

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

August 26, 2019, 5:00 P.M.
City Hall, Assembly Chambers

I. ROLL CALL

Chair Becker called the meeting to order at 5:00pm.

Members Present: Chair Mary Becker, Maria Gladziszewski, Michelle Hale, Alicia Hughes-Skandijs

Members Absent: None

Liaisons Present: Chris Mertl, Parks and Recreation; Paul Voelckers, Planning Commission

Liaisons Absent: Chris Dimond, Docks and Harbors

Other Assembly Members Present: Loren Jones, Mayor Beth Weldon,

Some Members of the Public Present: Duff Mitchell, Managing Director of Juneau District Heating, Charles Murphy, KINY Radio Reporter, Ben Hohenstatt, Juneau Empire Reporter;

Staff Present: Greg Chaney, Lands Manager; Dan Bleidorn, Deputy Lands Manager; Roxie Duckworth, Lands & Resources Specialist; Teresa Bowen, Assistant Attorney III, Rorie Watt, City Manager, Director; Jeff Rogers, Finance Director; Beth McEwen, City Clerk; Mila Cosgrove, Deputy City Manager

II. APPROVAL OF AGENDA

The agenda was approved as presented.

III. APPROVAL OF MINUTES

Ms. Hale indicated she would contact Lands staff for minor corrections, otherwise the June 10, 2019 Draft Minutes were approved.

IV. PUBLIC PARTICIPATION

No public participation on non-agenda items.

V. AGENDA TOPICS

A. JAMHI Reversion Clause

Mr. Bleidorn introduced the discussion of removal of a reversion clause from an ordinance that was passed in 1987 which disposed of a property to Juneau Alliance for Mental Health Inc. (JAHMI) for the use of their facilities in Lemon Creek. The property is a four-plex located at 1968 Lemon Creek Road and was a Department of Housing and Urban Development (HUD) foreclosed property when the City bought it. At the time, the Assembly was actively looking for property for JAMI (the organization was formerly known as "Juneau Alliance for the

Mentally Ill” - JAMI) using funds made available through a Community Block Grant. This property was chosen based on need and the fact that it conformed to zoning and planning code. At the time the City purchased this lot, JAMI also purchased the adjacent property located at 1962 Lemon Creek Road from HUD. Prior to the purchase, the Planning Commission added a condition that if in the future, JAMI no longer needed the property, the property would revert back to the City and Borough of Juneau. This reversion clause was included in the ordinance as an option for the CBJ, but not required.

The ordinance contains the following clause: “...the deed whereby the City and Borough conveys the property to JAMI shall contain a reversion clause allowing title to revert to the City and Borough, at the City and Borough's option, should JAMI cease to use the property for the purpose set forth hereinabove. The reversion clause shall provide that in the event the title to property reverts to the City and Borough, title to any improvements made to the property by JAMI shall vest with the City and Borough, at the option of and at no cost to the City and Borough.”

The City purchased the property from HUD for \$91,800 in 1987. The CBJ has not identified a use for this property and due to recent funding reductions at the State and Federal levels, letting JAMHI retain and sell this facility would be a simple way for CBJ to provide support for the program to relocate to facilities that are more appropriate.

Since JAMHI began managing these properties, they have been used as two homes and four supported living apartments until February of this year when one of the buildings had a high capacity fire suppression system pipe burst, flooding the facility. This required the relocation of all tenants from both properties. JAMHI’s current request states that JAMHI is “considering selling the property at Lemon Creek Road in order to provide community housing and support services in other, more suitable locations in town and we ask to use the funds from the sale of this property in order to shift operations from their current location.”

Staff recommends that the Lands Committee pass a motion of support to amend Ordinance 87-28 to remove the reversion clause and forward this to the Assembly for approval.

Ms. Gladziszewski asked about the analysis to determine that the City did not need this property. Mr. Bleidorn replied that Lands looks at departments citywide and the condition of the building to determine if there are other needs or to reevaluate the use of the property. The condition of the building played a role in determining that the City did not have a use for this property. Chair Becker asked if JAMHI could sell this property. Mr. Bleidorn confirmed and noted that they could use the funds to acquire other property or to use towards their cause.

Ms. Gladziszewski moved that the Lands Committee pass a motion of support to amend Ordinance 87-28 to remove the reversion clause and forward this to the Assembly for approval, motion passed by unanimous consent.

B. Sustainable Juneau dba Juneau District Heating – Easement Application

Mr. Voelckers and Mr. Mertl disclosed their conflict of interest as they had both provided professional services to Mr. Mitchell and Mr. Comstock in the past.

