

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Thursday, May 27, 2021
Community Development Department
Virtual & Telephonic Meeting, 12:00 P.M.

Members Present: Nathaniel Dye, Erik Pedersen, Travis Arndt, Mandy Cole

Members Absent: Joshua Winchell

Commissioners Present: None

Staff Present: Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Teri Camery (CDD Senior Planner), Laurel Christian (CDD Planner)

I. Call to Order

The meeting was called to order at 12:01 P.M.

II. Approval of Agenda

MOTION: *by Mr. Arndt to approve the agenda as written.*

The motion passed with no objections.

III. Approval of Minutes

A. February 18, 2021 Draft Minutes, Title 49 Committee

MOTION: *By Ms. Cole to approve the February 18, 2021 minutes subject to minor corrections.*

The motion passed with no objections.

B. April 1, 2021 Draft Minutes, Title 49 Committee

MOTION: *By Ms. Cole to approve the April 1, 2021 minutes subject to minor corrections.*

The motion passed with no objections.

I. Agenda Topics

A. Stream Buffer Code Revisions

Ms. Camery provided an overview of the memo provided to the Committee members in the packet. She explained the ordinance has been worked on for many years and it is being brought back for general discussion and overview.

Ms. Camery stated there were two stream ordinances underway. A second ordinance going to the Planning Commission in June was to provide an immediate fix to the stream buffer ordinance that is void due to references to the Alaska Coastal Management program.

What is before the Committee today is a more substantial revision that addresses issues currently in code. Ms. Camery clarified that the proposed ordinance would streamline the review process. Current code requires a Variance for work within the stream buffer. The point of the revision is to allow for lower impact uses within the buffer, without the need for a Variance. They could be reviewed through the department level if they meet minimum standards for best management practices (BMPs) and riparian vegetation standards. She added that the proposal will reduce the permitting burden on the public, while still being scientifically defensible. This will also reduce the workload for the Commission.

Ms. Camery stated there are a few outstanding issues outlined in the memo that still needed to be resolved. A major driver of the revision is to allow clearing along Jordan Creek, which poses a safety issue near the airport. The ordinance specifically points to allowing clearing along Jordan Creek for the airport. Ms. Camery said that we cannot have just an exception for one creek or one entity, so the ordinance would be amended to allow for fixes to all public safety issues.

The second issue is the nonconforming section. The new nonconforming certification process was not adopted when this was written. This will be reviewed and revised before it goes to the full commission. Ms. Camery also noted that the revisions will also need to comply with new flood regulations adopted this year.

Ms. Camery stated the ordinance would set up uses that could be permitted at the department level and there are prohibited uses. There are also uses that are listed that cannot meet BMPs; these would need to be approved through a Variance. The last is uses not listed and uses not prohibited; these would go through the Conditional Use Permit (CUP) process. Structures within the setback would require a CUP. Structures are seen as unacceptable in the buffer from the scientific community.

Ms. Camery added that previously the Title 49 Committee recommended that stream relocations should go to the full Commission, because if you move the stream, you move the buffer, which can have an impact on neighboring property.

Ms. Pierce added that some of the key issues that staff are looking to address through the ordinance are minor activities within the stream setback that they do not have an easy way to approve now. An example is a hazard tree; this is not something staff can easily permit to be removed. The idea behind tier 1 and 2 would be based on the intensity of the impact. She clarified that staff may be able to make permitting easier for people trying to do basic work, if there are no impacts to the riparian vegetation. Property protection related uses can generally be allowed within the inner buffer and more intensive uses are in the outer buffer.

Mr. Dye asked what the average height of a tree was in Juneau and stated a tree within the inner buffer could absolutely harm a structure.

Ms. Camery replied that hazard tree removal would be allowed within both buffers.

Packet page 18 / ordinance page 1

Mr. Arndt asked if the Ordinary High Water Mark (OHWM) should be defined by a surveyor and not CDD.

