

MINUTES

PLANNING COMMISSION CITY AND BOROUGH OF JUNEAU Maria Gladziszewski, Chair

REGULAR MEETING June 14, 2011

I. CALLED TO ORDER

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

Commissioners present: Marsha Bennett, Dennis Watson, Nicole Grewe, Benjamin Haight, Dan Miller, Michael Satre

Commissioners absent: Maria Gladziszewski, Nathan Bishop, Frank Rue

A quorum was present.

Staff present: Dale Pernula, CDD Director; Beth McKibben, Nicole Jones, Teri Camery, Benjamin Lyman, CDD Planners

II. APPROVAL OF MINUTES

May 24, 2011 – Regular Meeting

MOTION: *By Mr. Miller, to approve the May 24, 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 - None

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

Chair Satre announced that there were four items on the Consent Agenda, and inquired if there was public comment on these items. No one from the public had comments, and no one from the Commission had questions.

MOTION: *By Mr. Miller, to approve the Consent Agenda, as presented.*

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

VAR2011 0012

A Variance request to reduce the front yard setback from 20' to 17' to accommodate for construction of a single-family dwelling.

Applicant: Paul D. Douglas

Location: Foster Ave.

Staff recommendation: That the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR20110012. The Variance permit would reduce the front yard setback on the subject site from 20 feet to 17 feet with the following condition:

1. Prior to issuance of a Certificate of Occupancy, the applicant shall submit to the Community Development Department (CDD) an as-built survey showing the location of the structure with a minimum setback of 17 feet from the front property line and with roof eaves no less than 13.4 feet from the front property line. Additionally, the as-built survey shall show that the door of the garage is located at least 20 feet from the sidewalk.

VAR2011 0013

A Variance request to reduce the side yard setback from 5' to 3' for an addition.

Applicant: Gerald R. Gotschall

Location: Twelfth St.

Staff recommendation: That the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2011 0013. The Variance permit would allow for an addition into the side yard setback up to 3 feet from the property line with eaves no closer than 2 feet from the property line, subject to the following conditions:

1. Prior to issuance of a building permit the developer shall submit to the CBJ Engineering Department, a detailed drainage plan which includes provisions for managing stormwater runoff during construction and which details the drainage facilities to be included as part of the development. No building permit shall be issued until such plans are deemed adequate and approved by the CBJ Engineering Department.
2. An as-built survey showing the addition is no closer than 3 feet to the side property line with eaves no closer than 2 feet to the side property line shall be submitted before Certificate of Occupancy is issued.

CSP2011 0003

A City Project to extend city sanitary sewer system to N. Douglas Phase V, LID 91.

Applicant: CBJ

Location: Douglas Hwy.

Staff recommendation: That the PC recommend to the Assembly authorization of the North Douglas Sewer Expansion – Phase V (L.I.D. 91) project.

USE2011 0008

A licensed childcare home for up to 12 children.

Applicant: Samantha Adams

Location: Engineers Cutoff

Staff recommendation: That the PC adopt the Director's analysis and findings and grant the requested Conditional Use permit (CUP). The permit would allow the development of a state licensed childcare home for up to 12 children, subject to the following condition:

1. A minimum of 4 parking spaces will be provided and maintained year-round.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS – Moved following the Regular Agenda item

MOTION: *By Mr. Watson, that the PC reorders the Agenda by moving Consideration of Ordinances and Resolutions to follow the Regular Agenda items.*

There being no objection, it was so ordered.

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

AME2011 0001

Rezone of land in Peterson Hill area: Wildmeadow Lane.

Applicant: CBJ

Location: Glacier Hwy.

Staff report

Ms. McKibben said the PC previously reviewed this rezone request on April 12, 2011. The rezone initiated by the CDD staff consists of 76.23 acres in the Wildmeadow Lane area currently zoned D-1(T)D-5. The area is intended to transition from D-1 to D-5 when water and sewer are available, which was completed last fall. On January 24, 2011, staff held a neighborhood meeting with property owners. Since that meeting, staff discovered that the CBJ owned property has constraints. The CBJ purchased some of the lands with grant funds for the purpose of developing the Raptor Center. A Raptor Center is not allowed in D-5 zoning, and is considered a conditional use in D-1 zoning. Other CBJ owned property has covenants with language that appears to be trying to restrict the land to non-residential uses (i.e., park, open space, etc.), and it contains high-value Category B wetlands. The D-5 zoning is not consistent with the Land Use maps of the 2008 CBJ Comprehensive Plan (Comp Plan). Attachment E shows a developed Recreational Service Park (RS) and an undeveloped Natural Area Park (NP), which is inconsistent with D-5 residential zoning. She noted the current zoning map (attachment B) shows that the entire area is to be rezoned D-1(T)D-5. Staff recommends the privately owned parcels be rezoned to D-5, and the remaining areas to D-1 consistent with the Land Use maps of the Comp Plan. She said the PC has the authority to finalize transition zoning, and if the PC recommends zoning to D-1 it would have to be forwarded to the Assembly for final action.

Mr. Miller referred to the staff report, stating that a comment received from one property owner supports his property being rezoned to D-5. He asked if this particular lot is recommended by staff to be rezoned as such. Ms. McKibben said that property owner attended the neighborhood meeting and he seemed to prefer that his parcel remain with D-1 zoning. He later indicated a rezone preference to D-5. Mr. Miller said a different landowner of the triangular-shaped property to the west requests her parcel to be rezoned to D-5. Ms. McKibben said that particular property owner contacted staff via email, but did not clearly state what the zoning she would prefer. Even so, she said the property owner made it very clear that she wants to retain her

property value and the possibility to develop or sell it in the future. She forwarded staff reports to that particular property owner, but she has not heard back from her.

Mr. Watson referred to Attachment G, stating that the CBJ Lands and Resources Manager, Heather Marlow, indicated that the presence of wetlands justify rezoning. Ms. McKibben stated that a wetland delineation would have to take place prior to development because they are currently designated as high-value Category B wetlands, noting that an acre was already filled in the 15-acre site.

Public testimony

Kim Smith, 3112 Wildmeadow Lane, said he resides in the area being proposed to be rezoned to D-5. He referred to attachment F, regarding Ms. Marlow's memorandum stating that she does not believe the rezone makes sense because minimal value would be gained from doing so. He explained that only one lot has been developed. He believes other property owners do not wish to subdivide their lots. He said his neighbor, Robert Shanker, is not in favor of a rezone. It appears a unanimous consent tonight is that the property owners want to rezone to D-5, but that is not the case. The site contains many wetlands, so minimal development could take place. Because water and sewer were recently installed in the area, the CBJ wishes to garner revenue by having lots subdivided, but he does not believe that would end up happening to a great degree. He agrees with the areas on attachment G as being rezoned to D-1, which includes the lookout in front of the parking lot, but it is heavily used for viewing the Mendenhall Glacier. This rezone request would not to a great extent benefit the property owners or the CBJ.

Robert Shanker, 3120 Wildmeadow Lane, said the area transitioning from D-1 to D-5 is essentially where private property owners reside, and it is their understanding that most of this land is undevelopable. Chair Satre explained that the proposed rezone request is shown on attachment G. Staff is recommending rezoning an area to D-5, which includes the neighborhood Mr. Shanker resides in, and then the remaining to D-1. Mr. Shanker confirmed that Bonnie Jo's property is proposed to be rezoned to D-5. Chair Satre said yes, including a few other properties that are already built out, except for one lot proposed to be rezoned to D-5. Mr. Shanker confirmed that the PC realizes one lot is not developed. Chair Satre said yes. Mr. Shanker said he and his wife do not support the rezone because at some point they or other property owners might want to construct a cottage or other smaller dwellings. They love the property with its seclusion, which is why people live there. Landowners might want to obtain a variance in the future to subdivide, but they do not see any need to rezone their property to D-5 at this time. He said if Bonnie Jo wants to develop her land then let her do so because she has to obtain permits beforehand, but as far as he knows the rest of the property owners are opposed to this rezone request. He said it is great that the CBJ recently installed water and sewer and paved Wildmeadow Lane, but they do not understand why the CBJ wants to subdivide this area. Mr. Pernula said there are two issues in relation to this rezone. First, is that the PC conducted an update to the Comp Plan from 2006 to 2008, and the largest issue was the unavailability of affordable housing due in major part to the lack of buildable land in Juneau, which is when the PC reviewed the Comp Plan to create higher densities. The Wildmeadow Lane is not necessarily an area where the PC is creating higher densities, but the rezone might create an opportunity for more lots to be subdivided for potential residential development. Second, the Assembly provided a directive when the CBJ began to install water and sewer lines in North Douglas and towards Pederson Hill, to garner revenue from properties served with these utilities by having densities of at least D-5. These are the reasons that rezones are being proposed. Mr. Shanker said he viewed the master plan of the land that CBJ owns on Pederson Hill, and the City intends

to install a road in the area near the Lutheran Church, but he does not think it is possible to construct a road from Wildmeadow Lane to the Hill 560 area. Mr. Pernula said a consultant provided a few access options to Pederson Hill, but he does not believe the CBJ has yet made a selection. A possible access could be through Wildmeadow Lane, but there are other options that might be better. Mr. Shanker said he understood that the CBJ land extends from Wildmeadow Lane, which was provided via a deed specifying that it is not to be used to provide access to other properties. Chair Satre said this might be outside of what the PC is considering tonight in terms of this rezone request. Mr. Shanker said if the PC is contemplating rezoning their property, they want to know what the overview consists of. Chair Satre said the PC appreciates Mr. Shanker's comments, and the PC could make a variety of recommendations to the Assembly. He confirmed that Mr. Shanker prefers his property to remain as D-1, and then the adjacent property rezoned to D-5. Mr. Shanker clarified that he is not concerned about the adjacent property, but he does not want his property rezoned to D-5. Ms. Grewe asked where Bonnie Jo's property is located on attachment G. Ms. McKibben said it is the large triangular-shaped lot to the west.

Public testimony was closed.

Commission discussion

Mr. Watson asked which properties on attachment G are CBJ owned. Ms. McKibben said all the properties shown as D-1.

