

MINUTES

PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU
Maria Gladziszewski, Chair

REGULAR MEETING
November 8, 2011

I. CALLED TO ORDER

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

Commissioners present: Nathan Bishop, Marsha Bennett, Dennis Watson, Benjamin Haight, Dan Miller, Maria Gladziszewski

Commissioners absent: Michael Satre, Nicole Grewe

A quorum was present.

Staff present: Dale Pernula, CBJ Community Development Department (CDD) Director; Nicole Jones, Eric Feldt, CDD Planners

Mr. Pernula announced that the VAR20110011 case to widen and straighten the roadway between North Eagle Beach Kayak Launch and Bessie Creek within 330 feet of 10 eagle nests was removed from the Agenda at the request of the applicant.

II. APPROVAL OF MINUTES

October 11, 2011 – Regular Meeting

MOTION: *By Mr. Miller, to approve the October 11, 2011 regular PC minutes, with corrections.*

There being no objection, it was so ordered.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Mr. Watson stated that Carlton Smith was recently designated to serve as the new Assembly Liaison to the PC. Chair Gladziszewski noted that Mr. Smith is not present at this PC meeting.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

Chair Gladziszewski announced that there are two items on the Consent Agenda, and inquired if there is public comment on them. No one from the public had comments, and no one from the Commission had questions.

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

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

AAP20110010

A Conditional Use permit (CUP) request to establish an accessory apartment served by an onsite sewer system.

Applicant: Lee Armstrong
Location: 1230 Mendenhall Peninsula Rd.

Staff recommendation: That the PC adopt the Director's analysis and findings and grant the requested Accessory Apartment permit, AAP20110010. The permit would allow the development of an accessory apartment on a lot served by an onsite sewer system. Staff recommends the following conditions:

1. Prior to issuance of any occupancy permits, the applicant must modify the Building permit, BLD20110525, to include kitchen facilities.
2. Prior to issuance of any occupancy permits, the applicant must submit to the CDD documentation of Alaska Department of Environmental Conservation approval of an onsite sewer system.

VAR20110023

A Variance to allow a triplex in the 13-foot street side yard setback along Douglas Highway.

Applicant: David Blommer
Location: Creek Street

Staff recommendation: That the Board of Adjustment adopt the Director's analysis and findings and grant the requested Variance, VAR20110023. The Variance permit would allow for a triplex to be 5 feet from the Douglas Highway right-of-way line and eaves that will be 2.5 feet from the same line with the following condition:

1. An as-built survey shall be required to be submitted to the CDD prior to the issuance of a Certificate of Occupancy.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS

AME20110006

A Text Amendment to rewrite Title 53 0 - Real Property: Chapter 53.09.010 Policy; Article I: Status Maps and Resource Inventory; Article II: Classification; and Article III: Plan.

Applicant: Heather Marlow, CBJ Lands & Resources Manager
Location: Boroughwide

Staff report

Mr. Pernula stated that on October 11, 2011, Cynthia Johnson, CBJ Lands & Resources Department Deputy Lands Manager, provided the PC a presentation on these items. The PC reviewed the proposed ordinance included in this packet, and responded to questions posed by

Commissioners. He explained that Heather Marlow, CBJ Lands & Resources Department Manager, later listened to the audio of meeting and found there did not appear to be a lot of questions or concerns about the first portion of the proposed ordinance through section 53.09.130, but many concerns were posed on the remaining portion. Therefore, Ms. Marlow requested that the PC review and provide a recommendation on the first portion of the proposed ordinance to the Lands Committee and Assembly, and defer forwarding any recommendation on the remaining portion until later. Chair Gladziszewski asked if Mr. Pernula has objections in doing so. Mr. Pernula said the first portion deals with land classifications, which he believes may no longer be relevant, as the PC deals with land classification per the CBJ Comprehensive Plan (Comp Plan), including that and there is a CBJ Parks & Rec Plan as well, so there is redundancy with the first portion of the proposed ordinance that is not necessary.

Commission discussion

Mr. Bishop referred to page 6, stating that once that verbiage is deleted, specifically lines 7 through 13 of the proposed ordinance that refers to the PC's role, he's uncertain whether that would later be referenced in another document containing similar language. He explained that under section 53.09.110 Initial classification, subsection (g) states, "The planning commission may make recommendations relating to the time parcels should be made available for disposal, conditions of disposal, and other recommendations relevant to disposal or use of the parcel," including in the Land Management Plan. In addition, there are a few other subsections of the proposed ordinance in the first portion that the PC should be cognizant of. Chair Gladziszewski said subsections (b)-(h) refer to the PC as well. Ms. Marlow said the classification by the PC is already addressed in Comp Plan and Parks & Rec Plan. She said Mr. Bishop's reference to disposal is currently outlined to occur in the Land Management Plan, and that will continue because that is not proposed as being changed at this time. She said the following portion titled 53.09.150 - Land Management Plan would be reviewed by the Commissioners at a future PC meeting.

Mr. Miller asked if there is an advantage to reviewing the proposed ordinance in a piecemeal fashion. Ms. Marlow said multiple groups are involved with the review process so they are doing this in a piecemeal fashion rather than in "one fell swoop," otherwise it would be like taking on all of Title 49. This process allows them to take on manageable portions, and they have already made amendments to Title 53 that were not presented to the PC for review because those reviews were undertaken by other bodies. The first portion of the proposed ordinance applies to the PC, which is why staff presented it to them, but not all of Title 53.

Mr. Watson found while reviewing Land Management Plan references that the Parks & Rec Plan has not been updated since 1996, except for Chapter 8. He asked if consideration was provided to changing the Land Management Plan, as the PC is currently able to classify parcels of less than five acres. Ms. Marlow said she intends to spend time with the PC reviewing the Land Management Plan at a future PC meeting, along with the remaining portion of the proposed ordinance. Mr. Watson asked what staff intends to provide as a comparison to upwardly adjusting the CBJ Lands & Resource fees. Ms. Marlow said they intend to review fee structures of other City departments, e.g., the CDD and Parks & Rec implemented processing fees for smaller project applications. She explained that the Land & Resource fees have not been updated in so long that they do not compare to other departments, so they would like to bring them in line.

Public testimony - None

Staff recommendation: That the PC provide a recommendation to the Lands Committee and Assembly regarding the proposed ordinance through section 53.09.130.

Commission action

MOTION: *By Mr. Watson, that the PC provides a recommendation to the Lands Committee and Assembly regarding the proposed ordinance through section 53.09.130.*

Mr. Bishop said he does not have any problem with the general classification in subsections (b) and (c). However, subsections (f) and (g) relate to the PC's role of determining how properties should be subdivided, what they should be used for, and when that should be done, which are aspects he does not want taken away from the purview of this body. He is more inclined to be favor of doing so if the PC were to exclude subsections (f) and (g), and possibly contemplate including them in other areas of the proposed ordinance. Mr. Pernula said whether or not land disposals are available for subdividing, there is an overlap between land classification and land management. It seems that the land management aspect is used to analyze parcels in much more detail to determine which of them are to be disposed of, and when so those issues should be addressed more appropriately in the land management section rather than the classification section. Mr. Bishop said this is not a level of distrust, as he just wants to make it clear that the PC should continue to have such a role, but the land disposal aspect in relation to the purview of the PC is spelled out in the Land Management Plan. Ms. Marlow clarified that on the future review of the remaining portion of the proposed ordinance on page 7, section 53.09.150 (a), it is in regards to land disposal, which states, "The plan shall address the retention, use, disposal, development, and subdivision of city and borough land and selected land and the acquisition of private lands for public purposes," including (b) that states, "The Commission shall recommend changes in the Land Management Plan as necessary." She explained that staff is not proposing to recommend changes in relation to this in section 53.09.150, and therefore that is how the land disposal aspect would be addressed in the Land Management Plan in the future.

Mr. Miller spoke against the motion, stating that he would like additional information before the PC provides a recommendation on any portions of the proposed ordinance for many of the same reasons Mr. Bishop mentioned. He explained that he does not possess a lot of energy against the first section of the proposed ordinance. He appreciates that staff is proposing to conduct this review on a piecemeal basis because it is a fairly large task. However, he does not want to forward a recommendation by the PC on the first portion of the proposed ordinance just to be expeditious, as he wants to be sure beforehand of what they are being requested to do, but the PC does not have sufficient information to do so yet.