Chair Becker introduced three new items: (1) draft ordinance granting a City District Energy Utility Franchise to Sustainable Juneau, Inc. *dba* Juneau District Heating to provide heat and hot water as a public utility service; (2) letter of support for Juneau District Heating from the Office of the Mayor, when Chair Becker was Mayor; and (3) letter from Elisabeth Ross, Birch Horton Bittner & Cherot, in support of Juneau District Heating.

Ms. Gladziszewski asked how the new introduced items relate to the easement agenda item. Chair Becker replied she was providing background information and she reads the easement application as conditions of dos and don'ts. Chair Becker recapped the document, while Committee members reviewed the new material.

Ms. Gladziszewski commented that her understanding was that Juneau District Heating had applied for an application for an easement across City property to install pipes. She thought that would be the discussion for this meeting and felt that the new introduced material is of broader focus than the agenda topic and was not certain if Law had reviewed the documents. Ms. Gladziszewski commented that she would like additional resources to understand the nature of this franchise, and felt that this conversation wasn't necessary when discussing easements across City property. Ms. Gladziszewski also commented that she didn't feel as though Juneau District Heating was not being treated as a utility at this point and they could apply to utilize a ROW or an easement, which one has to pay for. She did not object to this discussion but wanted a lot more information prior to going forward. Chair Becker replied that this discussion was to counter the Lands' memo in the packet that listed Juneau District Heating as a private for-profit company. Chair Becker continued that they are a utility and fall under different rights.

Chair Becker asked Duff Mitchell to speak on behalf of his business. Mr. Mitchell commented that control of franchises are given to home rule cities and boroughs and is part of state law. Franchises could be issued as the CBJ wishes, which is stated in City code; a tool for the City and for the Regulatory Commission of Alaska, who have regulatory rights and jurisdiction. Until Juneau District Heating has 10 customers, it does not have the ability to become a regulated utility under the State. It is a franchise that becomes a utility as recognized by the City as a public utility and would have the rights and entitlements as a public utility providing a public service in Juneau, per this ordinance.

Ms. Gladziszewski asked Mr. Chaney if his approach to this question would differ if this applicant was or was not a utility? Does it matter if a utility is requesting permission to construct in a ROW or easements and if Law has reviewed this request? Mr. Chaney replied that his intent was to discuss easements and how they are administered. Mr. Chaney commented that Lands was not addressing the bigger question of franchise and that it was his understanding that Law had not weighted in on the franchise issue, as this topic was new to him. The underlying question is whether Juneau District Heating can economically place their pipes in ROW or if they need easements to do that. If they have an expensive

proposition of putting pipes in the ROW, it could undermine the economics of their project. This is an issue they need to understand early on and it was Mr. Chaney's intention to evaluate the process at this meeting. The questions about franchises and public purpose are beyond the scope of this meeting.

Ms. Gladziszewski followed up stating that this item is super complicated and there is not enough time left in the meeting to discuss this. The Committee should have time to read and consider the information and that the Law and Lands Departments should have time to review the items. We should discuss the easement issue at this meeting as this item is complicated and we should have another meeting at a minimum or send it to someone, but the Lands Committee has not had enough time to review this issue.

Ms. Hale proposed that one possibility is that the Lands Committee could refer this to the Assembly who could then refer it to the Committee of the Whole for discussion in order for more time to thoroughly discuss it. Ms. Hale also did not believe the Attorney had yet seen this item and we would definitely want the Attorney to see the draft ordinance, so referring the issue to the Committee of the Whole is one possibility.

Chair Becker asked if this was a motion. Ms. Hale replied that she would actually like to make a motion:

That we move the Ordinance granting the City and Borough District Energy Utility Franchise to Sustainable Juneau to the Assembly for further discussion, likely at the Committee of the Whole, and ask for unanimous consent.

Chair Becker asked if there was any objection to the motion, none stated, motion passed. Chair Becker commented that the topic is now going to the Assembly.

Chair Becker wanted to move on to the Lena Land sale update and Ms. Gladziszewski asked if we were still going to discuss the easement application listed on the Agenda. Ms. Hale replied that it was her intent to move just the franchise element and not the easement application. Chair Becker asked for clarification about what was sent to the Assembly. Ms. Hale replied that it was not her intent to send the easement application in the Lands Committee packet to the Assembly for further discussion. Chair Becker commented that she thought these items would be discussed together as she thought these items were related.

Ms. Hughes-Skandijs concurred with Ms. Hale, that it was the franchise piece that would be moving and that the Lands Committee would still hear about the easement application.

