

MINUTES

PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU
Michael Satre, Chair

REGULAR MEETING
March 12, 2013

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 7:00 p.m.

Commissioners present: Dan Miller, Benjamin Haight, Michael Satre (Chair), Karen Lawfer, Marsha Bennett, Nicole Grewe, Jerry Medina, Dennis Watson (arrived at 7:10), and Nathan Bishop.

Commissioners absent: None.

A quorum was present.

Staff present: Greg Chaney, Planning Manager; Beth McKibben, Senior Planner; Jonathan Lange, Planner I; Ben Lyman, Senior Planner; Hal Hart, Director.

II. APPROVAL OF MINUTES

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

IV. PLANNING COMMISSION LIAISON REPORT

Mr. Carlton Smith shared that the Committee of the Whole, last evening, heard from the Realtors Panel on housing and they had the following recommendations.

1. To explore changing D3 zone lots to D5.
2. They would like the Assembly to consider special multi-family housing bonds for further larger multi-family projects.
3. They would like to add staff to the CDD Department and the manager's office to create a Citizens' Advocate position or an Ombudsman position to facilitate planning and permitting to speed the process; which was the same recommendation that the lenders came up with recently. Overall, they've called for a relaxation of the requirements of planning and permitting for major subdivisions, in effect a regulatory overhaul in the planning and permitting arena. They commented very candidly that the process in their opinion is currently more confrontational than collaborative and they made this point four times in the presentation and they also made the point that the Assembly had the ability to change this.

Mr. Smith stated that they also heard housing presentations from JEDC and the Commission on Aging, projecting senior needs by 2030. Mr. Smith then stated that the Lands Committee met the day before. He thanked the Commission for their recommendations on the timeline for the Comprehensive Plan to come to the Assembly, which he thought was very helpful. He recommended that the actual presentation to the Assembly include a color-coded listing of those things that have been added and deleted from the 2008 Plan and to provide graphics in the presentation. The Lands Committee also directed that the manager proceed and have the capability to negotiate with the successful recipient of the Tax Credit Grant Program from the Alaska Housing Finance Program relative to the purchase of a 3-acre parcel in the area of Switzer Creek for new housing, that is referred to as Parcel 2A. The Committee also approved further inquiry by the manager to explore improvements necessary to accommodate shore-side recreational fishing in the Borough. The next meeting of the Lands Committee is April 8, 2013. Mr. Smith stated that he would send that report if the Commissioners had not seen it yet.

Ms. Grewe referring to the addition of a position to CDD (citizens' advocate or ombudsman), asked how that would defer from the planning staff that they currently had and also what was seen as a void related to their staff and staff resource. Mr. Smith replied that there was a perception of a lack of current staff capability because things sometimes do not move as fast as anticipated. He stated that they need to strike a balance between advocacy and being an employee of the Community Development Department and working with the manager. The new Lands Director's direction was that the new person would likely be within the manager's department rather than a separate division, as it has been in the past.

Mr. Haight noted that the report had discussed the direction for subdivision development. He said that the Planning Commission had spent quite a bit of time over the past year working on the subdivision portion of the Code and asked if that was considered in their report.

Mr. Smith responded that the comments were abbreviated. Comments were made that the subdivision ordinance had too many things connected with it, requiring the developers to come up with the ultimate Christmas package at high cost, though it may not be realistic to take some of those things off.

Ms. Lawfer asked if the next meeting would have the developers. Mr. Smith replied it would be the landowners. Ms. Lawfer queried when that was scheduled for. Mr. Smith answered that that meeting had not been scheduled as yet because they did not have a draft report yet. He asked for suggestions as to how they could pull the panel recommendations together because the Assembly was open to the Commissioners' thoughts on that. The Assembly did not want this to be just another exercise. There was a need for 700 units. Mr. Smith personally believed that the momentum was there and departments were already seeing it come through, but the Assembly wanted to be able to have an action plan that made sense and could be at least done quarterly.

Mr. Chaney commented on the question regarding work that the Subdivision Review Committee had done on the subdivision ordinance, stating that it had not been adopted yet and was still in the legal realm and the comments provided did not reflect any of that work.

Chair Satre stated that the Code had been reorganized and slimmed down. It may not be to the extent that people were requesting, but hopefully reorganizing that Code would get them to the

point where they can identify where those changes can happen and keep moving through the process. He appreciated Mr. Smith for presenting his report and stated that they would make sure to get the action plan report through staff to the Planning Commission and looked forward to further reports on Mr. Carlton's work.

V. RECONSIDERATION OF THE FOLLOWING ITEMS

VI. CONSENT AGENDA

Chair Satre stated that before moving to the Consent agenda, there was a request from the applicant's representative to move USE2013 0002, the Conditional Use Permit for Alaska Glacier Seafoods for medium manufacturing (seafood packaging), from the Regular Agenda to the Consent Agenda. He asked if there was any objection. There was none.

USE2013 0004: Conditional Use Permit to construct an accessory apartment to tie into an updated on-site septic system

Applicant: David Spargo

Location: 15305 Glacier Highway

Staff Recommendation:

Staff recommends that Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a 599 square foot detached accessory apartment on a lot that is not served by public sewer, with the following condition:

1. Prior to issuance of a Certificate of Occupancy for the accessory apartment, the applicant must provide documentation from the Alaska Department of Environmental Conservation stating that an on-site wastewater disposal system, with the appropriate rated capacity, has been installed.

VAR2013 0002: Variance request to reduce front setback from 10 feet to 3.5 feet for reconstruction and expansion of an existing arctic entry and construction of a covered deck.

Applicant: Joseph Jacobson

Location: 1408 2nd Street

Staff Recommendation:

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2013 0002. The Variance permit would allow for a reduction in the determined existing substandard setback of 10 feet to 3.5 feet for the proposed reconstruction of the arctic entry and construction of a covered deck, with the following conditions:

1. Foundation setback verification approved by a licensed surveyor shall be required.
2. An As-Built Survey shall be required prior to issuance of a Certificate of Occupancy.

USE2013 0002: Conditional Use Permit for Alaska Glacier Seafoods for medium manufacturing (seafood packaging)
Applicant: Alaska Glacier Seafoods Inc.
Location: 8895 Mallard Street

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 medium manufacturing facility to be used for seafood packaging. The approval is subject to the following conditions.

1. In addition to the vegetated areas discussed in the application submitted with the project application, additional vegetative cover totaling 4,110 square feet shall be provided, and shown on a site plan reviewed and approved by CDD staff prior to issuance of a building permit for the manufacturing use.
2. Prior to issuance of a building permit for the manufacturing use, the applicant must submit a revised site plan showing 11 parking spaces, 1 accessible vehicle space, and 1 loading zone, and circulation aisles that comply with the requirements of CBJ §49.40.
3. Dust or vapor shall not be exhausted directly into the atmosphere.
4. The emission of obnoxious odors, toxic or corrosive fumes, or gases shall not be perceivable to adjacent businesses.

MOTION: *by Mr. Watson to approve USE2013 0004, VAR2013 0002, and USE2013 0002, and accept staff findings and recommendations and ask for unanimous consent.*

With no objection, **USE2013 0004, VAR2013 0002, and USE2013 0002 were approved.**

Mr. Watson stated that at the last Planning Commission meeting, there was an applicant with a rezone request which was on the Revised Agenda, AME 2012 0010, but since that meeting had run late, it was requested to be placed on the agenda as the first item. He requested if that could be moved up to Unfinished Business before AME2012 0006.

Chair Satre asked if there was any objection to moving up Unfinished Business on the rezone request prior to Consideration of Ordinances and Resolution. There being no objection AME2012 0010 was taken up.

VII. UNFINISHED BUSINESS

AME2012 0010 Rezone request from D5 to D18
Applicant: Grant Rentals LLC
Location: 3451 Douglas Hwy

Chair Satre apologized that he was gone at the last meeting and asked ~~Beth McKibben~~Beth McKibben to provide a summary of where they were at in the conversation. Ms. McKibben said that they had closed public hearing and asked staff to reach out to the adjacent property owners.

Mr. Bishop queried if Ms. McKibben had any new information.