Mr. Haight said there appears to be a discomfort level by the Commissioners to allow the first portion of the proposed ordinance to be moved forward on a piecemeal basis, rather than doing so in its entirety. If the PC were to do so, he believes aspects could occur by deleting sections in the first portion, which might not be re-addressed in the remaining portion of the proposed ordinance, and therefore that is not the manner in which the PC should be present a recommendation.

Ms. Bennett stated that at a previous meeting it was mentioned that not all of the current Commissioners were serving when the Land Management Plan was last presented to the PC for review in 1999, which is why the current Commissioners requested to review that plan now. She feels uncomfortable with the PC moving forward with only reviewing the first portion of the

proposed ordinance, as the PC's role would be taken away, but they are not sure what that entails. Instead of separating the review into two sections she prefers to retain them as one, and to review the proposed ordinance in its entirety at a COW meeting after the Commissioners have had a chance to review the Land Management Plan. She asked Ms. Marlow if doing so would impact staff's timeline. Ms. Marlow said that would, as the departmental goal is rewrite Title 53, and the Lands Committee of the Assembly already approved doing so, and therefore staff has and will continue to make changes to Title 53. She explained that staff presented the proposed ordinance to the Commissioners as a courtesy, but they were not required to do so by code. The reason they did so is because staff did not want to propose deleting the PC multiple times in the first section of the proposed ordinance without talking to them about this beforehand. Therefore, if the PC chooses not to provide a recommendation on the first portion of the proposed ordinance to the Lands Committee of the Assembly, staff will continue their work on the proposed ordinance with or without a motion from this body.

Mr. Bishop said he would like to review the proposed ordinance in its entirety in terms of the PC's role at a COW meeting with staff, rather than on a piecemeal basis that is being proposed tonight. He does not want sections deleted in the proposed ordinance without knowing beforehand where they will be placed in the future. He appreciates that staff has a schedule they wish to meet, but he prefers that the PC wait to get back to staff as soon as they are able in the form of a complete package.

Mr. Watson spoke in favor of the motion, stating that Ms. Marlow provided the proposed ordinance to be reviewed in two portions due to comments made by the Commissioners at the last PC meeting. He explained that the PC asked for and were provided a copy of the Land Management Plan by staff. While he realizes there is discomfort on approving the first portion of the proposed ordinance rather than in its entirety, he continues to speak in favor of the motion.

Mr. Pernula said the PC might choose not to make a "blanket" favorable recommendation on the first portion of the proposed ordinance. If they end up choosing not to do so, the PC might otherwise make a recommendation just on elements that relate to the PC, in particular the disposal of land for development that has to be addressed in the remaining portion of the proposed ordinance and Land Management Plan, rather than not making a recommendation supporting the first section of the proposed ordinance as it is being proposed.

Chair Gladziszewski said she was prepared to move forward on the recommendation, but the Commissioners have voiced concerns. If the PC does not move the first portion of the proposed ordinance forward, she wonders how that might impact the timeline since the proposed ordinance would not be ready in its entirety anyway. Ms. Marlow said there are other sections of the code that staff already moved forward, which the Lands Committee of the Assembly passed into ordinance. Therefore, with or without a recommendation on the first section of the ordinance by the PC, staff will continue on with the project, with the exception of the next 59.09.150 Land Management portion of the proposed ordinance.

Roll call vote

Ayes: Watson

Nays: Bishop, Haight, Bennett, Miller, Gladziszewski

Motion fails: 1:5; and the PC did not provide a recommendation to the Lands Committee of the Assembly regarding the proposed ordinance through section 53.09.130.

Chair Gladziszewski commented that it has clearly been stipulated by the Commissioners that the PC has requested to review the proposed ordinance in its entirety, rather than on a piecemeal basis. Even so, she does not believe the Commissioners had any particular objection in general to its concept, except those mentioned by Mr. Bishop.

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

USE20110024

A CUP application to convert an existing attached garage into a hair salon.

Applicant: Virginia J. Custer

Location: 4009 Spruce Lane, Mendenhall Valley

Staff report

Ms. Jones said this is a CUP in a residential D-5 zoning district, and the applicant meets all the home occupation requirements, except that this use would generate additional traffic in the neighborhood. The proposal is to convert an existing 475 square foot attached garage into a one-chair hair salon. The operations would take place Monday through Friday from 10:00 a.m. to 6:00 p.m. The maximum amount of traffic expected would be one appointment every 30 minutes, which would result in 16 per day. Staff feels the proposed use generating excessive traffic of six to eight appointments per day would be more realistic for this type of use, which would result in 12 to 16 trips per day and be slightly more than what is typically found for a single-family residence. However, at the beginning of the PC meeting the applicant informed her of the need for Sunday hours, which she deferred to the applicant to later expound on for the PC.

She referred to the site plan, stating that in order to meet parking requirements the applicant has proposed to add an additional section to the existing driveway. She provided a picture of the driveway as viewed from Google Earth taken a few years ago, and the front porch area has been changed since then. After the driveway is later altered, there would be sufficient room for four parking spaces, with snow storage planned in the southern portion.

Traffic is a concern of a neighbor, noting that two letters of written testimony were provided in the Blue Folder, with one in support, and the other in opposition. The concerns are in regards to the additional paving of the driveway that would provide more of a commercial feel to the neighborhood, including increased traffic. Another adjacent property owner mentioned that Spruce Lane is quite often used by people driving to Floyd Dryden Middle School to turn around in the cul-de-sac due to traffic congestion in the nearby area. From a zoning perspective, the property owner without the use permit could expand their driveway and not violate any land use requirements, which would be slightly over what would typically be allowed in a residential zoning district.

Staff recommends the PC approve the requested CUP, subject to the conditions and advisory conditions outlined.

Mr. Watson asked what the maximum size of sign would be allowed per Advisory Condition 1. Ms. Jones said in a residential zoning district a facade-mounted sign is allowed to be up to four

square feet containing the business name and address without a permit, but a monument-based sign would require a permit of the same size.

Ms. Bennett said it would probably be very rare occurrences when clients would actually ride bicycles to hair salon appointments. Ms. Jones explained that a section of the Comp Plan encourages when adding commercial uses in residential zoning districts at locations of small-scale businesses, they are to be located in such a way that citizens are able to walk or bicycle to them if it is compatible to do so, including providing covered bicycle storage. The subject property is located adjacent to a multi-use bicycle path, and across from Floyd Dryden Middle School. Therefore, not all the clients would bicycle to hair appointments, but it might be good to allow for a covered bicycle area onsite. She explained that there was another use off of Lupine Lane in the valley where a similar advisory condition was applied.

Mr. Watson asked if the proposed driveway addition would allow two vehicles being parked side-by-side, rather than in a row. He explained that the PC reviewed and approved previous CUP applications where they have not required additional parking. Ms. Jones said in this case the property owner needs two parking spaces for the single-family residence, and the proposed use would eliminate the garage being used as a parking area. Also, due to the square footage of the use, the applicant would be required to provide for two additional parking spaces. She explained that in a residential zoning district one stacked parking space is allowed, but the applicant would not be able to stack parking spaces for the proposed business. Chair Gladziszewski added that they would be able to stack personal parking spaces, and for the business the applicant is required to provide an additional driveway parking space.

Public testimony

Virginia Custer, 4009 Spruce Lane, said prior to purchasing the property it had a front porch bricked area with surrounding trees, which they later removed as they had plans to expand it over time. She is sorry about the concern of a neighbor wanting them to retain their green lawn, but she could expand the paved driveway without this CUP permit, so that is going to happen anyway. She is licensed to perform Alaska State Board testing in the salon area now, which takes place on Sundays about once every three months, and this activity would continue after she opens the proposed salon. In addition, she wishes to be with her infant children more in the future, and even though she currently does not work every day she wants to work several hours now and again on Saturdays or Sundays. She explained that at times she takes off on Saturdays during the wintertime to take her son skiing, and many people work Monday through Friday and require weekend appointments. Therefore, not being able to work on Sundays would reduce potential revenue, including not being able to take her son skiing on Saturdays if she is unable to make up that time on Sundays. Her front porch area already provides sufficient space to park several bicycles, which is already an open and covered area.