Ms. Camery replied that the 2013 Comprehensive Plan dictates the CDD determine where the OWHM is. She added that prior to this there were different interpretations by different surveyors. This is for purposes of consistency. She added the definition was updated as part of the flood ordinance.

Mr. Arndt replied that it was a legal question as to whether or not CDD has the authority to determine the OWHM.

Ms. Maclean said we would flag that for review.

Mr. Dye said a member of the public had their hand up and public testimony is not usually taken.

Mr. Arndt asked for measurement item (b), how are trees that start outside the buffer but have limbs within the buffer addressed.

Ms. Camery said that there are situations where vegetation overhangs the stream. She said people think you can cut the tree that overhangs the stream. The intent is that it remains attached to the land.

Mr. Dye added that the lines of the buffer extend vertically and anything within the buffer cannot be disturbed. If a tree is outside the buffer, the tree must be respected if it goes into the buffer by leaning.

Ms. Camery agreed.

Mr. Dye replied that it may only need to apply to the inner buffer. He thought the language needed to be clarified to add the intent.

Ms. Camery agreed and said the intent was for portions overhanging the stream.

Mr. Dye asked for uses not requiring a permit, item (c) surveillance equipment, and how would staff would handle cables that needed to be run to equipment.

Ms. Pierce added the intent was for a security camera for airport purposes. Staff would follow up and clarify surveillance equipment. It is not meant to be intensive.

Mr. Dye added that there might be utilities that go to the equipment and that should be clarified.

Ms. Pierce agreed it would be clarified.

Packet page 19/ ordinance page 2

Mr. Pedersen asked if there were only two prohibited uses or if there was another list.

Ms. Camery replied that those are the only two prohibited uses. She clarified that there are prohibited uses and uses not listed. If a use is not listed, the applicant can apply for a CUP. The outright prohibited items are not allowed through any process. There would be no way to adequately mitigate the impacts.

Ms. Maclean asked what section this would live in and clarified that anything but chapters 35 and 65 can be varied. She stated that the language needs to be clarified to prohibit a Variance.

Mr. Dye asked why it is being specifically called out in code. He thought it was odd. He did not think it should be called out so blatantly.

Ms. Pierce added that anything in Title 49 could be varied, with the exceptions Ms. Maclean noted, so staff do not need to call it out in this section.

Mr. Dye agreed that someone could apply for anything through the Variance code, so no need to call it out.

Regarding number 4, Mr. Arndt asked if riparian vegetation standards and best management practices are currently in code or are they yet to be created.

Ms. Camery replied that there is inconsistency in the terms. All terms will be riparian vegetation standards and best management practices and are at the end of the ordinance.

Regarding item (e)(3)(G) and (H), Ms. Cole asked if any removal of hazard trees requires a letter from a licensed arborist or if the two sections contradict each other.

Mr. Dye agreed the wording was not clear.

Ms. Pierce agreed that the language needed to be cleaned up. An arborist needs to determine if the tree is truly a hazard, there needs to be a level of professional standard.

Mr. Pedersen added that the letter from an arborist should be removed. He said that a neighbor's tree fell on his property and the letter was quite costly.

Mr. Dye questioned what a licensed arborist is.

Ms. Pierce replied that staff would look at the qualification level that is required. There are licensed hazard tree assessors that can make a determination.

Ms. Maclean added that staff would flag it for law to review. Ms. Maclean did not want CDD staff to determine if a tree is hazardous or not, and does not want the liability on the department.

Mr. Arndt asked about the license requirement. He wasn't sure what that license actually is. He added that people in town have told him they've gotten this advice from CDD before. He wants it consistent with non-stream tree issues.

Packet page 20/ordinance page 3

Regarding item (4)(a), Mr. Dye asked why do staff want to allow tree cutting for view shed management.

Ms. Camery replied that the intent was to allow department review of the most common requests within the buffer. The requests could be granted while maintaining the scientific function of the buffer. She added that "selective" removal of branches is important. Staff would allow the minimum removal to meet the need. It would be balanced with BMPs and riparian vegetation standards. If people are going to do it anyway, staff then have a way to review and address impacts.

