

MINUTES

**PLANNING COMMISSION**  
**CITY OF BOROUGH OF JUNEAU**  
Michael Satre, Chair

REGULAR MEETING  
November 27, 2012

**I. ROLL CALL**

Chairman, Michael 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 p.m.

Commissioners present: Michael Satre, Dennis Watson, Dan Miller, Nicole Grewe, Marsha Bennett, Nathan Bishop, Jerry Medina, and Karen Lawfer, Benjamin Haight.

A quorum was present

Staff Present: Crystal Hitchings, Community Development Planner; Teri Camery, Senior Planner.

**II. APPROVAL OF MINUTES**

- October 16, 2012 – Committee of the Whole meeting.
- October 30, 2012 – Committee of the Whole meeting.

***MOTION:*** *By Mr. Miller to approve the October 16th, 2012 and October 30th, 2012 Committee of the Whole meeting minutes, with any minor amendments that staff or commissioners may provide.*

There being no objection, it was so ordered.

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

**IV. PLANNING COMMISSION LIAISON REPORT**

Mr. Smith stated that the Assembly met on November 26th and considered two of the appeals that are outstanding (16B and crusher), it was a full discussion with the decisions still pending.

He stated that the Assembly and the Mayor are dedicated to see some movement in the big picture of housing. The Assembly has made the decision to convene its own housing briefing. The briefing would pull together a panel of experts comprised of lenders, major land owners,

realtors, builders, and developers. The topic would not be Affordable Housing, but the entire spectrum of housing in Juneau at all levels. The objective of the Assembly receiving this briefing would be to ask this panel of experts what elements need to be present in Juneau, Alaska to get the movement they were looking for. The Assembly would be meeting to organize the agenda on Thursday at 1:30 p.m. in the chambers. He mentioned there would be a number of agencies that would want to attend, but it would be an Assembly-driven agenda. The members of the committee are Deputy Mayor Becker, Wanamaker, himself, and Jesse Kiehl. He told the commissioners they would welcome their input.

Chair Satre asked if a timeline had been established for that yet. Mr. Smith replied that the quorum had been but the panel had not.

Chair Satre sought confirmation if the appeal for Professional Plaza had been withdrawn.

Mr. Smith replied that Mr. Chaney may want to comment on that, but in his understanding, it had been withdrawn.

## **V. CONSENT AGENDA**

CSP2012 0016: A 170 square feet easement at the Little Rock Dump along Thane Road from CBJ to DOT for the installation of cameras for avalanche monitoring.

Applicant: Gregory Patz / State DOT

Location: 1540 Thane Road

Staff Recommendation: Staff recommended that the Planning Commission adopt the above findings and recommend the Assembly approval of the proposed City-State Project review, which would allow an easement on City land for DOT's cameras to monitor traffic along Thane Road during avalanche events in accordance with the Project Description.

MOTION: by Mr. Miller to approve the CSP2012 0016 with staff recommendations and findings.

There being no objection, CSP2012 0016 was approved.

Chair Satre adjourned the group as a Planning Commission and reconvened as the Board of Adjustment to take up VAR2012 0024.

## **VI. BOARD OF ADJUSTMENT**

VAR2012 0024: Variance to allow a common driveway rather than an interior access street for a new two-lot subdivision on a major arterial.

Applicant: Warren Van Sickle

Location: 12411 Glacier Highway

Staff Recommendation:

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2012 0024, to allow for a new two-lot subdivision on an arterial highway with access provided by a common driveway rather than an interior street, with the following conditions of approval:

1. This variance approves the subdivision of Wadleigh Tract 2 into two lots.
2. A note shall be added to the plat indicating that no further subdivision is permitted unless a separate frontage street is constructed or the Land Use Code is modified to permit it.
3. A single common access point to Glacier Highway shall be established on the plat.
4. Prior to plat recording, a parking area of sufficient size to provide a minimum parking and maneuvering area to prevent back-out parking must be constructed.
5. A driveway maintenance agreement must be recorded concurrently with the plat.

Staff Report

Crystal Hitchings, Planner, Community Development, stated that this was a request to create a 30-foot panhandle access rather than an interior street for a two-lot subdivision. The subdivision is on an arterial highway and on arterial highways, all subdivisions are required to create a 60-foot interior street right-of-way. The lot is only 138 feet in width at the street and the lot would be too narrow if a 60-foot right-of-way were cut out, the minimum lot width is 100 feet. The applicant would have to either request a variance to the interior street requirement or to the minimum lot width requirement in order to create a subdivision. They have stated that the expense of creating the street is too great for a two-lot subdivision. DOT commented that the location of the existing driveway would be the preferable access. The applicant agreed to flip the panhandle to the opposite side so that it fully encompasses the existing driveway.

Ms. Lawfer referred to an email from Mr. Somerville (additional materials) and questioned how the width of 100 feet was measured.

Ms. Hitchings answered that a 100 x 100-foot square area has to fit somewhere within that lot and the applicant would, at the time of doing the subdivision plat, create a lot that meets the minimum lot requirement or else come back for another variance.

Ms. Lawfer asked if they approved the variance with the following conditions, where would they know that both lots have to have the 100 feet.

Ms. Hitchings responded that she didn't think they would put it in the conditions because it is a zoning requirement. The Land Use Code stipulates that it has to be met and at the time of subdivision, they would need to show that it's being met.

Mr. Smith clarified that the applicant re-reviewed the subdivision proposal to meet minimum lot standards. Normally, each lot will have to be 100 feet wide in the D3 zone; however, there is a provision in the Land Use Code for lots that are in challenging circumstances, e.g. very large and very long. In this case, the minimum standards have been met.

Chair Satre opened the meeting for public comments. There were no comments, so public comments were closed.

**MOTION:** by Mr. Miller to approve VAR2012 0024 with staff's recommendations, findings, and conditions.

There being no objection, it was so ordered and VAR2012 0024 was approved as presented.

Chair Satre adjourned as a Board of Adjustment and reconvened as the Planning Commission.

