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

Wednesday, June 18, 2018
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Paul Voelckers, Dan Miller, Michael Levine

Members Absent:
Carl Greene

Staff Present:
Laura Boyce (CDD Planner), Jill Maclean (CDD Director), Rob Palmer (CBJ Attorney), Beth McKibben (CDD Planning Manager), Laurel Bruggeman (CDD Planner), Marjorie Hamburger (CDD Admin)

Public Present:
Richard Harris (RH Development)

I) Call to Order
Meeting called to order at 12:04 pm.

II) Approval of Minutes
May 16, 2018 Draft Minutes

MOTION: *by Mr. Voelckers to approve the May 16, 2018 minutes*

The motion passed with no objection.

III) Agenda Topics

a) Unit Lot Subdivisions

Ms. Boyce presented on a recorded condo plat for Sunset Meadows, a multi-family project by RH Development. The concept for this development is called “site condos”, which is a new concept in Alaska. Site Condos are a hybrid of a subdivision and a condo project. The proposal for Sunset Meadows came to the Planning Commission as a Conditional Use Permit. The units are to be sold individually but the underlying master parcel is owned by the condo association. However unlike what Juneau is familiar with, a small amount of land surrounding the condo goes with the ownership of unit.

State law is clear that this arrangement qualifies as a subdivision, said Ms. Boyce. At issue is the fact that a condo plat is not reviewed by the local authority, i.e. CBJ, as a subdivision. Before committee members is the State’s recording of the plat. Ms. Boyce said staff seeks input from the committee about how to handle this new type of condo development. One area of concern is how the lot is assessed for taxation. How do we look at a parent lot versus unit lots?

Mr. Levine asked for clarification on the difference between unit lots and a normal subdivision. Ms. Boyce said the parent multi-family parcel meets all code requirements. The smaller lots around each unit, called unit lots, would have different requirements. Mr. Levine asked if a new type of subdivision is being made. Yes, said Ms. Boyce, this is just a different type of development. Ms. McKibben said CBJ understands lots owned by homeownership but this is a new thing for the community. Mr. Levine asked if there are pros and cons for allowing this type of land ownership that should be discussed in order to think about how to make a path forward. Ms. Boyce said the city wants to review the pieces of land and insure they are being taxed appropriately. Health, safety, and welfare for the unit buyers need to be looked at as well. She proposed that covenants and restrictions for the homeowner association be reviewed through some sort of process so that buyers understand the expectations of what they can and cannot do on their unit lot.

Mr. Voelckers said the definition says a unit lot is not a lot. Therefore, he said, he is having trouble understanding what is being created and what rights and limitations will there be for this type of lot in relation to a standard lot? He feels the need to first identify what it is; what rights belong to a buyer of this lot.

Ms. McKibben said there is an appetite in the community to sell property in this way and CDD is trying to make a path forward. Mr. Levine said he can see both sides; it is appealing to own a little bit of property. Will this make financing easier, he asked? Yes, said Ms. Boyce. Mr. Levine said before the committee discusses all the specifics are there downsides or detrimental policy ramifications to making this happen that we should know about? Ms. Boyce repeated that this is a new concept of land ownership in Alaska, and it was adopted in Anchorage in 2017. Everything staff has thought of so far is in the packet of information.

Mr. Miller said he wanted to hear from the applicant as to the benefits he sees in developing in this way. Mr. Miller said that in a condo plat you can reserve space for a particular unit. He thinks this could be done around each lot and this could possibly solve the problem if, in fact, there is one. Banks have been financing condos for a long time. Maybe we don't need a new ordinance and in the condo plat just reserve space around every unit. He said he does not see maintenance easements.

Mr. Harris said all we did was take the line of the condo unit outside the walls of the individual structures. However the parent lot is not divided and that is where the confusion is. On page one of the handout, under A.1. Purpose it says it is not a subdivision, it is a condo. Mr. Levine said that if different people own different parcels of land then it is a subdivision, according to what he understands. Mr. Harris said the land underneath is owned cooperatively by the Homeowners Association; the owners just have use. Mr. Levine said this is different from what we are reading. Mr. Harris said if you divide use of the lot that is a condo. Mr. Levine asked, if I buy a condo do I own the backyard? Mr. Harris said not in fee simple, that is the key word. You have use of the backyard, however.

