

## MINUTES

### **PLANNING COMMISSION** City and Borough of Juneau **Mike Satre, Chairman**

REGULAR MEETING  
**November 26, 2013**

#### **I. ROLL CALL**

Mike 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:** Mike Satre, Chairman; Dennis Watson, Vice Chairman; Nathan Bishop, Jerry Medina, Dan Miller, Nicole Grewe

**Commissioners absent:** Ms. Lawfer, Mr. Haight

**A quorum was present**

**Staff present:** Hal Hart, Planning Director; Travis Goddard, Planning Manager; Beth McKibben, Senior Planner; Ben Lyman, Senior Planner; Rob Steedle, Deputy City Manager; Greg Chaney, Lands and Resources Manager

#### **II. APPROVAL OF MINUTES**

- November 12, 2013 – Regular Planning Commission Meeting

**MOTION:** *by Mr. Miller, to approve the meeting minutes of the November 12, 2013 regular Planning Commission meeting, with any minor corrections or modifications provided by any Commission members or by staff.*

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

#### **III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None**

#### **IV. PLANNING COMMISSION LIAISON REPORT**

Mr. Nankervis reported that last week the Alaska Municipal League met and held its conferences in Anchorage. The majority of the Assembly attended the conferences, during

which Assembly Member Karen Crane was elected as President of the Alaska Municipal League (AML) for the forthcoming year.

The Assembly is currently working its way through three property tax exemption appeals. It heard the second of three appeals at its meeting on November 25. The Assembly is nearing completion on the Disturbing the Peace ordinance. The Assembly is also currently hearing the Harris appeal on the Commission decision regarding the rezone request.

Finally, the Human Resources Committee made numerous board appointments to the Historic Resources Committee, the Sustainability Committee, and the Human Rights Commission, with eight applications submitted for three board seats for Bartlett Regional Hospital, which will be appointed the evening of December 5. There have been so many applications for the vacant Planning Commission seat that it will be filled on a separate night.

**V. RECONSIDERATION OF THE FOLLOWING ITEMS - None**

**VI. CONSENT AGENDA**

AAP2013 0019: A Conditional Use Permit for an accessory apartment on a substandard sized lot.  
Applicant: Halibut House Properties, LLC.  
Location: 3820 North Douglas Highway

**Staff Recommendation**

Based upon the proposed plan (identified as Attachments B, C, and D), and the findings and conclusions stated above, the Community Development Department Director **RECOMMENDS** the Planning Commission **APPROVE** the request.

USE2013 0035: Conditional Use permit for overflow parking of vehicle inventory on land zoned Light Commercial.  
Applicant: Alaska Rent A Car, Inc.  
Location: Jordan Avenue

**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 parking lot not accessory to another use on the lot within a Light Commercial zone.

The approval is subject to the following conditions:

- 1) The vegetative cover shown on the plans submitted shall be maintained with live vegetation as shown in the approved plans. Proposed new vegetative cover shall be installed within one growing season of permit approval.
- 2) A sight-obscuring fence at least 4 feet tall shall be installed along the perimeter of the site. Advisory: Fences over six feet tall require a building permit prior to construction.

No sight obscuring fence more than four feet tall may be constructed closer than 20' from the edge of a traveled way; on corner lots, sight obscuring fences are limited to three feet in height within 20' of intersecting traveled ways. CBJ §49.25.430(4)(L)

- 3) Prior to issuance of a building permit the developer shall submit to the CBJ Engineering Department, a detailed drainage plan which includes provisions for managing storm water run-off during construction and which details the drainage facilities to be included as part of the development. No building permit shall be issued until such plans are deemed adequate and approved by the CBJ Engineering Department.

**MOTION:** *by Mr. Watson, to approve the Consent Agenda with staff's recommendations, and he asked for unanimous consent.*

The motion was approved.

**VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS** - None

**VIII. UNFINISHED BUSINESS** - None

**IX. REGULAR AGENDA**

AME2013 0009: Requested zone change from Waterfront Commercial to General Commercial of the Auke Bay Post Office property would allow for remodel of existing office space into 7 apartments; residential property on north side of Glacier Hwy. would also be re-zoned to General Commercial from Light Commercial.

Applicant: Northwind Architects  
Location: 11893 Glacier Highway

**Staff Recommendation**

Staff recommends that the Planning Commission recommend that the Assembly amend the zoning maps as provided CBJ 49.25.110(c).

Mr. Bishop stated that he would like to postpone this item until there is input from the newly-formed Auke Bay Steering Committee. He added that this is a key piece of property in Auke Bay, and that it should be considered by the steering committee.

Mr. Satre said if Commissioners wanted to pursue Mr. Bishop's idea, his quick impression of the situation was that there should first be a motion to suspend the rules of order. If that motion was successful, to then have a motion to continue. He added that he would certainly welcome the staff's opinion of the process.

Mr. Lyman said the application has to be processed under the code that is in effect when the application is made. From a regulatory standpoint, nothing would be gained from the Auke Bay Steering Committee review, said Mr. Lyman. The applicant submitted their application in July,

before the Steering Committee was formed, said Mr. Lyman.

Mr. Bishop said that he did want to postpone the rezone request and he would move that the Commission did so until such a time that the Steering Committee for the Auke Bay sub-area plan has time to make comments to the Planning Commission on that particular area that is under consideration.

Mr. Satre said he felt it would be appropriate to suspend the rules of order to consider that motion first.

**MOTION:** *by Mr. Bishop, to suspend the rules of order to be able to consider a motion to continue AME2013 0009.*

A motion to suspend the rules of order requires five affirmative votes, said Mr. Satre.

**ROLL CALL VOTE:**

Ayes: Grewe, Bishop, Watson, Satre

Nays: Miller, Medina,

**MOTION FAILS**

STAFF REPORT

Mr. Lyman explained in his staff report that the property under consideration is the Auke Bay Post Office property, proposed to be rezoned from Waterfront Commercial to General Commercial. There is also a second request to rezone the Iverson property, across the street, from Light Commercial to General Commercial, concurrent with the Post Office rezone.

