

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

**Monday, October 1, 2018**  
**Community Development Department**  
**Large Conference Room, 12:00 pm**

**Members Present:**

Nathaniel Dye, Michael Levine, Carl Greene, Dan Miller

**Members Absent:**

Paul Voelckers

**Staff Present:**

Laura Boyce (CDD Planner), Jill Maclean (CDD Director), Jane Mores (CBJ Attorney), Beth McKibben (CDD Planning Manager), Teri Camery (CDD Planner), Amy Liu (CDD Planner), Marjorie Hamburger (CDD Admin)

**Public Present:**

Mark Cheatham (CBJ Airport)

**I. Call to Order**

Meeting called to order at 12:02 pm.

**II. Approval of Agenda**

The agenda was approved as is.

**III. Approval of Minutes**

**A. August 20, 2018 Draft Minutes**

**MOTION:** *by Mr. Miller to approve the August 20, 2018 minutes.*

**The motion passed with no objection.**

**B. August 27, 2018 Draft Minutes**

**MOTION:** *by Mr. Miller to approve the August 27, 2018 minutes, noting he was absent for this meeting.*

**The motion passed with no objection.**

**IV. Agenda Topics**

**A. Review of Proposed Revisions to CBJ Code re: Stream and Lakeside Buffers**

Ms. Camery presented draft language regarding the proposed revisions to the Committee. She said it has been two years since conceptual approval was received for this approach. In January, 2017, a Stream Buffer Working Group was convened to advise and lend scientific credibility to these revisions, as stated in her memo (pg. 6).

Essentially, the draft takes a list of common activities that currently require a variance and allow them to be reviewed via a departmental process. If an activity does not meet these standards, then the process of applying for a variance will apply. Other uses can go through the Conditional Use Permit (CUP) process, she said.

Ms. Camery acknowledged the presence of an airport representative, Mr. Cheatham, and pointed out the proposed language in the document that addresses public safety issues, which are of concern to the airport, i.e. removal of trees, that can go through a departmental review process instead of being brought before the Planning Commission. There is also new section that allows emergency authorization by the director, which is a notable change. Ms. Camery said she is looking for feedback on anything in the draft and has highlighted a few sections where she particularly desired feedback. (See Attachment B of memo.)

There are three different options in the draft for how to present the different lists of uses. Ms. Camery said she would appreciate feedback on which one is most useful.

Mr. Miller said he thinks the tables are equally useful. His primary issue to figure out on this topic is when a developer is doing a project near a stream and keeps the structure 50 feet away, sometimes there needs to be some grading done next to the structure, for example to build whatever road system is necessary to access the building. The language in the ordinance does not address the possibility of getting into the 25-50 foot buffer area to do some grading so that drainage goes into the setback area, not into the stream. How will this be accomplished, he asked? In the original ordinance under the definition of development, no. 6 states development meaning "removal of substantial vegetative cover". In the past, he said, this allowed developers to get in there a little bit to create that buffer from the stream. There are many situations where the area being developed is lower ground than the stream bed and there needs to be a way for the water to get through to make drainage work properly. In the original ordinance, this language was a way around that which has been in use for 35 years.

Ms. Camery said that what Mr. Miller was describing is currently prohibited and needs a variance. Ms. McKibben pointed to Line 69 in the draft ordinance, "Stormwater management to improve water quality and/or water quantity" as indicating that appropriate mitigation activities are allowed. Anything that is appropriate for stormwater mitigation can be approved, she said. Mr. Miller said it was his understanding that 0-25 feet was a no-disturbance zone but 25-50 feet was no-build. He understood that there could be a transition area. Ms. Camery said it sounded to her like a misunderstanding. Ms. McKibben explained that the concept is to be more flexible than no-disturb/no-build. There have been a number of variances permitted in the past to allow for mitigation type activities. This new language seeks to identify what are the types of appropriate mitigation efforts in order to take away the need for the variance process.

Ms. Camery said she will make sure that the particular situation brought up by Mr. Miller is addressed. She said she supposes this will be a Tier II category. Mr. Miller said if it is possible to build a house at 51 feet from the stream, there is a need for backfill, etc. If the intent is really to keep a 0-50 foot no-disturbance zone, builders will need to know that unless they want to backfill with a shovel or don't care about drainage, they have to build at 60 feet in order to walk an excavator around the structure. Ms. Camery said she thinks the definition states that this is not approved, but she is not aware if the practice has been different. Mr. Miller said maybe there needs to be some other category on the table.

