

MINUTES

PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU
Mike Satre, Chairman

REGULAR MEETING
July 23, 2013

I. ROLL CALL

Michael Satre, Chairman, 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, Chair; Dennis Watson, Karen Lawfer, Ben Haight, Nicole Grewe, Jerry Medina, Dan Miller

Commissioners absent: Nathan Bishop, Marsha Bennett

A quorum was present

Staff present: Hal Hart, Director; Chrissy McNally, Planner I; Ben Lyman, Senior Planner; Beth McKibben, Interim Planning Manager/Senior Planner; Michelle Elfers, Architectural Assistant II; Ed Foster, Streets Superintendent

Mr. Satre noted that item AME2013 0006 which was a request for a comprehensive map land use designation change from MDR to MU which had been postponed until further notice would in fact be addressed by the Commission at tonight's meeting. There were concerns raised by the CBJ Attorney which needed to be addressed which would be dealt with at that point on the agenda.

II. APPROVAL OF MINUTES

- June 25, 2013 – Regular Planning Commission Meeting

MOTION: *by Mr. Miller, to approve the regular meeting minutes of June 25, 2013, with any corrections or modifications provided by any commission members or by staff.*

There being no objection, the minutes from the above meeting were approved.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Mr. Carlton Smith said the Assembly wanted the Commission to be aware of one of the top ten priorities of the Assembly, which is to create a plan to address declining state and federal revenues. He said the Assembly is dedicated to creating an economic development plan for the City and Borough of Juneau. Towards this end, it will begin by creating a baseline identifying where the community is as an economy today looking at trends in income in all the sectors of Juneau's economy.

The Assembly wants to involve the public substantially in this project, and specifically, it wants to engage the business community in this survey. It wants to identify the economic development priorities of the city and borough, the goals, and the investments that must take place. The timing is anticipated over the next six to eight months. He said the Assembly would love to have the input of the Planning Commission in this endeavor.

Ms. Grewe said that she was glad to see this was a priority of the Assembly. However, she felt that the estimated time of six to eight months was a very short time frame in which to implement these goals.

She inquired if this project had been programmed for funding. She asked Mr. Smith what role the Assembly anticipated the Commission would play.

Mr. Smith answered that the specifics need to be discussed by the Assembly. It has not yet been determined if this would be an RFP process involving one or more firms. They wanted the Commission to be informed of it at this point in the process.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

STV2013 0003: Request to vacate Shelter View Lane.
Applicant: Tracy W. Moore
Location: Shelter View Lane

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Street Vacation permit. The permit would allow for the recording of a subdivision plat vacating the Shelter View Lane right-of-way.

USE2013 0024: Conditional Use to operate bed and breakfast.
Applicant: Susan A Ashton
Location: 3120 Douglas Highway

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit.

MOTION: *by Mr. Miller, to approve the Consent Agenda with staff's findings, analyses and conditions.*

There being no objection, the motion was approved.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VII. UNFINISHED BUSINESS – None

IX. REGULAR AGENDA

AME2013 0006: Request for Comprehensive Map Land Use Designation Change from MDR to MU.
Applicant: Richard Harris
Location: 9510 Atlin Drive

Staff Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and recommends the Assembly not amend Comprehensive Plan Map G as shown on attachment A.

Mr. Satre explained that late in the day of this meeting both he and the Planning Director Mr. Hart were contacted by the City Attorney's office which expressed concern about the ability of the Planning Commission to review this application.

Mr. Satre read an email from City Attorney Jane Sebens recommending the item be pulled from the agenda. Conversely, the Planning Department had received a memo from the applicant's attorney stating the opinion that it was the Planning Commission's role to review the application and make a determination.

Mr. Satre read the memo from the City Attorney stating that the main point was that the Planning Commission's authority is derived from the CBJ code which neither expressly recognizes an individual's right or provides procedures to apply for or pursue a comprehensive map amendment nor authorizes a Planning Commission to review a proposed map amendment request on an individual property owner basis.

