

**ASSEMBLY STANDING COMMITTEE
COMMITTEE OF THE WHOLE
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

August 10, 2017, 5:30 PM.

Assembly Chambers - Municipal Building

Assembly Work Session - No Public Testimony

I. ROLL CALL

II. APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

- A. July 12, 2017 Committee of the Whole meeting minutes

IV. AGENDA TOPICS

- A. Hecla / Greens Creek and Coeur / Kensington Update (verbal update)
- B. Meander Way Local Improvement District (LID)
- C. Legislative Update from CBJ Lobbyist (verbal report)
- D. Pederson Hill Project
- E. Annexation

V. STAFF REPORTS

- A. Hearing Officer Appointment

VI. ADJOURNMENT

ADA accommodations available upon request: Please contact the Clerk's office 72 hours prior to any meeting so arrangements can be made to have a sign language interpreter present or an audiotape containing the Assembly's agenda made available. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: city.clerk@juneau.org

**ASSEMBLY STANDING COMMITTEE
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THE CITY AND BOROUGH OF JUNEAU, ALASKA**

July 12, 2017, 5:30 PM.

Assembly Chambers - Municipal Building

Assembly Work Session - No Public Testimony

I. ROLL CALL

Deputy Mayor Jerry Nankervis called the meeting to order at 6:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Maria Gladziszewski, Norton Gregory, Loren Jones (telephonic), Jesse Kiehl, Ken Koelsch, Jerry Nankervis, Beth Weldon and Debbie White.

Assemblymembers Absent: Mary Becker.

Staff present: Rorie Watt, City Manager; Amy Mead, Municipal Attorney, Mila Cosgrove, Deputy City Manager; Laurie Sica, Municipal Clerk, Bryce Johnson, Chief of Police; Roger Healy, Engineering and Public Works Director; John Bohan, Chief CIP Engineer; Rob Steedle, Community Development Director; Bob Bartholomew, Finance Director; Tom Mattice, Emergency Programs Manager; Erann Kalwara, Public Safety Manager; Lieut. Scott Erickson, JPD; Sgt. Dominic Branson, JPD.

II. APPROVAL OF AGENDA

Deputy Mayor Nankervis noted that he had requested an exception to the rule regarding public testimony at the COW and hear from the neighborhood regarding the Meander Way potential LID. Hearing no objection, it was so ordered.

III. APPROVAL OF MINUTES

A. June 12, 2017 Assembly Committee of the Whole Meeting

Hearing no objection, the minutes of June 12, 2017 were approved with minor corrections.

IV. AGENDA TOPICS

A. Recognition - Chief Bryce Johnson Retirement

Mr. Watt said the staff and Assembly were sad to see Chief Johnson go and extolled the work he had done in the time he was in Juneau. He appreciated his focus on community policing, the outward facing efforts, and the outreach and involvement to the community.

Chief Johnson said he appreciated the support he had received and that he had enjoyed his time in Juneau. He said the Assembly has been great to work with. He said that Mr. Watt inspired people to be better. He said Chiefs come and go and there is great staff at JPD. Ed Mercer would be the best police chief yet.

B. Meander Way - Mendenhall River Bank Stabilization

Mr. Watt said this was a tough issue for the Assembly and noted the information provided in the packet. He suggested hearing first from the neighborhood.

Nico Bus said he did some river bank stabilization 20 years ago and it would be very beneficial to work with CBJ and NRCS on this project. A patchwork project was bound to fail and this type of

improvement would benefit everyone.

Will Race said he did not support the project. They moved in to their home in the past two years without full disclosure of the issue. Currently the proposal required each parcel to pay the same rate, but the cost to each owner was not the same, and he preferred to see the project, if it went forward, would be to be assessed individually.

Norman Statton invited the Assemblymembers to his home on Sunday to see the area. The river is getting deeper and the banks will fail due to physics. His property is one of the worst in the area and he asked the city for support with the project. 80% of the neighboring property owners are in agreement to move forward. If it is not fixed, there will be piecemeal, bandaid approaches, and the problem is that individual projects can be affected by how the other projects are done. It is unfortunate that five parcels are endangering 20 other people's homes. Now that this is public knowledge, the disclosure issue will cause difficulty with bank financing. Every owner will have to face the issue one way or another. In a few years, the river could be to the street and the utilities underground could be affected.

Ms. Weldon asked if there had been any discussion about changing the costs so it is not uniform. Mr. Statton said that the work to clear to the base and put in rock would be the same protection for all and therefore it should be charged similarly.

Kurt Goering thanked the city for the work that has been done. This is a radical proposal far exceeding our ability to pay. \$78,000 is an estimate and being in government contracting he knew the final cost would be determined when the project was done. He was strongly opposed to the project, he empathized with his neighbors, he said he was willing to form a homeowners association, CBJ could help with permitting, and he had already lost a sale of his home. There are other ways to address this and we have retained an attorney.

Ms. Gladziszewski asked Mr. Goering what he thought was the correct response to the problem. He said there are experts in Juneau and elsewhere that do erosion mitigation. The properties in need of attention most could do a smaller project and those affected could contribute to that project. This is still a wait and see issue, as rivers change, and as this wasn't a problem until the first joehkelup.

Joyce Goering thanked the Assembly for their efforts. Their home is currently unsellable now, and she sympathizes, but this LID is a runaway train. The current price of \$78 - 80,000 is not reasonable. She would like the city to do a CIP and they are willing to participate in some way, but not in this way.

Joe Flores said he is opposed to the LID. The main concern is the unknown. He purchased his home 2 years ago, then had erosion and spent \$30,000 for rip rap at his site. There have been four releases so far and his rock has held. \$78,000 is the initial price and the project cost may go up from there. He was one of the original eight that were told the project would be approximately \$30,000, and he did not believe it was appropriate to charge those less affected to pay the full amount. He was also told he would not get any credit for the \$30,000 worth of rocks he had put into the project already.

Roger Healy spoke to his memo dated July 12 and provided a supplemental graphic of a cross section of the Mendenhall River. He said the staff's role has been to be the conduit for Federal funds. There are costs not provided by NRCS - 25% of all project costs, and the costs associated with permitting, any land or easement acquisition, maintenance, financing costs, and potential litigation. These costs are included in the homeowners' estimate. 75% of the homeowners voted in favor of the project. NRCS needs permission to get on to the land to build the project. The CBJ owns only one lot in the project area. The other land either belongs to DNR in the riverbed to mean high water or to individual property owners. NRCS needs permission from each land owner to construct the rip rap slope. We view that as an application for a construction easement and there is also a requirement that the local sponsor, CBJ, must provide ten-year maintenance to the structure. If the project moves forward, CBJ needs to get easements from each property. Some are opposed to this project. I have tried to meet with most who oppose it and all of their reasons are valid and in summary, the

neighborhood has been a real joy to work with. They have taken a difficult project and tried to move it forward. There has been a lot of discussion about how to assess individual properties. We took the approach that the final project provides equal protection to each property so all are assessed the same portion of the local sponsor's cost of the project. Still to be done to arrive at the final assessment will be inclusion of any cost of acquisition of construction and maintenance easements. If there is not agreement, we would need to negotiate with the owner and/or use the eminent domain procedure, which is a procedure we do not use often. To assess whether there would be a monetary value to the easements, we have taken an estimate of increasing the overall owner contribution of \$2.2 million to \$2.8 million to cover those costs. The findings that the Assembly must make is to determine if the project is a municipal improvement and if the properties benefited assessed in the proper manner. He said the memo outlined two options.

