where a future project will be developed so it will probably be the most impacted by his proposal. He noted that most of the existing residents would not be able to view the deck. He said he appreciates the willingness of the Board of Adjustment to consider his variance request.

Mr. Watson referred to the two doors that now exit from the second story of unit 10, but he recalls that the initial building plans showed one door. Mr. Willis said he believes two doors could be still accommodated by the original deck size, although the intent was to finance this as a commercial property through the Small Business Administration (SBA), as they had attractive loan rates. He said the SBA required the use of over 50% for business purposes, so he intends to install an office on the second floor, including storing some business items in the boat condo area to accommodate for this.

Mr. Rue said the variance criteria is fairly strict per existing code requirements, which staff has provided findings on, so he asked if Mr. Willis provided a rebuttal to those that staff found as not being met. Mr. Willis said he wanted to get this variance filed as quickly as possible, and he is not too familiar with code issues, so he probably should have taken more time to review the criteria. He explained that when he received a response from the CDD staff stating that they would be recommending denial, he provided his response to the findings, which he believes adequately allows him to obtain the highest and best use of this property. He said the deck is an arbitrary size that he chose. Even so, in terms of some of the setback issues, if the building had been constructed 5' further out of this side yard setback then it would have been permissible to have this deck built. He said he spoke to the builder who stated that they did not intend for the building to be this close at this end into the side yard setback, which he deferred the owner of the complex, Scott Jenkins, to address when he testifies later on.

Public testimony

Dave Hanna, 11495 Mendenhall Loop Rd., and on behalf of Dorothy Sewell (his mother-in-law). He said when this project was initially proposed, he was in favor of it, and he hopes they construct more of them. He stated that the community should thank developers such as these

who have the courage to keep developing during these challenging economic times, which keeps Juneau progressing. He congratulates them on allowing residents to have affordable housing and business solutions, and he would like to see more examples of this type of development in town, so the Board of Adjustment should encourage this.

On the other hand, he said Ms. Sewell is not in favor of the deck proposal. After he viewed the slight revisions in the report to the deck, he now can see how the Board of Adjustment might approve the variance request with conditions. However, the reality is that the overall project was proposed with the idea in mind that the complex would be positioned so it would have no impact to the neighborhood behind it. He explained that the building was oriented to the other side of the parcel, the windows to the rear were kept to a minimum, and an agreement was made for no lighting to be placed on the backside of the building. He believes that once the greenbelt is finished, this will be a nice development, so maybe a continuation of the same use would be the best development on the adjoining property that is currently vacant. He noted that if they start making too many changes, such as having this deck up in the air, especially if it is a large deck, it might be more conducive to holding parties, which might be against the spirit of the original agreement. He understands why the neighbors behind the complex do not like the idea of having a large deck with a bunch of people having a good time and looking down on their property, which is not what they originally envisioned when they capitulated that this is a good project to allow to be constructed in the neighborhood. He suggests that if the Board of Adjustment allows the proposed project to move forward that they condition the variance so the deck is constructed as far to the front of the building as possible, so it does not extend past the second doorway to the rear, and that a lattice barrier also be provided, or the equivalent. He noted that he is somewhat nervous about a lattice barrier being installed because of high winds potentially blowing it down. He said if a compromise is reached, he hopes they take into consideration the concerns of the neighbors.

Andrew West, 2404 Aurora Dr., said he lives next to Ms. Sewell, and his home is located directly behind the proposed deck. He echoes many of the comments Mr. Hanna made when he stated that the builders did a very good job of minimizing impacts, but the proposed larger deck goes against the spirit of the previous agreement. He asked the Board of Adjustment to abide by staff's findings and analysis and deny the variance. In particular, in regards to Finding 6, which states, "A grant of the variance would result in more benefits than detriments to the neighborhood," as this proposal would provide more detriments because people on the deck could look into the neighbor's backyards, bathrooms, and upper stories. Also, Finding 3 states, "The authorization of the variance will not injure nearby property," and he disagrees with staff's analysis that states, "...with the buffers in place it is unlikely that the approval of this variance would injure nearby property." He explained that most of the trees planted in the buffer area are only 5' tall, so it is going to be another 5-10 years before they provide an effective barrier, especially from the large deck if it is permitted to be constructed. He thanked the Board of Adjustment for the opportunity to testify.

Scott Jenkins, 17070 Island View Dr., said he understands the variance review process, as he has previously applied for a couple of them, noting that he has found this process to be somewhat difficult to understand when he has attempted to meet some of the criteria. He said the Board of Adjustment has to determine if this proposal is within harmony of the neighborhood if a larger deck is constructed at end of the complex, which he believes it is. He said the complex was not initially designed to accommodate a larger deck off of unit 10. He explained that the original design included a staircase with a small 8' x 5' deck, so it is understandable that Mr. Willis



wants better utilization by installing a larger 10' x 24' deck. He noted that in the beginning, if they would have designed the building to go up against the 10' side yard setback property line, the code still permits them to access the second floor via a staircase, which would have included a deck extending into the setback, so what is being applied for today would not go any further. Therefore, with the proposed larger deck being constructed closer to the property line for a future project on the other side, it has no difference than if he would have constructed the building 5' longer that would have been allowed, versus a 5' deck, noting that Mr. Chaney might wish to elaborate on how this works. He explained that he originally thought that he could build within 5' of the property line with a deck on the second floor, but he later found out that this could only take place in industrial zoning, not in General or Light Commercial. He said he has given up a very large section of property for a greenbelt that has a huge value, which the condominium association will have to continue paying taxes on. He said they have worked in that greenbelt area to finalize and enhance it, which is what they agreed to do before the CO is issued. He believes that the proposed deck would not have any more of an impact on the neighbors as any other person who has a window facing a neighbor elsewhere, or that anyone on the proposed deck would have a better view of the neighboring backyards as compared other tenants looking out any second-story window of the complex. He referred to attachment D, noting the horizontal line just below the two doors, which is where the deck would be constructed. He explained that Ms. Sewell resides around the corner in the rear of the complex on the other side of a large tree, so he does not believe people on the deck would be able to view her house, so the impact to any adjacent homes would be minimal, as the intention is not to extend the proposed deck all the way to the rear of the building.

Mr. Miller stated that from the site plan, it appears that if the building was constructed 3' or 4' away from subject setback then it is possible that a larger deck could have been built in this area. Mr. Jenkins said it was somewhat of a fine balance because in the design phase they moved the building back and forth and discussed how different iterations might work, and they ended up leaving sufficient room on that side to allow for servicing utilities, include delivery of fuel, snow removal, etc., at the opposite end of the building. Therefore, if they initially moved the building over 3' to 4', doing so might have impeded access at the other end. In addition, as he previously mentioned, he misunderstood that they could build within 5' of the side yard setback property line, but he later found out that this was not the case when this deck size was proposing to be changed.

Ms. Bennett said this is a wonderful looking building, and they have done a really nice job. She hopes the developers are able to obtain additional financing to construct another complex, which she believes would sell rather quickly as these units have. She said the PC was presented with previous issue regarding installing a fence in the greenbelt area to provide a barrier, versus planting trees, which was when 11 homeowners signed a petition stating that they wanted a fence, although the final decision was to plant trees. She said trees will take much longer to grow to provide a sufficient barrier, but a fence would have instantly provided for this, which she asked Mr. Jenkins to elaborate on. Mr. Jenkins said he believes the complex has provided an incredible visual and sound barrier to Egan Drive for the D-5 neighborhood, and he also has soundproofed the units in the complex. He said a nice job could be done constructing the proposed deck if they had to install the lower lattice barrier to ensure that it is in harmony with the deck, i.e., a 3-1/2' to 4' railing/fence that would be fairly solid. He said he feels that they did their part by planting trees in the greenbelt area, and if the neighbors want to plant more trees they are able to do so, or construct their own fences if they wish.

Mr. Watson asked how far passed the front of the building would the stairway be constructed. Mr. Jenkins said because of the elevation of the height to the second story, the stairway would have a landing about midway up, with a switchback. He said they could move the staircase away from the rear of the building so it is more towards the front as possible, which could be designed a couple of different ways. He clarified that the beam across the second story measures 24' for the length of the deck, so a 24' long proposed deck should have been listed in the report, not 20' long. He stressed that they did not change this measurement for the deck to be larger after the fact, as it was always intended to be 24' long.

Mr. Willis said it was his mistake because he misspoke when he told the CDD staff that the proposed deck was 20' because it has always been 24' long. He said it was his design to construct a 10' x 24', and to hold it back from the rear corner so that it would be less visible as possible to adjacent neighbors. He noted that according to code, he could have a 5' deck the full length of the building. He said if he is unable to come to an agreement with the Board of Adjustment, he would probably end up with a 5' by 24' skinny deck. He noted that this past year at his current residence, he has been up twice past midnight on his deck; once on New Year's Day, and the other on Fourth of July. He realizes that if this larger deck is approved that the use would pass on to new owners, although he does not throw wild parties.

Mr. Haight asked if it is possible to have a stairs, a landing, and then have the next set of stairs drop down to grade level to still provide a deck for outdoor functions, but also to solve the view issues of the neighbors. Mr. Willis said yes, although any of the two-story units have a better view of the adjacent properties to the rear than Mr. Willis would from a larger deck.

Public testimony was closed.

Board discussion - None

Staff recommendation: that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR2010 0039.

Board action

Mr. Watson stated that if the Board of Adjustment continued VAR2010 0039 to a subsequent PC meeting, perhaps the applicant and the builder could meet to address a rebuttal to staff's findings and analysis. Mr. Rue said he agrees with Mr. Watson. Mr. Miller said he would not mind attempting to work on the findings beforehand to see if any of them might be revised so they are answered in the affirmative. Although he would first like to verify with staff that if the building was initially constructed to the 10' setback in this area, would be legal to build a staircase with a 5' landing on top to access the upper deck. Mr. Chaney said there is an exception to providing access to/around structures, so for the purpose of access they could do so.

