

MINUTES

PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU
Maria Gladziszewski, Chair

REGULAR MEETING
January 25, 2011

I. CALLED TO ORDER

Acting 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.

Commissioners present: Nathan Bishop, Dan Miller, Marsha Bennett, Dennis Watson, Benjamin Haight, Frank Rue, Maria Gladziszewski (via teleconference), Michael Satre

Commissioner absent: Nicole Grewe

A quorum was present.

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

II. APPROVAL OF MINUTES

January 11, 2011 – Regular Meeting

***MOTION:** by Mr. Watson, to approve the January 11, 2011 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 said it has been some time since the Assembly last met, so he believes any past action has been reported in the local media.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - Moved to be heard following the Board of Adjustment

VI. CONSENT AGENDA - None

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA - None

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

X. BOARD OF ADJUSTMENT - Continued from the last meeting

VAR2010 0039

A Variance Request to reduce a side yard setback from 10' to 5' for the construction of a deck. The applicant has provided additional information.

Applicant: Van Rueben Willis

Location: Jordan Ave.

Chair Satre stated that at the January 11, 2011 PC meeting, the Board of Adjustment continued this case after closing public testimony, so if the Board of Adjustment wishes to re-open public testimony then a Commissioner would have to take action to do so.

Staff report

Ms. Jones provided slides showing the previous deck design to reduce the side yard setback from 10' to 5' to allow for a 10' wide by 24' long deck, with traditional railing. She showed the current redesign the applicant submitted to minimize the intrusion of the deck into the setback. The deck has been reduced in size to 8' wide, with a 5' tall 1x6 sight-obscuring barrier to restrict visibility on the west portion of the structure. She explained that the deck, stairs and landing were moved as far forward to the front of building as possible. She showed the view plane by adjacent D-5 neighbors of the proposed deck, noting that the residents of Lots 4 and 5 might be the most impacted, including taking into account the future building on the adjacent vacant Lot 7.

Mr. Bishop said the 5' tall sight-obscuring barrier would be constructed from the west end bottom of the deck, which would end up being about 4' from the top of the deck. Mr. Jenkins interjected from the audience stating that from the top of the deck the barrier would still be 5' tall.

Ms. Jones continued, stating that there was a discussion that they could build a deck in the front portion of unit 10 above the garage door as an option if the applicant is unable to obtain this Variance. She said staff has not changed their recommendation for the Board of Adjustment to adopt the analysis and findings and deny the requested Variance.

Chair Satre asked if it was the will of the Board of Adjustment to re-open public testimony. Mr. Rue stated that since new information was provided, and the plans were changed then they should do so, to which the Board of Adjustment agreed.

Public testimony re-opened

Van Rueben Willis, 2912 Jackson Rd., the applicant, said his intent was to modify the proposal to attempt to appease concerns. He said per the suggestions provided by the Board of Adjustment at the last PC meeting that if he reduced the deck width from 10' to 8', and produced a sight-obscuring barrier on it then the deck might be more acceptable. With that intent, he said he tried to meet those concerns and needs by redesigning the deck, including providing a place where he

could enjoy the outdoors on nice days, which is the same as every other neighbor who already has this opportunity. In terms of alternately constructing a deck off of the front of unit 10, he does not recall discussing this as being an option at the last PC meeting with the Board of Adjustment. He explained that he does not believe doing so would be feasible because the width of the huge garage door nearly spans along the entire front of unit 10, which is in an area where they would be unable to obstruct with posts to support a deck because it would probably impede snow removal and emergency access. He stressed that his redesign is the best compromise to ensure that he would have use of his deck as other neighbors do, and to meet the concerns that were voiced.

Scott Jenkins, 17070 Island View Dr., the applicant's agent, said there are concerns regarding impacts of the view of the deck by neighbors to the rear of it, but the applicant is not proposing to encroach into the rear 20' setback, and instead, he provided an additional 2' of buffer in the rear yard. He noted that when the Valley Professional Center Subdivision was applied for a couple of years ago, the agreement was made to retain a 20' vegetated greenbelt, which remains. In terms of the side yard setback to the adjacent property, the proposed deck would still provide a view plane to the neighbors in the rear, but the applicant is not requesting to encroach into the rear setback at all. He said he realizes previous concerns from the neighbors about D-5 residential being adjacent to Light Commercial zoning, although they are not encroaching into the setback between these zones, and instead, just into the side yard setback adjacent to another commercial property. He said when this subdivision was previously approved is when he exceeded the rear setback requirements, including leaving it as a vegetated area, which he is unable to use for snow storage, parking, etc., and the tenants of the complex are required to pay taxes on it. He noted that he worked with the applicant on the redesign of the proposed deck, whereby he offered to answer questions of the Board of Adjustment.

Mr. Rue asked if Mr. Willis or Mr. Jenkins wish to speak regarding their separate written responses to the findings of the variance criteria, which are both contrary to staff's. Mr. Jenkins explained that Mr. Miller provided revised findings to staff's at the January 11, 2011 PC meeting, and he and Mr. Willis attempted to be realistic in responding to the findings as well, which at times has been difficult to address, but they did their best.

Public testimony was closed.

Board discussion

Mr. Miller asked staff to explain the de minimis variance criteria, including when it is applied in terms of setback requirements per code. Mr. Pernula said this might be taken into consideration when a structure is already built, although this proposed deck is not. Mr. Miller said he understands, but he would like to know what percentage is allowed per a de minimis variance to encroach into a setback. Mr. Chaney said 20% [later corrected as 25%] of the required setback, noting that up to that amount is eligible for a de minimis variance if it is a discovered situation after construction with an approved building permit, but in this case it is before the fact.

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

Board action

Mr. Miller stated that at the previous meeting, he presented revised findings that would permit the proposed deck to be built. He said the applicant and agent have made revisions to the design,

which makes the proposed deck less obtrusive, i.e., lessened the width by 2', moved it forward by 4' to 5', and moved the deck supports to the side yard setback property line. He noted that if the deck had been constructed by mistake, and if, e.g., an as-built survey was conducted and they found that the deck was incorrectly constructed within the setback, it would qualify for a de minimis variance, which could be approved at the staff level. He said there was also a previous statement at the last meeting that if the complex was situated properly on the opposite side then there would have been sufficient room for an 8' wide deck, although with the snow removal and access issue, including the required 20' rear buffer then it would have been difficult to foresee this side yard encroachment of this deck back then. Therefore, he supports the approval of the Variance for these reasons.

Mr. Rue said he tends to agree with Mr. Miller, and asked if the proposed deck might impede emergency access through the side yard setback area in terms of the 5' extension of the proposed support posts of the deck, which might be moved further inward toward the building. Ms. Jones said she sent the proposed project to many agencies within the city, and she did not receive any comments regarding potential emergency access hazards as the applicant proposes this deck redesign.

Ms. Bennett commented that with a deck off of the opposite end of unit 1, and no deck off of unit 10 at the other end of the complex it might make the building appear to be lopsided, so doing so would impact the appearance of the complex and harmony with the neighborhood.