## **VII. REGULAR AGENDA**

USE2012 0019: A Conditional Use Permit to extract 240,000 cubic yards of material from the Lemon Creek streambed over a six year period.  
Applicant: COALASKA INC  
Location: 2025 Anka Street

**Staff Recommendation:** Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow extraction of 240,000 cubic yards of gravel from the Lemon Creek streambed over a period of six years. The approval is subject to the following conditions:

### Annual Grading Permit and Bank Protection

1. The operator shall stockpile about 50 cubic yards of broken rap, equivalent to Class I rip-rap, near the project area to address emergencies if the flow becomes redirected towards the bank. If the rock is not used it may be sold when the project ends.
2. Prior to issuance of the first year's grading permit and approval of the first year mining plan, the operator shall submit a bond of \$30,000, sufficient to repair any serious bank damage.
3. By November 1, one month before the commencement of each mining season, the applicant shall submit a mining plan. The mining plan shall be processed by the Engineering Department as an annual grading permit. Such plan shall include:
  - a. Estimation of material to be removed.
  - b. Map of area to be worked (showing property lines).
  - c. Map showing proposed culverts, access roads, bank stabilizations, berm details (including height, location, material composition and removal plan) stream relocations and other proposed features
  - d. Methods for protecting Lemon Creek from oil, fuel and hydraulic fluid (including leaks from heavy equipment).
- e. Prior to the commencement of mining, the applicant shall verify property line location and delineate offset distance to the extraction area.
4. The top of excavation slopes shall be prohibited within 10' of any banks or the property lines.
5. The applicant shall directly hire or pay permit inspection fees to provide for periodic inspection of the mining area by an appropriately licensed engineer and/or hydrologist.

6. Periodic inspections shall be made as determined by the engineer and/or hydrologist, sufficient to monitor the operation. Such periodic inspections shall include visits during or after high water events.
7. Inspection reports shall be submitted to the Engineering Department for each 10,000 cubic yards of material removed from the stream, and those reports shall include the following information:
  - a. Volume of material removed.
  - b. Map of area worked.
  - c. Verification of compliance with mining plan.
  - d. Report of bank destabilizations.
  - e. Opinion whether bank/property line setbacks are adequately protecting adjacent properties.
  - f. Bank protection/stabilization measures if merited.
8. An inspection report shall be submitted at the end of the mining season, which includes all items in numbers 4-7. The report shall be submitted to the Engineering Department and to the Community Development Department within one month of the end of the mining season, or April 15.
9. The applicant/operator shall confine all excavations to within existing rip-rap banks. Prior to proceeding with annual excavations, the applicant must find and stake adjacent rip-rap banks.
10. The applicant/operator shall protect the structural integrity of existing stream banks and rip-rap banks. A no-disturbance zone of at least 10 feet horizontal distance from adjacent rip-rap and banks is required. (This condition is necessary because rip-rap boundaries may or may not correlate with property boundaries, as noted in the earlier requirement to mine 10 feet from property boundaries).
11. The applicant shall protect all vegetated slopes and maintain a similar non-disturbance zone identified above, unless a site-specific engineering analysis indicates otherwise.
12. All cut-slopes shall be less than 2 horizontal to 1 vertical unless a site-specific engineering analysis proves that a steeper slope protects adjacent properties.
13. Excavated areas within the creek bed must be clearly marked with warning signs. Excavated slopes must be graded to a gentle slope of 4 horizontal to 1 vertical before signs are removed. These measures shall be integrated into the annual grading permit.
14. The approved access points at 1721 Anka Street, 1791 Anka Street, and Ralph's Way shall be inspected each year to verify that no changes have been made to the embankment due to heavy creek flows during the previous year. Alterations to the proposed access will require approval by the Community Development Department and the CBJ Engineering Department.

#### Project Expiration and Dates and Times of Operation.

15. Gravel operations shall take place between December 1 and March 15. No in-water work shall be allowed between March 16 and November 30 with the following exception: In-stream work to connect the excavated sections of the creek shall be allowed for one 7 day period between May 15 and June 15. The applicant shall provide notice to CBJ Engineering and DNR-Habitat before work commences.

16. Operating hours shall be 7 a.m. to 6 p.m. on weekdays and 9 a.m. to 6 p.m. on Saturdays. Operations shall not be allowed on Sundays.
17. Gravel extraction shall be limited to 40 days per year.
18. The permit shall expire after six years or extraction of 240,000 cubic yards of gravel, whichever comes first.
19. The extraction amount shall not exceed 35,000 cubic yards per year.

#### Truck Traffic and Street Maintenance.

20. Truck traffic from the development shall be routed only through the Anka Street/Glacier Highway intersection.
21. Truck traffic and heavy equipment operation associated with gravel extraction is strictly prohibited from the Davis Avenue side of the river.
22. Prior to leaving the excavation area, the transport truck bed, with the tailgate locked, shall be raised to a minimum twenty degree angle for a timed 5 minutes to allow excess water to escape. Tilt time may be reduced if water escapement occurs sooner based on the project engineer's visual assessment and approval.
23. The applicant shall protect catch basins along the route from sediment infiltration by use of manufactured Catch Basin filters.
24. The applicant shall inspect the traveled route a minimum of twice daily for escaped material from the haul.
25. The applicant shall sweep and clean the roadway at the end of each day if any water or material has escaped, or if a major spill occurs.
26. The applicant shall immediately respond to any additional clean-up requests during the operation from the project engineer, CBJ or ADOT.
27. The applicant shall construct a rockery lane for debris removal from truck tires prior to entering Anka Street.

#### Habitat Protection.

28. No sediment migration from the truck or ramp shall be allowed in the waterway.
29. Prior to commencement of mining and prior to gravel bar coverage with snow and ice, the applicant shall field stake the exact excavation configuration and setbacks from flowing water.
30. The applicant shall place any large woody debris encountered during excavation activities at the surface of the floodplain, upstream or adjacent to the excavation area to encourage gravel bar formation and/or side channel creation. The woody material shall be partially buried to anchor the material during high flows.
31. There shall be no on-site fueling or equipment maintenance performed within 100 feet of the creek banks. This includes fueling or maintenance of portable equipment such as generators and pumps.
32. There shall be no on-site storage of fuel or other chemicals.

### Staff Report

Ms. Camery stated that they received comments from two downstream property owners with concerns regarding property damage, particularly to the banks along the stream.

