

MINUTES

PLANNING COMMISSION CITY OF BOROUGH OF JUNEAU Michael Satre, Chair

REGULAR MEETING
October 23, 2012

I. ROLL CALL

Chairman, Michael Satre, called the regular meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 6:57 p.m.

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

Commissioners absent: Benjamin Haight.

A quorum was present.

Staff present: Hal Hart, Director; Greg Chaney, Planning Manager, Teri Camery, CDD Senior Planner

Chair Satre addressed a request that public who are unable to attend the meeting be allowed to attend via phone conference. He noted that there are clear rules of order for Planning Commission members who are absent. The rules do not specifically address members of the public other than if a member of the public is with the absent Commissioner over the phone. He stated that it would potentially take a motion to suspend the rules of order to allow somebody to listen in tonight via telephone and then possibly testify via public testimony or be available for questions; though if there are a lot of people, then that becomes a problem. Chair Satre wanted the other Commissioners' opinions to let this person attend via phone this evening.

MOTION: *Mr. Watson made a motion to suspend the rules to allow the member of the public to participate tonight.*

The members were in agreement.

II APPROVAL OF MINUTES

- October 9, 2012 – Regular Planning Commission meeting.

MOTION: *By Mr. Miller to approve the October 9th, 2012 PC minutes, with any corrections as provided by the Commissioners or staff.*

There being no objection, the minutes from October 9, 2012, was approved with minor adjustments.

III PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

IV. PLANNING COMMISSION LIAISON REPORT

Carlton Smith reported that the Assembly meeting was held last night on reorganization and the Mayor has asked him to continue as the liaison for this year and also to serve as Chairman of Lands Committee. He announced that there will be a retreat authorized by the Mayor on Saturday to chart out a new direction for the CBJ. It is going to be professionally facilitated and Mr. Smith sought everyone's input on Planning Commission issues for that meeting.

Chair Satre thanked Mr. Smith and expressed appreciation to him for being the Assembly representative on behalf of the Planning Commission.

Chair Satre explained the Planning Commission's intentions of wanting to continue moving on and needing the assistance of the Assembly in establishing priorities for staff. He noted some of the things that the Commission is currently working on such as the Comprehensive Plan, adjustments to Title 49, including the subdivision standards, the potential for a wireless ordinance, a noise ordinance, and possible revisions for the Eagle tree ordinance. He requested that Mr. Smith keep these in conversations with the Assembly.

Mr. Smith stated that he wanted to first have a conversation with the Commission and felt that the new Assembly would appreciate a high quality, focused presentation before bringing these issues before them.

V. RECONSIDERATION OF THE FOLLOWING ITEMS

VI. CONSENT AGENDA

AAP2012 0006: A Conditional Use Permit for an accessory apartment on a lot having substandard lot size and an on-site waste water treatment system.

Applicant: Northwind Architects
Location: 3180 Indian Cove Drive

Staff Recommendation:

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested 589 square foot Accessory Apartment permit.

VAR2012 0020: A Variance request to reduce the front yard setback from 25' to 5' for a boat port.

Applicant: Dennis and Sharon Early

Location: 17009 Towers Road

Staff Recommendation:

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and APPROVE the requested Variance, VAR20120020, for a front setback reduction from 20 feet to 5 feet in order to construct a new 2-car garage and boat port/garage, with or without a bay door, subject to the following conditions:

- 1) Prior to final inspection, an As-Built survey will be required to document that the boat port/garage meets the required 5 foot front yard setback.

VAR2012 0018: A Variance request to the minimum lot depth, width, and area for properties accessing a minor arterial.

Applicant: BSJ Joint Venture

Location: 13640 & 13680 Glacier Hwy

Staff Recommendation:

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2012 0018. The Variance permit would allow for the reduction in the minimum lot depth, width, and area for properties accessing a minor arterial.

Staff recommends the following conditions:

- 1) The subdivision plat shall include a note requiring that the five lots be accessed with a single, shared driveway only and that access to Glacier Highway via the individual lots will not be allowed.
- 2) Prior to final plat recording, the developer shall provide for a homeowner's association whose responsibility will be to ensure the property owners will provide for continued maintenance of the shared driveway.
- 3) Documents creating the homeowner's association shall be recorded concurrently with the final plat.
- 4) Provide a final grading and drainage plan for the proposed five-lot subdivision prior to final plat recording.
- 5) Fire apparatus access and turn-around must be provided and shall be constructed to International Fire Code Standards prior to issuance of any Temporary Certificate of Occupancy (TCO) or Certificate of Occupancy (CO).

USE2012 0020: A Conditional Use Permit to allow a second floor addition to encroach three and a half feet into a side yard setback.

Applicant: 917 Group

Location: 917 Glacier Avenue & 740 West Ninth 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 second floor within the side yard setback. The approval is subject to the following condition:

1. Prior to framing inspection of the north eastern, second-story addition, a surveyor shall confirm that the wall is no closer than 3.5 feet away from the side property line.

MOTION: *by Mr. Miller to approve the Consent Agenda with staff findings, analysis and recommendations.*

There being no objection, all four items were approved.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS

VIII. UNFINISHED BUSINESS

VAR2012 0014: A Variance request to allow a minor subdivision creating two lots on a portion of Auke Street that is undeveloped.

Applicant: Alaska Pacific Capital Co.

Location: Auke Street

Mr. Bishop stated that he would like to rescue himself on this item because one of his subcontractors is a potential buyer on this property.

Chair Satre noted that he was not in attendance for this meeting, there was a full staff report, public comment period and commissioner discussion, but there were not enough votes to move forward to either approve or deny the application at that time. He asked if staff had any new information that needed to be taken into account and potentially open this up for public hearing.