Ms. McKibben recapped that this was a rezone application by Grant Rentals for four lots just about the roundabout in Douglas. Staff has proposed to extend the rezone to include three more properties, i.e. three parcel ID numbers owned by three individuals; otherwise, the rezone would extend only to the lots that have access to the Frontage Road. Planning Commission held the public hearing and closed it and asked staff to reach out to those property owners because they did not feel that the outreach was sufficient or received. In the packet, was an e-mail from Pam Varney who was an adjacent property owner. Greg Chaney had talked to Delores Holloway. Staff was not able to reach Tiffany Wilson, who was in California, and unfortunately the letter was mailed to the wrong address and staff did not have a telephone number for her. Mr. Chaney did speak to Ms. Wilson's tenant, but has not received any comment back from her. Pam Varney was not opposed to the rezone; she was more concerned about parking, if the Grant property was redeveloped. Ms. Holloway did not seem to have a very strong opinion in either direction.

Ms. McKibben noted another e-mail from the Assessor which was in the packet. There were some questions asked to staff about changing the zoning and how it affects property values. The gist of the email said that it does change the value of the property in regards to the highest and best use and subsequent sales value. She explained, "In this case, let's say we have a duplex on a lot that is zoned D5 and the lot is zoned D18, but it remains a duplex for the next 10 years, the D18 zoning isn't going to affect the assessed value of that property." She concluded by saying that that was where they left off.

Chair Satre asked if that answered the Commissioners' request for information from the last meeting.

Ms. Lawfer thanked staff for taking those steps with regards to the property owners.

Mr. Chaney stated he had spoken to the tenants on Tiffany Wilson's residence earlier today and they said they would try to contact her and give the notice about the meeting.

Chair Satre asked about the will of the commission.

MOTION: by Mr. Bishop to move AME2012 0010 to the Assembly with the Planning Commission's recommendation for approval.

With no objection, **AME2012 0010 was approved.**

VIII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS

AME2012 0006: A Text Amendment of Title 49 of the Comprehensive Plan for the 2013 update.
Applicant: City and Borough of Juneau
Location: Boroughwide

Before they went forward, Chair Satre stated that there was a letter from himself to the Planning Commissioners with some suggestions on how to proceed. He noted that this item was of concern considering the volume of public testimony they had received from the community, both

verbal and written comments, over the last few meetings. He stated that they have been working on this for just slightly over a year now and they have some things to close in this loop in terms of the current efforts to update the plan. They still have significant work in front of them, but he thought it would be helpful to lay out the possibilities moving forward and getting this up to the Assembly. He felt that they should spend some time talking about it during this meeting but that they also had the opportunity for Committee of the Whole meetings and other regular Planning Commission meetings moving forward. He stated that Mr. Lyman may have some comments as to how he has organized the public comments to date. He also announced that they will have verbal public testimony during this meeting because it was an advertised agenda item.

Mr. Lyman explained that there were 41 pages of additional comments (blue folder) with some responses by staff, some which were appropriate and some flagged and forwarded to the Commission for consideration. He noted that they were organized by theme and by chapter and had included everything that they had received up until 10:30 that morning. He stated that Max Mertz, at the last public testimony, had asked about the introductory paragraph to Chapter 5 not being shown as newly changed text. Mr. Lyman said that he went through the whole text and compared it line by line and made sure that there were no omissions and nothing that they hadn't talked about was changed. He assured the Commissioners that the next draft recommendation to the Assembly will have all of the changes discussed thus far. He said for this evening's meeting, they would be working off of the February 20th staff report with the new packet and the same Draft Comprehensive Plan.

Mr. Watson asked about the new changes that were put in as of 10:30 this morning.

Mr. Lyman replied that there were some substantial changes:

- Chapter 1 was rewritten almost entirely (new changes begin on Page 10 – 13).
- Staff response on a comment on community forum (Page 14-15).
- Comments from Douglas Indian Association (Page 6).
- Chapter 8 (Page 28 – 29) - two boxes with DOT staff updates.
- Chapter 18 (one comments at the end on Page 41).

Mr. Medina suggested having the new comments highlighted in the future for ease of review and appreciated Mr. Lyman for his work.

Ms. Bennett stated that she appreciated Mr. Lyman's work as well. She noticed as she was going through the other comments that sometimes he had answered them directly and at other times said these suggestions will be forwarded to the Planning Commission for consideration; Ms. Bennett stated that she was not sure what that meant. Mr. Lyman explained that they could certainly take some time and go through those one by one as suggested by the Commission, e.g. Page 8, beginning of Chapter 1, where it talks about community history, Alaska natives etc., he stated that he was not a scholar of native culture or the appropriate terms to use and would like the Commission to take a look at it. He noted that there were some comments on Page 6 from the Douglas Indian Association. He gave another example on Page 14, Chapter 2, 2.1 IA13, '...do not specifically reference LEED. LEED may not be the best measure of sustainability in our climate and location.' Comment was forwarded to the Planning Commission for consideration. It should be noted, however, that 2.2 IA5 refers to the existing standards adopted, which in turn specifies LEED certification of construction and reconstruction of city-owned buildings. He explained that since there was a direct response that he could point to, he felt

comfortable with the terminology unless the Commission wanted to change it. He went on to say that he had offered professional recommendations to the greatest extent that he thought practical. There were a lot of comments about wireless communication facilities and some policy decisions that were beyond staff which he commented should be forwarded to the Planning Commission and then to the Assembly.

Chair Satre appreciated Mr. Lyman for putting it in the correct format which made it simple to go through and stated that their workload would consist mainly of going through the public comments and deciding on how to incorporate it into the plan or to save it for a future re-write.

Public testimony was opened.

Public Testimony:

Duff Mitchell, West Juneau, Executive Director of Alaska Independent Power Producers Association and member of the Juneau Commission of Sustainability; stated that he wanted to speak on behalf of Juneau Hydropower Incorporated of which he was the Business Manager and Vice President of. He explained that Juneau Hydropower Incorporated was the developer of a 20 megawatt hydropower facility south of Juneau. They were almost close to the end of the permitting process, have filed a draft license and have had the draft environmental assessment. They have had many public scoping's, a lot of study plans, and have invested over 2 million dollars in Juneau investor's money to provide energy security for Juneau. He stated that when their project is done, it will increase the energy capacity of Juneau by one-fifth, about 111 gigawatt hours - a good size facility.

He said that the Comprehensive Plan from his point of view was very meticulously looked at by certain regulatory agencies at the federal and state levels, they look at the environmental assessment and how it relates to the local comprehensive plans; it's a requirement that they have.

He appreciated the Commissioners in deciding to make the Comprehensive Plan more inclusive than exclusive. Some of the general comments were that when one company specifically gets listed, that all get listed and/or be inclusive. There was a comment brought up earlier of the Douglas Indian Association, he stated that there are two federally recognized tribes in Juneau, the Central Council of the Tlingit and Haida Indians and the Douglas Indian Association; both of which deserve mentioning. When a utility is mentioned, all energy providers must be mentioned. He said that he had put specifics into the document that he had handed out.

He noted that there were several resolutions already on record that have been passed through the Assembly over the years and thought it prudent that those resolutions be reflected in the Comprehensive Plan. He said that those resolutions could be changed to reflect the desires or wishes of where the Commissioners want the chapter to go.

Specifically related to energy, he mentioned Resolution 1882, supporting the Southeast Intertie. It is unequivocal. Juneau is not the only community that is represented. The Southeast Intertie is controversial in that some people like it and some don't, but the fact is there is a City and Borough resolution stating the support for it.

Resolution 2528 - The Climate Action Plan. He stated that the Climate Action Plan is mentioned in Chapter 6, but in the Climate Action Plan there are specific strategies and goals related to energy and wondered if the Commissioners maybe wanted to incorporate or enlarge the energy plan to encapsulate or to acknowledge the Juneau Commission of Sustainability areas.

As a point of reference, he mentioned the development of an energy plan saying that the Juneau Commission of Sustainability had been tasked with that. It is an open process but the Juneau Commission of Sustainability has made that one of their objectives for 2013.

Resolution 2632 that was just passed in December was a resolution expressing Assembly support for the extension of electric power along the Veterans Memorial Highway and felt that they should update that in Chapter 6.

He stated that there were more changes on the document that he had submitted.

