

MINUTES

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

REGULAR MEETING  
February 22, 2011

**I. CALLED TO ORDER**

Chair Gladziszewski 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 7:02 p.m.

Commissioners present: Nathan Bishop, Dennis Watson, Nicole Grewe, Benjamin Haight, Maria Gladziszewski

Commissioners absent: Marsha Bennett, Frank Rue, Michael Satre,

A quorum was present.

Staff present: Dale Pernula, CDD Director; Greg Chaney, Teri Camery, Nicole Jones, CDD Planners

**II. APPROVAL OF MINUTES**

February 1, 2011 – Committee of the Whole (COW) Meeting

**MOTION:** *by Mr. Miller, to approve the February 1, 2011 COW minutes, with corrections.*

Chair Gladziszewski stated that it appears throughout the minutes that the A-Weighting scale means (fast response) and C-Weighting means (slow response), whereby she requested staff to look into this for accuracy purposes.

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 recently requested that a resolution be drafted in support of the position by the Alaska Municipal League (AML) with regard to revising the Alaska Coastal Management Program (ACMP), which he expects will be on the Agenda for the February 28, 2011 meeting. He stated that if any Commissioners are interested on this subject then they should attend the Assembly meeting to testify, noting that he does not believe a great deal of public commentary will be provided.

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

VI. **CONSENT AGENDA** - None

VII. **CONSIDERATION OF ORDINANCES AND RESOLUTIONS** - None

VIII. **UNFINISHED BUSINESS** - None

IX. **REGULAR AGENDA**

**CSP2008-00012**

A City Project to construct a cul-de-sac and access ramp at the end of First Street on Douglas Island.

Applicant: City & Borough of Juneau

Location: First Street

**Staff report**

Ms. Camery stated that the Blue Folder items regarding CSP2008-00012 contain a memorandum from her providing additional staff analysis, dated February 22, 2011; and a memorandum from Eric Feldt of the CBJ Community Development Department (CDD), dated February 18, 2011, regarding flood zone issues. CBJ Engineering also provided two memorandums in response to public comments, dated February 15, and 17, 2011, respectively. In addition, public comment letters were provided from Kelly Corrigan, and Les and Deborah Morse. She noted that some primary comments received to date regarding this proposal are in regards to concerns about conflicts with the flood zone, the ACMP, public notice and need issues, changing the neighborhood character, and potential commercial use of the area. In addition, a petition was provided with 20 to 25 people stating their opposition to this proposal, including a recent printed list stating that all the property owners and renters on First Street in Douglas are opposed to this project.

She said this project was originally reviewed by the PC on October 24, 2008, and minutes of that meeting and staff report are included as attachments 7 and 8. She said her staff report, dated February 22, 2011, addresses only the items the PC requested additional information on; plus a few corrected items from the initial October 6, 2008 report by former Planner Daniel Sexton, so any sections of this report that she did not specifically change in her current report are still in effect. She reviewed the project for conformance with the October 20, 2008 CBJ Comprehensive Plan (Comp Plan), and she addressed some issues regarding sedimentation. She said the original conditions regarding sedimentation are no longer needed due to the post adoption of the 2009 Manual of Stormwater Best Management Practices, which have been omitted per her analysis.

She said the remaining items the PC requested information on during the October 14, 2008 meeting are: the need for the cul-de-sac and ramp; the review of alternative designs for the project; consideration of a hammerhead-style turnaround; access points for CBJ Public Works personnel to address the Douglas main trunk sewer line; and clarification from staff regarding intertidal fill and the ACMP consistency review.

She stated that she provided PowerPoint slides of the vicinity map, site plan, and two alternative site designs for the project.

Mr. Miller said public comment was provided regarding the power pole and fire hydrant in terms of an alternate site option on the CBJ property known as the Douglas Townsite Block 41 - Fraction of Lot 4, which the applicant says is not feasible, although no drawing was provided for this specific alternative showing this; Ms. Camery deferred to the applicant.

Public testimony

Autumn Lowrey, representing the applicant CBJ Engineering, explained that the alternative for a hammerhead-style turnaround is not practical because of the distance required, noting that it is 25' wide, but the length is inadequate due to the steep topography at the rear of the lot, and the location of the power pole and fire hydrant. In addition, the distance required for the reversing radius of emergency vehicles would impede onto neighboring properties.

She said the Capital View Court site is not considered practical because access to the beach would require a ramp with an unsafe grade, making turn around maneuvers dangerous. Therefore, the turn around maneuvers would be entirely on the beach due to bordering private property on each side of Capital View Court alternative, which would require more fill to be placed on the beach than the hammerhead-style turnaround alternative.

She said the cul-de-sac alternative would be the best option even if this meant more fill within the high-tide area of the beach, but the grade is 22% in that area, and even so any other option is not viable.

She said when she received this project she was unaware that First Street is a platted right-of-way (ROW), but they are still proposing to install the cul-de-sac and access ramp at the end of First Street within the ROW. She said this is a City Project, so a benefit is that the CBJ would not have to purchase private property, and they would not be encroaching onto any other private property. She explained that she reviewed old projects when sewer infrastructure was initially installed in 1975 in this area, which runs from the Douglas Bridge to the Savikko Park area where First Street turns into Front Street, so she continued to pursue the design presented to the PC on October 14, 2008. She explained that Front Street is a dead-end street. She said she realizes that this area has been previously developed, so if it is to be developed any more than it already is then the three lots being serviced by the road would require a fair amount of additional access. She feels that a cul-de-sac and ramp access would provide improved access, as stated per the code. She said Dan Jager the Fire Marshal is present, noting that he previously identified concerns regarding the lack of maneuverability for emergency vehicles along this First Street corridor, as the fire trucks currently have to be backed up over 1,000' before they are able to effectively turn around. She said the ramp is needed to access the sewer line along the Douglas Beach within the First Street ROW, which has not been maintained since its installation. She said Tom Trego, CBJ Public Works Wastewater Superintendent, is present, so he is able to respond to questions of the PC regarding their typical maintenance schedule, which generally pertains to sewer mainline cleaning every one to two years, but it is inevitable that some type of sewer line failure in this area might happen in the future. Mr. Miller said Ms. Lowrey stated that the cul-de-sac is within the First Street ROW, whereby he asked if the ramp is as well; Ms. Lowrey said yes. Mr. Miller stated that the cul-de-sac is proposed to have a 40' radius. Ms. Lowrey referred to attachment 4, stating that it is 80' to the edge of the drivable surface. Mr. Miller asked if the toe of the fill would be inside the ROW; Ms. Lowrey said yes.

Mr. Watson said the reasoning for the cul-de-sac and access ramp is to make it safer for fire/rescue personnel, but the CBJ personnel also has to access the sewer line for

emergency/maintenance, whereby he asked how else they might access this area if the cul-de-sac and access ramp were not provided for. Ms. Lowrey said, e.g., if a disaster struck tomorrow it would be a matter of possibly having to install a make-shift ramp, as opposed to going through this process to install infrastructure that would withstand and be built to proper code, whereby she deferred to Mr. Trego.