Mr. Dye said he had questions about water quality and quantity – quality seems easier to identify. He said he is curious how will quality versus quantity be evaluated? Ms. Camery said during the agency review, this would be evaluated by an outside entity or the planner would ask the applicant for an explanation. Mr. Dye asked if this means the burden is on the applicant and he cited Line 75, item 7 in the draft ordinance. If the vegetation does

not constitute a threat, can the owner/developer do anything about it? Ms. Camery said that the advisors said vegetation is vital to streams. Ms. McKibben said you could have a house next to a stream and there is a tree in danger of falling on the house so the owner could have permission to remove the tree. The “illegal activities” component addresses airport concerns where tree removal is done to create views into the trees. Under the current buffer code this is not permitted.

Mr. Dye asked if the intent is to prevent illegal activities which are happening in the treed area. Ms. Camery said there are two items with different requirements. Ms. McKibben said the sentence structure needs to be reworked to be clearer. If illegal activities are happening, then the trees could be limbed to alter the landscape and open up sight lines. Ms. Camery said maybe the phrase “illegal activities” is problematic. Ms. McKibben suggested there may need to be multiple sentences here to describe the situation. Ms. Camery said she saw what Mr. Dye meant and agreed it needs to be cleared up. Mr. Dye pointed out some other areas needing to be cleared up in this way. Who is the CBJ public safety official, he asked? Ms. Camery said rather than identifying specific people, it should be left up to the director’s discretion regarding who is qualified to fill this role. Mr. Dye asked who that might be. Ms. Camery said that the language is largely crafted around Jordan Creek and the airport, in which case the official is likely to be the police. Mr. Miller suggested the first and third sentence should be together (Lines 75-79). The middle sentence is just for a situation where a tree might fall on house and the homeowner would have to hire a consultant.

Mr. Levine said it seems to him that public safety is enough justification for removal so there is no need to indicate what causes the threat to public safety. Ms. Camery suggested taking out the words “illegal activities”. Mr. Levine said he had concern about the public safety officer not being identified. Mr. Dye asked if this section is related to safety around the airport, can homeowners use the same justification if trespassers are around their property.

Ms. Maclean commented on the public safety official and said it has to be the CDD Director, who is the enforcer of Title 49. She did not think JPD has the jurisdiction to enforce Title 49. Mr. Miller pointed out that this allows for a decision to be appealed, which is needed. Ms. Maclean suggested more work on language in this section.

Mr. Levine asked if there was intent to limit what public safety means and is there allowance for things that don’t directly result in property damage such as trespassing? Ms. Camery said it might be helpful to have a solid definition of public safety. Also, the 8 points regarding purpose and intent listed at beginning of the ordinance are to be used for evaluation. If something violates the purpose and intent and is an outlier that could be the basis for a denial. Mr. Levine pointed out that none of the 8 things have to do with public safety. He also noted that there is a place for the removal of trees for public safety. A good definition of safety will be incredibly broad, he felt. Ms. Camery asked if he felt the definition should be narrow. Yes, he said.

Ms. McKibben said the language regarding illegal activities tries to address the airport issue, which is the only model CDD has to work with. Not sure how to do it, but that’s why it is here. There are other areas in Juneau where illegal activities are occurring near waterbodies, such as camping, and the issue is how to protect streams? Mr. Dye said maybe focus should be given to a specific area such as Jordan Creek and designate specific areas where trimming is permissible in relationship to public safety. Are there any other areas in CBJ, he asked? Mr. Levine suggested another approach which could allow for weighing the damage to a stream habitat. In specific instances, is an illegal activity, such as camping, worse than cutting down the trees? Perhaps it would be best to allow the director and other advisors to determine this. Mr. Dye said that Jordan Creek all way to the highway is an issue. Mr. Levine said if there is a way to address this that would be good. Ms. Camery wondered about other ways to address public safety beyond removal of vegetation, like cameras. Mr. Levine said in terms

of an ordinance it should be made clear that removal of vegetation happens only after other less damaging things are tried, such as a fence.

Mr. Greene pointed out that the committee was getting into the weeds on this topic. He said he likes leaving it to the director's discretion to take action if there is public concern.

Mr. Dye brought up the 25-50 foot viewshed enhancement. He said this is a difficult thing for the Auke Bay area. Ms. Camery said the stream working group was opposed to this allowance but she knows the department often gets requests to trim for viewsheds. Acknowledging the need and the practice gives the opportunity for some level of review and mitigation to make sure trimming is being done via Best Management Practices rather than just prohibiting this entirely and having it done illegally. Mr. Levine asked why the working group was opposed. Ms. Camery said because vegetation is one of the most important elements of stream habitats. Mr. Levine asked why it is a Tier I then. Ms. Camery said Tier I and II both follow Best Management Practices although Tier II goes into more depth.