Resolution 2528 - The Climate Action Plan. He stated that the Climate Action Plan is mentioned in Chapter 6, but in the Climate Action Plan there are specific strategies and goals related to energy and wondered if the Commissioners maybe wanted to incorporate or enlarge the energy plan to encapsulate or to acknowledge the Juneau Commission of Sustainability areas.

As a point of reference, he mentioned the development of an energy plan saying that the Juneau Commission of Sustainability had been tasked with that. It is an open process but the Juneau Commission of Sustainability has made that one of their objectives for 2013.

Resolution 2632 that was just passed in December was a resolution expressing Assembly support for the extension of electric power along the Veterans Memorial Highway and felt that they should update that in Chapter 6.

He stated that there were more changes on the document that he had submitted.

Chair Satre appreciated Mr. Mitchell's efforts in providing his comments in writing, which would help the Commission immensely over the next few weeks as they do the edits. Chair Satre asked Mr. Lyman if there was anything from Mr. Mitchell's comments that he wanted to bring to their attention. Mr. Lyman mentioned talking to Mr. Mitchell on several occasions and stated that the energy chapter now included the Southeast Hydropower and the Sweetheart Creek project because Mr. Mitchell had brought it to his attention. Mr. Lyman said that he hadn't had a chance to read through all the comments yet, but would be able to talk about it next week.

Ms. Lawfer queried about the status of the energy plan by the Commission on Sustainability. Mr. Mitchell replied that they were very much at the beginning, currently at an outline stage right now and have been having work sessions every month on a Wednesday. These [worksessionswork sessions](#) are open to the public. He said that they didn't have the money to hire a contractor, so it's mainly volunteer effort. He noted that it was more information gathering, looking for options and potentials and getting some good people that can bring out detailed information on certain technologies.

Mr. Watson was curious where Mr. Mitchell was timeline-wise between the beginning and the end of the FERC process. Mr. Mitchell stated that the FERC gives three years to file a permit to a license. They filed for a second successive permit, but were ready to file for a license soon. He explained that once a license is filed, FERC has three months to a year to adjudicate it and go to construction based on the licensing condition that they give. FERC (Federal Energy Regulatory Commission) is the agency that's in charge of hydropower licensing for the United States.

Mr. Medina queried if there was a power sales agreement with a customer to purchase power.

Mr. Mitchell replied that that they do not have a signed power sale agreement at this time. He noted that Juneau's power has been increasing and customers on diesel would like electricity. He explained how the Kensington Mine burns more diesel and produces more electricity than Haines and Skagway combined. He stated that the market exists from cruise ships to homes and that the people understand how less expensive of a fuel source this option would be. He also pointed out that oil in the last three years in Juneau has gone up 36%. He concluded by saying that "You build it, it is going to come."

Since there were no further questions, Chair Satre thanked Mr. Mitchell for joining them as well for the written comments.

Bill Leighty, 227 Gastineau, stated that he has not read the new Comprehensive Plan but commended his detailed explanation and agreed with Mr. Mitchell's comments in general. He brought to the Commissioners' attention to the possibility that for technological as well as economic reasons, that they might want to consider District Heating Systems for circulating hot water, with a heating source being biomass. This is actively being considered, thanks to Bob Deering's presence on the renewable energy cluster working group as Co-Chair. He also noted that in attending a conference in China last year, he learned that the Norwegians were working on a new boring technique, which may allow people anywhere on earth to access geothermal heat, what's called hot dry rock or engineered geothermal systems by affordably drilling a hole probably about 20 inches in diameter, 6 km deep and the geothermal gradient anywhere on earth is 30 degrees °C per km; 6 km down, the temperature of the rock is 180 degrees °C, which is well above boiling. They could theoretically pump water down this hole and the hole would cost about a million dollars but would produce about 250,000 MWH of thermal energy as hot water coming out of the well per year. Economics-wise for a year, it would cost twice as much to do anything in Alaska as it does elsewhere in the world and adding the cost of piping to move this hot water around so that people can access it, it would be a several million-dollar system, but still the cost of kilowatt-hour of that thermal energy (hot water, not electricity) would probably be in the 2-3 cents range, which is much more competitive than any other heating source. So in the Comprehensive Plan, he cautioned that they not restrict the possibility for plumbing of that nature in the City; piping both back and forth would be a closed system and opined that the pipes should be done underground rather than on the surface - which would be an impediment. He reiterated saying, "So, let's be sure that the Comprehensive Plan doesn't make that difficult for us, should we suddenly find ourselves with a technology available to us that's affordable and economically attractive and perhaps higher energy prices, whether it's oil or electricity especially for space heating, which is about half of our total energy supply here in town." He mentioned the possibility that that hot water coming out of the hole at about 90 degrees °C, is hot enough to

run an organic Rankine Cycle Turbo Generator. Chena Hot Springs has two of them at 200 KW each running at 74 degrees °C, source water 165 F coming out of the ground, where it's an entirely different geothermal phenomenon – they have hot water fairly close to the surface where it's easy to pump it up and run it through their generators. He went to say that the holes that they could drill here might first run an ORC electric generating plant and then have enough heat content to circulate around a District Heating System. Using the numbers available from Norway, in a preliminary way, they might need about 16-20 Geothermal District Heating Systems to completely heat this community with the number of dwelling and commercial units they currently have. He hoped that they could add this to the Comprehensive Plan in some way and concluded by saying that he was available anytime if they had any questions.

Mr. Watson stated that Alaska is very strict on drilling, but not as strict as other parts of the country, but now that everybody is reaching in for ground source heat, thermal heat with fracking and such, he asked Mr. Leighty when he thought the State might get involved in drilling 6 kilometers down and extracting a taxable product [thermal energy]. Mr. Leighty answered that the Lieutenant Governor was aware of this and had just met with the primary proponent of this new boring technique in Norway. The next step was to involve the folks from ACEP, Gwen Holdmann et al. to talk about this, which they haven't done just yet.

Public testimony was closed.

IX. BOARD OF ADJUSTMENT

TMI2013 0001 Interpretation of Title 49 CBJ Land Use Code, as it pertains to whether an accessory apartment can be permitted on lots less than the minimum lot size in RR, D-1 and D-3 zones with two stand-alone single-family residences with the appropriate Title 49 references attached, CBJ 49.25.510(d)(2)(g)(i).

Applicant: City and Borough of Juneau

Location: North Douglas Highway

Staff Recommendation:

The Director of Community Development is requesting that the Board of Adjustment interpret analysis above and determine if:

1. A Conditional Use Permit, as requested per CBJ §49.25.510(d)(2) to allow an accessory apartment, and the Table of Permissible Uses CBJ §49.25.300 section 1.135, would allow for a substandard lot with two single-family homes to apply for a Conditional Use Permit for an accessory apartment one, or both, single-family residences.

Or;

2. Substandard lots with two single-family homes do not meet CBJ §49.25.510(e), which requires 100 percent of the applicable required square footage. Accessory apartments may not be permitted on lots below the minimum lot size if two legally

nonconforming single-family residences are present. If this is determined to be the case, then Conditional Use Permit APP2013 0004 will be withdrawn.

Staff Report

Jonathan Lange, Planner, explained that staff is requesting a text interpretation of the Title 49 Land Use Code of, 'Can an accessory apartment be permitted on a lot less than minimum lot size for lots with two stand-alone single-family residences'. The text in the Land Use Code that pertains to this is in Chapter 25 and says, 'They could be reviewed through the Conditional Use Permit process if the lot on which the accessory apartment is on is smaller than the minimal lot size for permissible uses listed in the Table of Dimensional Standards'. Also, citation from the Land Use Code about detached single-family dwellings says, 'If there are two detached single-family dwellings located on a single lot within the rural reserve, the D1 or the D3 zoning districts, they shall meet 100 percent of the applicable square footage requirement'. He stated that these were the two citations that staff would like interpreted by the Planning Commission.

He gave a brief background to this text interpretation in the Conditional Use Permit that was applied for at 5167 North Douglas Highway, which was in a D1 transition to D3 zone. It currently has two single-family dwelling units and one with a proposed accessory apartment. In the D1 zone, the minimum lot size is 36,000 square feet for one single-family dwelling and if there are two, it would need to have 72,000 square feet; which was why the Conditional Use Permit was applied for.