Chair Satre announced that the applicant provided a document labeled "Variance Approval Criteria Addressed" in the packet.

Mr. Miller said he wishes to revise staff's findings, as follows:

- 1. The relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;*

He stated that staff overlooked the justice to adjoining condominium owners, as they were all provided a sizeable deck, or mezzanine. If only a 5' x 24' deck was allowed, he said the owner would have access to a very small deck, as opposed to a slightly larger deck that he could fully enjoy, which would be the same as all the other tenants are able to do, including all the D-5 neighbors to the rear who all have decks in their yards as well.

**Yes.** Criterion 1 is met.

2. *Relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;*

He said he finds that this criterion is met per the same answer staff provided for Finding 3 in the last sentence, which states, "A larger deck could have a larger impact on the neighborhood, however with buffers in place it is unlikely that the approval of this variance would injure nearby property." He explained that if the deck is not going to injure nearby property then the public welfare and safety is preserved.

**Yes.** Criterion 2 is met.

3. *The authorization of the variance will not injure nearby property;*

**Yes.** Staff already found that criterion 3 is met.

4. *The variance does not authorize uses not allowed in the district involved;*

**Yes.** Staff already found that criterion 4 is met.

5. *Compliance with the existing standards would:*
  - B. *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*

He noted that only one of Finding 5 has to be met, and under sub-criterion (B) everyone in the neighborhood, whether it is in the D-5 zoned neighborhood or at this complex, on sunny days are all able to hold barbeques and parties to enjoy them, so to not allow this deck would unreasonably prevent the owner from using the property in a consistent manner as the other tenants of the complex or the adjacent neighbors.

**Yes.** This sub-criterion 5B is met.

6. *A grant of the variance would result in more benefits than detriments to the neighborhood.*

He said he does not see how building a small and unusable deck could be considered less detrimental, versus having a deck that a person and their family could enjoy just like everybody else in the vicinity during nice weather in Juneau.

**Yes.** This criterion 6 is met.

Ms. Bennett commented that she suspects tenants in the condominium will install blinds to block the view of adjacent neighbor's backyards from their second-story windows, so some type of cloth material could also be used to provide a barrier so the neighbors are unable to view the proposed deck.

Mr. Rue said if a deck is designed so it is set 10' back from the rear of the building then the neighbors would not notice it as much, including installing some type of lattice with solid baffles, versus railing. He said he is able to go along with Mr. Miller's revised findings, with an exception to Finding 1. He said this building was designed over a year ago, which is when the architect should have figured out this deck issue. He said the architect designed mezzanines for eight of the units, but they could have included them in two end units as well, but they chose not to do this, so it difficult for him to agree with revised Finding 3. However, he agrees that all the other residences in this area have decks, including those in the adjacent D-5 zone, and he believes the Board of Adjustment should encourage this type of development mixture, so he is willing to look beyond the oversight of the architect. He stated that with these changes, he believes he could go along with Mr. Miller's revised findings.

Mr. Watson said he is not comfortable with the proposed 10' deck width, as the applicant is requesting to move too far into the side yard setback, so he would like it scaled back to 8', and he is fine with the 24' length. Furthermore, he is concerned about the development that might be constructed adjacent to this area, so if that developer were to build up to their setback it is possible that that future project might be in conflict with this one. He said it is important for the Board of Adjustment to not jeopardize future property owners, or have an adjacent developer appear before the Board of Adjustment with similar set back issues as this one.

Mr. Bishop said he supports the idea of allowing the applicant to install a deck he is able to use, but he has difficulty with the revised variance criteria, as he feels the Board of Adjustment would have a hard time getting around them. He said there are two sets of stairs required to provide a switchback landing area, so it would extend somewhere near 8'. Mr. Pernula said there might be other methods in which to build the stairway without a switchback. Mr. Bishop clarified that what he is attempting to state is that there are many different ways to approach this.

Chair Satre said it has been brought up that there are alternatives to contemplate, so the Board of Adjustment might have to request the applicant to come up with other options with the builder, including working with the CDD staff. He said he appreciates Mr. Miller attempting to work on the revised findings. However, what gives him pause is that they do not yet know what the next property owner is going to do, which is a "missing piece of the puzzle," so the Board of Adjustment is unable to truly analyze what the impacts of this proposal might be because that adjacent property still has an empty space. He believes where the Board of Adjustment stands right now, without further information from the applicant or staff, is that staff's analysis is correct.

***MOTION TO CONTINUE:*** by Mr. Watson, that the Board of Adjustment continues VAR2010 0039 to a subsequent PC meeting to allow the applicant to further contemplate addressing the findings to be reviewed by the Board of Adjustment.

Mr. Watson said he requests that the proposed deck be scaled back from 10' to 8' wide and 24' long to allow less visibility from the adjacent neighbors. He agrees that installing a lattice

barrier is probably not the best choice, although there are other options the applicant might contemplate.

Mr. Pernula said there were a couple of comments to move the proposed deck and stairs as far forward as possible.

**FRIENDLY AMENDMENT:** *by Chair Satre, that options for moving the stairs as close to the front of the building as possible, and decreasing the width of the deck from 10' to 8', including researching various screening options to be presented in detail to the CDD staff, the Board of Adjustment, and the adjoining neighbors.*

Mr. Watson accepted Chair Satre's friendly amendment.

Roll call vote

Ayes: Haight, Bennett, Bishop, Watson, Miller, Rue  
Nays: Satre

Motion passes: 6:1; and VAR2010 0039 was continued by the Board of Adjustment.

Chair Satre adjourned the Board of Adjustment, and reconvened as the PC.

**BREAK:** 8:29 - 8:33 p.m.

**XI. OTHER BUSINESS**

**INQ2010 0038: An Inquiry regarding sales tax allocation for potential sewer projects in the West Valley and North Douglas areas.**

Mr. Watt said a memorandum to the PC was provided in the packet, dated January 6, 2011, which has attachments, and another memorandum from Heather Marlow, Lands and Resources Manager, regarding CBJ land development and disposal - next steps, which to some extent go hand in hand. He said the CBJ has decisions to make on how to allocate sales tax, and Ms. Marlow provided a complimentary effort on municipal land disposal/development prioritization, noting that the decisions made on these issues will frame the direction that the city will move in the future.

With regards to sales tax revenue, he tried to identify sewer project areas where the city could expend those funds to benefit different types of land in various areas of the community. Over the past five years or so, he said the city extended sewer in North Douglas to many properties, and this year they will continue to serve all properties that front the highway between Kowee Creek Bridge and the Bonnie Brae Subdivision. He said they have also recently completed a sewer extension project along Glacier Highway to the crest of Pederson Hill, including servicing the properties in the Industrial Boulevard, Sherwood Lane, and other smaller neighborhood areas.

He said there are still funds from the temporary sales tax initiative, which the city will collect for a couple more years. He has identified five major areas, which he will describe:

- A small area in West Juneau “donut hole” along the Douglas Highway that was left behind in the 1970s when sewer was extended to Downtown Douglas, which consists of a small number of homes.
- An area adjacent to Auke Lake “donut hole” for property owners located over the crest of Glacier Highway to Pederson Hill. He said this area is where they were unable to get to with gravity sewer because it was too close to the Mendenhall River. He said if they can find a way to serve them, it will still be somewhat complicated because future development would require an entirely different type of pumping station, so he is reluctant to construct an essentially throw-away pump station at this time, although he is recommending that this project be pursued, including obtaining comments from the neighborhood.
- The Mendenhall Peninsula near Engineer’s Cutoff and Fritz Cove Road encompasses a large track of land that is also a complicated area to serve with sewer. He said this is due to Fritz Cove Road, Engineer’s Cutoff, and down Mendenhall Peninsula where the roads are rolling. He explained that installing sewer on rolling roads generally means they will have to incorporate numerous pumping stations as well. Therefore, on a general cost basis it will be a very expensive area to service this area with sewer, including anticipating what will be forthcoming in terms of future development on Pederson Hill.
- He said the city and the university jointly own the Pederson Hill property, and Ms. Marlow has a development plan that she has been working on with the Lands Committee. He noted that there was an earlier effort to research developing those lands, which was halted to wait for sewer. Now that sewer is being planned in this area, Ms. Marlow has carried on with this planning effort. He said this is the most promising large track of municipal land that will be served with sewer.
- In terms of the North Douglas West Juneau connection, he envisions North Douglas over time looking somewhat like West Juneau, so they would probably want the roads and infrastructure to look the same, including installing walking and bicycle routes, and neighborhoods that wind up the hillside. He said they would face water pressure issues in this area, and they do not want to build more infrastructure than necessary, so a direct connection from the water reservoir makes sense, versus installing numerous pump stations.

Mr. Bishop stated that since they are not able to approach sewer in the lower end of the Mendenhall Peninsula, he asked if this is due to wetland, or beach access issues. Mr. Watt said it is really a property issue, noting that on North Douglas the State Department of Natural Resources (DNR) own the tidelands, and the city was able to obtain a DNR easement for that project. However, on the Mendenhall Peninsula individual properties abut the refuge, and he does not believe they would be able to obtain a permit, but if so, it would be very expensive because it runs quite a ways out into the refuge, including that it would be extremely difficult to negotiate sequentially with so many individual property owners.

