

MINUTES

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

REGULAR MEETING  
December 20, 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 p.m.

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

Commissioners absent: Nicole Grewe, Jerry Medina

A quorum was present.

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

**II. APPROVAL OF MINUTES**

November 8, 2011 – Regular Meeting  
November 15, 2011 – Committee of the Whole (COW)

***MOTION:** By Mr. Satre, to approve the November 8, 2011 regular PC minutes, with corrections, and the November 15, 2011 COW minutes, as presented.*

There being no objection, it was so ordered.

**III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS**

Mr. Pernula announced that Chair Gladziszewski has served for 12 years on the PC, and as a token of staff and the Commissioner's esteem they purchased and signed a photograph to present to her, to which Chair Gladziszewski thanked everyone stating that she appreciates this.

**IV. PLANNING COMMISSION LIAISON REPORT**

Mr. Smith said the Assembly met last night and were provided a briefing on the Variance request regarding the Fritz Cove property. The Mayor presided over that hearing, and it appears the parties have come together and are close to an agreement. In addition, he understands that the PC/COW met with the Assembly in the past to share goals at the beginning of the year, and he asked if they have an interest in doing so early on in 2012. Chair Gladziszewski said the Commissioners are always interested in talking to the Assembly, and the more they are able to

do so the better, to which the Commissioners agreed. Mr. Smith asked when the PC might be available to schedule such a meeting. Chair Gladziszewski said the PC generally schedules COW meetings on Tuesday, and the Assembly does so on Monday, but she assumes the Commissioners could do either day.

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

**VI. CONSENT AGENDA**

Chair Gladziszewski announced that there are two items on the Consent Agenda, noting that VAR20110027 was just added. She inquired if there is public comment on these items. No one from the public had comments, and no one from the Commission had questions.

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

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

**AAP20110014**

A Conditional Use permit (CUP) for an accessory apartment on a lot not served by city sewer.

Applicant: Michael Saltzman  
Location: 1685 Fritz Cove Road

**Staff recommendation:** That the PC adopt the Director's analysis and findings and grant the requested CUP. The permit would allow the development of an accessory apartment.

**VAR20110027**

A Variance request to the 50' streamside setback of Duck Creek.

Applicant: Michele Elfers, CBJ Engineering  
Location: Along Duck Creek between Cessna Drive & Glacier Hwy.

**Staff recommendation:** Staff recommends that the Board adopt the Director's analysis and findings and approve the requested Variance, VAR20110027. The Variance permit would allow for a water line to be installed up to 26' from the Ordinary High Water of Duck Creek, with the following conditions:

1. The applicant shall double bag and dispose of any soil that is disturbed that contains the invasive plant knotweed.
2. The applicant shall save and reuse the vegetation within the 50' setback of Duck Creek and replace the vegetation after construction is complete.
3. The applicant shall make all efforts to connect the new water line to the water main as close to the ACS bank as possible, minimizing encroachment into the 50' setback.

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

**VIII. UNFINISHED BUSINESS - None**

**IX. REGULAR AGENDA**

**CSP20110008**

A City consistency review of the reconstruction of Berners Avenue.

Applicant: John Nelson, CBJ Engineering

Location: Berners Avenue

### Staff report

Mr. Feldt stated that CBJ Engineering requested a City consistency review permit for reconstruction of Berners Avenue, which is on the 2010-15 Capital Improvement Program (CIP) list of projects. The road is about 1/3 mile in length within a residential neighborhood. There are single-family dwellings to the north, and a multifamily complex to the south. Even though this is a residential neighborhood, the traffic volume is fairly heavy for that type of street. There is a Waste Water Treatment Plant to the south of the site, and a popular recreation trail towards the airport. Those uses create increased traffic on Berners Avenue. There is a signed truck route that informs truck drivers exiting from the Wastewater Treatment Plant to use the route from LaPerouse Avenue to Ladd Street and through Berners Avenue, rather than to the end of Berners Avenue and through Radcliffe Road. That particular route was built to accommodate truck traffic and to avoid the residential area. He referred to photographs of the existing road conditions (also in the report) of the failing roadway where potholes and shoulders require repair. There are no gutters or curbs for pedestrians to walk so the area could become quite dangerous, especially at nighttime. The road is very straight with no traffic calming devices in place, and therefore drivers tend to feel comfortable driving fast on Berners Avenue. A self-made speed limit sign and others have been placed alongside Berners Avenue, but speeding traffic continues to be a neighborhood concern. The improvements shown on the Proposed Road Profile slide in yellow will be most noticed while driving down the street once they are installed, which include:

- Replacement of roadway embankment
- New 5' wide sidewalks with curb and gutters on both sides of the street
- Improvements to existing water and sewer systems
- New underground storm drainage system
- New asphalt paving
- Upgrades to existing street lighting
- Additional road surface striping and intersections

Staff reviewed adopted City plans to ensure this project is consistent with them. Berners Avenue is not specifically identified in any of those plans, but general recommendations are provided, such as per the Non-Motorized Transportation Plan (NMTP), which are:

- Having 5' minimum wide sidewalks along low speed/volume roads and accessible ramps at street crossings
- Wide shoulders for bike lanes
- 11' travel lane widths where speed limit is less than 45 mph
- Shorten crossing distances at intersections by tightening curb radii
- Use continental or ladder design pedestrian striping at street intersections
- Install appropriate street lightening for pedestrians

With trucks traveling to/from the Waste Water Treatment Plant 10' to 11' lanes would be too narrow as indicated by the applicant, so they have determined that a 12' lane width would be more accommodating. Even so, the introduction of sidewalks with curb and gutters on both sides of the street would create a narrower vision for drivers to travel slower. In addition, the 12' lane width would match those on the recently rebuilt Radcliff Road, which intersects Berners Avenue, noting that bicycle lanes were not provided along Radcliff Road. He explained that the

NMTP provides guidelines, not regulations, although staff finds that overall an 11' lane would make the project more consistent with the NMTP.

Staff recommends the PC adopt the Director's analysis and findings and recommend the approval of this City consistency review permit to the Assembly.

Mr. Watson said Long Run Drive and Linda Avenue were reconstructed with one sidewalk, so he questions why they are requesting that two sidewalks be installed on Berners Avenue at the expense of one wider bike lane, which is a concern that was voiced by the neighbors. Mr. Feldt said he does not recall all the details of those other road projects, but he believes the drainage capacity was a larger issue, which is where they created one side of the street dedicated to drainage facilities and probably utilities, including accommodating for a sidewalk on them. Mr. Watson said with that being the case, the PC could make exceptions if they choose to with this permit. Mr. Pernula said Berners Avenue does not currently have any sidewalks and this project is not being constructed as a subdivision improvement standard, rather it is to reconstruct an existing substandard street.

Mr. Miller referred to the memorandum from Mr. Watt of CBJ Engineering, dated November 4, 2011, concerning the Professional Plaza Driveway. Mr. Feldt said he would rather speak to that topic when the Commissioners discuss an actual recommendation on the project, or at a future PC meeting. Mr. Pernula stated that basically the prohibition of another access into that property was a condition of the rezoning ordinance to begin with, and then also as a condition of that CUP to not allow that access. He explained that Mr. Watt has stated that he believes there are some safety issues because there is only one access directly onto Glacier Highway, so he feels it would be best if traffic was re-routed onto a different street that could have eventual access provided onto Glacier Highway. In addition, it would provide a second ingress/egress to that commercial development for emergency vehicles. He believes Mr. Watt is stating that this is an important safety issue, but he does not want to hold up this reconstruction project of Berners Avenue. Even so, Mr. Watt would like feedback from the PC as to whether they think it is worthwhile to go through the process to amend the ordinance to rezone that property, including amending the initial CUP. However, that is a separate discussion from this City consistency review permit, which the PC is currently reviewing. Chair Gladziszewski said she prefers that the PC discuss the concern Mr. Watt mentioned at a future meeting. Mr. Satre commented that under this current City consistency review permit there is no new driveway from Berners Avenue into the Professional Plaza property because this permit is simply for road reconstruction.

Mr. Miller said the proposed travel lane of the roadway width is planned to be 12' wide, and he asked if this is just on the truck route portion of Berners Avenue or along the entire street; Mr. Feldt said it is for the entire length of Berners Avenue.