Ms. Gladyszewski asked if people voted for one cost estimate and if the cost changed, was another vote needed. Mr. Healy said staff could go back out for an informal vote or revise the assessments. If the recommendation is to proceed to an LID hearing, staff could revise the assessment, send the notice out via certified mail and see if where the votes and protests would be after that. Ms. Mead said the actual assessment is not set until the project is done. At the beginning there is the creation of the LID and a hearing process associated with that and if more than 50% of the owners who are paying project costs attributed to the homeowners object, then the LID does not move forward. If the LID goes forward, at the end of the project the costs are assessed. Ms. Gladyszewski said that if it is already known that the cost has increased from \$78,000 to \$105,000 and they voted on the estimate at the lower number, that was a significant factor for a vote. Ms. Mead said there was no requirement for a pre-vote, but for the creation of the LID there needed to be an ordinance and a hearing process, and that is where people could officially testify and vote. Mr. Healy said that an informal ballot was a typical approach to an LID and the results were to gauge neighborhood support. It could be done again with the increased costs.

Ms. Gladyszewski asked if there was a way to figure out separate costs of the project per property based on current severity of the erosion on the property. Mr. Watt said the LID ordinance requires assessing in the proportion to the benefits derived, and that is debatable. Engineering's approach is one - we have heard a different view. People will contest this and there is no perfect assessment method. There is some exposure, no matter how it is approached. Mr. Healy said certain criteria could be applied to assess each property's risk - there were many factors including flow, soils, and that type of assessment of risk to the existing property is very arbitrary vs. the equal benefit of the constructed improvement to each property.

Ms. Weldon asked if in the informal survey was there a mention that the project cost could be as much as \$120,000 or were they agreeing because the property owners thought it was \$80,000. There are five that don't want to pay \$80,000 and there is now potential of increased costs. Mr. Healy said the initial estimates included uncertainty of what was provided by NRCS. We initially assumed the compliance with NEPA was our task but in further discussions with NRCS, that is an overestimation and our costs decreased there. The specific reason for thinking costs will increase is dropping one lot that had the stable point and the other is an estimation of monetary compensation for easements. There was no range of potential costs given to the neighborhood. Ms. Weldon asked him if he suspected more would drop out with a higher cost and he said yes.

Mayor Koelsch said the city assessor had eight appeals, and asked if that number had increased. Mr. Bartholomew said the assessor has been in discussion with eight property owners and 3 received a 50% reduction and 5 received a 25% reduction based on erosion and loss of property. Mayor Koelsch asked if the remaining 20 owners had no issues. Mr. Bartholomew said that several other owners had met with the Assessor's office, and at the time that the discussion took place there was no damage observable by the Assessor.

Mr. Kiehl said the city benefits from this project as well, including the utilities on Meander Way and its own lot. In terms of the city's cost to the project to date including staff time, are those being charged to the project now or to the operating budget. Mr. Healy said there was currently no project amount to charge costs to and they were identifying their hours and putting them in a holding pattern. Mr. Kiehl

asked if work to date would be charged to the project and Mr. Healy said yes, and that was included in the initial estimate.

Mr. Healy explained his diagram distributed at the meeting. He said the property lines along the river are to mean high water called the meander line. The constructed improvements landward of that would be the construction easement the CBJ would require. After the constructed improvements, the property line would move to the new meander line, and to that line would be the area needed for a maintenance agreement.

Mr. Kiehl asked if some homeowners would lose more yard to the project. Mr. Healy said the project would push out into the river due to the slope. The bank is steep and the project would leave a 1.5:1 slope. Mr. Bohan said the rip rap would extend down into the areas where the river is undercutting and some properties are gaining and some are losing property but it is all protruding into the river given the fact that at some point there is a very steep edge. Mr. Kiehl asked about the timing of the project. Mr. Bohan said that was subject to approval from the Assembly, and from the neighbors, and obtaining federal funding appropriated to a project by direct federal appropriation, while negotiating for easements, permitting with DNR, and settling all the issues before a project could be bid. Mr. Kiehl asked who owned Gold Creek concrete chute. Mr. Healy said it was a project constructed by the Army Corps of Engineers and was a requirement of CBJ to maintain, subject to regular inspections by the Corps.

Mr. Nankervis asked Ms. Mead if the standardized assessment, based upon all parcels benefitting with the same protection at the end of the project, was a legally defensible position. Ms. Mead said that the benefit to the property can be a future benefit, but that finding has to be fully fleshed out. There is only one case that she found regarding equal apportionment. It was from MatSu and was challenged because the statute, which the CBJ ordinance follows, requires apportionment according to benefit received. The court in that case noted that Matsu had a very specific code provision which allowed for equal apportionment in a very narrow circumstance, otherwise, apportionment according to benefit would have been required. She thought it was possible to get to a finding that the properties are equally apportioned. What needs to be answered is, if the properties are not all currently at the same risk, how is it that they will equally benefit in the end. That answer would make the assessment defensible.

Mr. Nankervis said that the NCRS stated that CBJ was at least six months away from federal funding with no guarantee of receipt of the funding. Mr. Healy said there was no line item in the federal budget now for this project.

Mr. Nankervis asked if the construction easement was only for the length of the project and Mr. Healy said yes. Mr. Nankervis asked if the 10-year maintenance agreements included the construction easement and all the area to below the water line and Mr. Healy said that was correct. Mr. Nankervis said he had serious concerns about establishing this type of LID.

Mr. Jones said if CBJ decided to not pursue this LID, then if federal money became available, there would be no local sponsor, and therefore, the funds would not be able to be used. Mr. Healy said that was correct, NRCS would not proceed with the design.

Ms. Weldon asked if CBJ was required to proceed to eminent domain for this project, would the apportionment make that more difficult? Ms. Mead said eminent domain would not increase the LID cost but it would increase CBJ's costs. The LID can only pay for the improvements, not for maintenance.

Ms. White asked if property lines would be altered in installing the project. Mr. Healy said yes and Ms. White expressed concern about the need for homeowners to obtain new, costly as-built surveys when selling their property.

Ms. White asked about the river changing direction over time and if someone does a project on their own parcel and it changes the course of the river and potentially the property of a neighbor, what

would be the recourse. Ms. Mead said that there are covenants on the subdivision plat that this is an erosion zone and those buyers took that property with that understanding. There may be individual actions that could be taken for negligent action or action that caused property damage that was foreseeable or avoidable, but that would not have anything to do with the municipality. Ms. White spoke about recoverable damages based upon real estate disclosure laws.

Mr. Kiehl asked if there is time to build the participation by CBJ into next year's CIP and to cap the cost and provide homeowners along the river with a "not to exceed" amount for the LID. Are there steps CBJ can take to put aside funding in case the costs exceed \$78 or 80,000. Ms. Mead said normally there is a portion of costs to CBJ and homeowner and the CBJ could cap costs, but it is critical to articulate the municipal nature of the improvement in this project. It must be more than being a financial conduit, but that route would require further articulation of the municipal benefit.

Ms. White asked about setting a precedent for other homes in a hazard zone. There are more homes along the river, in mass hazard waste zones, and if CBJ was opening a Pandora's box. Ms. Mead said it was not a precedent to bind a future assembly as it was an appropriation. If there is no funding to do the same thing in the future, that is a defensible decision. The political equity issue is a matter for the Assembly to determine if it would be setting an expectation.

