

MINUTES

PLANNING COMMISSION
CITY OF BOROUGH OF JUNEAU
Michael Satre, Chair

REGULAR MEETING
December 18, 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 7:04 p.m.

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

Commissioners absent: Jerry Medina, Nicole Grewe.

A quorum was present.

Staff present: Greg Chaney, Planning Manager and Hal Hart, Planning Director.

Chair Satre stated that a question had been raised in terms of interpretation of the Rules of Order, and the City Attorney, Mr. Hartle, joined them by telephone.

Chair Satre thanked Mr. Hartle for being available at the late hour and assisting them with a question that one of the commissioners had brought up regarding a decision that was made at a previous meeting. "A Conditional Use Permit was approved. No notice of reconsideration was given prior to adjournment at the previous meeting. The Commissioner has now asked if they can give notice of reconsideration for that item at this meeting." Chair Satre asked what Mr. Hartle's interpretation of the Rules of Order was.

Mr. Hartle answered that reconsideration was a two-step process – "You give notice at one meeting and the reconsideration could be brought up at the next meeting. If it is not brought up, it expires. It is a matter of due process. If the applicant didn't get the notice at the meeting at which the decision was made, then it would violate due process to bring it up without having given the notice. These permits are a valuable piece of property that the PC grants and we have to do due process before we can make changes or deny someone such a valuable piece of property. Without notice, at the meeting at which the decision is made, then there is no reconsideration to be brought up at the next meeting." As an aside, Mr. Hartle recommended giving notice of reconsideration if they still had questions, the findings needed to be tweaked, or more information needs to be provided.

Chair Satre reconfirmed asking if somebody was going to go down that path since reconsideration could not be given on something that had already been approved or denied and reconsideration notice hadn't been given at that meeting, then the only avenue would be the normal appeal process as stipulated by code.

Mr. Hartle replied that there is an appeal process, 20 days from the day that the NOD is filed with the municipal clerk.

Ms. Bennett noted that Mr. Hartle had mentioned if there was just cause, a Commissioner could recommend reconsideration, she sought clarification on that and asked what was the rule, if possible, to bring up a reconsideration.

Mr. Hartle answered, "Unless notice was given within the meeting in which the decision was made before that meeting adjourns, one sentence, 'I give notice of reconsideration that my vote on' but without that notice, it would be a violation of due process to bring up a permit now and make any change or even not to make a change, because the applicant, the permit grantee, and also the public didn't have the notice that that was going to happen. That is why it is a two-step process, notice and then the reconsideration itself."

Chair Satre thanked Mr. Hartle. Chair Satre stated that Mr. Hartle's interpretation did not affect the reconsideration that was on the agenda and proper notice of reconsideration for USE2012 0019 had been given.

Chair Satre noted other changes in the agenda - USE2012 0022, a Conditional Use Permit to allow off-site staging at the Juneau Subport for the new State Library Archive Museum Project will be moved to the Consent Agenda.

CSP2012 0017, the Glacier Highway and Mendenhall Loop Road intersection safety improvements (aka Auke Bay roundabout) has been removed from the agenda and will be rescheduled at a later time.

II APPROVAL OF MINUTES

- November 27, 2012 – Regular Planning Commission Meeting.

MOTION: *By Mr. Miller to approve the November 27th, 2012 PC minutes with any changes provided by the staff or fellow Commissioners.*

There being no objection, the minutes from November 27, 2012, were approved with minor corrections.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Phillip Smith, a 28-year resident of Juneau, 69-year resident of Alaska, and an Army Veteran, representing Veterans for Peace, spoke about the approval of the Use Permit for the gun range

near the airport. The Veterans for Peace felt that the decision had been made hastily and that there had not been a full-blown public discussion of the implications of that facility for the community. Mr. Smith didn't think there was a lot of thought about the pros and the cons or the types of messages being sent. When he saw the result of the deliberation and the approval of the permit, he was astounded that there were no conditions on it other than for purposes of providing utilities consolidating the three lots into one, but none for public safety, public health etc. His organization met at least 2 or 3 times and discussed this, and they felt the whole topic needed a much greater public dialogue. He acknowledged that the Commission may not be the body that should be leading the dialogue, but perhaps the Assembly could. There had been hardly any debate at all when they amended the ordinance to allow the Planning Commission to proceed and approve the Use Permit, but his organization felt that the topic deserved considerable attention and input from sporting organizations, veterans' groups, schools, pastors, and others, so that it did not appear to be yet another rubber stamp. They planned on exploring the appeals processes, so that they could at least keep the discussion going on in the community for a while before a final decision is made to put a facility in place. They would like to see more of a federal, state or city oversight in this issue to protect the people. He concluded saying that he appreciated the work they did.