Mr. Chaney clarified that he misspoke earlier, and for the record it is 25% of the required setback for a de minimis variance per the code, not 20%; so 25% of 10' is 2.5', but the applicant is proposing to extend 3' for a total of 8', which is 30% into the side yard setback.

MOTION: by Mr. Miller, that the Board of Adjustment revises the Director's analysis and findings and approves the requested Variance, VAR2010 0039, with the current deck proposal provided by the applicant at this meeting, including the revised findings previously provided by Mr. Miller on the Board of Adjustment as listed on pages 10 and 11 of the January 11, 2011 PC minutes, which are:

- 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 the sub-criterion 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.

Chair Satre asked staff if this provides sufficient information to prepare the Notice of Decision on this Variance, VAR2010 0039; Ms. Jones said yes.

Mr. Watson said there were two doors installed on the second story of unit 10 before the proposed deck was presented to this body, so the applicant and his agent moved forward with that prior to this variance being approved, which bothers him even though the applicant previously explained why this was done at the last meeting. He said he believes that this is the second variance request in terms of this complex, which is in a sensitive area, noting that the neighbors have banded together every time these issues have been brought forward. Therefore, he stressed that the developer has to be sensitive to this, as the neighbors will do so again regarding any proposed projects that extend beyond the conditions of the initial permit for this complex. Chair Satre asked for clarification if this is the second requested variance regarding this particular complex. Mr. Chaney said staff is double-checking this, noting that this was a

very contested subdivision project. He clarified for the record that the applicant's agent Mr. Jenkins previously spoke from the audience during the review of this case in a response to Mr. Bishop's question, so he does not know if the digital audio recording captured his comment. Therefore, for the record he wishes to state that the proposed barrier is intended to be constructed 5' from the deck surface, but the drawing makes it appear as though it is 5' from the bottom of the support structure. Chair Satre confirmed with Mr. Miller that this was his understanding while making the above motion; Mr. Miller said yes.

Mr. Rue said he is inclined to support the motion, stating that a concern he had at the last review was that this proposed deck project could have been resolved during the original design phase of the complex a couple of years ago, so the Board of Adjustment should not have had to review this Variance. However, with amending the design by lessening the width of the proposed deck to 8', and the applicant has met the major intent of the side yard setback requirement from the property line by having the support posts 5' from the building to allow for snow removal and emergency access, so this is a reasonable resolution.

Mr. Bishop said the drawing as shown for the current proposal is not going to meet the Building Code requirements at 5' for the cantilever, and instead, he believes it is only going to be allowed to be twice the depth of the bearing deck members.

FRIENDLY AMENDMENT: *by Mr. Bishop, that the Board of Adjustment amends the motion to allow columns of bearing members to be moved beyond the proposed 5' to that which may be necessary to meet Building Code requirements for cantilever purposes, if necessary.*

Mr. Miller said he does not accept Mr. Bishop's amendment as being friendly. He explained that Mr. Rue pointed out the importance of retaining the support posts at 5'. He said he is certain that adept builders, i.e., applicant's agent will ensure that they adhere to the Building Code, which could mean that they might have to construct a 7.5' versus an 8' deck, including that this is a permitting issue, as opposed to this Variance request review process tonight. Mr. Bishop asked if the Board of Adjustment is considering 5' as being an issue, and if so, he did not realize this. Mr. Miller clarified that retaining the support posts at 5' from the building ensures that they remain at the side yard setback property line, so this and all the foundation aspects are in compliance with the side yard setback requirements.

FRIENDLY AMENDMENT WITHDRAWN: *By Mr. Bishop.*

Chair Satre said this is one of the properties where it is hard to imagine the variance criteria applying because the parcel is about as flat as it gets in Juneau, and there are no other mitigating circumstances the Board of Adjustment generally has to contemplate. He explained that the applicant mentioned however that through the initial Conditional Use permit (CUP) process the PC went through to permit this complex, there were several aspects instituted to make the project work. He explained that when the Board of Adjustment places the proposal in this light where those become the mitigating factors to put it into context, the answers to the various variance criteria starts to get there, otherwise it would be easy to speak against this Variance.

Roll call vote

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

Nays:

Motion passes: 8:0; and VAR2010 0039 was approved as modified by the Board of Adjustment.

[7:28 p.m.] Ms. Gladziszewski stated that she is having difficulty hearing the meeting, so she will hang up and switch to another telephone, and then call back in a few moments.

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

V. RECONSIDERATION OF THE FOLLOWING ITEMS - Heard out of sequence

TXT2009-00003

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

Applicant: City & Borough of Juneau

Location: Boroughwide

[7:29 p.m.] Ms. Gladziszewski successfully reconnected via teleconference, stating that she is able to hear much better.

Staff report

Mr. Lyman said two e-mails were provided in the Blue Folder: one from Erik Emert, dated November 24, 2011; and another from Sandra L. Harbanuk, dated January 25, 2011. He explained that Mr. Emert is the owner of the Rendezvous who offered to allow the PC to visit his bar and conduct sound tests. He noted that at the last PC meeting, Mr. Miller expressed interest in taking up Mr. Emert on this offer, so at some point this evening he would like find out if the Commissioners would like to conduct a site visit as part of the Committee of the Whole (COW) meeting on February 1, 2011, so he is able to provide Mr. Emert notice beforehand. He noted he received another e-mail later today in regards to jake brakes, which he handed out at the beginning of this PC meeting. Chair Satre stated that the review of the proposed noise ordinance is a work-in-progress, noting that this COW meeting will provide for a more in-depth review. He asked staff to state the key elements that the PC should focus on tonight. Mr. Lyman said he would like to finish the review of Draft Noise Permit Process (attachment B), which has sample public notice coverage maps attached, including possibly discussing a few cells that are yet to be populated in the Environmental Designated Noise Abatement (EDNA) matrix for threshold decibel (dB) noise limits received on non-residential properties. He explained that the thicker item provided in the Blue Folder is the packet for the February 1, 2011 COW meeting. Ms. Bennett stated that for the record, she was not provided the two Blue Folder items; plus a few other Commissioners stated so as well. Mr. Pernula provided them copies from the public meeting packet material table; Mr. Lyman apologized for the mix up.

Attachment B: Draft Noise Permit Process, with sample public notice coverage maps

49.15.900 Purpose.

He said this was provided in the January 5, 2011 packet and reviewed by the PC, and the Commissioners briefly discussed this at the last PC meeting on January 11, 2011 as well.

49.15.910 Noise Permit required.

He explained that currently the Building Official Noise Permit is for construction projects proposed to occur during nighttime hours due to necessity, i.e., pile driving by a barge, chip sealing a major roadway that cannot be done during day, etc. He said these types of permits have

not been widely used, although there have been a couple of projects that have raised peoples' ire in the community, specifically a recent dredging project at the airport to deepen the float plane pond, and a few others over the years. Therefore, staff received direction from a few of the members of the Assembly to research adding a public notice period to the Building Official Noise Permit process, which he included under 49.15.910 (b) *Construction noise permit*.

(a) *Land use noise permit.*

He noted that a land use noise permit would conceivably be reviewed by the PC, or perhaps in addition to the CUP, or it may not require a CUP because it could be for a use expected to be noisy, so only a noise permit would be required.