Ms. Bennett requested staff to expound on Ms. Marlow's comments in regards to the rezone and wetland issues. Ms. McKibben said the properties contain high-value Category B wetlands. She does not know how much of the area is wet, or what portions might be developable, or what sort of mitigation plan the US Army Corps of Engineers (COE) would require. However, any development on Category B wetlands requires applying for permits through the COE, and they might provide specifications for how future development could take place and/or require mitigation. She does not disagree with Ms. Marlow's comments regarding the Comp Plan in terms of preserving wetlands because they are completely accurate.

Mr. Miller requested staff to review the difference between constructing bungalow housing in D-5 versus D-1 zoning. Mr. Pernula said a small bungalow lot is created adjacent to a larger existing lot. The maximum lot sizes are 7,000 square feet in D-5, and 36,000 in D-1. The minimum lot sizes are 3,500 square feet in D-5, and 18,000 in D-1. Mr. Miller stated that in order to subdivide a bungalow lot from a D-1 lot, the lot would have to be 54,000 square feet. Mr. Pernula said he believes so if the arithmetic works out.

Mr. Haight asked if Bonnie Jo provided comments when the PC previously discussed this rezone request. Ms. McKibben said Bonnie Jo provided an email to staff, as she was trying to understand the proposed rezone process, and she also expressed a concern that the potential be retained to develop her property.

Ms. Bennett asked staff to point out where the meadow and trail are located on attachment G. Ms. McKibben said it is the largest parcel labeled D-1 to the east.

Chair Satre asked what ramifications there might be if the PC retained existing residential built-out lots with D-1 zoning as doing so would not violate the Comp Plan, or if this might be placing the PC in a situation of being unable to back out of this at a later date. Ms. McKibben said the

lots are shown in the Comp Plan to transition from Rural Dispersed Residential to Medium Density Residential (RDR(T)MDR). MDR consists of five to 20 multi-family dwellings units or more per acre. Chair Satre stated that this does not require development to D-5 zoning; instead, it provides an option, and the Comp Plan provides a provision that these lots be rezoned to D-5 zoning. Ms. McKibben said yes, at a minimum.

Mr. Doll said the Assembly would continue to lobby for the transitioning zoning concept. He explained that not doing so in this case would unfairly force other locations throughout the community to still do so in the future which would not be equitable.

Ms. Grewe stated that out of the 18 lots 10 are owned by CBJ, which leaves eight privately owned lots. She said the staff report states that four comments were received from eight of the private property owners. Ms. McKibben said staff did not receive any written comments on this rezone request from private property owners. Owners of three of the private properties attended the neighborhood meeting, and one owner of the large triangular-shaped parcel sent an email to staff wanting to understand the process. Ms. Grewe stated that even though the comments were not in written form, two private property owners appear to be in opposition, two voiced support, and four remained silent. Ms. McKibben said it is hard to know because two property owners attended the neighborhood meeting stating they preferred to retain D-1 zoning, which was different than the testimony they provided to the PC tonight, and the owner of the large triangular-shaped parcel did not specifically state her preference at the neighborhood meeting.

Staff recommendation: Staff recommends that the PC adopt the Director's analysis and findings and take the following actions:

1. Approve the zone upgrade to D-5 as shown on attachment G.
2. Recommend to the Assembly the rezone to D-1 as shown on attachment G.

Commission action

MOTION: *By Mr. Miller, that the PC adopts the Director's analysis and findings and grants the requested rezone, AME2011 0001, to allow the rezone of land in the Peterson Hill area: Wildmeadow Lane as shown on attachment G, subject to the actions outlined by staff.*

Mr. Miller stated that initially he was not in favor of staff's rezone recommendation, but with the public comments provided he is now in favor of it. He explained that with the extension of D-5 zoning beyond the triangular parcel extending into the Wildmeadow Subdivision section, he was unsure, but only one lot is undeveloped. With this being the case, if the PC were to only rezone the triangular parcel to D-5 and retain the remaining lots as D-1, it might be considered spot zoning. Furthermore, the CBJ instituted a Bungalow Ordinance, which could apply in this neighborhood for a section of lots to be subdivided to construct small dwellings, and he now supports the rezone to D-5 as shown on attachment G.

Mr. Watson said the land between the Mendenhall River and the adjacent property lends itself to a country atmosphere. He said all but one lot is developed, and it would be a challenge to construct additional homes on them. He does not believe that the rezone would impact existing housing. Instead, he believes this rezone would present an advantage to the community, and it addresses the directive from the Assembly and the Comp Plan, so he supports the motion.

Ms. Bennett said she has considered the fairness issue Mr. Doll mentioned. She said the property owners provided comments expressing skepticism, but none of them adamantly

objected to the rezone. It is possible the private property owners probably now realize the rezone request follows the water and sewer extension process in the community, and this neighborhood is being treated the same as others by following standard CBJ procedure.

Mr. Pernula commented that the PC is taking final action on the transition zone upgrade to D-5 as shown on attachment G. Ms. McKibben added that the PC would also be providing a recommendation to the Assembly on the rezone to D-1 per the same attachment with this motion.

Roll call vote

Ayes: Grewe, Haight, Bennett, Watson, Miller, Satre

Nays:

Motion passes: 6:0; and AME2011 00001 was approved by the PC with actions, as presented.

STV2011 0001

Street Vacation request of approximately 78 square feet of 1st St.

Applicant: Dale Whitney

Location: 1st Street

Staff report

Ms. Jones said the Street Vacation request is for approximately 78 square feet of right-of-way (ROW) on 1st Street in Douglas. She provided a photograph showing where the dock appears to be an extension of D Street in the channel (attachment D), but the maps are somewhat misleading because the dock no longer exists and the ROW requested to be vacated is about 5'x17', and the area of vacation request is approximately 78 square feet (attachment E).

She referred to the Alaska Tidelands Survey No. 14; 1968 (attachment A), which created additional land in this area in 2001 as the Kelly Smith Subdivision containing Lots 1, 2, and 3. She said the subject structure was built on Lot 3, which contains an old remnant of D Street.

She said the applicant began this process with an inquiry case, INQ2011 0006, in March 31, 2011. The applicant proposed three different street vacation options. She noted the option that seemed most feasible and least intrusive is presented to the PC for this street vacation of approximately 78 square feet (attachment C). She noted that none of the options were favorably received by CBJ Lands and Resources, General Engineering, or Public Works who stated that it is not desirable to vacate any CBJ ROW. CBJ General Engineering said the ROW might be required for future projects as 1st Street is not up to CBJ standards, nor is this a practice they want to start doing by relinquishing this ROW. She said the first option would encompass the majority of the existing structure with a portion in the ROW of 1st Street. The second option would encompass more of the existing structure, but not as much ROW as the first option. The last option is what the applicant requests which is to extend the property line. She believes the applicant intends to demolish the structure, and then rebuild. She explained that the subject structure and adjacent residence are substandard for the setback, so when the applicant applies to rebuild they would qualify for an exception where the front yard setback would be reduced to 10'. The ROW width in this area is 49' and would remain the same if the street vacation is granted. This is the widest portion of 1st Street, with the remainder being 39' wide, except further down the street where it is 38' wide.

She referred to attachment C, stating that the proposed Street Vacation request would not encompass the entire house, and it would remain as a non-conforming situation.

She stated that if the Street Vacation request is not approved by the PC, the applicant would be required to meet the 10' setback, and the corners of the indent of the Street indent would be in the form of a 10' arc, which would limit the amount of property the applicant would have to build upon.

She received a comment from a neighboring property owner stating that approving the Street Vacation request would compromise 1st Street by keeping the street as narrow as it is now because the subject house would remain in the ROW. They said this portion of 1st Street where the house is located at the bottom of D street is a dangerous area to maneuver vehicles on the hill when icy conditions are present.

She said staff is not recommending for or against the Street Vacation request. Staff presented the facts on the various comments received from the CBJ departments. A fire hydrant is located close within the vicinity, and water and sewer lines are underneath the street. The applicant found that no utilities are located within this portion of ROW, and this Street Vacation would not decrease the existing width of ROW. E Street is located one block away along the water, and has a ROW of approximately 155 square feet, which the PC vacated in 1995. A small portion of F Street remains a platted ROW. She stated that if the PC were to approve the Street Vacation request, staff recommends including a condition that the applicant be required to complete the minor subdivision platting process per CBJ code.

Mr. Pernula stated that, in regards to Joe Buck's comments, he agrees with them relative to any street vacation in general, but in this particular case it is for an indentation into the applicant's property where no public facilities are located. After discussing this with CBJ Engineering as to whether or not there are any potential public uses for this particular section of ROW in the future, and they concluded that there probably are none.

Mr. Watson asked staff how many residences exist on the subject property. Ms. Jones said a triplex spans the property. Mr. Watson asked what the setback regulations would consist of should the applicant rebuild a new structure. Ms. Jones said the property is in the D-18 zoning district that generally requires a 20' setback, but because of an exception of sub-standard setbacks, an average would be taken of this property and the two nearest it. Lot 3 and 2 have structures extending into the ROW, and then the next neighbor meets the setback, so the average of them would be less than 10', which equates to the subject property front yard setback being 10'.

Public testimony

Dale Whitney, 4515 Glacier Spur Rd., said he purchased the property in January 2011, which was previously owned by Freddie Mac who acquired it from Wells Fargo after a foreclosure process. Freddie Mac had it for about two years, and during that time the building was condemned by CBJ as being unsafe. He initially intended to rehabilitate one unit in the triplex to reside in for a couple of years while he contemplated how to change the overall property in the future. However, he later discovered that the building is in extremely poor condition, and to make it habitable would be too expensive. As he looked into the shape of the land, he found many historic anomalies due to how the general area has been developed. He said it is probably best to demolish the building, and then construct a new structure to current standards and provide

off-street parking on Lot 3. He explained that Lot 2 is the parcel that most of the building sits on now, and no off-street parking is currently available. He said a lot of debris and broken concrete has been placed in the ROW. He has not yet been able to move the concrete, which he intends to do so using heavy equipment. The building as it is situated now is very dangerous because the front doors open into the street, and the snowplowers literally push snow into the front yard. If the PC approves the Street Vacation request, he intends to demolish the building, and then construct new buildings set back from the street at least 10', including providing off-street parking. He is not sure that 10' would allow him to meet off-street parking requirements. He is requesting the option to extend the ROW in a straight line, which would provide him a reasonable area in which to measure the setback from. He is not asking for a portion of public property to build a structure on yet what he would be giving up is fairly substantial. In response to the opposing comments that this section of ROW might be needed for a future public use, currently a part of his building is already on a section of that ROW and it has the legal right to be there because it has been there for so long. If the CBJ wants to use the ROW, they would have to acquire a section of it from him. The comment from the neighboring landowner who resides down the street quite a ways referred to including Mr. Buck's comment that "...demolition and remodel of the building should require the owner to comply with current building and zoning codes for setbacks." Not to be pugilistic about this, but he does not believe anybody could require him to knock the existing building down to comply with current CBJ standards. He explained that basically the CBJ options would be for them to obtain the building from him by eminent domain, or to request him to do so voluntarily.