Mr. Satre read that this can be contrasted to the clear, legal authority , standards and procedures set out in code; for instance for a property owner to request a rezone on a property, for which there are very clearly defined standards and procedures.

The attorney's memo stated that because action taken by the Planning Commission without proper legal authority would be considered void as a matter of law, and would contravene local and state law, the Commission is advised against proceeding on this or on any other comprehensive map amendment request unless and until this jurisdictional issue is resolved.

Mr. Satre told the Commission and audience that recently the Commission has had another map request come before it which he believes has been declined, and is now before the Assembly. He said that the staff has informed him that there is now at least one other pending application.

Mr. Satre added that staff has not expressed the concern as these applications have come in that the City Attorney has raised. However, this concern has now been raised by the City Attorney.

Mr. Satre said it is extremely unfortunate for Mr. Harris, the applicant, that just a few hours before the hearing that there is a recommendation that the Commission does not have jurisdiction to take up an individual property owner's request to pursue a comprehensive map amendment.

So where does the Commission go from here, asked Mr. Satre rhetorically. Mr. Satre said in his view the Commission had three different options:

1. The Commission could remove the item from the agenda and make the decision that it does not have the authority. But then that leaves the applicant hanging; does the Planning Commission then go to work to establish changes to the Title 49 Code and work through the process of public comment, approving those going to the Assembly, and a year later maybe it does something?

The applicant potentially could pursue its request through a rezone.

2. The Commission has a recommendation from the City Attorney but it does not have a definitive legal opinion. One potential avenue it could pursue this evening is to continue this item until it has a definitive legal opinion.
3. The final option is to take up this item through the normal course of business, hear the staff application, have the applicant come forward, have the affected neighborhood come forward to comment, and then discuss, and then make a decision as the Planning Commission.

If the Commission does that, said Mr. Satre, even if it acts in good faith, the attorney says the Commission may not have the ability to make that decision, and it would open that up very quickly for appeal, irrespective of the decision that the Commission might make.

Mr. Miller wanted to know the comments from the applicant's attorney.

Mr. Satre stated that the applicant's attorney was copied on the City Attorney's memo to the Planning Department.

In his memo to the City, the attorney for Mr. Harris responded that it was his opinion that the City Attorney did not have the authority to take the item for his client off the agenda, and that the Planning Commission was charged with making its own jurisdictional decisions, and that the item should be restored to the Planning Commission agenda.

The applicant, Mr. Richard Harris, stated that he did not believe the law department had the authority to remove his request from the agenda. He believed the Commission had the authority to make the decision regarding his request.

Mr. Satre said that given the concerns of their counsel, he felt it may be appropriate to continue this matter until the Commission had received a definitive legal opinion from the City Attorney's office, advising the Commission on what to do. He said he felt it preserved the applicant's rights in terms of the pending application, as well as protecting the Planning Commission in terms of appeals one way or the other.

Mr. Watson said he thought it was prudent to continue the item until a legal decision could be made allowing the Commission to take the appropriate action.

Mr. Miller said that on page 5 of 11 of the staff report that staff had recommended that the applicant seek a map amendment prior to seeking a rezone of his property. Mr. Miller commented that the applicant got lead down this path and that it was too bad that the law department did not recognize this map amendment issue on the previous case.

Because of that, Mr. Miller said he thought the best solution was to continue the item and let the issue be worked out between staff and the applicant.

Mr. Satre said he acknowledged that the email he received was from 3:46 p.m. this evening, and that this was all very last-minute for all parties, including the neighborhood and the applicant, and that this was not a situation that they liked to be in.

To preserve the rights of the applicant, to protect the commission, and to protect the neighbor's rights, he felt that it was a good time to entertain the motion to continue this item, to receive a definitive, legal opinion about the Planning Commission's jurisdiction in the matter.