Mr. Watson confirmed that the land use noise permit would also include harbors, not just land uses. Mr. Lyman said "land use" is the generic term provided to the Land Use Code, so water-dependent uses fall under zoning and therefore the Land Use Code.

Mr. Rue said 49.15.900 Purpose starts out with similar language as 49.15.910 (a) *Land use noise permit*, whereby the latter states, "A noise permit is required for any land use that can reasonably be expected to create noise in excess of the limits set for in CBJ 42.20.330." He asked who ultimately would decide this. Mr. Lyman said he ended up wordsmithing this similar language repeatedly throughout the draft noise ordinance with the CBJ Attorney, and the idea is that the Director makes the decision, unless it is specified as not being the case elsewhere in the code.

(1) *Public Notice.*

He explained that this section was discussed at the last PC meeting.

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

As he previously stated, the Director makes the decision, unless it is specified elsewhere in the code. He said this might be for a rock-crushing project expected to be very noisy, or a chicken coup with no roosters that would not be noisy, etc. He said any Director or PC decision is appealable. Mr. Pernula said it is in the best interest of the applicants to apply for a noise permit beforehand, otherwise, e.g., if a developer intends to spend \$500,000 to \$1 million to develop a use, it could potentially be shut down after they begin operations because they might not comply with the noise ordinance. Mr. Rue confirmed that staff prefers to keep the verbiage of subsection (2) vague as to whether the Director or PC would make such determinations on noise permits; Mr. Lyman said absolutely. Mr. Rue commented that ultimately the responsibility would fall on the Director because he is the implementer of the Land Use Code. Chair Satre said a neighbor adjacent to a use could appear at the CBJ Community Development Department (CDD) Permit Center requesting a decision to be made on whether a use requires a noise permit. Mr. Lyman said this is true, including any use found to be in violation as well, or staff suggesting that a business developer apply for a noise permit when applying for other types of permits if the use is going to emanate noise.

(A)(i)

Mr. Miller said this subsections states, "Whether the proposed use is appropriate..." He asked if the word "appropriate" is typical for this type of application, and who makes such determinations, including whether there is a preset list of instances of "Whether the proposed use is appropriate..." Mr. Lyman said such determinations would be made per the Table of Permissible Uses (TPU) under 49.25.300. He noted that much of the draft noise permit process stems directly from the CUP process, and the CBJ Attorney found certain sections to be

somewhat less than ideal, so they revised some sections in an attempt to clean up the language, and this is the draft noise permit verbiage that has stemmed from that. He explained that staff would review the type of use being proposed in a particular zone, and whether it is appropriate, e.g., an industrial use in an industrial zone would probably be appropriate, although an industrial use in a residential zone probably would not. Mr. Rue asked if they might consider replacing “appropriate” with “allowed,” which is a less judgmental word. Chair Satre said if they were to do so this might cause confusion with an Allowable Use permit (AUP). Mr. Lyman agreed, explaining that they have done away with AUPs almost entirely because they provide a connotation that they are allowed. He noted that the PC has run into this problem time and again when an AUP was not really the best idea in given situations, and it was very difficult for the PC to deny them. He explained that stating that a use is “allowed” is not the same as stating that a use is permissible if it meets certain criteria.

(B)

Mr. Rue asked if “with particularity” is in the CUP language. Mr. Lyman said this is new language provided by the City Attorney, so the PC would have to provide written findings on each of the points for them to be legally justifiable. Mr. Rue said he wishes to provide more thought on this matter.

(3) *Specific conditions.*

Mr. Lyman said this was taken from a list of specific conditions that can be put on a CUP, with a couple of modifications.

(A) *Mitigation;*

(B) *Off-site impact mitigation fund; and*

(D) *Performance bonds.*

Mr. Rue said, referring to subsection (B), stating that “on-site mitigation” makes sense, but “off-site mitigation” basically states that they could potentially require someone to build something on someone else’s property, which could be problematic, so he wonders what the legal implications of this might be. Mr. Lyman said any mitigation proposed off-site would require obtaining permission from the owner of that other property. He explained that they would not require someone to construct an earthen wall on a neighbor’s property to protect them because he does not see how they could justify doing so. On the other hand, he said if they are talking about a shoreline use where property owners have no possibility of placing any type of buffer, but across that body of water another property owner could agree that installing a noise-attenuating wall on their property would protect others from their own noise impacts could possibly be done. He said this could be considered to be reasonable, which might be an aspect that allows the use to move forward, including providing protection for public health and safety.

Mr. Watson said the limited time that the state and city have to conduct road maintenance, particularly on Egan Drive is generally when they shine bright lights in the middle of the night while grinding up pavement, etc., so there is no method in which to mitigate for those types of impacts, so this off-site mitigation seems somewhat unfair, and he not sure that the PC should get into this. Mr. Lyman interjected stating that what Mr. Watson is referring to is construction noise permits, which are not land uses. Chair Satre clarified that what the PC is reviewing in terms of subsection (B) is noise that might be created for an extended period of time to mitigate off-site, as opposed to construction noise permits.

Mr. Rue said he is assuming that the noises they are dealing with tonight are steady and continuous noises, stressing that a definition has to eventually be provided, which will help. He

explained that that the World Health Organization (WHO) matrix provides examples of this type noise. He noted that they also have to define intermittent noise, so under subsection (B) he suggests revising it to state, “Uses that will create noise despite on-site mitigation that can be...” Chair Satre commented that Mr. Rue is essentially seeking a similar step-by-step process, e.g., how wetland mitigation is currently managed.

Mr. Lyman said the intent of subsections (A) and (B) are to provide conditions that could be placed on noise permits by the PC. He explained that, e.g., if an applicant presents an on-site mitigation plan then the PC could review it, garner public testimony of the neighbors, and then the Commissioners might state that the suggested on-site mitigation is going to be enough, but they might also require a certain amount of money to be paid to an off-site impact mitigation fund in cases where this is not enough during the three years the permit is valid. He said the developer would then have to re-apply for a new noise permit, which is when the PC might find that the past mitigation provided was sufficient if they were not required to use the off-site impact mitigation funds, so the PC could request that those funds be returned to the developer. Conversely, e.g., if additional trees were required to be planted, or to build a berm higher than the money would be in the off-site impact mitigation fund to address such concerns. He said these are tools available to the PC on a case-by-case basis, as needed, through the public process, with due process.