Public testimony was closed.

Commission discussion - None

Staff recommendation: The permit, if approved, would allow a street vacation of approximately 78 square feet of 1st Street in Douglas.

After review of the Street Vacation application, there does not appear to be a current public need to retain the proposed portion of ROW that is being requested to be vacated. While there are no currently documented plans to upgrade 1st Street, this section of platted ROW may be useful for future municipal projects. Comments received from Joe Buck, Director of Public Works, are very clear that this portion of ROW should not be vacated.

If additional information is presented at the hearing, and the PC determines that the ROW should be vacated, staff recommends the following condition:

1. The applicant shall complete the minor subdivision platting process per CBJ code.

Commission action

MOTION: *By Mr. Watson, that the PC adopts the Director's analysis and findings and grants the requested Street Vacation, STV2011 0001, per attachment E to allow approximately 78 square feet of 1st St. ROW to be vacated, subject to the condition outlined by staff, as presented.*

Mr. Watson said the Street Vacation request offers greater value to the property owner versus CBJ because this particular section of ROW cannot be used for anything other than the purpose the applicant mentioned this evening.

Chair Satre said all the requirements for the Street Vacation have been met, but the question is whether or not this particular case is in the public need; some comments state it is, while others state that it is not. He said the PC does not take ROW vacation request applications lightly because it is public land going into private ownership, but he is able to support the motion in this case.

Mr. Miller thanked staff for provided a thorough report to the PC.

There being no objection, it was so ordered, and STV2011 00001 was approved by the PC, as conditioned.

USE2011 0006

A modification of USE2007-0009 to allow bunkering of fuel for commercial vessels at the Auke Bay Loading Facility (ABLF).

Applicant: CBJ

Location: Glacier Highway

Staff report

Ms. Camery said a comment was received this afternoon from Heidi A. Reichl as a Blue Folder item. She provided a slide of the site plan (attachment 5), stating that the proposal is to allow commercial vessel fueling from fuel trucks, termed “fuel bunkering” by the US Coast Guard (USCG). The USCG has protocol type of procedures for fuel bunkering that have to undergo specific inspection requirements. The initial CUPs (USE2007-0009 and USE2008-0036) for the project prohibit fueling on-site except for a minimal allowance for snow removal equipment. This CUP is a modification of those initial CUPs to allow commercial vessel fuel bunkering at the ABLF. She stressed that this is not for general fueling operations, or fueling services for recreational boaters; instead, it’s strictly on an on-call basis for fuel truck deliveries to the site. No changes are proposed to the site plan, traffic circulation, or any other features previously approved with the other two CUPs, and all the other conditions on the project remain intact. One comment was received by staff from the National Marine Fisheries Service (NMFS) describing the value of the eelgrass habitat in Auk Nu Cove. The PC has already heard this many times with previous proposals. The NMFS requested the most stringent oil spill protection measures be instituted for the area. She said the applicant described in the report the oil spill response equipment both on-site and the expanded equipment available at Statter Harbor, as well as the inspection criteria required by the USCG. Staff’s recommendation is a reinforcement of the USCG inspection requirements already in place. She cited the conditions listed in the staff report.

Chair Satre said the report states that notification would be provided to the Statter Harbor facility personnel to coordinate operations, but this is not listed as a condition of the CUP. He said this notification process should be included within Condition 1 to ensure when vessels arrive and the operators call for fuel trucks to make deliveries, there could be instances when they might not meet the requirements of the conditions of the CUP. He said under this scenario, the proper notification would not have been provided, and if there was an oil spill the response team might not be able to arrive in a timely manner. Ms. Camery said the project description is enforceable as is, and many of the conditions are already duplicative, so they are mainly providing them to add emphasis. In that respect, staff could add a condition as Chair Satre has described.

Public testimony

Gary H. Gillette, CBJ Port Engineer, said the standard procedure for use of the ABLF is for vessel operators to contact Statter Harbor personnel to make arrangements because they are charged moorage for the time their vessels are tied to the float. If the vessel operator is going to require fuel, they are to notify the Statter Harbor personnel that they are going to be calling for a fuel truck. Once the fuel truck arrives they follow standard protocol, undergo an inspection, and the operator of the vessel and the fuel truck are required to have constant visual contact and communication while fueling, which they do now in other locations in the community. This is another area that would be beneficial to commercial users because it would relieve some safety and congestion issues at Statter Harbor. It is the only location the CBJ has to bunker large quantities of fuel, which at times takes two to four hours to off-load. He has no objections to the conditions of the CUP. Signs have already been installed listing telephone contact numbers, and the location of equipment on a building on the float. They are also able to post a sign on this building to notify people of this. He said such a sign stipulating the location of the oil spill response materials is somewhat redundant because it is a standard USCG procedure, but if that makes the PC more comfortable, they certainly could do so.

Chair Satre said concerns from the public were provided regarding the potential of fuel storage on-site, but it is clear in the application that this would not happen. It was also stated that fuel trucks have been parked on-site for an extended period of time. Mr. Gillette said fuel trucks might have been staged on-site prior to being loaded onto vessels to be transported to another community. Delta Western and Petro Marine who are the primary dispensers of fuel bunkering do not leave trucks on-site. He explained that last year a situation happened when a company was conducting a 2-day paving operation and they requested to store construction equipment on-site at night for a night or two, but long-term storage of fuel trucks is not allowed.

Mr. Watson recalls a discussion at a previous Docks & Harbor Board meeting regarding a requirement that a staff member be in attendance while fuel is dispensed on-site. Mr. Gillette said he does not recall that discussion. He explained that a staff person would probably not be assigned to be on-site unless they were there for some other reason, because they know that the fuel companies and vessel operators are in charge and responsible for carrying out fuel bunkering activities. They require the vessel operators to notify Statter Harbor staff of fuel bunkering requests, so if something goes wrong then staff would be standing by to assist. Mr. Watson said he believes the maximum threshold requirement is 10,000 gallons of fuel. Mr. Gillette said the standard fuel truck capacity at the site is generally around 4,500 gallons in one truck, and the higher 10,000 threshold limit would trigger a different level of spill response requirements. Therefore, it is not that they are unable to conduct fuel-bunkering operations from a fuel truck with a 10,000-gallon capacity, but if an oil spill occurred while refueling it would require a different level of response. He said the intent is not to conduct fuel-bunkering operations with any fuel trucks over the 4,500-gallon capacity at this time.

Public testimony was closed.

Commission discussion - None

Staff recommendation: That the PC adopt the Director's analysis and findings and grant the requested CUP. The permit would allow fuel delivery from a fuel truck (fuel bunkering) for commercial vessels at ABLF with the following conditions:

1. Prior to allowing fuel deliveries to the site, the applicant shall post a sign on the float that addresses the following issues:

- Fuel truck operators must have a USCG approved Marine Transfer Related plan for fuel bunkering.
 - Before fueling the truck, the operator must complete a Declaration of Inspection signed by the vessel operator and the fuel delivery truck.
 - The truck driver and vessel engineer must maintain visual contact throughout the fueling process.
2. The location of the oil spill response materials must be clearly identified with appropriate signage.
 3. Emergency response telephone numbers must be clearly displayed with appropriate signage.
 4. Adequate quantities of spill response materials must be maintained on-site. Fuel deliveries shall be halted after a spill event until the supply of spill materials has been replenished.

Commission action

MOTION: *By Mr. Watson, that the PC adopts the Director's analysis and findings and grants the requested CUP, USE2011 0006, to allow fuel delivery from a fuel truck (fuel bunkering) for commercial vessels at the ABLF, subject to the conditions outlined by staff, as presented.*

There being no objection, it was so ordered and USE2011 0006 was approved by the PC as presented, subject to the conditions outlined by staff.

BREAK: 8:08 to 8:15 p.m.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS – Heard out of sequence

TXT2009-00003

An ordinance relating to Noise, and providing for a penalty.

Applicant: CBJ

Location: Boroughwide

Staff report

Mr. Lyman said he has copies available of the January 25, 2011 staff report, which contains previous minutes and public comments on the draft noise ordinance should any Commissioners wish to review them. The main staff report is dated June 8, 2011, and another, dated June 14, 2011 was provided as a Blue Folder item that contains an email from Larri Spengler, President, Thane Neighborhood Association (TNA), and federal regulations related to noise. The memorandum regarding federal regulations provide the results of the CBJ Law Department and CDD research on the topic regarding federal preemption of local regulation for noise created by various acts of interstate commerce. These relate to shipping items into and out of Juneau, which were promulgated under the Noise Control Act of 1972 that pre-empts the CBJ from adopting more restrictive regulations in terms of those noise sources.

Based upon the public comments received over the past couple of years, he continues to maintain a list of interested persons who he emails regarding draft noise ordinance documents once they are scanned.

