

**DRAFT**  
Meeting Minutes of the  
City and Borough of Juneau  
**Subdivision Review Subcommittee of the Planning Commission**

<b>Tuesday, November 10, 2015</b> <b>Community Development Department, Large Conference Room</b> <b>5:00 p.m. to 6:30 p.m.</b>
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**Members Present:**

Paul Voelckers (Chair)                       Ben Haight                       Dan Miller

**Staff:**

Laura Boyce (CDD)                       Beth McKibben (CDD)

CBJ Staff:            Jonathan Lange (CDD), Jill Mclean (CDD),  
Greg Chaney (Lands and Resources Division)

Guests:             Peterson Creek Owners Association represented by: Gretchen Keiser, Bob Wild,  
Marlyn Olson, and Jill Sandleben; Duran Construction, LLC. Represented by:  
Josette Duran and Marciano Duran  
John Williams

Call to Order – 5:12 p.m.

Approval of Agenda                      Approved

Approval of Minutes:                      Dan Miller moved that the October 16, 2015 minutes be  
approved. **Approved**

New Business

1. Peterson Creek Owners Association Variance Request

(2:00) Jonathan Lange presented that the variance request is to the frontage and practical access to a public right-of-way for a proposed minor subdivision of four existing lots in USS 1555 into nine-lots. Mr. Lange explained that there is an easement to the subdivision as well as within the subdivision that provides access to the lots and subdivision. (3:20) The property is outside of the urban service area boundary and outside the fire service boundary. In 1977, the property was subdivided by a platting waiver along with restrictive covenants that limit the number of houses and lots. The driveway is within the 25' no development/50' no disturbance buffer along Peterson Creek, an anadromous stream. (5:40) Mr. Lange discussed the issues for

the SRC including that all lots must have 30 feet of frontage on a publicly maintained right-of-way. The subdivision has an easement across Goldbelt property for access to the subdivision. Right-of-way is also required within the subdivision. Any improvements to the driveway due to the subdivision expansion would occur within the stream buffer; currently, CBJ is not accepting variances to this section of Code.

(6:45) Mr. Voelckers clarified that streamside buffer variances are not within the purview of the Planning Commission Board of Adjustment to consider. So the solution is to do it by nomenclature – not calling it a right-of-way. Mr. Lange answered yes, but they would come back to that. Mr. Voelckers asked what the applicants were hoping to get from the SRC tonight since the item is already scheduled for the November 24<sup>th</sup>, 2015, public hearing. (7:44) Ms. Keiser answered that she wanted to give an overview of the request and orient them to the subdivision. Ms. Boyce explained that this request was brought before the SRC previously when the previous subdivision rules applied. Now the new subdivision rules that went into effect on September 30<sup>th</sup> apply. The new rules apply regarding access – there is access TO the subdivision, as well as access WITHIN the subdivision. The existing driveway is also within the 50 foot habitat buffer and those three items are what we want to talk about tonight.

(8:57) Ms. Keiser presented the PCLA request. The driveway goes from North Douglas Highway to and through the subdivision. It was built in 1968 and this “road” pre-dates the habitat requirements in Code so it is non-conforming. They assert that this driveway is direct and practical access as required by Code. It is a privately maintained driveway in two private easements. They present a slide show regarding the driveway. It is eighteen feet at its widest and twelve feet at its narrowest. It is mostly fourteen feet wide. The platting waiver previously approved required an owner’s association and restrictive covenants as conditions for approval of the subdivision. The easement is a forty foot permanent easement across Goldbelt property to the subdivision. Then, within the subdivision, it is a private easement to each lot as established in the restrictive covenants.

(12:45) Mr. Voelckers asked if the Goldbelt easement portion is surveyed. Mr. Wild answers that it is and the easement document and survey are included in the SRC materials. It was surveyed as part of the easement purchase agreement with Goldbelt previously. The easement has not been surveyed within the subdivision, but would be as part of the subdivision. (13:42) Mr. Voelckers stated that he remembered from the previous SRC presentation that the easement is essentially like a right-of-way because it is permanent and functions like a right-of-way. Ms. Keiser discusses the location of the driveway. The original owner of the subdivision that built the roadway tried to run it down the middle of USS 1555. Ms. Keiser continues through the slideshow regarding easement conditions. (16:00) The driveway averages twenty feet from the stream if measured at 100 foot intervals, but varies from greater than 50 feet to