Ms. Maclean said when people come into the Permit Center to apply to do this sort of trimming it can be an opportunity to give them education about why the buffer is important which might help them reduce their desire for a viewshed. Ms. McKibben said the language talks about removal of branches, but maybe the language needs to be clearer - "selective removal" for example. We might not allow them to take down a tree but cut branches to open up a view, for example. Mr. Dye said he doesn't like word branches instead of trees. To obtain a view plain, it might be better to remove smaller trees rather than branches of larger ones; this might be an argument from an arborist's point of view, he said. Mr. Miller said that the University of Oregon has a nice website about trimming trees; this could be useful for a handout.

Mr. Miller said he remains concerned about the transition between development and the 25-50 buffer area. In some cases if the land at 25-50 feet from the stream is higher than where there is development, the builder might have to excavate a channel in there. He gave several other examples of development that needed storm water management that might require some activity in the 25-50 foot area between the building and the stream but said the current language does not afford room for this to happen, which means a structure has to be further away than 50 feet. Ms. Camery said that the department can come up with some language for this.

Mr. Levine said it seems to him that there is value in some caveating of the director's discretion so the impact to the buffer is as small as possible. He said he would want the director to suggest ways to minimize the impact if there are any.

Ms. Camery asked the committee members for their opinion on stream channel alteration. Would a Tier II review or the CUP process be the better option? Mr. Levine asked for clarification. Ms. Camery said page 3 of her memo asks this question in better detail. The current draft regulations use language borrowed from Anchorage. Previously a proposal like this would go through a variance process, like for Duck Creek. This kind of alteration is significant because changes to the stream could change the on someone else's property. Using the variance process did not seem like a good place for evaluation of something that has broader neighborhood impacts. Therefore, she asked, which process would the committee recommend?

Mr. Miller wondered if there are director's decisions now that can be forwarded to the Planning Commission as a CUP if the decision proves to be too large or complicated. Ms. Maclean said yes, in some types of development there is this discretion. Mr. Miller asked if this was written in code. Ms. Camery said a very clear, legally defensive threshold would have to be established. Mr. Dye said he felt a CUP would be warranted if the change was going to affect someone else's property. Otherwise the neighbor might never know what was about

to happen, said Mr. Miller. Mr. Levine said it seemed to him that as a general matter stream alteration should not be allowed. The stream will go where it wants, he said, and he is disposed to not allowing this at all. He said he would be inclined to go in the other direction and say that a property owner is stuck with the creek as it is. Mr. Greene said ecologically this would have a large impact. Ms. McKibben said there have been situations where people have received permits from Fish & Game to move streams and CDD has not been aware of this permission. Ms. Camery said some times when there is habitat justification, alterations do happen. If the city were to prohibit this outright, they could be in conflict with Fish & Game. Mr. Levine asked if we could condition approval on obtaining a Fish & Game permit. He would not want to make it easier for people to do this, so he recommended making the process a CUP and requiring other permits to be in hand like from the Army Corp. Mr. Dye asked what would be the role, then, of the PC review? Mr. Greene pointed out the opportunity for public notice as an example. Mr. Dye asked if the CUP could be conditioned on these other permits. Ms. Maclean said typically the permitting processes run concurrently because we can't control those other agencies, however the CUP process allows for public notification. Ms. Camery said the proposal would be brought to the Wetlands Review Board in this case. If it fell under the flood ordinance, an applicant would be required to have other permits in hand. Mr. Levine said it is the same situation with marijuana permitting.

Ms. McKibben said often conditions are put in place in a CUP that other permits be obtained. If a CUP is denied and they get a permit from Fish & Game, we could require that permits be submitted with the grading permit. Would that work in a practical sense, she asked? Mr. Miller said he liked this method - get a CUP first and go through the whole neighborhood noticing thing because otherwise Fish & Game won't know about the buffers on other properties. If the process started with CBJ there would be foreknowledge of what the property owner is able to do. He said he did not think the applicant should need to get other permits first. Ms. Maclean also advocated for a CUP saying that otherwise there is no way to undo something.

## **V. Committee Member Comments and Questions**

It was decided to bring this draft ordinance back to Title 49, after review by CBJ Law, before going to the Committee of the Whole or the Planning Commission

## **VI. Next Meetings**

- Tuesday, October 9, 2018, 5:00 – 7:00 pm.
- Monday, October 15, 2018, 12:00 – 1:30 pm.

## **VI) Adjournment**

The meeting adjourned at 1:05 pm.