She pointed to a map showing the main stretch of the streambed that is privately owned and the plat that created the specific parcel. The zoning of this privately owned section of the creek is both rural reserve and industrial.

She referred to a diagram from the applicant that showed the main gravel bars in that section and noted that they have been mining a number of them, albeit not following the even or odd year approach that was laid out in the original 2006 permit. They have primarily been mining the same gravel bar each year because the stream is replenishing itself so rapidly.

Lemon Creek gravel extraction was approved in 2007 for a five-year period. That five-year Conditional Use Permit expired in June of 2012 and code requires a full new Conditional Use Permit.

The applicant has a new approach with mining the same gravel bars and is utilizing a steel ramp from three different access points along the creek rather than building a causeway, which was what was proposed in 2006.

The biggest part of this review is concerning bank stabilization and bank protection for properties downstream. CBJ Engineering has put a tremendous amount of time and effort into designing detailed conditions that protect the downstream properties and noted that there are 32 conditions on this project that have to be met.

Another major issue in the proposal has to do with traffic and the haul route, and protection of the road along the corridor. (Conditions 20 and 21).

She mentioned concerns from CBJ Engineering, CBJ Streets, and DOT regarding incidents that have occurred in the past where gravel and water have spilled from the trucks which resulted in icy road conditions (Conditions 20-27).

–the extraction area is adjacent to a residential area, which causes significant challenges, Conditions 15-17.

Public health and safety issues - Despite the fact that it is a privately-owned section of the streambed, it is used by residents.

Habitat - CDD hosted an inter-agency meeting with a number of different resource agencies. The first thing that came out of that meeting was the need to adjust the timeline because the project requires permits from the Corps of Engineers, DEC, Fish and Game, and they were all on different permitting cycles. The original proposal was to have a 10-year permit but at the applicant's request, it was reduced to 6 years so that the CBJ permit would be timed more appropriately with the other agencies (Condition 18).

Large woody debris is important to create site habitat and is important to U.S. Fish and Wildlife Service and Wetlands Review Board (Condition 30).

The applicant has been retaining this woody material throughout their operation and recreating habitat at the same time as the gravel is being extracted.

An issue from the U.S. Fish and Wildlife Service was regarding specific fields staking of the excavation area. CBJ Engineering was focused on fields staking the property lines and ensuring that gravel extraction kept a safe distance from all the other property lines. There is an additional condition regarding staking that is very specific to protection of the stream (Condition 28).

The extraction area has to be 10 feet away from flowing water (Condition 4). Ms. Camery explained that they can go directly to the dry areas without getting into the creek, so this condition was designed to stake out those areas in advance to ensure that water quality is maintained and reduce sediment into the creek.

Fish and Wildlife Service and the Wetlands Review Board brought the issue of the maximum annual gravel extraction amount without negatively impacting the stream (Condition 19). Fish and Wildlife Service suggested 25,000 cubic yards per year. The Wetlands Review Board suggested 50,000 cubic yards per year. The applicant accepted a conservative amount of 35,000 cubic yards per year.

The applicant also has to follow all the conditions per the DEC 401 certification regarding storm water protection and protection of the creeks from contaminants. She mentioned Conditions 31 and 32.

Ms. Camery spoke of Condition 15 causing some concern with the Wetlands Review Board. The Board was very concerned because from their perspective, it was worst time for equipment to be in the creek due to salmon migration. The applicant explained that they will not have to get into the creek at that time and but Fish and Game wanted them to be in the stream in case the stream does not reconnect itself. They did not take out the specific time frame because they didn't want CBJ to be in conflict with Fish and Game.

Neighborhood Harmony (River's Edge Condominiums and D-10, D-15 residential areas) – There is no question that this will be a noisy operation and very disruptive to the neighborhood when it happens. The residential area (particularly the condominiums) was developed after development of the industrial zone (Condition 15, 16, 17). Ms. Camery offered the possibility of further reducing the number of days of operation from 40 to 35 or 30.

She referred to public comments in the folder regarding property damage (cracks in the foundation), high levels of noise, and damage to the habitat due to the extraction.

Ms. Camery forwarded the comments to CBJ Engineering who responded that they support this development and felt it was necessary for slope protection because gravel accumulates rapidly in



the stream. If gravel extraction is not allowed to continue in this area, it would result in serious flood damage to the surrounding properties. Regarding property damage, the applicant responded that it would really take a professional survey to determine whether extraction was the cause. The applicant clarified that they do no drilling in the area but it was strictly excavation activity, which was loud, but theoretically should not be damaging foundations. She did mention that gravel extraction was done on the River's Edge property many years ago that could have caused property damage to this neighbor's home but it was unclear and there was no proof.

The Comprehensive Plan designates this parcel as Heavy Commercial and Light Industrial which includes trucking but not resource extraction. Resource extraction is included under Heavy Industrial Use. So, the application did not strictly conform with the definition. CDD's perspective is that it meets the intent of a Heavy Commercial/Light Industrial designation with all the restrictions they have placed on it.

Mr. Watson asked how many additional conditions were added since the last time they reviewed the application. Ms. Camery responded that the original review in USE2006 0054 had 26 conditions and is now up to 32.

Mr. Watson asked if anybody had kept a record on the number of complaints from the neighbors on noise since the original application was filed. Ms. Camery replied she did not have that information.

Mr. Miller asked about the Inter-Fluve report and why the extraction was important for Lemon Creek.

Ms. Camery answered that in 2004, City Engineering Department commissioned a study by Inter-Fluve Incorporated, a hydrology analysis of Lemon Creek Corridor, an exhaustive report that is available through the CBJ Engineering website. The report delineated all the different accumulations, deposition zones, and erosion zones in Lemon Creek, identifying areas of rapid bank erosion way up the valley and where that material was accumulating, specifying very specific pinch-points in the river and creek. The report was designed to assess flood hazards and flood mitigation. Gravel extraction was specifically identified as a necessary measure to reduce flood impacts on the creek. One other measure described was removal of the Read-Mix Bridge, which has been done. Since the stream is channelized and the material has nowhere else to go, it is piling up which is why CBJ Engineering is strongly advocating for this development but at the same time, adding extensive protections to ensure that extraction does not undermine banks.