The Post Office is leasing less of the vacant space than it used to. The building is currently maxed out in terms of the allowable number of dwelling units, which is eighteen units per acre. If the Post Office does not renew its lease, General Commercial zoning would allow for the entire building to be converted to residential use. The rezone to General Commercial would allow up to fifty residential units per acre.

Since the zone request is for less than two acres, it must be for the expansion of an existing zone. That is why the Iverson property has been included in the rezone request. There is no new development proposed for the Iverson property at this time, explained Mr. Lyman.

Mr. Lyman provided a table in his staff report showing the similarities and differences of all available uses from the Table of Permissible Uses for Light Commercial (Iverson Residence), General Commercial (proposed rezone) and Waterfront Commercial (Post Office building).

Waterfront Commercial is limited to boat and marine use, with more general uses largely prohibited, except for those related to marine craft. Waterfront Commercial is currently

limited to 35 feet in height, while General Commercial allows construction up to 55 feet, and Light Commercial to 45 feet. Most of the other standards remain the same for the three zones, except the front yard setback changes from 25 feet in Light Commercial to 10 feet for the other zones. All three zones require the same minimum lot width and size, explained Mr. Lyman.

Mr. Lyman said the Community Development Department (CDD) staff received very few comments against the rezoning request. They did receive one comment from the CBJ Lands and Resources office recommending that there be a special restriction put on the property limiting the height to the current 35 feet. Mr. Lyman explained that Staff recommends against putting any special conditions on the rezone as that would constitute spot zoning. That would be a unique zoning district on a property less than two acres, so they recommend against that.

In the Post Office building, there would be seven new units in the current vacant space, three one bedroom units and four studio units. The Auke Bay Condominiums are adjacent to the building, with Auke Bay School across the street, the Auke Bay Fire Station across the street, the Iverson residence, and the RV park.

There was a neighborhood meeting October 14, said Mr. Lyman, and this meeting constitutes the public hearing before the Commission. If the rezone request is approved by the Commission at this meeting, it would most likely be before the Assembly in January, and effective 30 days later, if approved.

#### QUESTIONS FOR STAFF

Mr. Watson asked about the height of the Auke Bay Towers, commenting that they appeared to be higher than 35 feet.

Mr. Lyman answered they were two stories on the sides, so perhaps about 25 feet on the sides, maybe a little bit more.

Mr. Watson commented that on occasion a major thoroughfare dividing properties is a major decisive factor as to whether or not a zone can be changed. Mr. Watson said he noticed in this case that this is not being used as a reason for denying a rezone.

Mr. Lyman responded that quite often zone changes involve considering various shades of grey. He said in this case there is a Waterfront Commercial zoning district in a Marine Mixed Use (MMU) land use designation in the Comprehensive Plan. They compared the Waterfront Commercial zone with what the MMU Comprehensive Plan land use designation allows. They are not really in sync, said Mr. Lyman. The MMU designation calls for many more general and neighborhood uses than Waterfront Commercial allows. This property is landlocked. It is not on the water, it is significantly above the water. Mr. Lyman said if this was a significant divided highway that really posed a barrier, then it would be more justifiable using it as a distinct boundary. Mr. Lyman pointed out that the only crosswalk in the entire corridor connects the two properties proposed for rezone. The code specifies that zone boundaries should follow geographic features, roadways or property lines. Mr. Lyman said he did not read that to say that there must always be different zoning districts on opposite sides of the road.

Mr. Medina asked how many parking spaces were reserved (required) for the post office.

Mr. Lyman said he was not sure, but that level of detail would be pursued with the use permit, not necessarily the rezone request. He said he did recall that the number of parking spaces required would actually go down, based upon the downsizing of the post office. He added that the State Department of Transportation and Public Facilities (DOT&PF) was actually excited about this proposal because it would likely reduce the amount of traffic entering and exiting the property. When the change of use application comes in, they would like to restrict the property to one driveway.

Gerald Gotschall of Northwind Architects said what the Commission sees in their packets indicates all the plans for the post office property at this time. They have no other plans for the development of the property at this time.

Mr. Watson asked what the square footage was of the existing post office.

Mr. Gotschall said he did not know, but that it has been reduced to about 4,000 to 5,000 square feet from around 13,000 square feet.

#### PUBLIC TESTIMONY

Greg Chaney, Lands Manager for the City and Borough of Juneau, which owns the Fire Station property across the street, commented that zone changes are for the long haul. He said the building that is there now could go away. Giving that property the right to build 55 feet high in front of the city property would put the city at a disadvantage. If the fire station goes away and the city wants to do something else with the property, said Mr. Chaney, or if it wants to sell that lot, it would prefer not to have the lot between it and the water have a higher height limit than its property.

Richard Harris commented that if this was a Marine Mixed Use designation on the Comprehensive Plan maps, then it seemed it needed to be a marine-related zoning. He said General Commercial is not a marine-related zoning. He said he was not sure if it was a legal zone change. He said he believed for there to be a zone change for property that was less than two acres, he believed the property needed to be adjacent to the zone change that is being extended. He said he was hoping he could get that question answered now, since he could not get it answered earlier.

Mr. Lyman said he would read from his earlier response sent to Mr. Harris at 2:50 p.m. the day of the meeting. Part of his response included quoting Marine Mixed Use property designations, which allow for non-marine related uses, and deducing that the General Commercial zoning district is much more consistent with this designation than is the Waterfront Commercial zoning district, because the Waterfront Commercial zoning district prohibits many of the non-marine related uses called for in the MMU designation, as well as having a much lower residential density limit than is called for in the MMU designation.