Public testimony was closed.

Commission discussion

Ms. Bennett asked staff if there has been any discussion in the neighborhood disagreeing with Sunday hours of operation, rather than just Monday through Friday. Ms. Jones said one neighbor provided written comments who is concerned about the potential of increased traffic and the commercial feel that this proposal would generate, which might be a reason why not to change the hours to seven days per week. The applicant did not initially provide the additional time on Sundays, so that was not initially reviewed as part of this application. Ms. Bennett said the

written comments were not specific to Sundays, as it was instead regarding traffic in general. She stated that if the traffic were spread out over seven days so there weren't as many vehicles on a given day, that would probably satisfy the concern of that neighbor. Ms. Jones said she is unable to speak for that neighbor, but she understands that less traffic would be probably be appreciated.

Staff recommendation: That the PC adopt the Director's analysis and findings and grant the requested CUP, USE20110024. The permit would allow the development of a one-chair hair salon within an existing attached garage. The approval is subject to the following conditions and advisory conditions:

1. The maximum number of chairs for this salon shall be limited to one.
2. The hours of operation shall be limited to Monday-Saturday from 10:00 a.m. to 6:00 p.m.
3. A covered bike storage location allocating space for 2 bicycles shall be provided.

Advisory conditions:

1. Signs are regulated under CBJ §49.45. A separate permit is required for most signs. Contact the CDD for more information prior to designing, purchasing, or installing exterior signs.
2. Any increase in hours of operation or number of employees shall require PC approval.

Commission action

MOTION: *By Mr. Watson, that the PC adopts the Director's analysis and findings and grants the requested CUP, USE20110024. The permit allows the development of a one-chair hair salon within an existing attached garage. The approval is subject to the conditions and advisory conditions outlined by staff, with a modification by the PC to delete Condition 3.*

Mr. Watson said he deleted Condition 3 because he is uncomfortable with the possibility of the applicant having to construct an additional structure in front of their home, as there appears to be adequate bicycle space storage already. However, if the Fire Marshall were to later deem there is not adequate bicycle covered storage, the property owner might be required to do so at that time. He is retaining the hours from 10:00 am to 6:00 pm from Monday through Saturday, which he feels is more than adequate for a one-station styling salon, and the neighbors are entitled to some relief in terms of traffic. This commercial use would be conducted in a residential area, and for the record he has always felt that commercial operations performed seven days per week in residential areas is not good for retaining neighborhood harmony.

Mr. Bishop stated that for the most part he supports the motion, but he is concerned with six days per week of the proposed commercial operation taking place in a residential neighborhood, especially in terms of Saturday operations because that is when children would be playing outside.

Chair Gladziszewski stated that since it would be such a small operation, she feels inclined to provide flexibility for either Saturday or Sunday operations.

FRIENDLY AMENDMENT: *by Chair Gladziszewski, that the PC revises the following condition:*

2. *The hours of operation shall be limited to Monday-Friday and either Saturday or Sunday on any given weekend from 10:00 a.m. to 6:00 p.m.*

Chair Gladziszewski said she likes the idea of covered bicycle storage being provided onsite, but the idea of having to construct a structure in the neighborhood seems strange so she is happy to delete Condition 3 per the motion. Mr. Watson accepted Chair Gladziszewski's friendly amendment.

Mr. Miller spoke in favor of the motion with the deletion of Condition 3 because the applicant is already able to provide for covered bicycle storage, including the friendly amendment. If the applicant were required to provide such an additional structure, they have to meet setback requirements and obtain a Building permit. He likes the idea of being able to allow some mixed use in neighborhoods because it brings neighborhoods together, including that the applicant would be able to stay at home with her infant children.

MOTION RESTATED: *by Chair Gladziszewski, that the PC adopts the Director's analysis and findings and grants the requested CUP, USE20110024. The permit allows the development of a one-chair hair salon within an existing attached garage. The approval is subject to the conditions and advisory conditions outlined by staff, as modified to revise Condition 2 and delete Condition 3, as follows:*

- 1. The maximum number of chairs for this salon shall be limited to one.*
- 2. The hours of operation shall be limited to Monday-Friday and either Saturday or Sunday on any given weekend from 10:00 a.m. to 6:00 p.m.*

Advisory conditions:

- 1. Signs are regulated under CBJ §49.45. A separate permit is required for most signs. Contact the CDD for more information prior to designing, purchasing, or installing exterior signs.*
- 2. Any increase in hours of operation or number of employees shall require PC approval.*

There being no objection, it was so ordered and the PC approved USE20110024, with modified conditions.

USE20110027

A CUP for the installation of a 119' tall monopole at Spruce Meadows RV Park.

Applicant: WesTower Communications

Location: 10200 Mendenhall Loop Road

Staff report

Mr. Feldt stated that three written comments were provided on this case in the Blue Folder from Karla Hart, George Danner III, and Patricia OBrien.

He said the applicant is proposing to develop a 119' tall telecommunication monopole at the Spruce Meadows RV Park. Since the monopole is over 50' in height, the applicant was required to apply for a CUP. He referred to attachment A of the Vicinity Map, stating that there are mainly single-family residences to the south. Vacant land lies to the west, east, and north of the site. The monopole would be installed about 90' away from the right-of-way, and it would be an additional 20' to the actual travel way, which would be quite a ways away from the eastern lot line, and much farther away from other lot lines. The applicant would remove a few trees because the site is fairly heavily forested, but the applicant and staff would work together to minimize removal of larger trees to preserve the buffer area. The subject site was chosen mainly to minimize wetland fill. If the applicant were to install the monopole further to the north away from developed areas then additional wetland fill would be necessary, not only for the building

pad, but for creating an extension of the driveway for vehicles to access the site. In addition, electrical lines would not have to be extended further, which would increase construction costs.

He referred to a diagram of the 119' monopole, stating that the top two structures of the antenna and satellite dish are being proposed at this time to distribute Internet data to those who have smart phones with Verizon service. The lower two infrastructures shown are future build-out scenarios. On the ground, the infrastructure would consist of a typical radio cabinet that would power the upper devices on the monopole, and a back-up battery pack to use during future power outages. The applicant originally proposed a generator, but after the indicated decibel levels that were expected to be emitted, they decided a back-up battery pack would be a better choice to greatly reduce potential noise emitting from the site to nearby residents and RV Park users.

Three utility light poles would rarely be used about once per month by the maintenance crew, and at other times the lights would remain inactive. Those light fixtures would contain side shields aiming light glare straight down. Being quite a ways from the roadside, he believes it is unlikely that light would be seen from the roadside or nearby residents. Chair Gladziszewski confirmed that no lights would be installed on top of the monopole; Mr. Feldt said that is correct.

He explained that the applicant provided photo simulations (attachment D), noting that to the left is a photograph of the existing site with a sign posted at the entrance of the RV Park. The photograph on the right is the proposed view of the monopole that would be green in color, which is important because it would allow the monopole to blend into the environment as being one uniform color. He explained that staff recommends a condition requiring the applicant to paint the monopole either dark green or brown to meet that goal. The applicant indicated that necessary trees would be removed during construction to reflect what is shown. Mr. Bishop asked if the equipment attached to the monopole would also be painted dark green or brown in color; Mr. Feldt said yes. He explained that the next two photographs are opposite views looking north to the site of both the existing and proposed views. He explained that the remaining photographs show the tower if it was the manufactured metallic color, and when compared to the green monopole structure in the previous photograph, the green one appears awfully bright, so the condition clearly states that the monopole and all accessories have to be "dark" in color. He explained that he has reviewed most of the conditions, and he has since revised Condition 6 in case a generator is proposed in the future, as follows:

6. If ~~the~~ generator exceeds 55 dBA levels at the closest residential property line, a separate Conditional Use permit shall be required to be final as it would be defined as a utility.

He said it has come to staff's attention that upon completion of the report that he referred to an appraiser study that was done in 2008 regarding the effects on property values of an adjacent telecommunication tower proposed at that time as having no negative impact. However, staff since found that there were many errors in that study, so much so that the level of accuracy is put into question, but the reference to that appraiser study in this report as a critical finding does not change staff's recommendation to the PC in terms of this case.