Ms. Bennett said she drives on Berners Avenue quite often because it is the access street to her subdivision. She explained that one of the written comments provided by Janet Thrower, dated October 14, 2011, has to do with a request to install a three-way stop at the Berners Avenue and Muir Street intersection, including providing for additional lighting for children to have a safe crossing to buses. She noted that double sidewalks on Berners Avenue would be similar to those found on Radcliffe Road, so it would be a continuation of that same street improvement system. She noticed that several neighbors are concerned about traffic in this area, and therefore the PC might consider possibly requiring speed bumps. Mr. Feldt agreed that speed is a concern on Berners Avenue, and the proposed sidewalks with curbs and gutters would create a traffic-

calming measure. The proposal is to also install crosswalk areas using striped continental or ladder techniques, rather than two horizontal bars, which would be another good indication, but during the winter the striping might not be visible. The existing lights would be replaced, including installing additional lighting as well. The Muir and Berners intersection is busy with pedestrians at certain times of the day, as those roads connect to Glacier Highway and the Dike Trail so that area will continue to be heavily used, but he does not know if data exists to support a new stop sign. There are only a few areas in the borough where speed bumps exist, which poses snow removal challenges by either damaging City equipment or the speed bumps can become damaged by equipment so the CBJ Public Works Department tends to be against installing them.

#### Public testimony

*John Nelson*, representing the applicant CBJ Engineering, offered to answer questions of the PC. Mr. Watson asked if there is reluctance by CBJ Engineering to install a stop sign at the Muir Street and Berners Avenue intersection to assist in slowing down traffic, which would be similar to what they ended up having to do on Stephen Richards and Riverside Drive. Mr. Nelson said CBJ Engineering typically does not use a stop sign as a speed calming measure, which is simply an aspect that they have not yet practiced. They also do not prefer to install stop signs mid-way through blocks such as this, which would make the segments much shorter so in this case they decided it would not be prudent.

Mr. Haight said Mr. Nelson stated that the addition of sidewalks with curbs and gutters would act as a calming measure as well as the crosswalk, but he is not sure how those will work on a straight road. In addition, he wonders how effective islands have been as alternative calming devices, and what might the objection be to installing them instead. Mr. Nelson said the installation of islands has been tried before on Taku Boulevard several years ago, which did not go over very well. The CBJ Streets Division did not prefer them when removing snow in that area, and people did not know how to maneuver around those islands, which ended up having to be removed. The sidewalks with curbs and gutters provide drivers a sense of a corridor, which gives the effect of it being a much narrower roadway that works.

Ms. Bennett asked how the speed bumps installed in the extension area of Riverside Drive towards the Mendenhall Back Loop Road have been working. Mr. Nelson said he does not have any information regarding those. Ms. Bennett said those speed bumps do not appear to be damaged by snow removal equipment, so she believes the objection to them might be proven wrong by this fact.

Mr. Miller asked if they might contemplate narrowing the roadway further after the truck-crossing portion of Berners Avenue as an additional traffic calming measure, especially if there is a second driveway installed in the Professional Plaza area in the future. Mr. Nelson said that idea was considered, but CBJ Engineering felt that consistency should be maintained based on what they planned for the truck route to Ladd Street through Radcliffe Road where it ties into a typical section of the same width of roadway.

Chair Gladziszewski said many questions of the PC are being directed toward traffic calming devices and what should be done, and DOT personnel are recognized as traffic engineers who conduct studies to back up their assertions, so she questions what expertise CBJ Engineering applied to this proposed project other than stating that they think their plan will work because they installed some similar devices and found that they did not work. Mr. Nelson said CBJ

Engineering has no studies right now for the proposed area, but they just know that from other experiences, e.g., when they have provided narrower roadways it tends to slow traffic down. As far as speed bumps, stop signs, etc., those installations might slow traffic down, but drivers speed right back up again so they have found those devices not to be effective. Chair Gladziszewski asked if CBJ Engineering consulted with DOT on their decisions for this project; Mr. Nelson stated that they have not.

Mr. Watson said on-street parking takes place on the shoulders of Berners Avenue, which would no longer be the case so he's assuming appropriate signage would be posted; Mr. Nelson said that is correct.

Ms. Bennett said it appears as though planning for additional lighting is not yet complete. Mr. Nelson said this is included in the application as being an added alternative, as CBJ Engineering typically ensures the main part of the project is within the bid estimate in order to it, and then they contemplate the lighting additive.

Nathan Young, 9414 Berners Avenue, said he is the owner of "Please Slow Down" sign on Berners Avenue, as he has a couple small children. The neighborhood in general is very happy about this project, which has been a long time coming. It is recognized in the report by staff that Berners Avenue experiences high traffic volume, which provides a popular shortcut to exit off of Egan Highway by Safeway to avoid two traffic lights, and then the traffic exits back out by the McNugget intersection or by the airport. The report also states that there has to be some type of traffic calming instituted, and it's recognized that the road needs to be narrower, but no provision was provided for that. Radcliff Road is being held as a similar project, which routinely has people driving 30 and 35 mph on it even though 20 mph signs are posted on both ends, so this is a very big concern to his family. At the meeting when this project was introduced to the neighborhood, it was well-attended by the neighbors when there was an overwhelming concern voiced for some type of traffic-calming measure. He advocates for the installation of a three-way stop at the Muir and Berners intersection to assist in slowing traffic down because it is very frustrating with the high amount of traffic routinely traveling at 40 mph. He explained that the Juneau Police Department has often monitored the speed of traffic in their area, which historically has been very high.

Helen Unruh, 9459 Berners Avenue #25, said she lives in a condominium complex off of Berners Avenue, and the members are concerned about the high speed in which traffic travels on this roadway. The members of the complex requested that she mention the Professional Plaza entrance, as Berners Avenue is already a high traffic area so if they are allowed to open that commercial area up they would be adding more traffic this busy street. They appreciate that Berners Avenue is going to be reconstructed, including a new drainage system installed because they are currently experiencing drainage problems.

George Elgee, 15885 Glacier Highway, owner of the Professional Plaza, said this plaza has been established since 1988, which has one egress with over 100 people working at the plaza complex. Vehicle accidents have occurred in front of the plaza area, and some people have had to be extricated from vehicles on occasion so this plaza facility requires a secondary egress. He explained that if an additional egress is installed 99.9% of the people are going to go out the same egress that they currently do now. They would not detour through the Berners Avenue neighborhood so he does not know what type of traffic would do so per the previous testimony that was provided, which would probably be an odd occurrence if it were to happen by people

working at the plaza. Providing a secondary egress to the plaza facility is for safety reasons to allow for emergency vehicle access. If vehicle accidents take place and emergency vehicles are unable to access in front of the plaza area, the fire department personnel would probably have to let them burn, which would not be a good choice.

Mr. Nelson offered to answer questions of the PC. Mr. Watson stated that when DOT ends up widening Brotherhood Bridge near the subject area, the access onto Glacier Highway would be blocked off so he wonders if that might increase traffic detouring through the Berners Avenue at that time. Mr. Nelson said he is not aware of that access area of Glacier Highway being changed in the future.

Public testimony was closed.

#### Commission discussion

Mr. Miller asked staff to explain Mr. Watt's premise for pushing this project forward without addressing the Professional Plaza second access issue. Mr. Pernula said he spoke to Mr. Watt about this, and he originally intended to incorporate doing so at the same time as this project. However, Mr. Watt found that the problem is the process that the City would have to undergo in terms of rezoning of the Professional Plaza property. That property currently has a condition that an additional future access cannot be provided off of Berners Avenue, so the ordinance would have to be amended. Furthermore, the CUP for that project also had a condition that they cannot provide access onto Berners Avenue. Therefore, this would involve a two-step process to first present an amended ordinance to the PC and the Assembly, and once the ordinance is effective the CUP would be presented to the PC to amend it per the newly adopted ordinance, but there is not enough time. He explained that Mr. Watt thinks the amount of work that would be involved to provide a second access for the Professional Plaza area would not be that difficult at a later date. Even so, before undertaking that long and convoluted process, Mr. Watt is seeking some indication from the PC as to whether doing so would be worthwhile. Chair Gladziszewski said she believes the PC is unable to answer such a question without being provided more information. Mr. Miller said this is out of the realm of the actual case the PC is reviewing at this time, so he requested that PC take a break to discuss process issues. He explained if the PC chooses to move forward in this manner, he wants to place further conditions on this particular road reconstruction application in regards to another Professional Plaza access aspect.

**BREAK:** 7:38 to 7:43 p.m.

Mr. Miller said evidence is provided in the staff report and via public testimony about different traffic-calming aspects that have to be instituted on Berners Avenue. Staff pointed out that it seems to be effective when they typically attempt to slow traffic down in neighborhoods using a calming measure of narrowing the road to 10' to 11'. However, CBJ Engineering and the waste management folks have required a truck route through that area, which has a minimum requirement of a 12' wide roadway. Therefore, he believes providing for a 12' wide truck roadway portion is great, but he would like the PC to consider reducing the remaining portion of Berners Avenue to at least a 10' or 11' wide to make that section of Berners Avenue safer for pedestrians and bicyclers.