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

IX. REGULAR AGENDA

USE2012 0006: A Conditional Use Permit for a 155-foot wireless communications tower on Spuhn Island.

Applicant: WesTower Communications

Location: Spuhn Island

Staff Recommendation:

Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of a 155-foot lattice telecommunications tower, including a 10' x 24' equipment shelter with a diesel generator, fuel tank, and telecommunications equipment, all enclosed within a 50' x 50' chain link fence. The approval is subject to the following conditions:

- 1) Prior the issuance of a Building permit, the applicant shall submit a letter to the Community Development Department signed by a radio frequency engineer certifying that the structures comply with electromagnetic radio emission levels set by the Federal Communications Commission (FCC).
- 2) Prior to receiving a Certificate of Occupancy, the applicant shall submit a letter to the Community Development Department signed by a radio frequency engineer certifying that the structures as constructed and at optimal emission levels comply with electromagnetic radio emission levels set by the Federal Communications Commission (FCC).
- 3) Prior to the issuance of a building permit, the applicant shall submit a noise study for the facility to demonstrate that dBa levels will not exceed 65 dBa at the property line during the day or 55 dBa at night. If the noise study indicates that the generator is louder than 55 dBa at the nearest residential property line, the project shall be reviewed as a Utility through the Conditional Use permitting process.
- 4) Fritz Cove Road shall not be used as an arrival or departure location for tower construction or maintenance activity.
- 5) The tower shall be lighted by a Dual Lighting with Red/Medium Intensity Flashing White System as described in FAA AC 70/7460-1K, Chapter 8, sections 80 through 84. The option of omitting painting, as described in Chapter 8, section 85 will not be allowed. This tower will also be required to be painted in alternating sections of aviation orange and white in accordance with AC 70/7460-1K, Chapter 3, section 30 through 33, specifically in alternating bands as described in section 33 (d), and shall meet the specifications as described in Chapter 12, section 121. If during the FCC/FAA registration and approval process, it is determined that this condition is not legally compatible with FCC and/or FAA regulatory standards, this Conditional Use Permit will be invalid and automatically revoked under CBJ Code 49.15.330(g)(8).

Chair Satre stated that Mr. Bishop would be rejoining them and that Ms. Camery had the staff report.

Staff Report

Teri Camery, CDD Senior Planner, referred the commission to a blue folder item they had received that afternoon, a letter from Loren Domke and Kathy Nielsen. The letter highlights three specific points; a call for an evaluation of the least intrusive sites for the tower, a call for a new assessment of visual impacts using a helium balloon; and a note about inadequate time for public comment on the application.

Ms. Camery started by reviewing the history of the project, which she noted had been rescheduled three different times, and that each time previously when they thought they had all the issues resolved something new came up, primarily on the issue of aviation safety. She appreciated everyone's patience with the long extended review time for the project. She also mentioned that they had made a decision early on in the project that they would substantially broaden their normal public notice for the project, noting that the Code only requires a 500-foot notice from the site, but they extended that to over a mile. They also required three Public

Notice signs rather than one because it was a remote site. One was located at the North Douglas boat ramp, one at the end of Fritz Cove Road, and one on Spuhn Island at the dock site. Ms. Camery appreciated the applicant's cooperation in allowing the extra effort.

Next, Ms. Camery gave an overview of the whole report focusing on the major issues; aviation safety, property value, neighborhood harmony, and comprehensive plan.

She referred to a map showing Spuhn Island, Mendenhall Peninsula, and a general overview of the area and the approximate tower site on parcel B of the Spuhn Island Subdivision Plat.

She showed a depiction of the tower, a 155-foot telecommunications tower, the last 5 feet of the tower being the antenna. She went on to explain that the conditional use process evaluates the tower height; however, they have included other details from the applicant with the diesel generator and other specifics of the enclosed facility at the base of the tower.

She then referred to a recent survey of the area which showed the ground height for the tower at about 150 feet. Trees in the immediate vicinity of the tower range from 80 to 110 feet high, so the 155-foot tower would be 45-75 feet above the tree line, depending on the angle of view.

She went on to explain the aviation safety issue. When they began the review, they started with a letter from the applicant and correspondence from the FAA which indicated that no lighting or painting of the tower was required. Some weeks later, they received word via the airport manager and a different division within the FAA that this was actually a very heavy aircraft zone for small planes in Juneau. The division that writes the no hazard determination letters does not look at local conditions such as this; so, this was is a major difference.

The Flight Standards Division of FAA, which has a regional office in Anchorage and local offices in Juneau, submitted a series of very strongly worded comments to CDD indicating that this was a very high profile area for small plane traffic. She referred to a map sent to them by the FAA Regional Flight Standards indicating the different reporting stations for small planes right near Spuhn Island.

Ms. Camery continued to say that Spuhn Island has a reporting station on it where small plane traffic has to report to the Juneau Airport. This is what FAA refers to as VFR traffic, operating according to visual flight rules, and small planes have specific authorization in this area to fly at low altitudes, below the tree line. She then referered to the next slide that shows the reporting station right next to the location of the tower.

She elected not to re-read the letters in the staff report but mentioned strongly worded correspondence indicating that this is an area with very challenging weather conditions, lots of small plane traffic and a very strong push from the FAA Flight Standards Division, local pilots, and CBJ airport manager, all calling for the lighting and painting of the tower despite the original no-hazard determination from the other division within FAA.

The CDD held a meeting on August 16 in Juneau with a representative for the applicant, a local representative of FAA Flight Standards and the airport manager where different lighting options were discussed. They were aware that the tower was the concern for the neighborhood and tried to come up with an option that would have the least impact possible to the neighborhood but would still address these very significant aviation issues. They got a very clear response from FAA, the airport manager, and others that they would accept nothing less than a white flashing strobe during the day and a red steady light at night with full orange and white safety painting. Ms. Camery stated that they looked for other possible alternatives, but FAA Flight Standards, the airport manager, and local pilots were adamant about that point. She mentioned excellent cooperation from the applicant on this issue and that the applicant has agreed to the conditions.