Ms. Bennett stated that in terms of the off-site impact mitigation fund, the city has the same responsibility as well as developers or businesses to ensure the health and welfare of the population. Mr. Lyman explained that the intent is not for the city to contribute to the off-site impact mitigation fund in any way, and instead, it is for a new, or perhaps an existing business who are not meeting the new noise ordinance, so they would have to come into compliance by possibly reducing noise impacts to neighbors. He said it could be argued that the city bears some culpability or responsibility for that, but he argues that a section of the Land Use Code is not the device where that should stem from. He explained that, e.g., the program to retrofit older engines on seaplanes with new turbo props is not in the Land Use Code, and instead, it was a program that the Assembly supported and allocated funds towards, which allowed for changes to make those engines quieter, but aircraft is not regulated in the Land Use Code. Mr. Watson said the CBJ Public Works Facility was constructed adjacent to a residential area on one side, and the State Department of Transportation (DOT) Facility is on the other side. Therefore, this residential area now has two commercial operations generating noise where they work late at night, including all night at times, which are uses the PC might have to consider in more detail because noise complaints from residents may arise once the proposed noise ordinance is approved. He stressed that the city cannot be exempt from noise being generated in the borough solely because they are the CBJ. Mr. Lyman clarified that he did not state that the CBJ was exempt from the proposed noise ordinance. He explained that if a city operation is found to be the source of the noise then they would be just as subject to the noise ordinance regulations as any other property owner. He explained that what he previously stated was that the city would not under the off-site impact mitigation fund provision bear any culpability for paying into it if that was necessitated by a private development because that is not what subsections (A) and (B) address, and he does not believe the Land Use Code is the appropriate mechanism either. In relation to the CBJ Public Works Facility, that particular project went through early scoping meetings. He said the building was changed from where it was initially cited so it provides a visual and auditory buffer between the yard and adjacent residential properties, which was to mitigate for noise impacts. He noted that the owner who developed an adjacent property to this facility attended those scoping meetings and participated in that decision. He noted that after the

facility was permitted is when the adjacent developer subdivided his parcel and constructed the one existing house on it.

Mr. Bishop said he is very uncomfortable with putting the city in the position of being responsible for doing off-site mitigation for somebody else's project because he can see where that could become problematic. He explained that generally project estimates tend to be costly, and then the city would be responsible for providing the final tally of projects, which might or might not get done, as this would depend on whether mitigation funding is available. He stated that he foresees this as being an easy method to push a project forward when it has not been adequately mitigated to begin with, which is why he is uncomfortable.

Mr. Miller stated that in terms of subsection (B), Mr. Lyman said if the applicant provided the city off-site impact mitigation funds to hold in case they are required for additional mitigation later on then this describes a performance bond. He said an off-site impact mitigation fund might be a good idea, but not as it is being described in this manner. He explained that the city is not going to have a bank account for individual applicants as they do for performance bonds. However, on the subject of an off-site impact mitigation fund he believes under certain situations this might make sense, especially in relation to existing uses that have been allowed to take place over the years. He noted that he intends to revisit this issue when the PC reviews 49.30.940 Nonconforming development and 49.30.900 Nonconforming noise levels, but right now he believes subsection (B) should be omitted. Ms. Gladziszewski said she does not understand Mr. Miller's comment about an off-site impact mitigation fund being used for existing projects, as it would apply to future noise permits for proposed projects. Mr. Miller clarified that the permits are not necessarily going to apply solely to future permits for proposed projects, but this depends on how the PC handles 49.30.940 Nonconforming development and 49.30.900 Nonconforming noise levels because it is very possible that every single noise emitting business in town will have to apply for a noise permit. Mr. Lyman referred to page 4 of the January 5, 2011 staff report, attachment under a subsection, which states:

(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 this provides a sunset clause on lawfully nonconforming uses, which must come into compliance with new restrictions, or the developer would have to apply for a noise permit to exceed noise restrictions within two years of the adoption of the noise ordinance, so Mr. Miller is correct because the regulations will eventually apply to any use that violates the noise limits within the borough.

Mr. Rue referred to subsection (B), stating that he is concerned about the open-ended nature of an off-site mitigation fund for noise impacts that might be raised later on, versus aiming the contributions toward specific projects that will prevent noise impacts to neighbors off-site, i.e., installing triple-pane windows, etc. Mr. Lyman said he is trying not to rely on particular instances or situations, and instead, he is focusing on the foreseeable future as to how the off-site impact mitigation fund might be used. He explained that in previous discussions the PC has had about AML and the impacts the barge loading operations have had to Douglas residents, they suggested instituting some type of off-site mitigation fund that might potentially be paid into by both the CBJ and AML to retrofit the resident's homes with triple-pane windows. He said all Commissioners or all the Douglas residents did not necessarily agree with this. He noted that he

previously informed the PC of his conversation with Mr. DelGado who stated that he already has triple-pane windows installed in his residence, so he would not receive any benefit if they were to do so. However, it may be that in certain situations it may be appropriate for the CBJ to contribute to an off-site mitigation fund, but this is not an aspect that should be written into an ordinance. If they were to do so, e.g., whenever a noisy use is proposed then the city would pay half the money to mitigate noise impacts, but in this particular case it would be inappropriate in this subsection. Mr. Miller said he might have been the one who brought up the off-site mitigation fund idea at a previous PC meeting. He explained that what he was relating this to was the fee-in-lieu of parking type of scenario, which was to provide for one fund that everybody places money into that the city could match to take care of some of the older problems in terms of noise impacts that still exist.

Chair Satre said an off-site impact mitigation fund is generic and open-ended as it is currently written, so he can foresee such a fund as never being used, or being used to hold projects hostage, or possibly shutting down what are currently considered as being normal uses. He said some of the Commissioners voiced concerns regarding issues with subsection (B), so at the very least the PC would want to see how an off-site impact mitigation fund would be administered in more detail in the code. In addition, he is also curious how such a fund has been incorporated into the code of other municipalities, so these are aspects that the Commissioners might discuss further at the COW meeting next week.

Mr. Lyman referred to subsection (D) *Performance bonds*, stating that this could very easily include subsection (B) *Off-site impact mitigation fund*. He stated that how the off-site impact mitigation fund would be administered could be through performance bonds. He explained that it could be that they might delete subsection (B), and keep subsection (D) and have the exact same situation with cleaner language, so they could add verbiage to the beginning, which states, "Completion of all on- or off-site improvements..." in subsection (D) if they were to do away with subsection (B).

Mr. Bishop said the city has been fairly ineffective in dealing with various long-term situations in terms of collecting performance bonds for mitigation, so he would be uncomfortable using this off-site impact mitigation tool.

- (C) *Dedications; and*
- (F) *Expiration.*

Mr. Rue said there are conveyances of titles, easements, etc. to implement possible mitigation, but later on the expiration of the permit addressed under (F) might be quite short or quick. He stated that if someone dedicates an easement, but then a permit expires and the developer is unable to renew it, he asked if they get the easement back, or if the dedication expires as well. He also asked staff to describe the juxtaposition of subsections (C) and (F). Mr. Lyman explained that whenever the CBJ requires deed restrictions, or other instruments restricting a property owner from using their property as might otherwise be expected, e.g., a Bungalow Lot created under the recent Bungalow Subdivision Ordinance, or if it is a deed restriction because they want to have a wet bar in their living room, with a small stove, but they are not going to rent it out, and they do not want it to be considered another dwelling unit; zoning won't allow it to be another dwelling unit, so they would record a deed restriction that states that they are unable to rent out that part of the house as a separate unit. He noted that the last page of the instrument recorded always includes a check-box option that states that the CDD authorizes that aspect to be removed from the property, but when this situation changes, or the ordinance changes is when

they could simply remove that deed restriction by re-recording the last page, which is a fairly typical process. In addition, if this last page is not included with the document, they are always able to record another document signed by the Director, City Clerk, or Chair of the PC, if need be, which removes a restriction from a particular property, so it is not an aspect that necessarily goes forever with the land. Mr. Rue said he is not sure they should retain subsection (C), but if so, he wishes to add, “...to ensure implementation of noise mitigation/abatement.”