Chair Satre thanked Mr. Smith for attending the meeting and bringing forth his and his organizations' views. Chair Satre acknowledged that they had made their decision, but per the City Attorney, they had a 20-day appeal period. He advised Mr. Smith to approach the Community Development Department during normal office hours to get the appropriate appeal forms and walk him through the process.

Mr. Chaney said that the notice of appeal period would end on January 3, 2013, and it must be done through the City Clerk's Office. It would be an appeal of the Planning Commission's decision. They would be defending the Planning Commission's decision, so it would be through the City Clerk, Laurie Sica is the head of the Clerk's Office.

Mr. Smith stated that as he understood it, it would go to the Assembly who then have the option as to how they wished to handle it.

Chair Satre explained that it was rather simple to file the initial appeal. The Assembly will take that up and decide whether or not to grant the appeal based on the ordinances. The Assembly has, in the past, given great deference to any citizen or group that had appealed any of their decisions and allowed due process to happen.

John Dunker, 592 Seater Street, Veterans for Peace, mentioned that he wanted to reinforce the comments of Mr. Smith and would only add that should there be opportunities to discuss changes in the laws that restrict the Planning Commission or the Assembly's scope of action. It appeared that even under state law, the municipality's actions are quite limited. He didn't think they should throw up their hands in defeat, but embrace any further debate on possible changes as an opportunity for community dialogue.

Chair Satre closed public participation on non-agenda items.

IV. PLANNING COMMISSION LIAISON REPORT

Mr. Smith stated that the Assembly would interview Planning Commissioner candidates tomorrow evening, Wednesday, December 18, 2012 at 5:30 at the Committee of the Whole meeting. They will be scheduling the first meeting of the Ad Hoc Committee (appointed by the Mayor) on January 8, 2013 and it would be comprised of a series of panels made up of realtors, lenders, builders, developers, and landowners. If any of the Commissioners had questions about the format and content, the panels would likely be finalized on Friday, December 21st at 1 pm during their meeting in the Chambers. Mr. Smith then wished them a Happy Holiday.

Ms. Lawfer, being a condominium owner, asked if the panel would be able to talk about the unique challenges that condominium owners face with regard to financing, how lenders look at condos, and Homeowners' Associations. Mr. Smith stated that when this had first been discussed, there was a misconception that they were only going to be addressing Affordable Housing but the Assembly wants the panels to discuss the entire housing stock of Juneau and condominiums would be a major part of that.

Ms. Lawfer asked if the Planning Commissioners were invited to sit in on the meetings. Mr. Smith said absolutely and that the first meeting would occur January 8, 2013 - the first of three successive meetings. Each panel would develop a white paper on their topic areas, so that the Assembly would have a definitive statement of what the panels believed were the obstacles to housing in Juneau and the strategies to address those.

Chair Satre mentioned looking forward to participating in the meetings and thanked Mr. Smith.

Mr. Bishop suggested moving the Consent Agenda above the reconsideration.

V. CONSENT AGENDA

USE2012 0022: A Conditional Use Permit to allow off-site staging at the Juneau Subport for the new State Library Archive Museum Project.
Applicant: PCL Construction Services Inc.
Location: 200 Egan Drive

Staff Recommendation:

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of a four-year long site staging area for the State Library Archive Museum project. The approval is subject to the following conditions:

1. The applicant shall ensure transported material is secure and safe, and any debris falling on the street be cleaned up as soon as possible.
2. The applicant shall be responsible for obtaining permission from state or city agencies during any unexpected street closures due to the staging and transportation operations.

3. The applicant shall ensure that the sidewalk along Egan Drive in front of the subject site shall remain passable for all pedestrians, and cleared of any material that may originate from the construction staging operations.
4. The hours of operation are: 7:00am - 5:30pm Monday - Friday and 9:00am - 5:30pm Saturday.
5. Outdoor light fixture shall be of a full cut-off design.

MOTION: *by Mr. Watson to approve USE2012 0022 with staff findings and recommendations and unanimous consent of the Commission.*

There being no objection, USE2012 0022 was approved.

VI. RECONSIDERATION OF THE FOLLOWING ITEMS

USE2012 0019: A Conditional Use Permit to extract 240,000 cubic yards of material from the Lemon Creek Streambed over a 6-year period.

Applicant: Colaska Inc.

Location: Lemon Creek Streambed.

Staff Recommendation:

Staff recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow extraction of 210,000 cubic yards of gravel from the Lemon Creek streambed over a period of six years. The approval is subject to 36 conditions.

Chair Satre explained that this item was approved at a prior meeting; however, a Commissioner had given notice of reconsideration after it was approved and before the meeting had been adjourned. Chair Satre continued saying that at that time, they could take up the motion to reconsider. If the motion receives 5 votes and passes, then it was as if the prior vote to approve the item had never happened and the original motion to approve the item would then be on the floor for further discussion or removal and further Commission action.