#### Municipal Land Development and Disposal – Next Steps

Ms. Marlow said when Mr. Watt was preparing his future sewer project presentation, it brought to mind the fact that the CBJ Lands and Resources is preparing to update the CBJ Land Management Plan, which last occurred in 1999. She felt this is a good opportunity to discuss with the PC and other CBJ groups the plans for municipal land development and disposal. She said a strategy they are looking at is to create a Land Disposal Plan to identify properties for

near- to mid-term disposal and development, which would be a companion to the Land Management Plan.

She said she is looking to where the CBJ Engineering goes next with sewer to see if there is a companion in relation to any particular CBJ parcels for land development and disposal. The idea is to put forth projects in the CIP list to forward municipal development where roads, sewer and water, etc. could be provided into areas currently not served. She invites discussion by the PC tonight, which she will provide to the Affordable Housing Commission (AHC), the Lands Committee, and to others to gain more input.

In general, she has reviewed the municipal land holdings, including looking at the urban service boundary, existing public utilities, wetlands, slopes, zoning, and access to identify suitable areas for residential development using the source documents, which include the Comp Plan, and the Pederson Hill Access Study. A document generated in companion with the Comp Plan is called the Delineation and Function Rating of Jurisdictional Wetlands of potentially developable CBJ lands posted on the CDD web site, which she encourages the Commissioners to review.

She has not assigned a priority to the development areas, but the Si't u waan Subdivision and Mountain Avenue areas have the lowest cost and barriers for entry. She noted that in her memorandum she did not include discussion about municipal property on Douglas Island due to the acreage in private ownership that has been recently up-zoned. She noted that the city has substantial ownership of land in that area as well so they too could seek to up-zone and develop their property, but given the traffic constraints of the Juneau-Douglas Bridge/10<sup>th</sup> Street intersection, they have a great potential to block private development by filling up the road capacity. She noted that the CBJ is engaging in a process of opening up land on the backside of Douglas in working with Goldbelt to build a road, which will serve the new growth area identified in the Comp Plan.

She said some of the parcels contemplating being developed are Mountain Avenue in Lemon Creek, which consists of a 3- to 4-mile area near the CBJ Public Works Facility through Lemon Creek and into Hidden Valley, and another section of nearby land in the DZ School area. The Si't u waan Subdivision in the east Mendenhall Valley is another fairly large parcel that runs from the edge of development down to the Mendenhall Glacier to the Floyd Dryden Middle School area, and then up the hillside, which is several miles long. She stated that a Pederson Hill parcel in the west Mendenhall Valley is under municipal ownership from the Mendenhall Loop Road down to Auke Lake. Another site is along Goat Hill off of the Mendenhall Loop Road that consists of a subdivision off of Jo Ann Way and All Seasons Drive. Finally, the Mendenhall Peninsula in the north tip closest to the university contains steep slopes, so water and sewer, and an access road are required for development. She noted that she viewed several other parcels, although she did not move forward with those due to wetlands, or other constraints found during the analysis of them.

She said the main focus is on the Mountain Avenue and the Si't u waan Subdivision because they have zoning, acreage, and potential for the quickest and most efficient return on investment. She said the Mountain Avenue parcel is off of Davis Avenue that runs onto Mountain Avenue, which intersects with municipal property that runs up to Hidden Valley. She noted that the parcel does not contain wetlands, but it does have stream corridors. Mr. Watson asked Ms. Marlow to point out the Hidden Valley Rock Quarry site in relation to this subject parcel. Ms. Marlow showed a slide of the boundary of the gravel pit, including where the mining operations

take place on a plateau. She said they would maintain separation of the subject parcel from noise and visual purposes of those operations. She said the DZ parcel is adjacent to the DZ School, but on the same piece of property, and very few wetlands were found in the project area, including some stream corridors at the lower elevations. She said the gentle topography is relatively accepting of development in this area, including that it has access from roads. She noted that the school district has an interest in claiming the majority of developable land for construction of an elementary school site consisting of about 40 acres that would cover a majority of the development area.

Mr. Bishop asked what the purpose of the development is by the CBJ. Ms. Marlow said she is seeking land for residential development. Mr. Bishop asked if this is intended for high- or low-density housing. Ms. Marlow said that determination would stem from the input received from the CBJ committees and boards, noting that there are urban design principles of what this should include, which she intends to provide in the form of a recommendation.

She continued with the report, stating that the Si't u waan Subdivision has received a first phase of development, with individual lots off of standard streets that have been stubbed out for a future phase, and the property includes sewer and water access. There are few wetlands on that parcel, and creeks and streams are relatively absent, so considerable density is available for a Planned Unit Development (PUD) outside of the mass wasting and avalanche hazard area. She explained that with a PUD type of development, they could potentially loop the roads, or create small cul-de-sacs with clusters of development off of each of them.

#### Commission discussion

Chair Satre said where Mr. Watt is going with the sewer expansion plans regarding some of these CBJ properties will still need sewer installed, but it makes sense to recommend that the Si't u waan Subdivision and Mountain Avenue are the immediate areas to move forward with, and he believes the AHC would probably agree that these are their same priorities.

Mr. Miller asked whether the CBJ is going to develop the parcels, or if they intend to dispose of them to the highest bidder for private development. Ms. Marlow said she believes this will encompass both. She said the AHC recently received funding from the Assembly, which will allow them to provide support for future affordable housing projects. She noted that one of the issues the AHC always seem to have, particularly because they generally have a tight budget, is that they do not have pre-approved project sites, which is when they tend to have to negotiate for them. She explained that she prefers to streamline some projects and approval processes to get affordable development into these particular areas. She said the city has not completed many parcel disposals, but when they did so they found it was difficult to achieve the goals of the community if they provided them without caveats. She said a prior disposal was provided behind Fred Meyer to Hugh Grant, which had a caveat by the CBJ that he develop the property within three years or the city would have the option to buy the property back at the purchase price. She noted that Mr. Grant has not yet developed that property, but the city waived on its opportunity to buy it back thinking that it was best left in private ownership. She said they do not want to underwrite speculation, and instead, the desire is to actually have development occur, and not have people sit on property for 20 years, and then when it is valued higher they end up selling it later on for somebody else to develop. She said this is the tension that the CBJ has, although they will provide some parcel disposals, but she anticipates the city will include performance goals with land sales.



Mr. Rue referred to the Pederson Hill area, and asked Mr. Watt to explain where sewer is already installed, and where it will be in the future. Mr. Watt said sewer has been provided along Glacier Highway and the side streets, although no access has yet been provided into the Pederson Hill property, which he is recommending has to be done. Ms. Marlow added that the CBJ owns half of the western side of Pederson Hill, and the university owns the eastern half. She noted that several access corridors were reviewed off of Glacier Highway and Mendenhall Back Loop Road. She said after lengthy discussions, the preferred access is through a corridor on Wild Meadow Lane that runs through university property, so the city will have to develop an agreement with the university, although they have been tepid at best in working with the city to do so. Other areas discussed are across from Sherwood Lane where a church is located that has a parking lot where access might be provided, an access off of Hamilton Street located across the Mendenhall Peninsula, and a final possible access further up the hill from that area. She stated that they reviewed five total access areas, and found one that would be able to handle traffic at the lower elevation of Pederson Hill, and after a certain number of houses are built a trip generation will dictate what that street can handle. She noted in the higher elevation of Pederson Hill there is the potential to build community housing needs for 30-50 years, depending on the growth rates Juneau experiences, so later on they might have to provide two or three access points to serve increased development. She noted that it is more than likely going to take at least 5-10 years to provide access to the higher area. Therefore, if the city develops the other area of Mountain Avenue or Si't u waan Subdivision, she would probably complete them as a companion project to provide for long-term planning, while working on other mid- and short-term options. Mr. Bishop asked if the potential access corridor off of Wild Meadow Lane will work with the State Department of Transportation (DOT) Auke Bay Corridor (ABCOR) project. Ms. Marlow said she provided this alternative to DOT and asked them to provide comments in relation to ABCOR, noting that ABCOR is DOT's version of how to gain access to Juneau if there is an access road provided in the future, i.e., increased traffic for a route to get people through the Mendenhall Valley without routing them through the Auke Bay area. She said DOT has been researching the alignment of the ABCOR that would run up above the ferry terminal, and be routed off the bypass road that DOT recently constructed, and then back around to Goat Hill to tie into the Pederson Hill before it reaches the Mendenhall River area. She said DOT commented back to her stating that they are not working on ABCOR right now, and instead, are working on other projects because they do not have current funding for an alternative corridor at this time. Therefore, DOT believes it is going to take the city 5-10 years to complete such plans, so they will continue working on their access projects, and the city will on theirs, and then they will hold further discussions later on. She noted that right now the city is not doing anything that cuts DOT's ABCOR plans off.

Chair Satre said it is great that the CBJ staff is working on long-term issues, especially given the amount of buildable land and sewer that will be provided, as well looking at mid- and short-term solutions, which has been a huge push by various CBJ committees and boards over the years, so the PC appreciates these updates.

Mr. Watson commented that a couple of folks residing on Hamilton Street informed him how much they appreciate the method in which CBJ Engineering handled the sewer project in that area, especially since they were able to contact the CBJ during the process.

Mr. Watt said he would appreciate the Commissioners providing comments to the Assembly regarding their various viewpoints. He noted that CBJ Engineering has attempted to serve homes with sewer projects while addressing on-site sanitation issues on larger tracts of private

land that compliment zoning efforts, including municipal lands. He said the North Douglas - West Juneau connection has the potential to assist with development in that new area, including access to older areas. Chair Satre requested staff to draft a letter for the PC supporting the priorities and recommendations to forward to the Assembly provided by Mr. Watt and Ms. Marlow, which the PC wishes to review beforehand.