Mr. Haight said there are limits in the proposed noise ordinance for noise types, levels, and times of day, so there might be additional conditions provided outside of those listed in subsection (3) *Specific Conditions* to provide allowances to extend the time of day, or to allow for different noise types, or levels in certain cases, but still limit them differently. He explained, e.g., if the noise threshold level is 60 dB for a particular area, and the PC is reviewing a noise permit then there could be instances where the PC might want to limit the proposed use to 70 dB or 80 dB instead, but doing so should be done on a case-by-case basis. In terms of the type of noise, the Commissioners discussed two different types as being continuous or impulse sounds, so he believes they should make a similar limitation to them as well. He explained, e.g., if a land use is proposed that would expectedly provide a continuous noise on-site then the PC would certainly not want hear impulse noises as well from the same site at a later time. He requested that this discussion continue at the COW meeting next week. Chair Satre clarified that this entails additional potential conditions outside of section (3) *Specific Conditions* (A)-(G), which the Commissioners might want to stipulate at the upcoming COW meeting. Mr. Lyman offered to add new subsections to section (3), which are: (H) *Time restrictions*; (I) *Noise level restrictions*; and (J) *Type or source of noise restrictions*, which he will provide at the COW meeting next week.

(b) *Construction noise permit.*

Mr. Lyman said construction during Day-Time Hours listed in Table 3 on page 2 of the January 5, 2011 report is already exempt, and the PC at the last meeting previously discussed this. He noted that a comment was provided in the Blue Folder from Ms. Harbanuk requesting that the hours be amended in residential areas for the PC to institute an end time of 6:00 p.m. on weekdays and weekends. He said another comment provided at the last meeting was for an end time of 8:00 p.m. He explained that whatever these times end up being; if they instead simply state that during the day-time construction activities are already exempt, so they recognize that skill saws, hammers, etc. are noisy. Therefore, a construction noise permit would only be required during Night-Time Hours listed in Table 1, so it would be unlawful to operate equipment or tools listed under section (b). He said most of the language in section (b) was taken from the existing Building Official Noise Permit regulations.

(1) *Public Notice.*

Mr. Lyman noted that two maps are attached, which provide an outline of the public notice coverage area. He noted the Eric Badger, the Juneau Port Manager of Alaska Marine Lines (AML), provided an e-mail at the last PC meeting stating that staff singled out AML as being the only use this exception would apply to, which he apologized for. He explained that 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. He noted that AML has two neighboring sites that are not adjacent, which have very different relationships with the surrounding lands, so he thought they were illustrative in terms of what surrounding property would be provided public notice if this particular public notice language is adopted. He said the first map shows the AML barge line facility as the subject property. He said staff would provide public notice to all owners of

property within 1,000' of the subject property, including those within 500' of the shoreline within .5 mile, which reaches over to Douglas Island. He said this is a much larger public notice area than what is required for CUPs, which is for a 500' radius around the subject property. He said the second map shows the AML warehouse facility that is a few properties away from their barge line facility, which entails a different group of properties receiving public notice. He noted that very few properties are within .5 mile of the shoreline of this subject property, which does not reach over to Douglas Island, but it includes a few properties at the Rock Dump. He said this is a public notice aspect that would have to be sculpted through the public process, which the PC would have to weight in on. He said this language is essentially what the CUP lists for public notice requirements, which includes that signs be posted around town with red backgrounds. He believes signs for noise permits should look different so people do not confuse them with other use permits.

Mr. Miller said the PC reviewed a permit a couple of years ago regarding Stabler's Point Rock Quarry, which is when they heard testimony of noise complaints from people residing across Auke Bay on Fritz Cove Road, so he requests staff to research how section (1) as it is currently written would work in this situation now to determine how far away Fritz Cove residents are from the Stabler's Point Rock Quarry; Mr. Lyman offered to do so. Chair Satre added that the problem might be that the Stabler's Point Rock Quarry does not abut the shoreline because there is a road in between, which might trigger normal public notification procedures, although Mr. Miller's suggestion is an excellent idea in terms of looking at a permit that the PC has previously reviewed.

Mr. Watson asked if it is possible to create advertisements so they are small for less noise impact type of projects, versus large advertisements for greater noise impact cases. Mr. Lyman said the CDD publishes standard-sized advertisements for public notices in the local newspaper in which different items are listed. He noted that if there was a very large agenda then they might increase the size to list all the items, noting that the CDD staff controls this because they create the advertisements before publishing them in the local newspaper.

Ms. Bennett said publishing advertisements for a minimum of three days provides for a very short notice period for adjacent neighborhoods. Mr. Lyman explained that right now a Construction Noise permit can be obtained without any public notice, and staff has been requested by the Assembly to look into providing some public notice, but they also do not want to take what is a very important project, e.g., resurface the Juneau-Douglas Bridge, which has to be done at night because they cannot do so during the day due to heavy traffic, so they would not want to hold up such a project for a couple of weeks to undergo a longer public notice period. He said the intent is to balance a meaningful public notice period with the expeditious issuance of critical projects that have to happen at night, so three days seems to provide enough notification that people in the neighborhood when people probably would have come and/or gone from their homes at least once during this time period, so they should view the posted sign. In addition, there has to be a means for the public to submit comments to have a meaningful impact on the issuance of the permit. He said a one-day notice period would not be enough, but a one-week notice period would probably too long for contractors. Chair Satre said this is similar to the blasting notice period, explaining that the noise permits in all likelihood in terms of receiving public comment would not change the fact that the noise permits would be issued, and instead, it is essentially notification that there will be a nuisance, which is for a project that generally has to be conducted within a specific time period.

(2) *Revocation.*

No comments provided.

49.15.920 Expiration.

He stated that as an exception, a noise permit could be exempt from the noise restrictions for the duration of it. He explained that the PC previously said they would like to place a condition of a noise permit anywhere between one year and five years, and under this section it states that the noise permit will expire after five years. He said the intent is even if the noise permit is for a fairly perfunctory review, it is still important because changes occur, e.g., if they have a rock crusher in Hidden Valley, which is fine for five years, and then five years later they find that a new residential development is later situated in the area above the jail, this when those people might start to hear the rock crushing activities in Hidden Valley, which would be when the situation would have changed. Therefore, this is a method to ensure the developer knows that they are able to operate under such a use for a while, including that they do not end up with a situation where incompatible uses are located next to each other without being able to bring projects back for review. Mr. Miller said the rock crusher is a great example of why they would want to have an expiration date on noise permits to provide further review. However, there are many projects in the community that should not have expiration dates, i.e., the Juneau Gun Club, and the Juneau Rifle Range. He explained that as development progresses in the Montana Creek area, people who live there already know that these operations are located nearby, but if those permits have to expire every five years then people that move into this area between now and then might think that in five years they could put a stop to these operations. If so, he explained that this might cause an uprising, and then all of a sudden these operations might cease in this area because they have to relocate. He said he does not believe this section is perfect, as it is possible that most of the noise permits should have an expiration date, but others should not.