Mr. Watson is concerned about the speed that traffic travels on Berners Avenue in terms of safety of residents, as he lives in the valley in an area with the same issues. Therefore, if there is an opportunity to install a stop sign on Berners Avenue to slow traffic down, it would serve the

concerns of the neighborhood because for the most part the homemade signs are not very effective. He feels that once Berners Avenue roadway improvements are installed, there is going to be increased traffic.

Ms. Bennett said improved lighting should be installed, including ensuring that the crosswalk is clearly marked. She agrees with Mr. Elgee that most of the traffic exiting the Professional Plaza area will more than likely be directed towards town, rather than through the nearby neighborhood. However, the area past that intersection at Muir Street is where most of the individual homeowners have placed signs requesting drivers to slow down, but once the airport expansion project and the Dike Trail are finished and fully operational, she believes this area will experience increased traffic. At that time, some of the trucks traveling to/from the Waste Water Treatment Plant might decide that it would be nicer to travel down the same road that they have historically been using because it would be improved.

Chair Gladziszewski asked if Mr. Feldt attended the neighborhood meeting on this case. Mr. Feldt said he did not because he was not yet assigned to this case. Chair Gladziszewski said she was wondering if there was support for any particular traffic-calming measure by the neighborhood; Mr. Feldt said he does not know.

**Staff recommendation:** That the PC adopt the Director's analysis and findings and recommend the approval of this City consistency review permit to the Assembly.

Commission action

**MOTION:** *By Mr. Satre, that the PC adopts the Director's analysis and findings and recommends approval of the requested City consistency review permit, CSP20110008, to the Assembly for the reconstruction of Berners Avenue in the southern Mendenhall Valley area. The PC recommends that the Assembly approval be subject to the following conditions:*

1. *Fully comply with the 2009 Non-Motorized Transportation Plan for Berners Avenue be reconstructed to a width of 10' ~~to 11'~~ from Ladd Street to Radcliffe Road, and 12' from Ladd Street to Glacier Highway to facilitate the truck route.*
2. *Add a three-way stop at the Muir Street and Berners Avenue intersection to address the safety concerns of the neighborhood, unless some formal study or systematic examination supports some other traffic calming measure. CBJ Engineering shall evaluate the effect of addressing this possibility of additional traffic calming measures, including stop signs in the future. That a three-way stop to be installed at the Muir Street and Berners Avenue intersection.*

**FRIENDLY AMENDMENT:** *By Mr. Miller, that the PC recommends to the Assembly an additional condition as follows:*

3. *Provide funding for additional lighting beyond just the intersection as evidenced in the plan drawings, if possible.*

Mr. Satre accepted Mr. Miller's friendly amendment.

Chair Gladziszewski requested that additional verbiage to Condition 2 possibly state, "...3-way stop or other measure as indicated by consultation with DOT..." or some other factual finding, i.e., in case that a 3-way stop might later be deemed inappropriate, or so on. Chair Satre confirmed that Chair Gladziszewski's intent is to include a three-way stop unless some formal study supports some other traffic-calming measure. Chair Gladziszewski said yes, and it does



not necessarily have to be a formal study, but it could also be by some other systematic examination, (which was included in the motion).

Mr. Bishop said he is in general agreement, except that they specify reducing to roadway width to 10' in Condition 1, including omitting Condition 2 for a three-way stop at the Muir and Berners intersection. He explained that the PC previously reviewed the reconstruction of 12<sup>th</sup> Street in town and recommended narrowing that street, and when that project was finished and he drives on that roadway he automatically slows way down, which should be done in this case as well. Mr. Satre said the 10' roadway width is fine, (and he revised Condition 1 to state so). In terms of the three-way stop, he knows in other cases where the PC required the City to do so because the Commissioners thought it was right for certain areas. This is granted that Chair Gladziszewski included in Condition 2 that "...unless some formal study or systematic examination supports some other traffic-calming measure." He said this is because the PC does not necessarily possess the formal expertise to state that a three-way stop is required, or a flashing light signal is, or so on. He explained that the intent of the condition to the motion is to state that formal findings would have to be made by CBJ Engineering for not installing a three-way stop in that area. If they were to do so, they would have to properly calm the traffic in that area by some other means, including narrowing the street, and adding the striped intersections, and provide for additional lighting, and so on.

Mr. Pernula said the only time he recalls the PC previously recommending a stop sign as an alternative to a traffic signal was at the Stephen Richards and Riverside intersection, but the reason was not necessarily as a traffic-calming measure. Those issues were that the level of service of traffic would increase to F for some of the traffic motions, particularly turning left from Stephen Richards onto Riverside, which is when children on the west side of Riverside were having a difficult time crossing the street to gain access to the middle school.

Mr. Satre said he wishes to slightly modify the recommendations to the motion. He would like to retain Conditions 1 and 3 as is. He would like to add a cautionary recommendation to Condition 2, which states, "CBJ Engineering shall evaluate the possibility of additional traffic calming measures, including stop signs in the future." (This verbiage was added to the motion.)

Mr. Watson said he disagrees with his fellow Commissioners, as he feels the neighbors have stated valid concerns because they live in the neighborhood, so he would like to stand by Mr. Satre's initial motion, with the exception of narrowing the width of the road to 10'. Mr. Satre said he amended the motion in the manner he did so the PC could address the stop sign, and if Mr. Watson would like to propose an amendment to the motion he is welcome to do so; Mr. Watson said he accepts that. Chair Gladziszewski referred to Condition 2, and asked when the evaluation of the three-way stop should take place, i.e., prior or after construction. Mr. Satre said he will just remove Condition 2 all together so the focus of the motion remains clear in regards to the other two conditions. If another Commissioner would like to propose the three-way stop, he feels the PC could have a separate discussion on the possibility of adding such a recommendation, rather than muddling the entire motion.

**AMENDMENT TO THE MOTION:** *By Mr. Watson, that the PC requires a three-way stop to be installed at the Muir Street and Berners Avenue intersection as Condition 2.*

Chair Gladziszewski asked if he wishes to include verbiage regarding some type of study. Mr. Watson said the PC has to respect the neighbors concerns, and if his amendment to the motion

does this with regards to safety he believes it is appropriate as stated. Chair Gladziszewski said the Commissioners will now vote solely on Mr. Watson's amendment to install a three-way stop as new Condition 2.

Roll call vote

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

Amendment passes: 6:1; and Mr. Watson's amendment was approved by the PC, as presented.

Ms. Bennett said she supports the motion as amended.

Roll call vote

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

Motion passes: 7:0; and CSP20110008 was approved as modified by the PC.

Mr. Satre said if the PC later chooses to discuss the second Professional Plaza access, they should request to have CBJ Engineering look into this further as soon as possible with all the various issues related to rezoning and CUP since January typically is the rezoning season. If this is to be done, that is when such a request should be provided to the PC.

**BREAK:** 7:58 to 8:06 p.m.

Chair Gladziszewski adjourned the PC, and convened the Board of Adjustment (Board).

**X. BOARD OF ADJUSTMENT**

**VAR20110011**

A Variance to widen and straighten the roadway between the North Eagle Beach Kayak Launch and Bessie Creek within 330 feet of 10 eagle nests, including potential damage to 7 nests by fly-rock from blasting.

Applicant: Thomas Fagnant, State of Alaska - Department of Transportation (DOT)  
Location: Four linear road miles of Glacier Highway, a.k.a. Veterans Memorial Highway

Staff report

Mr. Pernula stated that a subsection of CBJ §49.70.310 Habitat, states:

49.70.310 - Habitat.

- (a) Development in the following areas is prohibited:
  - (2) Within 330 feet of an eagle nest on public land

He stated that traditionally even though this subsection of code says development is prohibited, staff has allowed this through the variance process development all over the community within 330' of eagle nests, including within 50' on private property. In addition, because staff are not experts on eagle nests they base recommendations provided to them by the US Fish & Wildlife Service (USFWS) to this Board. He explained that the previous December 14, 2011 staff memorandum is a supplement to the original staff report for VAR20110011, dated September 22, 2011, and there is also another previous supplemental memorandum, dated November 1,

2011. The project was previously scheduled for the September 27, 2011 and November 8, 2011 PC meetings, but was pulled from those Agendas at the applicant's request. Both of those previous memorandums were written prior to the issuance of the actual permit by the USFWS. The most recent staff report, dated December 14, 2011, is based on the issuance of the USFWS permit (attachment B), which has 25 permit conditions, and staff has not received additional recommendations from that agency since then.

He provided a slide titled Glacier Highway Eagle Nests Buffers that shows the roadway between North Eagle Beach Kayak Launch and Bessie Creek of 10 eagle nests within 330', and one of those nests is located at the northern end not within 330' so it would not be affected.