**Update on the Capital Improvement Program (CIP) process.** [Moved once again to be heard following the TXT2009-00003 under Consideration of Ordinances and Resolutions]

**VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS** – [Previously moved, so this item is being heard out of sequence]

**TXT2009-00003**

An Ordinance Repealing and Reenacting the Disturbing of the Peace Code, Relating to Noise, and Providing for a Penalty.

Applicant: City & Borough of Juneau

Location: Boroughwide

Staff report

Mr. Lyman said the PC reviewed this proposed noise ordinance several times in the past. He referred to page 2 of the report, noting that the drafts of Table 1: Night-Time Noise Limits, and Table 2: Day-Time Noise Limits, and Table 3: Day-Time Hours were endorsed by the PC at a previous meeting, including the hours in which these different limits would be effective. He noted that Margo Waring, through Ruth Danner, presented a Blue Folder item to the PC, which states that she would like them to reconsider the day-time/night-time transition hours. However, at this time, he would like to move forward with the day-time/night-time noise limits as they are, until the PC determines the draft limit times for noise in non-residential receiving areas. He said he would like the PC to focus tonight on aspects that many people in the community are concerned with regarding noise permits that would allow site-, use-, or project-specific exceptions, including across-the-board exceptions to these limits. He referred to possible exceptions to noise (attachment A), explaining that he has reviewed the previous draft with the City Attorney. He said they consolidated exceptions for construction of public works projects, project in rights-of-way, demolition activities, other types of construction permits into a single exception. He said this also included several other exceptions they applied to public events that were consolidated into a single exception.

Attachment A: Possible Exceptions to Noise

*(a) Non-amplified sounds created by organized athletic or other group activities, when such activities are conducted on property generally used for such purposes, such as stadiums, parks, schools, and athletic fields, during normal hours for such events;*

He said this has been discussed a couple of times by several Commissioners to also include outdoor family/group activities that could be found to be irritating by neighbors. He explained that if such outdoor activities took place in the middle of the night the neighbors might file a noise complaint, but if it happens during the evening this might not be the case in terms of the First Amendment right for the people to talk, but if people scream it could be considered a nuisance, which comes down to what the police officer determines will stand up in court. He noted that with the following exemption (b), they probably do not need exemption (a) anymore because the sports field representatives could apply for a noise permit, which would specify the hours football games could be played, when the PA system could be used, etc. He said the

community could look at that particular situation, the PC could place conditions on that use, and then they would not have to include a blanket exception for all sports fields or public venues where group activities take place.

Ms. Bennett suggested including publicly sponsored group activities, i.e., outdoor concerts, as possible verbiage. Mr. Lyman clarified that this is already covered under exemption *(h)*, which addresses sounds created by community events.

Mr. Rue stated that Mr. Lyman's proposal of having a permit request for a specific place and activity is a good one, otherwise the verbiage would be too general and lengthy in this case. Mr. Miller said he agrees with this to an extent, although the PC would probably end up reviewing too many cases for public sporting events who would be required to obtain permits, i.e., potentially by the different high school football teams, the Juneau Gun Club, etc., and instead, he prefers that verbiage be provided for such exemptions. Chair Satre clarified that he thought that these would be a decisions that would be made on such permits by the CDD Director, not the PC in most instances.

Mr. Lyman stated that exemption *(b)* addresses the two different noise permitting processes. There is the Building Official Noise Permit, which does not require a public notice period for events having strong public interest, i.e., projects that generally have to be done in the middle of the night and are noisy. He said there has been a push by some Assembly members to include a public notice process to provide a modicum of public involvement, while maintaining a quick CDD staff review process. He explained that another option is to draft a land use permit modeled on the Conditional Use permit (CUP) process, which would require providing notice, holding public hearings, etc.

Chair Satre stated that an exemption such as *(a)* in some form has to be included in the proposed ordinance, or else the vast majority of people who should apply for a permit may not ever apply that could potentially place an event or a group of people at risk later on. He said the verbiage exceptions should include events that are expected to be loud, i.e., sport fields that do not cause problems within the community, which are simply part of living in the Juneau environment.

Mr. Bishop said he believes this exception *(a)* is workable, otherwise the CDD staff would be presented with too many permits that might bog down staff, including the PC potentially. He suggested that perhaps adding the word "public" in front of "property" might solve many of the problems being discussed.

Mr. Miller said the Juneau Gun Club is located on private property. Mr. Bishop said private property might be one exception that has to be provided for. Mr. Miller agreed, adding that if an organized activity or sporting event takes place during normal hours it should be included in exemption *(a)*, noting that there is plenty of history with the Juneau Gun Club, including other events in town so they have to leave this exception somewhat vague to ensure they include appropriate community events that take place. He said this also includes the Treadwell Ice Arena activities, which tend to be fairly loud. Chair Satre stated that conversely, a permit might provide the Juneau Gun Club the protection that they have desired for a long time, so they could potentially apply for a permit exemption at the beginning of the process once the proposed noise ordinance is in place. He said the Juneau Gun Club could state that they have a history, which is even when further development potentially takes place in that general area.

Mr. Watson said most of the organizations have already been established for a long time and tend to have normal hours of operation, so this should not be an insurmountable issue. He explained that the annual Gold Rush Days event takes place at Savikko Park and they tend to operate from 7:00 a.m. to 5:00 p.m. over a couple of days, but the competitions generally run past 5:00 p.m. so they would be in violation of the proposed noise ordinance, and therefore perhaps they might request a permit to operate beyond the expected hours.

Mr. Lyman offered to quickly review the remaining draft exceptions to move the process along, and requested that the PC ask questions following public testimony, as there are members of the public who wish to testify, to which the PC agreed.

*(b) Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, regardless of whether such work is performed by a public or private agency, or upon public or private property;*

Mr. Lyman said *(b)* clearly provides an important exception, as it does not matter how loud the sound is when emergency personnel are responding to calls because these are a priority.

*(c) Sounds caused by bona fide use of emergency warning devices and alarms systems;*

He explained that if an emergency alarm goes off to warn people in the Salmon Creek area that the dam has collapsed and water is rushing down the valley, those alarms have to be allowed to go off, which are very loud. He said back-up alarms are emergency warning devices, so the PC should not limit how loud they can be.

*(d) Sounds regulated by federal law, including but not limited to sounds caused by aircraft.*

He said he does not believe this exemption very important because it will apply whether it is included or not, although it assists in clarification purposes. He said when the federal government precludes regulating certain aspects, the PC should not do so.

*(e) Sounds caused by construction or demolition activities when performed under the applicable permits issued by appropriate governmental authorities and only during the Day-Time Hours listed in CBJ 42.20.330(b) Table 3, unless pursuant to a Noise permit for construction or demolition activities issued under CBJ 49.15 Article IX that extends those hours;*

He said if the developer acquires the necessary permits, and are conducting construction or demolition operations during day-time hours listed in Table 3, they would not be required to obtain a noise permit unless it is to extend the hours of operation. He offered to include verbiage pertaining to overnight operations when those types of noise permits are issued.

*(f) Sounds caused by vehicular traffic upon premises open to the public in compliance with state law. This exemption does not include an individual vehicle that creates noise in excess of the standard set for in Section 42.20.330;*

He explained that this exemption basically states if 200 vehicles are being driven on Egan Drive they would be louder than a single vehicle, so a citation would not be issued to those drivers for making noise, as this is considered general traffic, but a driver of individual vehicles that are too loud might be cited.

*(g) Sounds caused by air-, electrical-, or gas-driven domestic tools, including, but not limited to, lawn mowers, lawn edgers, radial arm, circular and table saws, chain saws,*

*drills, leaf-blowers, and other similar lawn or construction tools during the Day-time Hours listed in CBJ 42.20.330(b) Table 3, unless pursuant to a Noise Permit for construction activities issued under CBJ 49.15 Article IX that extends those hours;*

He said the PC reviewed a Tigard, Oregon ordinance a couple of years ago where they prohibit any automobile work on residential property, although the PC did not feel that was appropriate for Juneau. He said it was the general understanding by the PC at that time that small domestic projects requiring the use of domestic tools during day-time hours do not require a Building permit, unless the intention is to do so during night-time, which would require obtaining a noise permit beforehand.

*(h) Sounds created by community events, such as parades, public firework displays, street fairs, and festivals that the City Manager or designee has determined in writing to be community events for the purposed of this section. The City Manager's decision shall be based on the anticipated number of participants or spectators, the location of the event, and other factors the City Manager determines to be appropriate under the circumstances;*

He explained that sounds created by community events that are in the interest of the public is being placed under the City Manager's discretion to make such a determine for exceptions.

*(i) Sounds made between midnight and 12:30 a.m. on January 1 of each year;*

He said this is a half-hour exemption for people making noise following the annual ringing in of New Year's Day.

*(j) Sounds made by snow removal equipment or operations, provided that all snow removal equipment powered by an internal-combustion engine shall be equipped with a factory-installed or equivalent muffler in proper working order, and provided further that this exception applies to the acts of plowing, scraping, and loading conducted in a reasonable manner, and that impulsive banging or hitting of snow removal equipment against concrete, asphalt, or other hard surfaces shall not be so exempted and shall be restricted to the provisions of \_\_\_(Impulsive Sounds);*

He said this exemption was modified based on a recent snow removal event he witnessed at 2:30 a.m. on a Saturday night when an operator was using a small Bob Cat to clear snow from a parking lot, which resulted in noise levels of 102 dB at the property line and 82 dB two blocks away. This revised verbiage recognizes the importance of snow removal and places limits on particular behaviors to minimize impacts to the public.

