

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

December 29, 2014, 5:00 PM.
Assembly Chambers

I. ROLL CALL

Kate Troll called the meeting to order at 5:00pm.

Members Present: Jesse Kiehl (telephonic); Mary Becker; Kate Troll; Jerry Nankervis

Other Assembly Members Present: Karen Crane

Liaisons Present: Mike Peterson, Docks & Harbors

Liaisons Absent: Jeff Wilson, Parks & Recreation Advisory Committee

Staff Present: Greg Chaney, Lands Manager; Jessica Beck, Lands Specialist; Alan Steffert, Engineering Associate

Public Present: Ben Wilcox; Mark Thorson

II. APPROVAL OF AGENDA

There were no agenda changes.

III. APPROVAL OF MINUTES

A. December 8, 2014

The minutes of the December 8, 2014 Lands Committee were approved with minor grammatical corrections.

IV. PUBLIC PARTICIPATION

Mr. Benjamin James Wilcox said regarding Item C, revising smoking ordinance to include marijuana, which seems redundant since the law states its illegal in public. Why should the city be spending valuable time and resources on such a thing. It's more hurdles just to walk down the street. For item B, the moratorium on applications, I'm curious if anyone with the City has consulted with any experts, any outside boards where it is legal to see if it's necessary. There's a time line already built in and the more we push it back, the more it screws up the time line. There's millions of dollars that are looking to get invested in this industry. Why hold it up? We need money. Instead of impeding it, why not get it going? Fairbanks was in the paper, they're a much larger municipality than us and they're on it. Lets get this going. We have a lot of tourists coming to town and people will come to town expecting it. The more we put it on the backburner the more issues we're going to face. There will be no guidelines for the police or anything. Lets look at the states where its legal and be prepared. It's an industry that's coming to town. It makes no sense with our current fiscal problems. It will be a large source of revenue for our community.

Mr. Mark Thorson, a 40 year resident of the community said prohibition of initiating marijuana sales within the City and Borough is a bad idea. We're the capital city, we need to lead by example and show the state we can take these issues on. We'll have a lot of people looking at us all summer long. I'm in the bed and breakfast business and I have more reservations for this summer than ever before. Every third call is someone asking if they're going to be able to smoke marijuana when they come to town. There'll be dock sales and people on Craigslist making home deliveries, similar to what you have in Nevada. My sister has a medical marijuana garden there, you call on the phone and they deliver to the house. If we put our heads in the sand and hope it goes away, you can expect those things to popup. The other thing, I have an anniversary this Sunday, I buried my wife in Evergreen Cemetery. She was a cancer patient, she was a resident of this community, she was the head nurse on the surgical unit at the hospital. I spent a lot of time at the Fred Hutchison Research Center and the Mayo Clinic trying to save her life. In both locations, they told me I needed to find some THC so she could eat and keep her food down. Here we are 30 years later and nothing. Juneau wants to be a cancer care center at the hospital. Let's get some product for the people who

are having to go through the chemotherapy. It's not fun. I urge this community to step up and do what's right.

V. AGENDA TOPICS

A. Update on North Lemon Creek Material Source Development

Greg Chaney said we have Alan Steffert here from the Engineering Department to talk about the details. I'm just going to give a brief overview. The Lemon Creek Gravel Pit has been active for several years and is getting near the end of its useful life. The North Lemon Creek Material Source is our new area. There is a fairly complicated land trade being discussed for the existing pit for Honsinger Pond. It was the only area considered appropriate by Bicknell, who is the current owner of Honsinger Pond. If the land trade goes through we'll need a new material source site, which would make our interest to get this done soon. The State of Alaska put out a public notice because the CBJ needs the easement to go through state property to get to our property.