Chair Becker asked for staff to present the agenda item concerning easements.

Mr. Chaney acknowledge the representatives from Juneau District Heating in the audience. Mr. Chaney mentioned that the concept of Juneau District Heating is a great and noble concept, but the devil is in the details as there is a difference between easements and ROW. The applicant has requested exclusive easements across CBJ property for their project to

install pipes. An unusual aspect of this proposal is that the pipes would be routed through CBJ property and would avoid adjacent ROW. As proposed, a portion of the distribution network would cut through the middle of properties in the Aak'w Village District (formerly known as the Willoughby District). By avoiding ROW, this layout would potentially decrease installation costs by largely reducing conflicts with existing utilities that have been installed in the ROW. However, the network of exclusive easements for the large diameter pipes would severely limit future development potential within the parcels that would be occupied by the pipelines. The primary purpose of ROW is to provide for infrastructure including utilities. As proposed, the exclusive easements would be similar to new private ROW that would divide public property and limit the future use of the parcels. In order for these exclusive easements to be approved, the Assembly would have to grant an exception to CBJ§53.09.300 *Easements (a)* which specifies that easements shall be nonexclusive. The easements would have to comply with all other provisions of CBJ§53.09.300 *Easements*. ROW serve the purpose for utilities and off ROW is where buildings are generally built. The City normally does not allow for buildings on ROW and neither for utilities under property. As a result, the City has a strict easement clause:

- (a) Easements will be non-exclusive
- (b) Application materials will be sufficient to evaluate request and Applicant will pay for an appraisal for value of easement
- (c) Application will be referred to departments for comment
- (d) Assembly may authorize manager to execute easement
- (e) Applicant shall provide survey of easements
- (f) Applicant shall pay appraised value of easement
- (g) No improvements allowed until approved by Manager
- (h) AsBuilt survey required after improvements are installed
- (i) Easement may be relocated at direction of Assembly improvements must be relocated at applicant's sole expense

Mr. Chaney commented that the applicant has not provided very much material beyond centerline drawings for their project. Mr. Chaney believes that Juneau District Heating would like to get a nod from the Assembly to approve their project, as they do not want to put forth a large amount of capital for their project if they have not been approved. Further, the applicant has requested the appraisal at no charge based on their franchise application. The AsBuilt survey is important to note where exactly the utilities are and what improvements have been installed. Item (i) is important in that Juneau District Heating is looking for certainty that they could leave their pipes under the ground. As the Lands Manager, Mr. Chaney is directed by code and this request for exclusive easements is unusual and a departure from the outlined code. Mr. Chaney mentioned that he has never processed an easement application where an adjacent ROW was available.

Mr. Chaney shared slides with an overview of where the pipes would go through City property. He noted that Egan is being reconstructed and the applicant would like to put the pipes across Egan now while it is under construction. The DOT application would go under Egan and terminate at Centennial Hall, which would require digging under City land.

Mr. Chaney continued to discuss the difference between centerlines and easements as an example of why the City prefers something in the ROW versus easements. If the pipes go under the City's property then they can get in the way of constructing buildings. Mr. Chaney highlighted through slides that the proposed centerline for this project goes between the new JACC footprint and Centennial Hall but the diagram provided by the applicant does not include easement widths. Mr. Chaney's estimates based on the cross-section diagram provided by the applicant are about 27 feet wide to dig a trench and there will be an overlap with the easement and the new JACC. If an exclusive easement is granted to Juneau District Heating excluding the JACC, the building will need to be redesigned.

Ms. Hale commented that this pipe would be buried underground and asked if the exclusive easement means that it applies to under and above ground. Mr. Chaney replied that was a good question and Lands does not have the details on the easement language. If Juneau District Heating has an exclusive easement prior to the new JACC being built then, the JACC will need to build around it. There was also a discussion of having an orchestra pit in the proposed pipeline alignment, but that would also need to be redesigned. Since the applicant has removed the discussion of cold water pipes, the pipe trench prism would be smaller, but it would still be 21 feet wide, according to Mr. Chaney's estimates. His suggestions of stacking pipes near the ROW were not well received by the applicant, as stacked pipes could cause issues when trying to reach a pipe below another one. It would increase costs and probably be impractical. Mr. Chaney recapped the Easements City code.