Mr. Dye said in regards to taxation, is each unit being taxed separately from the parent parcel? Ms. Boyce said the land would have a different value from the condo sitting above it. As we look at the project, we see individual pieces of land being sold and the remainder of the property under joint ownership.

Mr. Voelckers pointed out that what Mr. Harris was saying was at odds from the staff report. He requested comments from Mr. Palmer. Mr. Palmer said he did not have the information needed to speak to specifics. But, he said, it is within the committee discretion to push the legislation proposed by staff. The general idea is for a condo to have specific usage of a piece of land. This will be a case precedent that the backyard piece goes with the condo unit. If the unit is sold, does that include the land?

Mr. Harris said the unit is separate from the land, the land is underneath. Homeowners do not own the land below 7 feet.

Mr. Miller stated that he built boat condos and was required to dedicate a parking space in front of each unit. This was reserved land for each unit, in front of each unit. Everything else on the property was considered common. In the deed, he reserved a couple of extra spots for some units. How is that different than what Mr. Harris is doing on his condo development, although the land is not noted as reserved space? Mr. Miller thinks it could be considered the same type of thing. He said he is not sure if this unit lot subdivision applies if not wanted by Mr. Harris. What advantages are there for a developer to want to do this and how will it benefit the community, he asked? For tax announcements, is tax on the common area shown?

Mr. Voelckers asked if there is an advantage for the bank or for financing. Mr. Harris said he does not see a banking advantage. There are lower condo dues for the homeowner because they manage maintenance outside the building walls. The owner gets use of that space and must maintain it.

Mr. Levine asked why this is needed to accomplish a developer’s goal. Ms. Boyce said the piece of land is being sold with the unit and is assessed and taxed differently. Mr. Voelckers said he is not in agreement with this developer. Mr. Levine said it seems to him the condo and yard going with it is what is sold. Ignore the notion of 7 feet down; the homeowner controls maintenance of the “cube” and the city gets to tax it. That would solve this problem, he said.

Ms. Maclean asked structure plus land? Mr. Levine said no, it is sold as a condo with obligations to maintain the land outside. If it is sold as a cube, to include the land and the structure, then it is a subdivision. Ms. Maclean said you can have a regular subdivision with a homeowners association.

Ms. Maclean offered some history on the project. Mr. Harris first proposed 4 multifamily structures on this site but came back to the Planning Commission asking to do individual units instead. The Commission said a new Conditional Use Permit was not necessary. When permits were issued last year they did not show individual lots as they do now. The State signed off on the condo plats; CBJ does not do this. Instead the situation came to CDD’s attention via the assessor’s office who wants to know how to tax this property.

Mr. Dye said Mr. Harris is saying he is not selling the land. Where did this idea come from then, and does it matter? Mr. Harris said dealing with AHFC, the key to a site condo is the definition of the “cube”. It is owned within the lot. The cube owner does not own the sky above or the land below. The concept of the 7 feet below ground covers the maintenance of the utilities, which falls to the condo owner.

Ms. McKibben said the owner is buying use of the space around the building, correct? And that is being recorded? When I buy a unit in the boat condos, I maintain the parking and have unique use of that land? Mr. Miller said yes, and this is recorded on the condo plat for that parking space. He said we need to see the declaration in order to decide this question. Calling it “reserved space” on the condo plat is the simplest way, he thinks.

Mr. Levine said he agreed with Mr. Miller to address Mr. Harris’ situation. He now wonders what it takes to get from a whole piece of property to a subdivision. Somewhere between “fee simple” and “you don’t own it” there are a lot of property rights in question.

Mr. Palmer said on the handout are definitions of subdivisions; our code follows the old rule that as long as ownership is above ground it is not a subdivision but anything touching land is. How do we allow permitting regarding lot sizes and setbacks when a condo project has some division of land underneath it? A process with boundaries is needed, he said.

Mr. Voelckers said he sides with Mr. Levine - keep it simple. The longstanding, old fashioned definition of a subdivision needs changing to allow exceptions rather than writing a new definition. Mr. Palmer said there is a problem with Alaska Statue which the city does not control versus CBJ code which we do. Mr. Voelckers pointed out that the only intent of the 7 feet depth indication is to fix whatever is wrong with the unit. It would not allow something like putting in a new foundation.