He said another public comment was received indicating that staff should delve deeper into the bird migratory route in this particular case. He explained that the Land Use Code does not recommend or require staff to map or regulate bird migratory routes. The closest aspect mentioned in the Land Use Code regarding birds relates to development setbacks from mapped eagle nests. Therefore, if the bird migratory route is an aspect the PC wishes the Land Use Code to incorporate, it should be brought forth to the Assembly at some other time.

Mr. Pernula said he received a telephone call last week from Assembly member Ruth Danner requesting that this PC meeting be rescheduled to a future date when she is able to testify. He said Ms. Danner explained her concern by stating that the Telecommunication Act of 1996 provides that whatever the PC does tonight, it might be setting a standard. In other words, there is a provision in that Act that they are not allowed to discriminate against between telecommunication facility providers. If the PC allows a case with a certain set of conditions, they would then have to allow any other providers the same use permit and conditions. He believes what Ms. Danner was citing is as follows:

“SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY- Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

(7) PRESERVATION OF LOCAL ZONING AUTHORITY-

(A) GENERAL AUTHORITY- Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) LIMITATIONS-

‘(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

‘(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

‘(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”

He believes this is the provision Ms. Danner was referring to, noting that the Act contains about 128 pages, although this regulation is the only one he is aware of that provides something similar to what Ms. Danner requested, i.e., whatever the PC does in one case, they would also have to have the same conditions for another. However, he believes if they have unique situations, the PC is able to provide conditions relative to such a facility. Chair Gladziszewski stated that the PC has already permitted like facilities, so this case is not new news. Mr. Watson said the balance of this section of the Act provides that:

“Federal law allows cities to deny construction permit applications for telecommunications towers. The denial, however, must be based on a reasoned approach, otherwise the FCC is authorized to pre-empt the local decision and grant the construction permit.”

He explained that this particular regulation would be enacted if the CBJ does not have a telecommunication ordinance in place, which the City does not at this time. He speaks against the request of the citizen because there are telecommunication and written communications, and delaying this application would be setting a precedent that the PC should not be doing. Chair Gladziszewski said she does not want to debate what Mr. Watson just stated, but she does not believe that is what this regulation of the Act states.

Public testimony

Alissa Haynes, representing WesTower Communications, said the subject site was considered in relation to adjacent areas, and they are attempting to obtain optimum high-speed data and wireless cellular connectivity. In consideration of the different needs of the community, including various sites that already contain telecommunication infrastructure, there is a nearby location where a wooden monopole structure was placed several years ago at the corner of Montana Creek and Mendenhall Back Loop Road. However, that structure is not supportive for

allowing another co-locator on it as it is a 90' tall structure, which is within the tree line and would block their proposed transmission signal. In the proposed location of this monopole, they designed the structure to be set back on the site so it is not as visible from the main viewshed of the roadway. The applicant provided the photograph simulations in the packet showing this. She believes that many people do not even realize that the other structure she mentioned is even there because that monopole blends in with the environment back from the road corridor. She believes the proposed monopole would do so as well when it and its accessory structures are painted dark in color. Mr. Miller asked if the applicant typically paints telecommunication structures and accessories on them. Ms. Haynes said they have done so, and some of the towers previously installed in Douglas were required to be painted, including a few towers in Fairbanks, Anchorage, and in the Lower 48. Mr. Miller said the gray monopole in the photographs looks less obtrusive than the green one. Ms. Haynes said that is a fairly bright green hue, but they are able to paint the structures a darker green to match the actual color of the surrounding trees at the site. She noted that certain structures having the natural galvanized material tend to blend in better at times when trees are not present.

Mr. Bishop asked if the monopole is for Verizon's sole use. Ms. Haynes said the construction design allows the opportunity for co-location on the monopole up to two to three additional carriers. However, given the location of the structure and the potential growth of the surrounding trees, it might limit co-location on the monopole to one additional carrier with Verizon being at the 119' level, and then an additional carrier below that height.

Ms. Bennett asked what type of telecommunication coverage this infrastructure might provide for the Juneau area. Ms. Haynes said this site would allow the opportunity for high-speed data services within the surrounding area to patrons who have smart phones, pads, and tables to have access. The site would transmit microwaves to another telecommunications site, so others would have fiber availability as well.

Mr. Watson asked if this infrastructure would be similar and provide the same services as the antenna array that WesTower has in Anchorage where that structure is 73' tall. Ms. Hayes said yes, noting that the Federal Communications Commission (FCC) approved all of them for transmission.

Mr. Pernula asked how many towers WesTower plans on installing in Juneau. Ms. Haynes said there are currently no telecommunication services provided through Verizon in the subject area, but there are other future sites being planned for development. Many of those other sites are where they intend to co-locate equipment on existing towers, including a few new site builds. Even so, their first objective is to co-locate on existing towers when it is functionally feasible to do so.

Hildegard Sellner, 10229 Heron Way, said she provided a letter in the packet (attachment F). Her home is near the proposed monopole. In the past 12 days since receiving the notice for this hearing, she was shocked because she was vaguely aware of numerous studies that strongly suggest a correlation of electromagnetic radiation emitted by cellular towers in relation to health impacts. These include the lack of concentration, sleep disruption, headaches, fatigue, suppression of the immune system, changes in cardio function, leukemia, obesity, and cancer. After her initial shock she tried to educate herself and others in the neighborhood and Juneau while working a full-time job and entertaining houseguests, which was a daunting task. The telecommunication industry has paid millions of dollars in campaign contributions to both

parties, and the Federal Telecommunications Act of 1996, § 704 prohibits municipalities from considering the growing body of research and controversy concerning hazardous and environmental impacts of towers. The FCC regulations for radio frequency emissions are widely considered inadequate. Organizations in the United States, United Kingdom, Australia, many European Unions, and eastern European countries, as well as the World Health Organization are actively debating these topics. It seems that the full bio impacts of the electromagnetic radiation are not yet understood. She wonders if they are able to rely on the governmental authorities to protect the public from potential danger because exposure to cigarettes, asbestos, and DDT were once considered safe until they were later not. The losing battle is becoming commonplace in hundreds of American communities. Individual citizen groups, including municipalities attempt to stand against cellular companies until they are out-spent and out-maneuvered by the carriers' legal and technical resources. Many Juneauites are too bogged down with daily issues to "put more on their plates." Although many are concerned about the subject of monopole installations, they do not have time or energy to become involved in the daunting and apparently futile undertaking on short notice. Many people do not trust the system on so many levels that they have given up, while others choose to believe that the system is protecting their health just fine. Concerns about property values decreasing or rental income losses are not viable arguments against this proposed monopole. Juneau's housing market is tight so many people cannot afford to care about the proximity of telecommunication towers. She understands the City is tied by federal regulations and they follow the rules that are perfectly legal, and even public health and safety concerns are covered in an Orwellian sort of way. She has often wondered how people negotiate their commitment to rules versus personal convictions when the two are at odds. She's from Germany, and this issue was pressing there for many people just a few generations ago. Concerning the proposed monopole, she went through feelings of powerlessness, anger, overwhelming abandonment, betrayal, helplessness, and deep sadness. She used to have a naive belief in the "Power of the People." She has since come to see that they are in the midst of a "Grand World Experiment" without informed consent when it comes to wireless telecommunication technologies. She prays that the science she has unearthed in the past 12 days is wrong. At present, there is no City ordinance that regulates telecommunication tower locations in relation to residential neighborhoods. She requests that such an ordinance be enacted before this monopole is allowed to be installed. If this does not take place, she understands that the proposed monopole might set a standard for future sites. She also understands that 24 sites are currently being considered in Juneau. The issue has implications that reach far beyond her neighborhood. She asks for another hearing because 12 days was not enough time to research this issue, and to talk to others in the neighborhood and in Juneau. She requested that the PC at least move the proposed monopole as far away as possible from her neighborhood. She thanked the PC for all the work they do to protect and enhance the well being of the people of Juneau, and for providing this forum for citizens to voice their concerns.

Mr. Haight wonders how much of the health concerns of telecommunications are born by cellular phones, versus by emissions from the towers. Ms. Sellner said it is emissions from both, but cellular phones are voluntary, whereas towers are involuntary. Mr. Haight said it goes back to the point that if people in the community do not have cellular phones then there wouldn't be any towers. Ms. Sellner said that is correct, but she does not believe there is any informed consent, but she has never owned a wireless cellular phone, pad, pod, etc.