He said attachment A is the Common Environmental Noise Levels Factsheet, www.chchearing.org, which provides for how loud various noise sources would be. Attachment B is excerpts from the *Guidelines for Community Noise*, World Health Organization (WHO), which provides for what should be attained in terms of protecting public health, especially for sensitive receptors, such as children, the elderly, etc. He said attachment C is an interoffice memorandum, dated April 26, 2011 that he provided to the City Attorney, and the follow-up is per a Blue Folder item he previously mentioned. Attachment D contains public comments received on June 1, 2011, regarding an exception to allow firearm operations at the rifle range, game refuge, and trap club, as he had previously inadvertently made them illegal in these locations in the re-draft of the noise ordinance. The state also has its own definitions of when and where a person can hunt. A comment was provided by Mary Ann Dlugosch, which he believes is addressed by another comment from the TNA he mentioned earlier. Ms. Dlugosch mentions an interstate commerce exception, advocating that the PC might discuss this issue, but the PC has reviewed volumes of documentation regarding this and are still in the process of discovery. He said the TNA suggests revising 42.20.350(d) of the draft noise ordinance to state, "Sounds regulated by preemptive federal law, including but not limited to sounds caused by aircraft or interstate commerce..." He believes this is a good suggestion that should be incorporated. He said Ms. Dlugosch provided a comment regarding notification to households within a specified distance of projects expecting to emit excessive construction noise. The existing Building Official Noise permit has no public notice requirement, so this revised permit process for the draft noise ordinance includes some public notice requirements, such as for resurfacing the Juneau-Douglas Bridge, or driving piles at a particular tide, or other extenuating circumstances. Attachment E contains the June 6, 2011 draft noise ordinance, noting he neglected to change the date to June 8, 2011, but this is the most recent draft. In dealing with the City Attorney the draft ordinance was reformatted, and a fine schedule was added with associated penalties and verbiage in italics is new, and struck through text would be deleted. He referred to page 2 of the draft noise ordinance, Land Use Fine Schedule, stating that the first column was revised to state, "49.15.110 *or* 49.15.910..." Mr. Watson stated that for a very large project a \$300 fine is not going to garner much attention by the developer, so he questions whether they should make the "3rd and subsequent within 2 years" number of offenses a misdemeanor in the 03.30.065 *Penal code fine schedule*. Mr. Lyman clarified these are types of nuisance noises the PC previously expressed that they do not want to become involved with in regulating; vehicular noise, snow ball fights, dogs barking. Mr. Watson asked at what point might an infraction be considered a misdemeanor. Mr. Pernula said the City Attorney stated that he is very reluctant to turn an offense into a misdemeanor. This would mean an offender would become a criminal, rather than a violator of an infraction. In addition, with an infraction violation they do not have to prove a criminal intent, but simply serve the offender with a citation. A mandatory court appearance would be required for the third offence, which would impact a project to some extent. He said the 03.30.065 *Penal code fine schedule* section has been included because this is going to be one entire noise ordinance, but he does not believe it is relevant to the Land Use Code development, or at the purview of the PC. Mr. Miller said no other body has reviewed decibel levels, and other noise literature as closely as the PC has, and there might be nuisance aspects the PC might wish to discuss regarding this later on. He explained that the Assembly probably would not go through the entire education process as PC has when they are considering approval of the noise ordinance. Chair Satre said he does not wish for the PC to get "bogged down" on the penal code section of the draft noise ordinance tonight. The critical issues are in terms of decibel levels on receiving land uses, versus generating land uses, and the related exceptions. What the PC is tasked with tonight is dealing

with the preemption by federal law, and a few other large issues, and then some of the other contentious portions might begin to fall into place.

Ms. Bennett referred to page 7, 42.20.330 Land Use Noises, (1) and (2), which appear to have inconsistencies. She said it is confusing to provide for impulsive sounds occurring ten times or fewer in an hour under (1), and then four times under (2), but it might be better to have the same number or range in both sub-sections. Mr. Lyman said impulsive sounds are allowed to happen more frequently and be a bit louder during the day because they would not be waking many people up, disturbing sleep of others, or impacting their health. On the other hand, at night when a person might be taking the garbage out, they could drop a garbage can, or make other loud noises while shoveling.

He referred to page 4 of the draft noise ordinance, stating that 42.20.300 *Prohibition on excessive noises* contain fairly standard verbiage used across the country in noise ordinances. This was taken nearly verbatim out of the existing Disturbing the Peace Code, with minor tweaks provided by the City Attorney to section (b). Mr. Miller asked staff to define “rebuttable presumption.” Mr. Lyman said “presumption” is if a vehicle emanates a very loud noise, or a house party is very loud, then the owner is responsible in these instances. It is “rebuttable” in instances when property owners could prove they leased the property to another party and are out of town.

He referred to 42.20.310 *Sound measurement*, stating that a change was incorporated under (a)(1). This section used to state that the sound meter must be certified by ANSI as meeting the requirements of a Type I or II meter, but ANSI states that their certified Type II meters are no longer appropriate for enforcement activities, so reference to Type II meters was removed.

He referred to 42.20.320 *Maximum permissible sound levels*, stating that 42.20.340 *Nuisance noises*, and 42.20.350 *Exceptions* are now listed following this section. Under 42.20.320 section (a), he cited, “Interferes with normal spoken communication, disturbs sleep, or causes discomfort or annoyance to any reasonable person of normal sensitivity; except residents of the dwelling from which the sound is emanating.” This language is from the Disturbing the Peace Code. Every currently issued citation by the Juneau Police Department (JPD) for Disturbing the Peace noise violations are based on this, which would continue to take place. Otherwise police officers would have to take noise measurements. As the Commissioners witnessed during the field trip around town taking sound measurements, he does not believe that taking noise measurements would be effective because a noise may sound loud to the ears, but does not register as such on the decibel meter. He referred to *Table 1: Day-Time Hours* and said that Ms. Bennett pointed out that comments were provided stating how the hours listed are not appropriate. Everybody has different suggestions as to what they should be. The table does not align with traditional patterns of work and play in the Juneau community. A police officer suggested instituting different day- and night-time limits per season, but he believes that would be very difficult to enforce. Any transition would present a steep learning curve. Ultimately, it is up to the PC to revisit this, and then provide a recommendation to the Assembly for action. Mr. Miller said he likes the comment provided by the police officer, explaining that most everyone is busier later at night during the spring and summer with increased daylight. He requested retaining the morning hours and Sunday on the table as is, and revising the evening hours on Monday through Friday from 10:00 to 9:00 p.m. and Saturday from 9:00 to 10:00 p.m. Mr. Haight said he would like to change Mr. Miller’s suggested revision to Monday through Thursday, not Friday, to which Mr. Miller agreed. Chair Satre stated that during the winter construction, mowing the lawn type of outdoor projects are not taking place, so the PC might focus on extending the summer daylight

hours Juneau is blessed with because the inclement Juneau weather would limit them during the rest of the year. In addition, exceptions are provided in the draft noise ordinance for mowing lawns, snow blowing, etc. outside of these hours. Ms. Grewe said she prefers 9:00 p.m. during every weekday, and retaining the morning hours as is. Chair Satre requested the PC make a recommendation to staff to move forward on. He has a feeling that the PC might possibly change this table again, or the Assembly might do so at a later time. The first option was provided by Mr. Miller and Mr. Haight to retain the morning hours and Sunday on the table as is, and revise the evening hours on Monday through Thursday from 10:00 to 9:00 p.m. and Saturday from 9:00 to 10:00 p.m. The second option by Ms. Grewe is for every weekday to 9:00 p.m., and to retain the morning hours as is.

MOTION: *By Mr. Miller, that the PC retain the morning hours and Sunday on Table 1: Day-Time Hours of the draft noise ordinance as is, and revise the evening hours on Monday through Thursday from 10:00 to 9:00 p.m. and Saturday from 9:00 to 10:00 p.m.*

Roll call vote:

Ayes: Bennett, Watson, Miller, Haight, Satre
Nays: Grewe

Motion passes: 5:1, and *Table 1: Day-Time Hours* of the draft noise ordinance was revised by the PC.

Mr. Lyman referred to 42.20.330 *Land Use Noises*, stating that “(a) Steady, Continuous Noises” is the initial noise source that led to having to draft a noise ordinance. He said at a January 2011 meeting, the PC determined they did not need to worry about the day-time hours on non-residential receiving properties. This section sets day and night limits for residential receiving properties, and for non-residential only during the night. Mr. Miller said this section states, “...shall not exceed 48 dBA on a residential receiving property or 55 dBA on a non-residential receiving property during the night-time hours...” He referred to attachment A, stating that if a refrigerator is running at 50 dBA adjacent to the property line, then they would receive a \$100 citation because a neighbor might still hear it, but other background noise might be taking place at the same time. When the PC went on a field trip and conducted sound measurements of a generator from a residential neighborhood, they never had a reading less than 50 to 53 dBA because it mainly consisted of other background noise. He said he does not understand why the Commissioners are trying to reduce these decibel levels so low. Mr. Haight said attachment B suggests that non-continuous noise outside a residence should be 45 dBA or less, which would be reduced by 15 dBA inside the residence. Mr. Lyman clarified that a reduction of 10 dBA might be achieved through an open window inside a residence, and 15 dBA with it closed, which is the standard and Mr. Miller actually verified this. The goal is to reduce the level to 33 dBA inside a residence at night, which is where the number was derived from in this section.

He said (2) is a new revision for emergency, backup, and standby electrical generators at 70 dBA on residential receiving properties without a Land Use noise permit. This stemmed from numerous complaints. During this past winter, he had the opportunity to conduct sound measurements during a couple power outages where backup generators were located at different facilities. He agrees with the people who complained about the loudness of emergency backup generators at the Terry Miller Legislative Office Building, the Baranof, and the State Office Building because a person could not sleep if they were near them. This provision requires that

those type of generators be muffled with sound attenuating barriers installed around them because they quite often emit noise ranging in the high 70 to 80 dBA.