*(k) Sounds made by solid waste collection or street sweeping equipment or operations during the hours of 6:00 a.m. to 7:00 p.m. provided that solid waste removal equipment powered by an internal-combustion engine shall be equipped with a factory-installed or equivalent muffler in proper working order;*

He said this exception recognizes that waste removal is a public health and safety issue, although it is not a service that must be provided that disturbs residents. He noted that waste collection is able to occur during business hours, but traffic flow of garbage trucks have to be scheduled to be off congested roadways before peak traffic hours. He said this includes street sweeping activities that are not so crucial to warrant them being conducted during off hours at the expense of public health due to excessive noise.

*(l) Sounds made during loading or unloading activities related to marine shipping or other tidally dependent operations, provided that all equipment powered by an internal-*

*combustion engine shall be equipment with a factory-installed or equivalent muffler in proper working order;*

He said this is one of the more contentious exemptions. He noted the Eric Badger, the Juneau Port Manager of Alaska Marine Lines (AML), provided an e-mail, dated January 6, 2011, in the packet. He said he responded to Mr. Badger's e-mail, noting that for the record that he did not mean to single out AML as being the only use this exception would apply to, but AML has appeared before the PC as having a contentious land use in this community so he thought AML would be a good example to use in the report, which he is sure the PC will hear more about in the future. He explained that this exemption also includes the commercial fisheries loading facility at Auke Nu Cove, Northland Services Inc., loading ice at Taku Smokeries, etc. that all conduct operations generating noise, which might irritate neighbors, but they fall under this exemption.

*(m) Sounds from uses existing or operating at the time the ordinance becomes effective which exceed the standards contained in this article shall be exempt from these standards for a period of two years from \_\_\_\_, the date of adoption of this ordinance, after which time they must operate under a valid permit issued pursuant to CBJ 49.15 Article IX or comply with the standards in this article; and*

He said he believes a period of two years from the date of adoption of this proposed noise ordinance is a reasonable time to allow various uses to come into compliance, and to mitigate/reduce impacts over a couple of years, including obtaining a noise permit for impacts they are unable to mitigate/reduce. He said after that time, they could be cited if the activities cause sound to exceed the dB limits set in Tables 1 and 2.

*(n) Sounds for which a valid Noise permit has been issued pursuant to CBJ 49.15 Article IX.*

He said this exemption is if a noise permit for construction or a land use has already been issued, and then a noisy activity is later being complained about, but it is consistent with the permit then the activity is exempt per the conditions of the permit.

*Attachment B: Draft Noise Permit Process (with sample public notice coverage maps)*

He said this contains new information, so he will review only a few of the sections and subsections, as follows:

**49.15.900 Purpose.**

He said this the PC would mitigate external adverse impacts of noise whether it is from an ongoing use, or from construction only expected to take place for a short period of time.

**49.15.910 Noise permit required.**

*(a) Land Use Noise permit.*

He said this is required for any land use that can reasonably be expected to create noise in excess of the limits established in the Penal Code, and permits will be reviewed by the PC, including that use of the property shall be set forth in the permit per conditions.

*(1) Public Notice.*

He referred to two maps that are attached where he used the AML as an example, explaining that the public notice area outlined in the first map would be mailed to all property owners within 1,000' of the perimeter subject to the permit, which is twice as large as the public notice requirement for CUPs, which is 500' in the second map. He stated that recognizing that noise in Juneau tends to cross the water, bounce off the mountains, and then return, so it is heard

emanating from odd places in town. He said this provision also extends notice to any shoreline areas within one-half mile of the subject property, which would be as far away as 3<sup>rd</sup> Street in Douglas, but not for properties located along St. Ann's Avenue or Front Street. He noted that through John DelGado of the Douglas Advisory Board informed him that some of the residents of the Downtown Douglas area hear noise from the AML facility, so even with this extensive notice it would not include all of those impacted by such noise. He said the second map reflects the warehouse, processing, and administrative operations of AML, and therefore different properties receive the public notice. He explained that these maps and public notice requirements would be informative when staff drafts future public notices.

(2) *Review of director's determinations.*

(B) *The commission shall adopt the director's determination on each item set forth in paragraph (A) of this subsection (2) unless it finds, by a preponderance of the evidence, that the director's determination was in error, and states its reasoning for each finding with particularity.*

He said the CDD Director has to make a determination on each item listed in (A)(2), which is the same as with a CUP, and the PC has to agree with the findings, and then the Commission can place condition on noise permits.

(3) *Specific conditions.*

(A) *Mitigation.*

(B) *Off-site impact mitigation fund.*

(C) *Dedications.*

He referred to the boat condominium project previously presented to the PC tonight, e.g., perhaps an easement might have been placed as a condition precluding any further development of it, which would have taken away the development rights to protect that area, so this is what the dedication is for.

(D) *Performance bonds.*

This is to ensure that conditions of the permit are met, e.g., perhaps it will take a while for trees to grow, but if they die in the meantime there is a performance bond that could be used to plant more trees, or replace them.

(E) *Covenants.*

He said this similarly could be a useful tool in dealing with noise.

(F) *Expiration.*

He said the PC would be able to place an expiration date on a permit, e.g., if they anticipate that a new rock crusher that might be proposed to be installed in an area adjacent to residentially zoned property, but not near existing residences then the PC might provide a three-year permit. After three years, the developer would be required to reapply for the permit, and upon further review it might be determined that the situation in the residential neighbor has changed, so it might not be appropriate to allow the rock crusher in the adjacent area any longer.

(G) *Other conditions.*

He said this would allow the PC to provide other conditions, as appropriate.

(b) *Construction noise permit.*

He said this section is a re-write of the existing Building Official Noise Permit, and the subsections are to add a modicum for public notice. He noted that Mr. DelGado previously informed him that he thought that the off-site impact mitigation fund and the construction noise permit were a bit too onerous, as they would not accomplish very much. He explained that Mr. DelGado feels that once a developer applies for a construction permit, they should be able to

undergo a fairly speedy process, and not necessarily involve the public; he also pointed out that his windows in his residence are triple-paned in a five-star energy-rated house, so an off-site mitigation fund would not benefit him in regards to noise emanating from AML because they do not make better windows than he already has installed. Therefore, he explained that certain folks staff is attempting to draft this for might only support certain sections of it, as well as the construction industry who will probably have a few things to say about the three-day public notice period before they can be issued a construction noise permit.

(1) *Public notice.*

He said a sign would have to be posted on-site, and published in the local newspaper at least three days prior to issuance of a construction noise permit.

(2) *Revocation.*

He said the building official could revoke noise permits if the construction activity creates an unreasonable disturbance.

49.85.100 Generally.

(3)(A) Class I use, \$300.00. Class I uses are:

He said this is a tiered-fee system to recoup costs based on the actual cost for bulk mailing over 500 public notices, and then via first class postage under that amount.

42.20.\_\_\_\_

He said this section provides that having a noise permit is a defense against prosecution.

*Attachment C: Possible Exception to Noise Limits; Chart by Hours*

He said this is a matrix that shows when the noise exceptions apply by hours, which is self-explanatory.

Mr. Watson said he was unable to locate fines that might be imposed, with the exception that the Chief of Police has discretion to charge a \$100 fine, so he questions where the punishment is because it appears that the fine is less than the cost of applying for a noise permit. Mr. Lyman said other fines were not included in the packet because the PC is not amending that verbiage at this time. He noted that the packet however does contain information that a violation is an infraction provided via a schedule already in code from \$100, then \$200, and up to \$300 that requires a mandatory court appearance. He said the each day would be considered as being another violation, so if an infraction continues day after day the fines would add up fairly quickly. Mr. Pernula added that enforcement tends to be somewhat problematic, as they normally they do not impose the second citation until the first one is litigated, so even though it states in code that the building official can institute an infraction each day, this normally is not done. Also, he noted that often the judge packages the infractions together, and then institutes one fine.

Mr. Miller suggested that the PC only open public testimony directly in relation to attachment A due to time constraints. Chair Satre asked staff if they are seeking direction from the PC in relation to the exemptions in attachment A, and then the permitting process found in attachment B following that. Mr. Lyman said the Assembly and the City Manager requested that the PC wrap up discussion of the proposed noise ordinance on February 8, 2011, which he does not foresee as being practical at this time, although he was hoping that the PC could provide comments on attachments A, B, and C, and then he would re-present a revised proposed noise



ordinance to them on February 8, 2011. He noted that in all likelihood, the PC will have to continue this discussion at the next meeting, so the Commissioners might choose to make such a motion tonight for this to take place at the January 25, 2011 PC meeting, which would suffice for missing the notice period by one day. Chair Satre confirmed that it is the intent of staff for the PC to hear public testimony tonight on this item, as he is sure the folks who have remained at the PC meeting during this late hour should have a chance to do so. Mr. Lyman said the PC has generally taken public testimony in the past, and during Committee of the Whole (COW) meetings is when they often suspended the rules and accepted public testimony as well. Chair Satre said the PC is not able to meet the deadline set by the Assembly on February 8, 2011, and the Commissioners appreciate the direction, although this proposed noise ordinance is a huge issue that will have many ramifications. He asked if it is the consensus of the PC to open public testimony, to which the PC agreed.