Kristine Trott, a resident who travels through the Auke Bay area every day, said she questions

the presumption that the highway through Auke Bay is not a major highway. She said it is a major highway for Juneau. She said these are not two contiguous pieces of land, and that by the map it would look like spot zoning.

Mr. Lyman said he wanted to point out that the way the city cartographer had drawn the map up for display on the wall showed the Post Office property as non-contiguous to the property across the street. However, said Mr. Lyman, in the zoning map, the zoning district goes to the center line of the road, so it would be contiguous to the Iverson property across the street.

Mr. Gotschall concluded by saying they were doing nothing to the building at this time. For the life of the building it would remain a two story building as it is now.

Mr. Miller asked if the zoning was changed to Light Commercial, would it meet his needs?

Mr. Gotschall concurred, stating he thought it would meet their immediate needs, but that the rezone to General Commercial would meet their needs years down the road, and they would not need to go through the six month process again.

**MOTION:** *by Mr. Medina, to approve AME2013 0009 with staff's findings and analysis.*

Mr. Bishop said he would like to make a subsidiary motion that this be forwarded to the Auke Bay Area Plan Steering Committee for its recommendation.

Mr. Watson said that he recognized Mr. Bishop's concerns. He thought it would help to receive input from the Auke Bay Steering Committee. Mr. Watson said he would encourage that this be the first topic the committee take up, because he felt the applicant was deserving of as prompt response as possible.

Mr. Satre asked if a schedule has been laid out for the Steering Committee meetings. Mr. Lyman said he believed it was Wednesday, December 4, from 6:00 – 8:00 p.m. in Room 221 in the Egan Classroom Wing at the UAS Campus.

Mr. Medina spoke against Mr. Bishop's subsidiary motion, saying that the right of property owners to proceed with development including requesting that the properties be rezoned is not subject to moratorium or other restriction while the planning process is underway.

Ms. Grewe affirmed that if the motion passed to await input from the Steering Committee, that the rezone request would still adhere to the rules in effect at the time of the request. Ms. Grewe said in that case she was in support of Mr. Bishop's motion. She said it was important to empower neighborhoods to plan for themselves, and to make it apparent that opinions matter to this board.

Mr. Miller asked if a staff member was assigned to the Steering Committee.

Mr. Lyman said it would be himself or Ms. Boyce. He said that minutes would be taken.

**ROLL CALL VOTE:** *(that this be forwarded to the Auke Bay Area Plan Steering Committee for its recommendation)*

**Ayes:** Grewe, Bishop, Watson,

**Nays:** Miller, Medina, Satre

**MOTION FAILS**

Mr. Watson said he would like to make an amendment to the main motion that the height be left at 35 feet and not 55 feet. He said he thought that 55 feet was rather onerous set right where it was on the waterfront.

**ROLL CALL VOTE:**

**Ayes:** Grewe, Bishop, Watson

**Nays:** Miller, Medina, Satre

**MOTION FAILS**

Mr. Bishop spoke against the main motion, saying he felt the Commission was doing a disservice to the Steering Committee when they take up a zoning change in the district in which they have been waiting so long to get a sub-area plan for.

Mr. Miller said it would not be a short time to wait for the rezone request. It would probably be a six week delay for the applicant. He said he wondered if Mr. Medina would consider changing the motion to Light Commercial as a friendly amendment. It would expand the zone to the other side, said Mr. Miller. It would also meet the concerns of the CBJ Land's Manager. It would be a little less than what is being asked for, and it would enable the developer to proceed with his development.

Mr. Medina said he would not consider this as a friendly amendment.

**ROLL CALL VOTE:** *(on Mr. Miller's amendment)*

**Ayes:** Miller,

**Nays:** Medina, Grewe, Bishop, Watson, Satre

**MOTION FAILS**

Ms. Grewe spoke in opposition to Mr. Medina's motion and repeated her comments earlier about the importance of neighborhood participation in the planning process. She said she did

realize that putting this issue before the Auke Bay Steering Committee would mean a delay, but she felt it was well worth the delay.

Mr. Bishop also spoke again against the motion. He said this rezone could result in potentially big changes to the community, and that it was well worth a community decision.

Mr. Watson spoke against the motion as well. He urged Mr. Bishop, as the Commission liaison to that committee, to make this item the first item on the list to be dealt with.

Mr. Medina said he was not downplaying the role of the Auke Bay area sub-committee, or the work they were about to do. He said he did not think it was fair for the applicant to be caught having to wait on what the newly-formed committee would have to say.

Mr. Lyman said the agenda for the December 4, Steering Committee meeting has already been set and noticed. He said they may be able to adjust the agenda at this point but he did know if the clerks have done the ten-day ad. Mr. Lyman added that if the application was denied the applicant would have to re-apply in January and in effect start the whole process over. They could not apply for something essentially the same as something they had applied for in the previous two years.

Mr. Bishop made the motion to continue the main motion until there was more information from the sub-area Steering Committee meeting.

Mr. Miller said that he felt it should be continued to the next available meeting after the Steering Committee meeting, which is January 14. He said it could be continued again if necessary, but at least if January 14 was named as the date, there was a firm date set for the process.

**MOTION:** *by Mr. Bishop, to continue the main motion until there was input from the sub-area Auke Bay Steering Committee, tentatively at the Planning Commission's January 14 meeting.*

**ROLL CALL VOTE:**

Ayes: Miller, Grewe, Bishop, Watson, Satre

Nays: Medina

**MOTION PASSES**

AME2013 0011: Request to rezone USS 3246 Tracts 1A, 2A1, and 2A2 from D5 to D15.  
Applicant: Patrick McMurtrie  
Location: 4670 Glacier Highway

**Staff Recommendation**

Staff recommends that the Planning Commission find the requested re-zoning to be in

conformance with the land use maps of the Comprehensive Plan, and recommend that the Assembly amend the zoning maps as provided CBJ 49.25.110(c).