He referred to 42.20.340 Nuisance Noises, (2) that states, "When the enforcement officer determines that the ambient or background sound level exceeds 53 dBA, the night-time noise limit shall be increased to 5 dBA over ambient or background noise levels, but shall not in any case be increased over 65 dBA." He said he did not include impulsive nuisance noises in the steady, continuous noises 42.20.330 Land Use Noises provision because an impulsive noise happens once then stops, such as house parties. He said it might take a bit longer, although it is possible to conduct a sound measurement where the ambient would not impact the outcome. However, it might be appropriate to incorporate a similar paragraph, such as 42.20.340 (2) into 42.20.330 *Land Use Noises* provision as well. Mr. Haight said the key is the differential between the source of the objectionable noise, versus background noise. If the differential is slight, e.g., a refrigerator as Mr. Miller previously mentioned, it would not be heard at the property line if a person resides directly adjacent to Egan Drive due to traffic background noise. This concept is not addressed under the 42.20.330 *Land Use Noises* provision in this respect. Mr. Lyman said the DBA levels listed in 42.20.330(a)(1) were previously provided by the PC, so they are able to revise them. Ms. Grewe said every time the PC re-reviews the draft noise ordinance the Commissioners continue to undergo an educational process, and they attempt to remember what they were thinking before. She said it is unfortunate that three Commissioners were unable to attend this PC meeting because a couple of them are quite knowledgeable and opinionated about this section. She recalls that the Commissioners previously set lower dBA levels based upon documentation, expert advice, etc. She prefers to err on the side of too low of dBA levels to protect the residents. They should wait for problems to arise, and then change the dBA levels at a later time, if needed. If these dBA threshold limits worked in other communities, she thinks that the PC should do so as well for Juneau to provide that residents are able to experience peace and quiet in homes. She prefers to retain the numbers as is under in 42.20.330(a)(1) until a full body of the PC is attained at a subsequent meeting. Ms. Bennett said when noise is emanating from a residence in a D-1 zone, and an adjacent neighbor measures it from their home then the distance between them would dissipate the sound. Therefore, the sound measurements would differentiate when conducted at the source, versus the receiving property. Chair Satre said the dBA levels in 42.20.330(a)(1) might be a bit low, but he is willing to wait until another time to argue this. Maybe the inclusion of the background provisions of the draft noise ordinance, along with the Land Use Code might assist in minimizing this concern that these dBA levels are too low. This might also allow background noise to be considered while dealing with the 42.20.330(a)(1). He requested staff to note the concerns voiced by the Commissioners, and their support for the existing language, so the PC is able to move forward with the review tonight. Mr. Watson said the draft noise ordinance in the end has to be usable and enforceable, and if this body errs too low then they are going to create a situation where enforcement personnel are not going to be able to effectively respond to noise complaints. If this were to happen, the PC would end up with a frustrated citizenry with no solutions. Mr. Lyman said it is unlikely that numerous Juneau residents would purchase sound meters; instead, if they hear a loud and irritating noise they would probably call the JPD. Mr. Watson agrees with Mr. Lyman, which is why he believes 48 dBA listed in 42.20.330(a)(1) is too low. Mr. Miller said it is important for staff to incorporate the ambient noise concept into 42.20.330(a)(1), and he concedes for the moment on the listed 48 dBA on a residential receiving property at night for sleeping purposes. However, the 58-dBA level during the day is ridiculously low, which he strenuously objects to. He is not concerned with the residents of Juneau purchasing sound meters, and complaining about their neighbors. Furthermore, he is concerned about businesses in Juneau potentially being impacted

after the noise ordinance is approved, and then having to comply with unreasonable noise regulations. Hypothetically, if he operated a one-man shop on a small piece of property and is using a sewing machine listed in attachment A as being 60 dBA at the receiving property line, he could be cited with a violation during the day per the draft noise ordinance as it is currently written. Chair Satre said he understands Mr. Miller's concern, although they are discussing steady, continuous noise in relation to generators, etc. Therefore, with the draft noise ordinance as it is written, he asked staff if business owners might be protected by undergoing the Land Use Noise permit process referenced in 42.20.330(a)(2). Mr. Lyman said business owners in violation of the noise ordinance would have to be quieter, or undergo the Land Use noise permit process. He said an example of this was the refrigeration unit at Rainbow Foods that used to emit a very loud and steady tone all the time. Mr. Pernula said he dispatched an enforcement officer to Rainbow Foods prior to the unit being fixed, and he captured a sound meter reading of 65 dBA. Following this, he visited Mr. Stey who resides next door to Rainbow Foods and they had to talk very loud to hold a conversation in his yard in order to understand what each other was saying. That particular business owner was able to switch out components of the unit, and it is much quieter now. He said 65 dBA is too high in terms of 42.20.330(a)(2), but he does not know if 58 dBA is too low regarding 42.20.330(a)(1). Mr. Lyman said the literature in the packet states that this type of steady, continuous noise has different impacts on the health of people, which is why this type of noise is addressed under a separate section of the draft noise ordinance with a lower noise limit. Chair Satre said these are not normal construction or business activity type of noises; instead, the PC is discussing single, steady, and continuous noises, which are at lower levels and might be more bothersome to people. He believes 70 dBA in 42.20.330(a)(2) might be too low. Ms. Grewe said there might be a slight chance that these limits might be too low, but she places emphasis on "steady, continuous noises." She does not want to discourage business owners from conducting normal operations, and the PC might contemplate lowering the limits at a subsequent PC meeting. If so, she would like the PC to be provided examples of actual businesses and dBA limits that might be impacted in Juneau. She said she is aware of a person who sews canvass, but he probably does not run his sewing machine 24 hours per day. Mr. Pernula referred to the case he just mentioned regarding Rainbow Foods, so there are aspects that can be implemented to mitigate that problem. Chair Satre stressed that he shares the concerns about the dBA levels possibly being too restrictive throughout the noise ordinance, but they have to remember that this particular discussion is in relation to steady, continuous noise, which has been noted by staff for a future discussion.

Mr. Lyman referred to Article IX. Noise Permits, stating that this provision pertains to businesses that cannot meet the other requirements of the noise ordinance, which allows the issuance of a noise or construction permit process in those instances. He said this would provide the PC and the public with the opportunity to become involved to hear what the pros and cons are, and for the PC to place conditions on permits when necessary. If the PC determines that impacts cannot be satisfactorily mitigated, the permit would be denied. In terms of construction activities, exceptions were provided in the draft noise ordinance with permits if necessary during the day. During the night, 49.15.940 Purpose states that "...a construction noise permit is required for activities using heavy machinery or processes that are likely to have adverse noise impacts on area residents." There are times when noise permits would come into play, such as repaving the Juneau-Douglas Bridge. He explained that this has to be done during the night when less traffic takes place, which would be noisy. He said this provision provides that "The construction noise permit procedure is intended to afford the public with notice of the proposed construction-related noise and allow for input of its issuance while providing for an expedient permit review process that would not unduly restrict important construction activities." He

stated that currently no public notice is required for this noise permit provision, and it would be a major change for Juneau.

He referred to (1) *Public Notice*, stating that public notice would be provided similar to CUPs, except noise signs would consist of a yellow background. Notice would be mailed to property owners within 1,000' of the property subject to the noise permit. He said other CUPs require notice within 500' of the subject property, although depending on the case staff occasionally extends that boundary to 1,000'. He said a portion of this provision states, "...where the property subject to the permit is within 500 feet of a shoreline, notice shall also be provided to property owners within 500 feet of any shoreline within one-half mile of the subject property." He has provided maps to the PC showing this in the past. One map was of Stabler's Point, and even with a 1,000' buffer no notice would be required to be provided to anyone in the vicinity, and the PC might choose to revisit this to extend that particular notice even further. He said it does tend to get rather costly to mail numerous notices to property owners, which he'll address in terms of the fee schedule on page 24. Mr. Miller stated that Stabler's Point is probably one of the only exceptions where this provision might not work, so staff would already know that special considerations would have to be provided. He asked if this might have to be in the code in order for staff to implement an exception. Mr. Pernula said discretionary language could be provided in the code allowing for this type of exception. Mr. Lyman said this would have to be provided to the City Attorney for legal review if the requirement is for 500', and staff was to use discretion to say that more public notice is better than less, which has a community purpose. He said no one would appeal the issuance or denial of the noise permit because too much public notice was provided for a project. On the other hand, if the code states that staff could use discretion to provide notice to whomever they want, and somebody was not provided a notice then that might present grounds for an appeal. Mr. Haight said the PC is establishing the minimum requirement within a certain distance from the noise source, but if a person chooses to go beyond that distance and impacts other properties, he does not believe the limits set are too low.

Mr. Watson described a current construction project taking place to improve energy efficiency by removing existing siding and insulation, while sealing a 3-story building from pollution because it houses 200+ employees. The workers are using construction tools from 8:00 to 4:30 p.m. A project such as this meets a higher need to improve efficiency with construction taking place from Sunday through Thursday to provide the employees a short break from noise on Fridays. He asked if an exemption might be provided in this case to allow a permit to be issued because they are making a building more energy efficient, but the construction noise would far exceed the dBA during the day in the draft noise ordinance. Chair Satre said the project Mr. Watson mentioned would consist of an ongoing activity covered under the Building Official Noise permit process, and the developer could request a Land Use Noise permit to operate outside the draft noise ordinance hours. He explained that this is a common question because there tends to be confusion by many in terms of the difference between these two types of noise permits, and the exceptions. Mr. Miller said he appreciates Mr. Watson's mentioning this because it is not clear. The draft noise ordinance under 42.20.330 *Land Use Noises* ((b) *Impulsive Sounds*, states "(1) During the day-time hours listed at CBJ 42.20.320(c) Table 1, impulsive sounds occurring ten times or fewer in an hour shall not exceed 73 dBA on a residential receiving property." He said every residential building permit requested would exceed 73 dBA, so he asked if all the developers would have to apply for a Building Official Noise permit, or a Land Use Noise permit. Mr. Lyman referred to 49.15.910 *Noise Permit required*, (b) *Construction noise permit*, which he cited. He said this prohibits heavy construction equipment unless a developer has a Construction Noise permit, but this does not

pertain to general construction tools such as sawzalls, hammers, nail guns, etc. A developer would not require a Construction Noise permit in the case as Mr. Watson mentioned unless they were planning to operate heavy construction equipment at night. He referred to 42.20.350 *Exceptions*, (e), which he cited. He explained that the developer could request a permit to extend the hours of operation, but they are permitted to use construction tools during the day without a special permit. Mr. Pernula said the following exemption (f) covers sounds caused by air-, electrical- or gas-driven domestic tools, including lawn mowers, lawn edgers, radial arm, circular and table saws, chain saws, drills, etc. during the day for incidental use. Chair Satre said the PC has undergone great pains to ensure that normal urban activities are preserved, but he is not 100% comfortable that the PC is finished reviewing the exemptions, or the federal regulation aspect.