MOTION: *by Mr. Bishop to reconsider USE2012 0019.*

Mr. Bishop thought that this was a complicated case and there was a lot of information brought forward, but he wanted to make sure that they were all on the same page with what they thought they understand. He mentioned that there were substantial problems from the condo owners' perspective with the application (noise, excessive vibration causing damage to the condos) which puts the application out of harmony with the residential neighborhood adjacent to it and he didn't see how they could make a finding to reconcile that. On their board, they have a licensed realtor who felt that this application was going to be deleterious fiscally to the condo owners and would impact the value of the condos; he supported that finding. Also the issue has been in the newspapers about the impact to the condo association; it has been well discussed and well understood by the community that the impacts have to be made known at the time of sale. Further, he cited that the application didn't have any restoration plan for the creek (an impaired

creek) and one of the principle reasons for it to be listed as an impaired creek by DEC, is the gravel mining in the creek.

Without a restoration plan, he wasn't not sure how they could make a finding that this isn't going to have an impact on the creek as it has in the past; he mentioned there were no conditions that went beyond woody debris within the creek bed to support a restoration plan. He noted that the item had been put forward as a needed thing to prevent flooding in Lemon Creek, but it was not an immediate need and was not indicated on the Flood Plain Maps as a flood area. It is an issue that they will have to take up in the future but he felt there was no need shown for immediate excavation. He stated they had not put any limits on where the mining could occur, he didn't understand why it had to be done directly in front of the River's Edge Condos - they have ways to buffer, restrict uses, and restrict excavation. He suggested moving the mining away from the windows, the doors and the openings of the River's Edge Condos to areas that would have less impact. He supported the white paper/research project that was put forth to justify the need for mining which indicated that further study needed to be done if there was to be mining in the creek because it could destabilize the banks and create erosion to different areas. He could not support the project as proposed due to the unresolved issues, lack of harmony, lack of a restoration plan, and the non-monetary "costs" involved. He stated that Lemon Creek is an asset to the community both for habitat and as a place of solace for people to walk in – turning them for mining in perpetuity is not good for the community or the ecology. He summarized by stressing that they owed it to the community to resolve the issues before approval and thanked everyone for their time.

Mr. Watson asked if the applicant was present. Chair Satre briefly reviewed the procedural process; if the motion were to pass, it would be as if the prior vote had not taken place, there would then be a point in the procedure on the application where a motion would still be on the table, that motion would be up for discussion and another vote unless it was recalled - Mr. Bishop has put on the floor a motion to reconsider USE2012 0019. It would take a vote to reopen any public testimony (6 votes). It is not incumbent on the applicant or the affected neighbors but noted that the applicant's representative was present.

Mr. Haight said he would like to continue to favor Mr. Bishop's motion because he wanted to hear what the additional conditions were that they should discuss and he thought they had an obligation, particularly to the condo owners and the community, to listen to all of the conditions before they finalize their votes again.

Roll Call Vote

Ayes: Miller, Haight, Bishop, Watson, Satre

Nays: Lawfer, Bennett

Motion passes 5:2 for approval of USE2012 0019 (for further discussion on the original motion to approve with staff findings, analysis, and recommendations USE2012 0019 with all 36 conditions.)

Mr. Miller spoke in favor of the motion as currently on the table; however, he would like to hear from the other Commissioners if they thought there a way to make it a better application.

He referred to the issues brought up Mr. Bishop and said he didn't agree with Mr. Bishop that there wasn't a restoration plan. The Wetland Review Board had looked at that very closely and in fact there was preventive maintenance done every year. Regarding the woody debris, the U.S. Fish and Wildlife person ensured them that it stays right in the streambed and not hauled off for any other mitigation purposes. Neil Stichert and the agencies associated felt that the habitat that they are creating for chum salmon is really a better place now and that the applicant was doing a great job with the work that was going on in the stream. As for flooding and if there was an immediate need for flood control, he said he did not know - all he knew was that there was a potential for flood. He referenced an emergency flood situation where they have to send in emergency crew to take in the gravel. As for neighborhood harmony, the zoning was such that industrial was on one side and residential on the other and impact was possible but he thought that they had resolved that with the conditions. As far as actual damage to the buildings, it was addressed with seismic monitoring, so if there was seismic monitoring and it was too much to where it is causing damage, they would get shut it down. He felt they did make peace with the neighbors with the addition of the seismic monitoring activity. He said that the 6-year term might be too long but suggested a year might be better to see if it would work out. The only thing that concerned him was that it was already so late in the year but he thought they ought to give them a chance to do it.