STAFF REPORT

Mr. Lyman told the Commission the three lots up for rezone from D5 to D15 lie directly across from the Pioneer's Home. Abby Way is the adjacent Street, with Mountainside Estates the adjacent housing development in the area.

Mr. Lyman said the Comprehensive Plan refers to this area as Medium Density Residential, characterized by urban residential lands for multi-family dwelling units at densities ranging from five to twenty units per acre. Any commercial development should be consistent of a scale consistent with a residential neighborhood.

The adjacent area, including Abby Way and Mountainside Estates, is designated Urban Low Density Residential, characterized by urban or suburban lands, developed with detached single family units, with duplex, cottage or bungalow housing, in addition to other types of homes attached to permanent foundations at densities of one to six units per acre, said Mr. Lyman.

The D5 Residential District is intended primarily to accommodate single family and duplex residential development at a density of five dwelling units per acre. The D10 and D15 Residential Districts are intended primarily to accommodate multi-family residential development at ten and fifteen units per acre respectively. These are relatively low density multi-family districts, said Mr. Lyman

Mr. Lyman displayed excerpts from the Table of Permissible Uses for the zoning districts, as well as the Table of Dimensional Standards. When two properties of different zones abut each other, the property requiring the higher minimum setback is the property which will carry the setback requirement. Mr. Lyman said one possible development scenario for the applicant is for zero lot line homes. A few of the lots shown in the potential development scenario in the application packet do not meet the minimum depth or setback requirement, said Mr. Lyman, so there will be at least a few changes.

Light manufacturing is allowed on a very limited basis within D15 zoning, explained Mr. Lyman. It is defined as an activity that does not have any off-site impact. Smaller theaters, healthcare clinics, day care centers, and small restaurants less than 1,000 square feet without drive-through service, would qualify as allowable commercial activities within a D15 zone. Within a D5 zone, day animal services, grooming, walking and daycare are allowable, but are not allowable within a D15 zone. Each zone has its potential impacts, said Mr. Lyman.

This rezone request has undergone agency review and a neighborhood meeting, and has also been before the Commission in 2008, said Mr. Lyman, with six recommended conditions. However, said Mr. Lyman, when they looked at the six conditions with the law department, they found five of them to be unenforceable for legal reasons, and the sixth condition which split the lot; part into a D5 zone and part into a D15 zone, was inconsistent with Title 49, said Mr. Lyman, which states that roads or property boundaries are to be followed when property

district boundaries are created.

Mr. Watson asked if highway access was a DOT&PF issue and Mr. Lyman acknowledged that it was.

#### APPLICANT

The applicant, Mr. McMurtrie, said his intention for developing the property was initially to do it all himself. But this is not going to be possible, and the cost of just developing the road property is going to be astronomical, he said. The property is very steep; and covered with second growth.

The high cost of property development is the reason he is requesting the D15 zoning, said Mr. McMurtrie. He wants to be able to build homes with common walls.

#### PUBLIC TESTIMONY

Abby Way resident Amy Skilbred said she did not know what was going to be developed on the property. She said the previous conditions in 2008 that were found to be untenable were to make the neighbors feel better about the development; the 100 foot setback and the 25 foot greenbelt.

Area resident Mr. Brooks said he was not opposed to any development in the area. Then he went on to say that he wanted conditional zoning as an option, although he did not say what kind of conditional zoning he was requesting. He said he would like neighbors to have a say in what kind of development took place in the area.

Mr. Watson asked Mr. Brooks if he had a fence on his property line.

Mr. Brooks said that he did not.

Area resident Wayne Stevens spoke in favor of the rezone request. He said the applicant should be commended to be willing to take a risk. He said the fastest way to increase affordable housing in Juneau is to increase the inventory of all housing types. He said this property is adjacent to higher density zoning, it is on transit routes and on a high traffic highway. It is cost effective for a developer to access sewer, water and electric power.

Sam Deal said he is a first time home owner who lives in the area. He said he was raising issues which had already been brought up for the record. He said that some of the setbacks shown on the potential development plan were off, including the ones which affected his house. He also expressed his concern about diminished value to the homes in the area and about any effect the development would have on habitat in the area.

Kristy Germain wanted to know if she could request a rezone of her piece of property that was already zoned D15 in the area to D5. The answer was that she could not. Her property is in the midst of D15 area. She could not request a rezone of a little piece of property sitting in the midst of an area already zoned something else, since her property was under two acres,

explained Mr. Lyman.

Richard Enriquez, owner of the largest lot on Abby Way, expressed concerns regarding the setbacks and environmental concerns about the forest, also about any potential drainage into Vanderbilt Creek. He also expressed concerns about the effect of development on the wildlife. He said whenever there is development the bear is always the one to be taken out of the equation.

Area resident Robert Provost said that he shared the concerns of his fellow neighbors. He said he did not think the change in zoning would not change the area that much. But if the area had already been rezoned to D15, he would have purchased his home in another neighborhood. He said he wanted to go on the record as being opposed to the rezoning.

Abby Way resident Michael Studt asked if there was an Environmental Impact Statement required at any stage of development.

Mr. Lyman replied that neither the State of Alaska nor the City and Borough of Juneau (CBJ) require an environmental analysis or environmental impact statement requirements. But there is the Coastal Management program and there are CBJ habitat provisions and code which apply to individual developments. Then there are also the federal permits and approval processes that must be followed, said Mr. Lyman. Those regulations apply to a development proposal when one is being considered. Mr. Lyman distinguished the situation by explaining that the rezone request is not a development, therefore, those regulations do not kick in at this point in the process.

Mr. Studt said that he would like to go on record that he was in favor of the proposed rezoning due to the fact that the City and Borough of Juneau is in very big need of responsible and affordable housing.