Tom Trego, CBJ Public Works Wastewater Superintendent, said he has been with the city 30 years this coming September 2011 in this department. He explained that this particular sewer line in Douglas has never been cleaned, and it is approximately over half full of sediment from the combined Douglas system, which has a 12" line about 3,200' from the end of First Street that runs down to Lawson Creek, but they cannot access it. Chair Gladziszewski asked how CBJ personnel knows this sewer line is over half full of sediment. Mr. Trego said staff made taps in the past year near where the last subdivision built at the end of First Street. Chair Gladziszewski requested Mr. Trego to educate the PC on how this sewer line was installed 35+ years ago and why nothing has happened, but now they appear to be worried about it. Mr. Trego said the sewer line is continuing to fill up with sediment, and if it is not cleaned the sediment will continue to flow into the pump station at the end of Lawson Creek where it is pumped across the creek. He noted that the gravel, sand, rocks, and debris run through the pumps, which causes high-maintenance wear and tear. He explained that because this is a combined sewer system in Douglas, i.e., the stormwater and sewer system are combined together, so at times hydrologic flushes are created and that material quickly ends up down at the pump station. Chair Gladziszewski asked what specific Douglas sewer flows through this sewer mainline; Mr. Trego said from Crow Hill to South Douglas area.

John DelGado, 1300 First Street, Douglas, AK, stated that he appeared before the PC 2.5 years ago stating his opposition to this proposal. At that time, he believes he presented compelling testimony that this project was not needed, wanted, or barely legal, if at all, which was when the PC directed this proposal back to the CBJ staff for further review. He said they are however at this juncture once again, and misinformation and inconsistencies are greater now than before, which has to be addressed. He said he does not wish for this project to be proposed, and instead, he requests that the PC take action and recommend voting this proposal down, which is his ultimate goal tonight. In terms of his rebuttal, he said CBJ asserts that this proposal does conform to the ACMP and the Juneau Wetland Management Plan (JWMP), but those regulations state that it is forbidden to provide for an extension of an upland area of the property deemed as wetlands. He said that Ms. Camery contends that this is not an extension of an upland area, but if it is not an extension then he asked how 40' of roadway with an 80' circumference could be established without placing fill on the beach. In addition, he said Ms. Camery's contention is, which is further disputed by the US Army Corps of Engineer (Corps) permit, that this fill can entail up to 1,250 yards of riprap, which would consist of 125 dump truck loads of fill. Therefore, he stated that if by chance the PC does not think this is an upland extension, he questions where three million pounds of rock is going to be placed, as it is not going to be piled up, and instead, he believes it is going to be leveled out and pushed onto the beach. He said First Street used to consist of an unpaved and rarely maintained gravel path, which was chip sealed about 12 years ago by the CBJ. He said that job consisted of a quick grading, and then the application of chip seal, which was performed in one day. He said this roadbed was never engineered or designed for heavy equipment to run on it, and its failure would be eminent if this large construction project is approved. He said he drives on this road every day, so he does not want it riveted with potholes, as he is happy with it, especially when the CBJ provided the road with chip seal because it assists in keeping the dust down. He does not believe the roadway

would stand up to load after load of gravel being hauled over it. He stated that in 2008, he mentioned the idea now referred to as the hammerhead-style turnaround, and he sees that staff did quite a bit of looking into this. However, the root of the matter is that they really did not do so because the contention of staff is that it is inadequate due to the slope, including the location of the fire hydrant and the power pole. He said the power pole and fire hydrant are virtually in the same side-by-side position. He noted that it is not a ROW, but the CBJ property is located to the south of this area where it would provide for a 25' roadway to be pushed through. He said the applicant states that topographical details provide that the slope is inadequate, which is erroneous. He explained that this area goes back about 50' to 75' before it starts to slope upward, and he was going to take actual measurements, but there was too much snow today. He said if the hammerhead-style turnaround was installed, it would definitely provide adequate space for emergency vehicles to turn around.

He said the notice for this proposal was mailed on the February 9, 2011, which he received on February 12, 2011, so he did not have time to prepare comments for the PC packet that was due on February 16, 2011.

He said he conducted a bit of historical investigation, and there was a codicil from Bell Simpson when this land was originally deeded to the CBJ that expressly forbids any development on these lots, although he does not know if it was bequeathed before or after her death. He said this should be looked into, but in truth, he does not want this looked into because he wants the proposal stopped by the PC tonight, as he does not believe the CBJ needs to spend anymore money on this.

He said he has resided in this area for 20 years and has witnessed many large vehicles turning around in this area, i.e., tractors, excavators, dump trucks with trailers, and they do not go onto the end property, which is privately owned.

He said CBJ contends that the access ramp to the sewer line is necessary because they have not looked at it for 35 years, but Mr. Trego stated CBJ Engineering personnel recently tapped into it so they know how much debris is inside of it, and therefore they already accessed it, so misinformation is being provided regarding this proposal.

He said Michael Schwab, CBJ Waste Water Senior Operator, stated that if it is necessary they would run equipment on the beach. He explained that the beach has seaweed, mussel shells, gravel, and it is rather soft, noting that he is a 300-pound man and he sinks up to his knees, and his son who is 80 pounds is able to walk on it without sinking in too much, but a vacuum truck that probably weights 100,000 pounds is not going to be able to be driven on this beach. Therefore, if this proposal was approved and an access ramp is installed, and a vacuum truck is driven on the beach then he believes the CBJ better budget to purchase a new one because the beach is going to devour it and allow the tide to get to it.

He stated that what the PC has to consider above all the other aspects is that every homeowner, property owner, and tenant on First Street is opposed to this proposal. He said these public hearings were established to address potential impacts of projects on neighborhoods, so he asks the PC to consider all their wants and needs before they make a decision, and he hopes that unanimous opposition to this proposal would allow the PC to defeat this tonight.

Mr. Miller stated that if Mr. DelGado were to assume that he is a Commissioner and that the possible failure of the sewer line is a matter of “when,” as opposed to “if,” and he asked what Mr. DelGado would do. Furthermore, he stated that if the project would not work on the CBJ property, he asked if Mr. DelGado has alternate suggestions. Mr. DelGado said he has watched excavators drop down onto this beach with no problem, which has been in multiple locations from the bridge down to his neighborhood area. He said any CBJ personnel who is an equipment operator could drop an excavator down on that beach, so if there was an actual break in the sewer line then they could gain access with this type of equipment, although someone might have to do a bit of hiking, but in 35 years this sewer line has not yet failed. He said a vacuum truck is never going to be able to gain beach access in this area unless they install a paved roadway all the way to the bridge, but that is not going to happen. Therefore, he believes access to the sewer line in an emergency situation is available at this point, and if it is solely a maintenance issue then local barge services would love to have the CBJ’s business to haul in the necessary equipment to perform such sewer line maintenance, including providing a vacuum truck, which would be at a fraction of the cost of this entire proposal. Therefore, he thinks there are other options, including access. He noted that Capital View Court could use a turnaround, and that area is bordered with private property.

Mr. Pernula said this proposal is not a permit, and instead, it is a review of a City Project, whereby he cited CBJ§49.10.170(c), which states,

“City and borough land acquisitions, disposals and projects. The commission shall review and make recommendations to the assembly on land acquisitions and disposals as prescribed by title 53, or capital improvement project by any City and Borough agency.

The report and recommendation of the commission shall be based upon the provisions of this title and the comprehensive plan, and the capital improvement program.”

Therefore, he stressed that any action by the PC has to be in the form of a recommendation to the Assembly based upon the code, the comprehensive plan, and the capital improvement program. Mr. DelGado commented that he found a hand-written Development Permit Application (attachment A) included in the packet for this proposal, which appears to be a permit.