Ms. Gladyszewski said she always viewed CBJ's participation as a conduit for federal funding, not as a benefit to the city. I view it as a benefit to the property owners. Ms. Mead said the Assembly could find it as a benefit as a municipal improvement, but if the extent is to be a financing conduit, that is not necessarily a LID, but a capital improvement by agreement. Ms. Gladyszewski said that it would require 100% agreement and Ms. Mead said yes, the homeowners would need to arrive at 100% agreement to their direction.

Mr. Kiehl said a case could be made that the project could be protecting CBJ utilities.

Mayor Koelsch said he was not ready to move this to the full Assembly. Equal benefit is a concern. He would like more legal help regarding equal benefit and municipal LID and municipal improvements. If we can't do an LID, are there other avenues to be a conduit for this project. He asked if further information could be provided. Ms. Mead said that she thought staff could provide more information on these questions. Mayor Koelsch wants proof that it is an equal benefit to everyone that is being assessed the same amount. Ms. Gladyszewski would like to know if there is another way to apportion the assessment that is scientific and defensible.

Mr. Gregory was not in favor of the LID process and he preferred the homeowners to take the information and potential cost increase and have their own meeting. He preferred a CIP by agreement and not an LID.

Ms. Gladyszewski said that because the homeowners had met many times, and 80% of the homeowners had supported this, she did not want that to be minimized. She would like to see how this can be worked out.

Mr. Jones said he thought it was important to approve the LID. The Federal government would not participate unless CBJ forms the LID. NRCS work ceases while we have a lot more discussion. He did not know if the homeowners would be successful in the CIP process. He did not want to be in the position of appearing to not be willing to do anything. 4-5 homes have gone into the river in MatSu and Matsu Borough and the state has put money into shoring up roads and highways and they have found no way to compensate the homeowners. We owe the homeowners a decision. The assembly is doing the homeowners a disservice and we need to step up.

Mr. Watt said there had been no discussion about the financial exposure to the treasury outlined in Mr. Bartholomew's memo of July 12.

Mr. Bartholomew said the central treasury is the cash flow for the \$2 million in cash to be paid by the property owner in order to get the work done and provide up front cash. Whatever the final

assessment of the LID is, it would be paid back to CBJ over 15 years. Normally these are fairly low risk, but here there is higher risk, if someone does not pay their full assessment. He wanted to note the higher level of risk to the CBJ.

Ms. Gladziszewski asked about timelines and when federal funding could be known. She did not want to delay. Mr. Healy said NRCS was continuing work on the design, doing technical drilling, and they are looking to the LID process as to whether or not they continue. If we stop, they will stop, in regards to the discussion on the LID. NRCS does not know when federal funding could be identified. Mr. Healy said he could not answer about the federal budget process. Mr. Jones said that the money for these projects is a response to disasters by Congress. So these funds would follow other disasters. The next one to be funded could provide money for this process. It is not part of a normal budget process, but a pool of money that is used for disaster relief.

Mr. Kiehl said he would like to know if there is another way to make a defensible cost assessment for a variable cost. He likened it to the tax assessment for fire protection and the difference of his home vs. others in the community. Protecting lives and properties from natural hazards is a job of the city and we currently maintain the Gold Creek conduit. He is interested in a way to provide property owners with a "not to exceed" assessment. He did not object to waiting until a future meeting for more answers.

Mr. Nankervis asked the staff if it understood the questions being asked and they nodded in agreement. Mr. Nankervis said he would attempt to get this matter on the next COW agenda.

Hearing no objection, the matter will appear on a future COW meeting agenda.

C. Ordinance 2017-17 An Ordinance Amending the General Provisions Code to Add a New Chapter Relating to Public Records.

Ms. Mead said this ordinance was requested by the Assembly. State law required CBJ to follow the public records in statute but did not require the state regulations on how to process requests. For many years CBJ has followed the state regulations. The purpose of this ordinance is to create a CBJ process to uniformly process requests. She explained a typo on page 6 of the ordinance, subsection (d) (3) and said an "and" and not an "or" was needed.

Ms. Gladziszewski asked if "public purpose" is defined. Ms. Mead said that is from state law and the municipality may waive fees if there is a public purpose is found for the records, however it is not defined in state law. Ms. Gladziszewski said that this code is written so people have no idea when the record would be provided and the costs could be astronomical, as review can take a long time and it could be very expensive based upon the attorney's rate. Ms. Mead said that was correct, review can be expensive and can take a lot of time. This is what she was asked to draft and it is modeled on the Homer code. The time can't extend forever, but it does not seem reasonable to set a specific time, and CBJ did not have a way to mimic the state response of 10 days, then another 10 days, then a request for an extension to court.

Ms. Gladziszewski said "prompt," and "as soon as practicable," were too vague and Ms. Mead said those words have meaning. She said the ordinance also states that a good faith, diligent effort, prompt response would be made.

Ms. Mead asked how many requests did CBJ receive. Ms. Mead said many, most were simple, which was why there was a streamlined process recommended, and others could take significant time. Ms. Sica said that there were approximately 20 of the type which took significant research submitted to date in 2017. The clerk's office had been tracking for approximately 3 years and had, in most cases, responded in 10 - 20 days for all. Ms. Mead said that of the 20, only 5 required legal review.

Mr. Gregory asked about the existing time to respond was reasonable under normal circumstances and if there was ever a need for more time - what would be reasonable. Ms. Mead said very often 20

days are taken not counting weekends. There were a few requests in March/April that took extraordinary amounts of staff time and the time under state law was not sufficient. She estimated she had spent 70 hours of her time and 70 hours of Ms. Cosgrove's time for review, in addition to the MIS time to gather the records. Mr. Norton said he thought the ordinance as written seemed reasonable.

Mr. Kiehl how much has been charged for records in 2017 and Ms. Sica said there had been no charges. She would provide the Assembly with the request log to verify. Mr. Kiehl asked if the ordinance covered charging for both review and production of the documents. Ms. Mead said this ordinance would only have had consequences to three of the requests in 2017 if in place, and those could have received waivers under the waiver provision.

Mr. Kiehl asked about a fee schedule and Ms. Mead said the ordinance incorporates a fee schedule in resolution which calls for the current charges in effect at the CBJ print shop and the staff salary of the respondent.

Mr. Kiehl shares concerns about prompt and practicable and there must be a reasonable place between that and a specific number of days. Maybe giving the requestor an estimate of the time that it will take so there is some expectation and some level of accountability. Ms. Mead said a guideline could be added which requires a response from the clerk by a certain time providing the date that the records would be required and /or an estimate of time that the records could be provided.

Ms. Gladziszewski said none of the internal workings are in the ordinance such as how and when the requestor would need to pay for the records, etc. Ms. Mead said a built-in fee reduction for certain scenarios and also a public purpose reduction, and it was correct, it could be a lot of money. Ms. Gladziszewski said most would say the request was for a public purpose. The state tends to reject the public purpose rather than identify those that need to have fees waived. Ms. Mead said the statute says the waivers need to be uniformly applied.

Ms. White said she did not support a defined deadline. Ms. Mead said the requests are looked at on a case by case basis by the court and if the city can show that there was other pressing work, it can determine there was reasonable effort or if there was not diligent effort. Ms. White did not want to write something from scratch and like the way it was written.