Mr. McMurtrie said he sympathized with the neighbors in the area of his proposed rezone. He said if he lived in the area he would be worried as well. He said he felt the neighbors are protected because of the slope of the land. It is so steep it would be very difficult to build near the back of the lots due to the steep slope. Mr. McMurtrie said his property does not drain into Vanderbilt Creek. It drains into the estuary along Glacier Highway where the Coast Guard Building is. He added there are no active eagle nests on the property.

**MOTION:** *by Mr. Bishop, that this rezone request (AME2013 0011) be forwarded to the Assembly with a positive recommendation for approval with staff's findings and recommendations.*

Speaking in favor of the motion, Mr. Bishop said we are in need of housing in this community, and in need of higher density housing on well-served roads. Mr. Bishop said this area is served by served by sewer and water, and is in the center of the community.

Mr. Medina also spoke in favor of the motion. This rezone request is substantially consistent

with the Comprehensive Plan and associated land use maps, said Mr. Medina.

Mr. Satre said the Commission has worked very hard to look at transit center development, and higher density development along existing transit corridors to fit with the Comprehensive Land Use Plan. Increasing the density of this property from D5 to D15 fits with the most recently adopted Comprehensive Land Use Plan, and it fits the goals of the City as a whole, said Mr. Satre.

Mr. Satre said the Commission did appreciate the neighbors providing their input on this, and that involved neighbors did make a difference in development. He said the neighbors should know and remember that any development that will happen in this area will be subject to a public process with likely neighborhood meetings, with the actual subdivision requiring a public hearing.

Mr. Lyman interjected to state that minor development, such as of a single residence or two, would not be subject to a public hearing.

With no objection the motion was approved.

AME2013 0015:        Rezone 82 acres of RR to a mixture of Industrial, Commercial and Rural Reserve.  
Applicant:            Bicknell, Inc.  
Location:             Honsinger Pond Area

**Staff Recommendation**

Staff recommends that the Planning Commission adopt the Director's analysis and findings and recommend the rezone request to Industrial be approved. Furthermore staff recommends that no portion of the site be rezoned to Light Commercial.

STAFF REPORT

Ms. McKibben reported that this request is to rezone 82 acres of Rural Reserve land to a mixture of Industrial, Light Commercial and Rural Reserve. This land, commonly called Honsinger Pond, is located across Egan from Fred Meyers, and at the end of the Airport runway. The Comprehensive Plan designation for this property is Resource Development. City water and sewer are available, and access to the property is from Yandukin Drive.

The applicant had scheduled a rezone request that was scheduled to come before the Commission in December of 2012, explained Ms. McKibben. That request was to rezone the entire acreage to Industrial and Commercial or Industrial, Ms. McKibben could not recall exactly. Regardless, that request was subsequently withdrawn by the applicant, she said.

They returned with a map amendment request to amend the maps of the Comprehensive Plan to a mixture of Resource Development, Industrial and General Commercial. With six commissioners voting, the Commission had a tie vote which resulted in a failure to approve the map amendment request. That action was appealed to the Assembly. In the meantime,

questions were raised about the legal standing of the body to decide map amendment questions. The applicant and the Borough signed an Order of Dismissal regarding the issue, said Ms. McKibben.

Currently, rezones must be in “substantial conformance to the maps of the Comprehensive Plan”. Previously, rezones could “not be in violation to maps of the Comprehensive Plan.” Ms. McKibben said the Comprehensive Plan states that land is to be managed primarily to identify and conserve natural resources until specific land uses are identified and developed. The area outside the study area of this Comprehensive Plan is considered to be Resource Development, said Ms. McKibben. She said the Comprehensive Plan states that as resources are identified or extracted from these lands they should be redesignated or rezoned appropriately.

The Comprehensive Plan reads that land uses around airports are typically industrial designations because they are more tolerant of the impacts of airport noise, dust, fumes and traffic. In Juneau, said Ms. McKibben, residential and commercial uses have encroached into industrial buffers surrounding the airport.

The applicant has requested that approximately 26 acres be zoned to Light Commercial, with approximately 20 acres on the site be zoned Industrial, with the remaining land remaining Rural Reserve. The definition of Rural Reserve, said Ms. McKibben, is that it remain primarily in public ownership, managed for the conservation and development of natural resources for future community growth. In addition recreation cabins, lodges and small seasonal recreational facilities may be allowed.

Ms. McKibben said that Light Commercial is located primarily adjacent to residential areas, and it allows for a wide variety of uses, but not as many as through General Commercial zoning. An Industrial district is intended for activity such as manufacturing, processing or repairing and assembly of goods.

Heavier uses could take place such as a gas station or a hotel within a Rural Reserve area with a Conditional Use permit, said Ms. McKibben.

Setbacks for Light Commercial and Rural Reserve Zoning are not too different, said Ms. McKibben, while setbacks for Industrial zoning are much less if any at all. Ms. McKibben said if the Airport was not a publicly owned facility, the Comprehensive Plan would probably show the area as Industrial.

A restaurant would be allowed in the Rural Reserve zoning district, said Ms. McKibben, but to be allowable it would have to be associated with a site-specific feature.

Ms. McKibben said the Comprehensive Plan makes reference to the Scenic View Shed quite a bit. She said it is very clear that the Scenic View Shed refers to publicly owned land.

Ms. McKibben said there is a recommendation in the Comprehensive Plan to purchase this property. It refers to acquisition of the Honsinger Pond land outside of the pond area for a natural area and scenic view corridor. Ms. McKibben said there is a line item in the Capital Improvement Projects (CIP) list for purchasing this land, but no funds attached to the line item.

Ms. McKibben said without going into the detail of the discussion in the Comprehensive Plan, that there are a lot of policies in the Plan referencing the Scenic View Shed, purchasing the pond property, the value of that area, and the value of the wetlands. She said there are also a lot of policies that talk about the need for commercial and industrial lands, and the re-use of previous gravel extraction sites.