Scott Dornbirer, 6750 Gray St., Douglas, AK, said he and his wife purchased property in January 2009, and it is located across from the proposed cul-de-sac area. He held up the one-page notice they received regarding this case, explaining that it does not provide sufficient information for them to make an informed decision as it was provided to them only a couple of days ago. He said they had no idea this project was being proposed. He stated that the area where the work is being contemplated is three lots away from his property, and the area the CBJ is proposing to fill is on a public beach. He noted that the First Street ROW might be located in the vicinity, but the road ends far short of where they are anticipating constructing the project. He stressed that this is not just a local issue, and instead, it is an area-wide issue when the CBJ intends to place fill onto public beaches. In terms of the hammerhead-style turnaround area, he said the power pole labeled #10811 is the only one on First Street that has not been replaced, which is very old and in bad shape, so it has to be scheduled for replacement very soon. He said the fire hydrant is about 1’ to 2’ onto the CBJ property where approximately 23’ is available for the CBJ to use to turn around vehicles, so it is deep enough for emergency equipment personnel to turn around as well, although maneuvering a large ladder truck might be difficult. He said he was informed that the Bednarowicz’ are the neighbors at the end of the street who allow the garbage truck to turn around in their driveway. Therefore, he said on the very rare occasions when emergency personnel are driving fire trucks in this area then they might have use that area as well, but he is sure that the Bednarowicz’ would allow them to do so if it was necessary, and therefore he does

not believe fire trucks would have to back up all the way down First Street. He said the best area to install an access ramp would be straight out into Gastineau Channel, which would allow maintenance vehicles to access the area. He suggests that the CBJ hire the services of a landing craft owner to take the CBJ pump truck to the site to maintain the sewer line, and then take the pump truck back out the same way. He said the CBJ could probably have this type of work completed for \$1,000, which would not disrupt everyone in the neighborhood, and this could probably be done next week. He referred to the Federal Emergency Management Agency (FEMA) Map that shows the proposed construction of a cul-de-sac at the end of First Street, which has a base flood elevation representing that those water levels would rise during a 100-year (1%) storm event. Therefore, the CBJ might want to raise the proposed area up several feet higher than they already designed it, including raising the lower half of First Street because according to the FEMA Map that area will also be under water. He said he believes the CBJ could save a lot of money if they contemplate other alternatives than the cul-de-sac option. Mr. Haight said Mr. Dornbirer and Mr. DelGado talked about the ultimate approach of the hammerhead-style turnaround, so he asked if Mr. Dornbirer favors this alternative; Mr. Dornbirer said yes.

Deborah Morse, 1403 First Street, Douglas, AK, said she owns the third house from the end of First Street. She is opposed to the cul-de-sac proposal. She is concerned how this project would change the shoreline along Gastineau Channel in this area. She is also concerned that a large cul-de-sac would increase traffic on First Street, and that it would make it more accessible for tour buses to navigate this area because it would provide for a better view of Downtown Juneau. She noted that the staff report states that tour buses will not access First Street, but several times this summer when she was turning onto D Street she met tour buses coming from the Savikko Park area down Front Street and going up D Street. Regarding the need for CBJ personnel to access the sewer line for maintenance, she stated that this has been an issue for 35+ years, so she questions why it was not address when Mr. Matson developed Beach Street in the mid-1990s, as that project was equivalent to five city blocks of frontage access along First Street, which was allowed to be developed without any thought by CBJ as to how they were going to service this sewer line. She said it is interesting that Mr. Trego said that the CBJ personnel was recently able to tap into the sewer line, as that would have been the perfect opportunity for them to address this issue if it is in fact a true concern. She feels that another solution has to be found to address this sewer line access problem that does not have the potential to drastically impact the First Street neighborhood, as the neighbors do not see any benefit of a cul-de-sac being constructed. She supports the construction of a small hammerhead-style turnaround at the end of First Street. She said the residents are happy with the way First Street is now, and they are not worried about emergency vehicles, plow trucks, and road graders accessing First Street because they do so now. She noted that her family did not sign the petition because they instead provided a letter to the PC, but everyone on First Street agrees with her and they are all in opposition to this proposal. She thanked the PC for the opportunity to testify.

Charlene Bednarowicz, 1503 First Street, Douglas, AK, said she and her husband reside at the very end of First Street. She said they wholeheartedly agree with the neighbors who have previously testified, as they too do not want a cul-de-sac constructed, and they do not want fill placed on the beach. She noted that their property is located between two lots so all types of vehicles often turn around in their large driveway, noting that she has posted signs stating that it is private property, although many people still do not seem to understand this. She stated that a cul-de-sac would be an eyesore, and it is not necessary. Mr. Haight asked how large Mrs. Bednarowicz driveway is. Mrs. Bednarowicz said it is large enough for the fire and garbage

trucks to turn around, and they have never objected to the drivers doing so, but if they install a cul-de-sac then more tour buses are going to access First Street because they already do so. In addition, they have seen CBJ and state trucks utilize the area, including driving on the beach near their house, which is when they made deep ruts in the tide flat area.

T. Kelly Corrigan, 1407 First Street, Douglas, AK, said perhaps they should start this discussion by stating that there never has been a problem with the sewer line in this area, rather than having a “doomsday” scenario. He said he agrees with the testimony by the neighbors regarding the necessity, including how to clean the sewer line, but they should not fault staff for agreeing with their CBJ employer. He explained that sewer pipes and culverts are designed to contain sediment inside of them, which is why an 18” pipe is installed when a 12” culvert would work to compensate for sediment being in them all the time, i.e., sometimes more, or sometimes less compensation is required. He stressed that changing the character of the First Street neighborhood makes no sense. He explained that people in the First Street area bought their property with no cul-de-sac, so a new one would impact all property values in the future. He asked the Commissioners to put themselves in the position of the neighbors, whereby if a cul-de-sac were installed on First Street back then they probably would not have bought property on First Street either. He said no streetlights are installed on First Street, as it is only a small roadway that services a few homes and is similar to a “Mark Twain existence,” so if this proposal moves forward then it would change First Street forever. He said this proposal has been underestimated in terms of cost, as it would actually cost around \$60,000 to install streetlights just to start with, but he cannot see this happening. He said he believes the neighbors were previously successful in getting their point across to the PC a couple of years ago when they stated that they did not want this project to take place, but apparently not because it is being brought up again. He stressed that the fact still remains that no one in the First Street neighborhood is in favor of this project, and they are happy with the services that are currently being provided, so he questions who the people actually are that the CBJ truly wants to service.

Mary Kay Pusich, 1407 First Street, Douglas, AK, said she echoes what the testifiers have stated tonight. She said this proposal is not a necessary project. She explained that she has lived in Douglas all her life, including on First Street for 20+ years, and on Second Street. She said many people enjoy recreating at the beach area along First Street to beach comb, land skiffs, etc., so installing fill on it and making this area inaccessible is not right. She said the solution brought forward tonight to potentially use a landing craft to transport pump trucks is a good idea, and the CBJ would save money, and prevent inflicting pain on some families in this neighborhood. She said there is no reason for this project anymore, so it has to go away. She said the 20’ power pole and fire hydrant are easy fixes, whereby she noted that she had her property surveyed in 2004, which shows electrical lines encroaching onto vacant lots that she recently sold, which are next to the CBJ property and her current property, so those power pole utilities should be relocated underground. She said she does not understand how the CBJ is intending to create a problem when one does not exist. She said Santa comes down every Christmas in a fire truck so there is already emergency access, including access by garbage trucks and moving vans without any problem. She said the Bednarowicz’ have been very gracious when drivers of larger vehicles have had to use their private driveway to turn around, and she is sure the Bednarowicz’ are not going to let a neighbor’s home burn down by not allowing such access in the future. She asked the PC to please consider this proposal before them by making it go away. She said the CBJ could move the power pole and fire hydrant if they have to, including installing a bit of gravel on the 25’ that they own, and then all the neighbors would be happy, including that the CBJ would save some money too because she understands that they do not have a lot of it. She



appreciates the time and consideration by the PC, and she hopes that the PC provides this proposal more thought.