The condition is the product of a lot of discussion with the applicant, the FAA Flight Standards Division, the CBJ Law Department, and the telecommunications consultant to make sure that their wording conforms to the FAA Advisory Circular and that it meets the parameters that they need to ensure aviation safety.

She referred to a map developed by the CDD cartographer that showed areas in red where the tower is not visible and areas in white where it would be visible.

Chair Satre asked if that took into account topography and not vegetation levels.

Ms. Camery replied that was correct because the tower would be above the vegetation; it would be visible for most of Spuhn Island, the whole south end of the Mendenhall Peninsula the Fritz Cove area and for a long stretch of North Douglas Highway.

She next presented photographs taken from three specific locations; the end of Fritz Cove Road at the cul-de-sac, the North Douglas boat ramp and 808 Fritz Cove Road. The photographs were sent to the applicant, who took the height and topography information and made a representation of how the tower would look from those sites. Ms. Camery cautioned that the visual depictions could not take into full account their proposed painting and lighting recommendations.

She moved on to property value and neighborhood harmony, which she stated was a big issue for the surrounding neighbors. WesTower provided an initial report from Horan & Company, Sitka, showing that there would be no negative impact to property value. A secondary follow-up analysis was done by the same company to reflect the painting and lighting recommendations. The company was also provided with updated surveys, photographs, and a copy of a property value study that a resident had sent to them indicating that cell towers lead to a decline in property values. The conclusion remained the same: no negative impact on property values and the report concluded that in Juneau, there is not a negative market value perception associated with cell towers.

She noted that many residents feel very strongly that this will have a very serious negative impact on their property value and a number of them have called for varying degrees of new analysis from alternative property sites, some have suggested a moratorium, and others various ways of doing new visual impact analysis. She explained that they were certainly very valid

points to make, but current code does not provide authorization for them to look at alternative sites to require an analysis of the demand for a cell tower.

She stated that they also consulted with the CBJ Assessor's Office who concurred with the Horan Report. The conclusion from the director on property value and neighborhood harmony was that the developments will not substantially decrease the value of or be out of harmony with properties in the neighboring area based on the Horan property value analysis and the fact that there are cell towers all around the community at this point, including Auke Bay and many remote areas. She pointed out that a utility corridor was established in the Spuhn Island Plat which calls for utility infrastructure.

Mr. Watson asked about the combined height, given the elevation of the site location and the tower; he thought it was about 345 feet. Ms. Camery said she believed it was 305 feet above sea level.

Mr. Miller queried if the diesel generator was a backup or if the tower would be running on the diesel generator the whole time. Ms. Camery replied that it was their backup. Mr. Walsh later clarified that it is an emergency backup generator as well.

Ms. Lawfer said that in looking at the total height from sea level, it seemed as if the lighting for the tower that is shown on Attachment 9, which is 320 feet tall and located on Channel Drive, would be similar to what is being suggested for this tower.

Ms. Camery replied that it would be a similar configuration.

Ms. Camery stated that the Lymans', who are traveling and will not be able to testify in this meeting, wanted to convey a suggestion. They wanted a discussion about shielding the light for residences. They are located at the end of Fritz Cove Road and wanted to see if that would be possible to reduce the impact on their neighborhood. Ms. Camery stated that they had discussed that option at the August meeting with the applicant, FAA and the airport manager. The airport manager and FAA at that meeting were adamantly opposed to the idea because of the aviation concerns in the area. She made some additional calls on the topic to see if there were any options and what she learned was that light shielding would not be possible for the Mendenhall Peninsula neighborhood because it would defeat the purpose of lighting and painting the tower for aviation safety. The only thing that might be an option would be a limited light shielding configuration for the property owners that were immediately adjacent to the base of the tower; though she did not have a design that was guaranteed to meet FAA regulations.

Ms. Lawfer questioned how difficult, expensive, or cost prohibitive it would be to change the lighting system if a newer technology came along. Ms. Camery said she had no information on that.

Mr. Miller asked if they were concerned about shielding it from the light strobe or the red light at night. Ms. Camery said presumably both. Chair Satre noted the shielding would be for affected neighbors from a light source that wasn't there before.

Ms. Camery went on to discuss the scenic corridor issue. They had received comments that Spuhn Island is protected through the comprehensive plan Scenic Corridor/Viewshed ordinance, but when they looked at the ordinance, the scenic corridor is defined, but the Viewshed is not. North Douglas is in the scenic corridor, not Spuhn Island itself. The Director's determination on this issue is that because the Viewshed is not defined, and because the policy refers to public land and not private, that Spuhn Island would not be protected under this policy.

Ms. Camery gave a brief review of the standard conditions that they have had on all their recent cell tower reviews to make sure that this tower conforms with emission levels set by the Federal Communications Commission; a condition regarding the generator noise that has been used in previous reviews to ensure that it does not exceed allowable levels. They received a comment from a resident concerned about construction activity along Fritz Cove Road and the applicant has specifically agreed to a condition stating that Fritz Cove Road will not be used for construction or maintenance; the condition on lighting and painting (she read the ending "...if it does not conform to FCC and FAA Regulatory Standards, then the conditional use permit will be invalid and automatically revoked..." and they have an agreement from the applicant on this condition. (Note: I'm not really sure what this is saying.) (additional note: seems to be a gap in the text here)

She mentioned the carefully constructed wording is because of the public safety aspect connected with painting and lighting.

Michael Satre thanked Ms. Camery for her presentation.

Mr. Miller asked what would happen if Condition #5 was not met.