Mr. Kiehl said he did not want to see a set number of days for the full request to be completed, but a set number to provide the estimate of time and cost. As we set up our laws, we need to provide for accountability. He spoke about the waiver for public purpose and the limit of \$500 over a year of total waivers and a potential of splitting the costs between the requestor and CBJ. Ms. Mead said the ordinance could direct the manager to determine a policy for how the waiver was applied, or change the ordinance.

Ms. Weldon said she did not believe in a set amount of time, but does like the time frame for the clerk to respond initially.

Ms. Gladziszewski said she liked the idea of a a shared cost between requestor and the city. Ms. Mead said the high cost requests are extremely rare.

Mr. Nankervis said the dollar amount could assist in helping to narrow a request. Mr. Nankervis asked if there is a definite time frame to get back on many things in the CBJ, such as permit issuance, etc. He did not support specific time frames. He likes the ordinance because before we had nothing. He did not support a shared cost scenario and this ordinance addresses the time sinks.

MOTION by White, to correct the typo and have return to the full Assembly as noticed for public hearing.

Mr. Kiehl objected.

MOTION, by Kiehl, to amend, to provide that requests must be responded to within 20 business

days, either by production by the records requested or with the estimate of when the records would be produced.

Ms. White objected and said this was too directive to staff.

Ms. Gladziszewski said that there were not objections to how the responses are being made now because they are following 10 day regulation - so if we only say "prompt," then people would not have an idea of when the request would be fulfilled.

Mr. Nankervis objected.

Roll call:

Aye: Gladziszewski, Kiehl, Weldon

Nay: Gregory, Jones, Nankervis, White, Koelsch

Motion failed, 3 ayes, 5 nays.

MOTION, by Gladziszewski, on page 7 of 8, to change "does not exceed \$500" to "does not exceed half of the estimated costs during any period of 12 consecutive months."

Following discussion, Ms. Gladziszewski withdrew her amendment.

The Assembly took an extended at ease to allow members to draft an amendment.

MOTION, by Kiehl, on line 24, on page 6, to strike the semi-colon, put in period, and add a new subsection, (e) to read, "if the request qualifies under (d) of this section, and the combined amount of all fees, including the amount of any waiver or reduction granted to the requester or to any other requesters acting in concert with the requester in making requests for the same or related records, exceeds \$500 during the previous 12 consecutive months, the fees shall be reduced by 50%."

Mr. Kiehl said that just like status quo, if you have a public purpose and qualify for a public purpose waiver, the manager can waive the fees up to \$500 and any subsequent request in the same year can be reduced by 50%.

Ms. Gladziszewski says this amendment allows one waiver or reduction and for the second one the requester would pay half.

Mr. Nankervis asked Ms. Mead about the structure of the wording and she clarified the revisions she would need to make, and Mr. Kiehl noted that there would need to be the word "or" added at the end of line (d)(2).

Mr. Nankervis and Ms. Weldon objected. Ms. Weldon said she believed that requests can be narrowed in scope and that currently most requests do not reach the level of high costs.

Ms. White said she prefers the way the ordinance is written now.

Mr. Kiehl said this amendment helps strike a balance and it is reasonable to split costs for public documents with the city and requestor.

Mayor Koelsch said this ordinance allows everyone to ask for records, and most requests will not incur fees, and if someone wants six months of the Assembly's emails, there will be a reasonable amount of time and cost to provide those.

Ms. Mead clarified that the first five hours of labor to produce records is currently at no cost.

Roll call:

Aye: Gladziszewski, Jones, Kiehl

Nay: Gregory, Nankervis, Weldon, White, Koelsch
Motion to amend failed 3 aye, 5 nay.

The main motion passed without objection and was forwarded for public hearing at the next regular meeting.

D. Ordinance 2017-14 An Ordinance Proposing an Amendment to the Charter of the City and Borough Relating to Competitive Bidding.

Ms. Mead explained information in her memo and said that the intent this ordinance changes the charter, not the code, which would subsequently need to be changed, if adopted by the public on the ballot.

MOTION, by Koelsch, to forward the proposed ordinance to the full assembly on July 31 and requested unanimous consent. Hearing no objection, it was so ordered.

E. Attorney Resources - Misdemeanor Prosecution

An annotated version of Ordinance 2017-18 is included, explaining the purpose behind each of the proposed amendments.

As noted earlier, there was a request that the Assembly also consider adding misdemeanor drug offenses as well. Those changes will be presented separately once staff has a better understanding of the fiscal impact.

Ms. Mead explained the annotated version of the changes to the penal code.

MOTION, by Weldon, to introduce the ordinance at the July 31 regular assembly meeting. Hearing no objection, it was so ordered.

Ms. Mead noted the cost to add the additional attorney staff as provided for by a memo from the Finance Director.

Bartlett money in for attorney services, and decrease in person hiring is less expensive and the office was frugal, so the money lapsed from the law department is larger than expected.

Mr. Bartholomew would follow up with Mr Kiehl's request.

Mr. Kiehl - public defender contract - do we have estimated costs of increased prosecutions. Ms. Mead said law obtained new case management system and the public defender is intending to retire. we have been approached by 2 or three people and I don't think it we will pay less and it will be a competitively sought after contract.

No objection to drafting an appropriating ordinance for this position.

V. EXECUTIVE SESSION

A. City Manager Evaluation

MOTION, by Kiehl, to recess, into executive session for a personnel matter, specifically to meet with the city manager to discuss his performance evaluation.

Hearing no objection, the Assembly adjourned into executive session at 8:31 p.m. and returned to regular session at 9:34 p.m.

Mr. Kiehl said that during executive session, the assembly discussed the city manager's evaluation with him.

Mayor Koelsch asked the Assembly Sub-Committee on the Mining Ordinance to begin meeting.

VI. ADJOURNMENT

There being no further business to come before the Assembly, the meeting adjourned at 9:35 p.m.

Submitted by Laurie Sica, Municipal Clerk



DATE: August 10, 2017

TO: Jerry Nankervis, Chair
Assembly - Committee of the Whole

FROM: Roger Healy, PE, Director Engineering and Public Works

SUBJECT: Meander Way River Erosion

At the July 12th Committee of the Whole meeting, there were several questions posed to staff regarding the Meander Way project involving the Natural Resources Conservation Service (NRCS) Emergency Watershed Protection Program (EWP).

Are there other mechanisms besides an LID to achieve this project? Yes, as outlined in the July 12th COW meeting, one option is a Capital Improvement by Agreement. There are several steps that would need to be taken by the Assembly and the residents to achieve this proposal:

- 1) The CBJ would have to agree to act as the conduit for NRCS (federal) funds (including providing upfront financing);
- 2) All contributing lot owners would have to agree to pay all costs to match NRCS construction funding and to fund CBJ's costs and provide all easements in the initial agreement. In practice, this would mean all 27 construction and maintenance easements are provided to the CBJ free of charge (or paid for out of the project). The final assessments would be calculated at the end of the project and applied accordingly for contributing property owners to begin repayment.
- 3) The CBJ would have to agree to pay for and maintain the improvement for at least ten years.