CBJ Attorney Amy Mead and the State Department of Law Asst. Attorney General Sean Lynch provided separate legal opinions. In addition, he spoke with CBJ Attorney Jane Sebens who stated that after reviewing the issues she believes there is room for local regulation based upon some of the USFWS permit conditions. In particular, Condition B, R and U (attachment B), including an online pamphlet titled "What you should know about Federal Permit Necessary for Protecting an Interest in the Particular Locality on page 3, Item 11, which states, "State, Tribal, and Local governments may have their own regulations protecting eagles. Your federal permit is not valid unless you obtain an comply with all permits."

Staff recommends that the Board recommend approval of the Variance request to the Assembly based on the total deference in the past to conditions that were recommended by the USFWS, including that bald eagles were removed from the Endangered Species Act. This is not due to a legal issue, but because staff are not eagle experts, and the information they were provided states that the eagle nests will be adequately protected.

Chair Gladziszewski said she recently spoke with CBJ Attorneys Hartle and Sebens, particularly about State Attorney Lynch's letter. She referred to attachment A of the November 1, 2011 memorandum by Ms. Camery where the State Attorney Lynch's comment #5 states that "In fact, federal 'take' of eagles do not prohibit the CBJ from requiring greater restrictions to meet their management needs." Therefore, even though Mr. Lynch is stating that the CBJ is trying to manage eagles, they are not because this Board is attempting to manage construction projects.

#### Public testimony

Al Clough, the Regional Director of the SE Region representing DOT, said DOT supports staff's recommendation as outlined by the Director, specifically as stated in the December 14, 2011 memorandum. The DOT memorandum, dated November 29, 2011, was shared with the CBJ Law Department, and added to the record in relation to jurisdiction of this case, which is predominately for informational purposes because they not want to get into a "he/she said situation" between CBJ and state lawyers. There is certainly a jurisdictional question, and at some point in time that may need to be vetted. He noted that Mr. Pernula in the staff report states that the eagle ordinance has to be amended for future variances.

He referred to the staff recommendation for the Variance request, including another recommendation, dated May 3, 2011, in relation to a Thane Road eagle nest variance for construction activities to include blasting and such that also had a companion USFWS permit. He pointed out that the CDD staff has always relied on local USFWS input, and that other variance for Thane Road reconstruction provided no additional restrictions on what DOT was allowed to do other than what they obtained through the federal permit.

He announced that Chuck Grey the Pre-Construction Engineer and Art Dunn the Senior Environmental Technicians for DOT are present. Mr. Dunn has significant knowledge of bald eagles and construction projects around them. DOT has expertise in dealing with eagles, including previous Glacier Highway extension projects, and this is the third phase of construction for that outdated highway. If the Board would like, Mr. Dunn is prepared to speak specifically to what DOT intends to do, why they are doing it, and any impact they foresee on eagle nests and the bird population, including the successes they have had on past projects.

Mr. Miller said he works for a construction company in Juneau and is somewhat familiar with blasting involved with certain projects. He believes the perception of the public entails how blasting used to be done when fly rock went everywhere and ripped limbs off of trees, which was fairly damaging. However, the blasts are now controlled using computerized programs so hardly any fly rock takes place, but the new method for blasting was not addressed in the Variance request. Mr. Clough said the contractor would be in charge of blasting operations, which involves installing various monitors, including posting a \$500,000 bond so they tend to remain cautious of their work, and DOT has to ensure that all takes place. He is not prepared to speak to the specifics of how contractors conduct their blasting, although Mr. Grey might be able to do so should he be requested to provide public testimony to the Board. He said DOT has this public project to get done, and they feel that they demonstrated with previous projects on Glacier Highway that they are responsible stewards. The USFWS has issued a permit with conditions, and DOT accepts staff's recommended conditions to the Board, and they are prepared to live by all those conditions.

Mr. Watson said the packet contains minimal information about public safety in terms of this project. Mr. Clough said one of the most unfortunate occurrences they would be dealing with are two to three memorials that were impromptu put forth for Juneau youth who lost their lives along this particular stretch highway. Therefore, DOT is interested in resolving some of the inherent safety issues on the alignment of the highway in certain areas in terms of sight distances, and so on, in order to make it a much safer stretch of highway for everybody in the future.

Mary Lou King, 1700 Branta Road, said she resides at Sunny Point. Many of the people of Juneau are against changing the CBJ regulations to permit blasting during the eagle-nesting season, which is being allowed just because the USFWS recently changed its regulations. Regulating mistakes regarding eagles have been made in the past. She questions who wrote the regulations in the past to put a bounty on eagles, because during those days viewing an eagle in Juneau was a rare sight and having a successful nests anywhere near here was not possible back then. She wonders if it was the USFWS that did so, and they have now written the regulations that permit blasting during the eagle-nesting season. She questions if there are any studies showing what other birds are nesting in the proposed construction area. She explained that all species of birds are attracted to edges between habitat types. The edges between the forest, and beach/saltwater are where nesting birds are particularly attracted to because of the food source they offer. The species of birds that might be nesting in the project area are owls, herons, ravens, crows, marbled murrelets, songbirds, robins, red thrush, and humming birds that are protected by migratory bird treaties. She thinks the people of Juneau should at least try to be kind to their birds.

Brenda Wright, 17430 Andeanoff Drive, said she is a board member of the Juneau Audubon Society. The agencies that protect Juneau's bald eagles are the USFWS and the Alaska

Department of Fish and Game (ADF&G) that are allowed to relax the previous rules for protection of the birds during nesting from construction and maintenance projects. The Juneau Audubon Society is particularly concerned about the USFWS permit and this Variance request for the road improvement and widening from Eagle Beach to Bessie Creek for those exact reasons (she pointed to the Glacier Highway Eagle Nest Buffer slide presented by staff). This particular place concerns at least seven eagle nest trees and possibly more. Unlike before, this permit does not limit blasting or endangerment of active nests during egg laying from March 1 to June 1 or raising eaglets from June 1 to September 1. DOT personnel stated that efforts would be made not to disturb the nests, but blasting is still planned to occur during these months. If blasting does occur during the nesting and raising eaglets season, there is a possibility of losing the entire production of new eagles for two years. With seven active nests, it could mean as many as 28 eagles might possibly be lost. We are very lucky to have an abundant and healthy population of bald eagles in Juneau. Many summer visitors come here to view urban wildlife, especially with eagles being the highlight of their trip. Therefore, the Juneau Audubon Society strongly urges the Board not to set lower standards for eagle protection than they have now, and please do not decrease the protection of eagles within the CBJ. Mr. Bishop asked if Ms. Wright has an idea of the density of eagles in the project area relative to the remaining road system. Ms. Wright the project area consists of the breadline that is nearly 4 miles long and each eagle generally has two nests with only one being actively used per year, but there are 11 nests in the trees in the project area so obviously the fishing is better there.

*Jeff Sauer*, 15965 Glacier Highway, said he is here to testify as an individual. He is the Vice President of the Audubon Society and author of the letter provided in the packet, although Ms. Wright already testified on behalf of this entity, as he was on vacation for a time. He is testifying to give some pushback on serious political pressure from DOT upon the City and this Board. This has included some misguided legal manipulation by DOT that has recently occurred. Staff made changes over time to recommendations since this Variance request was first presented. It is true that the USFWS relaxed their restrictions, which is when DOT started putting on pressure. The situation with the eagles in that area has not changed, so this body has the power to make recommendations that were originally provided by staff on the initial Variance request. The initial recommendation disallowed blasting during eagle nesting times, which are the norm, valid, and cost-effective to provide protection to eagles. Those recommendations have historically proven to provide positive benefits, which DOT has consistently adhered to during past road construction projects. He does not know why the USFWS revised their regulations concerning eagles, but the City clearly has the authority to continue recommending the same restrictions have to protect eagles. He disagrees with the comment where the experts state that the current restrictions adequately protect eagles, as that is a matter of debate. He referred to the November 3, 2011 staff report, page 3, which states, "Because of the public need for the project the staff recommendation already incorporates a major compromise because it restricts only blasting instead of all heavy equipment use, which has been the standard on other eagle variances. The uniform restrictions on blasting within 330 feet of all eagle nests would apply only between March 1 and May 31, while blasting from June 1 through August 31 would be prohibited only within 330 feet of active nests. This would allow heavy equipment work year round through the full length of the project area. Restrictions to blasting activity would apply only to a small percentage of the area." He explained that the bald eagle is the national symbol, and the question is how much do they want to respect it, including whether they want to take out eagle eggs when they do not have to, and so on. He referred to page 5 of the same staff report, which states, "Past reviews provided protection for eagles with practicable restrictions while allowing for appropriate development." Therefore, just because

USFWS regulations were changed, there is no reason for the City to bow down to the serious pressure that the DOT has applied, as the historical recommendations make sense and are not onerous. When he viewed this pressure being applied to the City, he recalled an article in *The Juneau Empire*, dated February 12, 2010, which is titled, “Legislators Denounce DOT as Defiant” and it goes on to state that the “State agency [DOT] disputes bipartisan complaint.” There are also a number of other quotes from both democrat and republican lawmakers within the article, and one states that “House Minority Beth Kertula, democrat Juneau, this week publicly recalled fluent Governor Tony Knowles reference to the ‘Sovereign Nation of DOT’.” He suggests that the Board not get pushed around too much by DOT.