Ms. Camery replied that they would then have to go back to the Planning Commission. The reason is that they have to have absolute assurance because of the aviation safety issue that the tower will be lighted and painted.

Chair Satre asked if the Department of Law had reviewed that language and Ms. Camery replied that they have reviewed "every word".

Ms. Bennett felt that it was an accident waiting to happen and hopefully the applicant had alternative locations in mind.

Mr. Chaney replied that they had worked very carefully with local pilots, the airport manager, and at least one division of FAA who felt that it would be a safe situation and if they thought it would be an unsafe situation CDD staff would not be recommending in favor of the proposal. Chair Satre said that they would not even try to approve something like this without the FAA's positive recommendation.

Mr. Watson said he did not see anything in public comments from the pilots and asked whether staff had any input from them.

Ms. Camery responded that there is a letter from a private pilot , Mr. Wescott, and Doug Wahto spoke both for himself as a private pilot and as FAA.

Mr. Medina elaborated on what Mr. Watson was referring to in the staff report where it talked about the airport manager and mentioned different carriers (Alaska Seaplanes, Wings of Alaska, Air Excursions, Ward Air). He asked if they had spoken to pilots from all those carriers.

Ms. Camery said that she did not speak with them individually and that it was her understanding that the airport manager received a lot of comments and input from them.

Team representing WesTower and Verizon:

Murray Walsh, 2974 Foster Avenue, spoke on behalf of WesTower, an agent of Verizon Wireless. He stated that Verizon Wireless was working to bring 4G network communications and enhanced cell phone service to Juneau. He said that this tower location was picked after a great deal of searching and analysis and felt that they have found the best possible place to service the Auke Bay area (west of the airport).

He said that the Company had sent a staff contingent to be with them that night - Sarah Grant, Project Manager for WesTower; Lisa Hanks, Site Acquisition Specialist; Travis Nichols with Verizon who would be part of the team that actually builds the facilities that hang on it; and Ryan Wells, the Regulatory Specialist for the Pacific Northwest Region for Verizon Wireless. He expressed his appreciation for the depth of effort that staff has put into this. He stated that they concurred with the language in all five of the conditions and pointed out that there were other towers in Juneau that are both lit and painted and that are also on flight path or typically places where airplanes fly. He said that they believe this would be safe.

Mr. Medina questioned Mr. Walsh as to the location of the existing towers that were in current flight paths.

Mr. Walsh said that the KJNO tower at 3-Mile was 320 feet tall and KINY tower on Douglas Island Beach, North Douglas, was a couple of hundred feet tall.

Mr. Watson asked if they were located close to a VHF signal, but Mr. Walsh did not know.

Alissa Haynes, 685 Matterhorn Drive, Park City, Utah 84098. Ms. Haynes stated that they were provided the visual analysis by the FAA that references several of the sites. She pointed to a map to further explain the locations of the towers.

Mr. Watson asked how much co-location space would be available for other users.

Sarah Grant, 19500 Cipole Road, Tualatin, Oregon, WesTower Communications, stated that the standard separation per carrier as a rule of thumb is a maximum of 10 feet and this technology

being line of sight technology would dictate that any pertinence of the tower above the tree line, any 10-foot segment, maximum is 10 foot, minimum is sometimes as little as 5, so they were showing a 45 to 75 variance depending on the azimuth of the signal. They could potentially have up to 7 carriers on the tower, structural feasibility allowed.

Mr. Watson asked about the economic life of the tower.

Ms. Grant stated that they anticipated a 25-30 year lifespan for the tower and that was the extent of their legal entitlement. After that period, there would be a holdover period and both parties could agree to have the tower removed or continue to maintain the facility and modify it as new technology would come along.

Mr. Watson queried how far the signals would carry from this particular tower.

Travis Nichols, 38053 36th Pl S, Auburn, Washington 98001. Mr. Nichols said that there were a lot of variables and factors that went into the distance of the signal but as a rule of thumb, anywhere from 5 to 7 miles, based on the technology and the way it is today, they could probably exceed that, especially over water.

Mr. Watson asked if repeater towers are still used (towers that carry signals from one to the other). Mr. Nichols replied in cell tower construction and design today, everyone serves the same purpose and that is to bring everything back to the base station and to a switch.

Mr. Watson questioned if they would be able to service an area larger than 5 to 7 miles.

Mr. Nichols said not as it stands now.

Mr. Bishop asked if there were any other areas that might have been looked at and deemed feasible, but not as attractive. Mr. Walsh answered that other locations were looked at in Auke Bay, but they were all right next to people's homes.

Ms. Grant replied, referring to a map, that the radiofrequency engineers had given them a target area out of which some were owned or controlled by the FAA, three with only helicopter access which would create ongoing maintenance and cost issues. Some were in the direct flight path of the airport which eliminated them from further development above a certain height or no development at all. They moved up to the north corner of Auke Bay and went parcel by parcel, looking for a parcel that was large enough, had allowable setback, and would be accessible from a construction standpoint and the parcels were systematically rejected. The minimum basic requirements for constructability were access, willing landlord, favorable Land Use Code underlying land use, and neighborhood harmony. She mentioned that the detailed process has been included in the staff report.

Finally, after looking at all the logistics, this property seemed to be a feasible option because it covered not only all of the residences and stationary targets objectives, but also the moving ones on the water.

Mr. Bishop asked if there would be blackout areas within the area they are intending on covering.

Ms. Grant said to the east of cut-off road right next to the airport would be shadowed by the ridge, so they would use a co-located facility/an existing tower to cover that area.

Mr. Watson asked that given Verizon's experience with towers, why only one agency of the FAA had been contacted because he felt that it had delayed or at least partially delayed the process.