Mr. Steffert: The reason we're here is because public notice the Department of Natural Resources issued for obtaining an easement across their land. It's essentially a done deal, it's just apart of their procedure. We started this project back in 2007 and it's now coming to fruition. In 2007 we realized we needed to find a new gravel source. At that time the existing gravel source was being mined at a high rate and we thought at the rate we're going we'll need a new gravel site in short order. We identified this land behind the jail. We did geological tests and mapped the resource. We got a use permit which is good for 10 years and every 10 years we have to renew it for gravel extraction of the area. We sat on it for a while. The bridge was built when we built the impound lot, after 2007. We didn't use a lot of material out of the gravel pit. It sat there so there wasn't an impedious to rush in and build it. After that our gravel usage went way down and our shot rock went way up. We had a major switch been gravel and shot rock material. So we decided to proceed at a slow development pace and mine for projects as they required it. Move material at no expense to the city and pay us as they remove it. Whereas if we put out a contract we would have been paying a unit price for excavation. We were looking at a significant amount of material to be moved, so we proceeded slowly.

We have quite an area of development in this corner. We have an 100 foot elevation gain. We have to make a massive cut to get up here so what we did originally was put up a temporary access road to start mining the terrace and mined through. As we mined we were able to identify the kind of material underneath where it was too deep for our exploratory digging and by doing that we're better able to understand the geology of the area to design a road better. We've done sufficient mining in order to see the extent of impact for the state land would be and at that point we applied to DNR for an easement. They've already receive a construction permit for early access. The easement process takes quite a while.

This is what it looked like prior to construction in 2007 (referencing on screen images) and this is what it looked like earlier this year. What we have here is a mid-height bench and we have a very steep construction road going up there. Freehand drawn it shows the final access road will be significantly less grade and turn and disappear into the hill and get somewhere over here. There's still a significant amount of material left to cut. This is a representation of the design of the current topography. Here is the easement line. When I finish this final road we'll have a massive road cut. What we've done today is sufficient enough to show where the easement line will be so they'll give us the easement. Next summer I have to get the access road though the DNR triangle with a construction contract going out to bid like our regular bids. At the end of that contract, we'll have a finalized two lane road at 7-8% grade for hauling trucks through the DNR land and keep mining along the road corridor until we open up the new phase. Its been a long process but the end is in sight.

Mr. Peterson: In the past, Lemon Creek correction officers and JPD have used that area for a shooting range, how will that be impacted?

Mr. Steffert: Here's the shooting range, adjacent to the jail. It's heavily treed and it's right at the top of here. Part of our agreement with the jail when we were constructing this is that we put a fence right along the berm, not a security fence but we can hang signs. They're more than happy with that. They're more concerned about people getting out than getting in.

Mr. Nankervis: What would the lifespan of the easement be?

Mr. Steffert: It would be perpetual. We will build the road, it will still be state land but we can maintain

the road and have access through it.

Mr. Nankervis: The only thing that might change would be ownership?

Mr. Steffert: We could apply to get ownership but we're not intending to mine it, just get through to access materials.

Ms. Crane: How far back does the CBJ land go?

Mr. Steffert: The property line goes more or less like this, cuts back, and is pretty much the west side of Lemon Creek.

Ms. Crane: Are we moving closer or further away from residential area in Lemon Creek. Will noise be an issue?

Mr. Steffert: No, we discussed this when we permitted the original facility. We adjusted the boundary along the edge to keep it high. This terrace is around a valley, we're intending to dig the plateau down and leave a massive bank facing the residential development and trees help immensely too.

Ms. Troll: Is there any action needed from the Lands Committee?

Mr. Chaney: No, the chair asked for the back story concerning the easement application.

Mr. Kiehl: I appreciate the presentation. It brings me up to speed.

Ms. Troll: The Honsinger Pond land trade - does that complicate the situation or will it dovetail pretty nicely.

Mr. Chaney: We didn't really come to talk about that because it's a complicated issue. We're still working to find out how much we're going to potentially trade. We don't have an appraisal yet. If we do end up trading that is a big area we could use for storage. This is one place we could store the material cut from the road. If we don't have that we'll have to find somewhere else to store it.

Mr. Steffert: The original gravel pit is still being used by multiple contractors at this time. We have a lot of room where we can split people out. The new one will be constrained by this road cut to one spot. The Statter Harbor job that will start removing gravel from the road cut next week, it will be one contractor hauling out a lot of material. If the old gravel pit were sold, we'd have to find a new spot in this restrictive place to put those people. When we build the new road, no one will be able to get in there, except for the road contractor. Timing could be problematic.