#### Public testimony

Ruth Newman, 4101 Mendenhall Blvd., said she has macular degenerative disease so it has been difficult for her to sit this long and not be able to see. She stated that since she is unable to return to testify in front of the PC at a later time, she would like to inform the PC of the concerns she and her husband have regarding the level of noise they have to live with in their neighborhood. She said she has lived on the corner of the Mendenhall Boulevard/Mendenhall Loop Road intersection where the traffic signal is located for 46 years, with Valley Boulevard across the street. She explained that night before last she only had two hours of sleep, and some nights she has two nights in a row without sleep due to noise. She said young males living on Valley Boulevard play boom boxes, and drive vehicles with no mufflers, which are both very loud causing this excessive noise. She said the noise vibrates their windows, so they now have fine-line crack in them, and she has to periodically check her curio cabinet because the noise vibrations move items around. She said her husband uses two hearing aids and he is unable to hear very well with them, and even so when he removes them at night this noise still wakes him up because it is that loud. She said this is very stressful, which has caused them to have health issues because people in general need more than two hours sleep. She said their backyard abuts property where the Glacier Valley Baptist Church is located, and during the wintertime at 2:00-3:00 a.m. is when snow removal takes place, which is when they hear back-up beepers from snow removal equipment. She said the noise is so loud that it sounds as though it is taking place inside of their bedroom. Another fairly loud noise element close by stems from the football games that they do not have a problem with, but they do have issues when someone makes a loud bang to announce the starting of the games, which jars their house. She said she has sleep apnea, so she sleeps with a mask. She said when the traffic light was installed, it is unfortunate that the right turn lane is very near where their bedrooms are located, so they constantly hear loud vehicles with no mufflers, with loud music being played as vehicles are driven by. She said all of this incessant noise has changed the quality of their life. She explained that the neighbor across the street was unable to attend this PC meeting, and asked her to mention that she sleeps with earplugs, including at times with a pillow over her head, although she is still unable to sleep most of the time. She said this excessive noise is unacceptable, but they are unaware what they should do about it, although 46 years ago when they first moved to this area it was paradise when they could hear the wolves howling on Thunder Mountain. However, now she and her husband most times cannot talk to each other due to the noise when they are in their backyard. She explained that the noise mostly stems from residents on Valley Boulevard who cause 90% of this excessive noise problem. She said they are hoping to live the rest of their lives at their residence, but they would like a better quality of life while doing so, but the excessive noise has become very tiring. She said in the summertime tour buses exacerbate the noise, although she does not

generally have a problem with them, but one in particular is an older model bus that is rather noisy, which tends to be very annoying. She said there has to be some type of drug activities, parties, etc. taking place across the street on Valley Boulevard all night long, so anything that can be done to help them with this excessive noise situation would be greatly appreciated. Chair Satre said the PC appreciates Mrs. Newman's comments, which is precisely why this body is working on the proposed noise ordinance because the existing Disturbing of the Peace Code is too vague. He said the noise ordinance should provide a means for the enforcement officials to work with them regarding this noise concern. Mrs. Newman thanked the PC, stressing that they have become very concerned because of the recent fine-line cracks on their windows. Mr. Lyman informed Mrs. Newman that her written comments were provided to the PC in the past, and he thanked her for appearing before the PC.

Public testimony was closed.

Staff recommendation: that the PC provide staff direction regarding the two topics discussed in this memorandum for inclusion in a future draft Noise Ordinance:

1. Possible exceptions to noise limits; and,
2. Noise permitting processes.

### Commission discussion

#### Attachment A & B:

Mr. Pernula noted that under 49.15.920 Expiration, on page 3 of attachment A, it states that noise permits automatically expire after five years, unless an earlier expiration date is provided as a condition. He noted that if the PC were to eliminate too many exemptions, it would require the PC to review more noise permits, versus previously issued noise permits that would be re-presented on a five-year basis, so this aspect might be impacted by what the PC chooses to do regarding limiting exemptions.

Chair Satre announced that the PC already provided a few comments to staff regarding some of the draft exemptions in attachment A, although he does not believe the PC has objection to attachment B, so he requested that the PC move on to reviewing attachment C.

#### Attachment C:

Mr. Watson referring to (c), stating that cruise ship operators constantly test alarms during the day-time while in port, and such noise far exceeds any other noise along the waterfront, which has not been addressed in this section. Chair Satre said the cruise ship operators sounding alarms falls under (c) and (d), which the US Coast Guard probably regulates. Mr. Lyman agreed with Chair Satre, adding that non-stop announcements over the PA systems from the cruise ships are just as loud as the ship alarms and are also not exempted in attachment C, but he does not believe there is any community interest to exempt either of them.

Mr. Miller referred to (f), stating that this exemption does not apply to individual vehicles. He noted that the Commissioners probably all agree with the point Mrs. Newman made during public testimony about noise in their neighborhood all night long, which is what the PC is attempting to dissuade with this proposed noise ordinance. He said per Table 1, the night-time noise limit at a receiving residential property is 53 dB, so if a vehicle is being driven by a residential area that exceeds 53 dB it should be illegal and the driver should be cited, whereby he noted that 53 dB is also ambient. Therefore, the quietest vehicle without a radio or stereo system

on is going to be illegal with a 53 dB limit as well, but they are stating that all the traffic on Egan Drive would be exempt from this section, so there should probably be a separate dB threshold set for individual vehicles being driven in residential areas during the day-time, including night-time hours. He noted that his Harley Davidson motorcycle has stock mufflers installed on it, which measures around 65 dB when he runs it, although it is considered as being a quiet motorcycle, but he would not be able to legally drive it anywhere after 10:00 p.m. as (f) is written now, so this subsection has to be revised. Chair Satre said he does not know if this scenario is necessarily directly tied to section (f), as a few of the Commissioners previously voiced concerns regarding the dB threshold limits included in Tables 1-3 under draft CBJ 42.20.330. Mr. Lyman noted that a rendition of a previously presented ordinance had limits on amplified sounds emanating from vehicles, i.e., if they could hear it 100' away then it would be considered as being too loud, but the PC removed this provision from that earlier draft, so perhaps the PC would like to revisit placing this back in. Chair Satre said he believes that the PC wishes for staff to do so by working with the verbiage stating that vehicles are required to have a stock engines and mufflers, and anything outside of these are prohibited.

Mr. Bishop referred to (g), stating that there has been a real issue in Juneau regarding chain saw carving taking place all day long in residential areas. Mr. Watson said that is no different than a homeowner having a tree cut down, and then cutting it up into firewood. Mr. Lyman said the CDD staff has received complaints in the past about people who run chain saws all day long. He explained that if a homeowner is having a tree cut town, and then has it cut up for firewood that is a discrete project, which is eventually done. However, if a person has a business at a residence where they carve trees all day long each and every day it becomes more of a land use issue. Mr. Watson said this would be no different than a daycare or dog grooming operation in a residential neighborhood, which the PC has had to review on previous cases, so he believes tree carving has to be addressed with individual applicants as well, versus placing this under (g).

Mr. Miller said there is a similarity between (e) and (g), explaining that they both address construction, tools, etc., although (e) relates more to business activities, and (g) is residential activities, so he proposes that staff define (g) a bit more to clarify its intent. Chair Satre stated that staff might include that this is for "casual use" under (g). Mr. Rue said (g) already states, "...domestic tools," which he does not interpret as to allow chain saw carving all day long. Chair Satre said staff might contemplate including a horsepower limitation. Mr. Lyman said if a professional chain saw carver is performing this practice to sell sculptures for money then it becomes a home occupation, and because this presents off-site impacts of noise it does not meet the definition of home occupation so would not be permitted in a residential zone without a obtaining a use permit beforehand. However, if a hobbyist gives away sculptures carved with a chain saw that would have to be addressed as well, so perhaps it might make sense to state that "casual and accessory" land use is permitted, e.g., to mow the lawn, cut down a tree, or do yard work, etc., so he offered to draft similar verbiage to revise (g).

Mr. Watson referred to (j), stating that the flip side to snow removal is gravel removal, especially when these practices are conducted at larger shopping center and business parking lots. He explained that gravel removal tends to be noisier than snow removal, which generally has to take place during off hours. He said these are important aspects of operating a business to provide year-round safe parking, although this has not been addressed in the exceptions. Mr. Lyman clarified that (k) addresses "Sounds made by solid waste collection or street sweeping equipment or operations..." He noted that this subsection does not state that this is for equipment used to sweep public rights-of-way, which is instead for "street sweeping equipment." He explained that

if an operator were to use a sweeper brush on the front of a Bob Cat it would be considered street sweeping equipment, he said the time included is from 6:00 a.m. to 7:00 p.m., but there are not many business open this entire duration, so most of them could probably do so sometime within this timeframe. Mr. Watson interjected, stating that many businesses have to ensure their parking lots are maintained when businesses are closed, and there are only a couple of companies in town that provide this type of service, which limits their availability. He said they might be able to maintain the parking lot of one business at 6:00 a.m., and then move onto the others, so if the PC is not careful they might flood the CDD office or this body with complaints when it is not necessary. He noted that there are a few smaller commercial offices/businesses within residential areas, although an exception to this is a large shopping center such as Wal-Mart that is located fairly close to a residential area. Mr. Haight asked if this might be a case when requiring a noise permit would be more useful, versus trying to draft another exemption for commercial gravel removal from parking areas. Chair Satre said gravel removal operations are intermittent in nature, which is confined to large parking lots that might cause impacts to residential areas but this does not take place every night for months on end. He noted that the solid waste collection and CBJ Streets Division services are still going to be performed by preset schedules, but the large parking lot maintenance would be performed on an intermittent basis, which might be another method in which to handle this exemption. Mr. Miller said he agrees that gravel removal from parking areas occurs every springtime, which takes place everywhere at the same time in Juneau because all the businesses want their parking lots cleaned as soon as possible. He said because the few that provide gravel removal services are very busy for several days during this time period, he is happy Mr. Watson brought this up because this could have possibly lead to problems later on. Mr. Lyman offered to draft an amendment to (j) to address gravel removal from parking lots and travel ways. He noted that he hesitates to simply state, "gravel removal is exempt" because, e.g., someone might later mine a creek bed and state that that noise is exempt because they are removing gravel. Chair Satre said this is where verbiage along the lines of "street sweeping/cleaning" has to be inserted in this revision process by staff.

