

MINUTES

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

REGULAR MEETING  
March 8, 2011

**I. CALLED TO ORDER**

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

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

Commissioners absent: Maria Gladziszewski, Nicole Grewe

A quorum was present.

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

**II. APPROVAL OF MINUTES**

February 8, 2011 – Regular Meeting

**MOTION:** *by Mr. Rue, to approve the February 8, 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 requested that the PC inform him of the status regarding the timeline of the draft noise ordinance review. He explained that he read the minutes, and attended most of the PC meetings when this item was discussed, although he has yet to report to the Assembly on its status. Chair Satre said he was not in attendance at the last PC meeting, so he deferred to the next senior member of the PC Mr. Rue, including inviting other Commissioners who wish to respond. Mr. Rue said at the last meeting it was agreed that Planner Mr. Lyman would re-write the draft noise ordinance. He said Mr. Lyman was to separate the re-write of the proposed noise ordinance into three subject areas to reorganize land use, noisy uses, and continuous noise. Mr. Pernula stated that additional edits would be made based on changes that occurred during the last meeting as well. He noted that Mr. Lyman created a new draft that was provided to staff today, which will not be on the next PC agenda, and instead, it will be presented at the April 12, 2011 PC meeting. Chair Satre asked Mr. Doll if it might be helpful for the PC to request staff to draft a

memorandum updating the Assembly on the status of the proposed noise ordinance. Mr. Doll thanked Chair Satre, although he does not believe this is necessary. He explained that from this discussion and whatever conversation he may have with the City Manager, he believes he can stimulate the Assembly in the right direction. However, he noted that the February 8, 2011 PC Minutes refer to four classes of noise, which are: 1) Steady and continuous sounds; 2) Land use sounds; 3) Nuisance sounds; and 4) Impulsive sounds, so he questions how this differs from what the PC has been perusing to date. Mr. Miller the PC was working with two different pieces by attempting to combine nuisance and land uses into one ordinance, which was very difficult, so the intention was to separate these uses in the re-written ordinance, and then the other continuous and impulsive sounds would fall under either of those uses. Mr. Doll asked if Mr. Miller imagines two separate ordinances. Mr. Miller said he does not, and instead, it might consist of two separate sections within one ordinance.

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

**VI. CONSENT AGENDA**

Chair Satre announced that there is one item on the Consent Agenda, and inquired if there is public comment on it. No one from the public had comments, and no one from the Commission had questions.

**MOTION:** *by Mr. Watson, to approve the Consent Agenda, as presented.*

There being no objection, it was so ordered and the case below was approved, as presented by the PC.

**USE2011 0002**

A Conditional Use Permit (CUP) for an 18-month extension of USE2009-00035: An Allowable Use permit (AUP) for a proposed 24-unit multi-family complex.

Applicant: Island Hills Association/Coogan

Location: Cordova St.

**Staff recommendation:** that the PC adopt the Director's analysis and findings and grant the requested AUP extension. The permit would allow the development of a 24 unit multi-family development in the D-18 zone on a 5.3-acre site accessed via Cordova Street with the following conditions:

1. A parking plan be submitted and approved prior to the issuance of a building permit. The revised parking plan will show a total of 48 parking spaces, 2 will be ADA accessible and one will be van accessible. No parking will be located in the northeast corner of the site in the sliver of land adjacent to the Cordova Street right-of-way or the D-5 single-family zoning district.
2. The contractor will not be allowed to operate any heavy construction equipment before 7:00 a.m. or after 4:30 p.m., Monday through Friday, or before 9:00 a.m. or after 4:30 p.m. on Saturday. Additionally, heavy equipment will not be allowed to operate on Sunday unless a permit is obtained from the CBJ Building Official.
3. A 10 foot vegetated buffer along property lines bordering the D-3 and D-5 zoning district is required. A site plan showing vegetated cover and the location and dimensions of the required screening will be submitted and approved prior to the issuance of a building permit.

4. A drainage plan will be submitted to and reviewed by the CBJ Engineering Department and approved prior to the issuance of any building permits.
5. A lighting plan will be submitted to and reviewed by the CBJ Community Development Department (CDD) and approved prior to the issuance of any building permits.

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

**VIII. UNFINISHED BUSINESS**

**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

Chair Satre said this item was continued at the February 22, 2011 PC meeting after the close of public testimony, and the Commissioners requested specific items to be provided by staff. He suggested that the PC hear the staff report, and then if the Commissioners choose to allow public testimony then a motion will have to be provided re-open it, noting that he hopes that the PC errs on the side of granting public testimony if facts from the new information warrants this.

Staff report

Ms. Camery referred to the Blue Folder items, stating that a letter was provided by the Douglas Advisory Board (DAB), dated March 1, 2010, specifically requesting that this project be continued until the March 22, 2011 PC meeting. In addition, public comment letters were provided by Renee UV Rey, dated March 6, 2011, and Scott Dornbirer, dated March 6, 2011; a letter from the DAB, and a motion on the project, including draft minutes from their meeting, dated March 7, 2011; and a comment letter from John DelGado, dated March 7, 2011, with a series of photographs. Furthermore, a petition was provided just before this meeting containing 10 to 12 more signatures in opposition to the project, which she believes is the exact wording from a petition submitted at the last PC meeting, which she passed on to the Commissioners.

She stated that at the last meeting the PC requested additional information to be provided by the applicant regarding the hammerhead and landing craft options for the proposed cul-de-sac and access ramp. She said the PC specifically wanted detailed site plans for these options, which the applicant provided. She provided a first slide of the original project design, which shows different site options that were reviewed. The next slide is hammerhead Option 1, which the applicant described in a memorandum to CDD, dated March 3, 2011 who states that it is not feasible because the roadway encroaches 118 square feet into a privately owned lot, and the hammerhead will extend 51.8' beyond the existing top of the bank onto the beach. The next slide labeled Option 2 is for a 120' hammerhead per the 2006 International Fire Code that would extend 68.2' beyond the existing top of the bank onto the beach, and is 9.8' beyond the limits of the proposed cul-de-sac. In addition, she said the applicant provided landing craft options for the access ramp from four different companies. She explained that the applicant's memorandum states, "Financially, one maintenance cycle for the sewer system via marine access is roughly twice the cost of installation of the First Street access ramp." She said she defers to the applicant to explain this in more detail.

Mr. Miller requested staff to elaborate on the PC's role regarding reviewing this City Project. Mr. Pernula stressed that this is a City Project, not a permit, whereby he cited the following:

“49.10.170 - Duties. (c) 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, the comprehensive plan, and the capital improvements program.”

He explained that the PC's role is to base their review of this project in regards to its compliance with the 2008 Comprehensive Plan (Comp Plan), the Capital Improvements Program (CIP), and Title 49. He said this City Project is not a permit that the PC can approve or reject, and instead, they can recommend to the Assembly that the CBJ should either go ahead with the project, or not, or go ahead with a modified project. Mr. Watson said if the determination by the PC this evening is that another site might be more suitable, he asked if this would it fall under 49.10.170(c). Mr. Pernula said if the PC determines that a superior site versus what is being proposed is preferred, so that might be the reason the PC recommends to the Assembly that the CBJ should not move forward with this project.

Ms. Camery said she neglected to mention that another Blue Folder item was provided by Mary Kay Pusich, dated March 8, 2011, which was inadvertently not listed on the cover page of the staff report.

Chair Satre said the PC continued this item at the previous meeting, so the Commissioners could make a motion to re-open public testimony, or continue from the point in which the motion was previously made at the last PC meeting. Mr. Rue commented that there appears to be additional public interest, ideas, and questions, which warrants re-opening public testimony.

**MOTION:** *by Mr. Rue, that the PC re-opens public testimony on CSP2008-00012.*

Mr. Watson said this project, and a separate rezone request are on the Agenda, so he requested that Chair Satre consider limiting public testimony to 4 minutes in order to provide the PC sufficient time to review both cases tonight. Chair Satre asked for a show of hands from the audience who wish to testify on these two cases, whereby he determined that it was not necessary to limit public testimony.

There being no objection, it was so ordered.