Mr. Chaney commented that Ms. Camery gave an excellent overview of the issue. He referred to the area on the map where the condominiums had been constructed and stated that the reason that Lemon Creek Valley was so platted was because Lemon Creek used to meander back and forth. It was a mining claim and gravel had been extracted from that area decades ago, the banks had been armored and developments were added on both sides of the banks; so now they didn't want it to meander anymore. The developer of the condominium project had an incident where the river was undercutting the banks and so they did a gravel extraction project and placed a

significant amount of rip-rap along it continuing the channelization of the river, which may have been some of the vibration and noise that the residents of the condominiums experienced.

Public Testimony:

Mike Short, Seacon, came forward to answer questions.

Chair Satre asked Mr. Short where the main areas of extraction were. Mr. Short pointed them out on the map.

Mr. Miller asked about how much gravel they had been getting per year. Mr. Short answered that he thought the maximum they had extracted in any one year was under 10,000 yards.

Mr. Miller asked how many days they operated to get to that. Mr. Short said it varied each year depending on the weather, but it could be anywhere from 10 days to 2 weeks.

Mr. Miller opined that it was his understanding that after excavating out the centers of the gravel bars, in the spring the water comes up and floods it re-depositing gravel back in the hole. He asked about the replacement rate of the gravel. Mr. Short replied that one of the city engineers had made a comment that it had filled up about 3 feet.

Mr. Medina inquired about the water quality reports that Mr. Short had handed out at the presentation to the Wetlands Review Board and if they were within the limits. Mr. Short responded that they were within the limits for turbidity and solids in that there were no solids collected.

Mr. Watson questioned that the replacement rate of the gravel when doing three times the amount that is currently being done. He asked if the river would be able to re-channelize itself. Mr. Short replied as far as depth, there is a layer of clay about 10 feet down that undulates underneath the creek bottom that they don't get into, they just extract the gravel over the top of that. He didn't think that they would be extracting the maximum proposed amount especially because of the new techniques being used.

Mr. Watson wondered what they were using to pull out the gravel and Mr. Short replied that they were using an excavator.

Mr. Short referred to a picture on Page 7 to explain the 10-foot buffer that they try to leave between any access creek and where they do the extraction.

Mr. Watson asked if Mr. Short had any knowledge of other mining permits upstream of where they were are operating, Mr. Short said no.

Ms. Grewe raised the question that since Secon has only operated 10 to 14 days a year and on page 5, it was noted that gravel extraction would be limited to 40 days per year, would Secon be opposed if they lowered the limit. Mr. Short answered that he would prefer to leave it at 40.

Michael Williams, 5846 Lemon Street, referred to the map to show where his home was located. He stated that he would like to remain in favor of utilizing raw resources and the applicant having access to that; however, his concerns were about the neighborhood, tranquility and the traffic. He complemented Ms. Camery on the stipulations that she had put in and the excellent presentation. He pointed out several cases of heavy trucks dumping large amounts of water on the roads, creating dangerous situations, noise violations in the early morning hours by tailgate slamming, and enforcement that was almost nonexistent.

Mr. Williams suggested that the area needed to be monitored closely because of the noise and the pressure of trying to accommodate everybody, the traffic. He mentioned that DOT had been doing a lot of surveying on the road and would probably expand the roads a bit. He suggested another outlet further down towards the Western Auto Area and coming out towards to the Egan Expressway.

Mr. Bishop asked if he had some issues that he wanted to see resolved.

Mr. Williams said he liked the time constraints from 7 am to 6 pm, holding the trucks for a few minutes for everything to drain out, but cautioned that it was not just this applicant but the other truck drivers, the other companies, individuals, soccer moms, and baseball dads zipping in and out of the area too. He mentioned enforcement to make sure that vehicles have mud flaps, tailgates, the lights should work, license plates should be visible etc. He would just like to be more appreciative of his backyard.

Michael Dau, 1901 Davis Avenue, #810 and #811 (River's Edge Condominium) stated he would like to make some clarifications on the map pointing out to where they did their first excavation, he stated that they were digging 60 feet from the bank because he could see it from the deck of his apartment. He said that he has been living there for 6 years and the first year was not so bad in terms of the noise but a few tiles came loose off of the kitchen floor. He stated that every year since then, it has gotten worse. When there is trouble getting through the ice, they bring in a CAT with a ripper on the back of it and a hydraulic ram to break out a chunk of ice the size of a city bus, to get to the gravel. He stated that for three days, it felt like an earthquake in his living room, it wasn't just the noise, but terrible vibration. He stated that in his home, there were major cracks along every support beam, his fireplace had moved a quarter of an inch back from where it was mounted in the wall and they have had to vacuum up the dust everyday off the bathroom floor where the main support beam kept cracking. He has spoken to two independent contractors who have confirmed that there is significant damage. They worked with the board and the management company trying to get a hold of Seacon to get some relief for the repairs but the management company came back and said it was normal settlement and they were not going to do anything about it.

Phil Gutleben, River's Edge Park Condominiums, Unit B4, said he had lived there about a year less than Mr. Dau and was currently the Vice President of the Homeowners Association. He had not witnessed the disruption and had no damage to his unit. He referred to the map and showed where A and B Buildings were located. He said that the pit was within 20 feet of the rock wall and no more than 60-65 feet from the back of the building, not the 100s of feet away that Mr.

Short said. Their homeowner association has been quite concerned about the lack of response from the contractor in terms of what Mr. Dau mentioned. They wouldn't even come over and look at the damage and so they haven't had a chance to have a meeting, but they were probably going to recommend that the owners take good pictures of their units before this happens again this year and asked if the Planning Commission could get some conditions added to keep things farther away from the building that would help. Otherwise he would suggest that they appeal the approval to the City Council.

Mr. Watson asked that given the information Mr. Gutleben had heard that evening with regard to the potential for more serious damage to either side of the bank of the creek, if gravel extraction didn't take place, as a homeowner, what would be a harmonious alternative for the two groups, if the Planning Commission were to approve this tonight. He said that it is a catch-22 situation because if the area does not continue to be excavated, there is going to be potential flooding.