Mr. Pernula clarified that when the first two original reports were written, staff was somewhat “flying blind” because they had not yet received any recommendations from the USFWS so they based their blasting restrictions on previous conditions they had instituted for the CBJ Stabler’s Point Rock Quarry, not for a DOT project.

Tina M. Brown, 19400 Beardsley Way, said she greatly appreciates the service by the Commissioners and realizes how much time and effort they provide to the community. She is speaking as an individual, including on behalf of the Alaska Wildlife Alliance founded in 1978. This is a non-profit organization committed to the preservation and protection of Alaska’s wildlife, and all of its board members are Alaskans. Bald eagles were recently removed from the Endangered Species Act, and because of this the USFWS relaxed its protection of these birds. She said she provided background information regarding this in the letter provided to the Board in the Blue Folder. She wishes to stress that just because the USFWS has done so this does not mean that it is right to risk eagles, as they are now making a come back. She questions why this project is being shoved through the process, which is what it feels like. She also wonders why DOT is not considering other options for blasting as they have done in the past. She does not know why DOT is not blasting now, or why they are unable to adjust the blasting according to the initial recommendations by City staff. She questions what specific reasons the Board might have to go against staff’s recommendations, which were, “Blasting shall be prohibited between March 1<sup>st</sup> and May 31<sup>st</sup> and blasting shall be prohibited within 330’ of an active nest between June 1<sup>st</sup> and August 31<sup>st</sup>.” She knows that if she were within 330’ of blasting she would be disturbed no matter what technique was used, which has not yet been established. Also, this body is managing eagles no matter what decision the Board makes. She has heard tonight that the Board is not in the business of managing eagles, but they in fact are because the decision of the Board would in effect be managing eagles. Juneau is the Capital City, and a major tourism destination and hub. The Board has the opportunity to set an example by demonstrating that our City values its wildlife and tourism industry. Many tourists come to Southeast Alaska specifically to view eagles, which is mentioned as well in Bob Armstrong’s letter (attachment F) in the Blue Folder. She and her husband own Weather Permitting Alaska, which is a whale watching and adventure travel business, and they have found that tourists are thrilled to see eagles. Many of the tourists are happier to see an eagle than a whale. She has been at the Mendenhall Glacier viewing bears many times, and has watched people become awed when viewing an eagle in a tree so they forgot to look for bears. Many Juneau residents are both serious and casual birders, including some that are photographers, painters, writers, and naturalists who enjoy our eagle population. She questions if they really want the community to be known as the City that blasts eagles at Eagle Beach, as such news would travel quickly, especially since Alaska is already infamous as being the state that shoots wolves from helicopters. Public perception is important for a town that relies on the tourism/wildlife viewing industry. Penalties are established for dead eagles, but those penalties do not bring dead eagles

back to life. CBJ is not required to change their high standards of eagle protection just because USFWS did so, as it is not the right thing to do. She believes that granting a Variance request such as this sets a precedent that relinquishes CBJ's authority to other groups, and she does not believe that "door should be opened" because doing so would not serve this community. She urges the Board to do the right thing for our wildlife and for all of those who value it by setting an example for responsible wildlife stewardship. They have to protect Juneau's eagles and reputation by supporting staff's initial recommendations for no blasting during eagle breeding season or within 330' of active eagle nests between June 1<sup>st</sup> and August 31<sup>st</sup>. She very much appreciates the Board considering these comments.

Greg Brown, 19400 Beardsley Way, said he lives at the north end of Tee Harbor. He owns Weather Permitting Alaska that provides high-end whale watching and wildlife viewing in all of Juneau. The worldwide TripAdvisor online rating system ranks his company as being the number one tour operator in Juneau, and trips can cost up to \$20,000. Last year they had people from National Geographic filming, along with PBS, including a film crew from Europe and two other groups who arrived in their own private jets. They hire very high-end people who work as naturalists, such as Bob Armstrong and Nick Jans who worked with them from time to time last year. Flip Nicklin who is probably the worlds most renowned whale photographer traveled up here. Mark Kelley a local photographer was also on the boat helping to guide trips last year, and he'll be guiding several next year. Eagles are one of the highlights of what tourists want to see when they travel to Juneau. On every trip they go on, with very few exceptions, they go to end of the project site area to obtain photographs of eagles, which provides the best opportunity to view them in all of Juneau from a boat where photographers are able to capture pristine shots. The only other place in Juneau to take photographs of eagles is at the landfill area, which they try to avoid. The tour trips operate from May through the beginning of October each year. Because most of us live in Juneau, he believes that we tend to take eagles for granted, but other people around the world do not and they travel here specifically to see them. There are not many places in the Lower 48 to view eagles. In Europe there are almost no places where eagles can be found.

Marion Hobbs, PO Box 210447, Auke Bay, said he is a lifetime Juneauite. Young people have died on that section of the Glacier Highway, which has needed to be rebuilt for years so the City trying to slow things down is asinine. He does not think the City should be involved in this eagle-nesting situation at all, or at any other time. He believes the City needs to concentrate on more important aspects, as they are wasting time and money on this issue while the City is going to have a shortfall in revenue next year so they are going to raise taxes. There are professionals who deal with eagles, so the City needs to back off and find more important things to do.

Art Dunn, Environmental Scientist for DOT, explained that he works in the construction section of DOT. It appears as though many do not understand why they are in this different situation now in terms of this permit, as opposed to the old management guidelines. He is not a biologist, but an Environmental Scientist and it just so happens that he was thrown into this. When he worked for DOT since the 1980s until 1991, they have had many projects around bald eagle nests. Therefore, DOT was required to work with the USFWS to develop a set of management guidelines and monitoring protocols. The USFWS finally produced written management guidelines in the 1990s, and they mentioned monitoring. The USFWS developed management guidelines because they needed to comply with the Bald Eagle Protection Act, but bald eagles were never listed in the Endangered Species Act for the State of Alaska. When the bald eagles were de-listed off of the Endangered Species Act list in the Lower 48, that is when the USFWS took on the task to develop uniform management guidelines for the entire country. At that time,

he wrote a letter (as an individual consultant because he was not working for the state at that time) stating that he thought it was a bad idea for the State of Alaska to be included because they are very different than the Lower 48. In that respect, he agrees with the gentleman who was the second to testify on this case. Nonetheless, the USFWS developed those guidelines and have a permit system in place, and as a state agency DOT has no choice but to abide by them and obtain the required permits. One aspect that many people may not recognize is the fact that DOT has continuously and successfully monitored blasting around bald eagles during nesting periods on other road construction projects since 1997, which includes Glacier Highway when they started the Auke Rec Bypass Project, and they have been doing so since. During some of those projects older blasting protocols were used, which several people have mentioned and were suggested by staff in their previous recommendation to the Board, although that was based at the CBJ Stabler's Point Rock Quarry site. He helped Bob Mallard write that recommendation for the City to be in compliance with the USFWS regulation guidelines at that time, which was nearly word-for-word a specification taken from a DOT project back then, and it was successful. However, the USFWS now has different regulations in place, and DOT believes those can be successful as well.

Mr. Haight requested Mr. Dunn to describe what the prior protocols consisted of. Mr. Dunn said they are listed in the initial packet presented by staff on this case, stating that they were not to blast at all during the eagle nest selection period from March 1 to June 1. Then they stated that if it was necessary to do so for completion of a job, and if it was not practicable to avoid that period they were to employ a qualified monitor or monitors, which had to be in control of other people who actually did the work if they were not doing it themselves. DOT instituted a training program at that time for the monitors who were actually working, including a lead monitor, which he was on a number of occasions, and one summer he had seven monitors working all around Southeast Alaska. He explained that the monitors basically recorded minute-by-minute notes of what was taking place, and they had the ability to stop the project at any time if they detected any sort of disruption that might have lead to a disturbance, which at that time was prohibited by the Bald Eagle Protection Act. There was no way around that, as there was no permit that could be obtained to disturb or 'take' bald eagles so the monitors had to stop such activities beforehand, and that monitoring was somewhat subjective, which took quite a bit of skill. Mr. Haight asked if any adverse impacts were experienced using prior protocols. Mr. Dunn said there were adverse impacts one year when a monitor stopped a blasting project for quite a while, but not by DOT who has never had any adverse impacts or disturbances to bald eagles during their road construction projects, and the new protocol has only been in effect since the summer of 2008.

