

MINUTES

PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU
Michael Satre, Chair

REGULAR MEETING
June 12, 2012

I. CALLED TO ORDER

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

Commissioners present: Jerry Medina, Nathan Bishop, Benjamin Haight, Marsha Bennett, Nicole Grewe, Dennis Watson, Michael Satre

Commissioners absent: Karen Lawfer, Dan Miller

A quorum was present.

Staff present: Greg Chaney, CBJ Community Development Department (CDD) Interim Director; Beth McKibben, Laura Boyce, Benjamin Lyman, Teri Camery, Crystal Hitchings, CDD Planners

Chair Satre announced that he revised the Agenda to hear the Board of Adjustment (BA) item prior to Consideration of Ordinances and Resolutions, including switching those two items to hear AME20120008 prior to hearing AME20120006; to which the PC agreed.

II. APPROVAL OF MINUTES

May 8, 2012 – Regular PC Meeting
May 15, 2012 – PC/Committee of the Whole (COW) Meeting
May 22, 2012 – Regular PC Meeting

MOTION: *By Mr. Watson, to approve the May 8 and 22, 2012 regular PC minutes, and May 15, 2012 PC/COW minutes with corrections.*

There being no objection, it was so ordered.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Carlton Smith, Assembly Liaison to the PC, stated that the Assembly continues to work on the budget.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

Chair Satre announced that there are two items on the Consent Agenda, and inquired if there was public comment on them, and no one from the public had comments. Ms. Bennett requested CSP20120012 to be removed, which Chair Satre moved to the Regular Agenda.

MOTION: *By Ms. Grewe, to approve the Consent Agenda, as modified.*

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

CSP20120011

An expansion of a lease on CBJ land to accommodate the demolition and replacement of the existing Cornerstone Emergency Shelter.

Applicant: CBJ

Location: 9290 Hurlock Avenue

Staff recommendation: That the PC adopt the Director's analysis and findings and recommend to the Assembly approval of this consistency review, in favor of granting the requested 50-year lease expansion of approximately 12,000 square feet, for a total of approximately 48,122 square feet, to the Juneau Youth Services Cornerstone Emergency Shelter at 9290 Hurlock Avenue.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS Moved to follow the Board of Adjustment

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

CSP20120012

A lease renewal on CBJ land for an existing communications tower at the West Juneau reservoir site.

Applicant: CBJ

Location: 3000 Jackson Road

Staff Report

Ms. Boyce stated that this case is for a lease renewal on CBJ land for an existing communications tower at the West Juneau reservoir site off of Jackson Street.

Ms. Bennett stated that the application was not signed. Ms. Boyce said she has the signed application, which was supposed to be swapped out with the unsigned version in the packet, but that did not happen. Mr. Chaney explained that this is a City/State Project (CSP) case, so it is not required that an individual or corporation sign the application, but the fact that the CBJ Lands & Resources Department signed it is acceptable for CDD to perform their review, which is a subtlety versus if it was instead a Conditional Use Permit (CUP).

Ms. Bennett referred to the City/State Project Review Requirements (attachment B), asking why there is either no lease fee, or it might be as high as \$1,600.00. Ms. Marlow, CBJ Lands &

Resources Manager, explained that for this particular lease the City has a ground lease rate of \$650 per month, which includes a profit sharing structure for subleases, but they have not received an actual DCS Tower sublease contract yet. The applicant would receive their first sublease, which would be included in the \$650 per month ground rent, and then the City would receive 30% for the second sublease, 40% for the third, and 50% for the fourth and each additional sublease of the contract amount. Ms. Bennett asked what amount the subleases normally entail; Ms. Marlow said they have not had any subleases yet. Ms. Boyce said the applicant's fee was charged for a CSP review based on the size and/or cost of the overall project. Chair Satre said it is part of the normal CDD fee structure, and larger projects require additional staff review so they are charged a higher fee, although they do not recoup all of CDD's review cost. Mr. Chaney said this consists of a fairly unusual step ranging from \$0 to \$1,600, as usually they have gentler steps in other CDD fee structures, but it has been this way for a long time and they have kept it the same since he started working for the City 15 years ago. Ms. Bennett explained that the reason she is asking about the fees is that during her tenure on the PC, there have been quite a few questions regarding whether the City receives sufficient rent from communication towers in the borough. Chair Satre said this particular CSP application fee is applicable whether it was for a road, bus shelter, and so on for different types of projects, as it is not specific to the communications tower. It is also not within the PC's purview to deal with lease fees, but it is within the PC's purview to review whether construction of this communication tower and proposed project is in conformance with the 2008 CBJ Comprehensive Plan (Comp Plan). Lease fees are left up to the City departments, City Manager, and the Assembly to review. Ms. Bennett said she recognizes that, but she is attempting to obtain an overall perspective regarding this.

Public Testimony - None

Commission Discussion - None

Staff Recommendation: That the PC adopt the Director's analysis and findings and recommend approval of this City Consistency Review to the Assembly with the following suggestions:

1. When a new antenna or other radio frequency emitting device is added to the tower, review for compliance with FCC maximum electromagnetic radiation emission levels may be required.
2. The applicant will maintain the tower in a dark color.

Commission Action

MOTION: *By Mr. Watson, that PC adopts the Director's analysis and findings and recommends approval of CSP20120012 to the Assembly, subject to the suggestions outlined by staff, as presented.*

There being no objection, it was so ordered and the PC recommended approval of CSP20120012 as presented to the Assembly.

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

X. BOARD OF ADJUSTMENT

TMI20120003

Text interpretation of whether a proposed variance would result in a variance to housing density.

Applicant: Len Ceder, Ceder Revocable Trust

Location: 17105 & 17125 Glacier Highway

Chair Satre stated that a different, although related, case number (VAR20120005) was continued at the May 22, 2012 PC meeting by the BA, which was when there were only five Commissioners present. They needed five votes to take action, and the Commissioners were unable to reach an agreement at that time so they continued the item. In doing so, the Board referred VAR20120005 to the Subdivision Review Committee (SRC). The recommendations of the SRC are in the packet, and he requests staff to speak to the discussions that took place since that Variance was continued. He explained that the result of the Board addressing TMI20120003 would determine whether they take up the related VAR20120005. Mr. Bishop stated that in terms of process, TMI20120003 is not a Variance so the Board should probably not hear it. Ms. Boyce stated that CBJ 49.20.300 allows the Board to make interpretations on text, and this is a text interpretation case.

Staff Report

She stated that since staff was before the Board on May 22, 2012, the SRC met, with Mr. Watson serving as Chair. The SRC, staff, and the applicant discussed the text interpretation as to whether it would constitute an increase to housing density. The SRC believes it would not increase housing density, and provided their recommendations to the Board. Some of the Commissioners present at that meeting were not present at the last PC meeting, so she explained that with this Text Interpretation is where the CDD Director is requesting the Board to determine if the Variance, as requested, would constitute a variance to housing density, which is not within the Board's power to grant as CBJ 49.20.250(b) states that a Variance cannot be granted if it concerns housing density. CBJ49.20.300, as she mentioned earlier, allows the Board to interpret text to determine if this would be an increase to housing density. The Variance Request, VAR20120005, is to lot width, depth, and area requirements in the D-1 zoning district to subdivide Lot 51B into two lots. There are two existing homes on the lot, and it is a nonconforming lot due to size and use.

Ms. Grewe said she was absent from those meetings, but she notices a discrepancy between the SRC and Director's recommendations on their text interpretations; Ms. Boyce nodded in the affirmative. Chair Satre explained that the Board found, at the last PC meeting, that they did not have five votes in a similar vain, so they continued the item for when more Commissioners would be present to allow another chance for review. Ms. Boyce said the staff report presented to the Board tonight has been revised since the previous one, which was updated to hopefully further clarify this issue.

She continued with the report, stating that the site is located in Lena Cove along Glacier Highway. The property displayed in yellow on the screen contains two parcel numbers because there are two homes on it platted as condos in 1981, and CBJ does not review condo plats so they had no say in that platting action. Therefore, each home can be owned independently although they are not, and they share common grounds. Another slide displays the existing homes in blue, and the parcels are outlined in orange. The applicant is requesting to subdivide Lot 51B so each home is on its own equal sized lots of 5,235 square feet each; the existing lot is 10, 471 square feet. Therefore, each of the two lots, if subdivided, would be 14.5% of the required lot size for D-1 zoning, with the minimum lot size being 36,000 in that district. The next slide displays the

existing homes; one being red and the other green. Mr. Medina asked which of them is the guesthouse; Ms. Boyce said it is the red one.

She continued with the report, stating that the applicant is seeking to subdivide Lot 51B into two lots in the Sunshine Subdivision created in 1969. At that time, the property was zoned R-12 that required a minimum of a 12,000 square foot lot. In 1969, a Variance was approved prior to that subdivision for lot sizes smaller than 12,000 square feet, which also allowed the lot depth to be less than the required 100' in depth. Therefore, once that Variance was approved, the subdivision could move forward. There were two lots at that time, which were subdivided into three. Ms. Bennett interjected, stating that the reason for the Variance to lot size in 1969 had to do with topography. Ms. Boyce clarified that topography was an issue for lot depth, not lot size.