MOTION: *by Mr. Haight, on above (to continue this item, to receive a definitive, legal opinion about the Planning Commission's jurisdiction on the matter.)*

Ms. Lawfer spoke in support of the motion asking for the clarification that this was for the ability of the Commission to decide on a map amendment requested by an individual property owner.

Ms. McKibben clarified that a rezone would be a separate review. The map amendment would be the first step.

The motion to continue was passed with no objection.

Mr. Satre acknowledged to Mr. Harris that this put him in a bad spot, and apologized to him for the last-minute inconvenience. He also thanked the neighbors who filled the chambers for this issue for showing up, and said that if it was determined that the Commission had jurisdiction on the issue, that it would be addressed at a later date.

The Commission recessed at 7:26 p.m. for a brief at-ease.

USE2013 0020 & CSP2013 0014:	A City project to expand existing snow storage site by Mendenhall Glacier.
Applicant:	CBJ Engineering Dept.
Location:	Mendenhall Glacier Bus Parking Lot, Glacier Spur Road

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit, and recommend the Planning Commission adopt the Director's analysis and findings of the City Project and recommend the expansion of the existing snow storage site.

Mr. Miller asked the staff how long the conditional use permit was for.

Ms. McKibben said it had no standard expiration.

Ms. Lawfer asked which entity was responsible for issuing the wetlands permit.

Staff responded the Army Corps of Engineers was responsible for issuing that permit.

Mr. Watson asked what the special land use permit was for.

Ms. McKibben responded that it was specifically for the snow storage, and that it was for five years.

Ms. Elfers told the Commission that permission from the Army Corps of Engineers had already been obtained.

Mr. Watson commented that a few years ago in its snow storage practices the city had built what he called "snow cones which were still melting in July". Mr. Watson stated he did not feel this is a practice which should be continued if the permit was to be issued.

Ms. Elfers responded this was probably in 2006, which was a big snow year. She said that current practice is to spread the snow so that it melts faster.

Mr. Watson also expressed the concern over trash maintenance of the site. As the snow melts, residual trash remains.

Ms. Elfers responded it is her understanding that within the Streets Department that concern has been addressed over the past few years.

Mr. Foster added that during the season, every Friday Streets Department employees visit the site and pick up any garbage which remains from the snow melt.

Craig Orsborn, President of the Gastineau Aeromodeler's Society, (GAS) which has an agreement to use the adjacent parking lot to the snow dumping area for its model airplane runway, had questions for the staff regarding the snow dump site.

He wanted to know if the city had come up with alternatives to the current snow dump site, what the capacity was of the site, and what the impact on the environment was of the icing chemicals used mixed in with the snow. He said he knew the city went through probably in excess of 300 tons of chemicals a year on the roads.

Another member of the club, Joseph Chaput, expressed his concern over the cost of using the site for snow storage, instead of using city-owned land for snow storage.

Mr. Orsborn added that the snow storage relocated distance mentioned in the original document was incorrect. It was to be stored 20 feet from the GAS runway, not the 10 feet stated in the document.

Mr. Foster answered that the capacity of the snow dump site is designed to hold 30,000 cubic yards of snow. As to snow in excess of that amount, he said he did not know. The Streets Department would cross that bridge when it came to it.

As to de-icing chemicals in snow, Mr. Foster said there are some, but when the snow melts in the spring, the chloride levels have been monitored, the chloride levels in the surrounding water is not increased to unacceptable levels. He said the water is sampled in the fall for a baseline and in the spring to see what contaminants are coming out of the pile.

Mr. Medina wanted an estimate of the number of cubic yards of snow removed in the winter of 2006.

Mr. Foster said he did not have an estimate of snow removed for that winter, and that he was not here that winter.

Mr. Medina wanted to know if the facility was designed to handle heavy snow storms of that nature.

Mr. Foster said the area was designed for an average snowfall year.

Mr. Medina wanted to know what other locations in the community had been considered for snow storage.

Regarding Mr. Medina's question about unusually heavy snow years, Ms. Elfers said it was her understanding it was the City's practice to leave low priority areas unplowed to make up for the heavy snow removal.