Ms. Maclean added that the licensed arborist section was in the 0-25 feet buffer. The current section allowing limbing is a separate part of the 25-50 feet buffer.

Mr. Dye asked if it should not just be for view sheds; it's limiting. He asked if CDD staff would be making the assessment on what was okay to remove.

Ms. Camery replied that it appears to be subjective. In the fine print, both sections must require that the uses have to be within the buffer. The applicant must demonstrate those uses must be within the buffer.

Mr. Dye asked if you must be standing within the buffer to have the view shed.

Ms. Pierce clarified that selective removal may be okay for non-hazard purposes, not just point to view sheds. She added that the intent is the burden of proof must be on the applicant to prove the activity needs to take place within the buffer and can't be accomplished outside of the buffer.

Mr. Arndt provided an example. He stated you could have a garden at 51-60 feet; you may need to cut some of the trees within the 25-50 feet buffer, so that the garden could get more sunlight.

Mr. Dye agreed and asked if staff would accept a document from someone that shows the trees don't need to be in the buffer or does staff make that determination? Where is the documentation coming from? A professional or CDD staff as a judgement call.

Ms. Maclean said the homeowner needs to state what the purpose is and why it can't be done outside of the buffer.

Mr. Dye asked how this plays through – does the applicant make the case and CDD approves it?

Ms. Maclean added the burden of proof is on the applicant.

Ms. Pierce asked if Mr. Dye wanted a report from a professional. Mr. Dye replied that he did not; there was confusion. This would be a Director's determination.

Ms. Maclean added that she envisioned if a large lot that is flat might not need the exception. She said if there is a steep lot pushing it to a specific spot that may be necessary.

Ms. Camery replied that is important to remember all developments must meet the landscaping standards and BMPs. This gives staff more of an allowance to permit these items.

Ms. Cole asked if staff were getting rid of view-shed enhancement.

Mr. Dye agreed it would be selective trees not just for view shed.

Ms. Maclean added that the airport was asking for privileges in this code. The airport will not receive special treatment through this code. That will change based on guidance from the Law Department. The airport needs to follow the guidelines like other property owners. Amendments to the ordinance will be made to reflect this.

Regarding items (f)(A)(2), Mr. Arndt asked if the bridges, including culverts (there are private bridges in the valley and private culverts) section applies to only public infrastructure. Mr. Arndt said he did not read it as such. He asked if the intent was for public or private items or both.

Ms. Camery replied that staff could add wording for private. The intent of the section is to allow exceptions that were previously allowed under the Coastal Management section. They would be allowed without a Variance.

Mr. Arndt wanted it to include public and private and noted the proposed language is different from the old language in the Coastal Management section.

Ms. Pierce agreed staff should include private infrastructure.

Ms. Cole asked if item (l) on page (2) needed to be discussed.

Ms. Pierce clarified that (l) on page (2) would be reworded to allow for removal of threats to public safety. The legal interpretation is that the airport cannot be the only entity this applies to.

Mr. Dye replied that we should have a public safety exemption for everyone.

Ms. Pierce agreed.

Mr. Arndt said that on the very bottom of the page, items (3) and (4) seem to be the same. He wondered why they were separated.

Packet page 21/ Ordinance page 4 – nothing

Packet page 22 / Ordinance page 5

Mr. Arndt said there was a lot of repeating for major versus minor development. He asked if it could be called major and minor instead of tier one and tier 2.

Ms. Pierce said staff could look into it. She thought it should be separate.

Ms. Camery stated that there would be some internal review before it goes to the full commission.

Mr. Dye asked what the preferred wording would be by staff.

Ms. Pierce said tiers not major and minor.

Packet page 23/Ordinance page 6

Regarding item (7) schedule, Mr. Arndt asked why items are being duplicated from Title 19.

Ms. Pierce said staff would look at it to see if it could be cleaned up and not duplicated.

Regarding item (9), Mr. Arndt asked who would be considered a public safety official.

Ms. Camery replied that this was relating to the airport safety issue and that staff would need to clean it up.