Ryan Wells, 22711 NE Cascara Circle, Redmond, Washington 98053, Verizon's Regulatory Specialist for the Pacific Northwest Region, answered that Verizon as a wireless company does not actually get involved with the FAA internal process; they apply with FAA rules and effectively wait on an answer. Their relationship with the FAA and the FCC is mostly what they advise Verizon to do and not the other way around.

Ms. Bennett questioned the effect the tower would have on future residents on Spuhn Island.

Mr. Walsh replied that most of those home sites will not be able to see the tower because of the restrictions on removal of vegetation and the way they are oriented. He noted that the City currently did not have a benchmark for visual impact, but felt that everyone on the team has tried to minimize the impact as much as possible, and this is an essential service that people in Juneau need.

Public Testimony:

Loren Domke, 965 Fritz Cove, Juneau, AK stated that he and his wife, Kathy Nielson live in the neighborhood of most impact. He urged the Commission to go forward very carefully. He felt that only one half of the argument had been heard. He noted that staff admitted that they cannot consider mitigation of the impact, but the Planning Commission can. He pointed out that this is not an Allowable Use in the zoning district but a Conditional Use that can be permitted only if the Use can go forward with no discernible impact on the harmony of the surrounding neighborhood. Another factor is that this is a high-end residential neighborhood and disagreed with Mr. Horan's assessment that the tower would not bring about a decline in home values. He also stated that the tower would destroy the profile line of Spuhn Island, contrary to the photographs that were displayed. He explained that there is a lot of flight activity by small planes at the **weigh** area which is known better to the locals. He stated that if the Commission were to delay this for a reasonable period of time, he would hire his own expert to take a look at some of those issues. He pointed to the watershed map showing Mount Meek and Auke Mountain as other potential areas that meet the requirements without visual impact and no flight pattern. He stated that there was a lack of notice and therefore the public is bound to have very general comments.

Steve Allwine, 2180 Fritz Cove Road, Juneau, AK, said that he wanted to commend Ms. Camery and the CDD for their hard work and attention to detail. He mentioned that as a property owner, and someone having quite a bit of experience with small planes, he generally agreed with the FAA as the appropriate thing to do. Although he appreciated Mr. Domke's comments

concerning lighting and the painting, the reality is that there are two lights on the dock on Spuhn Island that were insisted on by the United States Coast Guard and they flash their strobes in the winter and any time it is dark. On Auke Bay, there are lights on poles and the poles were intrusive in his view (e.g. Battleship Island, 100 feet tall, a wind shear tower). He went on to discuss the lack of notice issue and said if he remembers correctly, initial signs were posted for public hearing in May because he had transported the signs to Spuhn Island and he believed that there had been ample notice and opportunity for discussion. As for future development, he said that most of the lots will tend to face the opposite direction of the tower, because they would want the waterfront view. He opined that the placement of the tower has nothing to do with Verizon or WesTower but the reality is that this is an out of the way place; any further out, there is no power and the generator is only for auxiliary power.

Doug Wahto (via phone), Juneau, stated that he has been a lifelong resident and has been flying commercially and privately in Southeast Alaska for over 40 years; as a pilot for Alaska Airlines for 36 years, and prior to that had flown small aircraft throughout Southeastern and Northern Alaska. He currently has his own private aircraft. He explained that the tower is located within Class D Airspace, which is a 5-mile ring around the airport and the Juneau Tower controls all traffic within that 5-mile radius. In this controlled air space, under low weather and visibility conditions (VFR) Visual Flight Rule aircrafts can still operate, although under the control of the Juneau Tower, all they have to do is remain clear of clouds and maintain half-mile visibility, but traveling anywhere from 80 to 120 knots does not give a lot of time to react to certain obstructions. He noted that there are many days when the Mendenhall Peninsula is obscured with clouds and a lot of the smaller aircrafts transition around the end of the Mendenhall Peninsula, the south tip. So, traffic funnels either around or over Spuhn Island and he had seen planes pretty much at street level since they were transitioning around a lot in the island. He concluded by saying that flight standards' position was that unless the tower is lighted and painted, it would either have to meet code conditions or they did not feel it belonged there at all.

Mr. Watson asked when a tower of any sort is erected in the vicinity of an airfield, what notification process the FAA uses to make local pilots aware that there is something new in the area. Mr. Wahto said that he worked for flight standards and was not aware of any such communication process.

Ms. Grewe asked if in his opinion, with the light and the painting requirements on the tower, would there be an increased risk to pilots that perhaps don't frequent the area and were caught out there circling in poor weather. Mr. Wahto responded that would be hard to say but there was no guarantee that an aircraft would not fly into it even under the best circumstances.

Ms. Grewe asked if there were any other towers within the 5-mile radius where pilots routinely circled during poor weather.

Mr. Wahto replied that typically you would see people circling in the vicinity of Lena Point, which has a very prominent tower on it, and along Portland Island, George Rock and Outer Point.

BREAK 21:19 to 21:25.

Per Rules of Order, Chair Satre stated that the applicant would be given a chance to come forward and address some of the issues that had been brought up during public comment or take additional questions from the commissioners.

Mr. Walsh thanked the Chair and Commission Members. “The standard that you are judging this by has to be something that’s actually in the law, and the law does not say that post development, ‘it must have no discernible impact on its neighbors’. If that were true, then nobody could build anything. So, the question is whether it is deleterious to the point that it would cause loss of property value and you have been given plenty of proof that would not occur. Almost anything of any consequence goes through the Conditional Use Permit process. The Allowable Use Permit process effectively no longer exists. So, the Commission has been given wide latitude to explore a lot of things when a complicated issue comes before it, but that doesn’t mean that you can make up the rules as you go along and that is not the province of the public to suggest rules to be used that do not exist. I would remind you of what Ms. Camery said about the amount of notice and number of hearings this item had. This has been well known to the neighborhood for a long time, there is no lack of notice problem (one in the newspaper and the mailed notices to people within a mile). The suggested alternative locations, at least the ones I heard, would all be helicopter access required locations, which would not work for this situation. Mr. Wahto’s comments served to remind us that the aviation community would probably prefer that everything was flat as Kansas, but with the paint and the light they are comfortable or not exceedingly uncomfortable and not asking for rejection of the application.” Wireless is what the people want, so he thought that it was clear that they needed to do it as well they could, and he thought that this application was as well thought out as it can be, and he urged the Commission to go ahead and approve it tonight.