as close as three feet. Ms. Keiser stresses that the principal direct and practical access is non-conforming and they would not be aggravating it because they would not be changing the footprint of the existing driveway. (16:45) Referencing the variance criteria in Code that states that there be no net decrease for conformance with Code for nonconforming situations, Ms. Keiser states that if they would be using the same driveway that there would not be a greater nonconformance. State highway driveway standards, Ms. Keiser states, are a minimum of 14 feet wide, less than 15% grade, and enters public right-of-way at a right angle and their driveway meets those standards. Regarding public safety, the driveway adequately meets safety standards. Over thirty years, about five instances have occurred in which the police or emergency vehicles have had to access the driveway and there were no issues. (18:12) She points out that they are outside the fire service area and they regularly receive deliveries, such as fuel, building materials, FedEx, furniture, and even concrete trucks, to their properties.

Mr. Voelckers asked if any new driveways across the creek would be needed as part of the subdivision request or if they already exist. In the narrowest portion of the creek, there is already a bridge across the creek to Ms. Keiser's property. That section is already built out and would not need another crossing. Tract 4 would need driveways and could stay out of the buffer area. Ms. Keiser spoke with Teri Camery, CDD, who said that if a bridge were proposed across the creek, it is considered an exemption from the habitat buffer requirements, such as might pertain to Tract 2. Tract 2 homes currently have foot bridges to their properties. Ms. Keiser suggested that possibly there be a condition that there is no new disturbance of the buffer.

(21:03) Mr. Miller asks about the elevation change in one of the photos if the driveway were to be relocated outside of the habitat buffer in that area. Mr. Wild answered that it is about ten feet in elevation change in that area. Further down the driveway it becomes steeper gradually. There already exists sufficient room at the end of the driveway for a hammer head turnaround for emergency vehicles. Mr. Voelckers asked if this is something that already exists or if they would show this on a plat if it is required. Mr. Olson said that if it becomes a requirement, then they have it already. (23:50) Ms. Keiser restates that the four-lot subdivision would become a nine-lot subdivision of lots no less than three acres in size each. The covenants state that they cannot have two dwellings on a lot unless it is at least six acres. Under their proposal and what the covenants allow, they would generate no more than 146 average daily trips (ADT) which is under the 211 ADT threshold for rural privately-maintained driveways just approved in the new subdivision rules. The 146 ADT includes one single-family dwelling along with an accessory apartment for nine-lots. (25:09) Mr. Olson points out that three of the four lots have dual ownership and part of the purpose of this request is to divide the interests. This would make it easier for financing purposes or even sales. Mr. Voelckers asked if there is any discretion over the average daily trips if they go slightly over. Ms. Boyce explains how average daily trips are

calculated. According to the Institute of Traffic Engineers (ITE) Manual utilized for trip generation, single family homes generate 9.52 ADT, accessory apartments generate 6.65 ADT, and single-family attached homes – like common walls (zero lot lines) – generate 6.81 ADT. This proposal is for nine-lots and in the Rural Reserve zoning district may generate more than 211 ADT because there could be two dwellings and two accessory apartments per lot. The applicant states that the restrictive covenants limit the subdivision to less than that. However, if this variance is approved, a condition can be placed that would limit the trips this subdivision generates. (28:15) Mr. Miller asked what the mechanism is to change a covenant. Ms. Boyce stated that she believed that all owners had to agree to change it. Mr. Wild stated that there is no provision to change their covenants as outlined in their documents attached in the application materials. They can revoke them, but they cannot change them. Ms. Boyce said that including a plat note would mean that any change would require review by the CDD. Ms. McKibben stated that there is no mechanism for homeowners associations to notify the CBJ when covenants are changed; the CBJ will not know if the covenants have been changed. Mr. Wild stressed that their covenants do not allow for an amendment, and Ms. McKibben stated that covenants are generally private issues that do not involve the CBJ and are not an effective enforcement tool because the CBJ has no way of monitoring them. Mr. Miller stated that it sounds like a condition would be best and Ms. Boyce said that also a plat note would be good as well. Ms. Boyce said that conditioning the subdivision for less than the 211 ADT, if it were to be approved, would somewhat be keeping with the spirit of privately maintained access roads that were just approved in Code even though this request is not a privately maintained access road; it would be closer to keeping with Code than approving it without this condition.