George Danner III, 1028 Arctic Circle, said public speaking makes him very nervous. He provided the PC an email yesterday via staff. He somewhat feels that he has been pre-empted because the Commissioners did not receive that email until they were provided the Blue Folder

items just prior to this PC meeting, but staff received his email yesterday afternoon so it gave them the opportunity to say they are just going to remove the Public Comment section of the report on page 5. His email mentions his concerns about that Public Comment section because several years ago a study was initiated for the review of a 150' tall tower in an urban residential neighborhood. The study concluded that the height of the tower would not negatively affect property values, and he believes some corrections are due. The study was for two tower permit applications that were reviewed by the PC in January 2009 at the same time. The 150' tower was per USE2008-00026, which was approved by the PC, but that tower was never built. The other 180' tower was per USE2008-00027 located not far from the other proposed site. Both of those permits took over eight months for the review process by staff, and then when it was presented to the Commissioners they did not bother to check if a prior PC made any Notice of Decision (NOD) on the properties where those towers were to be located. The majority of one site was in the 25' buffer, and there was a prior NOD provided by the PC that stated that there was to be no disturbance in that buffer, but nobody bothered to do their homework. This is what brought him to write the email he provided to the PC in which he made some fairly serious accusations. He looked up the word "study" in the Webster Dictionary, which defines it as "A detailed investigation and analysis of a subject." Those appraisals suddenly became a study that is referenced in this application tonight, which couldn't be further from that "study" definition. The fact that he, with the assistance of his wife and Tim Strand, appealed the USE2008-00026 & USE2008-00027 applications when they spent nearly six months of their lives working on that, and he now completely understands why people do not appeal decisions by the PC because they are almost insurmountable to turnover. In the process of that appeal, they were provided the record of when the applicants appeared at the CDD Permit Center to apply for the applications for CUPs, and then that record continued to grow while the PC reviewed those cases. During that process, they received all the correspondence between the applicants and staff concerning those towers. Unfortunately, the City Attorney would not let them use the record in their appeal to the Assembly, so basically they were beat before they started. Even so, they continued on with the appeal as they still had hope, but they lost and he has retained that record of information on those cases. He explained that on December 4, 2008 at 4:33 p.m. Mr. Feldt specified the desired outcome in his request for services when he stated, "After receiving strong public objection, staff would not make a favorable recommendation with the uncertainty of affects to adjacent property value despite the applicant's assurance of no imposition." ...applicant "then later procured a consulting firm based in Seattle, WA, [Sheridan M. Shaffer] whose determination resulted in a 'no adverse' outcome. Since this could be construed as being self-involved for the applicant, having CBJ procure an appraiser [Canary & Associates] could be viewed more neutral."...and went on to say, "Having evidence leading to a 'no adverse' effect may be stronger if derived from a local appraiser obtained by the CBJ. We would greatly appreciate your services with these two projects." He explained that they were not allowed to present at the appeal the appraisal by Canary & Associates, which was mentioned in the staff report at the time, as he was a former City Appraiser, but it was not mentioned was that he was also a trustee of church property that the tower was to be built upon. Chair Gladziszewski apologized for interrupting Mr. Danner because he prefaced his comments stating that public speaking makes him nervous. She does not want to make him any more nervous, but requested that he focus further comments on USE20110027, rather than the former two cases he has been referring to. Mr. Danner said he does not know which Commissioners are new to the PC since that appeal took place, although a bit of history helps, and he is somewhat struggling tonight with his public testimony. He said there were 28 violations of the Uniform Standards of Professional Appraisal Practices, and charges were filed against both appraisers, Sheridan M. Shaffer and Canary & Associates. Mr. Canary was sanctioned with a \$500 fine, a formal reprimand,

additional education requirements, and a six-month license probation. Had he not brought this up and had no one on the PC been around at that time, and if they accept what is stated by staff in public comment on page 5 of the current report—having a wife on the Assembly he understands the PC’s workload, conflicts with public service, and how much the PC relies on staff to make their decisions—but when staff lies to the PC, the Commissioners need to question a lot more than just what he is bringing to their attention right now. He knows lie is a strong word, but the fact is that there was no actual “study,” as it was instead two “appraisals.” If the PC wants to view what was wrong with those two appraisals, he has eight pages of documentation he is able to provide to them. At the time of the appeal, he is sure the CDD Director was provided all this same information on the record, but he is not sure whether that was all provided to the PC. It is been his job to police the CDD, but after having invested six months of his life in tower applications, he feels that it is really important that the PC ensures that they are receiving the right information.

He referred to Finding 1, stating that this requires that the CUP application needs to be complete. His understanding of this is that staff is recommending that the Public Comment section that refers to the study be stricken—he asked staff if he is correct, and that they respond by nodding their head. Chair Gladziszewski said it is up to the PC to decide what is in the staff report, and they have not taken any action in that regard. Mr. Danner confirmed that this was a staff recommendation. Chair Gladziszewski clarified that staff’s comment was that Mr. Feldt was not recommending striking the Public Comment section, as Mr. Feldt previously stated that “the reference to that appraiser study in this report as a critical finding does not change staff’s recommendation to the PC in terms of this case.” Mr. Danner said if the Public Comment section on page 5 is removed, because it’s a lie and he understands that, even so, under the Property Value or Neighborhood Harmony on page 4 is part of a template, which has to be finished in order for the report to be complete. He said it states, “Effects to property value and neighborhood harmony from new telecommunication towers are often perceived as negative with disturbance to the skyline.” However, there is no reference to property value so that aspect has not been addressed, and therefore that finding is not complete.

Since 2008, he has been asking for a telecommunication ordinance and it seems obvious there are going to be more towers requested in the future, so he encourages the PC to push others in the City to get that done. These topics regarding tower installations are going to continue, and if the City were to get such an ordinance done it would make the PC’s review of tower cases much more simpler, as it has been nearly three years since that ordinance has been in the works, which he finds inexcusable.

Mr. Haight asked if any other studies were done, not just in this Juneau, but in other communities that might not have been provided to the PC to review. Mr. Danner said he is not aware of any “off of the top of his head” so he would have to research the information he has, which consists of volumes of Internet research.

Pamela Finley, 820 6th Street, provided a handout of two sets of documents to staff and the PC. She apologized for not providing this material sooner, but she only found out about this case the end of last week so she missed the Wednesday deadline. She explained that she already provided the material to the applicant, and has placed copies on the table for members of the public.

The first set of documents contains a selection of articles. The first article is titled *The Radiation Poisoning of America* written by journalists that has pages of footnote sources, many of which are scientific peer-reviewed journals. This set also contains an article called *The Bio Initiative Report* that came out of Europe in 2007, which includes many types of studies on this subject. Another article is a translation from a German study where they took blood samples before and after of melatonin and serotonin levels in relation to a wireless mass that was installed, and those results were not particularly good. The next is an article entitled *Real Estate Devalued When Cell Towers Are Erected*, which obviously does not deal with Juneau, but brokers and real estate agents provided general statements, and she would not purchase a home within a mile of a telecommunication tower. The next article is called *Wi-Fi Makes Trees Sick*, which she included as an example because under federal regulations municipalities are unable to consider true environmental effects. The next article is called *Should You Be Snuggling With Your Cell Phone*, which refers to research by Dr. Henry Lai of the University of Washington in regards to rats and Wi-Fi. Dr. Lai maintains a database that holds 400 scientific papers on possible biological effects of radiation from wireless communication where he found that 28% of those studies were with cellular phone industry funding that showed some sort of effects, but a higher result of 67% of such studies without such funding did so as well. The final article mainly relates to the Lower 48 in terms of smart meters, specifically in California, but those may hit Juneau in the future.

The second set of documents relate to the FCC Telecommunication Act of 1996, which is in two parts. The first part relates to § 47 USC 253 - General Purpose, which states:

“(a) In General.--No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

She explained that the federal government made the determination that the PC is unable to make it impossible to have wireless service in Juneau, and the next subsection states:

“(b) State Regulatory Authority.--Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

She said the PC is not limited from protecting the public safety and welfare, noting that under § 47 USC 332, which she believes was quoted earlier, states:

“(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.”

She explained that unless it is prohibited, the PC retains its zoning authority, as the following section states:

“(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.”