Mr. Lyman continued with the report, stating that under 49.15.910 Noise permit required, (1) Public Notice, the applicant would be responsible for paying for notice mailing costs. Staff would notify the JPD when a Land Use Noise permit has been requested so they can comment on them, including when they are issued. He referred to (A), stating that the PC would review the Director's reports to consider whether they are appropriate, complete, and comply with the requirement of the title. The findings are the same required for CUPs, but all noisy uses do not require obtaining a CUP. In addition, a Land Use Noise permit might be required in addition to a CUP or as a stand-alone permit if it is for a use a person could do by right. He referred to (3) *Specific conditions*, stating that the PC has discussed many of these before. Specifically, he wishes to touch on (D) *Expiration*, stating that the PC might set an expiration date for Land Use Noise permits, but it shall not be less than one year. The PC is able to issue a noise permit for a longer time period, noting that another provision, 49.15.920 *Expiration*, also provides for under (a) "...shall automatically expire ten years from the date of permit issuance unless an earlier expiration date is set as a condition of permit approval..." The PC might take into account while doing so what the changes in the neighborhood might be in terms of its current use during an approved time period. He referred to 49.15.910(3)(E) *Time restrictions*, which relates to when the permit applies. Next is (F) *Noise level restriction*, which limits maximum noise levels emanating from the use. He said the PC, under (G) *Type of source of noise*, limits a particular source of noise. Under section (4) *Notice of issued permit*, he said this provides that notice of noise permits issued are provided to the JPD, and section (5) *Posting of issued permit* requires that issued permits be posted on-site, which would alert other people that the use is going to be noisy. Under (b) *Construction noise permit*, these type of noises are prohibited only during night time hours when it is unlawful to operate pile drivers, power shovels, pneumatic hammers, derricks, etc., which relates to heavy construction equipment, not domestic hammers, nails, skillsaws, etc. In addition, it states, "...such permit shall be issued by the Building Official only upon a written determination that such operation during hours not otherwise permitted under this section is necessary and would not result in a disproportional level of disturbance to surrounding residents, given the public need for the project." He discussed this section with the Director and the Building Official, and some questions he and the City Attorney had were who gets to decide if this is necessary, for whom, and what the public need is. After these aspects were discussed, he said it was determined that if it was for a project such as resurfacing the Juneau-Douglas Bridge, the public need would outweigh whatever disturbance occurs for a couple of nights while the project is underway. On the other hand, another project at the airport is when workers were pumping silt out of the Float Plane Pond with a loud machine that did not have a muffler because it was not loaded onto the barge in time at Seattle. He said that type of project did not present a huge public need that the silt from the pond had to be pumped so quickly; instead, they would have had to expedite delivery of the muffler to come into compliance with the noise regulation.

He said the Building Official through written findings would make these types of decisions. Under the following (1) *Public Notice*, public notice would be provided a minimum of three days prior to issuance of a noise permit, which informs the public that loud noises are going to take place on certain projects. Signs would be posted at least three days prior to issuance of the permit. Under (2) *Revocation*, the Building Official could revoke permits if they later find that they were not a good idea to issue them by providing written findings.

He referred to 49.15.920 *Expiration*, (b), stating that construction noise permits would expire once the project is completed or one calendar year after issuance, whichever is sooner.

Mr. Miller referred to 49.30.900 *Nonconforming noise levels*, stating that an allowance is provided for two years to come into compliance, which seems reasonable. However, under the previous scenario he mentioned regarding a sewing machine running at 60 dBA, it would be illegal. He explained that if he makes \$200/year in profit, in two years he would have made a profit of \$400 to invest in a quieter sewing machine, which he does and that runs at 59 dBA, and it is still illegal. Therefore, he might apply for a Land Use Noise permit and appear before the PC requesting to extend the time to come into compliance to allow him to stay in business a couple more years to make enough profit to purchase a quieter sewing machine. He explained that with this scenario he is attempting to make the point that if a person has done everything they could afford to do and have shown good faith, he wonders if the PC could potentially put people out of business after two years by denying a permit. Instead, he requests to revise this section to include, "...a two-year extension would not unreasonably be withheld." Mr. Lyman said the PC might determine that the person has made a good faith effort, and the PC could potentially issue a two-year Land Use Noise permit with a mitigation condition placing the applicant on notice that they have to take a next step, or the PC would not issue the permit. This process places the use before the public, rather than just stating that the person is allowed to have never-ending Land Use Noise permit continuations. Chair Satre asked if staff contemplated incorporating similar language as to how other nonconforming uses are currently dealt with in terms of CUPs. He said with CUPs a particular nonconforming use might continue to be allowed if they do not do anything majorly different, such as being required to obtain another permit the moment they wish to expand or change what they are doing after the noise ordinance is enacted. Mr. Lyman said staff looked into this, but the problem is there are noisy land uses within the CBJ that exist, which caused staff and the PC to have to undergo this draft noise ordinance process, and it would be counterproductive if they allowed noisy uses to continue unabated. Chair Satre asked what happens if the PC finds they are unable to regulate a particular noisy use. Mr. Pernula stated that if it was for a large investment, such as a building worth thousands of dollars it usually falls under the provision in the Land Use Code as being nonconforming, which could continue to operate indefinitely, but not be expanded, etc. However, lower value investment land uses, such as signs have amortization provisions. He explained that if a business owner spent \$10,000 on a sign and the community wants to do away with it, the business owner might be allowed to retain the sign for whatever time is reasonable, say five or ten years, to amortize the value of the investment of the sign for the time the business owner has had it. In terms of including this type of provision in the draft noise ordinance, it is analogous to the amortization provision if a person has an investment in a land use noisy situation to let it continue for two years, or possibly beyond that time if they apply for a Land Use Noise permit. He believes this is a reasonable approach because this provides a method to amortize an investment of whatever is noisy. Mr. Lyman said the intent of this section is not that a business owner is required to come into compliance or they shut down the business; instead, to provide a couple of years to placed a business in violation on notice because maybe the existing use might not always have be

noisy, or only noisy during certain times of the year when it irritates neighbors. If so, it might take a while for those noisy operations to become a problem, and if complaints are later received then they would be put on notice to deal with the noise issue to mitigate impacts, or they would have to apply for a Land Use Noise permit to continue making noise certain times of the year. Another instance is that the business owner might have invested in an expensive piece of equipment that has not yet been amortized, but over the next five years they might be able to mitigate the noise by planting trees as a buffer, which could be provided as a condition of the Land Use Noise permit. He said if the business owner has been notified of all these aspects and chooses to do nothing to mitigate the noise, they could possibly be out of business. However, if they are taking strides to come into compliance, they might be allowed to continue operating. The PC already balances community costs and benefits of cases prior to making decisions and providing conditions on them. The intent is not to take any power away from businesses, but staff is trying to place control of noise permits to the PC, and public to some degree. Mr. Miller said the atmosphere being created for a business owner that has historically made noise would be completely unsure under this section whether they would be allowed to continue operations, and therefore he questions why any business owner might want to invest money in Juneau. If staff is stating that all business owners have to do is "try to comply" and the PC would issue them a permit, the draft noise ordinance should have such language. He stated that if decisions on Land Use Noise permits are up to five or six Commissioners that show up at a particular PC meeting, he questions how people would know whether they would still be allowed to operate. These PC decisions could potentially impact millions of dollars of businesses in Juneau, which he is very concerned about. Mr. Watson said he agrees, and if a large business owner is suddenly faced with this scenario that ends up having to close, he is not sure where the Assembly would stand on such a decision by the PC. Rather than place the Assembly in that position, he requests staff re-visit this section. He said this relates to the exceptions, but this has to have taken place in other communities. An example is with Boeing aircraft in Seattle. Now that they are gone, Seattle has huge unemployment problems and are trying to get Boeing back. He said Juneau is a town of small businesses, not large ones, and the PC has to keep this in mind and provide further discussion on this matter. He stressed that he does not want to place the Assembly in the position to have to back up this noise ordinance that staff and the PC have worked on so hard to develop because it is such a delicate balance dealing with the fragile economy in this community. Chair Satre said the PC would continue this type of discussion as they prepare to move the draft noise ordinance forward. The last aspect is to direct this to Mr. Lyman who has done his best to listen to the Commissioners as they have attempted to build some sort of consensus, even though dispirit view points are being made by certain Commissioners tonight. He requested those Commissioners who wish to incorporate changes into the draft noise ordinance to do so by providing specific written language to Mr. Lyman, as the PC is past the point of asking staff to continue wordsmithing it. He said staff already conducted research, outlined a re-draft of the noise ordinance, which has significantly changed over the course of time. He explained that when further changes take place it is probably going to involve numerous motions being made by Commissioners, so he believes the PC is past the point of attempting to garner consensus. The PC still has to deal with exceptions, the memorandum regarding federal regulations, and open public testimony once Mr. Lyman is completed with the report.

Mr. Lyman referred to 42.20.350 Exceptions, (a) Non-amplified sounds, stating that during the last PC review he discovered this section simply stated, "during normal hours for such events...provided that this exception is not extended to sounds produced by mechanical devices of any kind..." After reading this, he recalled that outdoor dance parties have been traditionally held until 4:00 a.m. on occasion, or football games that go into overtime, etc., so he included

some perimeters in this section. He added verbiage which states, "...during normal hours for such events, or from 7:00 AM to 11:00 PM Sun-Thurs or 7:00 AM to 12:00 AM Fri-Sat, whichever is more restrictive..." He referred to (b) Sounds caused by emergency work, which provides for an exception involving emergency equipment, vehicles and apparatus. He referred to (c) Sounds caused by warning devices and alarm systems exemption. He referred to (d), which states, "Sounds regulated by preemptive federal law, including but not limited to sounds caused by aircraft or interstate commerce." He said this is the exemption that includes the suggestion by TNA to add the word "preemptive," which clarifies the intent. Following this, he noted that in brackets is language stating that staff and the Law Department are working to identify the federal regulations they can adopt and locally enforce, which is a placeholder until such action might take place by the Assembly. He explained that if regulations were found that the CBJ could adopt, they might be able to do so elsewhere in the code. He said if they were preempted from doing anything else, this language under the exemptions section would still stand. He referred to (e) that states, "Sounds caused by construction or demolition activities when performed under the applicable permits issued as required by appropriate governmental authorities..." He suggested adding language to state, "as required" otherwise it is not applicable because it would have been somewhat redundant. He referred to (f) Sounds caused by air-, electrical- or gas-driven domestic tools, stating that Mr. Pernula previously addressed this section. He referred to (g) Sounds created by community events, such as parades, public fireworks, etc., stating that the bulk of this section exists in code already. He referred to (h), which states, "Sounds made between midnight and 12:30 a.m. on January 1 of each year." Ms. Grewe requested to also revise January 1 to December 31 each year.