She said the City had considered 30 – 40 sites around Juneau including town and valley locations for snow storage through a comprehensive evaluation process. The current site was selected because the City did not have to purchase it, and because it was flat; flat land being at a premium in Juneau, and also because it was not impinging upon any residential areas.

Looking at the map, Mr. Miller asked the staff if the distance from the snow pile to the GAS runway was 10 or 20 feet. He said it looked more like 30 feet to him.

Ms. Elfers said the buffer is 25 feet from the snow pile to the runway.

Mr. Watson commented that it appeared to him that the EPA (Environmental Protection Agency) had gotten deeply involved in snow storage issues.

Ms. Elfers responded that because of the wetlands that Industrial Blvd. was not an option for snow storage. She said she was not familiar with EPA regulations on the issue, but that the DEC (Department of Environmental Conservation) had many guidelines and recommendations regarding the storage of snow, and that it was not to be discharged into marine waters.

MOTION: *Mr. Watson moved that the Commission accept the staff's findings and recommendations and approve USE2013 0020 and CSP2013 0014 and ask for unanimous consent.*

Both the use permit and city project permit were unanimously approved.

X. BOARD OF ADJUSTMENT

VAR2013 0016: Variance request to reduce 20 foot setback to 8 feet.
Applicant: James C. Laurent
Location: 510 Summers Street

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR2013 0016.

Ms. Lawfer wanted to let the Planning Commission know that she had received a call from a friend of hers that lives in the area, who is currently in Seattle receiving medical care, and that she had a private discussion on this item, and if the Commission wants her to withdraw from this issue she will.

Mr. Satre said the Commission has previously been advised by the former City Attorney that it is very hard to avoid conversation with a community member on an issue, and that the best practice is to bring up the issue and put it on the record, and with the Commission as a whole, and he thinks that Ms. Lawfer has done that.

Applicant James Laurent told the Commission there are three residences that share the property line including his and all three are within ten feet of the property line. He said he did discuss this with his neighbors at the time he applied for the variance, and at that time they had no problems with this.

He had several differences in setback calculations from the city staff regarding his lot. In addition, his rock wall along the side of the lot is five feet deep, subtracting another five feet from the proposed parking space from one side. The major difficulties with the lot are the steepness, severely limiting usable space.

Mr. Laurent said his calculations gave him a total usable space of 595.2 square feet of usable space, which is substantially less than the 848 square feet of what the analysis says he would have without the variance. He said it is also significantly less than the proposed 720 square feet of the proposed two-car garage.

Mr. Laurent said that contrary to what the staff report indicated, that property owners in the neighborhood do have secondary structures. He said that while immediate adjacent property owners do not have secondary structures, that he counted at least ten neighbors who have large secondary structures.

He explained that topography does not allow him to have an attached garage.

He said if the variance was not granted he would have to park his boat on 5th Street where parking is already at a premium in the winter time, taking up two spaces.

Mr. Miller said that he kept going back to the site plan and that there were some unique physical features to this property that were not addressed well in the staff report, and that the map does a disservice in terms of access.

He said the topographic map shows how steep the driveway is. The applicant has one narrow spot to use in the winter.

MOTION: *Mr. Miller moved that Variance 2013 0016 be approved with new findings.*

In support of his motion Mr. Miller ran through the findings that staff had gone over in its report.

He said he felt on finding number two that relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.

He said he did not feel that safety and welfare was really an issue in this circumstance, but that the intent of the title was open air and light. The applicant would have a safer parking spot during inclement weather and not have to park down on 5th Street. So he felt that number two was met.

The criterion for numbers three and four were already met.

Disagreeing with the staff analysis, Mr. Miller found the criterion for number five was easy to meet: "That compliance with the existing standards would be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive"...

He stated that the property was steep, with a narrow entrance, with a rock wall that curved around, with snow creating an additional hazard half the year.