Recommendations from Lands staff are to direct staff to work directly with the applicant on a de minimis easement that will allow the applicant to get pipes across Egan Drive and to advise whether the Committee and Assembly is open to further discussion on a large package of easements. In order for the Lands Committee to work further on the proposal to route the district heat pipeline network through CBJ parcels, the applicant will need to provide series of survey or near survey quality diagrams showing the location, width and proximity to nearby structures of the proposed easements.

Chair Becker commented about the state law, which says that they have the right to use public streets upon payment of reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the municipality requires. Chair Becker feels that it is overboard to say that District Heating is going to come in and lay a pipe through a proposed building or a building that is already there. There are requirements in the law that require reasonableness and they do not fit with the kinds of things proposed by Mr. Chaney.

Ms. Hale commented that this has been bubbling and has been a difficult conversation and even though this is confusing for the Lands Committee right now, it is a positive thing that is working through the public process so that we can wrestle with it and work with the Lands Division and the applicant. Chair Becker commented that that is why it is going to the Assembly to be introduced and probably sent to the COW.

Ms. Gladziszewski asked about using ROW, you do not have to pay for that, correct? Mr. Chaney confirmed. Ms. Gladziszewski asked about AEL&P, and that if they use ROW and that if one were to have electricity hooked up to their house, the electric company would

take it down the ROW and the homeowner would then pay to get it to the house through easements. Mr. Chaney confirmed. Ms. Gladziszewski stated that she is in the camp for orderly ROW, as they are there for a reason otherwise you would have people going across property left and right. The plan presented to Ms. Gladziszewski does not appear to use ROW in an orderly fashion and instead goes through property. Chair Becker commented that she had not seen the official plan but she believes that the drawing presented at the meeting was not the appropriate diagram and was told they have one. Ms. Gladziszewski asked if that was what we were seeing at the meeting.

Ms. Hughes-Skandijs asked if this easement would make sense if they were going on the ROW, as she is also sensitive to the facts that the streets are dug up now. Does it make sense if there is a vision in the future where District Heating would use all ROW, does the easement to get across Egan Drive still make sense. Mr. Chaney mentioned that a small easement could be used to run along a ROW to make it work and deferred to the City Manager who had come forward.

Mr. Watt commented that the ROW is always available. He thinks everyone would agree that quickly figuring out how to get Juneau District Heating across Egan during the current Egan rebuild project is for the good of all parties. The wider question of whether the Assembly is open to a package of easements is unknown. At some point Juneau District Heating is going to have to decide whether to bank on Assembly approval and bank on maybe having to make a left-hand turn or suffer the difficulties of going through the Whittier intersection. It is going to take the Assembly a while to decide to grant an easement across municipal property. The effort with the de minimis easement is to help Juneau District Heating get across Egan while the road is cut up.

Ms. Hale asked about the timeline across Egan, that it was her understanding that this had to happen this fall but it there may be a little more time than that. Mr. Watt replied that sooner is always better because as soon as DOT puts down the permanent service improvements they are going to be resistant, as they have already poured concrete and curbs in quite a few areas but we would work with the applicant to try to nudge this forward to whatever the location they need.

Ms. Gladziszewski commented that she does not have an issue with getting them across Egan. It makes sense to put that pipe in now and to provide a small easement to complete that crossing. After that, there is the question of how the pipes get anywhere else.

Ms. Gladziszewski moved to get the applicant across Egan and ask for unanimous consent.

Chair Becker followed up with a question before taking a vote, inquiring if across Egan Drive is through the DOT, who would grant that easement? Mr. Watt replied that to get across Egan, that would be a DOT permit but in order to get to the edge of the DOT ROW there would need to be excavation on City property to get out of DOT ROW.

Ms. Hale asked Mr. Watt if he sees it feasible to work with the applicant to grant some form of permission to dig a hole on City property to finish getting across Egan. Mr. Watt replied that the City would look at the easement code, which is not the easiest process to

maneuver. The City could grant easements upon approval by the Assembly and it would have to be valued by an appraiser within 90 days. This would be a lot of effort for a small easement that would take Assembly approval, but it is possible. If the City tried today to grant an easement between Centennial Hall and the JACC, it would fall apart as neither facility has complete construction plans. Even if the City could figure out the best method, we would be making any future expansion of those facility more expensive or not possible. There are two separate things, getting across Egan Drive (accommodating to make that happen in the short run) and the broader question concerning multiple easements.