#### Public testimony re-opened

Autumn Lowrey, representing the applicant CBJ Engineering, said she provided two hammerhead and access ramp cul-de-sac options. She said there were questions from the neighborhood as to why the initial options would not work, and she reviewed the fire code during the break at the last PC meeting, which was when she decided to draft these two new options for the record at this PC meeting. She explained that Option 1 places the hammerhead equivalent with the existing edge of the road. She said the radius of 28' is required for a hammerhead according the International Fire Code, and it would cause an encroachment of 118 square feet into CBJ FR Lot 4, Block 41, Douglas Townsite. She stated that Option 2 does not address the hillside on the rear of the lot, noting that this area can be modified to accommodate for that while incurring extra expense, so this option could still work. She said this hammerhead option would extend 9.8' beyond the limits of the proposed cul-de-sac fill. She explained that both of these hammerhead

options would create a perpendicular break into Gastineau Channel. In terms of the landing craft/barge options, she was able to speak to four companies. She noted that there are five companies in Juneau that provide marine services with ramp capabilities, and they were all willing to do this type of project, but the greatest concern is in relation to their availability. She said scheduling ahead of time for general maintenance is doable, although in the event of emergency sewer situations it would be a "shot in the dark" as to whether they would be available or not. She said the landing crafts are based out of Auke Bay, and a barge service is located downtown. She said every landing craft/barge company spokesperson stated that when their landing crafts/barges are not out working they lose money, so they would not wait around for the CBJ to call them into service. She said the CBJ is looking at providing service and maintenance to the entire sewer system consisting of approximately 3,000 feet and 10 manholes within a 2-week window, which would consist of two landing craft/barge trips per day. She said one company quoted \$400 per hour, but most of them ended up estimating around \$3,500 to \$4,000 per day, which includes travel time. She said most of these companies would not sit a wait, so this would be an issue in terms of having to leave the equipment on the beach, which would succumb to tidal influence. Therefore, taking into account the 2 weeks it would take to run this operation at \$3,500 to \$4,000 per day, it would end up being more expensive than the initial proposed project. She noted that the ramp lengths were a concern by these companies who stated that they would like to explore this aspect beforehand to determine whether this type of shoreline service would work.

Mr. Rue asked if the applicant reviewed an alternative access point to the sewer system in the Lawson Creek area. Ms. Lowrey said this was done in 2008 when a different representative from CBJ Engineering initially presented this project to the PC, which was when they stated that one of the major factors was to protect the critical habitat. She said a driveway provides access to the pump station from the Lawson Creek area, which would need to be reinforced to allow heavy equipment to access the area. She noted that John DelGado's truck is shown in the photograph in the area, noting that it is difficult to tell where the edge of the bank is located, but it is fairly close to the driveway. She said she has grave concerns about making improvements in the area so heavy equipment can utilize it for sewer maintenance because doing so might impact critical habitat, which is much different than the First Street neighborhood concerns, including traffic. She said she and Ms. Camery discussed this today regarding what might be required when providing improvements in this sensitive area, although she is not fully versed on the various permitting processes by outside agencies of this type of project might entail, but it appears that such permits would probably be fairly extensive. Chair Satre stated that apparently Ms. Lowrey has not had a chance to more extensively review the Lawson Creek area as being an option for maintaining the sewer system in South Douglas. Mr. Lowrey said that the Lawson Creek area was previously reviewed as a possible area because of a sewer easement access, but it was previously determined in 2008 as not being suitable because it is located in a sensitive habitat area of the beach, which consists of Alaska Tidelands. She said that area is different than the CBJ right-of-way from First Street to from Capital View Court, which the neighbors consider as being a public beach. She said it was also determined that Lawson Creek is an anadromous stream, so that was not the preferred option because maintenance access would have to be created on non-CBJ property. Mr. Haight confirmed that maintenance is required in that Lawson Creek section of the sewer system. Ms. Lowrey said yes, adding that it is within the sewer easement access area.

Mr. Watson asked if the applicant reviewed the cost to construct the project. Ms. Lowrey stated that constructing the ramp without the cul-de-sac would cost about \$20,560, which includes mobilization, erosion and sediment control, and material being hauled in.

Chair Satre announced that the people who attended the last PC meeting when this case was reviewed, their comments are still on the record. He said new items were brought forth tonight, so any public testimony provided should address these new items.

Scott Dornbirer, 6750 Gray Street, Douglas, AK, said he owns Block 41, Lot 3 & 4 FR, so he would be directly impacted if this proposal moves forward. He said the turn around and access ramp on First Street should solely be on CBJ property. He referred to Option 1, stating that he is not sure if fire trucks really need 60' to maneuver a turn around, so the proposed toe of slope is probably bigger than is actually required. He said the ramp in the proposed area will be underwater most of the time, and the CBJ will only be able to access it during extremely low tides. He said the ramp would protrude into the Gastineau Channel and catch seaweed, dead fish, and debris, which will stink and become a bear attractant, so the CBJ should contemplate building a temporary ramp instead.

Kelly Corrigan, 1407 First Street, Douglas, AK, said his lot is located adjacent to the Dornbirer property. He said the employees requesting this City Project are working for their employer who is the CBJ, so others should not expect them to do any less than they are, although an independent entity should instead be looking into this problem to determine what is truly required, including whether there might be other possible sites, rather than First Street. He said he understands other sites are being used to maintain the CBJ sewer system right now, but in terms of this project, he said they might give private enterprise a chance to review it who might come up with a better plan. He stressed that an independent analysis should be conducted to collaborate the facts, especially potential impacts to wildlife, which he brought up before in one of his letters, explaining that there are a plethora of animals, i.e., ducks, birds, salmon, salmon smolt, etc., which would be impacted if this project moves forward. He said everyone in the neighborhood is against this proposed project.

John DelGado, 1300 First Street, Douglas, AK, said he provided several e-mails with colored photographs to staff and the PC today, and staff did not do them justice when they copied them to black and white. He explained that as Chairman of the DAB, he provided the PC with a motion regarding this case, including minutes of the DAB's unanimous opposition to the proposed project. Over the past couple of years, he has watched this project unfolding, and he reviewed all the different proposals that were presented. He said he voiced his opposition to this project at the last PC meeting as well as the entire First Street neighborhood, which should not be overlooked by the PC. He referred to the first photograph of the CBJ pump station at Lawson Creek, which shows access to it, the beach access, the generator building, and the location of the existing gated utility, which is easily accessible and maintained year round. He said this access point is about 1,200' from Crow Hill, and was identified by Tom Trego, the CBJ Public Works Wastewater Collections Supervisor, at the last PC meeting as being the beginning point of the inaccessible portion of the 1975 sewer extension system. He noted that Crow Hill is over 2,000' from the proposed project. He said the second photograph is of the same pump station at Lawson Creek looking south, which shows that this area has a gently sloping beach currently accessible off of an adjacent CBJ maintained road that he drove on this morning. He said the snow was graded, and this access road is gated, but it was frozen open so he was able to gain access. He said a sewer access point shown towards the top right of the photographs could be a

location for easy beach access, which is closer to the currently un-maintained area of the proposed access ramp off of Front Street. He said this area south of Lawson Creek could be converted to a permanent sewer system access site for less cost than the proposed project. He said the third photograph shows that the access road is wide and well maintained at Lawson Creek. He noted that a building constructed of cinder block is about 15'x20' that houses a CBJ generator, which supplies emergency generation to the pump station located on the right of the photograph so beach access could be easily obtained on the left, or further forward in this same photograph facing east. He said Lawson Creek is at least 75' to 100' beyond the slope of the beach in an area north of the proposed project. He said the fourth photograph is looking northeast towards the bridge, with Lawson Creek in the distance. Finally, the fifth photograph is looking northeast as well, although towards Juneau, with Lawson Creek to the left. He noted that the applicant previously discussed this area, which he believes is already developed, as there is a permanent building housing a generator, with a gated and maintained access road, so the contention that the CBJ Lawson Creek site is in a sensitive area is negated by the fact that it is already developed. He referred back to the second photograph, stating that this is a view of the beach at Lawson Creek that has a gently sloping riprap frontage with an elevation descent of less than 8'. He said this location is directly adjacent to the access road, and about 15' from the beach. He said this area is on CBJ tidelands so it would not cause negative impacts to any surrounding neighborhood, especially since it is already developed. He noted that the rocks could easily be removed for access to the CBJ tideland area using a four-wheeler or a four-wheel-drive pickup truck. He said he takes exception to the applicant's estimate on the project cost for Front Street, which would entail 120 dump truck loads of rock, which does not include constructing an access ramp to the beach that could not be done for \$20,560. Chair Satre said he believes this cost estimate by the applicant was solely for construction of the access ramp. Mr. DelGado said he has not calculated the amount of concrete that would be required to construct an access ramp, although at \$200 per yard it still seems as though the applicant's cost estimate is incorrect, which he is sure was unintentional. He stated that since the Lawson Creek alternative is already developed then it would not take very much additional construction to make that site work, which is a far superior option. He stated that if he was a Commissioner and even if he was not a property owner and excused himself from that thought process, which is difficult to do, but he would say that the Lawson Creek option provides for a better project and access without public opposition, and it would not hinder neighborhood harmony. Mr. Watson commented that the Alaska Department of Fish & Game is in the process of garnering public comments regarding re-mapping anadromous streams, including defining access points in Southeast Alaska and other areas of the state, but the Lawson Creek option might get in the way of that.