Mr. Miller asked if Mr. Dunn is aware of any guidelines that DOT may have for contractors on how to proceed with blasting, i.e., encourage them to conduct blasting and loud dumping of rocks into truck beds only during the best possible months to minimize and avoid impacting bald eagles, and if so, he questions why that was not provided in the packet so people do not get so upset. Mr. Dunn referred to page 2 of the USFWS permit (attachment B) in the current staff memorandum, stating that all those aspects were already worked out between DOT and the USFWS, not just imposed on DOT, which will be made part of the contract. He referred to F(iii) which states that "The Contractor shall work with the Project Engineer to limit time necessary within the 330' primary zone of nests only to that required for completion of the project." Also, (iv) states, "Guardrails shall be installed outside the bald eagle breeding season (March 1 – August 31)" because there are other construction activities than blasting that can make noise as Mr. Miller mentioned, and pounding guardrails is certainly one of them. Furthermore, there is an



actual monitoring requirement during blasting under F(v)(a) "...for eagles in danger of flying debris," which is when they are required to have a monitor onsite that can shutdown blasting activities if any eagles are in the area and could be injured by flying debris. He explained that Mr. Clough mentioned that DOT requires contractors to post a \$500,000 bond for eagle disturbances, not just for completion of the job so any fines or other costs that may accrue from their work would be per that bond. This is similar to the \$1 million bond for possible damage to surrounding buildings that the CBJ required those contractors to post when the new Parking Garage was under construction, which seems to get the attention of the contractors when deciding on their means and methods of instituting blasting.

Public testimony was closed.

#### Board discussion

Mr. Watson referred a CBJ ordinance regarding the effects of wildlife (not in the packet that he took the time to look up), and page 1 references IA3.6 and IA3.8 of the 1996 CBJ Comprehensive Plan, but that Comp Plan was updated and approved in 2008. He asked staff if these two sections of the 1996 Comp Plan were changed in the newly adopted 2008 Comp Plan. Mr. Chaney said that particular wording appears to be the same in the updated 2008 Comp Plan, which might just consist of a mistake that was made in that particular citation. Mr. Watson referred to the same ordinance on page 9 that references habitat at the Kensington Mine, which states, "There is a significant need for the Kensington Mine. There is no feasible and prudent alternative tied to the applicant's proposal or the US Forest Service preferred alternative that markedly improves conformance with JCMP habitat standards." He asked if the JCMP habitat standards provide different requirements than the ordinance he is looking at. Mr. Pernula said he would have to take a look at that specific ordinance before commenting on it. Mr. Watson said he was struggling while reading this ordinance to figure out what the difference was with the Kensington Mine application referencing eagles, versus this project the Board is reviewing tonight. He explained that the answer would not alter his decision either way, but he became somewhat confused when he read that section of this ordinance.

Staff recommendation: That the Board adopt the Director's analysis and findings and grant the requested Variance, which would allow road construction activity within 330-feet of 10 eagle nests on Glacier Highway between approximately mile 29.5 and mile 33.6.

#### Board action

***MOTION:*** *By Mr. Satre, that the Board adopts the Director's analysis and findings and grants the requested permit, VAR20110011. The permit allows road construction activity within 330-feet of 10 eagle nests on Glacier Highway between approximately mile 29.5 and mile 33.6.*

Mr. Bishop said he is uncomfortable with this application because he feels they are being pushed around as others have previously testified to tonight. He is sympathetic to DOT's need to make road construction improvements in a timely manner, but he does not feel they have worked with City staff to try to find a compromise in certain areas in terms of this project to pin down what the necessary conditions are for protection of eagles. He feels as though DOT has bulldozed their way along and threatened the Board, which makes him uncomfortable moving forward with an approval.

Mr. Watson spoke in favor of the motion. He differs with Mr. Bishop, as he has never felt intimidated by any document that has come before the PC or Board in the five years he has been

serving. He does not speak for anybody else, but he simply deals with the facts and it was good information provided in letter from the State Department of Law, dated November 29, 2011, which he received on January 6, 2011.

Mr. Miller said he believes the proposed project is going to be a lot better than what people are afraid of in terms of potential impacts to eagles. The method in which blasting occurs now provides for less impact to eagles than other construction activities that CBJ has allowed in the past. That said, in the future it would be best if DOT would emphasize their willingness to work around sensitive eagle nesting and raising of eaglet periods, including promoting doing so with contractors. He understands that projects have to get done, and having a blanket permit so DOT can do what little bit of blasting that they are probably going to have to do during those months is okay, but it would be much better if DOT came right out and stated so because he does not believe anyone is going to take a chance and risk killing eagles. He is going to support the motion.

Ms. Bennett supports the motion. She appreciates the DOT Environmental Scientist's comments about his personal experience and the track record of DOT in this regard. The comments made on why those eagles are there is because the breadline is a major fishing area where all the fishermen go so as well. Therefore, this area is not just an average road that they are discussing, as it is in fact a very significant eagle nesting area. When she was reading the documents provided on this case, she wondered how much difference one year of additional time might be for the project if doing so would end up protecting the period when eagle are nesting. She suspects that if they are proposing this to be a two-year project already, a little bit of additional time spent on protecting eagle nests and fledging eaglets would certainly be worth it. These are her advisory comments, and she is going to support the motion.

Mr. Satre supports the motion. In terms of his history on the PC and this Board, the Commissioners have held many discussions about eagle nests over the years, and no cases have ever been given a quick "rubber stamp of approval." Instead, the Board has held fruitful discussions about them, and ultimately they have always deferred to the USFWS. The Board is reviewing this case where the City ordinance is not necessarily inline with the USFWS regulations. He believes everyone in this room will look forward to an engaging conversation on what may happen in regards to the City's habitat standards on new guidelines and regulations by the USFWS, but in this case they are not talking about a pristine area. Yes, it is a beautiful area and we all love to go out there, but there is already an existing road. Nobody wants to see dead eagles on the side of the road, as we all enjoy the beautiful place that we live in. Even so, this area is part of the urban environment in Juneau, which might be a place where they can test these relaxed USFWS regulations against eagles that are already used to significant road traffic during the months when they are breeding. The blasting technologies today are far different as in the past that Mr. Miller alluded to, and quite frankly small blasts 330' away might hardly even be noticed by eagles when they are taking place, as they might sound like heavy trucks being driven by, but the Commissioners do not have that type of information in front of them. Ultimately DOT is trying to make this stretch of Glacier Highway safer, and there will be disturbances to not just eagles but every other species of wildlife that uses that corridor. He believes the more expedient this project is able to get done, it should minimize disturbances and provide for a safer road in Juneau. He supports staff's existing recommendations.

Mr. Haight said he agrees with the DOT representative who stated that they are limited in the amount this Board is able to condition the project. He also agrees with Mr. Sauer that this Board

has the allowance to some extent to control and make additional limitations beyond the conditions that the USFWS provided in their permit. In reviewing the USFWS permit, he feels it is progressive and adequate to move this project forward. This Board should recommend approval of the project to the Assembly with the understanding that they will get a report back so they will know more about how such regulations progress over time.

Chair Gladziszewski said she strongly believes the City can and should, if it reflects the values of the citizens, to place more restrictive conditions on development. She does not believe this pertains to managing eagles, as it is managing construction development. She agrees with Mr. Haight when he stated that it appears as though the USFWS permit looks to be reasonable for a project such as this while understanding what its goals are for the entirety of the project. She will support the motion, and she, like Mr. Satre, looks forward in participating in terms of the question about what the CBJ law should consist of in the future, as they already know how it has functioned in the past. The Commissioners have quite often done so, i.e., talking about impacts to eelgrass, which is when they required that a dock be moved, including placing additional restrictions on that permit although they do not manage eelgrass beds or fish, but that's what this body does and they do so responsibly.

Roll call vote

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

Nays: Bishop

Motion passes: 6:1; and VAR20110011 was recommended for approval by the Board to the Assembly, as presented.

Chair Gladziszewski said VAR20110011 will now be presented to the Assembly for approval.

Mr. Clough requested to speak to the Board. Chair Gladziszewski asked if the Commissioners have any objection to suspending the rules to allow Mr. Clough to provide further public comment, to which the Board had none.