What the PC is unable to consider are environmental effects. She read studies stating that they are unable to consider health effects, so she wonders how they might get from environmental to health effects. She was unable to locate a definition of environmental effects relevant to that

provision, but she found in other federal laws (and they do not control in this instance) in relation to the Clean Air Act, under § 7412. Hazardous air pollutants (a) Definitions- states:

“(7) Adverse environmental effect

The term “adverse environmental effect” means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.”

This definition does not mention anything about public health. Further, in another section of the Clean Air Act it mentions an Adding in Pollutants category, which states:

“It is the duty of the agency to evaluate the health and environmental effects, or to look at serious adverse effects to public health, and serious or widespread environmental effects.”

Therefore, in the Clean Air Act these are treated as two separate terms, and the significant question is whether the PC is prohibited from looking at health effects. She realizes the PC is unable to prohibit wireless service, but this body might be able to require telecommunication towers to be placed a significant distance from any residential place. She explained that the electromagnetic effects vary with distance, i.e., the farther a person is away from it the better off they are, which she believes the PC could institute. She would truly like to see an ordinance that deals with wireless transmission in general, not just on towers because she believes the next technology is going to involve placing wireless transmitters on telephone poles. Juneau is blessed with mountains, and she noticed that in many areas towers have been placed on them.

She found a number of law review articles on the FCC Telecommunications Act of 1996, and there is a tension between local control and the love of wireless telecommunications. One of the comments said:

“Several members of the Conference Committee (the committee passing the law) were unhappy with the sweeping pre-emption contained in the original house bill and sought to change it to preserve local control. Most of all (what they are talking about is that there is a circuit split on things) what these courts have failed to examine, beyond the legislative history of the TCA itself, was the general mood of the newer republican majority of the 104th Congress. This was a congress whose stated goal was to return governmental power to state and local governments to evolution. If the 104th Congress actually intended to pass the statute with a sweeping pre-emption provision, would they have re-titled it Preservation of Local Zoning Authority?”

The question as to what type of authority the PC has, which she believes is open, but she is also able to understand the limits of doing so because the PC cannot deny wireless service. She is concerned about placing many wireless transmitters in the same area, or on the same structure. She does not know the science regarding this to know whether her concern is realistic, but she recalls hearing that if you place six cellular phones together with an egg in the middle that they would cook the egg; one cellular phone won't do it, but many will. She is concerned that towers are being placed here and there without a wireless telecommunication ordinance, and nobody is looking at any of these concerns to determine whether these problems exist. She explained that the approach in Europe seems to be more precautionary because there are studies indicating that non-thermal effects, i.e., microwave radiation does not cook a person, but having it around people where it is close to them is not good for their health. Therefore, in Europe they treat microwave radiation as though it might be dangerous and they act accordingly, so perhaps the PC should turn this case down until an ordinance is enacted.

Mr. Watson encourages Ms. Finley to pass this information onto members of the Alaska Congress because much of what she mentioned is outside the authority of the PC. In addition, he asked if Ms. Finley is aware of how many payphones are available for the citizens of Juneau. Ms. Finley said there are very few payphones in town, and she does not carry a cellular phone, except when traveling or going out in the backwoods. She believes there used to be a payphone at Fred Meyer and a few are located downtown for tourists. Mr. Watson said this is becoming a big concern. He knows that the payphones have been removed from the legislature, although there is still a payphone at Auke Bay, and he knows the City pays for all the public payphones in Juneau right now. The reason he mentions this is in regards to public safety, and there are areas in this community because of the topography that do not receive adequate cellular service signals. He had one incident when he needed cellular service when it did not work. Ms. Finley said she agrees there are not enough payphones in this town, as she also knows that cellular phones are very useful and people love iPads, etc., but they have to balance public safety and the potential dangers of them. There are scientists who are willing to conclusively state that microwave radiation presents dangers, but she does not think there is any consensus to that. There are numerous studies regarding this that should not be ignored, which is to the extent that the PC should require wireless equipment to be installed where it would have the least impact on people, but still work. In terms of this case, the PC should question whether it has to be in the proposed location, or if the monopole might be placed farther away from the nearby residential area.

Mr. Haight said he recalls reviewing numerous studies involving power transmission line configurations, including microwave emissions. However, the newer technologies that he deals with are interior wireless routers, i.e., wireless controls for lighting, computers, etc., so he asked if Ms. Finley has viewed any studies in relation to that. Ms. Finley she has and wireless technology is everywhere because it seems to be a favorite of most people, but they should think about such technology before using it.

Ms. Haynes referred to attachment A, stating that a previous tower was installed about 100' away from the subject property where WesTower previously considered co-locating, but the wooden structure would not support their equipment. She has not heard anyone speak in opposition to that previously installed tower, but they took that same siting into consideration in this case. In addition, the neighborhood already has cellular service activity provided to them.

Mr. Bishop said a testifier said multiple towers are being proposed around the community, and he asked how many WesTower is contemplating. Ms. Haynes said they are considering installing 12 sites; some with several co-locations, two are planned to be installed on rooftops in downtown, and other new towers for Verizon transmission services as well. Some of those towers would be installed in industrial areas. Depending upon what the zoning regulations are, including the proposed use would determine whether or not future cases would be presented to the PC. Mr. Bishop asked if the timeline for this to take place is over the next 12 months; Ms. Haynes said yes. Mr. Pernula commented that co-locations placed on existing towers that do not extend the height of structures, or if the tower is below a certain height depending on the zone then the PC would not review those cases, but beyond these aspects in certain zones they would.

Mr. Haight said the signal strength varies in relation to tower sizes and distance to customers. Ms. Haynes said that is correct, and the signal strength also depends on the capacity of the number of users in a given location. In addition, topography poses challenges in terms of the density of the forest and other surrounding buildings that tend to restrict penetration of signals or

bounce off of them. This includes transmitting signals across waterways, which might be a negative or positive depending upon what the signal coverage objections are for given areas. It is possible that signals being transmitted across certain waterways might conflict if another signal is being transmitted from the other side against each other, and if so, those signals would have to be properly re-programmed. Therefore, studies are conducted beforehand of potential signal strengths as to where they are best able to site towers, including co-locating equipment to provide maximum coverage. That all depends on the review of each case by the Radio Frequency (RF) Engineers, which includes the advancement of technologies that has made the need for less towers, as compared to when siting was originally conducted. The sites used to be much closer together, which required more of them to be placed within .5 to 1 mile of each other. However, they are now able to place them 2 to 3 miles apart, and doing so has reduced the amount of new sites. Mr. Haight said RF Engineers generally have already created plans for areas, although the PC has not seen them because the providers protect those plans to some degree. Ms. Haynes said she believes if the PC were to view such plans, it would be based on when the applications are presented to them. She explained that attachment E of this application shows the antenna and tower locations in Juneau, and several of those sites are based on RF engineered plans.

Ms. Bennett commented that many health concerns the PC heard tonight were previously discussed several years ago when this body started considering telecommunication tower proposals. Furthermore, the PC reviewed four or five drafts of the telecommunication ordinance, and hopefully it will be enacted fairly soon. She asked if these types of health concerns were mentioned when WestTower deals with other communities, and if so, if they provided official responses to them. Ms. Haynes said many people have generally spoken at those PC meetings, and some were opposed, but others were not. Health concerns are always a factor, which is the reason there are federal emission levels the providers have to comply with before equipment is allowed be released for manufacturing. Such equipment has to be tested beforehand for radiation emission and noise levels per the FCC regulations before they are approved. Ms. Bennett asked if the provider has conducted different studies to address health concerns in addition this. Ms. Haynes said she does not know the full details of whether this has been done by WestTower.

Public testimony was closed.

BREAK: 9:02 to 9:16 p.m.

Commission discussion

Chair Gladziszewski stated that when the PC started reviewing telecommunication tower applications several years ago, the Commissioners asked staff to obtain a legal opinion from the CBJ Law Department regarding specific aspects this body is able to take into consideration. If this has not been done, she requests that staff do so in regards to health and environmental effects. Mr. Pernula said the PC held lengthy discussions regarding this, but he does not recall if an official legal opinion was ever provided, which he offered to research.