Les Morse, 1403 First Street, Douglas, AK, said he is in opposition to the proposed cul-de-sac project, which is an intrusive solution to the problem, the shoreline, and the neighborhood. He said the Lawson Creek alternative was brought up in past, although he believes that it needs further investigation as to whether that might be a better choice. He said there might be more reasonable access points, including Lawson Creek, which should be looked at before the project moves forward. He said the reasons provided for placing this project in the First Street area, including using heavy equipment to encroach onto the beach does not make a lot of sense. He said heavy equipment already accesses First Street, noting that there has been a lot of snow this winter and the street has been plowed and well maintained all winter, so there are no access issues by the First Street neighbors. In addition, he has witnessed emergency vehicles enter/exit the neighborhood without any problems for a long time as well.

Mary Kay Pusich, 1407 First Street, Douglas, AK, said she previously provided letters to the PC, which she hopes the Commissioners have had time to read, and they have also listened to 100% of the neighbors who are in opposition to the proposed project. She said the Lawson Creek area does appear to be the best CBJ site to make improvements. She said they have a lot of wildlife habitat in the First Street area, and if an access ramp were to be installed then foul smells would definitely end up being emitted due dead fish and debris, which would cause bear problems. She said the access ramp will be underwater most of the time, but maintenance costs have not been explored, noting that every year more fill would be brought in, and concrete would have to be replaced, including that she does not know how long it would take the proposed access gate to corrode. She explained that she has held conversations with a private property owner on First Street who grants access of their large driveway to CBJ personnel to turn around heavy equipment, and they have no qualms doing so for drivers of emergency vehicles either. She said the sewer system has been in place in South Douglas for 35+ years, which is at 50% capacity. She said the CBJ personnel tapped into the sewer line a couple of years ago, so she believes the applicant is “throwing up red flags,” which is disturbing the harmony of the First Street neighborhood when there are other solutions that they have already been using to maintain the sewer system. Instead, she stressed that the CBJ could improve infrastructure at Lawson Creek. She stated that if the CBJ were to place the cul-de-sac at the end of First Street, it would block the Bednarowicz’ access to their house should any buses, cars, or party goers decide that the cul-de-sac would be a great place to park, and if so, emergency vehicles would not be able to gain access either. She said another situation is that the neighborhood would have dump trucks continually driving up and down First Street hauling hundreds of loads of rock, but First Street has a light chip seal coating on it, so she asked who is going to pay for improvements to pave the road so it can handle heavy equipment driving on it if this proposal moves forward. She thanked the PC for their consideration and time, stressing that this project is a bad idea, and sufficient testimony has been provided in opposition to this proposal for the Commissioners to recommend against it.

Debra Morse, 1403 First Street, Douglas, AK, said she spoke at the last PC meeting and is still opposed to this proposal. She said the heavy equipment being driven up and down First Street would tear up the road, which is in ill repair now. She stated that First Street is not chip sealed in front of last four or five houses, so this area tends to have potholes, which would get worse if this project moves forward. She stressed that the project would ensure that more traffic would utilize First Street, including tour buses, and there is no person in this room that can guarantee that this will not happen. She said there are other areas to access the sewer system, and this does not have to just be at Lawson Creek because there are other potential access points up and down the South Douglas shoreline, including other roads that lead to the beach that could be used instead. She stated that she does not appreciate that this project is being considered, nor does she appreciate statements made by the applicant about “pooh-pooing” the concerns of the neighborhood, as this involves their homes, their community, and livelihood, so the neighbors should be taken seriously.

Pete Bednarowicz, 1503 First Street, Douglas, AK, said he is the property owner that would be mostly impacted by the proposed project, and he strongly objects to the need for a cul-de-sac or the hammerhead options. He said an alternative that has not been mentioned is the possibility of constructing a temporary access ramp, which would allow them to remove the ramp after the project is over with, and this is probably what a contractor would do if they were pursuing this as it is only going to be used every couple of years, so it would be ridiculous to install a permanent access ramp with a gate.



Ms. Lowrey stated that if sewer access was provided at Lawson Creek, it would not work. She said the cul-de-sac option would provide emergency access in terms of safety, including that such access would ease snow removal equipment maneuverability. She offered to answer questions of the PC. Mr. Rue asked Ms. Lowrey to provide an estimate regarding the number of times that CBJ personnel would need to access the ramp. Ms. Lowrey said she believes it would be once every two years.

Mr. Bishop said the estimate of \$20,560 is to construct an access ramp, whereby he asked if Ms. Lowrey has a full build-out estimate of the entire proposed project. Ms. Lowrey said it would be around \$71,000, explaining that this estimate is from the 2008, so she would have to update those particular numbers, but the access ramp estimate was made using current numbers. Mr. Bishop said most of the discussion is revolving around the access ramp, but it appears that the majority of the impacts would actually be from the installation of the cul-de-sac, which is the largest portion of the project. He noted that it would be fairly simple to scale the access ramp down and move it closer inland. He asked if Ms. Lowrey received input from the CBJ Streets Division and fire department personnel regarding the need for the cul-de-sac. Ms. Lowrey said Dan Jager, the Fire Marshal, testified at the last PC meeting, whereby she noted that the issue with the fire department is not gaining access to First Street, and instead, it is exiting First Street in the event that a fire engine is required elsewhere. She said right now the fire personnel have issues maneuvering fire trucks in this area, and to do so they have to cross private property, which the fire department personnel does not want to be part of; hence the cul-de-sac, including the hammerhead design. She said both of these designs meet the 2006 International Fire Code, which is the current code she is required to follow, and is also the reason these two designs have not been reduced in size. In terms of snow removal, she stated that a cul-de-sac or hammerhead turnaround would allow the area to be more efficient for the snowplowers, versus doing so on a dead-end street. Mr. Bishop said he understands this, stressing that he wants to know what level of comments were provided from these two departments, as there are many streets throughout the borough that are similar to First Street that do not have turnarounds either, so he wants to know whether this project was pushed forward because of input from different departments, or mostly because of the need for CBJ sewer system access. Ms. Lowrey said in her view of the records on this case, it was initially for sewer system access, and then the fire department came onboard a bit later on in the early 1990s wanting to add a cul-de-sac off of First Street, so it was pushed by the fire department, but not by the current Fire Marshal who is fairly new. She said the current CBJ Streets Division Superintendent provided commentary in her report to the PC regarding his point of view on the necessity of the project, but she does not have any comments from the previous Superintendent.

Mr. Watson asked Ms. Lowrey to describe the easement for the South Douglas sewer system, which is on state land. Ms. Lowrey said it is only where the CBJ easement is not within the state right-of-way, and she does not believe the easement crosses any private property while the CBJ personnel are conducting maintenance of that particular section of sewer system. Mr. Watson confirmed that the CBJ property ends at Mean Low Water of Lawson Creek. Ms. Lowrey said it abuts the Alaska Tideland Survey, and she is not sure if it is above Mean High High Water, as she has not overlaid maps of this area to see where the property line actually is when compared with tide levels, but she imagines it is above it. Mr. Watson said he is attempting to determine what the easement to the CBJ consists of from the state in terms of what they have stipulated that the CBJ personnel are allowed to do. Ms. Lowrey said it is only for access to the sewer system.

Mr. Rue asked where this project sits on the CBJ's list of priorities in terms of installing cul-de-sacs on streets. Ms. Lowrey said she is unable to answer that question. Chair Satre said he does not believe this project is on the current CIP list as being funded. Ms. Lowrey clarified that this is a CIP project, so it is on the list at some level.

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.

Commission action

Chair Satre said this application has been in process since 2008, which has been continued by the PC many times. He said the PC reviewed staff's recommendations to recommend to the Assembly, and significant public testimony was provided in opposition to the project. He suggests that rather than trying to derive a recommendation as to whether other options might be available, or if this can be done without any further designs in front of them then the PC has to review the project as proposed.

Mr. Watson said he is against the proposed project for all the reasons stated tonight. He explained even if the proposed project was in a different location in the Lawson Creek area, it would still pose the same habitat concerns as it does on First Street.

Mr. Bishop said he is against this project, stating that there are quite a number of policies within the Comp Plan regarding protecting shorelines for habitat as well as maintaining scenic corridors, and First Street provides a very scenic part of our local heritage. He explained that citizens cruising Gastineau Channel in any direction are provided an incredible scenic view of this stretch of shoreline in South Douglas, which is a part of this community, so interrupting this scenic corridor with a large cul-de-sac and an access ramp protruding into the channel, which would only be used every couple of years does not meet the needs of the community. He said alternatives have to be explored, as this case is "placing the cart before the horse."