Greg Fisk, 421 Kennedy Street, Juneau, AK, said he purchased Lot 6A in Douglas, which is located across the street from Mr. DelGado's residence. He explained that he purchased this property because of the unique character of the First Street neighborhood, and the fact that access to it was rather limited in the sense that the existing dead-end street serves as a deterrent. He believes small tour bus operators would definitely be attracted by such development, but he is also concerned about having an access ramp installed within a large cul-de-sac area because it would provide too much beach access by locals, including that no one would be provided to police it. He said if this proposal is allowed to move forward then the neighbors are going to witness vehicles being parked in the cul-de-sac to access the beach for walking as the main use, which is all very nice, but he does not believe this is the proposed purpose of this project. He said the PC was provided good solutions tonight by the residents regarding other means of accessing the area in terms of servicing the sewer line. He explained that in the event of a catastrophic sewer line failure down by Lawson Creek, the First Street access would not do the CBJ a lot of good. He said the suggested access via a landing craft transporting service vehicles or backhoes makes a lot of sense, which would be a lot cheaper than what is being proposed. He said he hopes the PC recommends denial of this proposal, as their recommendation would carry a lot of weight with the Assembly, and they owe it to the residents of First Street to preserve the character of their neighborhood.

Ms. Lowrey, Mr. Trego, and Mr. Jager. Ms. Lowrey stated that Juneau has a Tourist Best Management Practices volunteer program, and although not every tour operator is required to take part, it is an encouraged practice, and the citizens tend to like it because a telephone number is provided for anyone to report incidents. In terms of the use of First Street by tour buses and limiting such activity, she explained that this is not the appropriate venue to discuss this because it is not germane to the proposed project, so this issue cannot be resolved at this PC meeting. Regarding the design, she said the CBJ is proposing for the current toe of fill on First Street to be extended 32', which includes the existing drivable toe of fill area.

Mr. Bishop asked Mr. Trego to further explain the process that he envisions to maintain the sewer line, including what this might entail. Mr. Trego stated that in the past, in order to maintain local sewer lines is when the CBJ personnel has done so by walking between private properties in the area while carrying supplies to tap the lines. He said the plan in this area is to jet clean the sewer line out to remove sediment and debris, which is by using either a vacuum truck, or with a vacuum trailer that consists of a smaller piece of equipment that does not have a vacuum on it, so they would have to hand carry buckets of material to a nearby dump truck. He explained that in terms of background, the sewer line has been extended out to North Douglas where they have beach access, but in this South Douglas area the sewer line was installed in 1975 from St. Ann's Street through Savikko Park and down to the bridge to a lift pump station. He said from Lawson Creek down to the Juneau-Douglas Bridge area is where they used to have access until the state installed the roundabout, which is when they blocked an access road to the beach in that area, so the CBJ personnel was able to maintain that sewer line over the years until that time. However, the only area the CBJ personnel can maintain the sewer line now is through an access on private property where the Totem House is located off of David Street, so they have to gain permission to do so from that property owner beforehand. Even so, he said there is no access to the sewer line from Lawson Creek to the end of First Street from the roadside in South Douglas.

Chair Gladziszewski stated that if the CBJ personnel has been able to obtain permission from the private property owner near Lawson Creek, she asked why they cannot do the same somewhere else along the stretch from Lawson Creek to First Street. Mr. Trego explained that because of the steep embankment in this area, including the method in which the beach is laid out in South Douglas makes it is impossible to access the sewer line by doing so. He noted that at Lawson Creek where the pump station is so there might be an access point in that location, although the embankment along First Street to the beach is very steep, including near Lawson Creek Road. Chair Gladziszewski asked Mr. Trego to respond to the landing craft idea. Mr. Trego said this is a possibility, noting that people should realize when a sewer line backs up and gets plugged it floods homes, which places wastewater into the environment that causes health issues, so the CBJ personnel are tasked with maintaining all the sewer lines to prevent this from happening. He said they know this particular sewer line is half full now and it could plug up at any time, so this is the reason for this proposed project, which is to gain access to clean it out.

Mr. Bishop said it sounds as though Mr. Trego does not intend to use the vacuum truck in the proposed project area, and instead, a small vacuum trailer. Mr. Trego said in the past, it was thought that the CBJ personnel could use the vacuum truck and gain access because staff has walked in this area many times, which was when the past CBJ Fleet Mechanic that was on-site said he thought this would be possible. He explained that, if not, the Street Department owns a vacuum trailer, which staff thought about taking to this area, but they would probably have to do so using a backhoe, or loader, or a small 1-ton dump truck to pull the vacuum trailer. Mr. Haight said this sounds like they would be instituting a fairly non-traditional method of accessing this sewer line to maintain it, so he asked if the CBJ might entertain contracting such work out, including possibly maintaining this sewer line on a more frequent basis. Mr. Trego said that could be a possibility, explaining that in an emergency “timing is of the essence” if this sewer line happens to plug up due to the volume that flows through it.

Mr. Watson stated that assuming the CBJ was provided access they are asking for, he questions how often Mr. Trego anticipates providing maintenance to the sewer line along the beachfront side of South Douglas, as compared to other sewer lines in the city. Mr. Trego said the CBJ personnel makes rounds in an attempt to clean other sewer lines out every three years, so this particular sewer line would be within that same cycle. Mr. Watson said fire department personnel expressed concerns about access with emergency equipment in this area, including that the PC heard testimony tonight about neighbors being willing to cooperate, and he is sure they will, but if there happens to be an activity taking place in the neighborhood and that area is difficult to access because other vehicles are parked along First Street, he asked how long it might take a fire truck to exit this area if it was required to respond elsewhere in an emergency situation. Mr. Jager said it would depend on the type of apparatus the fire personnel is driving, e.g., a fire engine could do so, or a ladder truck that would require more space, or an ambulance could do so as well, including the person’s experience with driving a particular apparatus, and the comfort in their ability to maneuver it. He explained that when the CBJ contemplates servicing the First Street area, they also have to take into account that if they are going to do so, and then the driver receives another emergency call and is directed somewhere else in town then they would have to, but he does not know what the exact turn around time is now. Mr. Watson said it is safe to state that the fire personnel probably would not want to run a ladder truck down First Street since most of the homes contain one story, so they would probably choose to use a fire engine. Mr. Jager said the only reason they might have a ladder truck on scene is because it

carries specialized equipment that the fire personnel requires for basic structure fire fighting, including that it is able to provide increased water flow through larger hoses.