In staff's analysis of this Conditional Use Permit, first they looked at the citation in Chapter 25 about accessory apartments and found that they can apply for a Conditional Use Permit if they are on a lot smaller than the lot size for permissible uses. Also, a section in the Table of Permissible Uses states that two single-family detached with one or two accessory apartments in the D1 zone requires a Conditional Use Permit that the Planning Commission has to approve. He then showed a picture of the lot and homes. Staff also, in their analysis, brought up the citation that says, 'Two detached single-family dwelling units located on a single lot must meet 100 percent of the applicable square footage requirement'. Also citation in Chapter 30 Section 400 A, 'Non-conforming situations may not be aggravated as used herein, aggravate includes further violation of density requirements'.

He stated that interpretation of the Land Use Code in TMI2013 0001 would be applied by staff to all similar situations boroughwide in the future and asked the Planning Commission to interpret the analysis - Option one, would be that a Conditional Use Permit would be allowed for the accessory apartment to be on the lot that is substandard and does not meet the requirement of the minimum lot size for the permissible use; or Option two, that because of the substandard lot, the application would not be allowed and they would need to meet the 100 percent applicable size square footage of the lot in the D1 zone.

Mr. Miller asked if a question of interpretation would go to public testimony. Chair Satre asked staff if this would this follow the normal public hearing process. Mr. Chaney answered that it would be up to the Commissioners' discretion because it was not clearly stated in the code.

Mr. Miller sought clarification from a slide on PowerPoint regarding the broad categorization. Mr. Chaney replied that it could be interpreted as being a precedent for lots that are zoned D1

transition D3 or as a precedent for all lots that are zoned D1 whatever their transition zoning might be. He recalled the Hughes Way controversy that was a lot at the end of a right-of-way where there were two single-family dwellings and two accessory apartments, and how the neighborhood reacted to what they considered a four-plex in their D1 neighborhood. He stated that North Douglas was not an exception but that staff had been seeing more of these scenarios and needed some clear guidance on how to move forward, but that it was the Commission's prerogative to keep it to just this particular case.

Chair Satre asked why a variance to the Conditional Use Permit could not be done, so that they could keep it specific to that one piece of property as opposed to its application boroughwide. Mr. Chaney responded that in the Table of Permissible Uses, for a substandard lot, a Conditional Use Permit was required to approve it, not a Variance. He stated that staff wanted to make sure there was some sort of guideline to follow for the future, if they do approve it.

Ms. Lawfer was confused regarding the language interpretation by the Planning Commission and the application itself because in the application it talks about adding a mother-in-law apartment in a duplex; she asked if it were two single-family homes on substandard lots. Mr. Lange replied that was correct. In looking at the definitions in the Land Use Code of what a duplex is, it states that it must have walls that have a single wall that adjoins the two or a roof and floor that adjoins the two dwelling units; but this particular lot has the two homes and has a wall underneath the porch, which does not quite meet the duplex definition. Mr. Chaney followed up saying that common usage of terms in the public are often a little looser than code definitions and also that usually a duplex requires a minimum of 15 feet of common wall whether it's roof to ceiling or side to side.

In thinking about it, Ms. Bennett stated that she understands why people wouldn't want to have two units and then an accessory apartment in a totally D1 situation, but in this case, it's right next to a D3. Depending upon the way the two neighborhoods got configured, it might not be a stretch at all to have a little bit higher density. In a strictly D1 situation that isn't transitional, it would be more upsetting. She opined that in this case, as long as they were talking about a neighborhood that's adjacent to a D3 or a higher density neighborhood, from a harmony standpoint, it wouldn't affect public attitude.

Mr. Chaney pointed out that this property was unique in that it's in a D1 zone, but it has water and sewer, which is really unusual. He also noted that the property is on their list for rezones in the future indicating the transitional nature of the property.

Chair Satre said that if they were to decide on having accessory apartments on substandard lots - two single-family homes, it would not take away the requirement to come back for a Conditional Use Permit. So, regardless there will still be a chance for public hearing and concerns of the neighborhood to be heard.

Mr. Miller also alluded to the fact that once it became D3, then they wouldn't be substandard lots anymore.

Mr. Bishop referred to an earlier question regarding whether a Variance could be requested for this issue. Chair Satre stated the answer was no as he understood it. Mr. Chaney rephrased his

answer and said if it's determined that a Conditional Use Permit would be appropriate, then a Variance is not needed. The code is set up to have a Conditional Use process for these sorts of things. If on the other hand it is determined that it's not appropriate for density, then a Variance to density could be applied for. Since there was a split there, staff wanted the Planning Commission to really think this through and provide some guidance.

Chair Satre sought the will of the Commission to either open public testimony or to discuss it amongst themselves.

Mr. Bishop preferred to keep it as an in-house review.

Mr. Miller wanted to discuss it further before making a motion. He thought that the Conditional Use Process was a good process to take care of these types of questions. He did not think that the decision on this one piece of property should set the precedent for all others to follow because certain situations on individual applications might need to be looked at differently.

Chair Satre did not think that this one decision would set a precedent in anyway because staff is going to first look at the applications and determine if it is out the normal box for this area and if it needs to go through the Conditional Use permit process. It's just saying that the door is open to further permit applications as opposed to the door is open to you getting a stamp and ready to go build something.

Mr. Watson agreed with Chair Satre's comments and stated this offers opportunities to improve housing in areas, but would still allow the Commissioners the opportunity to say no if needed.

Mr. Bishop respectfully disagreed with fellow Commissioners saying that if they were to decide that you can have two houses on a lot that is not meeting requirements for square area and they can have accessory apartments through the Conditional Use Permit process, the Commission is essentially saying it to everybody, which in turn is setting precedent. He disagreed that these interpretations made today or tomorrow would go down in a book in CDD and come out as interpretations that staff uses to make decisions. He continued on to say that his interpretation was that that you can have accessory apartments in this particular instance because the code is very specific in that it says, 'The accessory apartment shall be reviewed through the Conditional Use Permit process if the lot on which the accessory apartment proposed is smaller than the minimum lot size of permissible uses' and it is clearly listed that you have to have 72,000 square feet in the Table of Permissible Uses. He stated that he would go with the straightforward section of the code that would address this particular issue.

Mr. Medina agreed in general with Mr. Bishop's comments but pointed to 49.25.510, which states that two detached single-family dwellings located on a single lot with the rural reserve, D1 and D3 zoning district, shall each meet a 100 percent of the applicable square footage requirement. He concurred with staff findings and was in favor of the Recommendation 2.

Ms. Grewe asked Commissioner Bishop what the citation was as she hadn't brought her folder. Mr. Bishop stated that he was following staff citation, 510 D2.

Mr. Miller asked for clarification as to what Mr. Bishop's recommendation was. He stated that he didn't necessarily agree with staff's recommendation 1 or 2 because he didn't think an interpretation was necessary. He suggested Recommendation 3 to just use the section of codes they currently have for the application.

Mr. Bishop said that he would follow recommendation 1 but explained that there was a discrepancy in language because the Table of Permissible Uses says ...shall meet a 100 percent of the applicable square footage requirement and the other section says specifically that they can allow smaller lots than listed in the Table of Permissible Uses. One says you have to get a variance if you do not meet the permissible uses and the other says you have to go through the Conditional Use Permit process if you don't meet the Table of Permissible Uses' square footage requirement. One is saying you have to meet Table of Permissible Use requirements and the other one is saying under certain circumstances, accessory apartments don't have to meet Table of Permissible Uses' size requirement if you go through the conditional use process.

Chair Satre asked if it would be fair to say that the application coming up on the agenda was appropriate according to Mr. Bishop's interpretation of Title 49. Mr. Bishop replied that that is how he would interpret it.

Chair Satre thought that they had an appropriate application to move forward on without coming down to a strict interpretation of the section of code.

Mr. Bishop mentioned that he did not see the reason why they shouldn't make an interpretation if they felt it was the exact interpretation and provide that for the public to use in the future.

MOTION: *by Mr. Bishop to adopt Recommendation 1 on TMI2013 0001 of staff's recommendation and find that to be the appropriate interpretation for this specific instance.*

Mr. Miller spoke in favor of the motion.

Roll Call Vote

Ayes: Lawfer, Bishop, Bennett, Grewe, Miller, Watson, Satre.

Nays: Medina, Haight.