Mr. Rue said he believes the proposed project is "overkill." He said there are probably safety issues of having to turn around at the end of First Street, but this proposal for a huge cul-de-sac and access ramp would create impacts to a very quiet and low-key neighborhood. He said this project would cause shoreline impacts, although there are other ways to "skin the cat" in terms of dealing with sewer maintenance, noting that a number of alternatives were suggested tonight that would not create as great an impact as this project would. He believes this proposal would cause changes in traffic. He said he has been a proponent of eliminating cul-de-sac areas as is being proposed, e.g., to get to the wetlands in the Sunny Point area is where that cul-de-sac attracts unsafe users in his neighborhood because people have had to clean up needles and tin foil. For all these reasons, he believes the sewer maintenance can be dealt with in a better way without causing so many impacts to the First Street neighborhood.

Ms. Bennett said she supports the idea of going with the wishes of the neighbors, as this is where they live, and they are all opposed to the proposed project, so the PC should be considerate of their opposition.

Chair Satre announced that given the fact that the PC's decision tonight is only a recommendation to the Assembly, so he hopes the neighbors in attendance are taking note and fully understand this.

***MOTION:*** by Mr. Haight/Rue, that the PC recommends that the Assembly not approve the 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. If the project is approved, the PC requests that the Assembly find less intrusive ways to access the sewer system for maintenance and repairs, as needed. The reasons have been well stated by the neighbors that this project as designed is not in harmony with the neighborhood, as it would create numerous negative impacts. This project is not so necessary as to override these concerns because there are other ways to do it.

Mr. Pernula asked what are the other ways. Mr. Rue stated that an idea discussed was to allow temporary access from Lawson Creek or other areas of South Douglas, which should be looked into as being better options. Chair Satre added that it was previously mentioned that such arrangements might be made with existing landowners for access through their property, including that there appears to be many other alternatives.

There being no objection, it was so ordered, and CSP2008-00012 was recommended by the PC that the Assembly not approve this proposed project to construct a cul-de-sac and access ramp at the end of First Street on Douglas Island.

**BREAK:** 9:06 – 9:13 p.m.

## **IX. REGULAR AGENDA**

### **AME2010 0002**

A Zone Change Request for the Breakwater Inn from D-5 Residential to Waterfront Commercial.

Applicant: Q Enterprise Inc.

Location: Glacier Ave.

#### Staff report

Ms. Camery stated that the Blue Folder items consist of public comments via an e-mail from Van Sunberg and Tracey Miller, dated March 6, 2011, and another letter from Elisabeth Mercer and Garret Goodman, dated March 8, 2011. She said the Breakwater Inn is a 45-year-old building, which was built in 1966, and the property was changed to commercial zoning around 1969. She said they inherited a complicated situation that neither the CDD staff is happy with, nor the applicant, nor the neighbors. She said there really is no perfect answer on ideal zoning. She said from staff's perspective, she will address the reasoning as to why D-5 zoning does not work, but Waterfront Commercial (WC) is also proving to be a challenging fit as well. She said the Breakwater Inn is located in a busy area surrounded by heavy traffic so it is not ideal for residential development, although commercial development has posed impacts to the surrounding neighborhood. She referred to the aerial photograph (attachment 7) of the site, stating that a close-up view shows two access points along Glacier Avenue and Highland Drive. She said an outline of the property boundaries were placed on the photograph as staff knows them, noting that it is not necessarily 100% accurate, which was based on information garnered from the Alaska Department of Transportation (DOT) from one of their previous surveys. She

said staff does not have a survey of the subject property in the parcel files because there has never been an expansion of the building since construction, so a trigger for a new survey has not taken place. She noted that a portion of the lower parking area of the site is outside the property boundaries and is within the DOT right-of-way where it touches one corner of the building. She highlighted the parking concerns in terms of the upper parking area along Glacier Avenue. She said there are parking issues with both the upper and lower parking lots. She showed a photograph from the Assessor's Office database of the Glacier Avenue side of the Breakwater Inn that shows the adjacent house 10' away, which the homeowners access through an easement with the Breakwater Inn through the lower parking lot, as the home was constructed before the Breakwater Inn was in existence. She referred to the hazard map (attachment 6) of the landslide and avalanche area, noting that the subject parcel has been within a severe avalanche area designation since 1987. She referred to a Comp Plan map (attachment 5), stating that the entire area highlighted in yellow of Aurora Harbor is zoned WC, which includes the adjacent property owner, and the Breakwater Inn parcel, whereby she stressed that this is per the Comp Plan, not the zoning code. She referred to the zone change vicinity map of the code (attachment 4), stating that the Breakwater Inn parcel and the surrounding area is currently zoned D-5 that consists of low-density residential.

She stated that the code requirements for a zone change states that it must be compatible with the Comp Plan, and the property must be designated WC in this plan as well that it has to meet the basic requirements of an extension of an existing zone, or else it has to be two acres or more. She said the site is .52 acres so it is undersized, but it meets the basic requirements because it is an extension of another WC zone. In terms of compatibility with the Land Use Code WC zoning designation, staff has determined that it is compatible with WC zoning as the hotel and restaurant uses are allowed according the Table of Permissible Uses (TPU) with a CUP. She said hotel and restaurant uses are not allowed in the D-5 zoning district with any type of permit, which is why staff concluded they are not compatible uses in a residential area. She said any type of commercial use located on the edge of residential neighborhood is going to present impacts. She said staff reviewed various policies and zoning maps of the Comp Plan, and determined that the rezone request was generally compatible with those requirements.

She said the major issue with this parcel is the severe avalanche area designation. She stated that hazard designations in the Land Use Code state that any new development requires a CUP. She said it is important to note that with a hazard designation they cannot have any new development on the parcel that increases density, and there is no exception. At the same time, she noted that throughout the staff report there are some exception around this, e.g., there is always the possibility that the hazard designation maps will change in the future. However, right now, she stated that under the severe avalanche area designation anything the applicant intends to develop under WC zoning, if it is approved, will require a new CUP.

In terms of parking and traffic issues, she said at the Glacier Avenue entrance parking area has vehicles backing out directly onto the roadway, which is part of their legally non-conforming use, which is not allowed under current code. She explained that any new uses the applicant might propose under WC zoning would require that they meet current parking requirements. She said there is no further parking space to work with in this area, as the building is already against the setbacks, so to meet new parking requirements they cannot have back-out parking, and instead, the applicant would have to meet minimum dimensional standards for the parking spaces in terms of isle widths, but even so they would have a very difficult time making significant changes to that lot. In the lower parking area, a portion appears to be outside of the property

line, so it is difficult to know what they can/cannot do. She explained that this would depend on what use the applicant might end up proposing in the future, which would require a new staff analysis. She said this is a major restraint on the property along with the parcel being in a severe avalanche area designation. Mr. Watson asked if the Breakwater Inn property qualifies for the Fee-In-Lieu of Parking Program; Ms. Camery said it does not.

She said a number of neighbors raised concerns about the potential increase in height of the Breakwater Inn, although staff is unable to make a conclusive statement as to whether it is possible to do so. She explained that doing so would depend upon how the roof was designed, where it is measured from, etc., so there are various aspects that would have to be reviewed beforehand, but the major constraint relates to the fact that if the applicant intends to expand the uses in the building then it would require more parking spaces, including a CUP under the severe avalanche area designation for WC zoning, except for very minor changes.

She said commercial use for the Breakwater Inn presents challenges to the neighborhood, which is mainly to the Glacier Avenue neighbors and the homeowners directly adjacent to it. As far as the adjacent homeowners, she stated that when staff contemplates rezoning they typically do not want to leave a single parcel standing alone because if they were to do so then the area of the immediately adjacent property would retain a small snippet of D-5 zoning. She said the nearest adjacent homeowners are strongly opposed to the idea of having their parcel rezoned to WC per their letter included in the packet. She said these homeowners spoke to the Assessor's Office and determined that a rezone to WC for their residential dwelling was likely to increase their property tax rates, including that they feel that they would have a very difficult time selling the property to any future owner, except possibly to the Breakwater Inn, or a future owner of that establishment. She said the applicant does not know if they could use that lot should this take place. She explained that retaining D-5 for this individual parcel is an idea that staff reviewed, but she is not recommending in favor of it at this time. She noted that even if she were to recommend in favor of doing so, it would require a totally different public process than what the PC is engaged in right now.

Mr. Rue stated that he believes the 35' building height limitation is the same in D-5 or WC zoning. Ms. Camery said it is, explaining that difference under D-5 zoning is that the applicant cannot expand any commercial uses. Mr. Watson said his interpretation is that the Breakwater Inn is already at the 35' building height limitation at the Glacier Avenue side of the property. Mr. Chaney said the method in which the height of buildings has to be measured according to code is very complicated, which he will not go into detail about, but he feels it is possible to add a story to the Breakwater Inn without violating the 35' height limit.