Ms. Troll: I assume we'll get an update when its appropriate for us.

B. Ordinance 2014-50 An Ordinance Imposing a Limited Moratorium on the Receipt or Processing of Applications, Permits, or Pending Approvals Pertaining to Marijuana Establishments.

On November 4, 2014, Alaskan voters approved a ballot measure related to the legalization of marijuana. The initiative, which goes into effect on February 24, 2015, allows the State nine months to enact regulations concerning the registration and oversight of marijuana establishments, defined by the initiative as marijuana cultivation, testing and product manufacturing facilities and marijuana retail stores. The initiative requires the State to begin accepting and processing applications for the registration of marijuana establishments within one year of the effective date of the act. The initiative authorizes local governments to enact legislation concerning the time, place and manner related to the operation of registered marijuana establishments (for example, hours of operation, allowable locations, and limitations on the number of establishments allowed within the municipality .)

The purpose of the moratorium is to allow the CBJ time to consider and enact legislation concerning the operation of marijuana establishments in the CBJ. The moratorium is set to expire within one year of adoption, which is after the date the State is required to enact regulations given the fact that it may be necessary to coordinate our local legislation with the State's regulatory scheme, but before the time the State is required to begin processing applications.

Ms. Mead said the moratorium does not change any of the time lines imposed by the state initiative with respect to the operations of marijuana establishments. Marijuana establishments under the initiative are any of the commercial businesses associated with the cultivation, manufacturing, processing, anything related to the commercial use of marijuana, retail sales. Under the initiative, the ABC board, or marijuana control board if the legislature chooses to create one, has from 9 months from the effective date of legislation, which is November 2015, to put in place a regulatory

framework for these commercial businesses. Within 1 year of the effective date, so February 2016, the ABC board must start accepting applications for licenses, because under the initiative a commercial business must have a license to operate. They must begin accepting applications by February 2016. By May of 2016 they must begin the approval process and begin issuing licenses. If the ABC board fails to do any of that, then the local regulatory authorities will be able to step in and issue its own licenses within 90 days, which is August 2016. The way our conditional use permit works is that someone could come in and ask for a permit to operate a business. For example, I could come in and file for a conditional use permit to open a bar. The Planning Commission could properly consider that and grant me a permit. One of the likely conditions of the permit will be that I have a license to operate. But, I can begin that process while I'm applying for an alcohol license. We are in the same situation with respect to the marijuana establishments, but we do not yet have a regulatory framework in place. There was a comment earlier that these laws have already passed in other states, but in those states, they've only begun allowing legal sales within the last year. This part of the process doesn't have a great track record for us to follow. We, under the initiative, have the authority to impose time, place and management regulations on marijuana establishments, basically zoning laws. We can limit the number of establishments we're going to allow in any particular zone, or in the City overall or we can decide where to allow them to operate. We haven't had time to look at any of that. By imposing the moratorium, we put the public on even footing with respect to applying for conditional use permits to operate these types of establishments and gives us time to put in regulatory framework. It does not impact the time line given by the state law.

Mr. Peterson: For the City to put in a regularly framework, wouldn't it be pertinent for the City to wait for the state to put in their regulatory framework first?

Ms. Mead: Yes and no. We have no idea what the state is going to do with respect to the regulations it imposes. The initiative specifically leaves it up to the local governments the authority to enact the zoning regulations that are going to govern these types of establishments. That is not something the state is going to do. The local governments can also put in place any regulations that won't conflict with state law, which is why the moratorium expires after one year. The moratorium can expire sooner if the CBJ is done with it's work sooner. The way the state initiative is laid out, the regulations the state imposes should be done by November 2015. Our moratorium expires in February 2016. Applications should not be accepted until February and won't begin to be processed and approved until May. So we have time after the state is finished with it's regulatory process to make whatever changes we need, make or address. Given the way the current initiative language reads the state is not going to impose specific zoning regulations on marijuana establishments.

Ms. Crane: But they may say you can have X number per community? The same way they do with alcohol.