MOTION: *By Mr. Miller, that the PC revises section (h) to read, "Sounds made from 11:00 PM on December 31 each year."*

There being no objection, it was so ordered.

Mr. Lyman said the PC previously expressed that they did not have any interest in accidentally making fireworks legal in Juneau by having a provision in the draft noise ordinance. However, fireworks were made legal in Juneau a couple of years ago. As it turns out, the City Attorney was unaware of that. This was provided via a change in the International Fire Code, which revised the classification of various fireworks that made it so fireworks in Juneau are legal. The State has not adopted other restrictions, so fireworks are saleable in the State of Alaska. He said a couple of permit applications were received by CDD for firework sale stands, which would be locally operational within the next few weeks. He explained that under the draft noise ordinance, no exception was provided for fireworks other than public firework displays, and it would be legal to purchase or set them off. Even so, he believes the Fire Marshal is drafting an ordinance to change that. Mr. Pernula clarified that the Assembly introduced the ordinance from the fire Marshal, but he does not believe it would be adopted by July 4, 2011. Mr. Lyman referred to (h) Sounds made by snow removal equipment or operations, stating that these relate to impulsive sound provisions, and the PC has already discussed this in relation to sand, gravel, and other materials. He described at a previous PC meeting that he witnessed an operator of a small bobcat clearing snow from a parking lot in downtown by ramming the bucket into a concrete retaining wall, scraping up the wall, and then banging the bucket on top of the retaining wall to knock the snow out of the bucket. He measure that sound level at 82 dBA from two blocks away, and the sound meter topped out at 105 dBA at the property line at 2:00 a.m. He referred to (j) Sounds made by solid waste collection or street sweeping equipment, stating that the PC previously discussed this. He referred to (k) Sounds from uses existing, stating that an exemption was

provided for two years for nonconforming uses, and it is clear the PC has to revisit this. He referred to (l) Sounds created by an activity for which a valid Noise permit has been issued, and (m) Sounds caused by firearms discharged at the rifle range, gun club, game refuge, or any other location and time permitted by law. He said if they were too close within the range of a road they would be in violation, but not if a hunter was in the woods or using one of these facilities during the listed hours they are open.

He referred back to 42.20.350 *Exceptions* (d) Sounds regulated by preemptive federal law. In discussing this particular exception, attachment C, he documented his research and findings per an interoffice memorandum to the City Attorney and Mr. Pernula, dated April 26, 2011. He started off with the Noise Control Act of 1972, and provided them relevant sections. He added emphasis to the provision, "...no State or political subdivision thereof may adopt or enforce any standard applicable to the same operation of such motor carrier, unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by an regulations under this section." The CBJ Law Department has not had any luck making any more sense of this than he did. He mentioned the terminal and commercial area to them, as he was trying to figure out exactly where the CBJ might regulate noise from fishing vessels, barges, forklifts, trucks, cargo aircraft, etc., although he was unable to provide a recommendation. He referred to attachment B of the Blue Folder item on Code of Federal Regulations, stating that Part 202-Motor Carriers Engaged in Interstate Commerce and Part 325-Compliance with Interstate Motor Carrier Noise Emission are standards the CBJ would have to identically adopt to regulate them locally. The question is whether the CBJ would have to have the same testing procedures, or solely institute the same requirements. While the Commissioners review the standards, they would find very specific testing requirements listed on pages 3 and 4, Table 1- Maximum Permissible Sound Level Readings, including Measurement Tolerances that apply. A provision is also provided as to how hard the wind is blowing, if it is raining, or snowing then sound tests cannot be conducted. He said any accessory equipment has to be turned off while conducting sound tests. Therefore, as an example, if they question how loud a forklift is when it is transporting a shipping container, and then placing it atop another container, but when the testing is being conducted the forklift is unable to be operational so they would not be able to test this noise that people are complaining about. He would like the Commissioners to contemplate these federal regulations and standards for a while to figure out how they might proceed. Even so, he believes they are stuck with 42.20.350 *Exceptions* (d), which is if the federal government preempts the ability of the CBJ to regulate sounds caused by aircraft or interstate commerce, which is kind of the "end of the line." He would follow up with the City Attorney to try to garner more direction on some of the questions, but at this point he feels that they are at a dead-end. Chair Satre requested an official legal opinion to be provided by the CBJ Attorney to the PC in regards to questions raised on the ability of the PC to write an ordinance containing language regarding interstate commerce. He said in order for the PC to have some standing when presenting the draft noise ordinance at a public hearing, they require a memorandum from the Law Department stating what is and is not allowed in terms regulating interstate commerce. Mr. Lyman said the CBJ could apply to the Surface Transportation Board (STB) for a Jurisdictional Determination, which entails a \$1,400 application fee that generally takes eight to 12 weeks to process, and the STB typically refunds the application fee to municipalities or government agencies. He mentioned this possibility to the City Attorney who stated that what he has found so far per the initial memorandum, not the follow-up documentation in the Blue Folder, is that they could save trouble and time by accepting that the CBJ does not have any jurisdiction regarding regulating interstate commerce. Chair Satre stressed that the PC definitely requires the legal opinion by the CBJ Attorney, which he previously requested. Mr. Watson

thanked Mr. Lyman for his work on re-drafting the noise ordinance, to which his fellow Commissioners agreed.

Mr. Pernula referred to 42.20.350 *Exceptions* (a) Non-amplified sounds created by organized athletic or other group activities, stating that both high schools hold athletic events using loud speakers at sports fields, which has to be included in an exemption otherwise they would have to apply for a Land Use Noise permit. Chair Satre stated that the PC previously discussed announcement system operations during athletic events. Mr. Lyman said considering that there are only two fields where loud speakers would be used, it makes sense for those facilities to obtain Land Use Noise permits to allow amplified sound. After doing so, this particular exemption listed under (a) would relate to other general types of activities, but staff is able to amend this at a later time if it is the wish of the PC.

Public testimony

Fred Gray, 120 Mount Roberts Street, Acting Manager for Delta Petroleum, stated that regarding the previous case, USE2011 0006, to allow fuel bunkering at the ABLF, there were questions in terms of safeguard operations. He also listened to this particular discussion regarding the draft noise ordinance because the Delta Petroleum facility is located within the barge facility corridor. For 17 years this facility has operated 9,000-gallon fuel trucks between the summer hours of 5:30 a.m. to 7:30 a.m. for public safety reasons, and to not interface with tourism operations on the Main Street corridor. He explained that the operators maneuver the fuel trucks within 30' of apartments and dwellings that align within that corridor. To his knowledge, they have never received any complaints about such operations. The winter operations consist of two trucks loaded with heating fuel that is delivered at 6:00 a.m., sometimes rarely with chains on tires, to provide service to buildings in downtown for public safety purposes before the workers are driving on those narrow streets. To his knowledge, they have had one complaint when an operator was refueling El Sombrero. That establishment is very difficult to refuel because the fuel tank is located at the rear of the building, which they refuel on Sundays and pay the operator time-and-a-half for the public safety of residents. He said a colleague from Lynden Transport is in attendance, and he assumes that he agrees with him that the industry has incorporated many aspects in terms of public safety outside the bounds of 7:00 a.m. to 10:00 p.m. at night. He explained that if they have heavy jet fuel usage taking place at the airport, such as refueling military aircraft at times, they run fuel trucks between 9:00 to 10:00 p.m. to avoid traffic, which they pre-plan for public safety reasons. He believes Mr. Lyman misspoke when he referred to the barge facility situation in attachment C on page 7. He explained that Delta Petroleum offloads their barges at the Taku Oil facility because they do not have their own terminal. If Mr. Lyman walked up with a sound meter to conduct measurement at the property line of the Taku Oil facility, he would receive an "X dBA" reading, possibly 40 to 50 dBA, but if he walked up to the dock it may well be over "Y dBA," possibly +75 dBA. The point he is making is that Mr. Lyman should not have the meter at the property line; instead, from a residents' porch in Douglas, or the nearest resident in the downtown corridor otherwise Mr. Lyman would always find excess dBA readings during the course of barge operation events. He said it is known that on a perfect night during the wintertime, hypothetically if a person were to drop a quarter outside the double blue doors, someone in Douglas would yell out heads when it is very quiet. He worked barges at night and has heard vehicle traffic, and when someone beeps a horn in Douglas when he is on the dock conducting fuel-pumping operations. Staff and the PC should be cautious when they define what the testing procedures are for sound meters. In addition, when he heads to work at 5:00 a.m. he views Gray Line and Prince Cruise tour buses heading through the downtown corridor going out the road, and on rainy days he is sure they are exceeding 75

dba 30' from downtown residences, but he does not believe people have complained. He said he is attempting to inform the PC of what commercial businesses do and how sensitive they are to noise regulations in terms of servicing their customers. Chair Satre said the PC is unable to address the items mentioned by Mr. Gray because they relate to vehicles operating in a normal fashion on a street, which would not be affected by the draft noise ordinance. In regards to the actual fueling of tanks, the PC discussed solid waste collection and street sweeping equipment, and they might contemplate inserting language to address refueling. Mr. Lyman said page 7 of attachment C contains solely federal regulations, and he is not sure what Mr. Gray is referring to because he did not insert any new verbiage. Mr. Gray said he has no expertise, and he is viewing the commercial and barge traffic noise abatement aspects in terms of the draft noise ordinance. Mr. Lyman informed the PC that during his report to them, he was simply restating existing regulations of the federal government on page 7 of attachment C. He referred to page 5 of the draft noise ordinance, stating that the 42.20.310 *Sound measurement* (c) Measurements shall be made from: (1) provision provides that sound measurements have to be taken from a different piece of property, not from the property where the sound is emanating. He referred to 42.20.340 *Nuisance Noises*, (c) Noise from motor vehicles, stating that the draft noise ordinance as written would recommend adopting state law 13 AAC 04.215 that allows the JPD to collect revenues of tickets they write, as opposed to those revenues going to the state, but it is not a different law.

Jim Stey, 235 5th St., thanked Mr. Pernula and Mr. Lyman for their work on the draft noise ordinance. He referred to provision 42.20.330 *Land Use Noises*, (c) Noise Permits, stating that this section refers to Land Use Noise permits or Construction Noise permits. He said it appears when there is a request for a Land Use Noise permit, the public would be notified who reside within 1,000', but not so with Construction Noise permits. There are times when construction noise could be very loud and last a long time for large projects, such as the construction currently taking place at the Christian Science Church with workers operating jackhammers. The public should also be notified of all Construction Noise permits because they are equally demoralizing should residents reside next to them for extended periods of time.