Mr. Miller referred to (k), stating that once recycling begins the solid waste collection crews might need to work a few extra hours, so perhaps the PC should revise the day-time hours listed in Table 3 to reflect this. Ms. Bennett said the PC previously held discussions regarding solid waste collection in Downtown Juneau regarding the fine line in accommodating for this outside of when businesses are open, including not waking residents. Mr. Lyman referred to Table 3, which states that day-time hours begin Monday-Friday and Saturday at 7:00 a.m., and 9:00 a.m. on Sunday. He noted that comments were provided from Arrow Refuse Waste Management indicating that it is essential for the crews to be on the street providing services at 6:00 a.m. in order to exit congested areas before peak traffic times. He noted that he also received a separate statement via e-mail, which he did not include in the Blue Folder as the person did not request that it be passed on to the PC, although he was asked to keep Matt Dahl of Arrow Refuse informed if there were any changes to (k) because 6:00 to 7:00 p.m. works for them just fine, which is the practice they are using now. He noted that any revisions to these hours would substantially impact existing service, explaining that Arrow refuse used to start collecting earlier than this, but because of noise complaints they moved the start time to 6:00 a.m. He said it might be possible to extend collection services beyond 7:00 p.m., although Arrow Refuse does not have any interest in doing so, as they are done long before that time. However, he said the CBJ Streets personnel might find benefits to perform street sweeping services beyond 7:00 p.m., or another company that might provide recycled waste collection services later on, but he would hazard against using the day-time hours listed in Table 3 for the reasons he has stated.

Chair Satre referred to (l), stating that this exemption has caused most of the comments provided by the public so the PC has bandied about the verbiage, but this version has not been noticeably changed. Mr. Lyman confirmed that it has not. Mr. Bishop said staff said the loud speakers for the cruise ships were not exempt, but (l) appears to have language that exempts them, so he asked if there is another section of the draft exemptions that obfuscates this. Mr. Lyman said the intent was for sounds resulting from loading/unloading activities, not when passengers walk on/off cruise ships, so he offered to revise (l) to read:

*“Sounds ~~made during~~ resulting from loading or unloading activities related to marine shipping or other tidally dependent operations, providing that all equipment powered by an internal combustion engine shall be equipped with a factory installed or equivalent muffler in proper working order;”*

He explained that this is not perfect. Mr. Bishop requested Mr. Lyman to continue to work on revising this verbiage. Chair Satre agreed, stating that Mr. Lyman is aware of the Commissioner’s intent. Mr. Miller said in terms of other tidally dependent operations, low tide is when many boats are placed on grids at the harbors to be power washed, maintained, etc.. He said there could be boats on the grid all night long if that is when the low tide is, and the noise that emanates from such activities are not from loading/unloading. Chair Satre said these activities would not be covered under (g) because they are not necessarily taking place during the day-time hours. Mr. Miller agreed with Mr. Watson, explaining that this is a tidally dependent operation conducted by owners of pleasure boats, the fishing fleet, etc. Chair Satre said he previously commented that the PC has to review possibly including a blanket exemption for all commercial marine and industrial type of areas in Juneau because of the large variety of uses that occur all hours of the day in waterfront areas. He said that although this might not be the ultimate solution, there are many aspects that have to be taken into consideration. Mr. Rue said (l) states, *“Sounds ~~made during~~ resulting from loading or unloading activities related to marine shipping or other tidally dependent operations...”* He said he interprets this to mean other operations would include cleaning the bottom of boats or maintaining them on grids. Mr. Miller said he now understands. Chair Satre said he too read this differently on the first pass, so Mr. Rue has made a good point. Mr. Miller requested that Mr. Lyman revise (l) by punctuating this paragraph with a strategically placed comma, or semicolon. Mr. Bishop said he would rather not intersperse punctuation to solve a problem as doing so generally results in more issues than it solves, and instead, he requests staff to include another phrase that allows maintenance of boats on grids. Chair Satre clarified that this exemption includes the ferry terminal, Glacier Seafoods, Northland Services Inc., AML, etc., i.e., but if they operate outside of day-time hours in Table 3, or exceed the dB threshold limits listed in Tables 1 and 2, those entities would have to appear as an applicant before the PC and undergo the noise permitting process, which would provide for public comment, noting that he is not personally advocating for this, but this is what the PC review process would entail. Mr. Bishop noted that many marine noises generated are not related to mufflers and internal combustion engines, and instead, they tend to be more impact-related scraping type of noises, so (l) might not even deal with the real issue of the noise. Chair Satre explained that based upon public testimony the PC has previously heard in terms of noise measurements taken at freight facilities, (l) deals with a portion of noise impacts, so with staff including some additional clarification to (l) then the PC intends to leave (l) in the draft exemptions for now, to which the PC agreed.

A woman [name unknown] from the audience interjected stating that she lives on Mint Way off of Mendenhall Back Loop Road, and when this cul-de-sac has snow removal operations taking place between 12:00-1:00 a.m. is when the operator has to back the snowplow up in order to make the sharp turn, which is when the back-up alarms go off, but there is no other traffic on the

street at that time, so she asked if this alarm noise can be exempted from taking place in the middle of the night. Chair Satre said this unfortunately falls under draft exemptions of sounds that the PC is unable to regulate in terms of the proposed noise ordinance because back-up alarms are a safety aspect that is already regulated by state law.

He referred to (*m*), asking if this exemption makes sense to the Commissioners, to which they agreed.

Mr. Lyman suggested that after the January 25, 2011 review, he will return on February 8, 2011 so the PC is able to review the final draft, including with the background information that was previously provided. Chair Satre requested Mr. Lyman to provide past minutes excerpts of pertinent discussions by the Commissioners as well, which might assist the public to understand the long road that staff and the PC has undergone during this process that has taken 2+ years.

Mr. Rue noted that at the last PC meeting, he stated that he was concerned about the dB threshold limits that were set as being too high because they are only for “steady and continuous noise,” so the PC still has to address “constant noise” impacts. He said this might mean that a definition of “noise” has to be developed, including “steady and continuous noise,” and “constant noise” and/or “impulsive noise” in the proposed noise ordinance.

Mr. Miller said the Commissioners have not yet conducted a site visit to the Rendezvous that staff offered earlier to listen to how loud that bar is. He thinks it would be very helpful if all of the Commissioners were able to perform sound meter tests of that bar, including comparing it to the sound of a vehicle driving by, ambient, etc. He said another site visit might include the Commissioners going to Downtown Douglas to record sound measurements at 7:00 p.m. when the barge lines are unloading containers. He noted that although the Assembly and City Manager requested that the PC forward the proposed noise ordinance recommendations on to them after the February 8, 2011 meeting, he does not want to pass on a PC recommendation that is not complete, so he would like to take a bit more time to finish this review. Chair Satre agreed, stating that obviously the Commissioners will attempt to work expeditiously, so the PC requests staff to dedicate an entire COW meeting to be scheduled towards this endeavor, to which the PC agreed.

**Update on the Capital Improvement Program (CIP) process.** [Moved to be heard following the TXT2009-00003]

Mr. Pernula stated that usually each year, the CDD staff begins by drafting a document containing a general idea of what the PC would like to include as new CIP projects to be added to the list. He said such a document would be prepared over the next couple of months, and then he would present it to the PC for final review. He noted that Mr. Watt requested the PC to start thinking about potential CIP projects. He said the packet contains last year’s comments the PC made to the Public Works & Facilities Committee (PWFC). He noted that last year there were many potential CIP projects, and some of those were brought forward by staff that included a project from the Long Range Waterfront Plan (LRWP) for the Marine Park Parking Garage enhancements on the first floor of the building, and the Seawalk as a project with regular annual funding. He said he discussed with Mr. Watt the possible inclusion of the new park by the Juneau-Douglas Bridge currently under review. He explained that last year some of the PC projects were included in the CIP. He noted that the PC suggested that bicycle racks be funded for future years, not just in 2011. He stated that any potential CIP projects they would like to

recommend adding to this CIP list should be provided at this is the time, or forwarded onto him following this PC meeting so he could provide them to Mr. Watt.

Mr. Watt said the CBJ prepares a revised six-year CIP each year, which guides the investment of public funds for maintenance, repair, construction, and acquisition of public infrastructure, facilities, and equipment. He said the CIP list is provided on an annual basis to the Directors of the CBJ departments, who provide their requests to him, and then he works with the City Manager to draft a recommendation for the Assembly's review. He said PC is welcome to suggest CIP projects to include on the list, and it might be helpful to review past year's CIPs for projects that did not make the list, as some were not included due to various levels of available funding sources. He noted that he provided a link to the CBJ web site listing 10 to 20 CIP annual plans that the PC is able to view in terms of what projects were funded, what the departments proposed, and to check to see if they have missed projects the might have been specifically called out in planning documents. In terms of the funding types, he said the sales tax revenues generally fund Public Works, Parks & Rec, and Eaglecrest projects, including an annual project that benefits the JPD, and the fire department as well. In addition, there are special sales tax projects, and the CBJ is currently in the middle of a five-year sales tax collection with regards to funding sewer projects, which will continue being collected for the airport terminal, and the Statter Harbor project. He stated that when this comes up for renewal, it might take place the following fall, but he wanted the PC to know that the conversations regarding this are taking place. He said the enterprise funds consist of the airport, hospital, and water and sewer utility type of projects. He offered to answer questions of the PC regarding any ongoing projects, or those that did not make the previous CIP list last year.