Motion passes 7-2.

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

AAP2013 0004: A Conditional Use Permit to allow an accessory apartment (This case may be withdrawn depending on outcome of TMI2013 0001).

Applicant: Gerald Butler

Location: 5167 North Douglas Highway

Staff Recommendation:

As mentioned in the above project description, the outcome of this project is dependent on the Board of Adjustments decision related to Text/Map Interpretation Case TMI2013 0001.

It is recommended that the Planning Commission adopt the Director's analysis and grant the requested Accessory Apartment and associated Conditional Use Permit. The permit would allow an existing accessory apartment on a substandard sized lot with two single-family dwellings.

Staff Report

Jonathan Lange, Planner, briefly stated that the site and the specific parcel had adequate parking for the accessory apartment and the two single-family homes, and that staff recommends approval of their request.

Chair Satre opened public testimony.

Public Testimony:

Pamela Butler, 5167 North Douglas Highway, stated there was nothing specific she had to address before the Commission.

Ms. Lawfer questioned if the residences had separate addresses since they were considered as two separate residences. Ms. Butler replied, no. Ms. Lawfer then asked if it had the same parcel number as well. Ms. Butler said yes.

Ms. Lawfer asked if in granting this Conditional Use Permit, they were talking about one apartment in one of the homes. Ms. Butler answered that was correct. She explained that when they had purchased the house, they were told the mother-in-law apartment was grandfathered in. Her mother and brother had stayed there, but now they would like to convert that into an apartment.

Ms. Lawfer queried staff if it was permissible to have two single homes in the same address, flat number, etc. Mr. Chaney said there should be three addresses for the two single family homes and the apartment, but as far as it being on the same lot, that was okay and as far as it being the same parcel number for taxing purposes, that was fine too.

Mr. Chaney mentioned assigning addresses separately for emergency response purposes.

Public testimony was closed.

Mr. Medina mentioned that Comprehensive Plan Policy 4.1 states, "It's the policy of the CBJ to facilitate provision and maintenance of safe sanitary and affordable housing", and asked staff if affordable housing was defined anywhere and what was the standard used - HUD or Housing Commission. Mr. Chaney stated that in the policy, it's more of a general statement; they do have the 30 percent of income goal [another way to look at it], but they don't regulate rental rates for these things.

Mr. Bishop looking at Attachment C stated that he could see only four vehicles parked and queried where a fifth one would be parked and if the parking had been verified.

Mr. Lange responded that the parking had been verified. Pointing to a picture, he explained where the parking spaces were and how it was laid out more like a horseshoe with shared access.

MOTION: by Mr. Watson to accept AAP2013 0004 with staff's findings and recommendations and asked for unanimous consent.

Chair Satre asked if there was any objection to or discussion on the motion.

Mr. Medina clarified that he was voting against the project just to be consistent with his vote on the text amendment.

Roll Call Vote

Ayes: Lawfer, Bishop, Haight, Bennett, Grewe, Miller, Watson, Satre

Nays: Medina.

AAP2013 0004 was approved 8-1.

BREAK 20:35 – 20:40

STV2013 0001: Vacate approximately 346.6 square feet of Gastineau Avenue

Applicant: Owen Clark

Location: 331 Gastineau Avenue

Staff Recommendation:

We recommend that the Planning Commission adopt the Director's analysis and findings and deny the requested Street Vacation permit.

If the Planning Commission elects to amend the findings and approve the requested vacation, the following conditions are recommended:

1. The owner is required to construct a retention structure to protect the building from debris falling from the roadway.
2. A plat will need to be recorded for the vacation to be completed.
3. The recorded plat will show the AELP utility easement.

Staff Report

Beth McKibben, Planner, presented an aerial photo of the location and explained the area where the applicant was requesting to vacate. This area is 49.51 x 7 feet for a total of 346.6 square feet. There is a foundation and an existing retaining wall in this area. According to all the records, this building was built in the 1960s. It was used as an eight-plex. The applicant did some major work, rebuilt the foundation in 2000 and then again in 2007. The building burned and was severely damaged. It's located in the mixed use zoning district. The lot is 5000 square feet and meets the minimum lot size and depth but does not meet the minimum lot width. If the vacation is approved, it will comply with the setback requirements because there are no setback requirements in the mixed use zoning district. If the vacation is approved, then a minor plat will have to be required to finalize the action.

She then stated that they received a lot of agency comments and summarized saying AEL&P noted that there are overhead utility lines and they don't have any record of easements, so they would need to be noted on the plat or by document. The Fire Department has stated that if it

doesn't narrow the roadway, that they don't have concern. CBJ Engineering has commented that it would be best if the building was reconstructed on private property and encroachments in the right-of-way were removed. They also noted that if the vacation is approved, the owner should be required to construct a retention structure to protect the building from debris falling from the roadway and by granting the right-of-way vacation without requiring debris catchment and proper lateral support to the roadway is unacceptable. CBJ Streets Department commented that the retaining wall needs to be rebuilt in the encroachment limits for reconstruction. The encroachment impedes snow removal and they have safety concerns with debris and snow falling as they plough the streets.

Ms McKibben then mentioned public comments [blue folder] with concerns about safety access and fire response and drainage.

The findings are that the application is complete and complies with public notice requirements, but the findings also note that the street vacation materially endangers the public health and safety in that Streets has noted that the retaining wall needs to be reconstructed and the location of the building inhibits that reconstruction.

The staff report notes that the proposed vacation does not appear to have decreased the value or be out of harmony with the neighboring area, but it is not in general conformity with the Land Use Plan. Staff is recommending that the Planning Commission adopt the Director's analysis and findings and deny the request of vacation. If the Planning Commission chooses to approve the vacation, staff is recommending the following conditions:

- 1) The owner be required to construct a retention structure to protect the building from debris and falling on the roadway.
- 2) She noted that the second condition was not in the staff report and in re-reading through Engineering's comments; she realized that granting the right-of-way without proper lateral support to the roadway was unacceptable [lateral support being the retention law]. She suggested that the second condition be included for now and that she would verify with Engineering the next day if that was their intent and if it was, it would be left in and if it was not, then they could take it out.
- 3) The plat will be recorded for the vacation to be completed and the recorded plat will show AEL&P utility easement.

Chair Satre asked why the public comment section [blue folder] did not have the names of those who commented. Ms. McKibben stated she did not know about a policy requiring signatures.

Mr. Miller asked why the structure was not legally non-conforming. Ms. McKibben stated the reason as being that the building crosses the property line and it is never legal to build in the right-of-way.

Mr. Miller spoke of a year 2000 building permit which was issued for foundation repair and asked why there was a building permit issued then and CBJ cannot issue one today to do some rebuilding. Ms. McKibben replied that it was her understanding that the maintenance required for the foundation in 2000 was approved because the building was existing. There was very interesting history for this property and the discussion on the encroachment. She talks about a memorandum from 1978 where the assistant attorney at that time had noted that they wouldn't

grant an encroachment permit, but when fire damaged the building, a decision was made to remove the encroachment and built on its own lot.

Mr. Watson commented that they cannot accept unsigned documents, though it was well written, and mentioned reading somewhere in the City guidelines that they do not accept unsigned documents. Chair Satre stated that perhaps when they get to the final decision on this, a comment could be made on whether or not certain things are part of that record.

Mr. Haight asked what the responsibilities were for building retaining walls and barriers to contain snowfall debris etc., if this building was reconstructed such that it met the setback requirements. Ms. McKibben answered that it was outside her area of expertise but that over the course of the years, there has been correspondence between various property owners, not the current property owner, but prior property owners in the City as to who was responsible for maintaining that retention wall, though she assumed they would have to go through the appropriate permitting process.

Mr. Chaney commented that right now, it is in the right-of-way, which meant that the responsibility was on the property owner to protect themselves from flying snow and debris. If they are on their own property, the situation changes quite a bit, and they would just be like any other project and would not have the special requirements to protect themselves from debris.

Ms. Lawfer asked what exactly they meant by the retaining wall and the lateral support, if they were to approve this.

Ms. McKibben presented a photograph and explained where the retaining wall would be and that the lateral support refers to the retaining wall, but stated she would want to verify that before leaving it in the condition.