Phil Gutleben stated that did a little research and found that mining had started there in World War II and stopped 25 years ago, and then the stream started to fill up again. He noted that the ramming might be what had caused the damage. He also stated that 60 feet is way too close to the building and needs to be further away (B Building had no damage because it was further away).

Tom Whitely, 8161 Thunder Street, also owner of 1901 Davis Avenue, #89, stated that he lived in the condominium for five years and wanted to reiterate that with the drilling and large excavator slamming its bucket down into a frozen ground, a stone's throw from the bedroom, was not a good thing to wake up to especially with an infant like he had. He suggested that the extraction needed to happen when the ground was not frozen solid and things needed to be dealt with to help stop further damage to the buildings, because they were a large investment to him and the other owners.

Sally Caldwell, River's Edge Condominiums, 1901 Davis, Building A, #6. She has lived there about three years. She thanked Ms. Camery for a very thorough and understandable presentation and stated that some of it was new information. She mentioned she and her neighbors love Lemon Creek and especially appreciate coexisting with the habitat there.

She has taken pictures of the cracks in the tile around the fireplace and in the beams. She noted that she was laying a new floor downstairs at the time of the drilling last year and the contractor showed her the separation between the foundation and the wall. The contractor explained how some separation does not have to be a problem, but how as they moved down the wall closer to where the drilling was, the separation was larger and of concern and pointed out that it was new. She said that the property damage she had experienced wasn't referenced in the report, just the noise was, although they did communicate with the contractor and she felt the damage was definitely correlated with the drilling.

She stated that there was a discrepancy between what the residents of the area were experiencing and seeing and what was being reported to the Assembly. She suggested that an independent assessment should be considered to iron out the discrepancy.

She mentioned the days and hours of operation, including Saturdays, which for a lot of residents Saturday was a day off, and as far as noise, they were going to be more sensitive to activity on Saturday.

As to the potential for flooding, she said they have had high waters since she lived there, but hadn't felt the threat of a flood. She hoped that that was not just a subjective statement from the contractor and would need to be substantiated. She concluded by asking for other alternatives to the drilling to address the concerns about the potential for flooding.

Mr. Bishop asked if she could describe the drilling a little bit, how long it was going on, and then the excavator trying to smash through the ice, what time period and how long that lasted. Ms. Caldwell replied that she hadn't taken notes but she could tell them her subjective experiences on the weekends, it is like an earthquake, and it was very disappointing to find the damage to the tile on the fireplace. She had discussed with their board what kinds of things they could do for her property, which has coordinated tile throughout.

Chair Satre told Ms. Caldwell that they would clear up with the applicant whether it was drilling or some sort of hydraulic ram. Ms. Caldwell said the discrepancy in the kind of equipment used, as the neighbors saw it and what the contractor was saying, is a concern.

*Amalia Monreal*, River Edge Park Condos, Building A5, referred to a letter she had written regarding this issue. She said she had moved there in 2006, and at that time it was really exciting because there were Silver Salmon along with Dog Salmon which are now gone after the excavation had started again. One of her biggest concerns was that it felt like an earthquake and was really loud. She was not aware that one of the benefits was to prevent flooding, but was concerned about the erosion that was happening to the banks and the stream bed. She wondered if the drilling was speeding up the process. As a descendent of the Auke Kwan clan, one of the originators there, she felt responsible to care for Lemon Creek along with her neighbors. She thanked the Assembly and Ms. Camery.

Mr. Chaney commented that they had looked at this noise issue very carefully and in a letter from Secon (Attachment 30), it stated that Secon did not make drilling noise from their activities.

Chair Satre injected saying that he very much wanted to get to that with the applicant later on. Mr. Chaney stated that staff had not been aware of this issue when they made their recommendations.

*Cynthia Dau*, 1901 Davis, #810 and #811, Rivers Edge Condos, stated that it is not just a noise issue and that flood control was what was served to them when they had bought the property. She stated that over the past six years, flood control using heavy equipment was not what was being done. Instead they go into the water, the dump trucks come out spewing water, they dig pits which create eddies and they have seen the river change. She continued saying that they did not haul away logs, move stumps which caught more debris coming down the river and changed

the course of the water. The water used to continually run on the Costco side, but had not done so for three years and she suggested somebody look at that.

The approval was for December through March, but noted that it is still raining in December. They create a ramp, cross open water and that might sit on a spit for a day or two, but then they have to break through what's frozen.

She had taken pictures of what had occurred. In their rental unit, the tenants reported that immediately after the river dredging, a split occurred above the stairwell. They had two contractors come in who said that it was not just settling. She mentioned that the reason they had not filed or pushed further was because they trusted their board and the association to have Secon come in and take a look at it. Secon brought in their video cameras and microphones and assured them that they had seen what had happened and that they were going to fix it. Then, the property manager came back and said they wanted paperwork which everyone filled out and submitted. Nothing has happened, except every year there was more damage and then they were told that was normal settling which she stated she does not believe. She mentioned the fact that seven of twenty-one units have been represented at the meeting even with such short notice.

Mr. Short said that they were not allowed to be in the water, but there is bound to be some inflow at the excavation sites as the gravel is being dug out and so there is always a pond (referred to the pictures). He suggested adding a condition allowing the water to drain out of the truck boxes before they leave the site which hopefully will mitigate some of the water leaving the site. He did not know of any drilling activity that had been done down there. He said they had a dozer to clear off a path. The excavators excavate the material out of the river bar and load it into the trucks. As far as damage to the properties, he didn't have any reference of that himself. He found out that there had been some paperwork filed with Secon and to his understanding, there was no response back from the parties involved and didn't know where it stood. He stated that he didn't know how to get around the noise as far as excavating the frozen ramps.

Chair Satre queried if there was anything else that they had used to help break up the ice and the gravel. Mr. Short responded saying that the only equipment there this year was the excavator, a dozer, and the dump truck and they were not permitted to do any sort of drilling and blasting down there.

Mr. Watson asked how long Mr. Short had been responsible for the project. Mr. Short replied just that summer. Mr. Watson confirmed that it was basically his first year.

Mr. Medina asked Mr. Short how often he was on site during the extraction process. Mr. Short replied that he visited the site a few times a day and was in the office across the site every day.

Mr. Medina questioned if he witnessed any particular kind of extraction that would be deemed questionable.