Mr. Rue said the difference between severe and moderate avalanche area designations are marked on the hazard map as rectangles. Mr. Chaney said the hazard map is drawn in such a way so if any portion of the parcel is in an avalanche area designation then the entire parcel is considered as being within that specific hazard zone, which is why it is shown as encompassing the entire parcel. He said the Breakwater Inn is in a severe avalanche area designation, which does not allow for additional density, although a moderate avalanche area designation possibly could through the CUP process. Chair Satre referred to a triangular-shaped moderate landslide avalanche area located immediately above the Breakwater Inn parcel on the hazard map, which extends into a severe avalanche area designation, so he wonders if both of these parcels end up with a severe avalanche area designation. He explained that these areas seem odd on the hazard map, as it appears that a moderate landslide avalanche area is shielding a severe avalanche area.

He estimates that half of the Breakwater Inn property would be considered to be in the severe avalanche area designation, and the other half would be in moderate, although the hazard map is drawn showing that it defaults to the highest hazard. Mr. Rue commented that it appears that even less of the Breakwater Inn property is in the severe avalanche area designation, versus moderate, although this is somewhat speculative.

Mr. Watson commented that the Federal Emergency Management Agency (FEMA) establishes floodplain guidelines through surveys, noting that reviewed some real estate down the street from the subject site, and they had no success in dealing with that hazard area, as they found out that a driveway was in the severe avalanche area designation, so that homeowner had to carry higher insurance.

Ms. Camery continued with her report, stating that in regards to the public comments on this issue, staff held a neighborhood meeting on December 15, 2010. She said the applicant described various proposals, and there was a good review provided of neighborhood concerns, which were largely reflected in the comments the CDD received. She said a great deal of concern was about previous impacts from the bar and restaurant, which she believes is fair to call an uproar that took place about eight months ago over crowds and late night noise at the Glacier Avenue entrance area. She said this has lead the neighbors to be all the more cautious about the rezone, noting that those previous nuisance concerns have since been resolved. She said the neighborhood is very concerned about any type of rezone or new development that would contribute to additional traffic, parking, noise, and crowds of people outside the Glacier Avenue entrance area of the Breakwater Inn in the future. She stressed that this is not to understate the impact these same activities have had on the lower entrance area of the establishment regarding the adjacent homeowners who have a dwelling 10' away. She said the neighbors expressed concern about the idea of proposed retail use. She explained that much of the parking impacts on this neighborhood are due to the Juneau-Douglas High School, as they do not have adequate parking for their events, and although the impact of this parking congestion has been reduced with the new Thunder Mountain High School in the valley, it still remains as being a big problem. However, she said some of the overflow parking issues stem directly from the Breakwater Inn as well, so she questions whether a rezone to WC might exacerbate these problems, but she does not have a definite answer to this, although from her review anything the Breakwater Inn does would require reviewing parking, and a new CUP, so after reviewing the Comp Plan and other CBJ policies she is recommending that a limitation be placed on the use of the Glacier Avenue entrance per Condition 1, which she cited, as follows:

- “1. The Glacier Avenue entrance to the building may be used only for existing uses. Existing uses are limited to 41 hotel rooms, 8 apartments, and the bar/restaurant. Any new uses of the building, including but not limited to retail use, must utilize the Highland Avenue entrance to the building and must be developed without any internal building connection to the Glacier Avenue entrance. Emergency exits, required by building code, are not subject to this restriction.”

She said she received comments regarding this condition, explaining that the homeowners adjacent to the subject parcel who use the Highland Drive entrance feel that this condition would transfer impacts to them, as it would lead to people hanging out, and shifting traffic, parking and noise occurrences down to this lower area of the establishment. Furthermore, another neighbor on the Glacier Avenue side is also concerned, whereby they stated that they intend to wait and provide their issues with this condition via public testimony to the PC. She explained that the problem with the Glacier Avenue entrance mainly stems from the bar and restaurant, so staff has suggested that new uses have to use the lower entrance, and existing uses are able to continue to

use the Glacier Avenue entrance. She said this is clearly not a perfect solution, as it is not addressing all the neighborhood concerns about the Glacier Avenue entrance. She said D-5 zoning does not seem to work with the Land Use Code, and WC zoning brings issues as well. Chair Satre stated that if Condition 1 is implemented and the applicant later decides to raise the building then it would just go away because it would solely be a question of siting the building and parking appropriately; Ms. Camery agreed.

Mr. Rue stated that if the zoning remains D-5, he asked if the applicant is able to change the interior space, e.g., from 41 hotel rooms to 20, or hotel rooms versus long-term rentals, etc., or if they have a limit to internal reconfiguration options. Ms. Camery said the applicant could operate under the existing commercial use, but if they propose to reduce the commercial use and density then they can do so under D-5 zoning, but they are unable to expand the existing commercial use. She said this includes that the applicant is unable to expand the restaurant, bar, or the number of hotel rooms. Mr. Pernula stated that there are many aspects involved with this, and the non-conformity is probably the most important in this instance. He explained that if they decrease some uses and they have the same envelope of the structure, there is probably some other use that could expand into that space. He explained that most of the uses might likely be aspects that would not be permitted because in the D-5 zone the basic use permitted is a single-family dwelling on a lot, so it is unlikely that this would occur. In addition, he said this subject parcel is in a severe avalanche area where an increase in the density cannot occur. Mr. Bishop asked how density is currently measured under a commercial retail use. Mr. Chaney said the density is in relation to dwelling units, so if it was all retail then whether it got bigger or smaller would not be a density issue. He stated that about 5 to 10 years ago, the previous owners of the Breakwater Inn called the CDD to inquire about turning the building into condominiums, and staff told them they were unable to do so because it would be changing the use from what it is currently to something different. Under WC zoning, he said they could change all of the rooms and reconfigure them into less dwelling units, which could be privately owned as condominiums, but this is not possible under D-5 zoning. He said there are options that rezoning to WC might give them, but those would still require a CUP, although they are somewhat locked down with D-5 zoning. He noted that the current parking requirements limit their options, but staff does not know what the future parking requirements might be, and even though parking is certainly allowed to be varied, the applicant cannot vary the current severe avalanche area designation, or the use of D-5, although he does not expect parking to be an absolute limitation because it is somewhat flexible albeit difficult. Mr. Rue said it appears that all the applicant could do under D-5 zoning is to retain the number of rooms as is and remodel them, whereby he asked if they could have less hotel rooms in order to make some of them larger and nicer. Mr. Pernula said he would probably allow reducing the number of units because he is unable to see a barrier if they were to do so as long as the same area in the building is still devoted to a hotel or motel use. Mr. Chaney stated that the applicant is able to conduct normal maintenance, although if the building is damaged to the point where more than 75% of the value of the structure is lost, e.g., a fire, extreme rot, etc. then they could not rebuild the building. Ms. Camery added that nothing about the legally non-conforming status prevents the applicant from taking care of the existing structure, although they are unable to expand its commercial use in the process.

Mr. Watson confirmed that the Breakwater Inn was in existence before Egan Drive was constructed in terms of the property line adjacent it, to which Ms. Camery agreed.

#### Public testimony

*Chris Kim*, 1711 Glacier Avenue, representing the applicant the Breakwater Inn, said he hopes this opportunity to testify will dissuade much of the concerns. He said they intend to complete minor repairs and maintenance to the Breakwater Inn, although a the big issue is the potential of a guest possibly leaving a stove on and starting a fire causing more than 75% damage to the building. He said if this were to happen then the Breakwater Inn could not be reconstructed because of the D-5 zoning designation. He said the estimate for repairs and maintenance was a bit over \$100,000 in 2010 because the building is very old. He said the owners requested a rezone from D-5 to WC, and they have no intention of expanding the numbers of hotel rooms or the building, although they would like to consider various ideas that might benefit the neighbors and their business in the future. He said they do not have enough funds or any specific plans to add another floor atop the structure, and if so, they would have to work on the existing structure beforehand. He explained that this is an assumption that the neighbors have been discussing, although the owners has never mentioned this before, but even if they were to do so then they would have to submit such plans for review. He said other concerns were in regards to the patrons of the restaurant making noise outside of Glacier Avenue entrance of the establishment, including statements that they are providing for low-income or section 8 housing. He explained only eight of the first level rooms are rented as apartments, with one-third of them are rented with assistance from the state, and one with assistance from the city, so he does not know why this was mentioned. He stated that 90% of the tenants own vehicles, so they do not use buses or taxicabs for transportation. He said issues were mentioned by some of the neighbors that patrons might use the bus stop, including that they might be drunk, etc. He said the owners and management previously experienced a fiasco eight months ago was when they addressed those issues, so they are now able to co-exist in a positive manner with the neighborhood. He said they continue to ask the neighbors for suggestions and comments, including that they have asked them to inform the owners and/or management about any issues they might have with the establishment or its tenants. He said he has been managing the Breakwater Inn over 1.5 years, and since that time he has not received any calls at the front desk regarding tenant issues. He explained that staff conducts ongoing inspections 24 hours per day, including that they have installed security cameras in various areas around the facility. He said if an avalanche destroys the Breakwater Inn in the future then obviously the owners would not have any other choice than to give the Breakwater Inn up, which is their concern. He explained that this is the reason they are requesting this rezone from D-5 to WC, which is in the event that any catastrophe should happen. He said a driver of a vehicle struck the Breakwater Inn in December 2010, which damaged the building, so they are worried that any larger accident than that might cause the Breakwater Inn to collapse, so he requests the PC to approve this rezone request to WC.