Chair Becker asked Mr. Mitchell if this was clear as to what the Lands Committee was offering at this meeting. Mr. Mitchell replied that it was not and that he replied that he submitted an easement request in 2017 to go across Egan and commented that he moved his location a little further down after seeing the current designs for the new JACC and that DOWL review his plans in which it looked as though the revised plans would not interfere with the new JACC. The second issue, a de minimis easement will not work due to Juneau District Heating investors thought that all of the easements would be granted. This project puts over \$30 million dollars into Juneau and the risk has skyrocketed because they do not have any easements and they are not going to build a pipe to nowhere across the CBJ property line. It makes it difficult to pull in investors with that type of money with the risk component that they are now being asked to accept.

Mr. Mitchell mentioned the earlier discussion on the depth of the pipes, the slides showed a trapezoid diagram. Juneau District Heating was asked to go deep so that an utilidor could be put in around it at some point in the future, which means that you could build on it. If we go up two or three feet then that trapezoid will be a lot narrower at the top and the trapezoid would shrink so that the easement would be radically smaller. We planned to install pipe 8 feet down because there was talk from the PRAC that Juneau District Heating would put an utilidor over the pipe. Utilidors have been used since the Roman times, which is concrete around the pipe that makes it so that buildings could be built upon it. This is not different from what district heating is doing all around the world, including universities and complexes around America. Utilidors are used when in fact you have a future problem. Juneau District Heating going through the JACC and Centennial Hall was always in the plans and 25" diameter pipes is the plan, not 16" pipes. We could not go down Egan effectively as it would kill the project economically to rip out that street again to put the pipes in.

The other issue is the easements issue; if you want an easement of service for utilities, State statute states the customer shall provide the easement. Therefore, there are easements of water, sewer and others that do cross properties that are not in the ROW. Juneau District Heating is asking to deliver power to heat energy to as many customers as possible and they originally have drafted everything through the ROW and came up with a scheme of thousands of dollars that was submitted to the Public Works director at that time who, according to Mr. Mitchell, said "that this was ludicrous and that Juneau District Heating was not going to rip up City streets and mess up City water and sewer by putting the huge pipes in that are under pressure that the City has to avoid and play around Juneau District Heating pipes." When you open up a street you don't have exactly where everything is known, so you run great risk on that. What Juneau District Heating was told in that meeting, according to Mr. Mitchell, is to look at parking lots, green belts and look at ways where they would not

be a burden on other utilities and that is what Juneau District Heating did. The map that was shown on the slides indicates that there are places that they do use the ROW and they do try to use green belts so that they do not add a cost or do harm to other utilities. Mr. Mitchell wanted to point out that they are also in negotiations with the State and Federal governments and Juneau District Heating does not have the same easement issues as with the City. Mr. Mitchell said once we hook up with the state, we will use State land and then Federal land and they understand because utilities can have easements to hook up customers. There is a big difference between in the City code and how easements are addressed, but utilities are treated a bit differently, which is my distinction from what I can take from the presentation provided.

Ms. Hale commented that she is supportive of this project but does not believe the Lands Committee should be permitting and that there is a process for coming up with permits and a process for determining how easements work. That process is an administrative one that needs to be followed and the Assembly needs to be involved but we cannot make any kinds of decisions in this Committee and the applicant needs to work with the administration and we will all need to work together as we move this forward. Chair Becker agreed that we all need to work together with the goal being cleaner air, lower costs, and happier people in Juneau. Chair Becker commented she was uncertain if we were going to achieve that.

Ms. Gladyszewski agreed with Ms. Hale and added that she is not comfortable to give extra judiciary processes for these things and that they belong in the Lands office that handles easements and ROW and that given the information right now, Ms. Gladyszewski is not prepared to try to change that. Ms. Gladyszewski restated her motion to allow the applicant to get across Egan drive and grant an easement at that juncture. However, if the applicant does not want to do that then that is another issue. But, in her opinion, this issue belongs in the Manager's or Lands Department to deal with easements. Chair Becker replied that this is why we are sending the issue to the Assembly.

Ms. Gladyszewski moved to direct staff to work with the applicant on a de minimis easement to allow the applicant to get across Egan Drive onto City property. Motion passed.

Mr. Mertl suggested that he believes this issue cannot be dealt with in 20 minutes or less, given the complexity of the project. The Lands Committee has heard from both sides and there is a lot of history surrounding this, and that we or if anyone will have a public process with this issue, we should give the applicant a chance to make a formal presentation so we can understand what we are answering or assessing. Mr. Mertl further commented that he feels this issue is currently very vague and introductory. Chair Becker commented that is why it is going to the Assembly to have all of the interviews and hearings.

Mr. Chaney commented that there were other items on the agenda, but noted the meeting was out of time

VI. ADJOURNMENT

Chair Becker adjourned the meeting at 6:01PM.