Mr. Miller said he would like to further explore the hammerhead-style turnaround possibility. He said he understands that the regular scheduled maintenance of this particular sewer line would certainly be better than having to respond on an emergency basis. He stated that if an emergency happened with this sewer line tomorrow, e.g., the CBJ personnel attempted to drive an excavator off to the side of the proposed area, and attempted to find an area where they could empty a dump truck full of fill just so they could drive off of First Street to gain access to the sewer line then doing so would be nearly impossible this time of year because everything is frozen solid. That said, he asked if something less might be an alternative versus what is currently explained in the report, e.g., the hammerhead-style turnaround, which is not perfect, but it is better than anything else being proposed, such as a ramp that goes straight out into Gastineau Channel. Therefore, when the CBJ representatives stated that the current proposed hammerhead-style turnaround idea described in the report does not quite fit or work, whereby he asked Ms. Lowrey to explain this. He said he would also appreciate being provided a specific drawing of what this concept actually looks like, so this is part of the record as a concept that has been explored at the request by the residents of First Street, including that when the PC sends their recommendation on to the Assembly then it might carry more weight. Chair Gladziszewski stated that people who reside on First Street have stated that a hammerhead-style turnaround would work, although Ms. Lowrey has not yet convinced the PC that it would not. Ms. Lowrey said one testifier said he did not take measurements due to the snow in the area, and another stated that maneuvering a fire engine would not work if they were to go with the hammerhead-style turnaround alternative, which are conflicting remarks among the neighbors. She said she is a draft person by trade, explaining that she placed this hammerhead concept in AutoCAD (a computer aided drafting software program), and she drew up the standards using the existing property lines. She noted that two things that she noticed immediately were the limited radiuses required to turn around in the hammerhead, or else they would have to do so by crossing private property, or backing out. In addition, running the length of the hammerhead would require excavating the hillside, and then constructing a rock retaining wall, which is not impossible, although it would not be real functional. She noted that she invited a representative of the CBJ Streets Division to provide testimony to the PC regarding snow removal in hammerheads. She noted that this would be doable, but it would not be as efficient as what a cul-de-sac could provide. She said the current hammerhead design does not impact the location of the access ramp, which is a separate issue and the reason why this project first started in 1993. She stated that there was testimony provided regarding possibly jutting out the access ramp into Gastineau Channel, although she does not see how doing so would benefit anything, and in order to do so it would require revising the Corps permit for the increased amount of fill that would be required, including the impacts of catching intertidal debris and general erosion. Furthermore, she stated that in order to drive equipment on an access ramp it would have to take place during very low tide, but this would cause the least amount of impact if it parallels the existing shoreline. She noted that it was later on when the cul-de-sac alternative was introduced to provide for some sort of turn around area. She said she is limited by the fire code to meet its standards in terms of designing the cul-de-sac. Mr. Miller said he serves on the Wetland Review Board (WRB), and he has learned from biologists serving on the Board how small salmon fry use these types of shore areas during high tide, which he believes would be a concern regarding this proposal. He explained that it would impact fish habitat if an access ramp jutted out into Gastineau Channel because such a ramp would interrupt a portion of the waterway, so having the ramp parallel the shoreline seems like better idea. Even so, he does not know if it is possible to move the access

ramp further back from the hammerhead area. Ms. Lowrey said the intent of the design is to continue the toe of the slope edge around to extend along the existing topography, whereby she noted that the access ramp would have a gate installed to prevent access when CBJ personnel are off-site.

**BREAK:** 815 to 8:27 p.m.

Public testimony was closed.

Commission discussion - None

Staff recommendation: that the PC recommend that the Assembly approve development of a cul-de-sac and access ramp at the end of First Street in Downtown Douglas as described in the Project Description and Site Plan per CSP2008-00012.

Commission action

**MOTION:** *by Mr. Miller, that the PC continue CSP2008-00012 to the March 8, 2011 PC meeting in order to provide the applicant additional time to develop drawings of the hammerhead-style turnaround and an access ramp design option for the record.*

He stated that he would like the applicant to explore the possibility of the hammerhead-style turnaround and an access ramp, and he realizes that Ms. Lowrey already said that with the AutoCAD drawing this does not fit. However, during the break, he viewed a drawing on the CBJ web site that Ms. Lowrey pulled up, which shows that it does not work, so this should be included as part of the record and the next PC meeting to document it.

Chair Gladziszewski stated that at the October 14, 2008 PC meeting the Commissioners asked for "The consideration of a hammerhead-style turnaround," but only one sentence was provided regarding this with no drawing, so she too would like for the PC to view an actual design, and for the Commissioners to be as specific as possible tonight in stating what is expected of the applicant.

Mr. Haight said he concurs with Mr. Miller, noting that all of the alternatives have to be equally explored, which will need to be re-presented to the PC, and then to the Assembly. He noted that a drawing was provided of the cul-de-sac alternative, including a similar drawing of the Capital View Court alternative, so the request for the applicant to also provide a drawing of the hammerhead-style turnaround is appropriate, including what options would/would not work within it.

Mr. Chaney said previous discussions were provided regarding the feasibility of a landing craft option, which might be worth looking into as well. Mr. Haight said this option might be worthwhile exploring specifically in terms of maintenance of the sewer line in this area, which is regardless of this proposal. He said it appears that the CBJ has quite an extensive amount of inaccessible sewer line in the South Douglas area even if an access ramp was installed at the First Street area location. In addition, another concern expressed was driving on the beach, which would be problematic, so it appears that this is non-traditional sewer line maintenance has to be explored more carefully. Mr. Miller said he does not imagine that the landing craft option would be the most economical method in which to maintain this particular sewer line system.

There being no objection, it was so ordered and the PC continued CSP2008-00012 to the March 8, 2011 meeting.

## **X. BOARD OF ADJUSTMENT**

### **VAR2010 0035**

A Variance Request to reduce the side yard setback from 10' to 1' for an existing garage.

Applicant: David A. Miller

Location: Mendenhall Peninsula Road

#### Staff report

Ms. Jones stated that this request is for a Variance to reduce the side yard setback from 10' to 1' for an existing garage. In 1987, she said a building permit was issued for a carport and the setbacks applied at that time were 10' from side yards, and the zoning district was R-12. She showed a slide of the carport that was constructed, which was never inspected. She showed a slide of the as-built submitted that depicts that the structure was to be a bit over 13' from the property line (attachment B). She showed the Assessor's photos taken in 2007 (attachment A). She showed a photograph of how the structure appears now, which was enclosed and made into a garage, which also shows how close the structure is to the side yard property line. She noted that in 1993 an additional as-built was done, which was when they found that the structure was actually a bit more than 1' over the property line. She noted that at that time two original survey monuments were recovered and are highlighted on the slide with a red arrow, which were found in to be in error. She noted that where the structure is from the property line is approximately 13', so if the original survey monuments were accurate then the structure would have met the height requirement. She noted that if the Board of Adjustment denies the requested Variance then a 10' side yard setback would be required, and approximately 25% of the building would have to be removed or relocated.

She said staff received a telephone call from a person asking when public notice was provided, and an adjacent neighbor expressed a concern with the drainage and increased use of the structure since it was enclosed, including safety concerns for future development. She provided a photograph submitted by an adjacent neighbor, Mr. Jones, showing drainage installed along the edge of the subject structure. She noted that the drainage plan currently submitted does not address roof runoff, and the eave closest to the property line appears to extend beyond it, including that a portion of the drainage appears to have been installed on a portion of the neighboring lot. She said the neighbor is also concerned about increased use of the structure since its enclosure, as the original intent was for a boat storage/carport, but the neighbor states that the enclosed structure is being used on a daily basis. She explained that the neighbor is also in the process of obtaining a Variance for a panhandle subdivision on his lot, and his concern is that the subject structure is so close to the property line that this might be a safety issue with his future development plans on his property.

She said staff recommends that the Board of Adjustment deny the requested Variance, noting that conditions were provided in the event additional information is presented, and if the Board of Adjustment makes positive findings to grant the requested Variance, VAR2011 0035, the variance criteria that are not met are findings 1, 2, 3, and 6.