Ms. Lawfer agreed with Commissioner Miller's comments with regards to being in favor of the motion. She thanked the Wetlands Board for all the work that they had done. Her understanding was that the 6-year period was granted so that it would coincide with all the other permits that they have through Fish and Game and the federal organizations.

Mr. Chaney said that it isn't perfect and they could not control the permitting windows of the other agencies, but he didn't think they could achieve perfect synchronicity.

Ms. Lawfer felt that with the 36 conditions in place, there were a number of places where they could pull the plug if it was not working or if the applicant was not working according to the agreement. Ms. Lawfer said she understood the residential and industrial together and cited an example of residents living between Douglas and the cruise ship docks, the ships go every 5-10 minutes starting at 5 in the morning. She felt that this project is slated for a very small time period, no more than 40 days between December 1st and March 15th. She agreed with Commissioner Miller regarding routine maintenance of the stream, so that it wouldn't become a crisis situation as well as the addition of the seismic monitoring. She concluded by saying she was in favor of the motion with the 36 conditions.

Mr. Watson spoke against the motion mentioning that he had been for it at the prior meeting. He cited a concern for the neighbors and questioned the ability of the applicant to mitigate the potential problems. He said that Mr. Bishop had made some excellent points, especially with regard to the neighbors, and even though the creek mining project had been there for quite a while, he questioned why they were continuing to harvest in the same area when there was a

much larger area to be utilized. He believed that the comment was made that there was vegetation on the other sand pits and obviously that raised the cost of the project, but there were other areas that could be utilized.

Ms. Bennett spoke in favor of the motion and agreed with Commissioner Watson's comments about the buffer around the condos. Hopefully, the seismic monitoring around the condos would indicate whether or not there was continuing damage. She mentioned that she was assured by Mr. Short that the company's liability insurance policy would cover the damages that have already been done to the condos.

She mentioned her previous comments regarding balancing the inconvenience and difficulties of the condo owners with the need for gravel for their housing stock. She thought the only sticking point for her right then was the issue of gravel extraction next year within 60 feet of the condominiums. She said that if Commission was going to reconsider this, she would argue in favor of encouraging SECON to vacate the area closest to the condominiums to minimize the amount of damage and to go for the other islands of gravel that were there with a little bit of vegetation, but closer to other shore lines.

Mr. Haight said that he would continue to favor the motion and he thought they had two dilemmas. One was the issue of industrial areas getting closer to the residential area and this was a topic that they would have to continue to weigh and discuss. The other dilemma was the potential damage to the condos. He thought that with their conditions, they were making a solid attempt to mitigate potential damage.

Mr. Bishop followed up on his previous comments and again spoke against the motion. He appreciated Mr. Miller's comments regarding the creek and Neil Stichert's input on the restoration being productive, but to him it went more toward something Commissioner Grewe spoke to last time, "At what point does it just not become a feasible thing to have these two uses adjacent to each other" and felt that they just could not have those two uses coexisting harmoniously. If it was a matter of ameliorating the flood risk and being finished with it, that would be one thing and he would be in favor of it, they were setting up a mining plan that didn't change the flood risk whatsoever, all it did was perpetually take material out of the creek at the expense of the neighbors.

He noted that mining rock in the creek gives a maximum of 40,000 cubic yards a year; 40,000 cubic yards a year was enough for one large house and didn't solve the problem of bringing material to their other development needs. Mr. Bishop asked if it was fair to say that they were going to put this at the expense of the neighbors for an indefinite period and he didn't see it as fair or as a compromise.

Roll Call Vote

Ayes: Lawfer, Haight, Bennett, Miller, Satre

Nays: Bishop, Watson

Motion passes 5:2 for approval of USE2012 0019.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS

VIII. UNFINISHED BUSINESS

IX. REGULAR AGENDA

X. BOARD OF ADJUSTMENT

XI. OTHER BUSINESS

XII. DIRECTOR'S REPORT

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Ms. Lawfer questioned that since they had passed USE2012 0022 and she understood the process and she agreed with the permit however, she noted that they had taken away parking for state employees from the lot where SLAM was going to be and now they were taking away the parking at the Subport by the Coast Guard because that would be used for employee parking. They had the legislature coming into town who would take one floor of the parking garage downtown which would leave a lot of state employees who would not have parking available. It won't be permanent, but it will cause an issue for some people.

Mr. Watson wished everybody a Merry Christmas.

Ms. Lawfer wished everyone a Merry Christmas and a Happy New Year.

Chair Satre thanked everybody both on the Commission and staff for all their efforts throughout the year. He appreciated everybody coming to the table, even when they didn't agree.

XV. ADJOURNMENT

MOTION: *By Mr. Bishop to adjourn the meeting.*

With no objection, the meeting adjourned at 7:59 pm.