Ms. McKibben said this is not a simple black and white request. She said the Plan gives a lot of guidance but it is not crystal clear as to interpretation. She added that this request is quite a bit different than the request of 2012, in that the rezone request is not for the undisturbed areas.

Mr. Satre clarified that the rezone request includes retention of the existing undisturbed Rural Reserve property to the east of the pond itself, and Ms. McKibben verified that it was. The previous request was to rezone the entire 82.66 acres.

Ms. McKibben said that the staff is recommending that all of the property requested for rezone be rezoned Industrial. She said the reason is because Commercial zoning is not considered in the RD Comprehensive Plan designation. Egan Drive gives a strong physical barrier between the property and Light Commercial zoning across the way. Light Commercial zoning does not appear to be in substantial conformance with the Comprehensive Plan. The Industrial zone would be an expansion of the existing district, and in substantial conformance with the maps of the plan.

The Planning Commission could approve the request as submitted, said Ms. McKibben. It could deny the request as submitted. It could recommend an alternative to the Assembly, of which there are many, said Ms. McKibben. She said she had presented one.

#### QUESTIONS FOR STAFF

Mr. Medina asked Ms. McKibben about recommending rezoning land that was in violation of the Comprehensive Land Use Plan; “a rezoning shall not allow uses which violate the land use maps of the Comprehensive Plan”.

Ms. McKibben replied that the code has been changed to read that “rezoning shall only be approved upon finding that the zoning district and the uses allowed therein are in substantial conformance”.

Mr. Watson said when resources are identified or extracted from lands they should be redesignated or rezoned appropriately. He said the definition of “appropriate” is a relative term. He said while Ms. McKibben deemed “Industrial” zoning appropriate, someone else might feel differently.

Ms. Grewe said the same clause caught her eye as well. She asked if Ms. McKibben had any insight into the purpose of the statement regarding rezoning after the extraction of resources from lands. She said it seemed as if it were written just for this situation, but she did not understand the intent.

Ms. McKibben said it is a policy statement that the Commission gets to interpret. She said there are numerous gravel extraction sites throughout the Borough. She said appropriate rezoning probably involves what the Comprehensive Plan says and what the surrounding land uses are.

Ms. Grewe said there are two zones missing from the code; parks and open space. She said therefore when the options of rezone come up, they are always perceived in the sense of areas with density attached to them.

Mr. Watson said in 1989 in the Comprehensive Plan the land was designated IPU (Institution and Public Use). It came back changed to its current zoning in 2008. It was requested the zoning be changed back but that never happened, said Mr. Watson.

#### APPLICANT REPRESENTATIVE

Mr. Daniel Bruce, attorney for the applicant, said they were in substantial agreement with the staff recommendation. He said they did disagree with the recommendation that all of the rezone request be rezoned to Industrial. They would prefer that it be 26 acres Light Commercial and 20 acres Industrial per their request. This is an effort to minimize the development impacts on this piece of property, said Mr. Daniels. Mr. Daniels said the property is not within the view shed as delineated. Mr. Daniels said only three acres within the 26 acres requested to be rezoned Light Commercial is Class B wetlands. He said of the total 46 acres they are seeking to have rezoned, about six percent of the property contains wetlands.

Mr. Bruce said Rural Reserve and Resource Development does not mean a park. Mr. Bruce said the gravel has been extracted, and it is time for the property to be put to its highest and best use. They feel that a combination of Industrial zoning closest to the Airport, with Light Commercial as a boundary between Egan Drive and the Industrial area, mitigates the impact of the development.

The property is listed in Fiscal Year 2013 as an item to be purchased for \$750,000 by the City and Borough of Juneau, noted Mr. Bruce. However, as noted previously, there has been no money appropriated for the purchase. He said it is within Bicknell Inc.'s rights to pursue development through the rezone request.

Mr. Bruce said that Chapter 11 of the Comprehensive Plan specifically states that this gravel pit is expected to be available "for development in the long term". Mr. Bruce said almost everything that can be built under Light Commercial zoning can be constructed under Rural Reserve zoning. He did say that some of these items would require conditional use permits under the Rural Reserve zoning.

The applicant would accept the 46 acre rezone of Industrial if that is what the Commission wanted to do, said Mr. Bruce, even though they do not feel that is the best rezone for the property. They feel rezoning all 46 acres Industrial would increase the impact because that zoning has a higher and more intense impact on the property than does Light Commercial Zoning.

Flat land with access to the highway and the Airport is in very short supply. The applicant has submitted a fair compromise for the development of this property, said Mr. Bruce. The site is surrounded on three sides by heavier, more intense uses. Thirty-six acres would remain untouched, Rural Reserve.

#### PUBLIC TESTIMONY

Lori Roland said she was disturbed to find out that the RR zoning (Rural Reserve) was as similar to the other zonings. She said that she supported the Commission's comments during its May 17, 2013 meeting about the City's missed opportunity to purchase property to maintain scenic and habitat values, and its comments about the Industrial use so close to a sensitive habitat area being a concern.

Dixie Hood said for many years she has served on the Mendenhall Wetlands State Advisory Group under the Department of Fish and Game. She said she is also a member of the City and Borough of Juneau Parks and Recreation Committee. She said she is referring to Chapter 8 of the 1996 version of the Comprehensive Plan, which is being reviewed by the Parks and Recreation Committee. Consideration of the Smith Honsinger Parcel is listed as a recommendation if it is not needed as Airport-related industrial expansion. Ms. Hood said one possible avenue of acquisition to her would be the SEAL Trust (Southeast Alaska Land Trust).

Mr. Watson told Ms. Hood he thought the reason her Comprehensive Plan is different from the existing plan is because it has been quite a while since her plan has been revised.