He referred to 42.20.350 *Exceptions*, (j), stating that he liked what Mr. Gray stated earlier about public safety being taken into account regarding transportation of fuel early in the morning, and even though they are loud it makes sense as does snow plowing and garbage removal operations, but street cleaning for beautification does not. All summer long street cleaning has been taking place downtown with no regulations in place where he resides, which is very loud. This used to start at 4:30 a.m., and he spoke to Ed Foster, Streets Superintendent of the CBJ Streets Division, and the City Manager who made an adjustment to 6:00 a.m. before the street sweepers were allowed to began operations on 4th Street. He prefers the starting time to be revised to 7:00 a.m. to be in conformance with similar exemptions. This would still provide time for operators to sweep downtown streets where they like to start, because more people are now parking vehicles in the parking garages so there is not so much congestion of traffic downtown. In addition, many businesses do not open until 9:00 or 10:00 a.m., so this provides more roadway area for the street sweeper operators to work. This would provide more hours for downtown residents to sleep, versus making it convenient for street sweeper operators to perform work downtown because that work does not pose public safety issues. Ms. Grewe said she has had requests from people to stop street sweeping practices from happening so early in the morning in downtown.

He enjoyed listening to the debate over dba limits, and he realizes the PC would select threshold levels that Juneau would have to abide by once the Assembly approves the draft noise ordinance. It is possible to assist with the process if some consideration is provided to a joint PC/Assembly

committee empowered for a couple of years, or as long as necessary, to change dBA threshold limits based upon public input on issues, such as a PC public hearing. They might find as they go along that the dBA threshold limits might have to be re-adjusted, which would benefit the public and businesses. The legislature does so through budget committees, etc. by empowering certain bodies to do their work for them, and this is something the PC/Assembly should consider.

He referred to fees, fines, and penalties under provision 49.85.100 *Generally*, stating that this is somewhat negative. In a more positive fashion, they should state that the purpose for creating a draft noise ordinance is because people have complained about noise and they want to protect the public health, safety, and property values. He said such a clause should be provided at the beginning of the draft noise ordinance, which would be stating that the CBJ has values and authority through a policy purpose statement.

The PC mentioned small business owners who could potentially be impacted by changes on dBA levels or time periods are set in the draft noise ordinance. He is a small business owner who has tremendously suffered by the fact that an adjacent business owner started making noise, Rainbow Foods. He said that business owner obtained all the required permits to operate as they were, and there was no stopping that noise without getting the law changed. He believes to allow existing and nonconforming businesses to have noise levels exceeding the noise ordinance thresholds would not advance any purpose. Instituting a time limit for businesses to come into compliance with the noise ordinance provides them the ability to look to the future and apply for a Land Use Noise permit to deal with the excessive noise, or else their permit would expire; otherwise impacted residents would be left in a “pit of despair.”

He has a very loud refrigerator inside his house that he is sure emits more than 50 dBA, which is located 20’ to 30’ from his head when he sleeps at night, but he deals with it. However, if it were his neighbor’s refrigerator outside his window making that same amount of noise it would be annoying to him. This is the reason the word “annoying” is a major part of the draft noise ordinance, which the PC has to keep in mind.

Robert “Bob” Doll, Assembly Liaison to the PC, asked if it would be appropriate to report to the Assembly that the PC is only going to deal with the draft noise ordinance to the extent that it pertains to land use. Chair Satre said the PC is reviewing the re-drafted noise ordinance tonight, and staff and the City Attorney would incorporate changes. He said the recommendations by the PC to them would be in regards to the Land Use Code, the Land Use Noise permit, and the exceptions. He explained that when the PC were first provided with the initial draft noise ordinance by staff a couple of years ago, they were looking at it from the point that it related to Disturbing the Peace, which did not make sense, and they are now reviewing it from a land use perspective. He said the PC would frame their recommendations to the Assembly on the portions of the draft noise ordinance that should be dealt with by the PC. The PC would also attempt to highlight areas that should be reviewed at the committee level of the Assembly. Mr. Miller said he has a different understanding, stating that before all the previous drafts the PC reviewed that were re-written by staff, they were hoping that the “nuisance” portion was not going to be re-presented to the PC. However, as Mr. Lyman explained earlier, he was unable to separate the Disturbing the Peace portion out from the draft noise ordinance. He said although the PC skipped over the review of this tonight, the Commissioners are the only ones who have been educated on different noise aspects in relation to the draft noise ordinance during a two-year review process. He does not believe any other body is more qualified to review the dBA threshold limits, etc., and the PC is not finished with their review at this point. Chair Satre said

the PC would be recommending the draft noise ordinance as a working document to the Assembly as a whole piece, and at that time some language would be provided stating that this is the PC's intent. A description of how this body handled this would also be provided because it is a very complicated ordinance. Mr. Haight said the PC is tasked with placing an emphasis on the land use aspect of the draft noise ordinance, but they cannot ignore the nuisance portion of it that falls under Disturbing the Peace, and the PC is in the midst of doing so and understands this has to be portrayed to the Assembly. Mr. Doll said he could almost guarantee that the Assembly would not tamper with the dBA threshold limits that end up being set by the PC, as they would not understand them. The members of the Assembly might understand the hours of the day or night, and seasons of the year, but they probably would not go beyond that.

He referred to page 10 of the draft noise ordinance regarding provision 42.20.350 *Exceptions* (d) Sounds regulated by preemptive federal law, asking if Mr. Lyman is suggesting that the CBJ would in fact have to embody federal interstate commerce regulations into local law. Mr. Lyman said he discussed them with the City Attorney and the JPD, and the JPD is not enabled by the federal government to enforce Environmental Protection Agency (EPA) regulations at work sites. He explained that JPD is authorized to enforce noise from vehicles with mufflers at the state level, but not through interstate commerce federal regulations. If the CBJ makes the decision to do so and not rely on representatives from EPA conducting tests in Juneau, the CBJ would have to adopt the interstate federal regulations locally in order to enforce them. Mr. Doll said his only difficulty with this is that it sounds as though doing so would entail a very long process, which would in essence be duplicative of what staff and the PC has already been doing. Chair Satre said he expects that what would be presented to the Assembly is not the addition of the interstate federal regulations; instead, sounds regulated by preemptive federal law. Mr. Doll said his predecessor mentioned this during public testimony, and since so much of this review is apparently experimental they do not know what the impact of the dBA threshold levels, hours, etc. are going to be. It might be advisable to incorporate into the draft noise ordinance language stipulating that a future review has to take place in two years, or an extreme would be to insert a sunset clause. The PC would then be allowed to review the noise ordinance to determine how many complaints the CDD staff receives, the number of fines imposed, etc. because neither the PC or the Assembly would know in any kind of detail how the noise ordinance would end up working out if they did not do so. Mr. Lyman said he is tasked with getting the draft ordinance through the Law Department in order that the PC is able to provide a recommendation to the Assembly, and the City Attorney does not like sunset clauses, so he can guarantee that this would not be included once the Assembly receives it from the PC.

Public testimony was closed.

Commission discussion - None

Staff recommendation: That the PC discuss the Draft Noise Ordinance, recommend changes as needed to staff, and make a recommendation to the Assembly on adoption of the Draft Ordinance.

Commission action

MOTION TO CONTINUE: By Mr. Watson, that the PC continues the Draft Noise Ordinance, TXT2009-00003, to a subsequent meeting for further review.

Chair Satre stated that this includes the written legal opinion from the Law Department regarding the preemptive interstate federal regulations, and minor revisions requested by the Commissioners to be incorporated by staff in the draft noise ordinance.

There being no objection, it was so ordered.

Mr. Miller said he is very impressed with where they are now in this review process, and staff did a great job re-drafting the noise ordinance, to which the PC agreed.

X. BOARD OF ADJUSTMENT - None

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Comp Plan review

Mr. Pernula said he previously mentioned at a past PC meeting that a review of the Comp Plan must take place every two years. The PC requested staff to review major items to be addressed by assigning chapters to individual Planners for review, and status reports would be completed by June 17, 2011. To date, he received about half of the status reports, and he has not read them all, but so far it looks as though quite a few Implementing Actions have already been completed, which could be eliminated. Some old data has to be updated, and once he receives all the status reports from staff he would incorporate them into one document and provide it to the PC for review at a subsequent meeting.

DOT medians

He explained that DOT would be installing pedestrian refuge islands at Walmart, Fred Meyer, and the Riverside/Egan intersection. For example, in front of Fred Meyer is where many pedestrians cross from the bus stop to shop. DOT would install an island in the middle of the roadway, and the area would be marked as being a crosswalk. The pedestrians would then be able to walk half way across the roadway, wait until the traffic from the other direction has cleared, and then they would continue crossing the remaining half of roadway. He said the three new crossings would make those areas much safer than they are now, especially knowing that a driver of a vehicle at the Walmart intersection recently hit a person.

Draft Willoughby District Land Use Plan review

He said copies of the draft plan were provided to the PC, and the state and the CBJ Lands and Resources Department would provide additional public processes. The PC would be provided an updated copy of the draft plan in the near future once those reviews are complete. He requested the Commissioners to provide him general comments in the meantime on the draft plan, which he would forward on to those agencies. He said Chapter 5 and two related figures would be adopted as an element of the Comp Plan. He, Mr. Chaney, and Mr. Lyman reviewed the draft plan, and found that many similar items are also found in the Comp Plan, but were provided greater detail.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Watson said the Subdivision Review Committee (SRC) met earlier tonight and held a discussion on public easements and street vacations, which was timely as the PC discussed a

street vacation case tonight. The SRC is also fine-tuning the revision to the Subdivision section of Title 49.

Chair Satre said the Public Works & Facilities Committee met regarding the Stabler's Point Rock Quarry permit extension application. He explained that the applicant is looking for direction as to what stance the CBJ might take in regards to extending their hours of operation, or possibly changing the permit versus solely extending it. He urged the applicant that if the application was re-presented to the SRC, they should conduct a closer review of the exhaustive minutes from the previous time that this permit was discussed by the PC because the permit extension would eventually be provided to this body.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XV. ADJOURNMENT

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

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