Mr. Short stated that from what he had seen, it had been within the parameters of excavating material and everything was done properly, but he had never excavated himself. They had

actually had a backhoe trying to keep the streets clean and sweepers come on site as needed. He didn't have a lot of answers to the concerns that were expressed regarding drilling operations, but he could understand the noise and vibration caused by an excavator banging the ground.

Mr. Bishop asked Mr. Short to briefly describe his role in the operation. Mr. Short answered that his role was to basically oversee the operation as to how it was going and the methodology used. He saw how the ramps were installed to gain access to the gravel bar, how the equipment got down, and watched the trucks load and come up out of there.

Mr. Bishop asked if it was done in the spring. Mr. Short replied that they have never been in the May window to reconnect the extraction zone.

Mr. Bishop wondered if most of the problems that they were encountering revolved around trying to break the ice and rock. He asked if it would be easier to work if they were able to use a period in the summer, spring, or early fall when it was not frozen.

Mr. Short said the timing is crucial because excavating at very deep frost levels is uneconomical. He said that there is a timeframe when the ground has enough rock where the equipment can move around on the sand and gravel and yet is not frozen deep enough to be problematic, though he was unsure of how that time plays out.

Chair Satre referring to Attachment 14 asked Ms. Camery if the entire time period of March 15th through May 15th sensitive for chum salmon hatching and migration was being fully utilized. Ms. Camery stated it was typical but they could raise that question with Fish and Game for a tighter timeframe that was viable for everybody. It was her understanding that those windows were established by habitat data and analysis accumulated by Fish and Game and is different for each stream and very specific to certain areas.

Ms. Bennett asked Mr. Short if they had liability insurance that would compensate people whose homes are damaged by the vibration. Mr. Short said they did.

Mr. Miller wondered if Mr. Short could clarify "being in the water versus in the creek." Mr. Short answered that when they extract the gravel, they have to survey and set stakes 10 feet from the rip rap banks and leave a buffer of gravel between that. When they excavate, they are in a creek bottom and end up with water entering the extraction zone. Engineering suggested they raise the box and allow the water to drain out of it before leaving the site and that is what they plan to do.

Mr. Miller asked if he was referring to CBJ Engineering. Mr. Short replied that CBJ Engineering recommended raising the box for a timeframe, based on how long it takes for the water to drain out of there before leaving the site. Mr. Miller said the condition stated 5 minutes. Mr. Short mentioned that the stipulation could be changed per CBJ Engineering's observance.

Mr. Miller queried about the condition for a street sweeper. Mr. Short confirmed that they anticipate having a rubber tired backhoe there during the operation every day and the sweeper will be there on an as needed basis.

Mr. Miller, referring to the noise issue, questioned Mr. Short as to which he felt would cause less vibration, a rock breaker to break through the ice or a ripper on a dozer. Mr. Short answered that a hydraulic breaker would be better, although it would be noisy when in use, the duration would be a lot less.

Mr. Watson asked if the project is subcontracted or if Secon operates all of its own equipment. Mr. Short replied that it is all subcontracted to one subcontractor.

Mr. Watson questioned the loud pronounced noise caused when the box is dropped.

Mr. Short replied that they call it an in-dump, it has a swinging gate, and they are basically cleaning the box by using the gate to slam against the box. They do not do it when hauling gravel, they simply back up, get loaded, tilt the box, and stay there till the water drains out. They shouldn't be ramming their tailgate against the box to clean it out and wasn't sure about the noise in the early hours of the morning.

Mr. Watson pointed out that there is a lack of effective communications from Secon to the neighbors/Association and wanted to hear Mr. Short's thoughts on how to improve that process. Mr. Short said that they could send out notifications as to when they anticipated being in the creek.

Mr. Watson inquired about the contact on Secon's end. Mr. Short stated that Secon can be contacted at any time. During the operation, there will always be a superintendent in charge of the operation.

Ms. Lawfer asked if the 9000-10,000 cubic yards that were extracted in the first part of the year, was due to necessity or because that was all they could get out. Mr. Short replied that it was all they could get out at that time.

Ms. Lawfer then queried, "If we went up to 35,000 cubic yards, is there a point in time where you have broken through the ice and now it is available, or is it really pretty much an even ice coverage throughout." Mr. Short responded that the conditions through the creek change and each winter is a little bit different, but it just depends on how far the frost penetrates in.

Ms. Lawfer questioned how much could be extracted from 7 a.m. to 6 p.m., on an optimal weather day. Mr. Short said about 1500-2000 yards at the most in a day's time, but wasn't exactly sure.

With regards to the noise and vibration, Ms. Lawfer asked if he knew of any seismic monitoring equipment being set up along the residential areas that is closely monitored. Mr. Short replied that there were seismic monitors.



Ms. Lawfer inquired how far in advance notices go out before the extractions begin. Mr. Short replied that they required to give notice one month in advance.

Ms. Lawfer referred to Page 3 of 5 on Attachment 14; Fish and Game Permit on file (Expires in 2013). It details a biologist inspecting the site. She asked if a biologist had in fact done so since this permit. Mr. Short said that Fish and Wildlife has been to the site. The biologist has been there during every extraction as well as being a part of the notice meetings. Neil was at the agency meeting and was enlightening of what is going on out there.

Ms. Camery clarified that this is a Fish and Game permit, not Fish and Wildlife.

Chair Satre said specifically in reference to that re-route season, staff had said that they have not actually had to do that during the past permit.

Ms. Lawfer asked if the person who came from Fish and Wildlife would be the one talking about placement of the stumps and what is happening with regard to the bank. Mr. Short stated that they have nothing to do with the bank except monitor rip-rap on site in case there is a problem with the bank so that they can stabilize them. So far, they have not had an issue with anyone from Fish and Wildlife. He added that Neil was impressed with the way Seacon had handled the debris and how habitat had increased on that site.

Ms. Lawfer queried about Attachment 24. Ms Camery stated that Neil Stichert presented this information at the inter-agency meeting that they had had on this project and was separate from what Fish and Game does. They had active consultation in this review from Fish and Wildlife Service, but did not receive comments from Fish and Game. Her assumption was that Fish and Game does habitat mapping and analysis surveys systematically to develop their timing windows, but could not speak exactly as to what their process was.