Ms. Mead: They might. They might limit the number of establishments state wide, they might limit by type. We can further limit or not. It's one of the many things we can consider. It doesn't change the time lines the state has imposed. It just makes it clear to everyone that we will not begin processing applications. It makes us proactive rather than reactive with respect to this initiative with how we want to proceed with this new industry.

Mr. Kiehl: The initiative gave communities the right to opt out of commercial marijuana sales and I'd like to make it clear I don't think this is an opt out?

Ms. Mead: That is correct. This is not an opt out.

Mr. Kiehl: In terms of the scope of what this is. Go back to the example, if someone wants to open a bar, right now someone could not open it in the low density residential neighborhood on Hummingbird Lane off of Backloop and we don't have rules about a marijuana dispensary. I sense there's this concern that someone could put in a permit application to open a dispensary back there, before we have any rules. So all this is doing is to avoid confusion.

Ms. Mead: That is correct. If we were to do nothing and we received applications for conditional use permits to open up a retail sale operation in the valley somewhere in a residential neighborhood, the Planning Commission could consider it like it would an application for any other retail operation in a residential area. That operation could not legally begin until the license is obtained by the seller. This moratorium puts everything on hold so we can clarify how we want to proceed.

Mr. Kiehl: In terms of the length of this moratorium, if I'm reading this right, 30 days after it's effective, and its for a year, so 13 months from when we vote on it. So we're looking at the same time the state would take applications for licenses we would begin taking land use applications at the same time. Does that give someone enough time to get everything through our permitting process and the

Planning Commission?

Ms. McKibben: Yes, that is plenty of time.

Mr. Kiehl: From early February to late February should be enough time? I'm thinking about conditional use permits and appeals to the Assembly.

Ms. Mead: The way the initiative reads, licenses won't be issued until May of 2016 which is plenty of time after our moratorium expires.

Mr. Kiehl: That would be my one concern. I'm hopeful someone on staff can run me through that. My sense is that we can make our zoning decisions in 11 months as opposed to 12 and give businesses a little more lead time for permitting.

Ms. Mead: The moratorium can expire whenever the Assembly decides it needs to expire. The February time was something reasonable to put in process before the state permitting process began. But ours can begin sooner.

Ms. Troll: The fact that we put the moratorium in place, doesn't preclude us from working through the process on developing our rules and regulations?

Ms. Mead: No, that's the whole point of the moratorium, to allow that process to begin.

Ms. Troll: As soon as we get direction from the state and the key pieces are in place that then allows us to move relatively straight forward in creating the rest of the rules and regulations.

Ms. Mead: There's a lot for the Planning Commission to consider as it moves forward in this process and for the Assembly to consider. I'm not suggesting we wait until the state completes their regulatory process because I doubt the state is going to impose zoning regulations on a state level. I think we should look at it right away, with the idea that if the state does impose some limitations on time, place or manner regulations (for example, limitations with respect to where bars can be with relation to schools), those can easily be incorporated into our regulatory framework.

Ms. Troll: When is an appropriate time for us to begin addressing it through our rules and regulations and the Planning Commission?

Ms. Mead: As soon as possible.

Mr. Kiehl: I agree that we should begin looking at it as soon as we can, but I'd be reluctant to start before the legislative session is over. A number of legislators have said they plan to introduce bills that would either set a distance from schools or other issues the initiative left open. I suspect we'd be trying to hit a moving target if we do start working on this subject before the session finishes.

Motion: Ms. Becker: I move we forward Ordinance 2014-50 to the Assembly.

Mr. Nankervis: Did you want to include 2014-51 as well, or just the one?

Ms. Becker: Did you have anything you wanted to say about Ordinance 2014-51?

Ms. Mead: I just wanted to address the comment made earlier about the purpose of adding marijuana to the non-smoking ordinance. The state bans public use, but our non-smoking ordinance is a little broader. The state does not define what public use is. This ordinance puts marijuana smoking on the same plane as cigarette smoking.

Ms. Crane: It says it doesn't include something prescribed by licensed physician or approved by the US Food and Drug Administration. Does that mean those items can be used in a public place.

Ms. Mead: I see what you're saying with respect to medical marijuana use.