Are there ways the CBJ could potentially limit individual lot owners' assessments by using Capital Improvement (CIP) funding? Yes, the Assembly can propose an allocation of CIP funding in the FY19 capital budget to supplement the construction match funding and other CBJ costs. Given that the greatest potential for assessment increases is from a landowner not providing a construction easement to the project, it is recommended that the Assembly's intent regarding the project specific use of any CIP monies be clear (i.e., CIP monies only used to cap assessments at a particular level; payment for construction easements; etc.).

Are there other ways to assess properties that is scientific and defensible? Yes, there are several different assessment methods that could be proposed, all equally open to real or perceived bias at the neighborhood level. Assessment methods could be based on, but not limited to, the following criteria or combination thereof: river frontage; perceived risk of bank failure; predictions on future erosion hotspots; property loss or property gain (i.e., meander line changes, distance between house and rock revetment, landscaping values, etc.) between present and final condition; home and property value; previous riverbank stabilization improvement values to individual lots; setback distance of primary residence from original platted meander line; etc. In regards to predictions of riverbank stability and assignment of future risk, CBJ Engineering staff reached out to a local engineering firm that provided riverbank stability assessments in similar circumstances. The costs for these assessments would be in the range of \$10,000 to \$20,000 per lot, with the range

dependent upon the level of analysis required and whether the assessments are subject to professional liability. This method would be the most scientific in quantifying future risk of bank failure assuming relatively equal erosion trends along river stretches, however would only be truly valid for the instance that the consultant analysis was performed given the unpredictability of river movement/meandering.

It is important to recognize that the proposed equal assessment method is based on the premise of equal benefits received to each property after the project is complete. The revetment proposed by NRCS must be continuous and is uniform in its long term protection provided to each property. The equal assessment method is also cognizant that each riverfront property had similar plat notes advising residents of potential erosion of their properties, and that quantifying future river erosion in this location is highly speculative.

Staff's position is that the neighborhood could propose an alternative assessment method based on the premise of unequal benefits. A formula could be developed that includes the criteria listed above. This approach would best fit into a capital project by agreement.

If the CBJ had to pursue eminent domain on this project, would that make the apportionment more difficult? As a condition of the EWP program, the NRCS requires that their project have clear property authority to construct. To avoid actual property acquisition, which may trigger other issues regarding setbacks, minimum lot size, etc, the CBJ has proposed the acquisition of temporary construction easements as sufficient for construction purposes. NRCS has indicated construction easements are sufficient for their use. Regardless, a temporary construction easement is a 'taking' of property, albeit temporary. If we have an unwilling landowner, then eminent domain is the mechanism for acquiring temporary construction easements. There are costs associated with eminent domain – administrative costs, surveying costs, legal costs, appraisal costs, and acquisition costs. These costs would be borne by the project, included within the assessments. In summary, if other landowners had to bear the cost of eminent domain for adjacent neighbors, apportionment of assessments would be more difficult.

Summary and Action

Decision before the Committee:

- Determine if this project can be considered a municipal improvement
 - Yes: it is appropriate application process LID – Forward the formation of the LID with increased assessments and authorization for use of Eminent Domain, to the full Assembly for Action;
 - No: offer the Capital Improvement by Agreement to the impacted residents as a conduit to receive the NRCS EWP Funding.



Memorandum

City & Borough of Juneau

155 S. Seward Street • Juneau, AK 99801

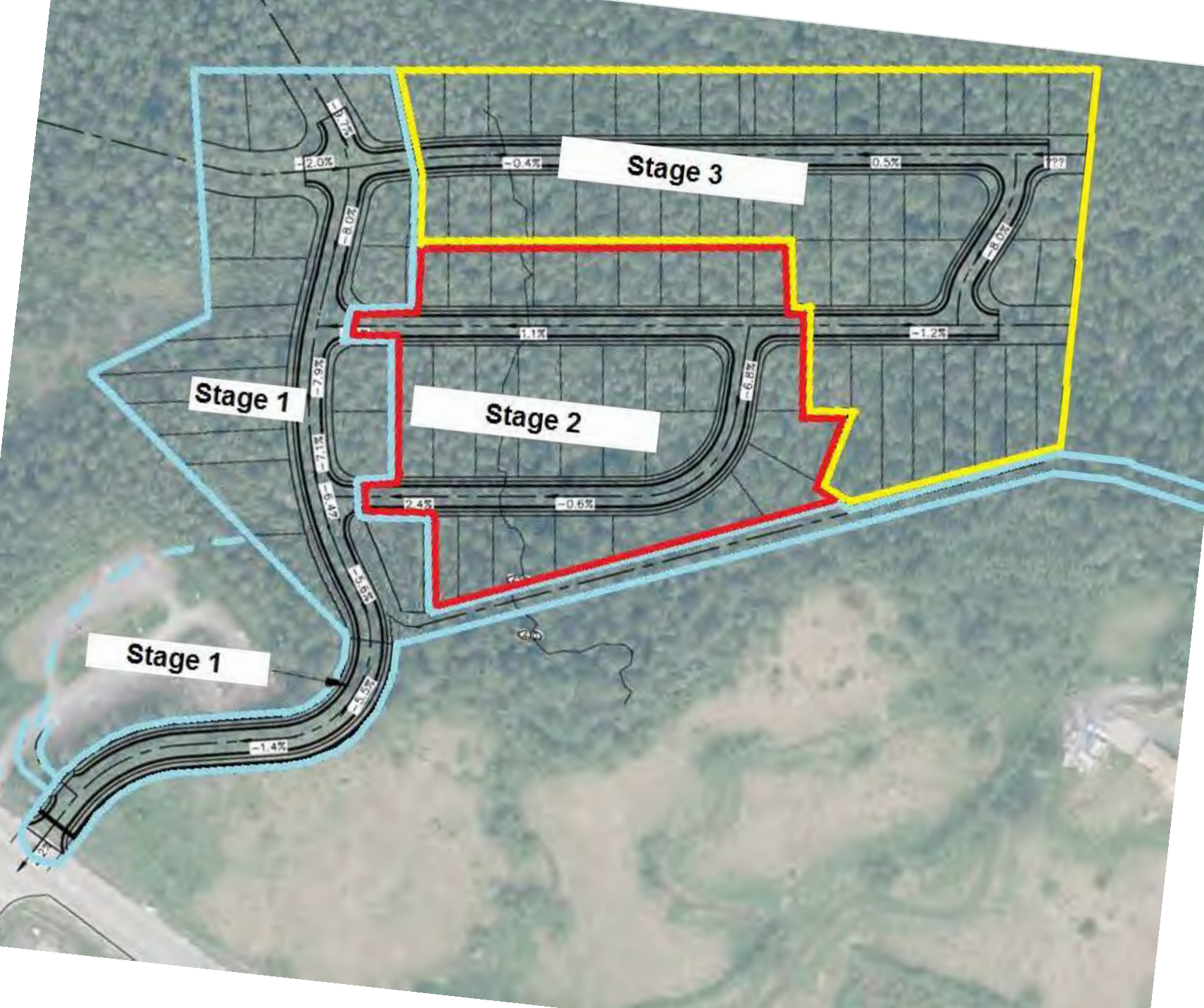
From: Greg Chaney, Lands and Resources Manager
To: Assembly
Date: August 7, 2017
Re: Pederson Hill Subdivision Status Report

This is an informational update, no action is required by the Assembly.