Kristine Trott said she moved to Juneau in 1976, and with her family has lived abroad for longer than ten years. Ms. Trott said there is no place with such clean air, and such a wild aspect as Juneau. She has lived in New Zealand, Estonia, Russia and Finland, to name just a few of the places she has lived, and nothing compares to Juneau, she said. The nearest neighbors to that piece of land are not contiguous. Fred Meyers is across a four lane highway, said Ms. Trott. The closest neighbors to this piece of property are wetlands, said Ms. Trott. The highest and best use of this piece of property is for beauty, as far as she is concerned, she said. Ms. Trott said the community is due mitigation because of the wetlands taken from it due to the lands taken from it due to the Airport.

Beth Leibowitz said she felt the overall concern was that the wetlands have been chewed away for some years, beginning with the filling in of the wetlands for Egan Drive. More wetlands have recently been used for the Airport expansion, and with the idea of keeping birds away from the airport, she added. Ms. Leibowitz said as a community she thinks it is time to stop the demolition of the wetlands, and instead putting it into conservation trust and/or public ownership as soon as possible.

Pat O'Brien said since this rezone request started in 2012 her goal was to achieve the highest level of public input that she could achieve. She said this is the third time the public has commented on this issue. Fifty-nine people submitted written comment in December, 2012. An additional seventeen people commented this April. Another twenty-one individuals are listed in the current staff report, with fifty-two more citizens commenting after the deadline to make it into the staff report, bringing the total to seventy-five letters of opposition just in this round, noted Ms. O'Brien. She said that makes a grand total of 151 letters of opposition for all three applications. Ms. O'Brien requested that the public comment written for the April 2013 Bicknell map change request become part of the record for this rezone application. She said this is because if this rezone is not granted, she is sure the applicant will appeal.

Ron Berg said during his 42 years in Juneau he has grown to appreciate the wetlands as an important and productive ecosystem. A massive reduction in the Juneau wetlands has been occurring in recent years, mostly to support the needs of the Juneau Airport, said Mr. Berg. A zoning change on 82 acres of land will further diminish the Juneau wetlands. Leaving the wetlands unchanged conveys health to the ecosystem and positive impacts to the quality of life in Juneau, said Mr. Berg. How do we want visitors to remember Juneau, said Mr. Berg; as the beautiful area that Juneau residents call home, or as an industrialized area that has lost its aesthetic value.

Mr. Medina wanted to recognize Mr. Berg as a former member of the Wetlands Review Board, and to thank him for his service.

Alex Wertheimer spoke against the rezoning request, saying it was ironic this was being considered just a few days after the release of a report by NOAA the (National Oceanic and Atmospheric Administration) and the Fish and Wildlife Service entitled *The Status and Trends of Wetlands in Coastal Watersheds*. This report found that the magnitude and rate of wetlands lost in coastal watersheds has increased alarmingly in recent years. Almost forty percent of our Mendenhall wetlands have now been developed, said Mr. Wertheimer. Mr. Wertheimer said the owner of this property purchased it relatively recently fully aware of the constraints of the Rural Reserve status.

Sally Rue said she was representing 20 residents of the Sunny Point Neighborhood Association. She read the letter from the Association, in which they referred to the property as a scenic view shed and a scenic centerpiece for the people of Juneau. The property is directly adjacent to the Mendenhall State Game Refuge, said Ms. Rue. The property and the adjacent wetlands contribute significantly to local, state and international fish and wildlife resources. She said the current zoning provides more opportunities for the CBJ staff and public to review development proposals for the property.

Tina Brown said she was speaking on behalf of the Alaska Wildlife Alliance, State Organization, Southeast Chapter, of which she is president. She said they concur with all of the previous comments which had been made. She said she had an update on the NOAA finding. On November 22, NOAA released a statement and announced that the status of transit coastal

wetlands is alarming. They said the loss of these valuable wetlands threatens not only fisheries and protected species but our supply of clean water and the stability of shorelines in the face of climate change. Ms. Brown said she urged the Commission to consider its definition of “resources”. The Mendenhall State Game Refuge is a resource, she said. Wildlife viewing is a valuable resource, she added. Nature tourism, photography, painting, are valuable resources, she went on to say. Ms. Brown said the Planning Commission was not just here to represent developers, but all residents.

Patricia Wherig said she was speaking for another resident who could not be present. Such a zoning change allowing commercial development could have long term effects on the water and habitat quality of the Mendenhall Refuge. With the loss of more than fifty percent of its acreage to commercial development, the remaining wetland acres are extremely important to be maintained in their natural state for the resident and migratory bird species, she added.

Karla Hart said while she does see that the developer is correct in saying they have the right to pursue a rezone, she also believes it is within the City’s right to deny a rezone. The Planning Commission’s responsibility is to represent the best interests of the community, said Ms. Hart. She said it is evident the community values this area as a natural area. The property is assessed at \$632,000. Ms. Hart said that comes to about \$20 a person in the community. She said she imagined a fund raising effort to buy the property at that value would be pretty successful pretty quickly.

Mr. Watson said the assessed value of the property is probably low because it has not been assessed in quite a few years.

Amy Skilbred said she supported all of the previous comments given that evening. She said she would like to see the rezone denied, and to have the City look into acquiring the property, and to identify a fair price for the current owner of the property.

Jon Lyman said that for fifteen years he was the educator for the Alaska Department of Fish and Game. He said he wrote the book called Alaska’s Wild Salmon which is still required reading in over half of Alaska’s schools to get out of high school in this state. He spoke of the sensitivity of salmon to pollutants in the ecosystem. Every time a piece is put onto the wetlands, additional buffering is denied to the core wetlands, and the system is degraded as a whole, said Mr. Lyman.

Margo Waring said she is a neighbor of the wetlands, and has watched the astonishing loss of the wetlands and the areas that border the wetlands. She said she hopes the Commission will keep the current zoning, and help institute a public process so that the public can buy the property, and make it part of the refuge.