She continued with the report, stating that two original lots were 52A that went to 51, and when that Variance was approved it created three lots outlined in orange on the slide that exist today, so it created one lot at 18,000 square feet, and the subject parcel is displayed in yellow at 10,471 square feet, with the middle lot being 9,866 square feet. Mr. Bishop stated that at the time of the previous subdivision, there was a Variance to lot density, i.e., a variance to lot area; Ms. Boyce clarified that was a variance to lot area and depth. Mr. Bishop said that is similar to this Variance Request, which is a variance to lot density by allowing a smaller lot size at a higher use. He asked if they still have the same verbiage of variance criteria now as they did back then, or if they were allowed to provide variances for lot densities back then; Ms. Boyce said she does not have that answer at this time.

She continued with the report, stating that in 1974 another Variance was approved for a front yard setback reduction for the swimming pool addition. In 1974, the pool structure was built, and then converted to a single-family residence in 1976 so at some point it received a Certificate of Occupancy to be a second single-family residence on the property. Staff believes that was issued in error, but it exists today with two homes on the property. In 1990, there was an additional Variance approved for another front yard setback reduction for an addition to the red structure. In 1981, the property was platted as condos, so each home could be owned individually and they share common grounds. In 1987, D-1 zoning was applied to the property making it nonconforming in lot size and use because two single-family homes on a lot in the D-1 zoning district require a minimum of 72,000 square feet, but this lot is 10,471 square feet, and therefore the subject parcel is 14.5% of the minimum lot size required for two single-family homes. CBJ 49.35.100(a) addresses reconstruction of nonconforming structures, so in the case as this portion of code is applied specifically to this property to the two single-family homes, if either of them are damaged only one could be replaced. This over time essentially corrects the nonconforming use on the property. She explained that although there are two structures on the property now, in the long run it is envisioned that there would be one single-family home on the property, which would bring the property back into conformance with D-1 zoning district standards. Another way to look at it is that the 36,000 square foot lot requirement for the D-1 zoning district is 1.2 units per acre density-wise, so if the current Variance Request is approved and the property is subdivided it would essentially move to 8.3 units per acre density-wise. This is the reason staff believes that the Variance Request would pose an increase in housing density, and therefore the Board cannot grant variances in those instances. Staff recommends that the Board determine that this Variance, if granted, would result in a variance to housing density. Staff provided two alternative recommendations in the report, and one is to accept the Directors analysis, findings, and recommendation that this Variance, if granted, would result in a variance to housing density, and therefore the Variance Request cannot be considered by the

Board. If the Board were to agree with that then they would not move forward with the Variance Request, VAR20120005, that follows TMI2012003. The other alternative recommendation is if the Board accepts the SRC findings and recommendation to hear the Variance Request application, the committee has listed the three findings found in the staff report.

Mr. Medina referred to the last two sentences of paragraph three on page 3 of the report, which states, "These were not meant as separate dwelling units. For some reason, this second dwelling unit received a Certificate of Occupancy in 1978 recognizing it as a single-family residence." He explained that the intention was never to have them be dwelling units, but staff stated elsewhere in the report that this was unknown, but Ms. Boyce stated otherwise tonight that this was previously issued in error. Ms. Boyce said staff believes two single-family homes could not be on the property in the R-12 zoning district, but guesthouses were allowed with two bedrooms without kitchens. Mr. Medina stressed that his point is that those were never meant to be separate dwelling units; rather one was to be a dwelling unit, and the other a guesthouse. Chair Satre said that seems to be the intent of the rule at that time. Mr. Chaney clarified that staff just does not know, but this appears to be the case and they cannot state for sure if that was a mistake because they do not have the facts either way. It is difficult to interpret old code that was amended over time, so he does not want to imply that staff now knows that it was incorrect; rather it may have been although either way the Certificate of Occupancy was issued in 1978 and they still have to honor it. Mr. Medina says he understands, although he wants to clarify those specific sentences in the report. Mr. Watson said they should not attempt to get into the minds of those who are not present at this meeting by trying to explain their previous decisions. He explained that this is not necessarily a unique situation because at the SRC meeting they discussed that there were other situations similar to this that the applicant brought to their attention in regards to other lot sizes in the same area, which he asked Ms. Boyce to expound upon. Ms. Boyce provided a slide displaying the subject parcel (highlighted in black) on the Vicinity Map of the surrounding odd-shaped smaller lots that are similar in size. At this time, when the D-1 zoning was applied to this area there were parcels that did not meet the 36,000 square foot minimum lot size requirement. Mr. Watson said he also recalls another comment provided by the applicant at the SRC meeting that there was a reduction in lot size for other lots in the vicinity that took place around 2005 or so, and perhaps the applicant could respond to this during public testimony. He explained that he wants to ensure that the Board is provided additional information on this case not provided in the staff report, which is not by intent, but the Board has to be made aware of those circumstances as well. Mr. Chaney said the most important point is that there are many other small lots along this stretch of shoreline, and the applicant provided information that another subdivision was recently completed. However, he is unaware of that subdivision and was unable to verify the date that might have taken place, although he assumes it was probably some time ago. He believes it is correct to state that there are many substandard lots along this particular shoreline, so this proposal would not be out of character with the surrounding neighborhood.

Ms. Bennett read from her notes she wrote prior to this meeting, which states, "The description of the property by the CDD makes no mention of a 30-year history of occupancy of these buildings. It is unrealistic to consider beachfront properties and properties on flat land as having comparable constraints and assets even if both are classified as D-1. Beach property values are typically greater, which may limit sales given Juneau's slow growth and population characteristics. Beach properties typically have less land around them, as is typical in this Lena Beach and other Auke Bay beach properties. As a PC, they need to allow for differences in topography and use when considering beach properties and comparing them with non-beach

properties. Being too rigid in an interpretation of the code is a disservice to residents of beach properties and undermines our legitimacy as a City of just laws.”

Mr. Chaney stated that staff provided findings by the SRC in the report, so the Board could provide a potential motion if they wanted to find in favor to adopt those findings, as appropriate. However, either way, he prefers a positive vote and adoption of findings so staff is able to provide the applicant clear direction, including having a clear record of the Board’s action; rather than to have a motion to approve the subdivision fail, and if so, staff would not have anything to follow up on with the applicant; Chair Satre said the Commissioners will ensure that they do so.

Ms. Grewe stated that the three SRC findings, in combination, essentially state that there are two existing dwellings and as long as they do not harm the character of the neighborhood then there is no harm. She asked Mr. Watson if this basically encompasses the conversation by the SRC; Mr. Watson nodded his agreement. Ms. Grewe said they hear this argument a lot, which is whether it is in committee, from development professionals, or among Commissioners. In addition, during the discussions about the shorefront property, as Mr. Chaney noted, there are several substandard lots in the vicinity, but she asked staff if any of them are to the extreme of what they might be creating in this case. She explained that there are many properties in the surrounding area that have permanent homes with guesthouses on one lot. Therefore, if the Board were to proceed with this text interpretation, and then possibly hear the related Variance Request they would be suggesting that it is okay to subdivide these lots, which would be stating that the subject lot could be 14.5% of the lot size required for these two homes. Mr. Chaney said they are inheriting subdivisions that were done prior to zoning in this general area, and the subdivision of the subject site was conducted in 1969 via an approved Variance, but there were several others that were also done in the vicinity prior to this one when there was no zoning at all. These were small cabin lots in remote summer locations, so there are several very substandard lots along that stretch. Ms. McKibben said Ms. Boyce conducted research in regards to this case when she found that the square footage of lot sizes within the immediate vicinity of the subject site range from 20,000, 8,000, 9,000, 15,000, 18,000, 10,000, 111,000, 50,000, 56,000, 69,000, almost 7,000, 12,000, 20,000 square foot, etc., so there are quite a few variations to lot sizes, with the lot almost 7,000 square feet in size being the smallest. Ms. Boyce pointed to the slide of the vicinity map, adding that the southern lot adjacent to the subject site is the smallest in the surrounding area.

Mr. Bishop stated that he believes the Board should hear from the applicant before he asks further questions. Chair Satre said the Board closed public testimony at the May 22, 2012 meeting, so a motion to suspend the Rules of Order to re-open public testimony would be in order.

MOTION: *by Mr. Bishop, that the BA suspends the Rules of Order to re-open public testimony on TXT20120003.*

There being no objection, it was so ordered.