Public testimony closed.

MOTION: By Ms. Lawfer to approve USE2012 006 with the staff findings and the five recommendations listed in the staff report.

Mr. Watson addressed the Chair concerning notification to other airports in the vicinity of Juneau and suggested adding that the applicant notify each of the surrounding airfields within a 100-mile radius of Juneau.

Chair Satre stated that he could propose that as a friendly amendment but cautioned if it was within the purview of the Planning Commission to get into notification issues with the FAA.

Mr. Watson said that they could rephrase it to read, subject to the approval of FAA, if in fact they have a process of notifying small airfields, then certainly he would expect them to do it, but he was not sure they did.

Ms. Lawfer said that she was not opposed to a special condition, but believed that the FAA does send out routine and regular notifications to pilots.

Friendly Amendment:

Chair Satre suggested adding Condition 6: During the FAA registration approval process, the applicant shall work to ensure that proper notification is distributed through FAA protocol to affected air traffic. He went on to say that in his mind, this would be responsibility of the people who oversee the flight safety operations.

Ms. Lawfer said she accepted that as a friendly amendment.

Ms. Bennett was saddened by the visual impact the tower will have, but recognizes the importance of telecommunications in society today. She still thought there was an issue with new pilots or people who aren't familiar with aviation in the area that might get into trouble, but that was something for the FAA to deal with. She said she supported the motion.

Ms. Grewe spoke in opposition to the motion noting her concern on finding #5, "will the proposed development substantially decrease the value or be out of harmony in the property in the neighboring area". She stated that the staff report may have overstated Horan & Company's assessment because there is acknowledgement in the memo that cell towers interfered significantly with the Viewshed. She noted that Horan also admits to a comparability problem in his summary statement.

Mr. Medina said that he thought they needed to be careful qualifying or determining which Viewsheds are more valuable than others. He said that he lived in Auke Bay and that there is no way you can place a value on it. He spoke in favor of the motion because it was appropriate according to the Table of Permissible Uses, the notice requirement had been met, the proposed development would not materially endanger local aviation safety nor would it substantially decrease or be out of value of harmony with the properties in the neighboring area and it is also in compliance with the 2008 Comprehensive Plan.

Mr. Bishop stated that he shared Commissioner Bennett's feelings in that he was also saddened to lose their Viewshed but he also understood that the tower had to go somewhere and continued to say that he thought the impact would be nominal and so he was speaking in support of it.

Mr. Miller also spoke in favor of the motion and thought it had a positive impact on the community and didn't think it would ruin the view at all.

Chair Satre commented that the Condition #5 was key because it addresses all the aviation safety issues and how it affects nearby residences - protected safety on one hand, but impacting neighbors on the other. He appreciated Ms. Grewe's comments but did not feel that it would negatively impact property values. He also noted that during the FAA registration process, if the tower lighting and the marking do not meet with their standards, he felt comfortable that it will come back before the Planning Commission for review again. He appreciated the public's comments and noted that staff went overboard this time to make sure that there was enough notice before the hearing.

Mr. Chaney needed a clarification on the friendly amendment. Chair Satre said that the friendly amendment was for an advisory condition that during the FAA registration and approval process, the applicant would work with the FAA to ensure that proper notice had been given to affected air operators.

Roll Call Vote

Ayes: Lawfer, Medina, Bishop, Bennett, Miller, Watson, Satre

Nays: Grewe

Motion passes 7:1 for approval of USE2012 0006.

X. BOARD OF ADJUSTMENT

VAR2012 0014: A Variance request to allow a minor subdivision creating two lots on a portion of Auke Street that is undeveloped.

Applicant: Alaska Pacific Capital Co.

Location: Auke Street

Staff Recommendation:

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR2012 0014. The Variance permit, if approved, would allow for a minor subdivision on a portion of Auke Street that is undeveloped.

Staff Report:

Greg Chaney, Planning Manager, stated that he wanted to clarify that the applicant has owned this property for some time and when the sewer lines were brought into the Back Loop area, the applicant was charged for and paid for two sewer LIDs. There is a stream running in this general vicinity and the sewer lines were brought up to the stream and terminated, but the applicant paid for the sewer lines to be brought to their property. So, whenever a house is built on this property, the city is obligated to bring the sewer lines up to the property line and that will result in sort of a rough trail being built through the nature of construction.

Mr. Chaney stated that the property is just north of the Mendenhall Loop Road and it is actually accessed by Auke Street. It is in the D3 zoning district, 7.3 acres. The minimum lot size in this area is 12,000 sq ft, about a third of an acre. It was platted in 1939 as two lots with two different access ways (he uses the map to point to the two paths). In 1983, there was a subdivision done by adding this tier of lots and the lot line of one of the plots was vacated by a platting waiver. It was done through the Planning Commission, but it was not recorded with an official plat because rules were different and kind of vague back then. Since this property got added, the remaining lot had no access to a right-of-way.

The applicant or the property owner was assessed for two lots and paid taxes on two lots until current time. It was only when they started doing research on this that they realized this was actually one lot.