Mr. Bishop asked staff how a moratorium might be applied in a situation such as this, as it appears the PC is going to have many additional telecommunication tower applications in the near future. The PC has already viewed several types of these of applications in a short amount of time, and new ones would probably be presented in more of a rapid fashion. Given that a draft ordinance is in the works, it seems as though the PC is going to be “a day late and a dollar short” if it is not enacted ahead of time. Mr. Pernula said for the 10 years he has been working

for the City, they have never imposed a moratorium to wait for an ordinance to be enacted. However, at his last job they imposed moratoriums on several occasions when changing subdivision or other regulations. In those instances, imposing such moratoriums were laid out in state statutes, which consisted of 90- to 180-day waiting periods in which time they were able to redraft ordinances, but such parameters are not in place for the CBJ. Mr. Bishop stated that if this case has to be evaluated as is, it would not apply to a moratorium even if the PC wishes to do so. Mr. Pernula said yes, as this application was already presented to the PC for review so they have to deal with it in a fairly timely manner, but the PC is able to take on additional information if they choose to do so. Mr. Bishop asked if a PC denial of this case for the purposes of evaluating the draft telecommunication ordinance would be inappropriate. Mr. Pernula said if the PC were to do so, they would have to deny the case based upon the code.

Chair Gladziszewski asked what the timeline is for enacting the draft telecommunication ordinance. Mr. Pernula stated that the CDD staff and the PC worked on the draft telecommunication ordinance to a certain point, and it was presented to the CBJ Law Department for review. However, the telecommunication ordinance is not their #1 priority, which is the noise ordinance that has undergone a very long review process with one element left before it is presented to the Assembly. After the noise ordinance is done, the CBJ Law Department will move onto the next priority, which might be the telecommunication ordinance.

Mr. Haight asked what the timeline might be when the draft telecommunication ordinance might be enacted in terms of this application. Mr. Pernula said he does not recall any aspects regarding the health effects of telecommunication facilities in the draft ordinance, but aesthetics are an aspect of it. Mr. Feldt said the few elements that would apply to this proposal in the draft ordinance are that radio cabinets would be required to be enclosed in structures, and since the proposal is located in a residential zoning district and is over 100' in height a balloon test would have to be conducted beforehand. He explained that to conduct a balloon test, they would be required to fly a balloon for three straight days, with one day being a weekend day. This would show the public that the proposal consists of a device being placed at a given height, and the balloon would be required to be painted the same color as the proposed tower structure. These are just two elements of the draft ordinance that come to mine in regards to this case.

Chair Gladziszewski said the health, environmental, and property value effects are continually being brought up in these cases. Mr. Feldt said the draft telecommunication ordinance has a reference to this per the Telecommunication Act of 1996, but no statement provides the PC more authority than what they currently have. Chair Gladziszewski asked if there might possibly be another statement outside of what was previously mentioned during public testimony tonight about health or environmental effects of frequency emissions, which might have been missed in the Act. Mr. Feldt said he is not aware of any others, although he offered to guide the CBJ Law Department to review the Act to determine if any regulations might have been missed, and then present his findings to the PC. Chair Gladziszewski said the PC has been under the impression that health effects were unable to be considered when reviewing telecommunication tower cases, which was provided either from a different regulation of the Act or through advice from the CBJ Department of Law; Mr. Pernula said he believes this is correct. Mr. Watson said a subsection of the Act under § 704 states:

“Local ordinances may not impose more stringent “environmental effect” limits on radio frequency emissions than those adopted by the Federal Communications Commission (FCC).”

He said the PC discussed this FCC regulation previously while reviewing the draft telecommunication ordinance, which is the reason the Commissioners are unable to address this. Chair Gladziszewski said it appears that the PC continues to be somewhat unclear about health and environmental effect issues when viewing these types of cases. Mr. Pernula asked if the Commissioners are requesting that additional information be provided to the PC before they take action on this case. Mr. Miller said he does not require more information, and he is ready to move forward with this application. He explained that he believes that the location of the monopole would be placed far enough away from the roadway and RV campsite, and the structure should be unobtrusive among surrounding trees. Public testimony was provided stating that this tall monopole is going to be ugly and there are no others in the Mendenhall Back Loop area, yet there are actually three of them. The fact that people previously stated that those existing towers would ruin the view of the Mendenhall Glacier, but they missed viewing those structures so they will probably miss this monopole as well, and he cannot imagine that this particular monopole would ruin the view of the Mendenhall Glacier either. In addition, currently on Montana Creek Road there is a bright yellow crane that has a 150' boom with a jib sticking up in the air, which has been at that site for quite some time. With all the information that has been presented to the PC on several different occasions in regards to tower applications, there has not been one single time when any of it was conclusive enough, e.g., to state that any of the towers have to be placed a certain distance away from people. Therefore, he does not know how the PC could even consider such information in order regulate where telecommunication structures are installed, especially since the FCC regulates where they are to be placed.

Mr. Bishop said he agrees that the application "in face value" looks good, and the monopole is generally being proposed to be installed in a decent location, which should be unobtrusive. However, he believes the PC owes the public to provide a comprehensive review of telecommunication towers in terms of health, property value, and environmental effects as a whole, rather than on a case-by-case basis. The PC is going to continue to review many more cases such as this in the very near future, including hearing more discussions of these same concerns as time progresses.

Chair Gladziszewski said in terms of the property value issue, the last time the PC reviewed the two tower cases in 2008 was when appraisers were hired, and those appraisals have since been called into question. If those appraisals are taken off the table, it seems as though the PC has no evidence one way or another about potential property value impacts by telecommunication towers. Mr. Pernula said he believes the PC has limited evidence in terms of what Mr. Miller stated about the proposed tower being fairly unobtrusive, so it should have little impact on property values, but no direct evidence has been provided by an Appraiser in this case so he offered to attempt to obtain valid information.

Mr. Watson referred to the very tall white and red tower in Douglas, which has a flashing light on top where many new \$400,000 to \$500,000 homes were built in the surrounding area. He is not an appraiser, but he researched the appraised values of recently sold homes in that area and he found no indication that those properties devalued in any way.

Ms. Bennett said the PC has diligently been working to draft an ordinance in terms of planning for future telecommunication facilities, but over the last few years almost all of the tall towers that were installed have not been presented to the PC for review because they were placed on industrial property. Such towers have been installed near the landfill, off of Fritz Cove Road, etc., which is not going to change so people are already surrounded by towers. However, the PC

has the responsibility to institute a telecommunication ordinance, but the Commissioners are not tasked with controlling the workload of the CBJ Law Department. She believes the PC should move ahead with this case and respect the comments that were provided. This includes the Commissioner's concerns about health effects, and the need for additional wireless communication facilities, which continues to grow.

Mr. Haight stated that wireless devices are being installed everywhere and those are beyond the PC's venue in terms of controlling health effects from them, which are outside of towers, including not having a draft telecommunication ordinance. Therefore, wireless transmission effects have to be taken up by some other venue where they are able to research possible health effects as a whole. He appreciates that the applicant is proposing to install a smaller monopole with minimal co-location, and they would be placing it quite a ways away from residential areas. In doing so, it should reduce the effects of radiation regardless of what the levels the FCC regulates. He believes the PC has to move forward with the application given these considerations. He said Ms. Finley stated that co-locating on existing towers where they stack additional cellular broadcast equipment on single towers, but even though they are not in conflict with each other they do impose additional radiation because of the multiplicity of signals, which he does not believe has been addressed by the FCC. Someone other than the PC has to research this, and then bring that forward for discussion by the community. When they pair emissions from towers into all the other wireless devices, i.e., routers, laptops, cellular phones, iPads, iPods, controls, lighting, etc., those factors have to be presented to the community as a whole, and it might come down to the public not choosing to buy wireless devices because that is what controls the wireless market.

Mr. Miller said the basic premise of the telecommunication ordinance is co-location, which is what CBJ has been pushing, but testimony was provided tonight stating that this might be the worst thing to do.

Mr. Bishop said the PC does not know if they should support co-location of telecommunication facilities, or disperse them in a more uniform fashion, which requires more of a comprehensive evaluation. These are aspects that have to be researched as a whole, rather than on a case-by-case basis because of the potential ramifications in relation to possible property value, health, and environmental effects. The PC has made assumptions based upon their own beliefs, rather than in terms of a concrete study. The PC requires more information and a better evaluation that determines what the overall wireless telecommunications impacts are on this community, not just potential impacts of this particular case, so he is uncomfortable moving forward as this application is being proposed.