At the April 10, 2017, Committee of the Whole meeting, the Assembly was presented with development options for the Pederson Hill Subdivision. At that time, two subdivision platting options were presented for discussion of relevant funding and technical requirements. The Assembly gave direction to pursue a "single final plat." After working through technical details with platting, bonding, and State Law requirements, that no longer appears to be the most efficient option. Accordingly, staff has developed an updated plan that is less complex and meets the purpose of the earlier Assembly direction to facilitate timely development of the subdivision and allows local contractors to successfully bid on the work..

Rather than a "single final plat," the plan is to pursue the development in three construction and platting stages (see attached drawing). This will allow the dollar amount of the bids to meet the local bidding market, and let the stages be constructed, recorded and sold as three separate plats. The first stage will be brought to the Planning Commission for its approval. It is helpful that by approving the large plat last February, the public and the Planning Commission have already been afforded the complete picture of the proposed development.

By developing and platting the project in stages, sale of lots from the first stage can more quickly fund later stages in a less complicated manner, avoiding the need for an appropriation and de-appropriation of a central treasury loan, and avoid the complexity and cost of a third party escrow agreement (\$160K). This method also provides a rapid completion schedule; the initial stage is anticipated to go out to bid in mid-August.



MEMORANDUM

CITY/BOROUGH OF JUNEAU

Lands and Resources Office
155 S. Seward St., Juneau, Alaska 99801
greg.chaney@juneau.org

Voice (907) 586-0205

Fax (907) 586-5385

TO: The Lands Committee

FROM: Greg Chaney, Lands and Resources Manager



SUBJECT: Expanding CBJ to Model Borough Boundary

DATE: January 25, 2017

On February 22 2016 the Assembly Committee of the Whole reviewed the option of incorporating additional areas into the Juneau Borough. After weighing various courses of action, the Committee voted to pursue annexing the unclaimed area between the southern Juneau border and the new northern edge of the Petersburg Borough. During the December 3 2016 Assembly Retreat the issue was discussed again. It was decided to take the issue back to the Lands Committee for further discussion because annexation applications are substantial undertakings, there is efficiency in bundling more than one area in an application, and the first applicant tends to have a significant advantage in the process.

However Model Borough Boundaries are only a guiding concept and are not a clear indicator of where future borders between boroughs will be delineated.

Figure 1 provides a regional perspective and shows existing boroughs in Southeast Alaska. In 2003 the State of Alaska Local Boundary Commission established Model Boroughs for areas of the state that were in the unorganized borough. The Boundary Commission delineated areas neighboring the City and Borough of Juneau (CBJ) that were proposed to be incorporated into a future expanded Juneau Borough.

Figure 2 shows model borough boundaries in near Juneau. The primary feature of this map is that it shows adjacent boroughs that could potentially annex unincorporated portions of Admiralty Island as well as Horse and Colt Islands. Mansfield Peninsula region is across Lynn Canal from the Haines Borough and even if Admiralty Island is not within the Haines Model Borough, since it is adjacent, Haines could apply to annex portions of the island. The Glacier Bay Model Borough has not been created yet however it is conceivable that northern Admiralty could be included in its incorporation application. Another potential applicant to annex northern Admiralty Island could be the Chatham Model Borough. Angoon is the primary community on Admiralty Island and has expressed interest in the past of including

the northern part of Admiralty within the Chatham Borough if it was created. So, even though it might seem unlikely that another borough would claim the northern section of Admiralty as well as Horse and Colt Islands, it seemed just as improbable that the new Petersburg Borough would extend so far into Juneau's designated model borough territory.

Given that other jurisdictions might claim areas within the Juneau Model Borough Boundary, it seems prudent to review options for applying to fill out the unincorporated portions of Juneau's Model Borough. Figure 3 shows areas outside of incorporated Juneau Borough that could potentially be considered for annexation:

- A. This triangular region is between the new northern boundary of the Petersburg Borough and Juneau's southern boundary. Since this area was not included in the Petersburg Borough, Juneau seems like the only other credible candidate to incorporate this region. In the near future, annexation of this region is mostly symbolic since there are no local residents or private properties. In the long run mineral development or tourism could generate economic activity in this region. At the February 22 2016 Committee of the Whole, the Committee adopted a motion to continue to pursue annexing this region.
- B. Pack Creek, Oliver's Inlet and the Glass Peninsula are areas where Juneau based tours, commercial fishing, guided hunts and recreational activities are common. It seems that since this region has a strong connection to Juneau, that it should be incorporated in the Juneau Borough. The shaded area identified with the letter "B" is mostly contained within the Juneau Model Borough Boundary. The exception to this is the area around Pack Creek. Pack Creek is a very popular area for viewing bears and visitation to this area is managed by the USFS based in Juneau. The shaded area within the Chatham Model Borough includes the drainage area of Pack Creek and then follows the watershed of Seymour Canal north to the existing Juneau Borough boundary.
- C. Similar to the logic in B above, the western shore of a portion of our model boundary appears to have a nexus with a future Chatham Borough. By pursuing area B and not area C, Juneau would acquire approximately the same area into CBJ, but would acquire a boundary that better follows economic and cultural activities of the future Chatham and current CBJ. If the Chatham Borough is not formed, this issue could be revisited in the future.
- D. As discussed above, there are three adjacent boroughs that could potentially claim the northern portion of Admiralty Island as well as Horse and Cold Islands. This area is potentially the most contentious area to incorporate since it includes many private properties, some permanent residents and some business activity. It would also be very attractive to other boroughs for the same reasons. The 2007 *Juneau Annexation Study Commission* concluded for remote areas, *"The Commission believes that a careful balance must be struck between rates of property taxation and levels of service delivery as annexation is considered."* The Commission also stated, *"The perceived*

disparity between the areawide mill rate and the corollary lack of services is at the “nut” of opposition to annexation. (Even property owners on the Taku River and on Shelter Island have issues with the areawide property tax rate, stating that they do not receive commensurate services from the borough.) ”

Considering that the Petersburg Borough was successful in incorporating a significant amount of land within Juneau’s Model Borough, now is an appropriate time for the Lands Committee to discuss which areas the CBJ should be included in Juneau’s application to the Local Boundary Commission. As explained above, staff recommends that the annexation application include the areas identified as A, B and D in Figure 3.

Staff recommends the Lands Committee adopt the following motion:

The Lands Committee forwards this topic to the Committee of the Whole with the recommendation of expanding the borders of CBJ’s annexation application to match the areas identified as A, B and D in Figure 3.