He also noted on the map that Little Auke Creek was not really mapped correctly, he explained the T-turnaround in the original subdivision, the anadromous stream that runs through it and where the water and sewer stops. The property owner paid for two services because everyone thought there were two lots there, so at some point when there is actual need for these lots, utilities will have to be extended.

He explained how far Auke Street is built at this time and suggested that the new lot line can be a little bit higher up than the old one, so that both lots will each have equal frontage on Auke Street. He again pointed out the confusion in the records regarding the lot lines.

One alternative to granting this subdivision would be doing a lot line adjustment if the property were to be sold to the adjacent property owners, with no new lots created.

The application does not comply with criteria 1, 2 and 6; it is not consistent with justice to other property owners, that public safety would not be preserved, and that there are not more benefits than detriments in the neighborhood. The applicant has provided their version of how these criteria have been met.

He summarized that basically, the applicant thought there were two lots. CDD staff went through the record and realized there is only one, the applicant would like to reestablish a lot line that was vacated in the past, but it does not comply with current code to do that, so a variance is needed. At the last Planning Commission meeting about a month ago, there were only 5 members and they could not come to a unanimous decision, that's why it has been continued.

Mr. Medina asked Mr. Chaney, with reference to Page 4, 49.25 Item C of the staff report where it talks about direct and practical access to a street maintained by an agency of government, he asked if this was a criterion that had not been met. Mr. Chaney replied that is correct.

Mr. Medina stated that on page 4 of the staff report, it states that the applicant would be required to either install water and sewer utilities or bond for it prior to the recording of the subdivision; he asked if this would be true if the variance were approved. Mr. Chaney responded that would not be required because they have already paid for the LID, it has just not been installed yet.

Mr. Miller following up on Item C, (...direct and practical access...) asked if it would be considered direct and practical access if there is a driveway that has fire apparatus access and turnaround that is constructed to International Fire Code Standards. Mr. Chaney answered that perhaps it could be considered direct and practical, but not maintained by an agency of government.

Mr. Miller noted that one of the staff recommendations on the approved Consent Agenda was for a driveway that was built down to a road that is maintained by an agency of government, but the

driveway has to have a fire apparatus access (Fire apparatus access and turnaround must be provided and shall be constructed to International Fire Code Standards prior to issuance of temporary certificate of occupancy). He queried what the difference was, if they were to construct it.

Mr. Chaney replied that there are two differences; one is that it was for five lots with all five lots sharing access. Second, he believes that they would be required to have fire access where that driveway would have to be constructed to that standard; however, all the lots front on a right-of-way maintained by an agency of government and are very steep, so they have designed kind of a winding driveway that takes care of the grade issues. He stated that it is a little easier when flat.

Mr. Watson asked why they required a turnaround in a lot that is not developed.

Mr. Chaney reiterated that this property was thought to be two lots for quite some time by all parties concerned because of the fact that the lot line had been vacated and was lost in the records. Thus, it has to be considered as a new case, creating a new lot or two lots from one, and they have to meet the current standards. One of the basic tenets of subdivision development is to provide safe access to the property for emergency vehicles and it has to be available year-round, which is why the maintenance requirement is present. So, if the lot line is drawn without providing emergency vehicle access turnaround as part of it, then it does not comply with the current code and will not be considered safe based on the current code requirements.

Mr. Miller wanted to clarify that if there was a need for sewer lines, they will have to be extended to the property line, so that the owners of those lots could have them because they have been paid for by the LID.

Mr. Chaney replied that they are provided for through the LID process, but just haven't been actually constructed.

Mr. Miller noted that when Windfall Subdivision was constructed, it was approved and platted, and that approved plat shows a hammerhead that is supposed to go all the way over to this piece of property. Mr. Chaney replied that was correct.

Mr. Miller queried then whose fault was it that it was not built, the applicant or the CBJ.

Mr. Chaney replied that he did not know whose responsibility it was for constructing that last bit of right-of-way, but the way it is now, was constructed by a developer in the past and accepted for maintenance by the City. It is definitely not the fault of the property owner (the applicant), as this is a different subdivision that they weren't involved in. He noted that as far as taking a lot and dividing it into two, the current code requires that a right-of-way maintained by an agency of government be brought up to that right-of-way; but it does not say who has to do it.

Mr. Miller asked if the subdivision would still require a variance had the hammerhead been extended as far as it was supposed to be, as it was platted, and CBJ had accepted this to be maintained. Mr. Chaney responded that it would not.

Mr. Medina questioned if there was another alternative on this parcel with a lot line adjustment that would not require a variance.

Mr. Chaney explained that any lot that exists that borders this property could be extended into it, that would not create a new lot and all of those lots will have frontage on the right-of-way, so it would not require a variance.

Mr. Watson mentioned the insurmountable difficulty in getting four property owners to extend their property line all the way up.

Public Testimony

Malcolm Menzies, 19005 Glacier Highway, the applicant, stated that he wished to correct one thing that Mr. Chaney had mentioned.

He stated that he still pays taxes on two lots. He did not know about the subdivision until he was trying to sell the property to the adjacent landowner. They researched the property and found out that there was a subdivision that was not properly recorded both by the Borough and by himself. Regarding getting the four property owners to extend their property, knowing the amount of time it will take, he just said that he is a very mature man trying to dispose of his property.

Chair Satre asked Mr. Menzies if there was anything specific he would like to address with regards to the alternative findings.

Mr. Menzies stated that everything has already been addressed in the application and he would try to answer any questions that the commissioners had.

Mr. Miller asked Mr. Menzies to elaborate on a comment that he had made at the last meeting, "...the people who are going to buy this lot are not even going to use that access across the stream..."

Mr. Menzies used a map to explain the layout of the property and how they would access the land from each side of the property.

Ms. Bennett asked if they were buying all of the property or just the bottom half. Mr. Menzies replied that they are planning on buying all 7-1/2 acres.