Brian Dougherty asked that the property not be rezoned, and said he felt the City should purchase the property. He said he remembers as a young man when Egan Drive was built, that there were assurances at the time that there would be no more taking of the wetlands. Mr. Dougherty said if he understood Ms. Grewe correctly, there was no vocabulary in the Planning

Commission process to describe land other than in terms of commercial development. That lack of vocabulary reflects such a slant that should not be there, he said.

Mark Kelley said this is one of Juneau's most important view sheds, as well as an important buffer zone for the Mendenhall Wetlands State Game Refuge that has lost almost 39 percent of its total wetlands since its inception. Mr. Kelley said he hoped the Commission would listen to the public, which overwhelmingly opposes this rezone as witnessed by the vast number of letters and testimony received this evening. Mr. Kelley echoed the sentiments of others when he said that Mr. Bicknell purchased this property with full knowledge of its Rural Reserve zoning. He should have no expectation of a rezone, said Mr. Kelley. Mr. Kelley said there is a group in town which has made a very reasonable offer to purchase this land. If Mr. Bicknell is given the zoning change, the land will most probably be priced beyond the ability of the local community to purchase it, he said.

Randy Held said he appreciated the beauty of the field as viewed from Egan Drive. He said he did not understand, however, how that testimony was relevant to the rezone request before the Commission.

Mr. Satre explained that the Community Development staff makes recommendations and that there are usually options to be considered by the Commission when making its decisions.

Cedar Malick said he was born in Juneau, and that he planned on staying here for a long while, and that he would like to speak for the younger generation who also planned on making their lives in Juneau permanently. He said it is a very noticeable area as one drives by. He said he cannot understand the reasons for make the area industrial. He said there are probably better areas than one which impacts resident's lives and drives every day. He said he would like that land to be there for when he is old.

Kim Smith said while in favor of comments the previous speakers had made, he wanted to emphasize several points. He said it was pointed out that six percent of the requested change area would be wetlands. He said if any one of them tried to obtain a permit for three acres of wetlands that they could cover or fill, they would not be able to get that permit. He said he did not want to see that minimized. He said the charts with the land use designations made it appear that there was not much of a difference between the zones. But the difference comes into play with the amount of coverage.

Robert Shaw said he was recalling the last time his father, who is in his nineties, was visiting. His father looked at the field and said how wonderful it was that the city has not allowed that land to be developed. Mr. Shaw said he just recalled that as he was sitting in the audience, and he hoped that his father was not proven wrong.

Beverly Agler said she was a fisheries biologist, ornithologist, and naturalist. She said she spends her lunch hour at the wetlands every day, and drives by the wetlands every day going to work. She said she has watched the area erode over the years that she has lived here. Before she moved to Juneau she said she worked on a National Wildlife Refuge on the East Coast. One

of her jobs was to attempt to restore wetlands. Ms. Agler said that you can never get it back; that the best thing you can do is to not take it away in the first place.

Mr. Satre said the applicant has a chance to come back and address the Commission. Without a motion, the meeting is to adjourn at 11:00, said Mr. Satre. Mr. Satre suggested that the meeting adjourn after the applicant's representative addresses the Commission, and take up this item as Unfinished Business at the next regular (December 10) meeting .

**MOTION:** *by Mr. Watson, to continue the meeting until the applicant is finished.*

There being no objection, the motion passes.

#### APPLICANT RESPONSE

Mr. Bruce, attorney for the applicant, said there are references in the staff report to Rural Reserve and Resource Development as being in public ownership, maybe suitable for parks. Mr. Bruce said he would like to remind the Commission of the "obvious"; this property is not in public ownership, it is in private ownership, and it has always been in private ownership.

Secondly, said Mr. Bruce, the denial of development rights for public purposes is essentially a "taking" under the Constitution and requires just compensation. The value that is paid, is paid for the highest and best use. Mr. Bruce said that he would submit that regardless of the Commission's decision, that if it is done on the basis of public purpose that the Commission may be venturing into an inverse condemnation situation.

Mr. Bruce said that maybe 200 individuals have been heard from in opposition to the rezone request. The Commission represents the 32,000 plus residents of Juneau, many of whom have not spoken out on this issue. You don't often hear from everybody, said Mr. Bruce, especially the proponents.

Thirdly, the parcel is not nor has it ever been a part of the Mendenhall Game Refuge, said Mr. Bruce. It has been in private ownership since the issuance of the patent, he explained. No one has quantified the environmental impact of a rezone, said Mr. Bruce. The impacts come up with the actual development plan, if there is a conditional use request, for example. This property has not been identified as being critical habitat for any species, he said. There is no anadromous stream in the 46 acres subject to the application for rezone. The Honsinger Pond, as is stated in the staff report, has too great a salinity to rear juvenile salmon in.

Keep in mind, said Mr. Bruce, that the applicant is seeking to change six percent of Rural Reserve wetlands to an increased use. People seem to be ignoring the fact that 36 acres of this land remains in Rural Reserve as a buffer, said Mr. Bruce. Commenting that prior to their rezone request there were two more during the evening, Mr. Bruce said that zoning is not a static thing; it changes as the needs of the community change.

One of the necessities for a vibrant, growing community, is adequate inventory of Commercial, Light Commercial and Industrial land. It states in Chapter 11 of the Comprehensive

Development Plan that this area is slated for future development, said Mr. Bruce. So if you are a person looking to buy property, a logical person would assume that this land would be suitable land to buy to request for a zone change, he stated

CSP2013 0030: Planning Commission CIP Project Nomination  
Applicant: City & Borough of Juneau, Community Development Department  
Location: Borough-wide

**X. BOARD OF ADJUSTMENT**

**XI. OTHER BUSINESS**

**XII. DIRECTOR'S REPORT**

**XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES**

**XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS**

**XV. ADJOURNMENT**

The meeting was adjourned at 11:03 p.m.