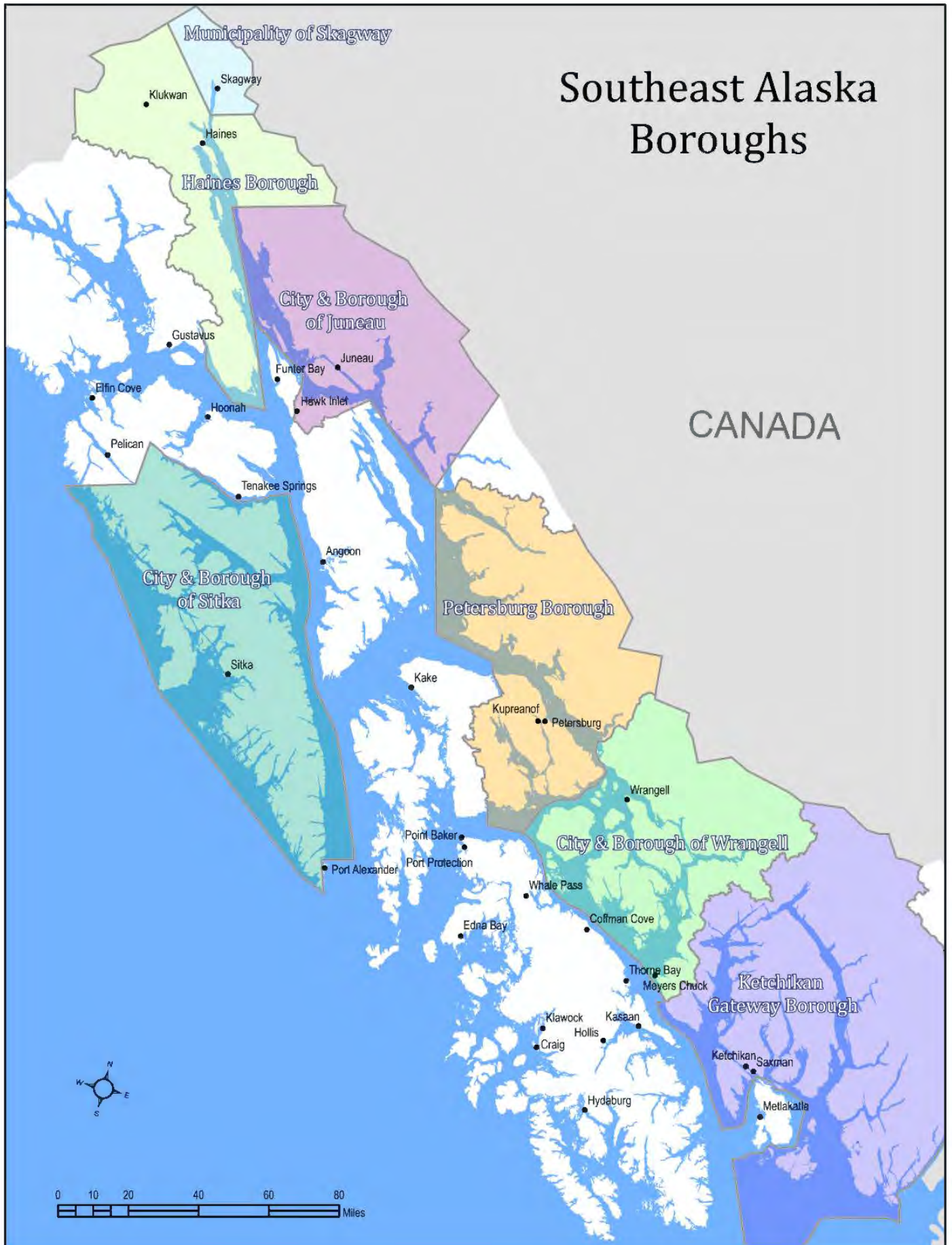


Figure 1. Regional Map of Southeast Alaska.

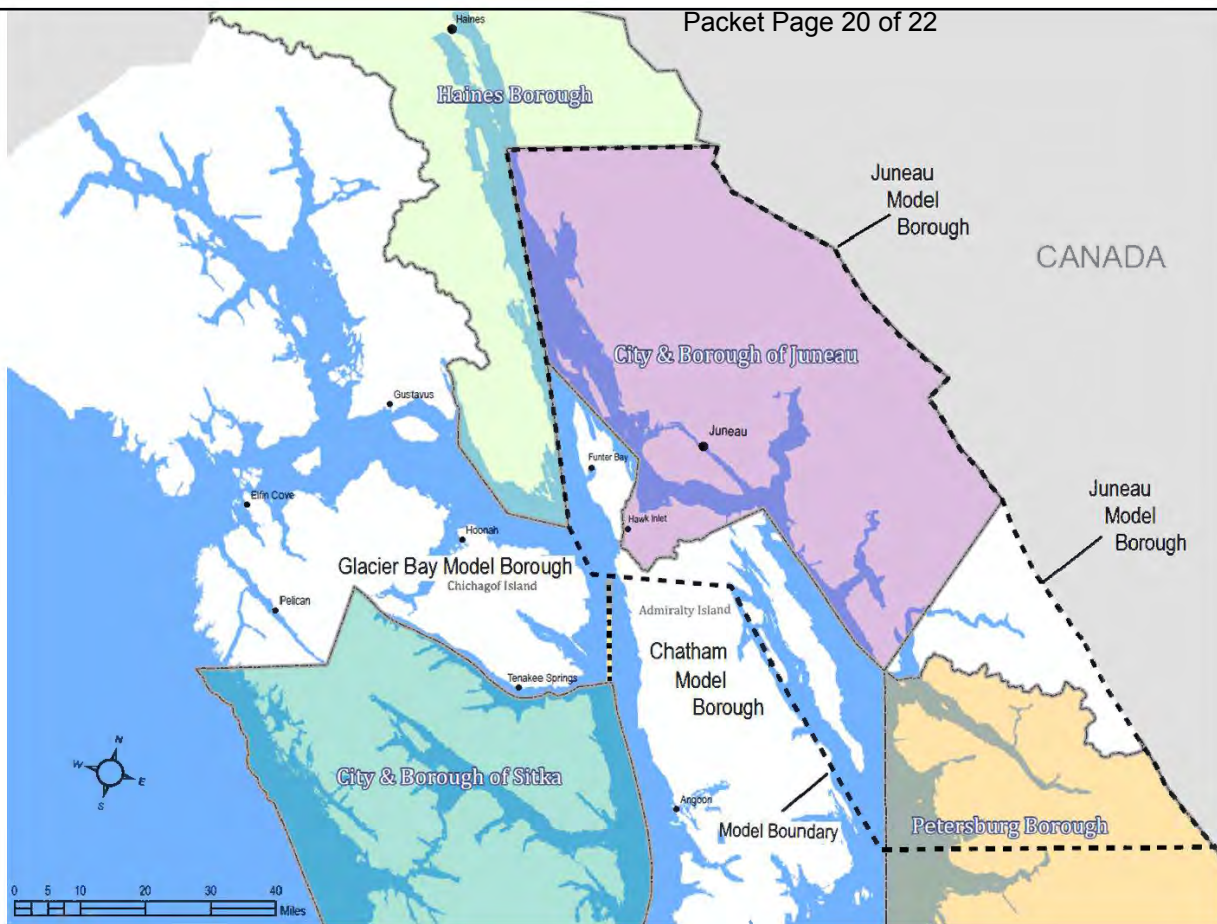


Figure 2. Boroughs adjacent to Juneau.