Mr. Rue said he wonders what level of traffic the establishment experiences from the nearby harbor, including whether they discussed trying to attract folks from that area in terms of enhancing commercial uses. Mr. Kim explained that this section of Egan Drive is posted as having a 40 mph zone, and there was an accident in this area when a driver of a vehicle struck a pole, which landed in the street, so he and others from the Breakwater Inn removed it, and therefore they are concerned about any further accidents so they are contemplating installing an overpass across Egan Drive.

Mr. Pernula stated that if the Breakwater Inn property were rezoned to WC and the building later burned down, he asked what the applicant might desire to rebuild. Mr. Kim said the applicant has no desire to build anything else at this time. Mr. Pernula asked if the applicant would be willing to have this as a condition of the rezone that if it were rebuilt then it would be at the same proportion it is now. Mr. Kim said the applicant might take that under consideration.



Mr. Bishop said as a former Planner and current Commissioner he appreciates Mr. Kim's comments, although Mr. Kim's is not going to be here 50 to 100 years from now, but the PC has to consider the potential of what could be on the property in the future for other owners, or in the event that a catastrophic event might happen. Mr. Kim said from this moment until 100 years from now, anything could happen.

Mr. Watson said staff commented that the adjacent homeowners have an agreement to cross the Breakwater Inn's lower parking lot area to access their residence, whereby he asked if this is in the form of a legal easement. Mr. Kim said the Breakwater Inn does not have any type of legal document for that type of access.

*Elisabeth Mercer* and *Garrett Goodman*, 1715 Glacier Avenue. Ms. Mercer said she and Mr. Goodman (her husband) are the homeowners immediately adjacent to the Breakwater Inn. She provided three exhibits, stating that Exhibit 1 is a map downloaded from the CBJ web site. She said the green area is non-commercial use, and when they consider placing a commercial use on the Breakwater Inn property "sticks out like a sore thumb." She said the PC has to take buffer zones into consideration in terms of this rezone, as right now the buffer zone between commercial and residential in this area is Egan Drive, which is a 4-lane highway with a 40 mph speed limit. In addition, potentially making the buffer zone connect with a 20 mph school-age pedestrian-heavy Glacier Avenue, which she does not think is appropriate. She said the PC has to consider that the area they are reviewing is in a severe avalanche area, and this lot would be vacant if an avalanche, earthquake, or landslide took out the Breakwater Inn. If so, she said they would be allowed to expand afterwards, so she appreciates the idea of providing a condition limiting rebuilding the structure to the existing proportion. She referred to Exhibit 2, stating that this is a photograph taken on March 7, 2011 of the lower parking area of the Breakwater Inn. She said there are parking issues in the upper parking lot of the establishment, but also in the lower area. She pointed to the van with wheel locks, and another car abandoned in this lower area over 6 months ago. She said the applicant has been unable to manage the area because as the photograph shows litter is scattered on the ground over the course of the day and it makes its way onto Egan Drive and their adjacent property. She said the current recommendation is to have all future commercial uses take place in the lower area, but the owners cannot manage the parking in the current state, so she does not feel that they will be able to do so as a greater commercial entity. She referred to Exhibit 3, stating that this chart shows Southeast Alaska and Juneau's population projections from 2009 to 2034. She said the PC has to take into account Juneau's future, and consider its strengths and weaknesses. One of the strengths she sees as a newcomer to Juneau is its neighborhoods. She explained that if the PC expands commercial entities in these types of residential neighbors, it would be detracting from this. She noted that the population projections show more likely than not that this town will be decreasing in population, so the PC should consider what they can do about this, i.e., not allowing commercial entities to encroach into residential areas and school zones in order to attract family growth because of Juneau's aging population. In regards to their parking access through the lower portion of the Breakwater Inn property, she explained that this was provided only through historical use. She said she and her husband have requested to enlist in an agreement with the current owners, but they have refused to do so. Therefore, while the PC considers a condition that if the applicant intends to expand its commercial use in this lower parking area, she requests that they also allow them to continue to have access through this area to their property as well.

Garrett Goodman, 1715 Glacier Avenue, (Ms. Mercer's husband), referred to Exhibit 1, stating that the property lines highlighted of the Breakwater Inn property are slightly off according to DOT. He said when they purchased their residence he researched what they were able to do in regards to the specific parking issue with the Breakwater Inn for parking lot access. He noted that the actual access point at the corner of the building out to the street is all DOT right-of-way in the lower parking lot area. He referred to Exhibit 2 where a car is located in the DOT right-of-way, stating that the previous owners of the Breakwater Inn and the former owner of their house did not get along as well as he and his wife do with the current owners. He noted that in the past the former owner of the Breakwater Inn attempted to block the former resident's access using a concrete barricade. He said in his communication with DOT, they indicated that DOT informed the former Breakwater Inn owner that he had to move the barricade or DOT would move it and send them the bill, as they cannot block ingress/egress through this area. He said he is in opposition of the rezone request. He explaining that even though the current zoning is in a severe avalanche area, if new research and studies are conducted on downtown hazardous zoning, the Breakwater Inn property might be re-designated as a moderate avalanche area, so he does not know how this might impact the CUP process for current or future owners. He said most of this neighborhood was developed in the 1950s, and the Breakwater Inn was not contemplated until the 1960s, which he believes was built "at the last minute," and it is a non-conforming use. He said ultimately it would best suit the neighborhood if the Breakwater Inn was reverted back to what it was supposed to be in the 1960s in a residential neighborhood with a school zone. Ms. Bennett said she has an issue with this, explaining that one of the more modern concepts of urban design is to encourage a bit of retail, restaurant and bar uses in an area that has homes, especially in this area because it is close to Downtown Juneau. She said downtown is getting filled up with government buildings now, so very little room remains for retail uses. Ms. Mercer asked Ms. Bennett if this is her opinion even when it is right next to a school that has young children passing by it every day. Ms. Bennett said she realizes there has been a huge controversy over the Breakwater Inn bar and restaurant, which was previously presented to the PC and the Assembly. Mr. Goodman said he and his wife accept the current use of the Breakwater Inn otherwise they would not have purchased the house next to it. However, based upon the information he and his wife received from the owners, their intention for the rezone was not to cover themselves for fire or emergency loss, and instead, it was to actually expand into retail uses with a convenience store, coffee bar, etc., which is not any of the existing uses currently taking place, including that it would increase parking. He said these additional retail uses would create more issues for both the Glacier Avenue and Highland Drive areas of the establishment. Mr. Watson asked Mr. Goodman if the current owners of the Breakwater Inn have denied them access to their property. Mr. Goodman said he does not know. Mr. Watson commented that he was curious about this, as he noticed that Mr. Goodman erected fences in a couple of areas on his property, and one partial fence parallels Egan Drive.

Gayle Wood, 1732 Glacier Avenue, said her 62-year-old residence is the fourth one down towards the valley from the Breakwater Inn on Glacier Avenue. She said the Breakwater Inn came into being after the neighborhood was established. She supports granting the applicant more flexibility in being able to upgrade the interior to attract business, so they are able to thrive. She said she has enjoyed the restaurant and bar because it is within walking distance, which she believes the neighborhood also enjoys. However, the neighbors have witnessed trying times, and it is nice that the current management says they have a better handle on what the neighborhood appreciates, yet one of the pictures that the previous testifiers presented shows a derelict car, which is in the middle of her view plane that has been abandoned for months. She said there continues to be parking issues, so she wonders what is really going on down there. She said the