Mr. Bishop said he echoes Mr. Miller's comments, adding that certain uses are very expensive to develop, which they might not institute if the developers know that the city might have the option of shutting them down in five years with the noise permit process. He said this is the reason there has to be options provided for permanent noise permits, including extended periods of expiration. In addition, he said it is possible that nominal uses of taxation might become a solution to the problem.

Mr. Rue commented that he echoes these thoughts, e.g., the existing entities that bring themselves back into conformance, or have to obtain an exception and are required to pay into an off-site mitigation fund to take care of the noisy problems, so they should be allowed to carry on because they would have done their best and paid into a fund to help lessen potential noise impacts to neighbors.

Mr. Watson said he also echoes the comments made, explaining that when a realtor sells a house, while working with a client they disclose whether this includes noisy neighbors. Therefore, when a buyer purchases that property it is a "buyer beware" situation because they would have been advised of this, but his concern is in regards to Mr. Miller's about the automatic five-year expiration time period for certain operations.

Mr. Lyman offered that the expiration might be for five years after the noise permit is issued, unless the PC makes a finding that this particular permit should not expire, and then if the Commission during a public hearing makes that finding, it would be listed in the Notice of Decision that such a noise permit could run with the land, e.g., the Juneau Gun Club, and the

Juneau Rifle Range could obtain one permit and then be done with it and not have to re-apply. He said for cases that are tenuous, or a bit more heated is when the PC might not be so sure, so they could provide a finding in order to issue a five-year, or 10-year noise permit, rather than letting it go on forever.

Mr. Watson said before too long the city is going to be looking at moving the boat yard out to Auke Nu Cove. He stated that when this takes place there will be a commercial facility operating seven days per week making a lot of noise near residential areas, so he asked how this noise permitting process would allow the PC to deal with that type of situation, e.g., grant the permit in perpetuity, or place a five-year expiration limit on such a case. Mr. Lyman explained that the draft exception currently allows noises resulting from loading/unloading, or tidally dependent activities, which exempts them from the Land Use Code, so this is one aspect that would relate to that property. In addition, the Auke Nu Cove property was purchased and planned for that use by Docks & Harbors before the 2008 CBJ Comprehensive Plan (Comp Plan) or the Zoning Atlas allowed for the use in that location. He noted that the neighbors have been very vociferous in opposition to that project even though the Comp Plan has been interpreted to mean that the zoning could be changed, but the zoning was later changed so development moved forward. Even so, development in the Auke Nu Cove area tends to be contentious, and just because Docks & Harbors have plans for it does not mean that those should be given carte blanche to allow them to make too much noise in that location.

Chair Satre referred to (3)(F) *Expiration*, stating that it might be up to the discretion of the PC to set and expiration date if they or staff find that an issue should be revisited for a temporary use, otherwise the noise permit would be in perpetuity. He said this is essentially how the PC operates now where every once in a while they provide a condition stating that a permit has to be re-presented at a certain point in time. Mr. Lyman said the intention is that the default position should be that noise permits would expire, and the exception to this rule is that they would not. He explained that this would provide that the burden is always to involve the public. He said the reason he included the automatic five-year expiration period has to do with the condition of the off-site impact mitigation fund. He noted that if a noise permit is issued that states that company X is going to pay \$1,000 per year into the off-site impact mitigation fund for the duration of the permit, and that money is used to do off-site mitigation for five years, and then they return to re-apply for a new permit and discover that their off-site mitigation has worked and there are no more neighbor complaints then that condition no longer has to be on that noise permit, so it can be removed, which would free up some developers from having a continual obligation of paying into the off-site mitigation fund. He said this is one relationship that has not yet been explored by the PC. Mr. Rue said he does not see enough situations where the default position should be for a shorter expiration date, so he is leaning more towards the default position being for a long-term duration, and then leaving it to the discretion of the PC to make the determination if shorter expiration dates for noise permits are warranted. Chair Satre said he agrees with Mr. Rue, stating that having a shorter default position for noise permits would take away certainty from development, as they do not do so with land use permits, so noise associated with land uses should be regulated along the same lines.

Mr. Bishop said a good permit is a permit that the PC or staff should not have to revisit, so perhaps the best measure of revisiting noise permits should be assessed on a complaint basis.

BREAK: 8:30 – 8:37 p.m.

49.15.930 Penalty.

No comments were provided.

49.15.940 Nonconforming development.

Mr. Lyman stated that he included this cross-reference under Chapter 15 of the code for nonconforming development, including the following two cross references, in the Draft Noise Permit Process document. He explained that generally when a new ordinance is adopted, any regulations existing before are lawfully nonconforming. He said obviously there are exceptions, but this is the general rule. However, he said the proposed noise ordinance is envisioned to apply to existing uses, not just future uses. He said members of the Assembly and the community are pushing the proposed noise ordinance forward because there are existing noisy situations disturbing people in this community, which are causing health impacts. He said they have to look to the future, including the past to determine how they can rectify situations that were permitted in the past. He said for nonconforming development it states, "...shall be brought into conformance as provided at CBJ 49.30.900."

...

49.30.900 Nonconforming noise levels.

He said this refers to Chapter 30 of the code for nonconforming noise levels, which refers to noise limits established at CBJ 42.20.330, and noise permits issued under CBJ 49.15.910 within two years after the adoption of this proposed noise ordinance. He said this section, 49.30.900, including 49.15.940 cross-reference between two different chapters of the code in terms of dealing with nonconforming noise emissions.

Mr. Watson referred to the car crushing operation off of Anka Street near Lemon Creek, with a residential subdivision across from it, which the city taxes, including that most people are happy that this operations is working. In addition, the operator loads at all hours on the waterfront at the Channel Construction Marine Facility, so according to these references this business would be required to come into conformance. However, in order to do so, he believes that this might be extremely costly for the city, as well as bringing all the other businesses into conformance with the noise ordinance, so this could have a major financial impact on this community. Mr. Lyman explained that this requires them to secure a noise permit within two years, and if they are nonconforming and want to continue to be nonconforming then they have to apply for a noise permit. He said this does not mean that the city would have to pay for costly mitigation, including that maybe the answer is to move that site to a different location, or require them to install a sound berm to solve the noise problem. Mr. Miller said the loading on all hours on the water would fall under the exceptions, so this aspect of their operation would not require a noise permit; Mr. Lyman agreed that this exemption would likely apply.

...

49.85.100 Generally.

He said this refers to Chapter 85 of the code regarding fees, which are normally an administrative matter, and the PC and staff have to undergo the fee process in accordance with the ordinance public process. He explained that the intention is to recoup costs charged to the community in terms of staff time.

- (1) Minor Development.

(D) Construction Noise Permit, \$100 if no building permit is required.

He stated that if a construction project, e.g., is to drive piles for a new dock, or for road construction at night then these do not require a building permit, so they would have to pay a \$100 application fee for a construction noise permit, which is a fairly modest fee for large projects.

(E) Construction Noise Permit, \$50 if a building permit is required.