Staff recommendation: That the PC adopt the Director's analysis and findings and grant the requested CUP, USE20110027. The permit would allow the development of a 119-foot tall tower. The approval is subject to the following conditions:

1. Prior to issuance of a Building permit, the applicant shall indicate a type of dark green or brown paint to be used for the monopole and all accessory structures.
2. Prior to the removal of any vegetation related to this project, the applicant shall work with staff in avoiding the removal of any trees over 12 inches in diameter where practical.
3. Prior to issuance of a Building permit, the applicant shall submit a fixture design of the utility lights showing a full cut-off design.

4. Prior the issuance of a Building permit, the applicant shall submit a letter to the Community Development Department from a radio frequency expert indicating the structures comply with electromagnetic radio emission levels set by the FCC.
5. Prior to receiving an Occupancy permit, the applicant shall submit a letter to the Community Development Department from a radio frequency expert indicating the structures as constructed and at optimal emission levels comply with electromagnetic radio emission levels set by the FCC.
6. If ~~the~~ generator exceeds 55 dBA levels at the closest residential property line, a separate Conditional Use permit shall be required to be final as it would be defined as a utility.
7. Use of a barbed wire fence shall not be allowed with this project.

Advisory Condition

1. The applicant shall be responsible for obtaining an approved wetland fill permit from the US Army Corps of Engineers.

Commission action

MOTION: By Mr. Miller, that the PC adopt the Director's analysis and findings and grant the requested CUP, USE20110027. The permit would allow the development of a 119-foot tall tower. The approval is subject to the conditions, with revised Condition 6, and the advisory condition outlined by staff.

Chair Gladziszewski stated that several years ago the PC first started reviewing cases involving proposals to install telecommunication facilities, and they have continued to review many more cases as time progresses. The Commissioners held discussions about what subjects could and could not be discussed, and she has been under the impression that health effects were an element that was “off the table,” although it now appears that might not be the case. As long as she and her fellow Commissioners are unsure, she is going to vote against the motion because this has to be researched further. She would like to find out these aspects beforehand, or be assured that those are aspects the PC is unable to consider. This includes the property value issue, as she knows in many other cases the PC reviews when neighbors have testified that their property values would be impacted by proposals, but there was almost always no evidence supporting that. In previous cases, the PC tried to obtain evidence that has come under question, and is why she has requested staff to research these aspects, so she plans to vote against the motion. Mr. Watson asked if Chair Gladziszewski is intending to deny this application based upon health issues. Chair Gladziszewski clarified that it is instead because she would like more information from the CBJ Law Department on potential health, property value, and environmental effects of wireless service emissions first. Mr. Pernula said if the PC lacks information it would be more appropriate to continue this case until staff is able to obtain answers to the questions, rather than for Commissioners to vote for denial.

MOTION WITHDRAWN: by Mr. Miller.

MOTION TO CONTINUE: by Mr. Haight, that the PC continues USE20110027 to a subsequent PC meeting when additional information in regards to potential health, property value, and environmental effects of wireless service emissions.

Mr. Bishop spoke against the motion, stating that he does not believe staff would be able to obtain the information being sought with the continuance of this case. He is taking into consideration how long the PC has been involved with working on the draft telecommunication ordinance, and in order to properly evaluate this case it would first entail enacting that ordinance.

Mr. Pernula said the current draft ordinance proposed that telecommunication facilities would still have to be presented through the CUP process. In doing so, the PC would have to make certain findings regarding health and safety, and if the PC has the ability to regulate on the basis of health effects it is already in the code, but what is unknown at this time is the if element, which might take longer than two weeks until staff is able to obtain an answer on that issue.

Mr. Watson asked whether additional public comment would be taken when this case is re-presented to the PC, or if such testimony would only be on new information if it is presented. Mr. Pernula said whether to re-open public testimony and to what level at a subsequent meeting would be up to the PC. However, he believes if the PC ends up hearing new information, other people should have the right to rebut that.

Ms. Bennett stated that it would be helpful for staff to provide a copy of the draft telecommunication ordinance, and previous minutes on tower cases at the subsequent PC meeting. She recalls that the PC already discussed most of the issues mentioned tonight, but the Commissioners came to a sense of closure on them, which is when they forwarded the draft ordinance onto the CBJ Law Department for review quite a few months ago.

Mr. Pernula said the threshold question he will request from the CBJ Law Department is whether the PC has the ability to consider health, property value, and environmental effects in relation to reviewing telecommunication facility cases. He explained that if staff is unable to obtain the information required by the next PC meeting, they would re-advertise this case to a subsequent meeting.

There being no objection, it was so ordered and USE20110027 was continued to a subsequent PC meeting.

X. BOARD OF ADJUSTMENT - None

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Upcoming meetings

Mr. Pernula said a Committee of the Whole (COW) meeting is scheduled for October 15, 2011 at 5:00 p.m. in the Assembly Chambers for a work session on PC goals and priorities. He prefers Commissioners start the work session in a broader sense by stating priorities they intend to accomplish prior to setting goals, and he has already provided items to them on doing so. Mr. Bishop said he will be traveling and plans to participate in the COW meeting via teleconference.

Mr. Pernula said Beth McKibben is beginning to review the Willoughby District Land Use Plan (WDLUP), and she wonders if it would be appropriate to assign the review of that project to the Title 49 Committee since they have not been terribly busy. Chair Gladziszewski asked Ms. Bennett and Mr. Bishop who serve on the Title 49 Committee if they were fine with taking on this task. Both agreed to do so, with Ms. Bennett noting that Ms. Grewe serves as chair of the Title 49 Committee who is not present at this PC meeting.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Miller said the Wetland Review Board conducted a field trip to the Juneau International Airport (JIA) project site with Tom Carson of Carson Dorn, Inc. They viewed the improvements made to Duck Creek, the dredging operation, and the Northwest and Northeast Runway Safety Areas. He said they found that the work is fairly impressive, which involved dredging 835,000 cubic yards of material, and in comparison would have otherwise consisted of 2,000 days of operators of dump trucks hauling the same material. He explained that an area of Duck Creek was completely re-routed, and they did a great job of recreating a natural-looking streambed.

Chair Gladziszewski asked what the status is in regards to the CBJ Lands & Resources proposed ordinance that the PC recently reviewed. Mr. Pernula said he is assuming that the ordinance will soon be presented to the Lands Committee of the Assembly. Chair Gladziszewski asked if Mr. Bishop would be in attendance at that meeting representing the PC. Mr. Bishop said he will be traveling for two weeks, and he believes that committee will probably meet during that time. Mr. Watson offered to attend in Mr. Bishop's absence, and requested staff to provide him notification via email stating when the next Lands Committee meeting is scheduled.

[The October 10, 2011 Lands Committee minutes were provided by staff to the PC for their perusal.]

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Miller stated that he would like staff to save his information on VAR20110011 for when this case is re-presented. Mr. Pernula offered to do so, but there might be adjustments to the staff report. Mr. Miller said the last time he left the information in the binder, he assumed that staff would retain it, but they ended up having to replace his binder with new copies. Chair Gladziszewski and Mr. Bishop said they would like their copies of that same case retained as well.

Mr. Watson said he commented earlier that the Parks & Rec Plan has not updated since 1996, except for one chapter. He said that department has a lot of land scattered around Juneau in neighborhood areas, which he does not believe that they intend to develop. He would like an effort implemented to work out some type of land swap with the Lands Committee, and then place some of that property into public domain to allow affordable housing to be constructed. This would be more suitable, as some of those properties are not designated as park land, which would not involve taking property away from the CBJ Parks & Rec, as they would simply be swapping property from the CBJ Lands & Resources holdings. Based upon what he has read in the Lands Committee report, he found that they have a substantial amount of undevelopable land. He plans on following up on this with the Assembly, including seeking public support for doing so, but he wanted to bring this to the attention of the PC beforehand. The Lands Committee has referenced the CBJ Parks & Rec Plan in their report, so there is some type of connection between them. He believes this might present an opportunity for making additional land available for housing at no expense to the City.

XV. ADJOURNMENT

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

There being no objection, it was so ordered and the PC meeting adjourned at 10:15 pm.