Ms. Crane: There are plenty of places to use that. I don't think it needs to be in a restaurant, bar or other public places we prohibit smoking.

Ms. Troll: We'll take these items one at a time. We have a motion before us to move Ordinance 2014-50 to the Assembly. Are there any objections to that?

Hearing no objections, motion passes.

C. Ordinance 2014-51 An Ordinance Amending the Second-hand Smoke Control Code to Regulate the Use of Marijuana.

This ordinance would amend the Second-hand Smoke Control Code, Chapter 36.30, to provide for the regulation of marijuana smoking in the same way the smoking of tobacco products is regulated within the City and Borough.

Ms. Mead: This language has been in place since the original ordinance was adopted. I don't have

the whole ordinance in front of me but the way it applies with respect to smoking it's already prohibited in places like bars, etc.

Ms. Crane: This says but it shall not include medical.

Ms. Mead: Let me look at this ordinance as a whole. My understanding is that you want to make it clear that smoking of any type is not allowed in those types of establishments.

Ms. Troll: I concur, treat marijuana as tobacco in all situations.

Mr. Kiehl: To be clear, the way I understand that section, we're defining smoking, includes anything with nicotine product. The exception would be that smoking not include a tobacco substitute with a prescription or would not include a tobacco cessation product. If some day, marijuana becomes prescribable by a doctor, which it is not now, it wouldn't qualify for this exception.

Ms. Mead: I think you're reading that correctly, but I think that sentence could be tightened up and clarified that it doesn't include medical marijuana.

Mr. Kiehl: If I'm understanding what Ms. Crane is wanting, I agree, we have this prescription exception for tobacco substitutes that contain nicotine. There is no way to prescribe marijuana under federal law, we don't want to get into that.

Ms. Crane: I think we're talking about two different things, but I'm not sure.

Ms. Mead: My understand is that Assemblymember Crane would like me to make sure that we're not allowing medical marijuana use in public.

Ms. Crane: Correct.

Mr. Kiehl: I did have another question regarding a private club applications. I know that there are entrepreneurs interested in opening businesses that will cater to tourists that will have no legal way for them to bring marijuana home, but who will want to consume it here. One of those individuals walked through sections of our clean air ordinance and is under the impression that it will be possible to have a large pole barn attached to their business that would be open on three sides and has a line 10 feet from the door to the inside and you can't smoke closer than that. I assume they would provide some sort of heat device for comfort. This person was under the impression that if we built a fence around the property, that this would be permissible under our clean air ordinance.

Ms. Mead: I'm having difficulty envisioning it in my mind. The purpose of the non-smoking ordinance is to prevent the harm to 3rd parties from an individual's decision to smoke, we added marijuana to keep that. Right now an enclosed space is defined, I'm not sure if it includes 4 walls, but the definition about how far from an entrance door it could take place. I can't say for sure whether this facility would pass under the ordinance. I don't know. You did bring up a good point. I know other communities, there has been talk about private clubs that are created for the sole purpose of people coming together to smoke marijuana. This ordinance would prohibit that. That is something you should consider. If you want to allow that, it would have to be exempt from the ordinance.

Ms. Troll: But we can deal with that aspect as we move through our own regulatory process? We may have to go back and amend this ordinance again.

Ms. Mead: Yes.

Ms. Becker: Will you be comfortable that the next time we see these changes will be at the Assembly level?

Ms. Mead: Yes.

Motion: Ms. Becker: I move Ordinance 2014-51 be forwarded to the Assembly.

Ms. Troll: With clarification on the items we discussed.

Hearing no objections, motion passes unanimously.

VI. STAFF REPORTS

There were no staff reports.

VII. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

Mr. Peterson: No comments.

Ms. Crane: Thank you for letting me sit it.

Mr. Nankervis: A number of people have asked me about Pederson Hill proposal. What kind of acreage are you looking at for the City development?

Mr. Chaney: We own over 100 acres, so defining the number for the end of the project would be difficult. Initially it would be about 30 acres. It would be about 200 single family lots, with 1 or 2 areas for multifamily developments.

VIII. ADJOURNMENT

Meeting adjourned at 5:52pm.