Mr. Haight asked if there was a methodology is truly minimizing the vibration. Mr. Short recalled that in the winter of 2010-2011, there was a lot of frost in the extraction which made it cost prohibitive for them to go in there and noted that the one-foot excavator that they are using would not cause a bang or vibration because there isn't enough structure to resist it. The seismic activity monitors cost money to place and require an engineer on staff to give the reports, but would be a possibility. Mr. Short relayed that the noise from the actual excavator was something he didn't know how to get around.

Mr. Haight discussed the new FEMA mapping analysis and questioned how this would fit into the whole role of flooding. Mr. Short answered that pointing to photographs of how the area was flooded in 1973 and referring to Hidden Valley that if the area were not excavated; there is a definite risk of flooding.

Mr. Bishop wondered if the applicant was the one who scheduled this particular timeframe. Mr. Short replied that the original applicant had been Mr. Horsney but he had no idea if he had proposed it or where that had come from.

Mr. Bishop wondered if the reason why they have to work in this timeframe where everything is frozen solid was because of the permits they had to obtain from the different agencies.

Mr. Medina asked if it would be a possibility to get a permit to excavate further up in the valley when this permit expires. Mr. Short replied that if there was enough interest, he would start working on it in January. Mr. Medina said that it was not an immediate solution and Mr. Short didn't think it would happen very quickly but his intent was to start working on it in January.

Mr. Miller wondered if the narrowing of the timeframe was dependent on water level and the creek being frozen, but not too much.

Mr. Short answered that it has to be frozen but not too much because their wheeled vehicle has to be out there. He said that 6 inches to 1 foot would be ideal. He did not know why they had the window of December to February but felt that the permits could be a reason.

Ms. Lawfer referred the Commissioners to Page 4 of the Office of Habitat and Management of the Fish and Game which talked about the time periods when the fish migrated and this timeframe might correspond to that study.

Mr. Miller asked if the gravel was the same all around the entire Lemon Creek Plane. Mr. Short responded that from his research, it was the same material.

Mr. Miller queried if the vibration was because the material was like loose marbles. Mr. Short said that that is basically why they have to wait for it to be frozen, to get rid of the loose stuff.

Chair Satre closed public testimony.

BREAK 21:31 to 21:37

Mr. Miller questioned if the type of equipment used was prohibited. Ms. Camery responded that it hadn't been specifically stated in the project description for a particular kind of equipment to be used, but there was no condition that stated that it was prohibited.

Mr. Bishop felt uncomfortable approving the application as proposed and preferred to continue the item until such time that staff had the ability to investigate what they have heard and look for a solution to the problem. He specifically wanted staff to find out how the timing on the permit was done and whether there was any ability to maneuver within that; whether they could get into the gravel before it froze and keep it stirred up to the point where they were able to work with it; what seasons they have been doing it in and when the breaking had been taking place; the kind of equipment they are using and if there was better equipment that could be used that would have less impact.

Mr. Watson asked if they were to consider Mr. Bishop's comments as a motion, would it impact the applicant's ability to go forward with the extraction this year and if he couldn't go forward

with the extractions this year, would the lack of excavation in any way potentially cause a flooding situation; he noted that they need to be careful if the answer to the last question was not positive.

Mr. Miller appreciated staff for their good job in addressing road maintenance, water drainage, preventing wood leaving the site, and the sweeper. He stated that the only issue unresolved seems to be the timing of when to break in the ice and recommended that the applicant heed the concerns raised and address them in the field.

***MOTION:*** By Mr. Bishop to continue this to the next regularly scheduled meeting for the purposes was stated before.

Regarding the flooding situation, Mr. Chaney stated that from what he understood, the bed of Lemon Creek is raising inches per year, but not feet per year, but over time it will create a flood risk and it was important to do something as a community to mitigate that.

Mr. Watson asked if continuing the item would hinder the applicant's ability to go forth with harvesting of gravel in the upcoming season. Mr. Chaney replied that it would narrow their window because there was work that had to be done in advance before their first meeting in December. If for some reason, it wasn't resolved then, it could be resolved in January but would narrow their opportunity.

Ms. Camery added that the current condition proposed via CBJ Engineering is that the applicant needed to submit a full detailed mining plan one month in advance.

Chair Satre questioned if the applicant had gone past the prior Conditional Use Permit wherein a full detailed plan had to be submitted by November 1st (one month before the commencement of each mining season). Ms. Camery said that would be interpreted as having some flexibility but the key thing was 'one month before the commencement'. She added that for purposes of clarity, 'by November 1' should be taken out.

Mr. Medina spoke against the motion because of the vibration in the neighborhood. He would be in favor of approving the permit with the added condition of installation of seismic measuring devices if possible and recommended that the applicant do some public relations with the neighborhood in addressing their concerns during the extraction process and how to alleviate them.

Mr. Bishop said he appreciated the need for the applicant to get in there as soon as possible and that's what he would want to see, may be next year, if they couldn't get them in there now. He mentioned that there was no solution as yet and the Engineering Department wanted 30 days to review the mining plan for suitability which means they are not going to be able to start on December 1st. They had to make sure that they are not disturbing the neighbors at 6 o'clock in the morning.

Mr. Medina disagreed saying that operations would not start at 6 o'clock in the morning and he believed they had to have a 30-day window to have their mining permit in, so they are not going to get in there by December 1.

Ms. Grewe supported the motion as stated.

Ms. Lawfer asked if the applicant would be able to work with an expired DEC permit.

Ms. Camery replied that the applicant cannot work without a DEC permit. She added that they also have to get final approval from CBJ Engineering on their mining plan and ensure they have the Corp Permit, a new DEC Permit, a City Permit; and a Fish and Games Permit.

Mr. Watson asked if approval of the Planning Commission would be contingent upon the applicant's responsibility for procuring other permits. Chair Satre did not feel it was all within their purview. Ms. Lawfer noted that she was just looking to see for timelines with regard to voting on the motion.

Mr. Miller stated that his thoughts had changed a little bit because the applicant did not have their 30-day notice in, didn't have the mining permit, and in 30 days the frost could be very deep. He thought that the applicant was in a tough position with the liability issue and the vibration, but he felt he should give them a chance and spoke in favor of the motion.