Mr. Medina referred to the first sentence of the second paragraph on page 4, which states, “According to the current Land Use Code, the nonconforming situation can continue (CBJ§49.30.100), but the nonconformity cannot be aggravated (CBJ§49.30.400).” Therefore, the two dwellings could continue to be inhabited with no problem under the current code, but it is the issue of the fact that the applicant wants to subdivide the subject lot. Mr. Bishop said he

does not see it that way, because when staff makes a previous error in recognizing the code it does not mean that error can persist into perpetuity. If an error is recognized and brought to the attention of the enforcement officials, the CBJ is placed in the position to enforce the rules. This is not to say that this is what he wants, but that is how he reads the law.

Public Testimony Re-opened

Len Ceder, the applicant, said these houses, since prior to when he purchased one and subsequently the second dwelling, have been occupied by individual families for 35 years, and the second house was constructed in 1977 over the pool addition. The population density would not be increasing because the dwellings have been occupied in that fashion, which was pointed out by the research Ms. Boyce conducted. Most of the houses on that Lena Cove stretch are out of compliance. There is not enough land for 32,000 square feet for each individual lot on Lena Cove. He is not increasing the actual density population or degrading the neighborhood; rather he is requesting the Variance so that each of the two dwellings are able to be legally occupied by a family.

Ms. Bennett said it seems as though this issue is that one of the houses is owned by the property owner, but the other is rented. In the D-1 zone there is a lot of pride in ownership, so by subdividing Dr. Ceder's property would actually provide for an upgrade of the second home in the eyes of the rest of community to two ownerships rather than one. Dr. Ceder agrees, stating that he maintains his personal residence very well, and a portion of the second dwelling is used as his shop. If the second dwelling ends up being owned by an additional family, they would probably change it, and if so, he does not know what he would do with his tools.

Public testimony was once again closed.

Board Discussion - None

Director Recommendation: That the BA determine that this variance, if granted, would result in a variance to housing density.

Subdivision Review Committee (SRC) Recommendation: The SRC met on Thursday, May 31, 2012, to review this text interpretation request. Three of the four members were in attendance, which constitutes a quorum. The SRC unanimously agreed to recommend to the BA that this Variance, if granted, would not result in a variance to housing density. The SRC made the following findings:

1. With subdivision of the property, density will not increase as new units aren't being created. However, there should be a condition that no accessory apartments be permitted on these parcels in the future.
2. The present situation is similar to most of the housing in the area. The proposal will not be a change for the character of the neighborhood.
3. If one of the existing housing units is destroyed, reconstruction will not change density because the housing unit is already present. Moreover, if the variance is denied and one of the dwellings is destroyed, the prohibition on reconstruction would actually result in a reduction of density.

Staff provides two potential alternative motions for BA consideration:

- Accept the Director's analysis and findings and recommendation that this variance, if granted, would result in a variance to housing density and therefore the PC cannot consider the variance request.
- Accept the SRC findings and recommendation and hear the variance application.

Board action

MOTION: *By Mr. Watson, that the BA adopts the SRC recommendation and grants the requested text interpretation.*

Mr. Watson emphasized that the Board strongly feels that this would not increase density of the zone where those houses are located.

Mr. Medina spoke against the motion, as he concurs with the Director's findings that it would be an increase to housing density.

Ms. Bennett said the SRC during their meeting recommended a finding that no accessory apartment be allowed. Chair Satre asked staff if the Board accepts that SRC recommendation whether they could place this as an additional condition on the actual Variance Request application; Ms. Boyce said that is correct.

Mr. Bishop said he finds this case especially troublesome because he likes the idea of being able to subdivide the lot, but at the same time he sees this as zoning by Variance. They are looking at this case in which they do not have a legally conforming situation. There are two houses on the same lot where staff has made the mistake in allowing them to have Certificates of Occupancy when they should not. If the Board were to approve the text interpretation to hear the Variance, the Board would be increasing housing density by Variance if it were approved. However, density is a legal term that states how many homes are allowed to inhabit this particular piece of property by law, but it has never been the case that this property was able to have two single-family homes on this lot via the code from the current material staff presented to Board. It may be that staff members interpreted the code differently in the past, but that does not negate the fact that the code does not read that way now. While he personally feels it would be nice if they did have a means to allow for the Variance Request, he does not see that the Board does, and if they were to issue the Variance Request they would be zoning by Variance, which would be illegal so he does not see how the Board would be able to move it forward. He intends to vote against the motion.

Ms. Grewe spoke in opposition to the motion. She also feels it would be zoning by Variance. During her tenure on the PC they have been asked many times to do similar things, and the Commissioners strictly interpreted the code in those instances. The other issue is that it would only be 14.5% of the lot size for these two homes. She understands that there are two single-family units with families residing in them, but people are occupying dwellings all over the borough who might not comply with the intent of the code. Even so, she believes it is beneficial for the Board to apply consistency in their interpretation of the code and Comp Plan.

Mr. Watson said there is no doubt that these conditions exist, but it provides the Board an opportunity to correct the situation that occurred. In doing so, it would increase the value of both lots and definitely not increase density. He thinks they would be doing a disservice in this case if the board turns this application down, so they need to keep in mind, as Ms. Grewe stated, that

there are other similar situations throughout the borough that exist. The purpose of this Board is to review proposals such as this on a case-by-case basis. Just because they might grant a Variance on this proposal does not require the Board to grant or deny future Variances that have happened in the past. He has been on the PC for a considerable time and he strongly feels that if the Board were to grant this case, they would be doing a better job as Commissioners in righting a situation that perhaps should not have taken place some time ago, which should bring closure. He speaks in favor of the motion, and requests those Commissioners who spoke in opposition to reconsider their opinion.

Ms. Bennett said she strongly feels the Board should consider the SRC findings and support their recommendation. She agrees with Mr. Chaney's comments that they do not know whether the decisions made by staff in the past were in error, or in any way contrary to the understanding at that time. She believes it prejudices the case to state that those were errors. The fact that the condos were platted outside of the control of the City means that is one issue the Board is stuck with. Even so, they are talking about nonconformity all along the beach in Auke Bay in regards to small cabins that were later turned into larger buildings. She believes the context of a D-1 zoned lot has to do with homeownership and having a sizeable space surrounding it, which she recognizes. However, the issue of whether it increases density seems fairly ridiculous since the same group of people have been living in the two dwellings through 35 years of history, so the idea that the Board is going to basically disenfranchise them with an action now seems unreasonable.

Mr. Medina requested that the motion be clarified.

MOTION RESTATED AND REVISED: *By Mr. Watson, that the BA adopts the SRC text interpretation on TMI20120003 that this Variance, if granted, would not result in a variance to housing density, subject to their findings.*

Roll call vote

Ayes: Haight, Bennett, Watson, Satre
Nays: Medina, Bishop, Grewe,

Motion fails: 4:3; and TMI20120003 was not approved to adopt the SRC recommendation and findings as presented by the BA.

MOTION: *by Mr. Bishop, that the BA adopts the Director's text interpretation on TMI20120003 that this Variance, if granted, would result in a variance to density, and therefore VAR20120005 could not be considered by the Board.*

Mr. Bishop supports motion, stating that this action is not solely about this particular case. He explained that it has something to do with it, but it is instead on how the Board reviews all cases in regards to housing density and lot areas in the future. He likes the idea of being able to deal with situations such as what Dr. Ceder has to address, but he does not think this is the "tool." He thinks the Board has to look at allowing smaller lot sizes to grandfather them in via different methods, or by possibly reducing the code requirements of them. However, this is definitely zoning by Variance in this instance, so the Board has to view alternative methods and not use the Variance "tool" to increase density of properties. If the Board were to do so, they would probably foresee a flood of Variance applications for similar types of requests, which would end up rewarding people who managed to "squeak in" by living on their property at higher densities

than was allowed over the years, and then appearing before the Board at a later date stating that this has persisted for years so they wish to pursue Variances later on. The Board might agree that they need to have increased density in certain neighborhoods, but they also need to respect the laws as they exist.

Mr. Medina thanked Mr. Bishop because he stated “point blank” how he feels as well. He believes it is more of a matter of upholding the integrity of the code, not so much trying to help some individuals that have been placed in a bad situation. The Board’s role is to interpret and uphold the code, which is why he supports Mr. Bishop and Ms. Grewe’s comments.

Ms. Grewe also lends support to Mr. Bishop’s comments. While this case has somewhat pushed this issue, she firmly believes that it would be zoning by Variance so this is not a “tool” that the Board should be using. If this were indeed a problem and there are other similar situations in the vicinity to the subject lot, the correct “tool” would be to provide changes to the zone via the code, not zoning by Variance.

Mr. Watson spoke against the motion. He said although Mr. Bishop eloquently spoke on the issue, Variances exist for the very reason that the Commissioners are here tonight, and if they were easy to do they would have a book full of instructions and they would not need a BA. The responsibility of the Commissioners is to do everything legally possible to assist homeowners in using their property. In this case, the applicant is not proposing to turn his property into a chicken farm, rather he is proposing to create two lots so each of the homes could be on their own individual parcel, which could potentially be sold separately in the future. He thinks a few of the Commissioners are using some great terms tonight regarding changing the code, but they all know how long that process takes because certain codes changes continue to be worked on, which has taken over two to three years. Therefore, he thinks they have done a disservice to the applicant this evening.