Mr. Watson referred to a particular section in Title 49, regarding if a house is burned down/destroyed, but the foundation is still there, how that differs from other applications. He discusses an incident last fall regarding someone approving one and then shortly thereafter it burned down and this person was allowed to rebuild. Ms. McKibben states that a legally non-conforming building can be rebuilt if the extensive damage, excluding the foundation, is seventy-five percent. This building is not legally conforming because it crosses the property line and it is built in the right-of-way.

Mr. Medina asked Ms. McKibben to elaborate a little bit on the memorandum from Ron King, specifically where he talks about the Comprehensive Plan and the future extension and widening of Gastineau Avenue. Mr. Medina believed that Mr. King stated it was not in conformance with the Comprehensive Plan.

Ms. McKibben referred to Page 5 of the staff report, which discusses conformance with adopted plan. In this staff report, she noted that the Comprehensive Plan guidelines consideration for Subarea #16 states, 'Consider mechanisms to encourage and allow vehicles, less residential development in Gastineau', and stated that this was not the one that Mr. King was referring to. The plan further recommends guidelines, consideration of Subarea 15, 'An alternative roadway connecting Egan Drive to downtown to Thane Road'. The idea of that road was to extend Egan

Drive to Thane to create an alternative access and by vacating this, the road could not be widened, as noticed in the aerial photo, which was shown to be very narrow in front of the building and appears that it would not be able to accommodate a wider road that would be needed to extend the same road.

Chair Satre opened public testimony.

Public Testimony

Owen Clark, 1775 Diamond Drive, Juneau, pointed to the map for the location of 331 Gastineau Avenue. He stated that he formerly owned it with a partner, but has not had a partner since about 1991. When they took over the property, the previous owners had been back and forth with the City about the retaining wall for years. The City said it wasn't holding up the road. The property owner wanted to take the wall out at the time, but the City said he would have to bond it because they would lose their road; it was about that time that Mr. Clark came into it. Mr. Clark discussed that they had been working on the building and putting concrete under it [almost 100 yards of concrete on one side] as well as concreting wing walls. Mr. Clark explained that over the years they talked to the City and when the City was going to do the reconstruct on Gastineau Avenue, the City informed they would fix all the retaining walls. Phil Buck stated that there would at least be a minimum of a jersey barrier wall, which didn't happen. Mr. Clark stated that they ended up putting just a curb and gutter, which has failed. He expressed a desire to just rebuild it like an eight-plex. He went on to mention that when the construction of the road ensued, 40 feet high retaining walls were built and he was told to pay half. He states that he had asked if anyone else on the project had paid half and was told no. He would have rethought it then because Rorie Watt had informed him in a letter, which he misplaced, that paying half would have meant vacation of the land. Mr. Clark had asked if he could work as the contractor but was told it would go to Arete Construction. Mr. Clark paid Arete Construction himself to put in a 6-inch water line into that building because he had planned on a fire sprinkler, which he notes was a little late, but he did get a 6-inch pipe to go into the foundation. The eight-plex he stated currently has six one-bedrooms and two two-bedrooms which he would like to turn into 6 two-bedrooms, he would have to pull the roof off and build the walls from the second floor.

Chair Satre opened up for questions to the applicant.

Mr. Haight asked if it was possible for Mr. Clark to rebuild with that uphill wall back behind the property line now and not use the existing foundation on that side or a new foundation. Mr. Clark stated that he probably asked for too much square footage on this vacate. He stated that in talking with Mr. Chaney, he was told he might as well go for the 7 feet because an overhang was being considered. Mr. Clark states that he could actually get by with 190 square feet. He asked for 340 and that was for approximately a 2-foot overhang up top. He states that it was suggested that he do that. Since the building had been there from the 60s, he thought that it would get some type of retainment, just to hold the road, because the road is failing again now. It was brand new back in 2001. Mr. Clark discusses the bidding of that job with Arete Construction, who committed \$3,079,000. The engineer's estimate was \$700,000, which left \$628,000. He stated it was only a 50-foot stretch. The building has been there and paying taxes for about 53 years. He thought there was a possibility that the road would be fixed, but stated that it did not happen, though they put in a standard curb and gutter. Mr. Clark stated that he knew the guys who were doing the work and they said it was the only place in Juneau where they had ever poured curb

and gutter where they could not stand on the downhill side of it to do the job. Mr. Clark noted that it must have been quite steep.

Mr. Haight rephrased his question asking, 'Given the fact that with this proposal, a retaining wall would have to be built, which is a fairly decent expense, is it more reasonable to reformat your foundation or rebuild the upper part of the foundation, so that's behind the property line versus in the vacated portion and not go through the process having to build a retaining wall; is that not possible?' Mr. Clark replied that there was about 100 yards of concrete and two foot walls but it was a feasible option; however he would ask if the City would be willing to pay half if this does pass and he would do the work of putting in the retaining wall. Mr. Clark went on to say that it was not just the foundation he was trying to save, but also the exterior walls. It's all framed with 2x6s. He had an engineer down there who thought a lot of it could be kept standing. He stated the work was all permitted and inspected by the CBJ.

Ms. Bennett raised a concern regarding the narrowness of the road and asked how this project was going to be staged. Mr. Clark admitted that it was going to be tough. He referred to one that was built next door, which was a huge 22 unit project. He noted that they had more room to work. Mr. Clark stated that he would just have to buy the permit to keep people from parking there while the work was being done. The curb and gutter failing has prevented him from getting in there to start any demolition. He stated that by driving any kind of equipment up there, he would just bust off that curb and gutter. He has tried to meet the guys down there but has not been successful in that attempt. He also noted that the property next door was vacant and might be able to work with that landowner; Dr. Connor owns that.

Bill Leighty, 227 Gastineau, said that he had lived there for 28 years. He testified that he was well aware of the unfortunate state of the building and would like to have it removed, whether this particular application is denied or not. He wondered what kept it there for so long and if the application were to be denied, asked if there was a plan for removing it. He stated that he appreciates the history that Mr. Clark has given regarding the way the retaining has happened, but states there is nothing that could be done about it.

Mr. Leighty stated it would be good to have more housing units in town and so a successful new structure there providing housing units would be an advantage to all. For those who live on Gastineau, it would mean more eyes on the street. He assumed it would be quality construction and quality people who would live there. He imagined that many of them will have vehicles and therefore would require some sort of parking space on the street. He did not know if conditioning of the building could be done, so that the residents are required to not own cars. Because the street is narrow, it may be necessary to have a no parking zone on the street right across from the building, as can be seen from the photos. He wondered if that was a condition that could be imposed.

Mr. Leighty discussed the idea on page five and six in the staff report of an alternate roadway to Thane and stated his long-time awareness of the same. He stated that back when Arete rebuilt the street, they made that route available to themselves all the way to Thane Road in order to bring material in to build the street. Therefore, it is known that it can be done, but he thinks it would be undesirable to try to make that very narrow corridor a two-way or even a one-way access alternative except under emergency conditions.

It seemed to Mr. Leighty that it was essentially an engineering problem requiring cooperation between the City and Mr. Clark. The roadway needs a retaining wall; anyone who observes that, looks at the pictures, stands there, can see that the retaining wall has failed, that the roadway is to be stabilized, but it is a pretty significant structure that's going to cost a lot of money. He had no idea if the 100 yards of concrete that Mr. Clark had put in had any effect on stabilizing the road bed and making it usable. That is going to require some of the footprint of the area that Mr. Clark would like to have vacated from the street. Therefore, maybe the project of building an eight-plex or even a six-plex there is just too ambitious. As part of the cooperation, cost sharing and utilizing whatever footprint of the building can be done there, engineering could come up with a simple solution that may or not be affordable to Mr. Clark, something that would allow for a stable structure and the remainder of the land to be used. He did not know what kind of access one would expect from the street to the dwelling units there; but, for sidewalk purposes, there assumed there was probably room for a sidewalk on the downhill side of the street, albeit very close to Mr. Clark's building.

Mr. Leighty opined that before the applicant and CBJ proceed, it might be in the best interests of both to assure themselves that even if that vacation and retaining wall problem were solved, that the foundation under the building is going to be adequate. He imagined that Mr. Clark has had an engineer's opinion on the foundation.

