

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
August 24, 2021

I. ROLL CALL

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held virtually via Zoom Webinar and telephonically, to order at 7:02 P.M.

Commissioners present: All Commissioners present via video conferencing – Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Deputy Clerk; Ken Alper; Dan Hickok; Mandy Cole; Josh Winchell; Erik Pedersen

Commissioners absent:

Staff present: Jill Maclean, CDD Director; Teri Camery, CDD Senior Planner

Assembly members: Loren Jones

MOTION: *by Mr. Dye to suspend the rules to follow Covid protocols.*

MOTION: *by Mr. Dye to extend the suspension through December 31, 2021.*

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA – None

III. APPROVAL OF MINUTES

A. Draft Minutes June 8, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the June 8, 2021 Planning Commission Regular Meeting minutes.*

B. Draft Minutes July 27, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the July 27, 2021 Planning Commission Regular Meeting minutes.*

IV. **BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION** – Chairman LeVine briefly explained the rules and processes for participating via Zoom format.

V. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

VI. **ITEMS FOR RECONSIDERATION** – None

VII. **CONSENT AGENDA** – None

VIII. **UNFINISHED BUSINESS** – None

At Ease 7:08 P.M. – 7:10 P.M.

IX. **REGULAR AGENDA**

Prior to presentation of **USE2021 0007**, Mr. LeVine declared a conflict and recused himself. Vice Chairman Dye took over the meeting at this point.

USE2021 0007: A Conditional Use Permit for an aquatic plant farm
Applicant: Brian P. Delay
Location: Lena Cove, Favorite Channel (approximate location)

Staff Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and APPROVE the requested Conditional Use Permit. The permit would allow the development of an aquatic plant farm at Lena Cove.

The approval is subject to the following conditions:

- ~~1. The Conditional Use Permit shall expire on March 11, 2031.~~
- ~~2. Any significant expansion in the intensity, footprint, noise, or other impacts of the operation, as determined by the CDD Director, shall be subject to a new Conditional Use Permit or a modification of this Conditional Use Permit.~~
- ~~3. A Floodplain Development Permit shall be required before development occurs.~~
4. Beaches surrounding the project site shall be patrolled by the applicant on a regular basis to retrieve any garbage or debris from the operation. If debris from the operation washes onto shore, it shall be removed within 48 hours, or as soon as safely or practically possible.

STAFF PRESENTATION by Teri Camery

QUESTIONS FOR STAFF

Mr. Voelckers asked whether the analysis letter from the US Forest Service opposing the project was solicited and if it has any bearing on this case. Ms. Maclean said the letter was part of the applicant packet submitted by the State and she did not know why forest service would have been consulted.

Mr. Winchell asked for a definition of what sort of debris would be included in recommendation #3, specifically, if it would include biological matter as well as nonbiological/inorganic matter. Ms. Camery referred the question to the applicant.

Mr. Pedersen asked how it was determined that this would need a conditional review based on the zoning. Ms. Camery explained this development would take on the zoning of the upland properties. Those are D1 and D3, both of which require conditional use permits for mariculture developments. Ms. Maclean cited Title 49.25.120 *Districts adjoining water or tidelands - Areas under water or tidelands which are not shown as included within any district shall be subject to the regulation of the adjacent district.*

Mr. Arndt remembered a shellfish operation was approved a few years ago with no sunset date but this project names a 10-year sunset and asked why this one would have it if the previous one does not. Ms. Camery said this is a different type of development and is visible to a neighborhood, which the other was not. Mr. Arndt asked if the lease received the automatic lease renewal, would they have to come back for another permit. Staff clarified it would not be a new permit, but an extension of the permit if awarded tonight.

Mr. Dye asked what the extension would look like. Specifically, would it automatically continue as is or would the PC have the ability to alter or deny the permit at that point. Ms. Maclean explained that would depend on whether the applicant changed or modified the operation or if there were any changes in Code that would need to be addressed.

Ms. Cole asked what would happen if the expiration and extension conditions were removed. Ms. Maclean reminded the Commission that without an expiration date, the permit runs with the land.