Ms. Bennett referred to the staff report regarding the related VAR20120005, stating that the issues brought up in the Variance criteria were quite weak on a couple of points. With regard to criterion 2, she read a note that she wrote prior to the meeting, which states, “This subdivision does not change anything except the ownership of the two parcels.” With that in mind, she continues to support the SRC findings, as she does not see that density would be increased, although it does reduce the lot size. In keeping with the rest of the neighborhood, good portions of homes in this neighborhood were grandfathered in because of various circumstances that took place prior to zoning. Therefore, penalizing people for nonconformity now seems rather unjust, and although she appreciates the points of view of her fellow Commissioners, she continues to feel that this is an injustice to the applicant and does not move forward as a positive aspect for the community as a whole. She does not think that being rigid in Board determinations does anyone justice.

Chair Satre said he appreciates the work by the SRC, but ultimately it comes down to the basic question as to whether this would result in a Variance to housing density, and he concurs with Mr. Bishop and urges affirmative action on the motion.

Roll Call Vote

Ayes: Bishop, Haight, Grewe, Medina, Satre
Nays: Bennett, Watson

Motion passes: 5:2; and TMI20120003 was approved to adopt the Director's recommendation and findings as presented by the BA.

Chair Satre apologized to Dr. Ceder that the Board was unable to move forward on the related Variance Request, but the intent and decision by the Board is clear that they found that it would be a Variance to housing density, and they simply cannot do so. The Board thanks Dr. Ceder for his time and effort, as he has been before this Board on three occasions. Dr. Ceder thanked the Commissioners and staff for all their time and work they have put into this as well.

Mr. Bishop said this Board made a decision not to hear a Variance Request based upon the merits that were found because it did not meet code requirements. The Board has held a similar discussion before and were unable to answer that question, but today they have done so by stating that this body has the right to refuse to hear a case.

Mr. Chaney stated that for the applicant's benefit, Mr. Ceder is able to appeal this case to the Assembly, and therefore Mr. Ceder has recourse of this Board's decision.

BREAK: 8:02 to 8:08 p.m.

Chair Satre adjourned the BA, and reconvened the PC.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS Heard out of sequence (two items reordered)

AME20120008

An Ordinance Amending the Land Use Code Relating to Restrictions on Rezonings.

Applicant: CBJ

Location: Boroughwide

Mr. Lyman stated that the PC and the Assembly previously discussed this amendment to the code on several occasions. He explained that he attempted to keep with the direction provided by Chair Satre during the discussion at the May 22, 2012 PC meeting, which is when Chair Satre stated that "...he wants this done with minimal analysis for the PC to review at a public hearing, and then move it onto the Assembly." He referred to the Draft Ordinance, Serial No. 2012-Rezoning Restrictions, 49.75.120 – Restrictions on rezonings, which currently states in part, "A rezoning shall ~~not allow uses which violate~~ *only be recommended for approval by the planning Commission upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the intent of the land use maps of the comprehensive plan.*" This was staff's draft recommendation, but thinking in about it a bit more he referred to page 6 of the report where he offers alternate language (in bold), as follows:

"49.75.120 – Restrictions on rezonings.

Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezoning requests which are substantially the same as a rezoning request rejected with the previous 12 months shall not be considered. A rezoning shall ***only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the intent of the land use maps of the comprehensive plan.***"

He explained that this language was changed from the draft ordinance in the packet, which also holds the Assembly to the same standard of reviewing the Comp Plan and at least making a

finding that the use is consistent with its intent. However, staff was unfortunately unable to obtain a Law Department reformatted ordinance because the Law Office Manager was out of the office at the time he discussed this with the City Attorney.

Commission Discussion

Chair Satre thanked staff for providing the draft ordinance as quickly as they did, along with a simple analysis. The discussions the Commissioners and staff held over the past few meetings was that given the interpretations of the code, they would have had to review every single boundary in infinite detail while considering the myriad of uses that might be in potential conflict with them. The code change provides the PC leeway to discuss what might be appropriate in terms of uses in upcoming rezone cases, including allowing for a bit of a “gray area.” It is interesting considering some of the cases that precipitated this code change, although he is not sure the PC would have decided any of those any differently, but ultimately it was the strict interpretation that allowed the decisions of the PC to be upheld at the Assembly level. Even so, the Commissioners realized the danger of such a strict interpretation being applied to rezone cases on a regular basis in the future.

Mr. Bishop asked staff to define “substantial conformance;” Mr. Lyman said that is the Commissioner’s “gray area.” Mr. Bishop asked how this would be measured, including if staff intends to provide a specific definition of “substantial conformance” in Title 49. He explained that they are adding vague language that could cushion just about anything, which “opens the door” fairly wide and makes him somewhat nervous. He likes the idea that they would no longer have to be so absolute, but he also does not like to “leave the door swinging wide open” either. Mr. Watson said he sees the use of “substantial conformance” throughout CBJ documents across nearly all departments. Many of the industries use “substantial completion” of a project, which provides for a “gray area” unless it is specifically spelled out in a contract. If this is not clearly spelled out in a contract, “substantial completion” is up to interpretation, and in this case it would be the PC and/or the Assembly to make that determination. He does not want to change this by narrowing it down to the point where they could only say ‘yes’ or ‘no,’ so this gives them an opportunity to provide such interpretations on a case-by-case basis.

Mr. Medina stated that since the Law Department reviewed the Draft Ordinance and revised language, he does not have any issues and supports approval of it.

Mr. Haight said he concurs with Mr. Bishop in that “substantial conformance” is a rather open term, although they are unable to measure what “substantial” is. In regards to other industries “substantial completion” of projects is when they provide a point of measurement.

Ms. Grewe said she does not have a problem with “substantial conformance.” There have been many times this PC interpreted aspects where there were “gray areas.” She believes the code, maps, and Comp Plan would never speak to every situation presented to the PC, and therefore it is up to the Commissioners to interpret and levy their best judgment of those cases. On the other hand, “substantial conformance” is a “gray area” she considers it to be empowering, not restricting. In contemplating what the alternatives might be if they omitted the word “substantial” from the phrase, it would definitely tighten it up and provide for no “gray area,” but she does not think that is what the PC wants because it would require strict compliance for any type of affirmative decision.

Public Testimony - None

Staff Recommendation: That the PC recommend that the Assembly adopt the Draft Ordinance to amend CBJ 49.75.120, with or without modification by the PC.

Commission Action

MOTION: *By Mr. Bishop, that the PC adopts the Director's analysis and findings and recommends the Assembly adopt the Draft Ordinance amending CBJ 49.75.120, subject to revised alternate language found on page 6 of the staff report.*

There being no objection, it was so ordered.

Mr. Bishop spoke in favor of the motion. He thinks that they should hold the Assembly to the same standards as the PC, and he believes the Assembly would want this as well. It is important that these two bodies not be on two different paths, i.e., if the PC were to do one thing, and the Assembly another. Mr. Watson stated that what Mr. Bishop is basically saying is that the Assembly could only agree with the PC, although if they are held to the same tolerances as the PC the Assembly would have no flexibility. Mr. Bishop said this gets to the “gray area” in interpreting what “substantial conformance” means, so what the PC is stating is that they might have somewhat of a different understanding of what “substantial conformance” is versus the Assembly, which is when they would be allowed to do different things from each other.

Chair Satre said what it allows is that the PC would be able to have some latitude in their interpretation of the maps, however if they did not hold the Assembly to that same standard they would not have that latitude. If so, it would be a decision that the PC would be able to make to find that an aspect is in “substantial conformance,” and then the Assembly would actually be “handcuffed” and not be able to do so. Therefore, the edit that Mr. Bishop put forward in the motion is actually the preferred language, and the Commissioners might have questions about “substantial conformance, but they will “cross that bridge when they come to it.”

Mr. Lyman said his reasoning as to what “substantial conformance” was when he wrote the revised language is zone changes and Comp Plan amendments have to be presented, undergo public notice and review processes via a public hearing, and then the PC and the Assembly are both held to a higher standard in reviewing them. Both of these bodies have to justify any actions taken. This allows the PC the flexibility to determine if cases are in “substantial conformance” with certain designations in the Comp Plan, reviewing the subject site, and “tools” of what they adopted by zoning districts. By going through that public review process allows the PC to decide what is “substantially conforming” in individual situations.

There being no objection, it was so ordered.

AME20120006

A Text Amendment to update the Comprehensive Plan - Chapter 7: Natural Resources and Hazards.

Applicant: CBJ

Location: Boroughwide

Chair Satre stated that there are two sections of Chapter 7 that were substantially rewritten, so he requested Mr. Lyman to focus on those first.

