

MINUTES

**PLANNING COMMISSION**  
City and Borough of Juneau

**APPEAL HEARING**

*Whether Tall Timbers Neighborhood Association has Standing to Appeal the  
Planning Commission Director's March 18, 2014 Decision Concerning a Proposed  
Transitional Housing Project for Women Newly Released from Prison*

July 22, 2014

**HEARING OFFICER**

Nicole Grewe

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<b>Attorney for Haven House:</b>	Mary Alice McKeen
<b>Attorney for Tall Timbers:</b>	Robert Spitzfaden
<b>Attorney for CDD:</b>	Robert Palmer
<b>Attorney for Planning Commission:</b>	Jane Sebens

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**I. ROLL CALL**

Mike Satre, Chairman, called the Special Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:04 pm.

**Commissioners present:** Mike Satre, Chairman; Dennis Watson, Vice Chairman; Karen Lawfer, Ben Haight, Nicole Grewe, Gordon Jackson, Dan Miller, Paul Voelckers

**Commissioners absent:** Bill Peters

**Staff present:** Hal Hart, Planning Director; Jane Sebens, Assistant Municipal Attorney; Robert Palmer, Assistant Municipal Attorney II; Travis Goddard, Planning Manager; Beth McKibben, Senior Planner; Rob Steedle, Deputy City Manager

**II. REGULAR AGENDA**

APL2014 0002: Planning Commission decision whether to hear or to not hear an appeal of the second Director's Decision regarding the operation of Haven House, a not for profit organization that wants to use an existing house in a D5 zone for transitional housing for women coming out of prison.

Applicant: Tall Timbers Neighborhood Association  
Location: 3202 Malissa Drive

Planning Commission will hear oral argument on the briefing on the matters of:

- 1) Whether the Tall Timbers Neighborhood Association is an aggrieved person that may appeal the CDD Director's decision.
- 2) Whether the Tall Timbers Neighborhood Association has the legal standing to file the appeal.

Chairman Satre explained that Commissioner Grewe would be the presiding officer for this appeal. Each party was to have a half hour to present their brief to the Planning Commission, explained Chairman Satre. This time would include questions asked by the Commissioners. The parties could also reserve a portion of their time for rebuttal, said Chairman Satre.

Once the briefings have been completed, the Commission would adjourn to executive session, where they would deliberate on their decision, said Chairman Satre. Once the Commission makes a decision, it would be written up by the legal staff for the Commission.

Ms. Grewe explained that the Planning Commission has asked for a briefing on whether or not Tall Timbers Neighborhood Association has the right to appeal the Planning Commission Director's March 18, (2014) decision concerning Haven House's proposed transitional housing project for women coming out of prison.

#### TALL TIMBERS NEIGHBORHOOD ASSOCIATION

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Mr. Spitzfaden said that Tall Timbers feels that it has the ability and the legal right to proceed with this appeal. He said the basic point of the brief is that the case law and the statutes relied upon in the brief by the Community Development Department (CDD) to argue that Tall Timbers does not have standing does not apply to the City and Borough of Juneau.

They are here this evening to ask for the opportunity to tell their side of the story, said Mr. Spitzfaden. He said that Haven House and the City staff have strenuously worked to prevent this opportunity. One reason Tall Timbers deserves to be heard is because the basic point of the legal issue is that most case law and statutes don't apply to the CBJ because it is a home rule municipality, said Mr. Spitzfaden. A fundamental question to be answered is; who is making the decisions here, the Director or the Commission? Is it up to the Commission to decide what use is authorized by the code, or is it up to the Director, said Mr. Spitzfaden. Mr. Spitzfaden said in his opinion the decision of the Commission this evening had two impacts: was Tall Timbers going to be given the opportunity to tell its side of the story, and was the Commission willing to cede authority in this matter to the Director.

According to Mr. Spitzfaden, the ordinance the Commission is -proceeding under dictates that if this is not a routine issue, then the Commission has to hear the appeal. The Commission should think seriously before denying his clients the opportunity to appeal this issue, said Mr. Spitzfaden.

It is also a matter of public policy that the public have input, said Mr. Spitzfaden; it should not just be up to an appointed director to decide a constitutional issue - whether one particular use is deleterious to a neighborhood or not.