CUP option for this case is the only method in which the neighbors would have input to address future issues. She noted that staff is left with dealing with the Comp Plan and Land Use Code, which in essence is having to work on “placing a square peg in a round hole.” She hopes in going forward that the applicant cannot expand their business uses because it would cause further impacts to parking. She stated that one use the representative of the applicant suggested is an area to hold special events. She explained that this has been taking place already in regards to Christmas celebrations, etc., although if it becomes more constant then the neighbors are going to have to continue to deal with the high school events impact on overflow of their parking, including more at the Breakwater Inn, which should not be increased, so she hopes that future CUPs limit how the applicant is able to impact the neighborhood in terms of parking. She referred to the aerial photograph (attachment 7) of the staff report, stating that it clearly depicts what a driver does when turning off of Egan Drive onto Highland Drive, which has no stop sign at the Glacier Avenue intersection. She said this is for a good reason, as the steeper area of the Highland Drive intersection has drivers entering where they at times cannot stop, yet pedestrians frequently cross in this intersection, so it is a constant nightmare because they are lucky that lives have not been lost. In terms of possible future retail uses being implemented at the Breakwater Inn, she hopes that numerous high school students would not be trying to cross the intersection to go for the “favorite flavor of the day” to purchase beverages at the Breakwater Inn. She said the applicant has a tough situation, and she appreciates the issues that the Commissioners have to face, but this neighborhood has been in the area long before the Breakwater Inn was built, including that it was probably a mistake that they were allowed to construct it in this residential area by some other PC long ago. She agrees with Ms. Bennett that a movement towards more commercial in residential neighborhoods is taking place, and this allows for walk-ability type of situations, which she has appreciated. Even so, it becomes tricky when the ownership of the Breakwater changes, because they implement changes that in turn cause impacts to the neighborhood. Therefore, she hopes that future CUPs are very carefully considered by the PC when they recommend approval of them. She said while the Comp Plan allows a hotel in a WC zone, and a certain amount of foot traffic will continue to take place back and forth between the harbor and the hotel, although patronizing the Breakwater Inn is not their main purpose. She said it bothers her that the PC is contemplating stretching this WC zone just because they have an existing WC area at Aurora Harbor, which has Egan Drive in between. She would like the PC to “think outside the box” because the Breakwater Inn is a commercial entity, but she does not see how WC is the appropriate designation. She explained that she believes the PC is stuck with the policies that precede them, although she hopes the Commissioners come up with a better way to designate proper zoning for the Breakwater Inn property.

Dan Sundberg, 1716 Glacier Avenue, said during the December 2010 neighborhood meeting, the representative of the applicant talked about what they might do to help the patrons and the neighbors by perhaps installing a convenience store, which at that time they said would be accessed by the Glacier Avenue entrance. He said he knows that the neighbors on the opposite side of the street do not want to deal with more traffic issues, including additional people hanging out in front of the establishment making loud noise, as they have recently experienced enough of these problems. He noted that today when he drove his vehicle from Egan onto Highland Drive, which is when he imagined what would happen if the applicant installed retail attractions in the lower area of the establishment. He is concerned because there is only enough space when a driver makes this turn onto Highland Drive while patrons are trying to enter the lower Breakwater Inn parking lot area when another person is waiting for oncoming traffic to subside to let them enter, but there is only enough space for one car causing traffic to back up on Egan Drive. He said if there was a queue of vehicles heading down Highland Drive towards

Egan Drive when drivers are trying to enter this same parking lot during rush hour, the vehicle stopped waiting to turn left into that lot would back up more traffic right on Egan Drive. He said this is a traffic hazard aspect that an engineer might have to take a look at, noting that he drove both of these directions to confirm this. He said if the applicant were allowed to install retail attractions, there would be an endless line of students walking back and forth across the intersection. He said he gets along well with the current owners who were very responsive, noting that they were stuck in a difficult situation during the fiasco that took place last year when they made changes, i.e., directing smokers to the lower side of building, which was a relief for the neighbors. He explained that this was when numerous smokers were taking breaks from the bar outside and talked all at once, so it tended to get very loud. He stated that now after rush hour it tends to be a very quiet neighborhood. He said the outstanding issues are maintaining the neighbor's viewshed, light, and air. He noted that the staff report mentioned that the Juneau Hotel structures adjacent to the Juneau-Douglas were constructed under the 35' building height limit, so the neighbors can imagine that tall of a building in front of their homes if the applicant is later able to increase their building height to 35', and if so, he would have to be on the top floor of his residence to see Douglas Island. He stated that if they make the adjacent lot WC as well, and a future Breakwater Inn owner purchases that parcel then it could become part of their parking operation, so this could change the entire character of the neighborhood. Therefore, he likes Mr. Pernula's idea of providing a condition to the rezone request, which states that the Breakwater Inn could only be built to the same proportion that exists in the event of a catastrophic situation.

Mr. Watson stated that the former owners of the Breakwater Inn provided a previous lunch takeout service for high school students, which was when about 120 students per day were walking across the intersection to purchase them. Mr. Sundberg explained that the former owners installed an exterior sliding window near the Glacier Avenue entrance for this purpose, and one day he counted over 200 students over that particular lunchtime. He said he understands that the high school recently instituted a closed campus policy, except for seniors.

Mr. Kim referred to the two vehicles parked in the lower area of the Breakwater Inn parking lot, stating that this establishment is being targeted regarding parking misconduct of individuals. He explained that the van shown in Exhibit 2 near the entrance actually belongs to Ms. Mercer's tenants, which was booted two to three days ago. He said the reason why the owners have management booting vehicles is because this is how they attempt to enforce parking on the Breakwater Inn property. He said the owners also had management contact the police and the towing company to remove the other car in the area, but someone dented it, so management was informed that they have to wait for the owner of the vehicle to pick it up, or they have to move it themselves, which they are opposed to. Chair Satre said this issue is outside the scope of rezone request, noting that there are differences of opinion regarding this topic, so he requested Mr. Kim to direct his comments to the case at hand. Mr. Kim said at this time they do not have concrete plans to expand the Breakwater Inn, although they have shared a few potential ideas for the future with the neighbors. He noted that the convenience store would mainly benefit hotel clientele, as they do not want increased traffic issues. He explained that people drive by 24 hours per day, and he has witnessed that some drivers stop at the stop sign while others do not at the Glacier Avenue and Highland Drive intersection, which is not enforced throughout the day. He said the tenants of the Breakwater Inn might cross this area to gain access to the bus stop, so they could be hit by a vehicle and lose their life, which is a concern of the owners and management.

Public testimony was closed.

#### Commission discussion

Mr. Miller stated that he is leaning towards supporting the rezone to WC, and the reason he thinks it might be the best for the neighborhood is because no changes in use would be allowed without a CUP. He explained that the CUP process entails the PC to review strict criteria that has to be met prior to approval. He said if a rezone to WC is approved, and if the applicant applied for a CUP afterwards then many of the existing problems being experienced by the neighbors due to the Breakwater Inn's legally non-conforming use within D-5 zoning could be addressed at that time, whereby it might end up that this establishment would have less issues with the neighborhood.

Chair Satre stated that the PC unfortunately does not have the ability contemplate other zoning options given the rules of Title 49, noting that the Breakwater Inn is less than 2 acres, so it is too small of a parcel to be rezoned to any other zoning designation, and therefore they are required to apply adjacent zoning. He said WC is the only zoning designation that stretches across the adjacent area, or else the property could remain as D-5 zoning. He appreciates the comments that any changes outside the existing use of the Breakwater Inn in the future would trigger a CUP, which would have to undergo a fairly stringent PC public hearing process.

Mr. Rue said it is possible that new owners might decide that they did not want the establishment as a hotel, so they could tear half of it down and provide sufficient parking and traffic flow, and if so, they could potentially end up with a friendlier use. He said the ability to rebuild something else onsite is a reasonable expectation, but without a rezone from D-5 to WC then they would not have the ability to rebuild. In addition, he has been one of the biggest critics in providing other than water-dependent uses in WC zoning because Juneau has very limited waterfront footage to add commercial to WC zones. He explained that the use on the subject property could end up serving the harbor, although access across Egan Drive is somewhat difficult, which could later be lessened if an overpass access is provided. He said because of these reasons, he is leaning towards the rezone to WC because the current owners of the Breakwater Inn are going to retain the use as is unless they come up with a proposal that convinces the PC that a better use of the property is warranted through the CUP process.

Chair Satre said recent updates to the TPU were implemented regarding the possibility of installing a convenience store within this establishment, and under WC zoning a small retail area consisting of less than 5,000 square feet is not allowed, so such a use would have to be larger in size, e.g., it could be a West Marine, but maybe not a small convenience store. Mr. Bishop requested clarity from staff regarding this, stating that if this true then it should relieve some concerns. Mr. Chaney said the TUP under 49.25.300(d) 2.120 states that a CUP in WC zoning is required, but no minimum square footage listed. Chair Satre apologized, explaining that he misread a portion of the TPU.