Mr. Lyman stated that the Juneau Economic Development Council (JEDC) made quite a few revisions to Chapter 5: Economic Development. In Chapter 7, staff incorporated formatting changes throughout, and Ms. Camery performed the initial review of this chapter.

Staff Comments

- Pages 74 - 80 and 90 - 91: Mr. Lyman said a few Implementing Actions (IAs) were completed, including updates made to the Juneau Wetlands Management Plan (JWMP) and program, which are underway. This includes CBJ's loss of jurisdictional permitting authority for Category C and D wetlands, and he deferred to Ms. Camery to expound upon this, including the mitigation inclusion.
- Page 81: He was unable to format the columns of the table appropriately prior to this meeting, which he would continue to work on.
- Pages 81 - 88: There were updates on studies.
- Page 89: In regards to the Airport Noise Contour Map, he spoke with the Airport Manager who noted that the Comp Plan maps for the airport runway area, the Federal Aviation Administration (FAA) R-77 Noise Contours, etc., have to be expanded once the Juneau Airport Expansion Project is complete. Therefore, they would probably be adopting an out-of-date set of airport maps in this Comp Plan review process.
- Page 92: Invasive Species; he deferred to Ms. Camery to expound upon this. However, this is one of the points that shortly after adopting the 2008 Comp Plan was when they recognized that the species discussed in the introduction of this section did not actually list invasive species specific to this area, which staff has attempted to correct.
- Pages 94 and 95: There were some changes to federal polices of eagle nesting areas, which are mentioned.
- Page 98: Hazards is a section where staff made substantial changes. It mentions the All-Hazards Mitigation Plan of 2009 and its role. Staff updated the policy on snow landslides (mass wasting) and avalanche hazards from the 2011 Avalanche Mitigation Study.
- Page 100: Earthquakes section; he explained that they do not have any IAs or policies provided in this section, which allowed them not to pay much attention to this paragraph during the past three to four Comp Plan updates. Even so, he looked at this section more closely and realized he could not actually verify any data, but the newly revised text by staff has been verified through the USGS [Geological Survey] and other sources.
- Page 102 (deleted and moved): Hazardous Materials; this is being moved to the Waste section, per a previous discussion by the PC as well as the Litter and Junk subsection.
- Ms. Camery stated that some of the aspects she dealt with in revising Chapter 7 are the JWMP categorized wetlands into high-value Category A and B, and low-value Category C and D. Since about 1992, the CBJ obtained general permitting authority from the US Corps of Engineers (Corps) over low-value Category C and D wetlands to have an expedited permitting process that rarely required mitigation, and therefore the CBJ had that process established in code. That general Corps permit has historically come up for renewal about every five years. It last came up for renewal in 2011, which is when staff held lengthy discussions with the Corps. The Corps made the decision not to renew the permit at that time because the permit had not been used for quite some time. From staff's perspective, that is actually a good aspect because it means that low-value wetlands were filled and developed, which was the intent of the JWMP. She recalls possibly granting two Category C permits in the past 11 years since she has performed wetland work for the City. It is staff's intent to re-obtain the general Corps permit

authority in the future, which would be a critical element to the JWMP update when they identify additional low-value wetlands at a later date.

Staff/Commissioner Comments

- Page 72: Mr. Watson referred to 7.1.DG1, and asked why staff reformatted it to 7.1 - DG1.
 - Mr. Lyman explained that it is a standard formatting change throughout the Comp Plan to the Standard Operating Procedures (SOPs), Development Guidelines (DGs), and IAs for easier reading purposes, which was previously recommended by the PC.
- Pages 74 and 75: Ms Bennett referred to 7.3 0 - IA1 [Reserved] and 7.3 - IA7, stating that 7.3 - IA7 was probably related to 7.3 - IA1, and she wondered why 7.3 - IA3 was deleted.
 - Mr. Lyman said the 7.3. - IA3 revision states that the portion deleted states, “Update the CBJ Wetlands Management Plan and Implementation Program...” He explained that right now they are currently updating the JWMP, so it is underway because it has been funded so is moving forward; Ms. Camery said that update begins in 2013, and therefore they should retain this because they might still want to update it later on.
- Page 86: Mr. Medina requested the following change “~~people-partiesync~~” to the Noise section; to which the PC agreed.
- Page 94: Mr. Chaney commented that this review by the PC is not a rewrite of the Comp Plan so he did not include this, but the section on Eagle Nesting Areas should probably be updated during the major rewrite of the Comp Plan. He explained that the eagle nest issue recently caused much confusion. Based upon public testimony and extensive discussion with many individuals in the community, the City has a code that seems to imply that eagles are endangered, although they are not in Juneau and have not been, if ever. What the protection for eagles is for is to manage for abundance, not to prevent them from extinction.
 - Mr. Watson said the Title 49 Committee is working on this issue, and there is an ordinance in relation to this that conflicts with this verbiage in the Comp Plan, and therefore the PC agreed that this needed to be addressed. He asked staff to provide a status update on the eagle ordinance, as they informed the Assembly that they would have this back to them by this summer.
 - Mr. Chaney said staff would check into this, and get back to the PC.
 - Chair Satre said this item was before the Assembly when the PC said they would take it up this summer. In private conversations with the US Fish & Wildlife Service (FWS), they expressed interest in being involved in this discussion. While he knows there have been staff changes in the CDD, along with other events taking place, it is still appropriate to ensure that the eagle ordinance is placed on the Agenda for the Title 49 Committee.
 - Ms. Grewe said she is the Chair of the Title 49 Committee, but she has not been alarmed with the eagle ordinance review because she knows that the committee set priorities through work sessions with the former CDD Director. Although the Commissioners at the previous PC meeting said working on the eagle ordinance was important, although there are other items in the borough that are really important that they discussed at those committee work sessions as well.

- Mr. Watson said Chair Satre made a commitment to the Assembly that they would work on the eagle ordinance this summer, so somebody is going to call them on this so he wonders where the priorities are.
- Chair Satre said they could continue this discussion later on, as he would like to get back to review this chapter of the Comp Plan.

Public Testimony - None

Staff/Commissioner Comments (continued)

- Page 97: Mr. Medina referred to 7.16 - DG2, which states, “Vehicles carrying rock and gravel are required to cover their loads...” He viewed at least six dump trucks today that did not have covered loads, so he asked if this is being enforced.
 - Mr. Lyman said this required via City ordinance, and is enforceable by the Juneau Police Department (JPD).
 - Mr. Watson said there are no truck drivers in town that cover their loads.
 - Mr. Medina said he has also noticed this, and therefore he wonders if this DG should remain in this chapter of the Comp Plan.
 - Mr. Lyman said the PC previously discussed this before the 2008 Comp Plan was adopted, which is when they provided language calling for new ordinances, and then discovered that they already had some ordinances adopted, but they just needed to be enforced. He does not think they have done anything to change this at all since then, so if this is an aspect the PC feels should be presented to the attention of the City Manager, Chief of Police, and Assembly then staff would do so.
 - Mr. Medina said that is fine, as this is just a question he had.
- Page 82: Ms. Bennett stated that since the Juneau Watershed Partnership (JWP) has become fairly substantial going beyond Duck Creek to a wider focus, it might be appropriate to mention the JWP in the context of watershed protection.
 - Ms. Camery said she feels obligated to state that she is a board member of the JWP.
 - Mr. Lyman offered to craft language for 7.7 - SOP6 to possibly add, “...and the public including groups such as the JWP;” to which Ms. Bennett agreed.
- Page 84: Ms. Bennett referred to 7.8 - DG3, stating that she requests to revise this to state, “Only Permit development...”
- Page 88: She referred to the last sentence of 8.10 - IA5, which states, “As an example, this may be appropriate for the Downtown Juneau area or the Lemon Creek subarea...” She wonders if an example is the best approach because when they previously worked on the Table of Permissible Uses, they found that at times providing examples tends to “hang them up.”
 - Mr. Lyman said he does not necessarily feel they need examples mentioned in this IA because as they continue to work on the noise ordinance, and in that case the examples abound, which are not limited to Downtown Juneau or Lemon Creek so he offered to delete this verbiage.
- Page 93: Ms. Bennett referred to the second sentence of the section on Stellar Sea Lion Habitat, which she would like to revise to state, “Benjamin Island is a major stellar sea lion haul-out within borough boundaries.”
- Page 95: She referred to 7.14 - IA2 that was deleted, although the PC supported leaving in those City protections.