Chair Satre felt that there were more questions to be answered but would like to see an exclusion zone around the existing condominium that is closest to the riverbank, which staff could research into. He thought that Mr. Bishop's motion to continue was appropriate.

Roll call vote:

Ayes: Mr. Miller, Ms. Bennett, Ms. Grewe, Mr. Haight, Ms. Lawfer, Mr. Bishop, Mr. Watson, Chair Satre

Nays: Mr. Medina

Motion passed to continue with an 8:1 vote.

Chair Satre asked if staff had the appropriate direction. Ms. Camery expressed concern if staff would be able to have all the answers by the next Planning Commission meeting.

Mr. Watson brought up that there were three positions on the Commission that were open at the end of the year, and with three new inexperienced people coming on the Commission, this issue could be much more challenging and recommended a special meeting.

Mr. Medina queried if this would need to go back before the Wetlands Review Board or just the Planning Commission. Ms. Camery replied that it would not, unless there was a significant

change to the habitat protections involved, and that she would certainly do everything she could to deliver it by December 11th.

Chair Satre thanked the applicant for being present to answer questions and the neighbors for their testimony.

## **VIII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS**

### **IX. UNFINISHED BUSINESS**

VAR2012 0023: Variance to reduce the front yard setback from 11 feet to 5 feet in order to construct a second story entry deck.  
Applicant: Anna Latham  
Location: 209 St Ann's Avenue

The item has been pulled from the agenda.

### **X. OTHER BUSINESS**

### **XI. DIRECTOR'S REPORT**

Mr. Hart mentioned a phone call that afternoon about coordinating with the Assembly and asked if the Commission had an agenda prepared. Chair Satre said that he had not had a chance to discuss it as a Commission.

Mr. Hart asked if it would be appropriate to do that before they left that evening. Chair Satre said that he and Mr. Smith had talked about the basic list of priorities of the Planning Commission in terms of various ordinances that were out there, making sure they were on the same page on those items, getting some feedback from the Assembly's retreat; where their list of goals was, how the Planning Commission could fit into that in terms of review of capital budgets with the Board and Capital Development's plans as well as ideas on housing.

Ms. Lawfer wanted to know how the Assembly would like the updated Comprehensive Plan presented effectively. They plan to do the roll-out of the Comprehensive Plan with public meetings throughout the community in the first part of the year. Mr. Hart mentioned that the Assembly members have enjoyed presentations from the Lands Department which are concise and to the point.

Mr. Medina asked if the subdivision ordinance was in it and Chair Satre replied it was.

Chair Satre encouraged the Commissioners to e-mail Mr. Hart with anything regarding feedback from the Assembly, priorities in terms of staffing, eliminating bottlenecks within the staff perceive, ensuring that groundwork had been laid with the city manager and the assistant city manager etc.

Mr. Watson raised the issue of appeals and the importance of clarifying the variance process which often seems to be in conflict.

Ms. Bennett wanted to know what the Assembly is going to be doing to assure more housing and make land more available. Mr. Hart suggested going through the changes that the Planning Commission has made with the zoning ordinances that have given more opportunities for housing in the community.

Mr. Bishop spoke about bringing up a discussion about an economic development plan with the Assembly, the integration of the CIP and Comprehensive Planning, prioritizing goals for the next 1 to 2 years, and targeting resources for greater synergy.

Ms. Grewe thought they should focus on the draft ordinances, unfinished business, the CIP, Comprehensive Plan, economic development, the role of local government in affordable housing, subarea plans, and management of municipal resources including land and disposing of lands.

Mr. Miller said he thought they had done a lot of things for affordable housing like increasing densities and bungalow housing but mentioned that they would appreciate more direction for the PUD Ordinance and cottage housing.

Mr. Hart mentioned that there was the potential for a second meeting in December because the SLAM (State Library, Museum, and Archives) Project needs a Conditional Use Permit. Chair Satre asked if they had done the variances. Mr. Chaney said that the project had been approved, but was being staged. Chair Satre asked for suggestions regarding a date and Tuesday, December 18th was mentioned, which would be confirmed via e-mail by the members.

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

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

Mr. Watson spoke about a 5-1/2 acre rural property in the Douglas area, the owner had approached them to **pass the waters through the \_\_\_\_**, and if it would be viable for them to move forward with subdividing the property. Chair Satre said he was a big fan of running things through subdivision review to avoid long unnecessary entanglements later on.

Mr. Miller said that the Wetland Review Board met and talked about permits and as habitat goes, they have been doing an outstanding job.

Mr. Bishop stated that the Lands Committee was working on an update of Title 53 Land Disposal where the review of Land Disposals by the Planning Commission prior to the negotiation of the Lands Manager would be eliminated. He felt that it gave the Lands Manager more opportunity to do things without putting everything on the table beforehand. It would come to the Planning Commission for a decision after they have negotiated a tentative deal and then on to the Assembly.

Mr. Smith commented on the joint agenda and suggested that a few of the members provide a very concise review of the key points of how the Assembly and the Planning Commission are designed to interact.

Ms. Grewe questioned if the Assembly was comfortable with the appeals process since there have been some spikes this year.

Mr. Smith said there had been no error made, but in his observation the Law Department has done a great job of explaining how this works, but the Assembly has not heard from the Planning Commission as to how it's meant to operate, and he thought it might be more effective if they heard it from the Commission because it is more technical in nature.

Mr. Miller reminded everyone that it was cold and flu season and garlic was a natural immunity booster!

Mr. Hart said he was reading Title 49 and it said that Planning Commission Chairman was supposed to forward the names of those people whose terms were up. He believed Mr. Watson's and Mr. Satre's terms were up but he was not sure who the third person was.

Ms. Lawfer stated that she would be out of town for the meeting on December 11th, for her mother's 79th birthday (12.12.12).

Mr. Watson thanked Mr. Hart, Mr. Chaney, and Ms. Given for the outstanding presentation that they gave on the 16B Appeal and that they had represented the Planning Commission extremely well.

#### **XIV. ADJOURNMENT**

**MOTION:** *By Chair Satre to adjourn the meeting.*

*With no objection, the meeting adjourned at 10:24 p.m.*