(29:45) Mr. Miller asked if a right-of-way would be required within the subdivision. Mr. Lange answered affirmatively. Mr. Miller then said that if a right-of-way were to be platted within the subdivision, the driveway would not necessarily have to be located in the right-of-way. He asked if a driveway has to be within a right-of-way; a street would have to be in the right-of-way. Mr. Lange said that the point is that the right-of-way be platted so that each proposed lot would abut and have direct and practical access to the right-of-way. The driveway would have to be in the right-of-way. Ms. Boyce stated that the improvement would have to be constructed or bonded for by the time of final plat. (31:25) Ms. Keiser then points out that this is why PCLA requested the variance for the public right-of-way and public access. Ms. Boyce stated that staff is working on amendments to the habitat buffer section of Code to clarify when exemptions may be made, but does not know when those changes will be considered and what activities may be considered for waivers. Mr. Voelckers asked if there is willingness by staff to consider this request. Ms. Boyce stated that staff will be recommending denial. The Code requires public right-of-way access to subdivisions. The only place in Code that allows consideration of subdivisions by easement is for remote subdivisions. This subdivision is not in a remote area. (33:21) Mr. Voelckers stated that some research should be done to see if a right-of-way can be

recorded, but constructed at some later time. It is a classic grandfathered logic situation; it was not done incorrectly in its time and nothing is changing. Mr. Haight stated there are reasons that the buffer requirements exist, such as to limit debris and contaminant run off into the stream. Mr. Haight asked how to condition this proposal so as to achieve those same goals providing the example for how to do snow removal and driveway maintenance. Mr. Haight asks how to apply conditions that address the intent of the buffer requirement and still maintain the easement location. Mr. Voelckers brought up the recent ANDSOH subdivision that was approved. Mr. Haight mentioned recent approvals along Jordan Creek.

Mr. Miller restated the three issues as he understands them: the streamside setback, the right-of-way within the subdivision, and the right-of-way to the subdivision (the potential deal breaker). Mr. Miller asks if it is possible to have a 40 foot right-of-way that sits on top of the perpetual easement, and if the right-of-way can be placed over an easement. If so, that may solve this problem, Mr. Miller stated. Mr. Voelckers asked what the functional difference is between the driveway that exists now and a traditional right-of-way. Ms. Boyce stated that the Code requires public access for right-of-ways and this easement is private; the public can't access it. Ms. Keiser said that Goldbelt land manager indicates that they are content with the current arrangement with the easement being private, but that is not an official position from the Goldbelt board. (39:12) Mr. Wild states that they know what the requirements are for a right-of-way and PCLA are requesting a waiver from that requirement. He believes it is a circular argument to require a public right-of-way for a subdivision when they do not have it, and then CDD staff recommend denial of it; that is why they are seeking a variance to this requirement. Mr. Wild stated that he looked for definitions for "direct and practical" access and found some case law, but he said common sense tells you what it is stating, "You drive there, it's direct, it's practical." The purpose of frontage is to provide access to the public domain; Mr. Wild state that PCLA has that. It is not going away, unless PCLA gives it up. Frontage is also required for public safety purposes, and Mr. Wild notes that police can access the property. Mr. Voelckers asked if it is gated. Mr. Wild said there is a gate, but it stands open. Mr. Wild said they are not looking for a right-of-way, they are seeking a variance from that.

Mr. Voelckers asked if there were any final comments as he was conscious of the meeting time. Mr. Lange pointed out that the owners invited the Planning Commissioners to visit the property to look around and see it. Public notice requirements were discussed when three or more Planning Commissioners meet.

(43:32) Mr. Voelckers said that the variance applicants have heard the SRC's strategies for trying to work with what mostly seems to be a benign proposal and thinks Mr. Haight provided good recommendations regarding the habitat buffer.

Mr. Wild said they should not worry about the condition of Peterson Creek with the driveway being so close to it as it has been there close to fifty years. Mr. Wild pointed out that the stream is not an impaired water body as stated previously by staff; Peterson Creek is a pristine stream. The owners take care of the stream: they do not plow snow into it or dump oil into it. Mr. Voelckers then said that to further their argument, they are asking to “get more action going in this area with more housing opportunities” with their request to which Mr. Wild then stated that it is a few more average daily trips. Mr. Voelckers closed the item by saying that the applicants have heard the SRC’s feedback. (44:45) Mr. Miller then asked about meeting with the applicant and then a discussion regarding ex parte communication occurred. Being that this is a quasi-judicial hearing, communication with the applicant is not allowed. Ms. Keiser asked the SRC if the slide show of the driveway photos was helpful and if they should be presented at the upcoming public hearing and was told yes. (46:03) Discussion item ended.

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