#### Public testimony

Kristen Miller, 1335 Mendenhall Peninsula Road, said her husband is Dr. David Miller. She stated that she submitted eight photographs, and a recent as-built survey found in the Blue Folder, which she will describe, respectively, as follows:

1. Is a view from the structure looking down towards the wetlands;
2. Shows the steepness of the driveway and a bit of the contour;
3. Shows two corners of the structure encroaching into the side yard setback;
4. Her house from an area of newly accreted land looking up towards the Mendenhall Peninsula Road, and this shows the steepness of the terrain;
5. Shows the old survey marker inaccurately labeled, with her husband standing near the corner of the structure, which is the 1.8' corner, with a tree stump that has been circled on their property;
6. Depicts the survey marker now accurately labeled at 4.8', which was agreed upon by both parties, noting that they did not determine where the property line was until both parties went through their accretion processes, and then new surveys were conducted, whereby the new surveyors agreed that this is in fact the property line. She said her builder, Alan Wilson, is in attendance tonight. She explained that she and Mr. Wilson reviewed these areas to depict where the boundary line is in their closest approximation. She stated that her husband is standing near the corner of the structure, which is at the 4.8' corner from the neighboring property line, with the same tree trunk circled as in photo 5. She said this stump is the tree that the adjacent neighbor claims that they cut down on his property, but photographs 5 and 6 clearly show that it is not on his property;
7. Provides a close-up view of the rear corner of the eave of the structure, with their driveway to the left, and then a cleared area to the side, which Mr. Jones describes as an "access road." Instead, she said it is a flat area that the previous owner, Steve Torok, built based on the erroneous survey markers. She noted that this is an area where all the vegetation was previously removed, which remains to be the case since they have owned the property, so it has probably been this way for 20+ years;
8. The eave at the front of the structure, which is the only one that might be within the side yard setback area by a short amount, noting that Mr. Wilson will speak to the PC about this later on; and
9. The most recent as-built survey by Randal Davis completed in 2009, and Mr. Wilson has drawn contour lines and provided points of information for the Commissioners to reference when he reviews this with them later on. She said this shows that the structure was built in this area mainly for safety purposes and vehicle turn around maneuverability.

She stated that in addition to these documents and the slides that Ms. Jones previously provided are the most helpful, and the 1986 plat Mr. Torok originally submitted with his initial application for building this structure, including the 1993 Kirchner as-built survey that shows the monuments that Mr. Torok relied upon.

She referred to the 1986 plat, stating that Mr. Torok designed the structure to be 13' from what he believed to be the side yard setback property line based on the placement of the previous survey markers, which they believed as well when they purchased this property from him. She said this was until Mr. Jones discovered a 1993 as-built survey, which showed that those survey markers instead had an alternative property line, which is when they discovered that they had to figure out which one was correct. She explained that when they bought the property in 2002 they had no knowledge this was an issue, and Mr. Jones has resided on the adjacent property since 1990. She noted that Mr. Jones did not bring this to their attention and he never seemed bothered by the location of the structure, but this only came to light in the last six months when

he submitted his application for a panhandle variance, which they opposed, and then Mr. Jones complained regarding their structure two weeks after that.

She stated that Mr. Torok planned this structure in 1986, although they do not know exactly when he built it, but it was obviously completed by 1993. She referred to the as-built survey completed in 1993, stating that it shows the structure as having six sides, not three. She said the various submissions from Mr. Jones claims that they actually expanded this from a three-sided structure to a six-sided structure, but they actually did nothing of that kind, as it is the same structure that has been in place since 1986 or 1987, and Mr. Wilson can speak to this because he is the builder that did the renovations to it. She said another document that illustrates this as well is the 2007 Assessor's photographs (attachment A) in the staff report, which is exactly what they bought when they purchased the property in 2002. She explained that these two photographs show different sides of the structure in existence the entire time. She noted that they simply installed garage doors on the two front sides and ultimately had to open up the wall in the back to ensure they did not disturb anything that Mr. Jones was concerned about in terms of going around the property. She said they have only provided slight modifications to the structure subsequent to August 2007, which were done gradually. She said this entailed pouring a concrete slab, there already was electricity and they just improved it a bit, and these various improvements have taken place since 2004, and they confirmed them with Charlie Ford of the CBJ that they did not need to acquire a building permit to do so, as each one was small enough, so they fell within the \$5,000 maximum limit. She said they were not technically in violation of anything because they provided the improvements over time.

She said they inherited this problem, and they are now trying to figure out the best way to deal with it. She explained that they have met with the CBJ staff on a couple of occasions, and they understand there are various recommendations that have been made. She noted that they have already asked Mr. Wilson to go ahead to do all of them as soon as they obtain permission from the CBJ. She noted that this includes addressing drainage, which they have already addressed and improved in the course of making modifications to the driveway in a significant manner, which benefited Mr. Jones' property more so than what he had in the past. She said they also cut back the eaves to ensure they do not encroach over the side yard setback property line, installed firewalls, etc., to make the structure as unobtrusive as possible, and to make sure it is up to code in all respects.

In the summer of 2007, she said her husband hired a tree faller to take down a tree on their property that was threatening their home. At that time, she said her husband had a cordial conversation with Mr. Jones regarding a dispute about where the property line was, but at the end of the day the blue line is what Mr. Torok and they believed to be the property line, but the black line ultimately was determined to be the actual property line (attachment B), so tree that they took down was on their property (photographs 5 and 6). She said they have always gone through the proper channels, but they have been depicted as being greedy and terrible neighbors, which is not true.

Mr. Watson asked Mrs. Miller to address the daily use of the structure that Mr. Jones mentioned in his submission. Mrs. Miller said it is their understanding that Mr. Torok always used the structure as a garage/carport to park his vehicles, and the other accessory structure on the opposite side was used as a workshop, which contains tools, a workbench, and a woodstove. She noted that they have continued to use different areas of the structure in the same vein by parking vehicles in the carport, and they use the accessory area for storing skis, equipment, and gear.

She said their use of that structure has not increased at all so it is exactly the same, noting that Mr. Jones did not previously complain about their use since they have lived there, which she believes stems from Mr. Jones' disappointment that they are not supportive of his Variance request.

Mr. Miller stated that Mrs. Miller mentioned that electricity was already installed to the structure when they purchased the property, so he asked if it has been upgraded since that time. Mrs. Miller said yes, noting that Mr. Wilson will speak to the Board of Adjustment about the changes he has incorporated.

Chair Gladziszewski stated that allegations were made that a lot of work has been done, but a building permit was never issued. Ms. Jones explained that the most current as-built survey shows a rectangle-shaped building, versus a six-sided structure on the initial building plans, but with no electricity, so whatever point the structure was hooked up to power would have required a building permit. She stated that she is unaware of when the electricity was installed, i.e., whether it was when the Millers owned it, or before when Mr. Torok did, as the structure was never inspected, but the improvements over time might not have required the Millers to obtain a building permit, although electricity installation always requires one beforehand.

Alan Wilson, 7290 Glacier Highway, owner of Alaska Renovators, Inc., offered to answer questions of the Board of Adjustment. Mr. Miller stated that he is sure Mr. Wilson is aware that a building permit is required for electrical installation, so he asked him to explain the situation regarding this structure. Mr. Wilson said he removed outdated incandescent shop lights, and installed compact florescent fixtures throughout the structure. He also replaced electrical switches and plugs, including adding a separate plug for heat. He said there were no changes to the existing electrical service, which remains as is per original construction. Mr. Miller stated that Mr. Jones mentioned that when the Millers performed drainage improvements in the side yard setback area, they might have encroached onto a portion of his adjacent property, so he asked Mr. Wilson to elaborate on the drainage project. Mr. Wilson stated that he was in the process of conducting landscaping work on-site in July 2008 to remove a few trees in the rear area of the wetland side of the property, which is when Mr. Jones approached him about the property line discrepancy. He said this is when the survey monument issue first came to light, so in an effort to resolve this he spoke to Mr. Jones who stated that the water from the side yard setback was running from the drainage area and cutting across to the left of the stream onto his adjacent property. Mr. Miller asked if that was natural drainage. Mr. Wilson said yes, and he explained that in an effort to be good neighbors he contacted the Millers who were out of town, which is when he told them that Mr. Jones was not happy with him regarding the drainage work he was conducting, including that he did not consult with Mr. Jones beforehand. He said the Millers requested that he do what he was able to in order to appease Mr. Jones. Therefore, he visited Mr. Jones the following day, and shared the drainage plans with him, which is when he explained that he intended to install a curtain drain across the front of the structure, and he would re-slope all the drainage along the driveway into an underground drain pipe, including installing a trench with another underground pipe behind the structure that was connected to it. He also explained to Mr. Jones that he only had 2' of area available to go around the corner, which was going to be a tight fit, and at that point they were both happy with his plans. He stressed that he believes the drainage is on the property line, not 2' over it as the CBJ Engineering personnel indicated in the staff report, so he feels that the drainage meets the CBJ code requirements.