Erin Howell, 11450 Joanne Way, said that she and her husband are potential property buyers. She spoke on the criteria of consistency with justice to the other neighboring property owners and the one on more benefit than detriment to the neighborhood. She assured the Commission that their plan for the property is going to be consistent with neighboring property owners. They are going to be large wooded lots and there will not be much change to the neighborhood. She feels that the neighborhood would prefer that than having a larger subdivision.

Public testimony was closed.

Mr. Miller asked staff, if there is just one lot, and someone wanted to build a house while having a driveway more than 150 feet that goes out to a road, would they have to build a driveway that would meet the IFC requirements?

Mr. Chaney answered not if it was just a single family residence built on the property. In his understanding; it takes three dwelling units sharing a driveway that needs to be built to the fire standards.

Ms. Grewe asked Mr. Chaney if he could go back to the presentation because she wanted to look at the graphics that spoke to Commissioner Miller's comments that Auke Street should have been extended but it was not. She asked about the measurement of the purple area shown on the map. Mr. Chaney said he did not know exactly how many feet it was. Ms. Grewe asked if it ends before the creek. Mr. Chaney replied that it definitely does. She asked if a variance would have been necessary had the entire purple area been constructed to which Mr. Chaney replied that they would not have needed a variance if it was constructed and accepted for maintenance.

MOTION: By Mr. Miller to approve Variance 2012-0014 with the following new findings on 1, 2, and 6.

1. That the relaxation applied for would give substantial relief to the owner and it would be more consistent with justice as two other property owners. Granting this variance would give substantial relief to the owner and almost everybody in town has had roadways built to where they are supposed to be built to and those property owners are able to subdivide their lands according to the laws and code. This property owner cannot because there was a section of the road that was not built that was supposed to be built. So, by granting this variance, it would be consistent with justice to other owners.

2. That relief can be granted in a fashion that the intent on this title will be observed in the Public Safety and Welfare be preserved.

Condition: I would basically mirror the recommended condition that fire apparatus access and turnaround must be provided and shall be constructed to International Fire Code standards, prior to the issuance of a temporary certificate of occupancy. I would make a condition that if the folks build a house back there, that their driveway is sufficiently built to code, so that they have safe access to serve fire safety for their house. So, that would preserve the Public Safety and Welfare.

3. Grant of the variance would result in more benefits than detriments to the neighborhood. I think that it is no secret that land is hard to find and here is a parcel that is just sitting there flat, it might be wet, but eventually it may end up being a new subdivision some day and that section of road may be built and we could get some more affordable housing or at least some different types of housing out of the deal and I think that we should move this forward and taking this step is definitely of benefit to the neighborhood.

He also backed up the motion with the reasoning, "Dan Jager, the Fire Marshall, states that 'Regardless of whether or not it is a true city street or if it serves three or more structures on the same stretch of road'. He agrees with Ron King that this would have to fulfill the IFC requirements for adequate turnaround for any road that is greater than 150

feet in length. So, by requiring the condition, we preserve Public Health and Safety. Mr. Jager agreed with that.”

The members discussed the condition under criteria 2 and the construction of the access way. Mr. Miller stated that the access can be anywhere but the condition has to be met.

Ms. Bennett asked what would happen regarding the taxes that Mr. Menzies has been paying for the two lots and what the City's responsibility was in terms of part of the road that had not been finished.

Mr. Medina said that in all due respect to Ms. Bennett, taxes didn't have any bearing on this variance request. He also spoke against the motion because the newly created lot would not have direct access from a right-of-way maintained by an agency of government and that he had not heard the word "maintained" in Mr. Miller's condition.

Ms. Grewe mentioned that just because there was an error decades ago, she would have a hard time penalizing the current property owners for that.

Mr. Watson stated his support for Mr. Miller's motion.

Roll Call Vote

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

Nays: Medina.

Motion passes 6:1 for approval of Variance2012 0014 with the new analysis, findings and one condition.

He thanked everybody for being there and adjourned as a Board of Variance and reconvened as the Planning Commission.

XI. OTHER BUSINESS

XII. DIRECTOR'S REPORT

Mr. Hart mentioned they have been gathering information for the retreat from past records and what their priorities have been. He also looked at the top 10 things the Assembly wanted to accomplish and mentioned that two or three of those could be accomplished in Auke Bay, to have a world class climate research station in the next 20 years, work with the University of Alaska to make housing on campus possible etc. He hoped that such projects will help the Assembly and the Planning Commission to concurrently achieve a few common goals.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Bishop said that the Lands Committee met and discussed a foreclosure in the Indian Village and there were two properties that they were discussing turning over to Tlingit and Haida and the

Lands Committee recommended the transfer. This will be transferred to Tlingit and Haida at a tax due rate only, not at an appraised rate; it would be going for \$1700.00 rather \$30,000.00 which bothered him. The other issue that they discussed was the new house bill that allowed for communities to defer taxes for a period of up to 5 years for subdividing properties. He was very disappointed by the bill because he thought that deferring taxes only created a liability for a developer and it could be of some help, but marginal at best.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Ms. Bennett said that she was pleased with Voelker's design on the building for the area on Glacier Highway and 9th Street, which would really improve both Casey-Shattuck area and the area of Glacier Highway that leads up to the High School. She mentioned thinking about the blue folder item by Mr. Chaney, in reference to the Willoughby Area and the high rises that were going to come in and displace people. She hoped the Assembly and Commission would talk about that issue.

Mr. Watson thanked Ms. Camery for all of her proactive work.

Chair Satre and Ms. Bennett appreciated their efforts and commended the outstanding job done.

XV. ADJOURNMENT

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

With no objection, the meeting adjourned at 9:58 p.m.