Mr. Dye followed up asking if they might be setting precedent by tying the sunset of the permit to the lease dates. Ms. Maclean explained because the project is in shared public waters in a cove with multiple users, the sunset dates are appropriate.

APPLICANT PRESENTATION Brian Delay explained his vision for the project as a kelp farm for Juneau and was available for questions.

QUESTIONS FOR APPLICANT

Mr. Winchell asked about the debris mentioned in the contract and whether it would include biological matter or if it was limited to the lines and anchor and other inorganic debris only. Mr. Delay was not certain how the state would define 'debris' but whatever the state decides, he would follow. Mr. Winchell asked how much mass and weight would be produced by February if the seeding were to begin in October and how it would affect the anchors and lines during winter storms. Mr. Delay estimated 15,000 to 25,000 pounds in total with different species growing at different depths.

Mr. Arndt asked if the line would sink or float if it broke free and with it installed seven feet below the surface, would vessels be able to go across or would they have to go around the area. Mr. Delay said the line would float if it broke free and would be affixed and installed to be at least seven feet below the surface in a negative four tide making it so a vessel could safely cross between the buoys at any time and any tide.

Ms. Cole asked the applicant for his thoughts on the ten-year expiration and extension option asking what his plans were when that time comes. Mr. Delay said he does not expect to be expanding in this location. Rather, this is just a starting point for him.

Mr. Voelckers asked if there would be any issue with harvesting the kelp around the timing of herring spawning and DIPAC activities. Mr. Delay said he would plan to harvest prior to herring spawning saying if they missed that window, it would be a loss for him but a win for the herring.

PUBLIC COMMENT

Anthony Gharrett, Lena Cove – Spoke against the project stating concerns with the lack of an engineering report, size of anchors that will be required, depth or substrate that will be required to anchor the project, size and number of buoys, how the lines will be cleaned and what will happen with the debris from the cleaning, and the lack of alternative site options.

Alec Mesdag, Montana Creek Road – Spoke in support of the permit and said tying the expiration permit to the lease is problematic.

Mr. Winchell asked Mr. Mesdag what he considered marketability of these products. Mr. Mesdag did not have an opinion on kelp. His wife owns an oyster farm and she is just starting to see success with that.

Barbara Shepherd, Lena Loop – Ms. Shepherd felt there may not have been enough time given for public comment and would have preferred more time be available. She asked if the rights to the project are transferable.

Jessica Gharrett Lena Cove – Had concerns about what would happen if the applicant decided the project was not viable and abandoned it or who the nearby residents could complain to if there was a problem with the project. Ms. Gharrett was concerned the kelp might attract foreign marine life such as urchins to the area.

Mr. Winchell asked if the location was her major concern. Ms. Gharrett agreed.

Gerry Donohoe Lena Beach – Spoke to say his main concern is the gear might end up on Forest Service beach land. He is in support of a kelp farm but not in this location.

Mr. Winchell asked if anybody has moored their boats in the cove over the winter and how do they fare. Mr. Donohoe said boats have to be moved from the cove before winter or they will end up on the beach.

ADDITIONAL APPLICANT COMMENTS

Mr. Delay replied to the public comments saying he is proposing to use 500-pound anchors, which will be strong enough to hold during storms. The seeds will be sourced in accordance with ADFG and will come from within 50 kilometers by boat from the site.

At Ease 8:30 P.M. – 8:35 P.M. due to technical difficulties

Addressing transferability of the lease and expansion of the project, he does not expect to expand in this area nor does he expect to transfer the lease. He sees Lena as a starting point but not as the future of mariculture.

COMMISSIONER QUESTIONS FOR APPLICANT

Mr. Voelckers asked Mr. Delay to elaborate on how the high energy of winter storms and wave action would be advantageous to the project. Mr. Delay said many kelp species prefer high-energy zones and having the gear so far below the surface will keep it well protected.

Mr. Winchell asked in the case that this becomes successful and profitable and expansion is an option, what areas would he be considering. Mr. Delay said he had looked at Barlow Cove but it is not an ideal location.