Mr. Rue asked Mr. Watt to comment regarding the outcome of the PC's recommended list of CIP projects provided last year. Mr. Watt said the PC recommendations last year were to:

- Include Library Parking Garage Enhancements

He said this was for a frontage treatment to the garage, which was deferred until resolution took place on the Docks & Harbors dock issues.

- Include Seawalk as a project in the CIP with regular annual funding

He said the Seawalk did not receive funding, which is clearly a need this year, so they now have two ambitious Seawalk projects located at Marine Park, and the Juneau-Douglas Bridge Park, which has generated vast public and Assembly interest. He noted that passage of state legislation dedicates funding for Juneau, and it appears a fairly robust allocation was provided for local waterfront projects. He explained that a meeting has been scheduled to take place later this month to discuss appropriating those funds for docks and Seawalk projects.

- Change the priority of the Safe Routes to Schools project from #8 to #1; move everything else down one priority level.

He is not sure what actually took place with regards to this, although a sidewalk was funded along Long Run Drive for a pedestrian route to Floyd Dryden Middle School per previous Riverside Drive roadwork discussions. He noted that the CBJ has also obtained a state grant, and a CDD Planner is currently working on a Safe Routes to Schools Plan, which will make the CBJ eligible in regards to funding future projects.

- Fund repaving of Industrial Boulevard in FY12

He said this was successfully placed on the Statewide Transportation Improvement Program (STIP) list, so the state will complete this project, with the CBJ paying the local match.

- Fund repaving of the Centennial Hall parking lot

He said this project was included in the area-wide paving plan.

- Bicycle racks are funded in FY 2011; consider funding bicycle racks in future years

He stated that some bicycles racks were funded last year, and he believes more will be funded this year.

- Include the North Douglas Crossing or at least the EIS for the North Douglas Crossing

He said this made the ballot, although no funding was provided for it in the CIP.

- Fund a study to find a suitable site for an Off-Highway Vehicle (OHV) Park in Juneau

He stated that no funding was provided for a study to locate a suitable site for an OHV Park.

- Provide the Sustainability Fund with steady annual funding

He explained that there are a couple of CBJ Engineering energy-efficient projects that are ongoing, which include installing/replacing street lighting with LED lights, and a couple of smaller energy-efficiency efforts. He said the Assembly last night passed the LEED Ordinance requiring certification of certain CBJ buildings over \$5 million, although they did not take up the PC's recommendation to reduce the threshold to \$3 million. He suggests that the PC review in the future how this progresses, and if a CBJ building project is presented with a lower threshold than \$5 million, CBJ Engineering might attempt to advance such an idea. He explained that he would like to see the CBJ to be successful with the large CBJ building projects before this threshold from \$5 million is lowered. That said, he noted that the CBJ Engineering has already voluntarily done so with the Harborview and Glacier Valley School projects, so he is hoping that both of these buildings will become LEED certified. He said CBJ Engineer has recently submitted the Glacier Valley School paperwork, and Harborview is close to being ready for submission.

- Consider including the West Douglas Road extension project in the CIP

He said work has started on the West Douglas Road, and the Assembly was successful in having the legislature re-prioritize funds for this project.

- Establish a study of the North Douglas Bench Road as a Capital project

He stated that the study for the North Douglas Bench Road did not move forward.

- If possible, establish a CIP project to support the Juneau Access Road

He said the CIP project to support the Juneau Access Road did not move forward.

He asked if the PC has projects they would like to recommend for inclusion in the FY 2011-2016 CIP tonight, otherwise they could follow-up by provided recommendations through Mr. Pernula to forward onto him.

Mr. Watson recommended that the CBJ take a look at building a new energy-efficient Municipal Building, which would be more functional and representative of city government, although he has no idea where it should be located, but its current location is probably not the best site.

Mr. Rue said he recommends that the Seawalk remain as a project listed in the CIP, to which the PC agreed. He said he is not familiar with the Safe Routes to Schools project, so he would have to defer on that one, although it appears that the remaining near-term projects is/are being taken care of.

Mr. Miller said he would like to re-emphasize that the PC would like to fund a study to find a suitable site for an OHV Park in Juneau. He said a sizeable portion of the Juneau population who recreate with OHVs are not being taken care of, so they are currently forced to OHVs in illegal places. Mr. Rue said he agrees, but this should include holding discussions with Goldbelt because he is not sure the CBJ has fully pursued every avenue with them, and he believes the best location is on the uphill side of an area that Goldbelt owns above Echo Cove.



Mr. Watson requested that the Juneau Access Road project be listed in this CIP so it remains visible and is not forgotten. Mr. Watt said this is a project that the state would generally pursue and fund, so it seems unlikely that such a recommendation would be provided for in this CIP list. He said it is possible for the CBJ to take on an ambitious transportation project, noting that the North Douglas Crossing did make the ballot, although the general revenue constraints of the CIP consists of about \$10 million worth of sales tax funds, and a couple more million worth of utility funds, so the Juneau Access Road project is probably not realistic in terms of the actual CBJ revenue framework.

Chair Satre asked if the city-state improvement projects for the Auke Bay area are still in progress, or if any of them have fallen by the wayside. He noted that he is unable to recall which of these were city, versus state projects. Mr. Watt said the state is actively working on realigning a portion of Glacier Highway that has a bend in the roadway, and the university has a pedestrian bridge that will go over it. He said the state is also working on the Brotherhood Bridge project, including providing a separate path from Brotherhood Bridge to Pederson Lake. He said the CBJ is providing matching funds on a wayside improvement project to the state, including that the CBJ has a project at the Mendenhall Back Loop/Glacier Highway intersection area.

Mr. Rue said the new Auke Bay Launch Ramp and trail project have attracted many people to that area, so this is causing a nuisance of people illegally parking along the highway, which might be a good project to recommend for inclusion on the CIP list. Mr. Watt explained that much of the wayside is a state right-of-way for the highway, the launch ramp is a CBJ project, and the city owns a small section of land nearby it, so the entire wayside project is the CBJ's with some of it being in the state right-of-way. He said the parking at the trailhead is on CBJ land located in the greenbelt along the edge of Auke Creek so there has been quite a bit of resistance from regulatory agencies and others to expand it, and therefore this has not been viewed as a viable option. Mr. Rue asked when they plan on finishing the Auke Lake facility project. Mr. Watt said that is a state project, although the CBJ will contribute a match for it, so discussions regarding this are moving forward. He said they intend to install a picnic shelter, restrooms, and various other improvements. Mr. Bishop said he previously placed calls to the City Manager's office and the JPD stating that the existing launch site at Auke Bay is an attractive nuisance. He stressed that he is concerned that someone is going to drive down the ramp when the lake is iced over and break through it. He said this might not happen this year, or next year, but he can guarantee that it is going to happen in the future, so a barricade of some type has to be installed. He noted that a blockade is placed at the end of Engineers Cutoff Road every winter, and then it is pulled back in the spring, so they should do the same for the launch ramp during the wintertime and spring. He said he has already seen this happen, but that person was able to stop right at the water's edge. He said this includes when people go out on the ice and start spinning brodies, which is when someone could also break through the ice.

Mr. Pernula said he would like included in the CIP the Seawalk, and funding for a study to seek an OHV Park site.

Chair Satre reminded the Commissioners that if any other projects come to mind, he requests that they provide those recommendations through Mr. Pernula who will forward them onto Mr. Watt.

Mr. Watt stated that he has not yet received recommendations from Directors of the CBJ on potential CIP projects, so the PC comments could be provided until early February 2011 for the

first round as a proactive opportunity. He noted that after that time, a draft CIP list of projects by the PWFC will be provided as an information item to the Assembly, and then later on as an action item, which will consist of the reactive phase of comments. Mr. Bishop confirmed that the PC has time to put together a more cohesive list at a subsequent PC meeting; Mr. Watt said yes.

### **Election of Officers and Planning Commission Committee Assignments**

Chair Satre said PC Committee Assignments are deferred until Ms. Gladziszewski returns to Juneau. He announced that the Election of Officers of the PC are assigned based on seniority, as follows:

Chair—Maria Gladziszewski  
Vice Chairman—Michael Satre  
Clerk—Frank Rue  
Vice Clerk—Dennis Watson

**MOTION:** by Mr. Haight, that the PC approves the Election of Officers of the PC to be assigned based on seniority, as stated by Chair Satre.

There being no objection, it was so ordered.

## **XII. DIRECTOR'S REPORT**

### **Response to the Alaska Commercial Fishermen's Memorial (ACFM)**

Mr. Pernula said he provided copy of a letter he wrote to the ACFM, dated January 5, 2011, so he expects to hear back from them fairly soon, and he will keep the PC informed of this.

### **2011 Legislative Reception**

He said the 2011 Legislative Reception will be held on January 19, 2011, from 5:00 to 6:30 p.m. at Centennial Hall, and the PC is invited.

### **Upcoming meetings**

He explained that the PC has a very light Agenda for the January 25, 2011, so he does not know if a PC meeting will be held, although he will let the Commissioners know beforehand.

## **XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES**

[The December 13, 2010, PWFC minutes were provided by staff to the PC for their perusal.]

## **XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS**

Mr. Bishop asked if the PC could meet regarding their continued review of the proposed noise ordinance, TXT2009 00003, on January 25, 2011, since the Agenda is so light. Mr. Pernula said it depends on how fast Mr. Lyman and the CBJ Attorney are able to make revisions and represent the revised noise ordinance to the PC. He said if it is done in a week from now, then this will be the main item on the January 25, 2011 Agenda, although he offered to let the Commissioners know by next week.

## **XV. ADJOURNMENT**

**MOTION:** *by Mr. Rue, to adjourn the PC meeting.*

There being no objection, it was so ordered and the PC meeting adjourned at 11:00 p.m.