- Mr. Lyman he suspects that was due to changes in federal policy regarding bald eagles, as the FWS is no longer conducting annual surveys, including that they have not provided the City that data since 2006. That was the last time he and Ms. Camery worked to update the paper maps, and when they requested to be provided more specific locations of eagle nests from FWS, they typically have stated that they do not want to release pin-point locations of eagle nests because they are afraid that people might cut them down. This means that the CDD staff would have to review the rough City maps, and then map the eagle nest locations for every one in town and annually maintain that data, including determining which nests have not blown out of trees and where new ones have been established. He believes this IA was deleted for practicality purposes.
- Ms. Camery clarified that FWS offers the City services on a case-by-case basis in identifying eagle nests, although Mr. Lyman is right that the FWS is no longer conducting annual surveys of eagle nests.
- Ms. Bennett said what Ms. Camery stated might be more appropriate type of comment to include in this IA, i.e., “To work with the US Fish & Wildlife Service on a case-by-case basis regarding eagle nests.”
- Ms. Camery said staff is able to do so, although the challenge is that federal staffing and policies frequently change, and therefore it is hard to keep this type of data current.
- Mr. Watson stated that the City reference maps for eagle nests were last identified six years ago in 2006, so he asked if they obtained any new information since then.
- Ms. Camery said they obtained sporadic updated information from the FWS when cases come up and at times they have the data, and other times they do not. Staff recently reviewed cases where staff has taken the City GPS equipment, and met with FWS and the applicant in order to obtain an exact reading on a particular eagle nests to download into the City database for future reference. However, FWS does not have the resources to conduct monitoring, except when funded by a specific development.
- Mr. Watson said, e.g., if staff were to identify an eagle nest in 2012, and then four years from now the CDD receives an application for development in that specific area, he asked if staff would then have to re-identify that eagle nest at that time as they would be unable to rely on the 2012 data.
- Ms. Camery said the code makes a distinction as to the buffer requirement between eagle nests and actively nesting eagles, so there are two different standards. Even if staff knows where a particular eagle nest is located, they would still need to consult with FWS to determine whether the eagle nest is actively used. Of course, new eagle nests are constructed and old ones are blown down, which are literally “moving targets” so it is a challenge, and therefore the information constantly needs to be re-verified.
- Mr. Watson said he is somewhat reluctant to insert language into this IA, which they already have trouble dealing with as is, and this is why he is probing for more information.
- Ms. Camery said she appreciates his concern, as this continues to be a difficult issue for staff as well.
- Page 72: Mr. Watson referred to 7.1 - DG1 where it states, “...mitigate against the effects of blow down...” He explained that they PC approved a case on the Consent Agenda

tonight, which would allow clearing on the Cornerstone Emergency Shelter property so he hopes that would be done in a more wiser fashion than has taken place in the past in other cases, but he wonders how they mitigate against blow down.

- Mr. Chaney said there are experts who study areas to select trees that are more likely to blow down than others. One technique that has not been used in Juneau very often, but can be, is to top a row of trees facing the direction of the new wind that they have not faced before. This is not great for tree growth, but it assists in buffering other trees behind them. Therefore, depending upon the situation, there are expert techniques that are used. He knows quite a bit of research was conducted for the new golf course to avoid blow down impacts, but that golf course was never built so they were unable to see how well it would have worked.
- Pages 101 and 102: Mr. Haight referred to the Flooding section, and asked staff to provide a status update on the new Federal Emergency Management Agency (FEMA) maps, including if those are an aspect the PC needs to include in this section of the Comp Plan.
 - Mr. Chaney said staff continues to negotiate with FEMA, and unfortunately they are edging the City closer to adopting the maps FEMA originally proposed. As much as staff tries their best to gain traction in FEMA's process, it does not seem that the points staff has brought up are gaining much credibility. The City has not yet adopted the new FEMA maps, and at some point there would have to be a discussion whether the City intends to adopt them, although he assumes that FEMA would be requesting code changes. If so, they would probably adopt some of them, and others would be very controversial. Therefore, he does not know in actuality what they would end up doing as a community in regards to this, which is still somewhat "up in the air."
 - Chair Satre stated that it might be appropriate, at the policy level, to discuss the City's input into the development and accuracy of reviewing the new FEMA maps to clarify them. He has seen the City take this on not necessarily through the PC, but through the Assembly and department levels. However, he wants to ensure that the PC is able to provide some sort of input, and maybe they do not want to let the PC in, but the PC wants to ensure those new FEMA maps are as accurate as possible. He stressed that staff might provide some language along these lines to strengthen the PC's push to do so.
 - Mr. Chaney offered to craft such language, and then present it for review by the PC at the next meeting.
 - Mr. Watson asked if funds were expended by the CDD to perform a re-study of the new FEMA maps.
 - Mr. Chaney said that was done and the results were provided to FEMA, but they said it was not good enough so they are still in the negotiation process.
 - Mr. Lyman said he would attempt to provide new policy language under the Flooding section, which states, "To be involved in mapping and policy changes, including at the federal level to protect the interest of the community;" to which the PC agreed.
 - Mr. Watson said a state agency in Anchorage deals with flood control, so he asked which staff person is assigned to conduct reviews with that agency on a proactive basis.

- Mr. Chaney said Eric Feldt of CDD is the primary representative with Nicole Jones acting as backup, so they inform him when any aspects of significance arise.
- Page 74: Mr. Lyman referred to 7.3 - IA1, where it states, “Update the CBJ Wetlands Management Plan and Implementation Program...” He and Ms. Camery discussed this, but neither of them intended to delete this section. Although staff is currently working on updating the JWMP and Implementation Program, and therefore they both agreed that it probably would be good to retain this verbiage in the Comp Plan.
 - Page 79: Chair Satre said he noticed that this section is restated in 7.5 - IA9.
 - Mr. Lyman thanked Chair Satre, stating that in hindsight it looks as though staff moved 7.3 - IA1 to 7.5 - IA9. He noted where this was deleted to, but not from which IA, so he will correct this.

He stated that there is a COW meeting scheduled on June 19, 2012 in the Assembly Chambers at 5:00 p.m., with food provided. A representative of the JEDC would be in attendance to discuss Chapter 5: Economic Development during the PC’s review of the Comp Plan.

Ms. Grewe said it is highly unlikely that she’ll be in attendance at the COW next week, and she knows that JEDC provided significant changes to Chapter 5. During her informal conversations with a couple of members of that Board is when they talked about changes to Chapter 5 that they were debating, and then they asked her whether the PC is intending for them to provide minor or major changes. She responded to them stating that the PC is providing a quick review of the Comp Plan, but if the JEDC has significant concerns about Chapter 5 those might be best posed in an additional economic development plan for the borough beyond JEDC’s organizational strategic plan. Mr. Lyman explained that he reviewed JEDC’s comments on Chapter 5, and they provided a couple new sections, including new ways of looking at economic development. In addition, staff has been working on adding a couple of new sections to Chapter 5 and attendant policies as well. He believes this information is relevant to the economic situation at this point of the community, state, nation, and the world on how they look at solving problems. Although JEDC’s comments are extensive, he does not believe they are “earth shattering” or inappropriate. He explained that he appreciates receiving written comments from Commissioners beforehand on any of the chapters of the Comp Plan, and he requests they forward them to him on an ongoing basis. Since he has been revising the Comp Plan the pages no longer correspond to the information as they used to, so the Commissioners should reference them by policy, IA, SOP, DG, or by the nearest identifiable placeholder item next to it when they submit changes. Mr. Watson said he is encouraged by what JEDC is attempting to do, and he wishes more organizations in the community took such interest and had that type of enthusiasm in reviewing the Comp Plan as well. He explained that many people are quick to criticize the PC in terms of the Comp Plan, but they are rather short on upfront leadership such as this, which is somewhat disappointing.

Ms. Bennett requested staff to provide something other than pizza at the COW meeting. Mr. Chaney said if the Commissioners wish to provide him requests for different types of food at the upcoming COW meeting, they should forward them to Jen Thorsteinson of the CDD who might be able to come up with an alternative.

Staff Recommendation: That the PC review Chapter 7 and make any needed updates or revisions. After all chapters have been reviewed on a preliminary basis, a Draft Comp Plan

would be published for review, after which the PC will begin a second round review of the entire document.

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Eagle Nest Issue

Mr. Chaney said this was part of the strategic plan, which also includes at least 19 other items for the CDD that are in the process of being implemented. When Mr. Pernula left the CDD, they have had a vacancy that he is attempting to fill, and then Ms. McKibben is trying to fill his vacancy so this means that somewhere in this chain there is someone that is not at CDD any longer. A few of the strategic items are on track, which would be implemented as originally scheduled, although realistically they are going to miss some of the other deadlines and they might/might not see the Draft Eagle Nest ordinance this summer, but staff intends try to work on it.

CBJ Lands and Resources Department: New North Douglas Road Alignment

He attended the Assembly meeting yesterday when staff from the Lands and Resources Department discussed the alignment for a new road in North Douglas. He was somewhat disappointed because he figured that the PC should have been provided a role to comment on it. He intends to attempt to work more cooperatively with the Lands and Resources Department in the future, so they are able to hopefully make such important decisions as a community.