Mr. Hickok asked if there was any concern with the aesthetic of the farm and if it would be an eyesore. Mr. Delay agreed that other farms are not nice to look at but this project is designed specifically with that in mind and he has taken steps to mitigate that concern.

Mr. Dye asked if the expiration date would be a problem and would he prefer not to have to reapply for the permit in 10 years. Mr. Delay said he is all for less rules but having checks and balances and giving the public the opportunity for input is important, too.

COMMISSIONER QUESTIONS FOR STAFF

Mr. Voelckers asked for clarification on the question posed by Barbara Shepherd about who to contact with complaints or concerns. Ms. Maclean said for code enforcement, they would call CDD and for any violations of state ordinances, they would call DNR.

Mr. Pedersen asked if the DIPAC pen also had a CUP. Ms. Camery said the DIPAC operation has been in place for a long time and she is not sure of the original permitting but when they have expansions, those can require permits.

MOTION: *by Ms. Cole to accept staff's findings, analysis and recommendations and approve USE2021 0007 deleting Conditions 1 and 3.*

Mr. Winchell spoke in support of the project. Mr. Winchell supports the project but does not support removing the Condition.

Mr. Pedersen does not support the motion saying he does not believe the permit is required in the code.

Mr. Arndt said he supports the motion and added that, while he understands Mr. Pedersen's concerns, he felt that opposing the motion would be more of a detriment to the applicant than to the process.

MOTION TO AMEND: *by Mr. Arndt to delete Condition reading "Any significant expansion in the intensity, footprint, noise, or other impacts of the operation, as determined by the CDD Director, shall be subject to a new Conditional Use Permit or a modification of this Conditional Use Permit." Saying that it is already in code and would be redundant to include it as a condition.*

Ms. Cole and Mr. Dye spoke in support of Mr. Arndt's amendment.

Roll Call Vote on Motion to Amend

YEA: Arndt; Cole; Pedersen; Hickok; Alper; Winchell; Voelckers; Dye

NAY:

The motion to amend passed with no objection.

Ms. Maclean spoke to Mr. Pedersen's concerns and explained that aquaculture has grown to include algae and kelp and is covered under Title 49.

Mr. Winchell spoke to the motion and Ms. Maclean's explanation saying the Conditional Use Permit along with the oversight of the neighbors work in favor for the project.

Ms. Cole was sympathetic to Mr. Voelckers' concerns regarding removing the condition with the expiration date but felt it could set a precedent with unintended consequences.

Mr. Dye spoke in support of the motion saying it is good to see innovative ways to create industry and diversify Juneau's economy.

Mr. Hickok spoke against the motion saying he supports the project but it is considered farming, which would be industrial and this is the wrong place for it.

Roll Call Vote on Amended Motion

YEA: Cole; Alper; Winchell; Arndt; Dye

NAY: Pedersen; Hickok; Voelckers;

The amended motion passed 5-3.

Mr. LeVine returned to the meeting as Chair.

X. BOARD OF ADJUSTMENT – None

XI. OTHER BUSINESS – None

XII. STAFF REPORTS –

Ms. Maclean reported:

- The Assembly repealed lot depth from the table of dimensional standards and CDD staff is in process of contacting affected applicants.
- NC and MU3 zoning districts have gone to the Lands, Housing and Economic Development committee.
- CDD has hired two new planners.
- Assembly joint meeting Monday evening.

XIII. COMMITTEE REPORTS

Mr. Dye reported:

- Title 49 meeting Thursday at Noon to discuss parking and signs.

XIV. LIAISON REPORTS – Mr. Jones reported-

- North Douglas zoning was reconsidered and has been referred to the Assembly COW.

- August 30 and September 20 are the last COW meetings prior to the election.
- The PC is now the Board of Adjustment as well.
- The extension of the ADOD passed.

Mr. Voelckers asked how much time the PC would have with the Assembly. Mr. Jones said normally they try to keep those to an hour, but considering the other items on the agenda for that meeting, it may go over.

XV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS – None

XVII. EXECUTIVE SESSION – None

XVIII. ADJOURNMENT – 9:17 P.M.