Mr. Harris said he could have given a limited common-area definition and could have done it that way. Ms. Boyce said the difference is for the CBJ assessors. Regarding the parking space scenario, condo owners are not taxed for that space. Mr. Miller said the intent for Mr. Harris is this is just a condo. Mr. Levine said but it ends up being a condo with land. Not sure we can fix this simply, said Mr. Levine, because of the netherworld between what is and is not a subdivision.

Mr. Miller said there are two things here, whether or not they apply to Mr. Harris' development, which may be reasons to have a code like this as per Mr. Palmer's comments. A developer trying to do a multifamily project with this concept, it would be easier to do if there were a code like this. There may be advantages for the future and this might be a separate question from does this apply to Mr. Harris' property, which can just be a plat amendment.

Mr. Harris said between the buildings there is not a property line; it is a unit boundary. All the same stuff for a condo development remains the same.

Ms. McKibben said code allows for a multifamily development on one lot, not just one unit. That is why Mr. Harris did not have to come back to the Planning Commission previously. But we do not have a mechanism whereby we see homeowners' documents. On the other hand, we do for Planned Unit Developments. Ms. McKibben wondered if the problem might be solved in this way.

Mr. Harris said the declarations were written by attorneys. To him it feels like an eagle nest type of question, why have some local ordinance when State stuff is in place to review a project? Ms. Boyce said density is the issue. Mr. Harris said that declarations can be altered later. It seems a nightmare for a developer to have a CBJ review when this has already been done by the State.

Mr. Levin asked what is recorded showing what I, as a condo buyer, own. Mr. Harris said you would record Unit 1, Sunset Meadows. Mr. Levine clarified asking if a unit is a box to include 7 feet below. Mr. Harris said yes.

Mr. Dye asked what result is trying to be achieved. Mr. Voelckers said it seems like there are two different but related questions. He asked if Mr. Harris is selling units now and is he being constrained? Is there something immediate to reconcile here, asked Mr. Voelckers? Ms. Maclean said yes, at present some Temporary Certificates of Occupancy are issued with two people in the units and other earnest monies need to close. Mr. Harris said he has met every requirement and he opposes the city holding things up. We are doing what we believe is the right thing, he said. Mr. Voelckers asked Mr. Palmer if this has this triggered a subdivision. Mr. Palmer said in a legislative capacity to protect Mr. Harris, if this aspect happens we want to protect him from enforcement issues. Mr. Voelckers said the Committee is murky about what needs to be evaluated. He doesn't want to put in some legislation to solve an unknown problem. His understanding is that staff's reading is that this qualifies as a subdivision and so there is a need to stop to correct the process.

Mr. Levine said we don’t act as a body to fix one person’s issue. He wonders if it is worth the trouble to go through this, as triggered by this particular project which will be done before we get finished.

Mr. Miller said one thing Mr. Harris mentioned is the unit boundary is outside the building and therefore he is able to keep condo dues lower. Mr. Miller said in his project the unit boundaries are inside the sheetrock and the building itself is within the condo association. By putting boundaries outside of the unit and keeping fees lower, this puts the onus of maintenance on the owner of the unit which he thinks is smart. Whether we can get to that with “reserved limited space” or get to it with this unit idea, Mr. Miller said he thinks this has to be answered by an attorney. He said he doesn’t know if we have to have this code to get there, and until that question is answered he thinks we should not do anything. Mr. Voelckers said it seems a good idea to draw this line outside of the sheetrock. He has not heard if there is a need to simply address terminology or to change code.

Mr. Dye confirmed that all committee members were in agreement with making things easiest at present. Ms. Boyce suggested that the language from Anchorage is a way to get there, and she will do more research. Mr. Harris said this language says “subdivision” but he is not creating a subdivision. Mr. Levine said he agrees with the goals of the RH Development that keeping fees down is good; he requests staff to figure out the CBJ side of the issue. Mr. Levine thanked Mr. Harris for coming in and helping to educate the commissioners.

Ms. McKibben asked what happens if an owner fails to maintain the yard? Mr. Harris said the Homeowners Association can file liens if property is not kept up and can take over maintenance. Mr. Voelckers asked if there are limits to what can be added outside the walls. Mr. Harris said yes, this is stated in the Homeowners Agreement.

The Committee reviewed what is on their to-do plate:

- Nonconforming
- Stub streets
- Common wall
- Canopies
- Urban agriculture

Ms. Maclean said staff needs time to organize the priorities.

IV) Next Meeting

Monday, July 16, 12:00 pm.

VI) Adjournment

The meeting adjourned at 1:02 pm.