Mr. Miller also found that granting the variance would result in more benefits than detriments to the neighborhood.

Going back to the first finding, Mr. Miller said this was the one he initially had the most trouble agreeing with, but that he could now see where it did have consistency with other property owners due to other secondary structures in the area. He said that he did see that there were numerous other property owners in the area who had unattached garages, due in part to Mr. Watson's assistance with his helpful tour of the neighborhood via Google Earth.

Ms. McKibben pointed out that the motion should adopt the corrected staff report.

Mr. Miller concurred with Ms. McKibben.

Mr. Medina spoke in opposition to the motion. He did not feel the request fit variance criteria.

Ms. Lawfer said that based upon the discussion she had with a property owner she thought it would be best if she recused herself from voting on this issue.

Roll Call Vote:

Ayes: Miller, Grewe, Haight, Watson, Satre

Nays: Medina

MOTION PASSES

XI. OTHER BUSINESS

XII. DIRECTOR'S REPORT

Presentation: Growth and Permit Trends in Juneau

Mr. Hart provided the Commission with an overview of the building permits issued in Juneau for 2013 thus far, and placed that building activity in perspective with the building activity in Juneau over the past five years.

He said that at this juncture, it appears that twenty percent of the year's permits have been issued in July alone.

There have been 43 permits issued so far this year. Over half of these permits are for single family residences. There is a 24 unit apartment complex which began construction in 2012 still under construction.

Mr. Hart said there has been public comment that there is interest in housing for the older population in Juneau.

M. Grewe remembered a couple who were going to build for the senior population in Juneau, and was wondering what happened to that project.

Mr. Hart mentioned a 500 square foot house where there were add-ons as an option. That is a starter home that is an exciting option.

Ms. Lawfer asked about the amenities such as sidewalks and parking.

Mr. Hart said it is a conversation where you see dollar signs come into play. That builders try to keep parking and these amenities as cost effective as possible. Mr. Hart said that builders are thinking in terms of placing parking places clustered together.

Ms. Lawfer wanted to know if there was a difference between an apartment and a condominium in the application.

Ms. McKibben said the zoning code does not distinguish between the ownership in that type of situation.

Mr. Hart ran the Commission through the timeline for the permitting process, with additional comments from the Commission and staff, all agreed could take anywhere from six to 12 weeks given absolutely no holdups in the process and no need to appear before the Commission, to the more common much longer period of many more weeks. The average construction period given was estimated at 12 – 18 months.

Mr. Hart added that in terms of growth the downtown museum/Soboleff Center construction is underway. A tower crane is being set up. It will be used to transport materials. Excavation of the site will begin August 5 with a ground-breaking.

Downtown will be impacted. Mr. Hart estimates by the loss of 20 parking spaces during the construction. It is planned the crane will be down by the start of next tourist season.

Mr. Miller commented that with all of this construction going on in the community that there will be a need for labor.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Miller said the Wetlands Review Board met last week and the board is now using a more scientific method to determine if an area is to be designated wetlands by using 130 questions to ask and answer for every piece of ground under consideration.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Medina requested that Commissioners receive emails regarding when appeals are due so they can keep current on the process.

Mr. Medina also wanted to express his extreme dissatisfaction with Miller Construction on the roundabout construction project. He said the first week when trees were being knocked down there was no flagging and no coordination. He said he was surprised there was not a major accident.

Mr. Medina added that Miller construction has also decided to use his Mr. Medina's employer's parking lot as a staging area without any prior consultation. Mr. Medina said he wanted to go on the record with his extreme frustration with Miller Construction, and that he was talked with DOT about it, and that they are frustrated with them as well.

Mr. Satre wanted to apologize for the short notice Mr. Harris and the public received regarding his issue before the Commission. Mr. Satre said that he knows that Mr. Hart and Ms. McKibben are very unhappy because they had told their customers that in good faith they could proceed and now at this late time it was recommended that they do something different.

XV. ADJOURNMENT

The meeting was adjourned at 9:14 p.m.