Public policy dictates that the Commission and not the Director should make these kinds of decisions, said Mr. Spitzfaden.

Mr. Watson asked Mr. Spitzfaden to further define and clarify his definition of Tall Timbers and its relationship to the definition of adversity as defined in his brief on page 5.

Adversity is when there is an actual dispute, said Mr. Spitzfaden, and when there are two sides to the story. The view of Tall Timbers is that there is an actual dispute, in that the Director made one decision in January, and then made another decision in March. There are clearly debatable points here, said Mr. Spitzfaden, that a reasonable person can debate upon. Tall Timbers feels that the adversity lies in the March decision, said Mr. Spitzfaden. Tall Timbers seeks the opportunity to explain why it feels that decision is wrong, said Mr. Spitzfaden.

Ms. Lawfer asked how decisions were made by the Tall Timbers neighborhood Association.

Mr. Spitzfaden answered he believed they were decided by majority vote.

Mr. Voelckers stated that Mr. Spitzfaden had made reference to the fact that since Juneau was a home rule municipality that some of the laws and statutes were then invalidated. He asked if this was in reference to an aggrieved person status, and asked if Mr. Spitzfaden could elaborate on this.

Mr. Spitzfaden said he understood that it was the position of the City and Haven House that there was a statute passed by the State of Alaska which stipulated that if you were an aggrieved person that you have the right to bring before the appropriate body your position. Two cases were cited to support this position, said Mr. Spitzfaden. Those two cases define an aggrieved party as an entity who has a "dog in a fight" as explained by Mr. Spitzfaden. The neighbors in Tall Timbers have a "dog in the fight" because they either own or lease property surrounding the proposed Haven House project, said Mr. Spitzfaden. The purpose of Tall Timbers is to help protect and preserve and help the neighborhood, said Mr. Spitzfaden.

There is another statute passed by the legislature that applies across the board, said Mr. Spitzfaden, that says if you are a home rule municipality, the statute that says you are aggrieved does not apply. Juneau is free to set up whatever system it wants, said Mr. Spitzfaden. We have set up a system that states the Director makes the decision, and you can appeal to the Director, you can appeal to the Planning Commission, you can appeal to the Assembly and you can appeal to the Superior Court if you want to keep appealing, said Mr. Spitzfaden.

The Supreme Court has never ruled on Juneau ordinances said Mr. Spitzfaden. Therefore, the view of the Tall Timbers Association is that the adversity requirement is what is held to be the standard in Juneau, said Mr. Spitzfaden.

Ms. Grewe summarized the major points as presented by Mr. Spitzfaden on behalf of the Tall Timbers Neighborhood Association:

1. The adversity standard is met and there is a dispute with two sides
2. Tall Timbers is aggrieved because they are within the zone of interest or the impact area
3. Tall Timbers is indeed an entity because it is recognized by the CBJ; they have bylaws, they were organized to protect the neighborhood, there is a list of purposes for this entity

Ms. Grewe said she felt these were the three main points presented by Mr. Spitzfaden, and she asked if there were any major points that she had missed.

Mr. Spitzfaden responded that he felt those were the basic points covered.

Mr. Jackson said that he disagreed with the remarks Mr. Spitzfaden made about the Director's decision. He said if every single person came before the Commission and challenged the Director's decisions, the department would experience an administrative nightmare. It was not a common practice of the Planning Commission to cede its authority to the Director, said Mr. Jackson.

Mr. Spitzfaden said that he is not disputing the fact that the Director made the decision, he is disputing the fact that no one can appeal that decision.

Mr. Jackson said at the beginning of every single Planning Commission meeting the Chairman asks for public comment, so that opportunity is given to all members of the public.

Ms. Grewe reminded the group the purpose of the hearing which was whether Tall Timbers Neighborhood Association has the right to appeal the Director's March 18, 2014 decision concerning the Haven house proposed transitional housing project for women coming out of prison and whether Tall Timbers Neighborhood Association is an aggrieved person that may appeal the Director's decision, and whether Tall Timbers Neighborhood Association has legal standing to file that appeal.