*Mr. Clough* said he appreciates the comments and concerns provided on the project. He invites all of them to work with DOT on this project, and he extended the opportunity to bring people out to view how DOT actually implements the regulations provided by the USFWS, including the Variance permit. He also invites them to stop by his office at DOT to meet the staff working on this project. He explained that he has served in different positions within DOT over the years, and has had the privilege of working with hard-working, knowledgeable, and conscientious staff. They take their jobs very seriously, and many have been Alaskans since before statehood. DOT does not practice impacting wildlife, and he believes doing so demonstrates that DOT staff has been and will be responsible stewards. All those interested are able to contact his office, and he will make any necessary arrangements to meet DOT staff and/or conduct visits to the project site.

Chair Gladziszewski adjourned the Board, and reconvened the PC.

**XI. OTHER BUSINESS** - None

**XII. DIRECTOR'S REPORT**

### General Commercial (GC) District ordinance discussion to allow for up to 60 residential units per acre

Mr. Pernula referred to a letter in the packet provided from Dan Austin, General Manager of St. Vincent de Paul Society, who is concerned about density permitted in the GC zoning district. He explained that residential uses are allowed to a maximum density of D-18, which is 18 dwelling units per acre, and additional dwellings might be allowed under the density bonus provisions up to 20%. He said Mr. Austin wants to add a couple of single-occupancy dwellings, as most of the tenants at St. Vincent de Paul do not have vehicles. In his opinion, that is fairly low density given the intensity of the GC zone. The idea of trying to create affordable housing and mixed uses is why he would like to see the density in the GC zone increased somewhat. Staff performed calculations to determine whether Mr. Austin could do his project on the entire site if he combined various lots on the parcel to gain the maximum density bonus provisions, and it looks like he might make it but just barely, so he believes the PC requires more assurance than that. Mr. Chaney said the idea of possibly gaining the density Mr. Austin is seeking using the bonus provisions is rather difficult to put into an application for grants with any certainty, so he would rather have a higher density specifically provided. Chair Gladziszewski asked if such rezoning should take place citywide rather than just accommodating this particular property. Mr. Pernula said yes, explaining that the Comp Plan for the GC zoning district designation states, "Residential uses should be between 18 and 60 units per acre." However, the limitation in the GC zone is 18 dwelling units per acre, which appears to be fairly low. He explained that they have to be cautious in doing so because if they bump up the base densities all over Juneau, staff would have a hard time applying density bonuses to recommend to the PC in the future. The reason he brought this to the attention of the PC is because either tonight or at the next meeting they are going to discuss the PC goals and priorities, so the density of the GC zone should be placed on that list as being a fairly high priority goal. Chair Gladziszewski stated that in general she believes Mr. Pernula has the PC's support to increase such density, and she does not believe he would receive any objection to working on this as he suggests from the PC, to which the Commissioners agreed. Mr. Watson asked what the timeline is for Mr. Austin's grant situation. Mr. Pernula said he has worked with Mr. Austin in the past, and he has already written one letter for him to use in the pre-application where he mentioned that he thought Mr. Austin could meet the density requirements on the St. Vincent de Paul Society property. He wants to continue to work with Mr. Austin fairly closely to determine if he might have a timeline problem, so whatever staff needs to do they will bring it forward to the PC at a subsequent meeting. Mr. Watson commented that federal grants are going to be much more difficult to obtain in their next fiscal year, and they are already halfway through this fiscal year.

### Another DOT Project (Not on the agenda)

He stated that he did not bring this DOT project forward as a case because it is extremely minor, which involves the Egan/Yandukin intersection where they DOT wishes to install improvements. Those improvements will mainly consist of widening turning lanes, and separating them from other traffic lanes so they are further away for safety reasons. That project would not have any impacts outside of DOT's existing right-of-way, but it will have a positive impact on improving safety. He does not think it is necessary for the PC to provide a full review of that project, and he intends to submit an email stating this to DOT, to which the PC agreed.

### Goals & Priorities discussion of the PC

Chair Gladziszewski noticed that Mr. Pernula did not receive too many written comments from Commissioners on the goals and priorities list. She said the list that Mr. Pernula provided tonight appears to fairly accurately reflect what the Commissioners previously discussed as being

their top goals and priorities, although she requests that #3 under long-term goals be moved up to short-term goals.

Mr. Pernula said there was an awful lot of discussion by the PC about their involvement in the review of the Land Management Plan (LMP) and the Capital Improvement Program (CIP). The CBJ Lands and Resources Department as well as the Lands Committee of the Assembly mostly perform the work on the LMP, so he believes they need to work out exactly what the PC's involvement in the land disposal process is going to be. Chair Gladziszewski said several Commissioners brought up at previous meetings the CIP review by the PC, as the current system is better, but not as good as it could be. Mr. Pernula said this entails mostly working with Rorie Watt, CBJ Engineering Director, as most CIP projects are funneled through him. He explained that Mr. Watt made a concerted effort to bring those projects to the PC both in the form of the actual CIP, and as individual projects when they are developed by the soonest possible date. Mr. Bishop said part of the problem is incorporating the desires of the PC and planning efforts for compliance with the Comp Plan on any short-term plans they might derive for local area planning. For instance, when the PC reviewed cases in the past they have made recommendations and nothing becomes of them. Therefore, there has to be a method in which the PC has a role of nominating projects in regards to the actual CIP list in more of an efficient manner beforehand so this body has a part in creating them that carries significance, not just reviewing projects that are already taking place. This includes having the Assembly allocate funding for certain projects that are grant driven, which is to nominate them early on so they have more credence in the future. Mr. Miller said he feels the same in terms of the PC's review of the LMP, land disposal, and development of Pederson Hill and North Douglas in relation to creating affordable housing by providing affordable land to the community. Therefore, instead of the LMP and land disposal options being presented to the PC to review afterwards, the PC should assist in leading the charge by taking more of an active role. He recalls the PC being told at a recent meeting how former Commissioner Merrill Sanford pushed for the expansion of the sewer system in Douglas and the Peterson Hill area. Mr. Sanford later became a member of the Assembly, and those sewer expansion projects have happened, so he thinks that is an example of how the PC can promote other projects to make them happen in the future as well. Chair Gladziszewski said this is the reason she brought up the CIP where the PC has to become more involved early on in the review process of nominating those projects because that is where the Assembly allocates funds for them, but the PC tends to be presented with those projects at the last minute.

Mr. Bishop suggests the PC move forward with a process in its entirety, rather than getting stuck on single items. Chair Gladziszewski said she prefers not to assign numbers to each goal, as she would rather place them either under long- or short-term lists of priorities. The short-term list should be project goals the PC intends to concertededly work on over the next one to two years, which is why she suggests moving the CIP review to the top of the short-term list of priorities.

Mr. Bishop said the short-term list Mr. Pernula provided tonight is fairly good, but he would like to add the Interactive Media goal that Ms. Grewe previously brought up as being a short-term goal. For the long-term goals, the largest change is to place Subarea Plans at the top of the list because that keys into working with the bonus provisions to figure out how to make them work. Once the PC has Subarea Plans with ideas built around them, the Commissioners would then be able to review Title 49 to determine whether they are able to implement doing so, and if not, the PC could then determine whether they could incorporate bonus provisions that work. Subarea Plans would work very well to assist in modifying the LMP, which should be done in

conjunction with keeping in mind the needs of the community, developers, and private property owners. He does not think the LMP should be independent of other CBJ plans, as all CBJ plans have to be reviewed hand-in-hand because public planning needs to precede private City planning efforts. Chair Gladziszewski stressed that she already mentioned she does not want to assign numbers to projects under long- and short-term goals as Mr. Bishop is somewhat suggesting, as she would rather the PC just place all the goals into two prioritized categories.

Mr. Watson said he believes the CIP has already been turned into the City Manager's Office. Mr. Pernula said he does not believe so. Mr. Watson said he has not yet seen the CIP list. In addition, when a private sector entity is running a business with more than one division they have to have everyone working together otherwise that entity fails, and it does not matter if they have two businesses or 10 or 12. This is similar to the City that has a lot of talent under many divisions, but nobody is pulling it all together in a timely fashion so they can operate effectively as a PC. He witnessed this when he previously worked for a company that did not practice such coordination, rather it was whoever was the most powerful that obtained what they needed, and then everyone else had to step back, which is when that company literally failed using that type of process. He sees more of this going on with the City since he has served on the PC, as he has attended every Assembly meeting for the past 18 months and he sees this taking place there as well, which is probably not necessarily by intent. Without instituting this type of coordination, the PC is going to have to undergo the same exercise next year, but in order to solve this issue it would have to start at a higher level than the PC, stressing that he does not see a coordination of efforts that helps staff to effectively communicate to this body about what is going on.