Subarea Plan for Auke Bay Status Update

Ms. Bennett stated that a friend of hers informed her that a community council is being formed on Fritz Cove Road. She also knows there is an active group called Friends of Auke Bay who are on Facebook. She wonders where the CDD is with regards to developing a subarea plan for Auke Bay in terms of pushing back the State Department of Transportation road reconstruction project for that area. Mr. Chaney said this issue has a high point of interest for staff, and he has been instructed as the Interim Director not to implement anything radical or new until a final selection for the position is made. Auke Bay is a very important area, and it is probably an ideal location for the next subarea planning effort, which he intends to encourage the new Director to move forward on this as soon as they are appointed.

Lag Time with New Ordinances

Mr. Bishop said he is concerned about this, and would like to know if this is by the CDD staff or the Law Department, including whether the PC might assist staff in making these processes move forward on an expedited basis. He explained that this could be done by providing pressure from the PC to the Administration to make it known that the PC is unable to get aspects completed because they are not receiving necessary support required from the Law Department. Mr. Chaney said Mr. Lyman is not in attendance, and he is tasked with this as he serves as the staff liaison to the Law Department. The Law Department has many demands on their time because they are particularly interested to not lose cases in court, so when that takes place the CDD/PC items generally are set aside until the Law Department has the time to devote attention to new or redrafted ordinances. The Law Department also works directly for the Assembly, not the City Manager, and therefore the CDD's boss is not the Law Department's boss. There is little the CDD staff can do to provide pressure on the Law Department, so staff just tries to work with them as best they can. In general, he believes staff has a good working relationship

with the Law Department, but many ordinances tend to take a long time to get through the process, and the new Noise Ordinance is a classic example of that because it has been with the Law Department for over a year, as they are still reviewing the interstate commerce aspect. This is a difficult issue for staff because obviously they are unable to get ordinances approved without the Law Department's review, but if their (Law Department's) attention is elsewhere the ordinances tend to experience some delay. Chair Satre stated that he recalls there are three ordinances being reviewed by the Law Department, i.e., the Noise, Telecommunication Tower, and Eagle Nest Ordinances, which are still under the PC's purview. Mr. Chaney said there is also the Subdivision Ordinance, which staff is working with the Law Department on, as staff is attempting to explain many complicated aspects of it to them, but staff is having a very difficult time scheduling meetings with the Law Department because they are rarely available. Mr. Bishop asked if the difficulty tends to be with the review or formatting of the ordinances by the Law Department. Mr. Chaney said it is primarily the review of content by the Law Department. Mr. Bishop said he feels the PC has to conduct more liaison sessions with the Assembly to solve this issue in order to figure out how the PC and CDD staff are able to gain additional support from the Law Department to get these ordinance moving forward. The Noise Ordinance review is pushing two years, but the Assembly placed other ordinances on priority status and requested the PC to get them through to them by a certain date, and yet the PC cannot meet their request because of these aspects that are beyond their control. He stressed that they have to determine whether it is a priority of the Assembly to place pressure on the Law Department to provide greater resources to the CDD to finish the projects the PC requested them to work on. Chair Satre commented that he notices Carlton Smith, Assembly Liaison to the PC, is taking notes.

Vacation of North Shattuck Way Status Update

Ms. Grewe asked if this case was presented to the Assembly for vacation of vehicular access of North Shattuck Way. Mr. Chaney said it was presented to the Public Works & Facilities Committee (PWFC), and they are still discussing it; Chair Satre said Sealaska raised an objection at that time. Ms. Grewe said the PC recommended that case to the Assembly, but they might not present it in the form of a public hearing. Mr. Chaney said he believes the decision was to wait for the adjacent Sealaska Heritage Institute (SHI) building project to be officially presented. He explained that there are many unofficial plans regarding that upcoming SHI project, although it is just now becoming officially public. The Assembly wanted to fully review what would be taking place along North Shattuck Way and South Seward Street between Sealaska Corporation property and the newly proposed SHI building. He explained that there are several modifications to that portion of South Seward Street being proposed, which is so they are able to review a regional neighborhood solution, not just an isolated case. Ms. Grewe said it seems as though planning should take place prior to construction of the SHI building. She realizes these projects are somewhat planning to take place simultaneously, but she was disappointed when she read in the media that Sealaska objects to the vacationing of North Shattuck Way. She explained that she felt the media portrayed this due to their concerns about construction, but the borough could find a way around that if they wanted to try vacating that portion of roadway. The night that the Commissioners voted on this, she knew there was going to be challenges with construction of the SHI building, but she did not think those would be insurmountable, which were a separate issue. Therefore, it is unfortunate that all these other aspects are being tied together in terms of that case now, versus what the PC's intent was with North Shattuck Way at the previous PC meeting. Mr. Chaney explained that the SHI proposal possibly entails removing parking spaces from South Seward Street, and therefore this would consist of a parking equation for the regional neighborhood in a wholistic manner. Mr. Watson stated that at the last PWFC meeting the two groups objecting were Sealaska and the Downtown Business Association (DBA). He is sure this

is a principle concern of Sealaska, but a gentleman from the DBA, who previously spoke to the PC about this also, spoke to the PWFC to try to make a stronger case on the same issue of parking spaces, but he is sure that person was unaware of the changes being contemplated for South Seward Street, so he would probably be back. He believes the Commission should gracefully step back and ultimately stay out of their way. Chair Satre stated that ultimately the PC provided recommendations to the Assembly on that case; not policy decisions, and it is his understanding right now that they have not yet made a decision. Ms. Grewe said she disagrees that the Commissioners should gracefully step back. She understands procedurally that the PC made recommendations to the Assembly on that case, but to not have that case heard at the Assembly level would not allow the public to continue to comment on what the PC felt was their alternative vision for North Shattuck Way. Mr. Watson said what he meant by the Commissioners gracefully stepping back is to let the process run its course because the Assembly would later review it and allow for public comment. However, from the PC's perspective, based upon the PWFC meeting, he thinks it would behoove the Commissioners to stand where they are. He explained that the PC recommended approval to the Assembly because they believe that case is viable and should move forward, and he believes the Assembly heard that message rather clearly.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Chair Satre said the SDR recently met, which the Commissioners already discussed.

Mr. Watson said the PWFC met last Monday, and the Chair of that committee is referring back to the PC the Auke Bay School Renovation Project because when the PC recommended approval it was with a condition to provided a curb and sidewalk on the right side of the roadway, which would block driveway access to property behind Squires Rest. The Squires Rest owner's contention is that they were there before the Auke Bay School, and they have used that driveway since then, but he and the others that use that access were unaware that it would be prohibited. Even so, the owner of Squires Rest has no easement on that driveway, but he does so on the other side of his building from the University of Alaska-Southeast. He suspects that the owner and the Juneau School District might be able to work something out, but this case would be re-presented to the PC. Mr. Chaney said he was somewhat surprised that the PWFC remanded it back to the PC, as this is not a construction-critical element because that access portion of the project would be done later, and therefore it might be a while until the PC re-reviews that case.

Mr. Bishop said the Lands Committee met yesterday, and discussed the Lands and Resources Department's request to submit a proposal to the Greening America's Capitals for the Willoughby District. He believes this is an excellent idea, which he recommended Ms. Marlow, Manager of that department, to do so. The committee also reviewed a proposal for approving a lease project for Docks & Harbors on tidelands to the right of the Juneau-Douglas Bridge in the area exiting onto North Douglas Road to work on a design to provide specific funding to support greening and energy elements. Ms. McKibben said this involves a Letter of Interest through the Environmental Protection Agency (EPA) and Housing and Urban Development (HUD) programs in which they have accepted five communities over the past two years. Each year, those agencies send experts in that field to work with chosen individual communities in a charrette setting. The concept is to take the conceptual Willoughby District Land Use Plan (WDLUP) to the next step during that process using green principles, including mixed use, accessibility, transit, energy efficiency, etc. Therefore, this application would focus on Leadership in Energy and Environmental Design (LEED) Juneau standards to determine if it would be sufficient, or

whether it is possible to obtain something similar to apply to other buildings in the district besides City projects. In addition, they intend to review transit in the area because the Downtown Revitalization Group intends to trolley in the district, which they would take into consideration as well. Perhaps remediation to Gold Creek might also be included, as there are links in that location for water quality aspects, including access to other funding to do so. This proposal includes other items which she is unable to recall at the moment, but that proposal should be presented to the PC fairly soon. Mr. Bishop said he used this as a platform to push for further subarea planning in other locations of the borough, including for the committee to be prepared for additional proposals such as this in the future.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Watson asked Mr. Bishop to clarify comments he made during the conclusion the PC's review of TMI20120003 this evening, including whether they were directed at the applicant or Commissioners. Mr. Bishop said his intent was to recognize the fact that the Board did not hear VAR20120005, as the BA decided that was not an appropriate application per their decision on TMI20120003, so his comments were basically an acknowledgement of that fact. In recognizing that fact, it could also play into the Board's future decision-making processes. Ms. Grewe said she did not attend the last meeting when this case was also heard, so she asked if that was the correct process when staff provides input on cases as to whether the Commissioners should hear the text interpretation prior to hearing an actual Variance Request application. She was surprised when similar cases were presented to the Board and PC over the years, but she is unsure of the process when that should take place. Mr. Chaney said this particular application was unfortunately taken in by staff, which he was unaware of at that time so he requested an opinion from the Law Department as to whether it constituted a variance to housing density. The Law Department did not act on his request for quite some time, which is not unusual, and then when he somewhat forced their hand is when they stated that they have had it for so long that the applicant now deserves due process via a public hearing. Therefore, the Law Department figured that the fairest method in which to do so was to present it to the Board to take the case out of the hands of staff, which at that point would have been fairly awkward for staff to deny that Variance Request application. In hindsight, he believes it would have been a better process for the Director to make a determination on it, and then for the applicant to appeal the Director's determination to the PC. At that point, if the PC found it would not pose a variance to housing density, the Variance Request application would have come forward. That would have been a cleaner process, but it did not work quite in the manner in which he thought it should have. The applicant did have due process via a public hearing, which was ultimately good, but that process took a bit longer than it should have.