In regards to the other building permit issues, he explained that the current CBJ code allows for improvement work under \$5,000 in value, as well as some work involving mechanical systems, i.e., electrical, plumbing, etc., without a building permit; plus a few exclusions for direct replacement of certain items. He explained that he started providing improvements to the structure in 2004, and has proceeded to do them to date. He stated that in hindsight, the cumulative effect of all the individual projects undoubtedly should have been permitted if they were done at the same time, but he confidently feels that had they envisioned and completed the project all at once to the point it is today then he certainly would have obtained a building permit beforehand back in 2004, although the improvement projects evolved over time.

He said a 200-gallon fuel tank is located at the rear of the property outside the 5' setback, so if this Variance is granted then the Millers will have a new as-built survey conducted, which is when the fuel tank will be relocated for compliance purposes.

He stated that he does not believe meeting staff's recommended conditions would be a problem, and the Millers have already requested that he incorporate these changes if this Variance is approved.

He referred to the 2009 as-built survey Mrs. Miller provided, stating that the heavy blue line highlights a creek that runs down the property. He said the contour lines are coming off the Mendenhall Peninsula Road area and they drop down onto the first of three flat areas: the first flat houses the structure; the second flat is where the residence is located; and the third flat is the front yard area where the drainage work was taking place when the property line issue became a concern. He said he obtained the elevations of the property from Google Earth, noting that it appears to be at a 118' elevation where the structure is located, which has an 18% to 20% grade down the existing driveway. He said the two rectangle-shaped drawings in front of the garage are about the size of standard automobiles, and this area depicts the existing turn around vicinity that the Millers currently have to maneuver in order to exit the driveway, versus backing out onto the Mendenhall Peninsula Road. He said on one side of the garage is where the Millers store snow. He noted that the subject structure was built at an angle to the property line, which facilitates accessing the garage, and only one of the two corners of the structure are within the side yard setback, not the entire structure.

Mr. Miller stated that staff has recommended denial of this Variance, although if the Board of Adjustment chooses to do otherwise then six findings have to be addressed and found in the affirmative, and certain conditions would be applied. He noted that findings 1, 2, 3, and 6 were found as not being met by staff, and the applicant provided a written rebuttal to them, whereby he asked if Mrs. Miller wishes to elaborate on them. Mrs. Miller said she addressed all the findings in their letter with the idea that once they adopt and implement all the conditions then all the findings would be met. Mr. Miller referred to finding 3, stating that it relates to the fact that the Variance will not cause injury nearby property. He noted that Mrs. Miller addressed the tree that was on their property that was removed by her husband because it was threatening their property, which is not on Mr. Jones property. He said the Board of Adjustment heard from Mr. Wilson regarding the drainage issue. He asked Mrs. Miller to further elaborate regarding removal of the brush from the side yard setback area. Mrs. Miller said she and her husband did not remove any vegetation in this area, but Mr. Jones claims otherwise, although Mr. Torok did all that work when he believed that entire area to be his property.

Chair Gladziszewski stated that the neighbor Mr. Jones submitted his own Variance application, and he suggests that this Variance somehow affects his request. Ms. Jones said she understands that Mr. Jones is concerned that the location of the subject structure might pose a safety hazard while he or visitors drive down his proposed panhandle driveway. She noted that the Miller's existing driveway is in a different location, and if he received approval for the panhandle subdivision then Mr. Jones would only be able to have one driveway access, which would have to reach both homes on his property, but it would not affect the approval of the Millers structure being in its current location or approval of the Miller's Variance, although Mr. Jones proposed driveway would have to be at least 2' from the property line, including that the grade cannot exceed 15%. Mrs. Miller added that Mr. Jones would not be able to build a driveway straight down along his side of the adjoining property line, and instead, it would have to be arched just as theirs is otherwise they would not be able to safely drive vehicles on it in the wintertime.

Public testimony was closed.

Board discussion

Mr. Miller said he commends staff regarding their work on this is a complicated case, and even so, he thinks he can revise the finding so they are met. He explained that any person that applies for an application deserves as much thought as the Board of Adjustment is able to provide in an attempt to make them work.

**BREAK:** 9:10 – 9:15 p.m.

Staff recommendation: that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR2010 0035.

In the event that additional information is presented at the hearing, the Board of Adjustment makes positive findings and decides to grant the requested variance, staff recommends the following conditions:

1. Prior to issuance of a building permit, the developer shall submit to the CBJ Engineering Department, a detailed drainage plan which includes provisions for managing stormwater runoff which details the drainage facilities to be included as part of the development. No building permit shall be issued until such plans are deemed adequate and approved by the CBJ Engineering Department.
2. Prior to Certificate of Occupancy, the structure shall meet all Title 19 building code requirements for fire rated materials, eave projection, and location of stove oil tank.
3. The as-built survey shall be required to show the eaves and rain gutters meet setback requirements approved by this variance prior to issuance of Certificate of Occupancy.

Mr. Miller commented that the applicant's response to the criteria was provided via a letter by the Millers on page 4-7 of attachment E.

**MOTION:** *by Mr. Miller, that the Board of Adjustment revises the Director's analysis and approves the requested Variance, VAR2010 0035, and makes revised positive findings for 1, 2, 3, and 6, including revising conditions 1 and 2, 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;*

*The criteria provided by the applicant (page 4 of attachment E) notes that the location of the structure has been in place in its current location for decades, and through no fault of their own the applicant found that the previous survey monuments installed by a professional surveyor were erroneously placed before they purchased the property, and therefore a relaxation would provide them substantial relief. This includes the fact that there are possibly many other structures in the Mendenhall Peninsula Road area that have sub-standard lot widths surveyed by the same professional surveyor that violate CBJ's setback requirements as well, so it is consistent with justice to other property owners.*

*This criterion 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;*

*The intent of this title provides for adequate open space for light and air, and is provided for from the side yard setback area of 2' at one corner, including 5' at the other corner of the structure, so there is minimal disruption of air and light. The initial as-built survey was erroneous; including that the intent of the placement of the structure was thought to be outside of the side yard setback area, which was the original owner's intent. The applicant addressed safety and welfare in their written response, which is preserved.*

*This criterion is met.*

- (3) *The authorization of the variance will not injure nearby property;*

*The tree that was taken down was done so on the applicant's property, so the statement by the adjacent neighbor saying it was located on his property is erroneous, and therefore this does not injure nearby property. The clearing around the structure in the side yard area occurred prior to any work being completed by the applicant, so they did not injure nearby property regarding this aspect as well. This structure has been in place for 20+ years and has never been the cause of injury to nearby property, and the applicant does not use this structure any more than the previous owner did.*

*This criterion is met.*

- (4) and (5) (A)-(D)

*These criteria are met, per the staff report.*

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

*There are identified benefits and detriments of this variance proposal; however granting of this variance will not result in more benefits than detriments to the neighborhood, which is true as is stated in staff's finding, including testimony provided by the applicant and their builder regarding the specifics of drainage and discussions with the adjacent property owner on how this occurred. The applicant opened up the rear of the structure*