Ms. Bennett said her written comments are attached to Mr. Pernula's list of priorities. She would like to emphasize what Mr. Bishop mentioned at past meetings to get down to the Subarea Plans level is when they can review the different aspects of planning that have to be addressed in that context. All of the Commissioners can learn in the process about how it actually happens, i.e., since the 1996 LMP was identified there were about 400 housing units needed, so she questions if any follow-up was done to determine how many units were constructed since that time, which she believes is unknown. Even so, those types of statistics would be very helpful to see whether the housing market is in crisis mode. In the three years since she has served on the PC, practically the only housing that has been constructed are accessory apartments within houses. She explained that Mr. Watson mentions at times how many houses are on the market and she is also able to view such information on the local multiple real estate listing as well, but there has to be some logical method in which to assemble this information so the PC is able to move forward to determine what the gaps and needs are for affordable and middle-income housing. Chair Gladziszewski clarified that Mr. Pernula compiles those types of statistics. Mr. Pernula explained that he compiles annual statistics on dwelling unit production by apartments, single-family dwellings, and so on, which goes back many years and is available on the CDD website. As far as affordability, the Juneau Affordable Housing Commission (JAHC) is working on those issues, but he is not exactly sure what information Ms. Bennett is looking for. Ms. Bennett stated that instead of the PC "reinventing the wheel," they could invite the JAHC to attend a PC meeting to provide a presentation on what they have learned so the Commissioners could be "brought up to speed" to know how far along they are.

Mr. Miller said he prefers to have the goals under a three-tiered priority list, i.e., short-, mid-, and long-term. He explained the short-term list is essentially projects that are ongoing, and the PC is just waiting for them to be represented to this body after they are worked on. This list should include the CIP process being at the top, along with Subarea Plans, which ought to be the two

topics the PC meets on as a COW with the Assembly. This is so the Commissioners are able to inform them of why they believe those projects are important, and for the Assembly to possibly allocate funds to allow the PC to move them forward. He believes affordable housing should be categorized under Subarea Plans.

Chair Gladziszewski confirmed that they would leave the short-term priority list as is, including adding the CIP process and Subarea Plans to it, and the long-term list would contain the remaining goals. Also, all the goals would be listed as bulleted items, not numbered.

Mr. Pernula said he is hearing differences of opinions from Commissioners about Subarea Plans. Some are saying this should consist of areas where they are going to package up land for disposal, and others have stated that it should consist of existing developed areas where they may want to consider improvements, changing zoning, and so on. Mr. Miller said Subarea Plans should include all of this, and there has also been discussions about the subareas of Auke Bay, Pederson Hill, DZ, Mountain Avenue, Under Thunder, and the Willoughby District. This should also involve how bonus provisions might work in those areas as well. Chair Gladziszewski said one of the underlying goals for such planning is housing development and density. Mr. Bishop stated that when he speaks to Subarea Plans, he is referring to land uses in those areas before disposal. When they look at the priorities the PC might have per Subarea Plans, they should contemplate the disposal aspect while trying to fulfill some of the Implementing Actions of the Comp Plan, i.e., meeting higher densities or low-income needs, and so on. In addition, where more transit oriented development should take place, and where parks are needed, including what areas are suitable for higher density or in commercial areas that are not zoned for it. He would like to view the borough in a more microscopic rather than a macroscopic level. Where it would become difficult is to actually select subareas to include in the plan, so the PC would have to spend time to determine what are the appropriate areas to be targeting, as there is a lot of pressure to do so in Lemon Creek and Auke Bay, and the subarea planning of the Willoughby District is already underway. Subarea Plans would move forward from the high-pressure areas, and then to the low-pressure areas is his way of thinking.

Chair Gladziszewski said she would appreciate Mr. Pernula incorporating the changes mentioned by the PC, including that Mr. Pernula is to provide status updates to the Commissioners at PC meetings under the Director's Report portion of the Agenda however frequently he deems necessary, but on a regular basis.

Ms. Bennett said she and others have discussed during previous meetings how active the Commissioners should become in reviewing the goals and priorities list. She explained that some thought that the COW should meet quarterly to do so, and others suggested on a monthly basis.

Mr. Satre said he feels the best method to move forward is by figuring out what tasks are going to be completed by listing objectives, and then distribute those into the committee system, which the PC has somewhat underutilized. Doing so would allow small groups to deal with certain "hot button" issues, and to consider them before they are presented to the PC as a whole. This would allow the meetings and workloads to be delegated, rather than having to try to obtain quorums of the PC or the COW on yet other Tuesday evenings. He volunteered to work with the CDD staff to do so. Chair Gladziszewski said the PC might also consider examining the committee structure to determine whether they need different titles assigned to some of them, or a new "Noise Committee," or whatever.

Mr. Watson said the review and update of the Comp Plan was placed on the short-term list, but staff is already working on providing their report to the PC. Therefore, when staff provides those updates, he would appreciate them focusing on specific areas mentioned on the goals and priorities list. Mr. Pernula said staff has reviewed and updated the Comp Plan by making recommended language changes to it, which will be provided to a committee of the PC early in January 2012. Mr. Watson asked if staff reviewed subareas while doing so, or just Implementation Actions of the Comp Plan. Mr. Pernula said staff has reviewed the entire Comp Plan, and then removed Implementing Actions that were accomplished, including updating other aspects of the plan.

#### Vacant Seat on the Subdivision Review Committee (SRC)

Mr. Pernula said the SRC has one seat recently vacated by Mr. Rue, and they are unable to make an appointment until January 2012, but they have one more meeting to finish their work on the Subdivision Ordinance; Mr. Miller volunteered to attend the next SRC meeting.

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

Mr. Bishop said the Lands Committee met largely to discuss the land purchase of a Montana Creek property. He does not know if the Assembly has taken action on this yet, but the Lands Committee looked favorably at doing so.

Mr. Satre said he unfortunately is unable to report on the meeting of the Public Works & Facilities Committee held last Monday, as he was traveling and was not able to call in. He offered to review the minutes, and then report to the PC at the next meeting.

Mr. Miller said the WRB met last week to discuss some of their concerns about their past site visit of the airport expansion project in terms of some of the improvements that were made. The WRB wrote a letter addressed to the Airport Board to inform them of the WRB's concern about maintenance issues they are going to have in the future, i.e., to ensure they monitor and clean out the trash rack that they had built. Also, the WRB decided to make a return site visit in the spring to ensure that the new slough that was constructed while re-routing Duck Creek is functionally performing. In addition, the WRB reviewed VAR20110027 and recommended approval to the PC for a Variance request to the 50' streamside setback of Duck Creek, which was moved to the Consent Agenda portion of the PC meeting earlier tonight. He said the WRB recommended approval of that case mostly because one of the bidders on the project is Andrew Campbell who is a member of the WRB that did not get the job, but he was very familiar with it. Mr. Campbell said he felt that they probably would not have to encroach into the 50' setback, rather there is a very a good likelihood that the contractor will be able to excavate outside of it. He explained there are conduits and communication utilities in that area, which would cost \$100,000/hr. to fix if they damaged them so the developer wanted to have the Variance permit in place before the contractor started excavating. He noted that another aspect is that the WRB actually allowed for some disturbance in that area because of the presence of knotweed, which is an invasive species where it and the surrounding dirt are going to be dug up and bagged, and then buried to a certain depth so it never grows again. This also involves cleaning the teeth of the bucket of the equipment and dump truck after removing the knotweed and the surrounding dirt.

[The November 7, 2011 Public Works & Facilities Committee, and November 21, 2011 Assembly Lands Committee minutes were provided by staff to the PC for their perusal.]



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

Chair Gladziszewski thanked her fellow Commissioners and staff for providing her a gift at the beginning of this PC meeting. It was very nice of them, and she cannot wait to read what everyone wrote. She thanked everyone for their dedication and work, and for the most part it has truly been a pleasure, as people generally do not realize all the work that the PC does. Therefore, she does impart some sympathy towards public officials when people at home are providing comments via computers, but if those individuals want to make a difference then they should join, or sign up, or volunteer to do so themselves if they think they are able to do any better. However, the Commissioners are the ones that stepped up and did so, which she really appreciates, including staff who are terrific and have among the most difficult jobs in the City because people are always mad at them no matter what they do, and people very rarely thank them. She also thanked the staff for their work because they try to do their best to represent the people that are not at PC meetings by attempting to be fair, and she believes they are doing a great job.

Mr. Satre said he sat next to Chair Gladziszewski for about six years and appreciates her insight into the workings of the PC, and the method in which she has run the meetings since she has taken over the past year as Chair, which has worked out great. Her attention to detail from where a comma goes in a sentence to what the City and state agencies are doing has been impressive to watch. Everybody appreciates her hard work and dedication, and they thank her for taking a turn and he hopes that she gets a bit of a rest before volunteering for another wonderful assignment such as this, to which his fellow Commissioners agreed.

#### **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 10:15 p.m.