In Mr. Leighty's experience, he does not remember a piece of fire equipment that has had to back down Gastineau; although it is referred to in the application that the fire trucks cannot turn around up there, somehow they do. It can be seen in the picture or by driving up there that just past Mr. Clark's building, there is a fairly large turnaround where the fire trucks could turn. He suggested that rather than a vacation, since some sort of cooperative effort is going to be necessary between the City and Mr. Clark, that this would be an easement granted to use the reinforced part of the roadway. He also stated a significant concrete structure would be needed. He further suggested a joint investment in that retaining wall could possibly be required. He voiced the need to get an engineering estimate to see if the project was still feasible. He concluded by saying that they would like to see the building removed and ideally replaced by a nice new one.

Mr. Bishop asked Mr. Leighty to describe why he preferred an easement over a vacation and asked what the difference between them was. Mr. Leighty answered that a vacation is an abandonment of a piece of the right-of-way by the City. If there is a joint investment by Mr. Clark and the City in a retaining wall structure there, then he should have the right to cross that to access his building and that would be an easement rather than a vacation.

Mr. Bishop interpreted Mr. Leighty's explanation as not maintaining the existing structure with that easement, but rather a new structure with easement through for access. Mr. Leighty commented that a new structure needs to be built there, a major retaining wall.

Mr. Bishop further questioned maintenance of the old foundation and the footprints of the old structure. Mr. Leighty stated that he did not mean that would affect his existing foundation. It was in the requested vacation area that the new structure would need to be built. He assumed that a retaining wall with abutment walls, a roughly U-shaped configuration, would be needed

there and that in order to use the foundation in his building, Mr. Clark needs to have an easement across or through that new retaining structure to use the site.

Mr. Bishop wanted to clarify if that meant for the easement be to the new structure with the same footprint as the old structure. Mr. Leighty said that was correct and imagined that was what Mr. Clark had in mind as well; that he is going to use the existing foundation of the building, he just needs to get access to his building.

Mr. Bishop stated that maybe he is just misunderstanding it, but it seemed to him that the foundation is in the right-of-way and they were vacating the right-of-way to maintain the existing property.

Mr. Leighty gave an example of supposing the new retaining structure interfaces with the part of his foundation that is in the right-of-way and he has an easement to use the resulting retaining structure, which includes a small piece of his foundation footing and asked if that was a valid concept. Mr. Bishop was still confused about how that was preferential to a vacation because they both seem to serve the same purpose of being able to maintain the existing structure.

Mr. Leighty was not sure but stated that Mr. Clark needs access to his building and the City and Mr. Clark need to share the cost of building the retaining structure that allows him to use that site.

Mr. Chaney clarified that the slight advantage of having the right-of-way remain where it is, with an encroachment permit rather than an easement, would be kind of kicking the can down the road close to 100 years when the building came to the end of its useful life, the Commission at that time could look at widening the right-of-way back to its original platted width.

Mr. Watson referred to Mr. Clark's statement about getting by with 190 square feet and asked if that would move him further back off the road a lot and if the road repair would be done by the City or by him.

Mr. Chaney clarified, 'Maybe I'm somewhat responsible for the square footage being requested because I had recommended that if he was going to ask for a vacation to include wherever the building encroached into the right-of-way, but if we move back and not include the eaves, we are reducing the numerical square footage, but it won't be reduced where the building is or move him back in any way, it's just exactly where his foundation wall is, so that's the difference in the area that we are talking about.'

Mr. Watson wanted to know if repair of that road would become the responsibility of the City if he were to move further back. Ms. McKibben noted that the application was for the area around the building as well (rectangle) but Mr. Clark, referring to the 190 feet, included only the building. Chair Satre stated it does not ultimately change the footprint of the building. Ms. McKibben replied that it does not really change the distance from the road.

Ms. Lawfer asked if the curb and gutter were put in by the City. Mr. Clark replied that was right.

Public testimony was closed.

Ms. McKibben mentioned that she could share the name of the person who had given the comments though the person had asked not to be named. Chair Satre preferred comments submitted with names but they could make a decision to include or not include these comments as part of the overall record at the end.

Ms. Bennett stated that there is a foundation that the applicant wants to build on and a failed street that is not his responsibility, but in looking at the photos, there seems to be a real problem between the street and his building in terms of what's actually going to happen and some agencies have said that there needs to be a retaining wall sufficiently high, so that snow removal isn't a problem and debris does not set. She questioned whose responsibility that would be and how they would proceed. Mr. Clark had suggested that the City would pay half but they did not have any promise from City Engineering that they are going to come up with half of the price.

Ms. McKibben replied that the comments from Engineering are that the owner be required to construct the retention structure.

Ms. Lawfer asked about the plans regarding widening the road because it would look more logical to widen it on the uphill side and not the downhill side. Ms. McKibben replied that there weren't any immediate plans to widen the road as far as she knew. She did not know exactly where the right-of-way was or how wide it was. The plats there are very old and very difficult to read. There may not be any right-of-way on the uphill side; if they were going to do that, they may need to purchase it.

Mr. Bishop felt uncomfortable making a decision without getting all the information and professional opinions from the Engineering Department and Public Works and suggested continuing the item until such time they could have more interplay between the agencies, the Planning Commission and staff.

While this wasn't a legally non-conforming issue, Mr. Miller asked hypothetically, if it was on his own property, and it was a legally non-conforming use, and they had a fire, and if the fire damage was more than 75% not counting the foundation, then when it gets rebuilt, it has to be conforming. Ms. McKibben replied that was correct.

Chair Satre thought Mr. Bishop's comments to be appropriate in that there were still questions to be answered like the stabilization of the road, what that would mean to the property owner and what it would do for the existing foundation and agreed that a decision might not be possible without getting all the facts in line.

Mr. Miller agreed as well to continue the item. He was leaning towards denying it anyways but felt that it would be tragic if denying this made the project unfeasible in terms of setting the building back 7 feet with no overhangs and the road doesn't get fixed etc., because Mr. Clark was still paying taxes on a property that was not generating any income. He wondered if there was a way to work it out where it could be a win-win for everybody.

Mr. Chaney requested that they provide staff with a list of questions they would like answered, if the decision was to continue the item. He also informed them that this lot is in the fee in lieu

District for parking, so they have the option of paying a fee and not having to provide parking on site.

Mr. Watson agreed with Mr. Bishop's opinion to continue the item and found it discouraging that this situation has been in existence for 50 plus years and now all of a sudden the City wants to tear it. He recalled a recent issue of the above-ground drain coming down somebody's property and how the Commission is constantly bumping into such cases all the time. He had hoped that Engineering would have been present to answer some of the questions as well. He was concerned that in this case they were dealing with actually removing housing from the community rather than replacing or putting housing back in.

MOTION: *by Mr. Miller to continue the item.*

Chair Satre asked Mr. Miller to provide some questions for staff to follow up on.

Mr. Miller said they need to find out from the agency concerned if they would consider the vacation if a retaining structure was built, and then if the retaining structure was built by Mr. Clark, if it could be tied in with the existing 100 yards of concrete that has been placed at the uphill foundation of the building; also how the design would be handled and CBJ's share of responsibility in fixing the problem. He also alluded to Mr. Clark's statement about pulling the roof off and building up the walls and asked staff is there was an alternative for that.

Ms. Lawfer stated that she would like to see the plans for widening that road and whether they are planning on doing it on the downhill or uphill side.

Mr. Watson referring to Ms. Lawfer's comment regarding widening asked if staff could provide a timeline for that as well. He also queried how quickly the City would fix that street if the applicant withdraws from the right-of-way. He went on to ask what is keeping the City from repairing that street now since it is in dire need of repair.

Mr. Medina questioned if there was any right-of-way on the uphill side.

Mr. Miller, "If Mr. Clark did choose to rebuild back onto his own property, would the CBJ accept not having to remove the existing concrete foundation that is in place?"

Chair Satre stated that the item had been continued until they got some answers and hoped to be able to find a solution.

X. BOARD OF ADJUSTMENT

XI. OTHER BUSINESS

Chair Satre spoke about the Comprehensive Plan and how it had started off as a simple update and now is becoming almost a complete rewrite. He stated that this will ultimately go to the Assembly who might require more changes or they might decide to keep the 2008 Comprehensive Plan. He opined that they were given a charge and they have to complete it the best way they can; there may be things that the Commissioners or the public are not happy about,

but they have to look at it as a document that is continuously revised. Chair Satre referred to his letter and stated that they might need to have a discussion in conjunction with the Assembly on whether they should start the Comprehensive Plan from scratch in the future or whether certain parts need to be rewritten completely, etc.