He said if a building permit is required, they would have to pay a \$50 application fee, so they would already be familiar with the project, and would have already paid other fees.

(3) Major development.

He said these are fees for land use permits under major development. He said he will have to double-check whether he might have inadvertently used the old fees from 2010, versus the new fees in 2011, which he offered to look into prior to the COW meeting next week.

Mr. Rue referred to where this section states, “...*except land use noise permits, which may not be extended.*” He said he is confused as to why they would not want to extend land use permits. Mr. Bishop added that perhaps the conditions on a noise permit and the requirement for mitigation are no more greater than that of a CUP for a subdivision or some other use that may have to be permitted, so he does not see any need to exclude noise permits from that particular extension in any of the other major uses. Mr. Rue said he is inclined to agree with Mr. Bishop, especially since many of the noise permits would probably be associated with CUPs for other aspects of the same project, so if they have not had the chance to get started for whatever reason, e.g., if financing did not come through, but it is expected to in 19 months, versus within 18 months, then the PC ought to be able to extend the noise permit along with the other associated permits of the development. Chair Satre confirmed that the PC has discussed a few instances where an extension of a noise permit might make sense; otherwise a noise permit could end up holding up an entire project. Mr. Lyman stated that he made a mistake, which he apologized for, explaining that he was crossing the wires between the final plat and permit, so he offered to delete, “...~~*except land use noise permits, which may not be extended.*~~”

(A) Class I uses, \$300.

He said this is a Class I use, which has a \$300 application fee.

(vii) *Land use noise permits;*

He said a list of fees are provided under this Class I use, and because of the much larger public notice perimeter, with a greater number of properties being noticed is when the applicant would pay higher fees for preparation and postage for mailing beginning at \$125, and up to \$500, and then \$175 for each increment of 500 properties. He said this could cause a developer to realize that, e.g., placing a noisy use in a location close to 1,500 other properties might not be the best location for it, so there might be a benefit in having this higher cost associated with greater proximity to many adjacent properties.

Mr. Bishop stated that the code provides for a couple of exceptions for certain ancillary uses to permits, i.e., a variance for hillside development, etc. He said those permit costs are wrapped into the conditional use of the major use, so he wonders if this is an appropriate use as well to have an ancillary charge associated with the land use noise public notice, not as a separate charge. Mr. Lyman stated that if they were to do so then perhaps in the instances where a CUP is required there might be a lower or no noise permit fee, except possibly for the extra public notice

fee. Mr. Bishop said yes, so they are all wrapped into one bundle. He said he would like to know more about the land use fees in terms of noise permit notification, and if they are following similar patterns of how this is administered in other jurisdictions because he is wondering whether this is the most effective method in which to distribute notices, i.e., or if it might be better to provide more public notice via the media in newspapers and radio advertisements, or whether via mail is the most effective way. Mr. Lyman offered to conduct research regarding this, although he is unsure whether he will be able to do so by the COW next week.

Ms. Gladziszewski asked if the proposed noise permit fees listed under subsection (vii) are similar to other CDD permits that are issued. Mr. Lyman said the listed fees are entirely unique to noise permits, explaining that for CUPs the fees are based on a public notice encompassing a 500' radius from the subject property. He said the noise permit fees are different, as they are being proposed as having varying fees depending on the number of adjacent properties, and they will be mailed to property owners within 1,000' of the subject property, including when the subject property is within 500' of a shoreline within a .5 mile. He said they potentially would have to notify many more people in terms of noise permits, versus others. Ms. Gladziszewski said she prefers providing the notices via mail, as many people no longer read the local newspaper.

...

42.20.____

Mr. Lyman said this is the final cross-reference that will live in the penal code, e.g., if the police show up at a the door of a developer and states that their rock crushing operation is really noisy; the developer could show the police their permit, which would be a defense to prosecution.

Chair Satre asked if the PC wishes to open public testimony, to which they agreed.

Public testimony

Jim Stey, 235 5th St., said development adjacent to neighborhoods that might have noise implications from mechanical equipment that they intend to install, e.g., a refrigeration unit, or heat pumps, etc., so he is concerned that staff or the PC might not be reviewing noise permits to pre-identify particular noise sources. He said these projects should also be reviewed to ensure that the developers intend to use the quietest types of equipment and systems available on the market. In addition, once the proposed noise ordinance is adopted then staff should be able to inform the developer whether the equipment they intend to install would exceed the dB threshold limit. He explained that when developers request a building permit in Seattle, they have a separate noise abatement program that includes documentation they are required to provide for staff to identify the types of equipment the developer is intending to install, so staff knows what the noise implications consist of beforehand. He said he would like the PC to envision that the CDD staff should be able to conduct similar reviews as well when permits are presented for development in this community.

Mr. Lyman said in the packet for the COW meeting is an e-mail from Debra Purves, then-Building Inspector, dated November 10, 2008, regarding the amount of noise that would emanate from equipment once installed, and she asked if such systems could be reviewed by CDD staff during the building permit process, and incorporated into code, etc. He said the Building Code Advisory Committee did not favor doing so in that manner because even if it is the quietest fan, if it is not properly maintained then it would start squeaking at some point. He said this is the

case even if a mediocre fan were installed and well maintained, so it might be much quieter than what it was originally listed as, which provides too much variability. He stated that the proposed noise ordinance as it is currently drafted sets a limit that applies, and requires that a noise permit be applied for and granted before someone can start conducting noisy operations. He said this is also if noisy operations are taking place without a noise permit then the CDD can enforce against them until that developer resolves that noise issue. He said this would be done by obtaining a noise permit, having mitigation, or reducing the noise impacts, or by removing the noisy equipment and installing a quieter system, so ultimately the burden is on the developer to come into conformance with the law. He said this might be done, e.g., by using quieter equipment, having better maintenance practices, building a sound attenuating wall, etc., as long as they are able to bring the noise level down to legal limits, or else they would have to apply for a noise permit through the public process. Mr. Pernula said he previously contacted the individual in Seattle that conducted the reviews Mr. Stey mentioned. He said this individual reviews all permits for the types of noise that will be emanating from development projects, and Seattle has a very large bureaucracy, but that individual who reviews those cases is very knowledgeable and has expertise. He noted that the city the size of Juneau does not have the ability for practical purposes to hire an individual such as that, and instead, they will have a noise performance standard that has to be met. Mr. Stey said the reason he raised this issue is because when a developer applies for a permit and staff does not catch noisy consequences of them, and then the PC approves the permit it will impact neighbors.

Don Reed, Vice President of Operations of AML, referred to attachment B regarding 49.15.910 (3)(B) *Off-site impact mitigation fund*, stating that such funds tend to become a payoff. He explained that in order for developers to obtain permits, they generally end up having to make mitigation payments. He said this concerns him, especially when he views the attached two maps of the AML property, with a large area of Douglas circled on the first map. He said he does not want AML to end up having to purchase triple-pane windows for every house within that circle, with only a few people complaining right now, which will undergo the public process so this might create a greater problem versus what they have now. Chair Satre said the PC has voiced similar concerns, so the Commissioners will be discussing this further at subsequent meetings.

Public testimony was closed.