Mr. Bishop said in terms of the subject property being non-conforming, it has changed significantly over the years with the addition of Egan Drive, so this parcel has substantially been pinched down to the point that the parking has dramatically changed over the years. He recalls when the building and the restaurant were substantially smaller, including when the Breakwater Inn did not have rental units so many aspects are different. He said the non-conformance has cumulatively been made more severe over the years. He stated that his greatest concern regarding this project is the potential for more retail use, as he has been caught in the same

hazardous traffic position that Mr. Sundberg mentioned. He explained that he was crossing Egan Drive to approach Highland Drive and ended up forcibly being stopped in the middle of Egan Drive by vehicles ahead of him waiting to turn into the lower Breakwater Inn parking area, which is when he was nearly hit by a big truck, so that was when he literally saw his life flash before his eyes. Therefore, he knows this is a reality and it will happen again, including a lot more so if this area is used as a retail inlet for traffic, which concerns him. On the other hand, he has enjoyed patronizing the Breakwater Inn over the years, so he does not want a catastrophic loss to happen should more than 75% of the building end up being burned or demolished. He said he is conflicted with this particular rezone request.

Mr. Rue said he shares Mr. Bishop's concerns as well in terms of the hazards of increased traffic in the lower parking area of the Breakwater Inn, which the PC has to consider if the owners later request changing the use through the CUP process. He believes it is going to be very difficult for the owners to make any serious changes to this parcel unless a majority of the building is destroyed, but it provides them the opportunity to address outstanding concerns.

Chair Satre stated that with the current non-conforming use, they are basically waiting for the building to rot away towards the point where maintenance is no longer economically feasible, so there may come a time when it has to be torn down, and if so, a rezone from D-5 to WC would provide them options if that were to happen.

Mr. Rue said the PC and the Assembly generally tries to obtain higher density in areas that are close to downtown and the transit corridor, so in this instance they might have wanted to rezone this parcel to higher density, i.e., D-10 or D-18, although they cannot do so because this parcel is less than 2 acres. Even so, it still might be possible if they were to also rezone the adjacent upland property to the same high-density zoning, but the neighbors would not like that. He stated that it would be a major issue if the applicant is able to come up with another use that they feel could be transitioned into the Breakwater Inn's current use.

Ms. Bennett said she was recently at the restaurant of the Breakwater Inn. She said she has enjoyed patronizing this establishment over the years, so she understands that the building has to be renovated, although it is going to be difficult for them in terms of cost. In addition, she said this establishment has competition from other nearby hotels, so she sympathizes with their need to make improvements to the building, including trying to make it more profitable.

Ms. Camery clarified that according to the recommended condition, the Glacier Avenue entrance could only be used for the existing uses, which are defined by the Assessor's Office as 41 hotel rooms, 8 apartments, and the bar/restaurant. She stated that if the owners were to add anything new, staff recommends that they must use the Highland Drive entrance only. She said this would hold true for any new development whether it is retail, or an increase in existing uses.

Mr. Watson said he is still struggling with the reluctance of the Breakwater Inn property owners to allow the adjacent homeowners access to their parcel, so he has yet to make up his mind whether he is going to vote for or against the rezone request.

**POWER OUTAGE BREAK:** 9:38 – 9:43 p.m.

Staff recommendation: that the PC adopt the Director's analysis and findings and recommend that the Assembly approve the rezoning for the subject parcel from D-5 to Waterfront Commercial with the following condition:

1. The Glacier Avenue entrance to the building may be used only for existing uses. Existing uses are limited to 41 hotel rooms, 8 apartments, and the bar/restaurant. Any new uses of the building, including but not limited to retail use, must utilize the Highland Avenue entrance to the building and must be developed without any internal building connection to the Glacier Avenue entrance. Emergency exits, required by building code, are not subject to this restriction.

Commission action

Mr. Miller noted that the staff recommendation to the PC contains a condition for approval of the rezone, and therefore he asked how this is done, and if it might be via a plat note. Mr. Pernula said this has been done many times in the past. He explained that the condition would be flagged by placing it onto the Zoning Map, including tying it into the database, so if someone applies for a permit then staff would know that this condition is present, and then staff would apply it. Mr. Miller said in reading this condition, nothing is stated within it that is not already in place. He said no use could be changed with a rezone from D-5 to WC unless the applicant underwent a CUP process later on, so he does not understand the purpose of Condition 1. Ms. Camery stated that without Condition 1, the applicant would be able to expand and have any new uses utilize the Glacier Avenue side of the parcel as well. She explained that a portion of Condition 1 states, "Any new uses of the building, including but not limited to retail use, must utilize the Highland Avenue entrance to the building and must be developed without any internal building connection to the Glacier Avenue entrance." Mr. Miller said he thought that back-out parking was not allowed, and if so, then they cannot do so. Chair Satre said the applicant would have to change an existing use, otherwise back-out parking is still allowed as a non-conforming use. Ms. Camery said it is kind of mixing two separate issues, as they do not know until they see what the new use might be, so they do not know if any new parking would be required, or if the applicant could meet the parking requirements for the new use in the lower area then they would not have to necessarily upgrade the Glacier Avenue parking area if they could meet the parking requirements in the lower area, although this is difficult to predict without an actual proposal in hand.

**MOTION:** *by Mr. Bishop, that the PC adopts the Director's analysis and findings and grants the requested Zone Change Request, AME2010 0002. The permit allows the Breakwater Inn parcel to be rezoned from D-5 Residential to Waterfront Commercial. The approval is subject to the condition revised by the PC, as follows.*

1. *Any future changes of use shall be through the CUP process.*

Mr. Bishop stated that the reason he revised Condition 1 is because he knows that a portion of the Breakwater Inn parcel is located in a severe avalanche area, so the entire parcel is designated as such. He stressed that he does not want future uses allowed without the applicant undergoing the CUP process. He said he also does not want to see a condition being met through the parking requirements for any changes to the Highland Drive parking area, which might be a more dangerous area for retail uses, rather than on the Glacier Avenue area. Therefore, he would rather see these uses visited later if/when they are proposed, not having this be a requirement of this rezone request.

Chair Satre said he believes public comment was provided regarding the fact that staff's initial recommended Condition 1 did not assist in addressing some of the issues that the neighborhood was facing due to the fact that patrons would still be accessing the bar and restaurant of the Breakwater Inn from the Glacier Avenue entrance. He asked staff if the new Condition 1 to require a CUP process for any changes to uses in the future is allowed for this type of rezone request. Mr. Pernula said the PC has not done so in the past that he is aware of; however, he does not see a problem with doing so, and if so, staff can address this before the recommendation is forwarded to the Assembly. He said even if staff does not have to do so, the Breakwater Inn parcel will continue to be located in a severe avalanche area, and therefore any change in uses will require a CUP no matter what, unless the parcel at some future date is pulled off of the CBJ Hazard Maps entirely. Chair Satre said the reason he asked this question is because he does not remember the PC ever doing this in the past. He explained that he believes Mr. Bishop's intent was to ensure that protection for the neighborhood is provided if the severe avalanche area designation were to change, or any other foreseeable use that might be forthcoming. He said the PC is reviewing a small rezone, and trying to protect the neighborhood by requiring the applicant to undergo the CUP process on any potential future changes to uses, including allowing the PC to move forward with the recommendation.

**AMENDMENT TO THE MOTION:** *by Mr. Rue, that the PC revised a portion of the motion to state, The PC recommends approval to the Assembly, and this is subject to the condition revised by the PC hinges on the CUP requirement being legal and valid, as follows.*

1. *Any future changes of use shall be through the CUP process.*

Mr. Bishop accepted Mr. Rue's amendment to the motion.

**AMENDED MOTION:** *by Mr. Bishop, that the PC adopts the Director's analysis and findings and grants the requested Zone Change Request, AME2010 0002. The permit allows the Breakwater Inn parcel to be rezoned from D-5 Residential to Waterfront Commercial. The PC recommends approval to the Assembly, and this hinges on the CUP requirement being legal and valid, as follows.*

1. *Any future changes of use shall be through the CUP process.*

Mr. Pernula clarified that any change of use would require a CUP; Mr. Bishop said this is correct.

**AMENDMENT TO THE MOTION:** *by Mr. Bishop, that the PC adopts the Director's analysis and findings and grants the requested Zone Change Request, AME2010 0002. The permit allows the Breakwater Inn parcel to be rezoned from D-5 Residential to Waterfront Commercial. The PC recommends approval to the Assembly, and this hinges on the CUP requirement being legal and valid, as follows.*

1. *Any future changes of use or expansion shall be through the CUP process.*

There being no objection, it was so ordered and AME2010 00002 was recommended for approval to the Assembly, as revised by the PC.

**X. BOARD OF ADJUSTMENT - None**

**XI. OTHER BUSINESS - None**



**XII. DIRECTOR'S REPORT** - None

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

[The February 14, 2011 Public Works & Facilities Committee minutes were provided by staff to the PC for their perusal.]

**XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS** - None

**XV. ADJOURNMENT**

***MOTION:*** by Ms. Bennett, to adjourn the PC meeting earlier than expected due to the unexpected power outage.

There being no objection, it was so ordered and the PC meeting adjourned at 10:56 p.m.