Chair Satre stated that an application is able to be provided to the PC for many different proposals at any time, and the Director is able to deny it for various reasons, and then the applicant is able to appeal that decision to the PC at which time they could either approve or deny it, which is when the next steps in the process move forward. He realizes Mr. Bishop has stated concerns in the past about why the Commissioners are presented with certain cases by staff that have not met the first critical test of whether they have met the code, but he is sure staff and the Director have done the best job they are able to ensure that hurdle is there and the process is preserved for everybody.

Mr. Bishop said he does not believe Title 49 supports the decision the Board made tonight on TMI20120003 because the code clearly states that certain prerequisites must be met in order for

cases to be heard either as a Variance, Conditional Use permit, etc. However, it is not clear as to what role the PC has on denying an application, which he requests staff to present to the Law Department for an opinion to be provided to the PC. At that point, they PC might determine how they want to proceed in having that discretion to deny applications based upon them not having met the requirements. He stressed that he feels as though the Board made a decision on TMI20120003 on a tenuous basis tonight, so he would like to ensure in the future that the Commissioners feel more comfortable making such decisions by having a legal opinion provided by the Law Department beforehand. Ms. Grewe said the Title 49 Committee should also review this as they work through other priorities. Mr. Chaney said that would be the case if this issue is not resolved by the Law Department. Mr. Satre stated that not as the Chair, but as a Commissioner member he is unsure whether he agrees with Mr. Bishop and Ms. Grewe. He explained that this is an aspect they need to move forward with, but he is willing to listen to opinions of his other fellow Commissioners. He said this could be because he does not completely understand why Mr. Bishop stated that they are on tenuous ground, which he requested Mr. Bishop to elaborate on. Mr. Bishop explained that the Board was presented with a Variance Request application tonight that the BA did not hear because the Commissioners decided that it did not meet the Variance requirements. Mr. Satre said he understands that, which he believes Mr. Chaney spoke to somewhat where the process might not have been 100% as he normally would have liked to see. Therefore, this process should take place if they have the Director's determination on a case at the beginning of the application process that approves or denies an application, which would ensure that there is an appealable decision moving forward. This would ensure that this body is not presented with an inquiry case where they have to make a decision and potentially deny it, and then not hear the Variance Request application as a result moving forward. It could be that they are going along parallel paths, but with slightly different justifications. Mr. Bishop said perhaps that might be so, but this body has previously been placed in similar positions, and several members of the Commission felt they were reviewing cases that should not have been presented to this body. When this has taken place, the Commissioners were placed in difficult positions where they were not comfortable providing findings on them because they were not necessarily situations where they were legally able to do so. He believes the Commissioners need to be provided clarification on whether the Commission has the ability to review the merits of applications for meeting the criteria in order to be heard, which is an important element that the Commissioners should be able to know as to what they are able to review or not. Mr. Satre said he thinks he has a philosophical difference, but he is not prepared to go into that at this time, although he understands Mr. Bishop's concern.

Mr. Chaney said he does not feel that the Board made its decision based on merits of the Variance Request application; rather it was a question as to whether the proposal constituted a violation of a variance to housing density. He realizes there was some discussion regarding the Variance criteria, but the bedrock of the Board's decision tonight on TMI2012003 was that it was a variance to housing density. The Law Department stated very clearly that they felt it was within the Commission's purview as having a role to play to pass judgment in the decision, although he is able to request further clarification on that, and then determine how that is to be done in the future possibly via code changes.

Ms. Grewe asked how many applications were actually turned down by the Director in any given year. Mr. Chaney said there were none, explaining that most of the time when a person provides staff with a concept, staff they informs them upfront whether they would/would not able to grant a variance, although in this particular case it somehow unfortunately made it through the process before that was able to take place. Generally, when a person is told that they would be unable to

obtain a variance, they do not apply. Therefore, when he stated that they turn down applications, he is not stating, e.g., that people walk into the CDD Permit Center with a fully completed application with their fee ready, and then staff says they are unable to take it in; rather it usually consists of an initial conversation with them about a potential proposal.

Mr. Bishop stated that if an application was presented to the CDD and Commissioners feels that it does not meet the requirements, he does not want to be debating other merits of the particular application. Therefore, it seems reasonable that for an application that does not meet the basic requirements, this body should not be debating other merits of the actual application so he wants to iron this out. This means that this body would not have to debate the full merits of the application, and they could move on if they decide not to review it, which is when the applicant would have the right to appeal the decision of this body, and then bring it back through an appeal process by the Assembly. This would also provide that this body would not have to review the other portions of the application that are not critical to the case at that point. Chair Satre said he does not believe that all Commissioners are in agreement regarding this in terms of every application. Therefore, he recommends that if a Commissioner believes when reading their packet material that an application does not meet the initial standards and it should not have been applied for, the Commissioners should communicate that to the Director, which would be a point that could be raised during the PC meeting, and then at any time when that item is on the Agenda any Commissioner is able to provide a motion before they start that whole review process to not hear the rest of that application so such a debate could happen at that point in time. Mr. Bishop said this is exactly what he wants to have determined, as to whether that is the procedure. He explained that the Commissioners discussed this in the past and it was never ironed out and established as a procedure; rather they basically indicated that the PC does not have the right to do so. However, if the PC does have that right to hold such debates, they should be doing this prior to hearing actual application cases; rather than debate the whole case prior to determining if it meets the basic merits. Chair Satre said if that is the case, he recommends that a Commissioner provide a motion when the Agenda item is read so they do not end up going into the full staff report and public comment processes. Mr. Bishop said he fully agrees. Chair Satre said if they were to do so and place this into some sort of established procedure that each application has to have some review at the PC level before it is even heard, he thinks that they would be placing too many hurdles on their review process of cases. He explained that any Commissioner at anytime is able to provide a motion to bring such concerns up, and then a debate could take place, which is when a Commissioner is to request a continuance before it is heard to have certain items decided beforehand, or they could take action that night. Therefore, those are processes that could take place during a normal public hearing on certain Agenda items, so it is not like they have to read the item, hear the staff report, provide for public comment via a public hearing, and then make a decision. Mr. Watson said he concurs, and this is an aspect that has to be handled within a very narrow scope. He explained that if the Commissioners do not thoroughly read their packets before the meeting, and then when cases are being presented at a PC meeting when a Commissioner raises the issue in the vain that Mr. Bishop just mentioned, this Commission could find themselves “in murky water” by inadvertently discussing elements that are not part of the concern by the Commissioner who raised an issue. Therefore, he encourages that if any Commissioner ends up thinking about this at any time that they do not wait until the day prior to the PC meeting to contact the Director, so it is imperative that the Commissioners read their packets when they receive them, and then immediately present their concerns to the Director beforehand. Otherwise, the PC ends up receiving numerous Blue Folder items on cases, which does not allow the PC the opportunity to thoroughly review all the information on cases beforehand, and the last thing he wants to do is to

misspeak and place the PC in the position of having to make a decision that might be appealed to the Assembly.

Ms. Bennett said she always errs on the side of the public, and the Commissioners had major disagreements tonight on that case, but they thoroughly discussed them and the fact that they brought that case forward was appropriate. The Commissioners are servants of the people, not arbitrary judges. The public deserves to have their say, which should be considered as carefully and thoroughly as possible. Mr. Bishop said he generally does so as well, but he is not recommending that the PC deny many applications. In fact, he hopes that the Commissioners never have to do so again. Tonight they did not hear the Variance Request application; rather they heard a text interpretation because they chose to define that that particular case did not meet the requirements, as it was an increase to housing density issue so it was not eligible for a Variance Request application. He thinks there are going to be very few cases such as that, but it is important that there are certain requirements for cases that have to be met beforehand, although he thinks the Commissioners did a good job of that tonight.

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 10:00 p.m.