Commission discussion

Mr. Bishop said in terms of Mr. Stey's comments he believes the notification process for the general public and the permit process are very good ideas, specifically because heat pumps have become a real issue in this community in various areas where they have been installed near neighborhoods, which will continue to take place. Therefore, he requests that a notification be made to applicants being issued permits to make them aware of the code, including the noise requirements.

Mr. Rue requested staff to provide a definition of "steady continuous noise" to the COW next week, noting that a definition has already been provided for "impulsive sound." In addition, he asked if the COW would be going on a site visit to conduct sound meter tests of noise that land uses produce; Mr. Pernula said that is up to the PC. Mr. Rue requested staff to provide a sound meter at the upcoming COW meeting, so they can differentiate between actual continuous noise that a person might hear on an ongoing basis outside of a bedroom, as opposed to conversations in a meeting room or a similar sound simulation that staff previously provided.

Ms. Gladziszewski said the COW should be able to hear fans, exhaust systems, a hot tub fan running by a neighbor outside at night, etc. that are likely to annoy a person while in their home.

Chair Satre said these noises should consist of mechanical types of sounds, which have been presented as being problematic to the PC on previous cases.

Mr. Bishop said he would like to know the difference between sounds both indoors and outdoors, i.e., to differentiate when taking 60 dB reading outside, and then re-hearing it inside a residence through a typical thermal-pane window. Mr. Lyman stated that according to the WHO excerpt, in the COW meeting packet for next week, it provides that the noise reduction from outside to inside with the window partly open is 10 dB [the WHO excerpt actually states 15 dB], but he said that this depends on what the windows and walls are constructed out of, so this might vary a bit. He explained that some of the other Commissioners have taken the noise meter around town to conduct sound measurements, whereby he offered to pass the same noise meter off to Mr. Bishop within the next couple of days to do so as well.

Ms. Bennett said in regards to conducting sound meter measurements at a bar, she previously provided an e-mail to Mr. Lyman and Mr. Pernula regarding this. She explained that because the method in which most bars are permitted, she does not believe they are located anywhere close to residential areas. She said most of the local bars are instead located in shopping centers, or on South Franklin Street where residences are not located close to them. Instead, the issues with bars are more likely to be related to the behavior of patrons regarding drunk and disorderly conduct or patrons leaving and driving under the influence, rather than to noise, so she believes this time could be better spent. Mr. Lyman referred Ms. Bennett to the e-mail he previously mentioned from Erik Emert in the Blue Folder, as he owns the Rendezvous and is concerned about potential complaints if his establishment is subject to the same requirements of the proposed noise ordinance as it is written. He clarified that there are no residences located above the Rendezvous, but directly adjacent to it there are residences above the Lucky Lady, near the Emporium Mall, and across the street. He noted that as the proposed noise ordinance is currently written, someone could complain who is staying at the Alaskan Hotel about the noise emanating from the Alaskan Bar if it was too noisy, so there are residences in close proximity to many bars. He said this is the rationale he offers to the PC as to why he believes the bar is worth conducting sound tests at.

Mr. Miller said the previous noise simulation provided by staff was not very helpful, which is why he believes the PC should conduct a site visit. He said wherever the Commissioners go, he believes it is important that they listen to real sounds because he previously did so when he borrowed the sound meter, which was very helpful.

Mr. Haight said he would like real sounds as well, which should allow the Commissioners to hear associated background noise as well. He explained that he occasionally works on building alarm systems, which are designed to wake people up, and in order to do so he has to first define the ambient level, and then set the dB threshold level of the alarm above that. Therefore, it is important to define ambient, and then the source of noise as this discussion progresses at the next COW meeting.

Ms. Gladziszewski said she prefers to listen to real noise, including sounds from a bar, which would simulate a party, and assist the Commissioners on gauging how loud certain sounds are.

Mr. Lyman said although he was excited that he was able to come up with the idea of the sound simulation presentation at a previous PC meeting, it ended up having no bearing on reality, which he will avoid in the future. In terms of notice requirements for conducting a site visit at the COW meeting next week, he explained that the meeting would probably have to adjourn in one location, and then re-convene in another, but he will double-check with the CBJ Attorney beforehand. He said he might also have to publish an itinerary, so he has to know where the Commissioners would like to go. He said the weather will have a bearing on the site visit because if it is pouring rain or windy out it will impact the sound meter readings, and if so, the COW might have to postpone it. Regarding the bar visit, he said they could take sound measurements from inside, and then from outside under the awning.

Chair Satre said a couple of different mechanical equipment systems that produce steady and continuous noise around town would be helpful for the COW to measure with the sound meter, but he does not want the site visit to take up too much time.

Ms. Bennett said she would like to hear similar noise comparable to the banging of metal containers on top of one another when they are being loaded/unloaded at barge facilities, which is the source of noise that the public has commented most about. Mr. Lyman said he does not believe any simulation of such noise could be effectively replicated. He said the folks at AML would probably be happy to provide Ms. Bennett a delivery schedule, and then she could go to 1st or Mill Street in Douglas to take sound measurements if she wishes to borrow the sound meter.

Ms. Gladziszewski stated that in the interest of time, she offered to work with Mr. Lyman to figure out the types of sounds the COW might listen to during the site visit, to which the PC agreed, and thanked her for volunteering.

Mr. Miller requested that the COW visit an area that is quiet in order to measure ambient, including determining what the lowest threshold of the Night-Time Noise Limit of 53 dB actually is as well.

Mr. Pernula said the COW will be held on February 1, 2011, at 5:15 p.m. in Conference Room 224 of the City Hall.

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Alaska Public Offices Commission (APOC) reports

Mr. Pernula said the City Clerk's Office recently provided the Commissioners APOC reports, which are due in March 2011.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Rue said the Wetland Review Board (WRB) last met on January 20, 2011, and previous to that meeting they met with the Alaska State Department of Transportation (DOT) and CBJ Streets Division representatives on maintenance of ditches regarding sedimentation issues. He said they discussed implementing different practices to minimize sedimentation flowing into

waterbodies and wetlands. He noted that there are Best Management Practices for construction, but not for maintenance, and these representatives have been receptive to listening to the concerns voice by the WRB. He said at this last meeting, the WRB the members worked on a draft letter they are going to provide to DOT and the CBJ listing recommendations to lessen ditch excavation sediment impacts on habitat.

[The December 13, 2010 Public Works & Facilities Committee minutes were provided by staff to the PC for their perusal.]

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Watson requested Mr. Doll to provide a report at the next PC meeting on the Assembly priorities for 2012. Mr. Doll said the Assembly has not yet formally adopted them, but as soon as this takes place he will inform the PC.

Ms. Gladziszewski asked the Commissioners if they prefer her to announce, or e-mail the 2011 PC Committee Assignments, to which they agreed via e-mail.

Mr. Watson congratulated Mr. Satre and his wife on their first child that was born a few weeks ago, and his fellow Commissioners echoed this. Mr. Rue said his first grandson was recently born, and Mr. Satre said Mr. Miller has a new grandson as well, and the Commissioners provided congratulations to them as well.

XV. ADJOURNMENT

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

There being no objection, it was so ordered and the PC meeting adjourned at 9:45 p.m.