Mr. Dye asked staff to rewrite it in a way that makes sense, so the code is applicable to everyone not just the airport.

Ms. Pierce agreed the burden of proof is on the applicant and it will be rewritten.

Packet page 24 / Ordinance page 7

Mr. Arndt again pointed to Title 19 for item (7).

Ms. Pierce replied staff would check Title 19.

Mr. Dye asked if any level of toxins would be okay.

Packet page 25 / Ordinance page 8

Regarding item (4), Mr. Arndt wondered why it is being flagged differently than the others. He said that if you are moving the stream, you are dealing with FEMA, so why does this go to the Public Works Department for review?

Mr. Dye said this would be a CUP, because there were concerns about moving the stream and moving buffers onto neighboring property. He asked if staff could reword it to state if buffers are moved, a CUP would be required.

Ms. Pierce replied that approval is required from the Director of Engineering and Public Works for drainage issues.

Mr. Arndt said it would be very expensive up front to get an engineered report and it would possibly be denied and not be able to use the work. He doesn't think the order, or who is required to look at the review, makes sense.

Ms. Camery said that the additional engineering review is needed for changing drainage patterns. The stream buffer moving also affects the flood ordinance. Higher level of review is needed and this is consistent with previous practice.

Mr. Arndt replied that his concern was within item (4)(k); it implies you have to get a permit first.

Ms. Camery replied that this is a list of specific items the Commission would review.

Mr. Arndt replied that this section implies you must already have a permit.

Ms. Pierce replied that the Commission needs to look at these items as part of the permit. Staff can look at where it lives. The concerns are valid; you won't design a stream relocation prior to getting the CUP, because it's not cost effective. Staff need to see how that workflow happens.

Packet page 26 / Ordinance page 9

Ms. Camery said staff need to further review the nonconforming section.

Mr. Dye asked for clarification on the question for item 1(c).

Ms. Camery stated that staff need to get the reference correct.

Mr. Dye asked for background information on the nonconforming section.

Ms. Pierce replied that staff have not reviewed this section against the new nonconforming section.

Ms. Camery added that the language was added before nonconforming was passed and that staff will clean up the issue and get it back to the Commission. The question is whether staff should treat nonconforming stream issues differently than other nonconforming issues.

Mr. Dye asked staff to bring it back to the Committee.

Ms. Pierce said yes. Parking is back to Title 49 first. At the following meeting, staff and the Committee can review a more cleaned-up version relating to nonconforming.

Ms. Camery also added that a key question is whether the existing nonconforming section applies or if everyone wants it to be special for the stream buffer. Does the nonconforming situation need to be remedied or mitigated?

Mr. Dye added that he thought the nonconforming section should live in one place, and this code could refer to the nonconforming section.

Mr. Pedersen agreed. Use the existing nonconforming information as much as possible.

Mr. Arndt agreed staff should defer to the nonconforming section.

Ms. Cole agreed and said this seemed like the Director's direction.

Ms. Pierce also said she agreed and the nonconforming section may need to be amended.

Mr. Dye asked about the waterbody permit application, and if this would go into the fee section. Is this in line with the current fee structure?

II. Committee Member Comments and Questions

Mr. Dye also said that the next meeting would be parking and then we can go to streams after parking. Mr. Dye asked for the Committee to get back onto a regular schedule.

Ms. Pierce reminded the Committee that parking is the Assembly's priority, so that will be at the next meeting.

Ms. Cole said she is in favor of a standing meeting, and requested that it not be the third Thursday of the month.

Mr. Dye prefers the first Thursday of the month.

Ms. Pierce asked for the second Thursday of the next month for parking.

The next meeting was scheduled for June 10, 2021.

Mr. Dye said that once a month may not be enough and they may need to meet more.

Ms. Pierce said the packet might be late for the next meeting.

This was not concerning to the Committee.

There were questions in the Q/A chat box. Mr. Dye asked staff to reach out to Mr. Hanna to address questions.

VI. Adjournment

The meeting adjourned at 1:20 P.M.