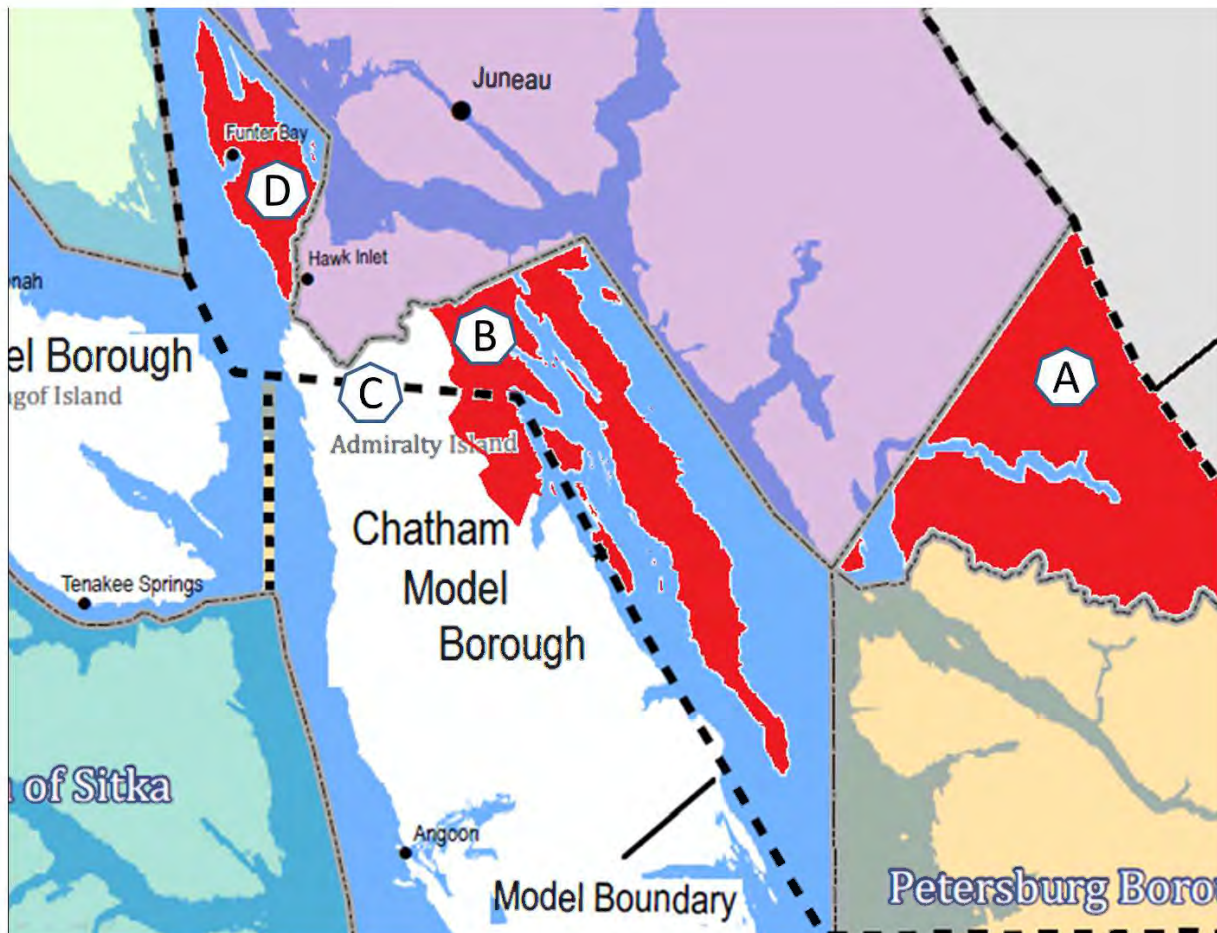


Figure 3. Recommendations for areas to include in Juneau's borough annexation application.

Excerpt

ASSEMBLY STANDING COMMITTEE MINUTES LANDS AND RESOURCES COMMITTEE THE CITY AND BOROUGH OF JUNEAU, ALASKA MINUTES

January 30, 2017 5:00 PM
City Hall, Assembly Chambers

I. ROLL CALL

Debbie White, Chair, called the meeting to order at 5:03 pm.

Members Present: Chair Debbie White; Assembly members: Mary Becker; Jesse Kiehl; Norton Gregory (telephonic participation)

Liaison Present: Weston Eiler, Docks and Harbors; Paul Volkers, Planning Commission

Staff Present: Greg Chaney, Lands Manager; Rachel Friedlander, Lands and Resources Specialist; Dan Bleidorn, Deputy Lands Manager; Rorie Watt, City Manager; Scott Ciambor, Chief Housing Officer; Rob Steedle, CDD Director

II. APPROVAL OF AGENDA

The agenda was approved.

III. APPROVAL OF MINUTES

A. December 9 2016 Minutes

The minutes were approved as amended.

B. December 12 2016 Minutes

The minutes were approved as amended.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

There was no public participation on non-agenda items.

V. AGENDA TOPICS

A. Expanding CBJ to Model Borough Boundary

Mr. Chaney addressed the Committee with his January 25, 2017 memo and reviewed the boundary maps provided in the packet.

Mr. Kiehl asked what conversations Mr. Chaney had with Angoon, Kootznoowoo and other groups about the Pack Creek area and Mr. Chaney said he has not had recent discussions with the communities but would be surprised if their feelings in the past would have changed. Mr. Kiehl noted the Mansfield Peninsula and Pack Creek as being locations of higher sensitivity and encouraged Mr. Chaney to speak with neighboring communities. Mr. Chaney replied he would not want to have those conversations without direction from the Assembly. Ms. White agreed with Mr. Kiehl and expressed a potential for conflict of interest due to her office location being inside Kootznoowoo Plaza.

Excerpt

Mr. Kiehl asked Mr. Chaney how he envisions this project going forward and Mr. Chaney replied the first step would be for the Committee of the Whole to address and be favorable to pursuing annexation of neighboring regions. After receiving approval from the COW, Lands staff would then address the neighboring communities about the opinions.

The Lands Committee unanimously approved forwarding this topic to the Committee of the Whole with the recommendation of expanding the borders of CBJ's annexation application to match the areas identified as A, B and D in Figure 3.

Mr. Kiehl then added that discussion at the COW would be most productive if Lands staff begins conversations with the neighboring communities to give feedback to the COW regarding the reactions Lands staff received from those communities. Ms. White agreed with Mr. Kiehl. Mr. Chaney said he would take it up with the City Manager.

PUBLIC PARTICIPATION ON AGENDA ITEM A

There was no public participation on Agenda Item A.

B. Pederson Hill Subdivision Update

Mr. Chaney addressed the Lands Committee on his January 25, 2017 memo, phasing of the project, the price per lot and the potential for Tlingit Haida Regional Housing Authority's (THRHA) partnership on the project. Mr. Chaney then addressed the Lands Committee on the disposal options of the project as outlined in his January 25, 2017 memo and reviewed the next steps and timeline for the project.

Mr. Gregory recused himself from discussion on the topic due to his involvement with THRHA. Mr. Kiehl asked where the creeks and stream setbacks on the plat were, and how close the plat was to reality, and Mr. Chaney replied the only anadromous stream on site is located within the preservation lot, and mentioned there is a conservation lot and park property on the site, as well as a large buffer lot—all being a part of the Army Corps of Engineer's mitigation plan for the site. Mr. Chaney said the additional streams on the site will run along property lines instead of in the middle of the lots. Mr. Chaney also commented that the plat does incorporate setbacks to show each lot is buildable. Mr. Chaney confirmed that every proposed lot is buildable, and that a significant feature of the subdivision is the equestrian trail. DOWL has produced the drainage plan for the site, said Mr. Chaney.

Mr. Volkers asked if the \$3+ million dollar quote (City's portion) covered everything to make the lots buildable and Mr. Chaney confirmed it so. Streets, sidewalks, street lights, fire hydrants, water and sewer stubbed to each property, and the equestrian trail will all be provided for that price, said Mr. Chaney. Mr. Volkers commented he did not understand the relationship between the City and THRHA. Mr. Chaney