He alluded to the possible work plan in the letter and suggested keeping written public testimony open until next week and thanked Mr. Lyman for organizing the comments. He also mentioned using the upcoming Committee of the Whole meeting as a heavy lift work session – they could go through the public comments and decide which ones need particular attention, to highlight the comments and the changes made. He hoped that the Commissioners would come in prepared to talk about specific fixes, not on a page-by-page basis necessarily, but chapter-by-chapter. He said the work would be continued on to the March 26th Regular Planning Commission meeting because he did not see them finishing everything by the March 19th meeting. He suggested that once they have worked through everything, staff could take it back and do a final clean version, after which the Commission would get a chance to look at it and then make a recommendation to the Assembly. Chair Satre asked for input from the Commissioners.

Mr. Miller questioned from a readability aspect, what needed to be done with grammatical errors.

Chair Satre recommended sitting with Mr. Lyman and getting those corrected.

Mr. Lyman encouraged the Commissioners to come to him or email him with any type of typographical errors, but cautioned to not let him know by page number because the versions might be different. He noted that staff as well as other people in the community are also reading and going through the document for errors as well.

Chair Satre thought that their efforts really need to be focused on the changes and in making sure it reflects the conversations they have had in the 16+ meetings over the past year and that it matches the intent of the Commission.

Mr. Haight expressed appreciation to Chair Satre in putting the letter together. He thought that it defined their direction quite well and gave them a good guideline to start with. He added that as they progress through these final three meetings, they review the milestones and define them more clearly in an effort to stick to task.

Chair Satre said it was a good point, but was still doubtful about the process and how the workflow was going to happen in the Committee of the Whole, but felt they could reassess it then.

Mr. Watson opined that they utilize their time in more content related corrections than typographical errors because it was this late into the process. He proposed maybe figuring out a way to lessen the number of pages as it is a public concern.

Mr. Lyman noted that track changes and comments take up a lot of space and that the final document will be much shorter than what it is currently.

Ms. Lawfer said that she had been to the last two Committee of the Whole meetings and had gathered some white papers - she proposed that other members do the same and look at the strategies and recommendations for the issues that are foremost in the community and try to address some of those in the Comprehensive Plan. She was happy to say that some of it is actually already addressed in the Plan. She went through the mortgage lenders', the real estate brokers' as well as the Commission on Aging white papers. She pointed out that the Juneau Economic Development Council had really nice downtown revitalization plans. She said she might have some more suggestions at the Committee of the Whole meeting.

Ms. Grewe felt that the emphasis in this document should be placed on policy statements or implementing actions, though she herself worked as a copy editor. She expressed concern in that the Assembly liaison had asked for some sort of a color-coded package, though she understands why, she felt there needed to be a fresh perspective especially because there were new members on the Commission. She did not feel it appropriate to get stuck on the way the 2008 Comprehensive Plan was presented or the history of track changes on this document. She felt that the work plan set up by Chair Satre was great to move forward and stay on task. Ms. Grewe asked if they could get the new public comments master file via email by March 17th, which would give them two full days to review them and any new comments that come up on the 18th and 19th, via a separate email by the 19th by 3 p.m. or so.

Mr. Lyman mentioned that their standard deadline for blue folder items was 3:30 p.m. on the day of the meeting. It may be different on days when they have Committee of the Whole meetings because they start two hours earlier than regular meetings. Mr. Lyman went on to say that he would highlight the newer comments in such a way that they understand, because he was trying to keep the comments chapter-wise. He said he would do his best to get the members one package on the 17th and one on the 19th.

Ms. Grewe suggested that Friday would be fine too if the other Commissioners so chose. Finally, she commented about their recommendation for adoption of the plan to the Assembly and asked if there was a place for a different discussion with the Assembly, especially in light of all the public discourse regarding how long the plan was because she felt that it derailed the value of the plan a little bit and the value of the work over the past year. She hoped that they could recommend a new plan to be started sooner rather than later, to pursue a new Economic Development Plan, new Subarea Plans etc., but was not sure what the appropriate manner for that discussion would be.

Chair Satre stated that it was a struggle keeping public testimony open till the Committee of the Whole meeting but he also did not want the Commission to get attacked by saying that they arbitrarily closed public testimony, that was the end of it, and were moving forward. He agreed that the sooner they get the comments the better. He also agreed that they have to have more conversations with the Assembly on a variety of issues which eventually might happen. He had spoken with Mr. Chaney and Mr. Hart a couple of times over the past week on how they were going to move forward and how they would present it to the Assembly, but the intent was there to speak to the Assembly regarding either building a new Plan or rewriting parts of it including changes to Title 49.

Mr. Watson cautioned that they should not get caught up with what some interest groups bring up but to focus on the comments that the Assembly Liaison presents, which would improve the Plan. In response to the idea of highlighting, Mr. Watson opined that he liked the idea though not to an extreme. The Assembly needs to see where the significant changes were made because they are not going to have the time to read through the whole document considering the number of committees each of the Assembly members serve on and the amount of material they have to read. He advised to keep the presentations short and easy to follow. He proposed focusing on the chapters that there had been significant public input because the Commission had made some good improvements on them.

Mr. Medina queried if they would be taking public comment during the Committee of the Whole meeting or if they were just going to be working on the document. Chair Satre recommended working on the document.

Ms. Bennett alluded to the comments from Duff Mitchell and asked if all of those were in red or if that included Mr. Lyman's comments as well. Mr. Lyman replied that he hadn't had a chance to look at them, but stated that most of the changes were in the orange document already. There are 3-4 different reviewers whose comments/changes show up as different colors, but there are new changes. He said that he would have to compare it to the original document and do a line by line change.

Ms. Bennett mentioned that it was hard to identify the changes now with all the track changes but that she would just give a brief overview of what she had gone through.

Chair Satre agreed that that was the intent. They just had to make sure that all the points discussed thus far were incorporated in the document and that all final public comment had been considered for now or future edits.

Mr. Chaney commented that it had been really disheartening to hear all these attacks lately about the work that the staff and Commission had put forward through at least a dozen meeting work sessions plus five public meetings throughout the community. He felt it was pretty good work effort though not perfect saying, 'Anything written by a committee is not going to be perfect'. He hoped they would take pride of authorship because it was not easy stuff and encouraged the team not to feel dispirited just because of a few naysayers.

XII. DIRECTOR'S REPORT

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Bishop commented that the Lands Committee met the previous night. The biggest thing that was discussed was _____ Property 2A, which is being offered to the AHFC goal award competitors as a potential property for their use in the grant application. There was further discussion on the Fisheries Development Committee's recommendation for roadside fisheries locations. The one that was being proposed was the old Channel Marine Facility near the Empire Building and the Triplett building; that was supported by the Lands Committee and forwarded on to the full Assembly. There was also a discussion of the housing forum put on by staff and there was good support and accommodations to staff doing a good job.

Mr. Haight discussed the Commission on Sustainability meeting which took place last week. There were two primary topics - Web page development and they were in the process of implementing it with the CBJ webpage. The Commission will be making a presentation to the Assembly/Committee of the Whole in April to present that webpage. The second item discussed was the Commission's energy plan [referred to Mr. Mitchell's comments] that will be moving forward and one of the primary projects for the year.

Chair Satre mentioned that he had asked that any committee changes or suggestions be forwarded to Mr. Hart or himself. He stated that most of the concerns were regarding how they use their standing committee system. He suggested setting that aside for future discussion because they currently have a lot of work to be done for Title 49 and some that the Subdivision Review Committee can do. He opined that they need to make those into good working committees going forward. He suggested keeping the committee assignments the same and discuss on how to make those more effective at a later date.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Watson commented on the DOT posting of a new revised STIP function. He explained that the website has a map which highlights their current and future projects with all the details.

Ms. Bennett commented that she would be going for the APA Conference in Chicago and would be out from April 9th through 23rd.

XV. ADJOURNMENT

MOTION: *by Mr. Watson to adjourn the meeting.*

With no objection, the meeting adjourned at 10:15 p.m.