*at their own cost once they discovered the erroneous placement of the property line, which was initially provided by a professional surveyor. The removal of the tree was rightfully taken down by the applicant, which is on their property, not on the adjacent property owner's parcel. If this variance is not provided, the applicant will have to embark on a lengthy and disruptive process of remodeling, or tearing down the structure, and then building a new one elsewhere on their property, so the granting of this variance will result in more benefits than detriments to the neighborhood.*

*This criterion is met.*

*The Board of Adjustment retains Conditions 3 as is, and revises Condition 1 and 2, as follows:*

- 1. The applicant shall apply for a building permit. Prior to issuance of a building permit, the developer shall submit to the CBJ Engineering Department, a detailed drainage plan which includes provisions for managing stormwater runoff which details the drainage facilities to be included as part of the development. Gutters shall be installed. No building permit shall be issued until such plans are deemed adequate and approved by the CBJ Engineering Department.*
- 2. Prior to Certificate of Occupancy, the structure shall meet all Title 19 building code requirements for fire rated materials, eave projection of 4 inches, and location of stove oil tank.*

Mr. Miller said requiring the installation of gutters on the structure will be a key component to minimize potential runoff impacts to adjacent property, and the gutters are to be directed to flow into the existing drainage line. He noted that the applicant is already handling the surface runoff as best they can by directing the flow off of the property.

Mr. Bishop referred to finding 6, stating that it is important to recognize that more than likely if the applicant was required to demolish the structure then they would have to move it elsewhere on the property, which would open the area up even further, so doing so would interfere with the privacy of the adjacent neighbor, and therefore this is an advantage to not have this happen. Furthermore, he stated that a building permit should be required for further improvements that have to be made in order to lessen encroachment of the eaves into the side yard setback, and to address the electrical issue. Mr. Miller said it is his understanding that once the variance is approved then the building permit will be issued. Mr. Bishop said there is a possibility that the applicant could withdraw the permit, so he would still like it stated in the conditions that the applicant shall apply for and obtain a building permit for the specific purposes as specified in the conditions.

**FRIENDLY AMENDMENT:** *by Mr. Bishop, that the Board of Adjustment states that the applicant shall obtain a building permit.*

Mr. Miller accepted Mr. Bishop's friendly amendment, which was included in the revised Condition 1 of the motion.

Mr. Chaney suggested that the Board of Adjustment specify the size of the eaves. Mr. Miller stated that if the building code states that the eaves should be 4 inches (page 3 of the Analysis in

paragraph 1), he believes this would make for a better structure, whereby he revised Condition 2 to include this in the motion.

There being no objection, it was so ordered, and VAR2010 0035 was approved with amendments to the findings and conditions by the Board of Adjustment.

**XI. OTHER BUSINESS - None**

**XII. DIRECTOR'S REPORT**

Upcoming meetings

Mr. Pernula said the Historic Resources Advisory Committee will be meeting on March 2, 2011 to discuss the design of the new building proposed by Sealaska Corporation for the pit area.

He said the next PC meeting will be held on March 8, 2011. Chair Gladziszewski said she will not be in attendance at that PC meeting, and requested staff to inform Vice Chair Satre of this; Mr. Pernula offered to do so. He stated that the Agenda includes a rezone request of the Breakwater Inn, which is currently zoned D-5 Residential. He said the current zoning does not make any sense with regards to what was built and its current use, so the applicant is requesting a rezone to Waterfront Commercial (WC). He explained that this rezone request poses issues in that it is in a higher medium-hazard avalanche area. Mr. Miller asked if there is a connecting property of WC elsewhere in the area near the Breakwater Inn, or whether it would be spot zoning. Mr. Pernula said it would not be spot zoning, noting that the area is zoned WC directly across from the Breakwater Inn on the other side of Egan Drive, and the Comp Plan shows the Breakwater as being designated WC as well. He said the Breakwater Inn is in somewhat of an odd location because they constructed Egan Drive between these properties, and when the PC was in the process of updating the Comp Plan a couple of years ago they reviewed this area, which is when they decided to leave the zoning with a WC designation. In addition, he said another case on the Agenda is for an extension of USE2009-00035 for 24-unit residential condominium on Cordova Street.

He stated that a Subdivision Review Committee meeting will be held on March 11, 2011 to review the draft Subdivision Ordinance.

He stated that at the upcoming PC meeting on March 22, 2011, it will include review of a side yard setback variance request, and the proposed noise ordinance.

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

Mr. Miller said the WRB met last week when the airport requested to make changes to their plans for the slough at the south end of the runway, and per the Environmental Impact Statement (EIS) they were supposed to connect two sloughs back together in that area. He explained that at one point they were together, but the airport revised the safety zone, so there is a lot of money that the airport could save by not having to do this. He explained that airport maintenance personnel has drivers of vehicles who use that area, so lights extend past the south end of the runway, and they would have to construct extensive bridge work in order to provide access over a manmade slough. He said the airport representative presenting the proposal to the WRB did not mention money, although he found it to be fairly interesting when a fish biologist on the

WRB described how fish might/might not use the slough area during high tide, although the main criteria for not wanting the two slough areas reconnected is because it is too flat, so if they were to dig the slough across at the end of the runway then they would have a level slough that would hold water, but it would attract waterfowl, which is hazardous to flying aircraft. Therefore, the WRB tentatively recommended approval to provide further research on this, but the plans by the airport will have to be provided to the Federal Aviation Administration representatives in Anchorage, and a little less than half of the WRB did not vote for it. He explained that a comment by a WRB member was that “You gave the WRB 90 minutes to think about this, but the EIS took nine years,” so he is not sure what is going to happen with this proposal. Chair Gladziszewski stated that since this project took the airport nine years to obtain an EIS then it is going to take quite a process for the airport to try to revise it. Mr. Miller said this tends to be the same feeling by the WRB. Mr. Pernula said this also involves a huge mitigation package associated with that airport project, so he questions how the proposal might impact that. Mr. Miller agreed, stating it is like “opening up a can of worms,” although he is not really sure how the mitigation package might be impacted.

[The January 3, 2011 Public Works & Facilities Committee (PWFC) minutes, and January 31, 2011 Assembly Lands Committee minutes were provided by staff to the PC for their perusal.]

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

Mr. Watson stated that cul-de-sac proposals have been frequently presented to the PC, but he was under the impression that the CBJ Engineering personnel did not care for cul-de-sacs. He requested staff to look into this to figure it out because cul-de-sacs are an important part of development, and the PC reviewed one case where CBJ Engineering requested to remove a cul-de-sac in the valley, and yet they proposed tonight to install one at the end of First Street. Mr. Pernula stated that having a cul-de-sac is better than a dead-end street because CBJ Engineering personnel wants to finish plowing snow as quickly as possible in order to get to other streets to do the same, and they do not want to have to go back and forth on certain streets, which takes too much time. He said he believes CBJ Engineering generally prefers not to have cul-de-sacs, and instead, prefer streets that are connected all the way through where there is a ROW, but with the case on First Street that is not going to happen. Chair Gladziszewski stated that the PC heard CSP2008-00012 over 2.5 years ago, and now it is back before the PC, although it appears that the applicant did not hold any neighborhood meetings, so it appears as though Ms. Lowrey “picked it up out of the ashes,” and then she thought it should be on the Consent Agenda, although the entire neighborhood is against that proposal, so there was a lack of communication. Mr. Pernula agreed, stating the he recalls when the PC reviewed this proposal in 2008 they requested specific information, which Ms. Lowrey provided, and she must have assumed that was all that was required. He said this hearing had more public in attendance, versus at the last one, including that the applicant had the issues better laid out.

#### **XV. ADJOURNMENT**

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

There being no objection, it was so ordered and the PC meeting adjourned at 9:46 p.m.