#### COMMUNITY DEVELOPMENT DEPARTMENT (CDD)

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Mr. Palmer, attorney for the Community Development Department, and Ms. McKeen, attorney for Haven House, said they would be splitting the half hour allotted to them. Despite the arguments which have been heard, said Mr. Palmer, there is really only one issue, and that is whether the arguments of Tall Timbers should be heard before the Commission or the Board of Adjustment.

CDD believes that the Commission should dismiss this appeal and proceed with the Use Not Listed hearing requested by Haven House, said Mr. Palmer. All the same arguments could be

made at that hearing, said Mr. Palmer, with all of the facts presented before the Commission at that hearing. At the Use Not Listed hearing, the parties could call witnesses and full participation of the public would be permitted, said Mr. Palmer.

The appeal requested by Tall Timbers is not yet ripe for review because the Commission has not yet made a decision, said Mr. Palmer. Right now Haven House cannot operate as intended, and could only operate if given a permit by the Commission as a Use Not Listed or a Conditional Use Permit, said Mr. Palmer. It is at that time when an aggrieved party or adversity standard could be applied, said Mr. Palmer.

When Tall Timbers filed its appeal on April 1, (2014), it did not have the capacity to appeal at that time, said Mr. Palmer. That capacity to appeal was not created until Tall Timbers filed its bylaws in June, said Mr. Palmer.

Mr. Voelckers asked if there are any precedents of a director's initial determination of an occupancy type leading to it an appealable action.

Mr. Palmer said it depends on what the use is. If the answer is something that is usually authorized by a building permit the answer is usually "no", said Mr. Palmer. A building permit would either be issued and there would be no appeal, or a building permit would not be issued, and it would go in front of the Commission. What makes this case complex, said Mr. Palmer, is that in the Director's determination in March he said that Haven House should apply for a Use Not Listed process. Because of that determination the Director has no authority to render a final decision, said Mr. Palmer. In that context Mr. Palmer said he knows of no other situation in a similar context in Juneau that has been appealed.

Chairman Satre said he struggles with the logic of why there is no appealable decision.

Mr. Palmer answered that with the Director's initial January decision the only aggrieved entity was Haven House, so therefore only Haven House had the right to file an appeal. With the Director's decision number two, said Mr. Palmer, the neighbors still are not in a position to appeal, because they are not yet aggrieved. They would or would not be aggrieved depending upon the outcome of the Use Not Listed decision, said Mr. Palmer.

Ms. Grewe asked what the criteria was for being a neighborhood association.

The creation of bylaws are necessary to register as a neighborhood association, said Mr. Palmer.

#### HAVEN HOUSE

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Ms. McKeen stated that through the Use Not Listed process all concerned individuals including Tall Timbers Association could make all the arguments they wish to make concerning Haven House to the Commission. She said Haven House requests that the Planning Commission schedule a hearing in August, or as soon as possible on the application for the Use Not Listed permit.

Ms. McKeen stated the Commission needed to decide if an unincorporated neighborhood Association could file an appeal with the Planning Commission, and whether the Tall Timbers Neighborhood Association is aggrieved.

Tall Timbers could not be aggrieved because Haven House has not been granted a permit to operate, said Ms. McKeen. The standard is very simple, said Ms. McKeen. A final decision has to have been made to grant someone a permit, if you want to object to the granting of a permit.

Ms. McKeen urged the Commission to hold a hearing as soon as possible. She noted that the attorney for Haven House, Mr. Spitzfaden, is out of town August 25 through October 1. This puts an undue hardship on the Haven House project, said Ms. McKeen. This would put the project into a seven months waiting period. This is a small nonprofit corporation with a public spirited goal, said Ms. McKeen. And she noted that they are paying rent on this property, they have a grant which they cannot currently use, an application with the Mental Health Trust Fund which they cannot currently process and other items which cannot move forward because they do not have a permit. It may be that eventually CBJ will grant the project a permit and they may not be able to go forward because of the delay anyway, said Ms. McKeen.

#### TALL TIMBERS REBUTTAL

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Mr. Spitzfaden said he hoped the Commission decided that it could go forward with their appeal. He said he did have travel plans, but that he could make an appearance before the Commission before he left on his trip if the Commission decided to hear the Use Not Listed Permit.

### III. ADJOURNMENT

The special meeting convened into executive session at 6:06 p.m., from which it adjourned at approximately 7:15 p.m.